EXHIBIT U 14

VENETE
KLEIN

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

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U14-VK-0001

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COMMISSION OF INQUIRY INTO STATE CAPTURE

STATEMENT BY VENETE KLEIN TO THE COMMISSION OF INQUIRY INTO STATE CAPTURE

INTRODUCTION

1. I have been approached by the Commission of Inquiry into State Capture ("the Commission") to provide input in respect of matters which form the focus of the Commission's inquiry into state capture ("the Inquiry"). I have volunteered to provide a statement in respect of the relevant matters, in the interests of fully ventilating such matters and assisting the Commission in the execution of its mandate. Although I have endeavoured to address all such matters as comprehensively as possible, this statement should not be construed as being conclusive of my position on the issues in question, nor should my failure to deal with any item in this statement be construed as a waiver of my rights in that regard, which rights remain reserved.

2. I have endeavoured to address all relevant matters (as conveyed to me by the Commission) thematically, and in a generally chronological manner. In order to deal fully with one theme at a time, this has required me occasionally to jump forwards and backwards in time when moving from one theme to another. I believe that this is the most efficient way in which to set out my statement.

3. By designation, at the relevant time, I was a Chartered Director (CD) SA and have graduated from various international executive programmes, including the Senior Executive Programme at Harvard University and the Executive Development Programme at the New School, in New York. In addition, I hold several international qualifications from MIT, INSEAD, IMD and Wits.

4. I have served as an Executive Director and Non-Executive Director on various Boards, including the Barclays Group Ltd, the Reserve Bank and Old Mutual Wealth. Until recently, I served as the Chairperson of The Institute of Directors Southern Africa. I have

garnered various achievements and awards as a result of my recognised performance in my career, including but not limited to the Business Woman of the Year Award, The Barclays International & Commercial Bank Leadership Award, the Nedcor People's Bank Top Managerial Performer Award and the Association of Black Investment & Securities Professionals Award.

5. For a full description with regards to my qualifications and employment background, I refer to my *Curriculum Vitae* ("CV") as well as my abridged CV, copies of which are annexed hereto marked **"VK1"** and **"VK2"** respectively.

APPOINTMENT TO THE ESKOM BOARD

6. I was nominated by Lionel Ricardo Adendorf to be appointed to the Eskom Board of Directors ("the Board"). I signed and dated the nomination form on 02 October 2014, a copy of which is annexed hereto marked **"VK3"**. The nomination was made in line with the prescripts as set out in the advert that appeared in the Business Times of Sunday, 28 September 2014.

7. On 11 December 2014, I was appointed by the then Minister of Public Enterprises, Lynne Brown ("the Minister") to serve as a non-executive member on the Board. A copy of the appointment letter from the Department of Public Enterprises ("the DPE") is annexed hereto marked **"VK4"**.

8. Eskom was at that point in dire straits, having faced going concern difficulties and with the country having been subjected to stage 3 load shedding. I felt impelled to make myself available to serve on the Board in order to lend my expertise to the cause of addressing the crisis facing Eskom and the country as a whole. I took up this position without any thought of financial gain.

9. I am unaware as to the process that the DPE followed leading up to my final appointment to the Board but would assume that it went through all the normal checks and balances.

APPOINTMENT AS THE CHAIPERSON OF THE PEOPLE AND GOVERNANCE COMMITTEE

10. Given the sheer enormity and complexity of the business, the Board's function is largely discharged through the efforts of various standing Board sub-committees, such as the Audit and Risk Committee ("ARC"), the People and Governance Committee ("P&G Committee") and the Board Tender Committee ("BTC") etc. Each of the board subcommittees has its own chairperson, delegation of authority and terms of reference, which guide the functioning of the sub-committees in conjunction with Eskom's Memorandum of Incorporation ("MOI"), Board Charter, the King III and IV codes on Corporate Governance and applicable legislation, including both the Companies Act 71 of 2008 ("the Companies Act") and the Public Finance Management Act 1 of 1999 ("PFMA").

11. A consequence of the aforesaid is that many matters falling within the delegated authority of the various sub-committees would not necessarily serve before the full Board. Only matters which meet the specified threshold in terms of the relevant materiality framework will serve before the Board. For example, the authority to approve contracts with a value up to R750 million is fully delegated to the executive, while the authority to conclude contracts with a value of over R750 million up to "Investment Decision" or "Budget level" is fully delegated to the BTC. As a result, only contracts with a value of above "Investment Decision" or "Budget level" will come before the full Board for approval. This means that multiple substantial contracts could be approved and concluded on the authority of the executive and the BTC, without the balance of the Board ever coming to know thereof.

12. As a result, members of the Board are required to trust that the checks and balances provided by the corporate governance structures are adhered to and adequately ensure the rigour of all decision-making processes. In addition to the above, the Board members rely heavily on the institutional knowledge and guidance received from the executive in relation to all such decision-making processes, including decisions made by the Board. This reliance is in accordance with the Companies Act. This, however, can result in difficulties from a corporate governance perspective, especially when decisions are

taken based upon information and guidance received from the executive, only to discover subsequently in the media that pertinent information was omitted or inaccurately submitted to the Board.

13. In early 2015, I was first appointed as Chairperson of the Social Ethics and Sustainability Committee, at which time I also served as a member of the Investment & Finance Committee and the P&G Committee. I later became the Chairperson of the P&G Committee and a member of the ARC.

14. During the first few months of the tenure of the new board there were a number of rotations of Board members within the Board sub-committees. This was due to the rotation of Board members as a result of one Board member taking up an executive role.

15. During the course of these rotations and after the suspension of 4 executives (I address the issue in relation to these suspensions below), Mr Zethembe Khoza became Acting Chief Executive Officer and I was moved to chair the P&G Committee.

16. I am not certain of the exact date of my appointment as Chairperson of the P&G Committee, but believe it was on or about 15 March 2015. Later, in about June 2015, I was replaced as Chairperson of the P&G Committee by Ms Chwayita Mabude, only to later be reinstated as Chairperson in or about August 2015.

17. The instability regarding the members of the committees also contributed to the governance issues, as Board members were always working with new people who were not familiar with the challenges that the Board faced.

18. Furthermore, the Board struggled with not having all the required information at hand when submissions were presented. It now appears that many of the submissions that were considered in my time contained misleading information or completely omitted critical information. What compounded matters even further for me, is that there are now differing versions of matters that I previously thought that I fully understood.

19. I believed that I was part of a success story in that we went from stage 3 load shedding at a cost of *circa* R434 million per day to the economy to no load shedding in my tenure

on the Board. I regarded this as one of my finest moments in terms of contributing to the country, which, after all, was my only motivation for agreeing to serve on the Board.

20. I understand my appointment to the position of Chairperson of the P&G Committee to have been motivated by the substantial experience I have acquired in this particular field of corporate governance during the course of my career, as demonstrated above. The primary mandate of the P&G Committee is to assist the Board in dealing with the nomination and remuneration of directors, senior executives, human resources strategies and policies. The P&G Committee is also the custodian of corporate governance to the benefit of Eskom. Following my re-appointment as Chairperson of the P&G Committee in August 2015, I served in that capacity until my resignation from the Board on Friday, 12 May 2017.

21. As chairperson of the P&G Committee, I was frequently called upon to mediate at executive level when matters could not be resolved. I always endeavoured to deal with these matters as discreetly as possible in the interests of the people concerned and the organisation as a whole. Similarly, I was called upon to deal with a number of "people management" issues that were escalated to the chairman of the Board, and which I handled with the same discretion. I attended to all of my functions as Chairperson of the P&G Committee with the rigour and efficiency demanded of anyone occupying a position of that importance.

MEETINGS LEADING TO THE DENTONS INQUIRY

22. I now describe the sequence of events in terms of the Board meetings that were scheduled for the period January 2015 – March 2015. At the outset, I note that I was informed of all the meetings, as described below, by the Company Secretary.

23. The Board Induction meeting was held on 16 January 2015 and was arranged by the Company Secretary, Malesela Phukubje. The agenda items included, amongst others, a "war room"[1] update, selective demand curtailment, a financial status update,

[1] The "*war room*" was a crisis management body (which was being run by the then Deputy President of the Republic of South Africa and supported by a number of high ranking government officials) established to oversee

consideration of Board committee handover reports, a media communication review, risk register consideration, debt management, turnaround strategy, Eskom fleet, panel of experts/International advisory committee and the PFMA section 51 indemnity. I recall having left this meeting feeling rather concerned both by the enormity of the challenges which had correctly been highlighted by the Minister and by the fact that Eskom did not appear to have concrete strategies in place to address these concerns.

24. A meeting was also scheduled by Mr Phukubje, to take place on 26 February 2015, but was later cancelled and did not take place. The reason given was that the DPE had advised that the meeting should not proceed. I raised objections to the cancellation of this meeting in terms of section 52 of the PFMA and Treasury Regulation 29. An email dated 27 February 2015, detailing my objections is annexed hereto marked **"VK5"**.

25. On Sunday, 08 March 2015 the Board received a request to attend a Board meeting on Monday, 09 March 2015 in order to make decisions in accordance with a Board memorandum dated 08 March 2015. The memorandum and resolutions are annexed hereto, marked **"VK6"**. I found it concerning that we had been called to a critical meeting on less than 12 hours' notice. In any event, I had a prior engagement and I duly declined the invitation.

26. I understand that the issues raised at the meeting by Mr Zola Tsotsi, in his capacity as Chairman of the Board, were of such a nature (for example, regarding an independent investigation into Eskom) that those who attended wanted the entire Board as well as the shareholder representative, Minister Lynne Brown to be present. The meeting was therefore rescheduled for 11 March 2015. Since I had not attended the meeting on 09 March 2015, I had to rely on the minutes of this meeting, annexed hereto marked **"VK7"**.

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the implementation of the 5-point plan Government had introduced to address load-shedding, which consisted of:

i. 30-day emergency measures;
ii. Co-generation production;
iii. Gas imports;
iv. Independent Power Providers (IPPs); and
v. Demand-side management.)

27. In terms of the memorandum, the Board was requested by Mr Tsotsi to take a resolution to commission an inquiry into the technical, commercial and structural status, as well as any acts and/or omissions which had contributed to the deficiency of generating and distribution capacity, of Eskom. Mr Tsotsi also proposed that this inquiry should be completed within a period of 3 months and that the Board subcommittee delegated to spearhead this inquiry should appoint an independent investigator, free of any influence or suspicion.

28. I found it concerning when reading the minutes of 09 March 2015 that the Chair referred to the Presidency having expressed concern, presumably to the Chair, regarding the performance of Eskom. The meeting agreed to invite the Minister to address the issues as articulated by the Chairman. I have seen two sets of the minutes of this meeting, the original unsigned minute (annexed as **"VK7"**) mentions the Presidency, whereas the signed set of these minutes had mentions of the Presidency removed.

29. At the meeting of 11 March 2015, the erstwhile Group Chief Executive Officer, Mr Tshediso Matona, again outlined the problems facing Eskom, which included:

    a. Departures of senior executives through resignations and retirements, which required him to reshuffle the team;

    b. Engagement with labour as staff morale was a big challenge;

    c. Gaps in information provided to the "war room";

    d. Unlikelihood of savings targets being met for the financial year due to serious leakage in primary energy costs;

    e. The liquidity buffer of R20 billion had decreased to R4.9 billion as 2 expected loan amounts had not been received; and

    f. The non-payment of substantial amounts owing by Municipalities.

30. The Minister also addressed the Board that day, once again expressing her concern around the Board getting a handle on the business. The Minister conceded that she had no right to instruct the Board on any matter regarding the conduct of Eskom's business.

31. The Minister did note a number of issues:

a. She was aware that the Board may have been feeling that it had fallen by the wayside given the activities of the "war room";

b. Concern regarding the interest rates which Eskom had negotiated and agreed to in the market;

c. The inequality of coal price purchases, with some companies being paid more than others;

d. Mismanagement of the load shedding process;

e. The purchasing of diesel "on the hoof";

f. The appointment of the Board did not bring about any problems and the process ran smoothly; and

g. The ARC may procure the services of an independent, credible forensic investigator to undertake the inquiry proposed by Mr Tsotsi and not someone who had previous dealings with Eskom or whose independence may be in doubt.

32. The activities of the "war room" were particularly concerning as I was of the view that they were potentially instructing the Board. For example, the "war room" took the decision that the Board should not proceed with the mooted voluntary severance package process as started by the previous Board. The minutes of the meeting highlighting this are annexed hereto and marked as **"VK8"**.

33. After the Minister left, the Board convened a Board in-committee meeting where Mr Tsotsi again presented his memorandum proposing an inquiry into corporate governance issues at Eskom and sought the Board's support in that regard. It was agreed that:

    a. A forensic inquiry would be established, and would be driven by the P&G Committee and the ARC; and

    b. The ARC would be the custodian of the inquiry and would engage with other committees as and when necessary.

34. Mr Tsotsi proposed that those Executive Committee members who were heading up the divisions where the inquiry would take place step down during such inquiry. Mr Tsotsi (at the 11 March 2015 Board in-committee meeting) assured the Board that he had compiled a report that supported the establishment of an inquiry (I deal later with Mr Tsotsi's subsequent admission at the 19 March 2015 meeting, that such report never existed). However, the Board was concerned about the continuity challenges this would occasion, especially given the fragility of the company at the time. The members agreed that there was a trust deficit between the Board and the Executive Committee members involved in the matters forming the focus of the inquiry and that it would therefore be in the best interest of the inquiry if they were asked to step aside for the period of the inquiry in order for it to be concluded within the proposed 3 month period.

35. The Board members expressed the view that they would prefer to do a fact-finding exercise before asking the relevant executives to step aside. There was concern that acting with haste may result in Eskom finding itself in a position where it has to fight cases in the Labour Court. Mr Tsotsi explained that this would slow down the inquiry and that a lot of work had already been undertaken and that he could provide the Board with a report as per the work that had been done previously.

36. Based on that, Mr Tsotsi then advised that the Group Executive: Commercial & Technology, Group Executive: Group Capital, Financial Director & Group Chief Executive should be suspended. The reasons provided by Mr Tsotsi were, *inter alia,* that the

Financial Director had met with tenderers during a tender process, while in respect of the Group Executive: Commercial & Technology there was an allegation of misconduct which included another staff member. The minutes of the 11 March 2015 meeting are annexed hereto marked as **"VK9"**.

37. Mr Tsotsi had recommended that Mr Malesela Sekhasumbi act as Group Executive Commercial & Technology. I found this recommendation to be concerning as Mr Sekhasumbi was on suspension and Mr Tsotsi did not share this with the Board when he made his recommendation. Later, this was one of the items that the Board charged Mr Tsotsi with prior to his removal from the Board. A letter from the attorney representing Eskom to Mr Tsotsi's attorneys regarding this issue is annexed hereto and marked as **"VK10"**.

38. The Board, at the 11 March 2015 meeting, resolved as follows regarding the inquiry and suspensions:

a. An inquiry shall be instituted into the affairs of Eskom and that the duration of the inquiry shall be three months. The Board envisaged that, upon completion, this inquiry would provide it with an independent view of reasons for the following:

i. The poor performance of Eskom's generation plant;

ii. Delays in bringing the new generation plant on-stream;

iii. High costs of primary energy;

iv. Eskom's financial challenges;

v. Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies;

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vi. Contract management, in particular cost escalations, frequent modifications, penalty costs and Eskom's capacity to manage contracts in general; and

vii. Security failures and accountability at Eskom as a Key National Point.

b. The ARC shall take custodianship of the inquiry and that the P&G Committee and other committees assist where necessary and report to the Board. The ARC is mandated to draft the Terms of Reference ("ToR"). The P&G Committee was mandated to provide support; and

c. The key executives be put on suspension for the duration of the inquiry.

39. A meeting of the P&G Committee was convened immediately after the Board meeting to deal with the decision to suspend the executives whose areas of responsibility would be investigated for the duration of the inquiry.

40. The P&G Committee accepted the identified four executives to be suspended as:

a. Tshediso Matona, Chief Executive Officer;
b. Tsholofelo Modise, Financial Director;
c. Dan Morokane, Group Executive: Group Capital; and
d. Matshela Koko, Group Executive: Technology and Commercial.

41. While on the topic of the mooted suspensions, I interpose to note the potential roles of Ms Suzanne Daniels and Mr Salim Essa in the suspensions. Ms Daniels, in her testimony before the Parliamentary Inquiry noted that she met Mr Essa on 09 March 2015 when attending a meeting with Mr Koko. Ms Daniels testified that, at this meeting, Mr Essa questioned what it would take to have employees suspended. Ms Daniels claims to have advised Mr Essa that she was a contract expert and not an employment expert.

42. At this point in time, and in line with her testimony, Ms Daniels was a senior manager, not the head of legal and the company secretary. She was only appointed as Group

Company Secretary on 01 October 2015, well after the suspensions had taken place. Yet the metadata of the pre-suspension letters for the four Executives, illustrates that Ms Daniels authored the letters and that they were last modified by Mr Essa on 10 March 2015, who she allegedly had her first encounter with the day prior. I discovered this when considering the letters for purposes of preparing this statement. The pre-suspension letters and printouts of the corresponding metadata of each letter are annexed hereto marked **"VK11"**, **"VK12"**, **"VK13"**, and **"VK14"**.

43. This is of particular concern to me as Ms Daniels, by her own admission, was at a relatively low level and should not have been drafting suspension letters. In my view this should have been done by Neo Tsholanku, the Head of Legal at the time. Of even greater concern, and frankly horrifying, is the fact that the letters were provided to and modified by Mr Essa the very day after he had enquired from Ms Daniels what it would take to have employees suspended. Mr Essa had no legitimate reason to be involved in Eskom internal processes let alone the drafting of suspension letters in respect of senior executives.

44. Returning to the process of the suspensions, the relevant executives were called into the P&G meeting (which was convened immediately after the 11 March 2015 Board meeting), chaired by Zola Tsotsi, individually and were informed of the Board's decision to launch an inquiry. They were further advised of the Board's view that their presence could hamper the said inquiry.

45. The P&G Committee, under the chairmanship of Mr Tsotsi, then gave each executive an opportunity to give the meeting any reasons as to why their presence would not hamper the inquiry. After this process was followed, the said executive were each asked to recuse him/herself in order to allow the P&G Committee to deliberate on the information and reasons provided by said executive and then make a final decision on his/her possible suspension.

46. In the cases of all four executives, the P&G Committee found that the reasons presented were not strong enough and proceeded with the suspensions. The suspensions were

deemed necessary in order to give effect to the Board's decision to proceed with the inquiry in an unfettered manner and to ensure same was concluded within the agreed three-month timeframe.

47. To my understanding, none of the suspended executives were given reasons for their suspensions. Instead, they were simply told that they were required to step aside in order for the inquiry to be speedily concluded and that they were not being formally charged.

48. It is worth remembering that none of the suspended executives were ever charged with specific wrongdoing – the reason for their suspension was purely as guided by Mr Tsotsi, namely that they might have interfered with the inquiry.

49. Besides Mr Matona and Mr Koko, I was advised that the remaining executives (namely, Mr Morokane and Ms Molefe) approached Eskom with the intention of settling, in terms of which they would resign from their respective positions and accept an exit package.

50. The Board considered these settlement requests and delegated the Acting Chairman, Dr Ngubane, myself and Mr Kumalo to enter into negotiations with the four suspended executives around their exit from Eskom and in relation to their respective exit packages.

51. The authorization provided for:

a. The Acting Chairman, Dr Ngubane, myself and Mr Kumalo to enter into exit negotiations with each of Mr Matona, Ms Molefe, Mr Koko and Mr Morokane;

b. That any settlement should be within the following parameters:

i. The financial package to be negotiated shall not exceed a maximum amount of up to 12 months' total package;

ii. Any benefits due to the affected executives as per the standard conditions of employment shall be implemented according to the relevant Eskom policies and procedures; and

iii. Settlement agreements shall set out the terms and conditions of the exit and include the relevant provisions relating to confidentiality.

c. That the Chairperson of the P&G Committee be authorised, with the power to delegate further, to take all the necessary and all immediate steps to give effect to the above including the signing of any agreements or other documentation necessary or related thereto.

52. To the best of my recollection, I recall that all settlement figures were provided for by Anton Minnaar, the Executive Support Manager at the time.

53. Mr Morakane requested an exit discussion, which was handled by Messrs Khumalo and Khoza.

54. Various meetings were held with Ms Molefe, some of which I was a part of, however her final exit agreement was handled by Mr Khoza.

55. Mr Matona referred his matter to the Labour Court, Johannesburg for an order to set aside his suspension and allow him to return to work. This application was brought on an urgent basis and was opposed by Eskom. At the same time, Mr Matona had lodged an unfair labour practice dispute with the Commission for Conciliation, Mediation and Arbitration ("CCMA"). The Labour Court found that there was no basis for urgency and dismissed the application in this regard. It nonetheless found in favour of Mr Matona in respect of procedural fairness of the suspension and referred the matter to the CCMA for proper handling of the issues prior to it being heard at the Labour Court.

56. My reason for supporting Mr Matona's departure was that he did not appear to have a handle on the turnaround of the organisation, which was particularly critical at that point in time. Dr Ngubane met with him and discussed his possible departure from Eskom. An agreement was subsequently reached with Mr Matona and he exited the services of Eskom.

57. With regards to Mr Koko, I was present at a meeting with him. He was the one executive who was not interested in leaving the employ of Eskom. He indicated that he wanted his job back. Upon objecting to this, I was mandated by the Board to engage with a senior partner of Dentons in order to establish whether or not Mr Koko had been, by way of the inquiry, found guilty of any wrongdoing.

58. In this regard, I contacted Mr Noor Kapdi of Dentons, who indicated that they had not found any evidence of wrongdoing by any of the suspended executives. In order to address my discomfort, I decided to engage with Mr Jerry Kaapu of Bowman Gilfillan, who advised that Eskom could not keep someone on suspension if the inquiry did not find any evidence of wrongdoing. Dentons also provided a letter confirming the above.

59. As far as I am aware, Mr Koko was reinstated in early July 2015. I refer to the 1 July 2015 meeting and minutes thereof where it is written that the fourth executive (Mr Koko) should be reinstated. This meeting was chaired by Ms Mabude. The minutes of this meeting are annexed hereto marked **"VK15"**.

60. During this time, one of the Board members acted as Interim Chief Executive with effect from 12 March 2015 and Mr Brian Molefe was subsequently seconded to Eskom from Transnet as Acting Chief Executive. As per the Secondment Agreement between Transnet and Eskom, the duration of secondment was three months, until July 2015.

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

    a. Edwin Mabelane (Acting Group Executive: Technology and Commercial);

    b. Nonkululeko Veleti (Acting Finance Director);

    c. Abram Masango (Acting Group Executive: Group Capital); and

    d. Zethembe Khoza (Interim Chief Executive).

62. The said executives were called in by the Board during a P&G Committee meeting on 12 March 2015 (chaired by Mr Khoza) and were informed of their acting positions.

63. The next relevant meeting was the Board in-committee meeting of 19 March 2015, which Mr Nick Linnell attended, as the independent consultant. I now note that the Board was introduced to Mr Linnell at the 11 March 2015 meeting (and not this meeting of 19 March 2015, which was previously my recollection). Mr Tsotsi, the Chairman, informed the Board that the consultant he had appointed (Mr Linnell) had been referred to him from higher up, in the Presidency. It was of concern to the Board that no proper process was followed to engage Mr Linnell's services. The Board accordingly expressed discomfort with the engagement of Mr Linnell. Moreover, the Board felt that the Mr Tsotsi's actions had compromised the Board as well as the integrity of the inquiry. The minutes of the 19 March 2015 meeting are annexed hereto marked **"VK16"**.

64. Further, during this meeting, Mr Tsotsi admitted that the report he had referred to earlier (at the 11 March 2015 meeting) in support of the inquiry did not exist.

65. With regards to issues relating to the media statement that he had released earlier in March 2015, Mr Tsotsi explained that during the preparation of the media statement, he intended for it to be distributed for input by the Board and the DPE. Thereafter, it would be issued. However, and according to Mr Tsotsi, the draft media statement had unfortunately leaked to two media houses and was distributed in the public domain without receiving approval from the Board. Further, the contents of the ToR which had been prepared by the Chairman of ARC were contradicted by the contents of the media statement in that the Board had never resolved to appoint Mr Linnell or a retired judge to oversee the inquiry. The draft Terms of Reference and the media statement are annexed hereto marked **"VK17"** and **"VK18"**, respectively.

66. The original ToR were sent to the Board by the Company Secretary and were then further unpacked by the ARC.

67. The Board unanimously agreed at the Board in-committee meeting on 19 March 2015 that it had lost confidence in the chairman (i.e. Mr Tsotsi) and would recommend his removal as a director due to:

    a. His failure to seek or obtain Board approval for the appointment of a consultant (i.e. Mr Linnell);

    b. His actions in terms of the suspensions; and

    c. Preparing and distributing a media release without Board approval.

68. This information was shared with Mr Tsotsi on his return to the meeting of 19 March 2015. Furthermore, the Board had resolved to inform the Minister regarding this breakdown between the Board and the Chairman.

69. At the meeting of 19 March 2015, the Board elected Dr Baldwin Ngubane, who at a later stage became the Chairman of the Board, to act as chairperson until we had communicated our resolution with the Minister.

70. The Board communicated its resolution to the Minister at a meeting on 20 March 2015. It was also indicated that the Board had requested the meeting in order to consult with the Minister regarding removal of a director in terms of the MOI.

71. The Board indicated that the Chairman of the Board had performed certain actions which rendered his continued directorship untenable. In the main, the actions were the following:

    a. Engagement of an external consultant (Mr Linnell, who appears from the metadata thereof, to have been responsible for drafting the resolutions that were sent to the Board for consideration on 08 March 2015) to provide services to Eskom without following Eskom's procurement processes or informing the Board of his actions;

b. Misrepresenting to the Board that there was a Report which had been prepared by the consultant and which contains findings about misconduct by certain executives;

c. Preparing a media statement to be issued in the name of the Board, which contained inaccurate information as well as information which named third parties and had the potential to prejudice Eskom's interests; and

d. The additional charge of Mr Tsotsi misleading the board when he tried to bring Mr Sekhasumbi back from suspension to take up an executive role.

72. It was clarified at the 19 March 2015 meeting that the Board was required to act in accordance with its fiduciary duties and that if the statement had mentioned that the Board had presided over an organization fraught with corruption, fraud and other maladies, it would bring Eskom into disrepute. The Board confirmed that it was unanimous in its view regarding the steps which were to be taken against the Chairman, and the consultation with the Minister.

73. The Board felt that the suspension was further necessitated by its discomfort of where Mr Tsotsi's instructions were coming from; there were underlying tones of influence on the Board from the Presidency and the 'war-room' as described above.

74. The Minister supported the views of the Board in accordance with the MOI. The Board elected to proceed with the suspension, in accordance with the MOI, and after its consultation with the Minister.

75. The Minister was kept apprised of the developments in removing Mr Tsotsi as Chairman, at a meeting held with Eskom Board Members and the Minister on 01 April 2015, at which I was present. The minutes of the 01 April 2015 meeting are annexed hereto marked **"VK19"**. We informed the Minister that the following steps were taken in this regard:

a. A Notice of Meeting was sent to Mr Tsotsi on 22 March 2015, calling him to a meeting with the Board on Wednesday, 25 March 2015. The Notice outlined that the Board had lost confidence in him and that he was required to present representations to persuade the Board to reconsider its position.

b. The meeting commenced at 18:00 on 25 March 2015 and was attended by the full Board. Mr Tsotsi was also present and was represented by Ngcebetsha Madlanga Inc Attorneys, who had briefed Mr Nazeer Cassim SC as counsel in the matter. Through his counsel, Mr Tsotsi requested a postponement of the meeting on the grounds that the notice given to him was short. They stated that, in effect, they had been given one day's notice which, for a matter as serious as that under consideration, was not fair.

c. The Board acceded to their request and it was agreed that the meeting would reconvene on Monday, 30 March 2015 at 20:00.

d. On 30 March 2015 at 17:00 the Board was advised through Eskom's attorneys that Mr Tsotsi had once again not had adequate time to prepare as he had spent the weekend of 27-29 March 2015 in Cape Town on Eskom business. Consequently, Mr Tsotsi's attorneys requested another postponement.

e. The Board took the position to proceed with the meeting in Mr Tsotsi's absence as it was of the view that he was delaying the process. This was communicated to his counsel.

f. At 20:00 the meeting commenced, and Mr Tsotsi was in attendance with his legal team. Together with his counsel, Mr Tsotsi presented his version in response to the allegations which had been made against him.

g. After conclusion of the presentation, Mr Tsotsi asked the Board to consider the impact his removal from the Board would have on his life and on his family, as well as on his ability to earn a living. He was then asked to recuse himself so that the Board could consider everything that had been presented.

h. After significant deliberation – after which it became clear that the Board was still of the same view of no longer having confidence in Mr Tsotsi – the Board decided that it would engage Mr Tsotsi directly in terms of how it ought to disengage, being cognisant of his request to consider his interests.

i. Two Board members were nominated to have an offline discussion with Mr Tsotsi – expressing the Board's view and encouraging him to disengage/resign rather than put this matter to a vote. After a lengthy dialogue, Mr Tsotsi addressed the full Board together with his legal representatives and advised the Board that:

i. He had decided to resign with immediate effect as both Chairman of the Board and as a non-executive director;

ii. He wished to be afforded a few days to empty out his office of personal belongings;

iii. He wished to be supported with payment for his legal representatives – which was standard practice at Eskom at the time; and

iv. He wished to be paid an amount equivalent to 3 months' board fees, taking into account that his tenure would have ended at the AGM.

j. The Board accepted points i – iii but pointed out that point iv would require consultation with the Minister and her approval. I note that the Minister later declined to pay the amount Mr Tsotsi requested.

THE DENTONS INQUIRY

76. As I alluded to earlier, the process of appointing Dentons and finalising the ToR was handled under the custodianship of the ARC, which was chaired by Ms Mabude. I only became a member of ARC on or about June 2015.

77. The original Draft ToR was sent to the Board by the Company secretary, Mr Phukubje on 14 March 2015, which I also received. I was comfortable that the original intent was covered and therefore did not add anything.

78. The 14 April 2015 meeting of the ARC articulated the process followed in appointing Dentons. As my first ARC meeting was only in June 2015, my only exposure to this meeting was in terms of the minute, a copy of which is annexed hereto marked **"VK20"**.

80. Dentons gave a presentation of its report to the Board on 25 June 2015, wherein issues related to timing, costs and extending the inquiry beyond three months were discussed.

81. Dentons made numerous recommendations in their report relating to various aspects of Eskom, including commercial, generation, group capital, finance, and group security. The Dentons recommendations as well as the ARC table tracking Eskom's progress in addressing each of the recommendations is annexed hereto marked **"VK21"**.

82. To make the process more manageable and to keep an accurate record of events, the recommendations were broken down into their respective group divisions. The Board was then provided with feedback through every ARC meeting.

83. The Board eventually declined to extend the Dentons investigation due to the agreed timeframe of three months expiring. This is consistent with the original decision as distributed on 08 March 2015. Further, the budgetary constraints played a big role in the allotted time being strictly adhered to.

84. I am aware that three reports were issued by Dentons:

a. The first report was that presented at the June 2015 meeting, and was collected and shredded. This report included allegations against individuals and companies that had not yet been investigated. Eskom was uncomfortable

releasing the names of those individuals and companies mentioned in the report that had *not* been investigated by Dentons;

b. The second report was that of 02 July 2016, that had the names of the above individuals and companies removed. This was a version of the report that the Board felt comfortable releasing to the public; and

c. The third version of the report was the 02 July 2016 report which was redacted heavily by Suzanne Daniels. At this point in time (early 2017), there was a lot of pressure to release the report. A meeting was therefore held with Ms Daniels to discuss the most effective way to release the approved 02 July 2016 version of the report. This was an informal meeting; hence I do not have any minutes for it, and I recall certain (but not all) Board members attending it. Those I can recall in attendance were Dr Ngubane, Mr Singh, Dr Naidoo, Mr Khoza and myself. It was agreed that the 02 July 2016 version of the report (not the redacted version prepared by Ms Daniels) would be released at a media briefing the day after this meeting. At the end of the meeting Ms Daniels asked to consult with counsel to get an opinion on releasing this version of the report. I did not hear back from Ms Daniels regarding the advice she received from counsel. The next morning at the media briefing, Ms Daniels proceeded to explain to the media that she could only release the redacted version of the report (i.e. the version prepared by her) as per the advice she had received from counsel. This was the first time that I or the other Board members present had become aware that Ms Daniels was releasing her redacted version of the report rather than the 02 July 2016 version of the report. This came as a shock to me and the other Board members.

MATTERS RELATING TO BRIAN MOLEFE

85. Brian Molefe and Anoj Singh were seconded to Eskom by Minister Brown. I welcomed the secondments. I have noted, in great detail, the appointment of Mr Molefe, his resignation, and his pension pay-out in my affidavit to the Hawks. The affidavit I submitted to the Hawks covering these subjects is, annexed hereto marked as **"VK22"**.

VENETE JARLENE KLEIN

DEPONENT

I certify that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and deposed before me at PRETORIA on this the 2 day of MARCH 2020 and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.

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

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK1"

VENETE KLEIN
Curriculum Vitae

PERSONAL DETAILS

Full Names	:	Venete Jarlene Klein
Known As	:	Venete
Nationality	:	South African
ID Number	:	580914 0109 08 2
Address	:	11 Numeral Street, Mooikloof Estates, Pretoria
Gender	:	Female
Contact Details	:	(c) 082 412 5759 (w) 012 993 5856 (w) 012 993 5863 (f) 086 636 2072 / (f) 012 998 1462 venete@kleininc.co.za
Languages	:	English (Fluent) Afrikaans (Fluent) Xhosa (Basic) Zulu (Basic)

EDUCATION

	OAKLANDS HIGH SCHOOL, LANDSOWNE, CAPE TOWN
1976	**Matriculation**
	INSTITUTE OF SOUTH AFRICAN BANKERS
1984	**Bankers Exams**
	UNIVERSITY OF THE WESTERN CAPE
Discontinued	**B Com Honors (Management)**
2014	INSTITUTE OF CHARTERED DIRECTORS SOUTH AFRICA **Chartered Director**

INSEAD, France
The Challenge of Leadership

THE MIT ENDICOTT HOUSE, DEDHAM, MASSACHUSETTS, USA
Corporate Strategy

IMD, Lausanne, Switzerland
Mastering Top Management Dilemmas

INSEAD, SINGAPORE
Avira Programme

Harvard, Boston USA
Senior Executive Programme

THE NEW SCHOOL / UNIVERSITY OF COLUMBIA, NEW YORK
Executive Development Programme

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VENETE KLEIN
Curriculum Vitae

NELSON MANDELA PROFESSIONAL DEVELOPMENT - NEW YORK
International Banking

INTERNATIONAL DEVELOPMENT, DUBLIN)
Strategic Banking and Development Beyond the year 2000

University of Chicago, London, UK
GRCB Leadership Development Program "Executing the GRCB Strategy"

SHARING IN GROWTH AND DEVELOPMENT OF THE EDUCATIONAL SYSTEM

- **Visiting Professor at the University of Free State to MBA students**
- Lectured at University of Louisiana (US) to MBA students
- Lectured at Cornel University in US
- Lectured at **Stellenbosch University** to MBA students
- Lectured at **University of Western Cape** to MBA students
- Lectured at EFMA (European Financial Markets)

EMPLOYMENT SYNOPSIS

01/2011 – current **Kleininc Management Consultants**

- **Chief Executive Officer**
  Key successes: Various Small Business Turned Arounds
  Strategic influence on various boards
  Public Speaking Engagements
  Mentorship of Senior Executives
  Corporate Governance Specialist

See attached List of Board Positions.

Executive Positions Held

11/2011 – 02/2012 **ECOBANK**

- **Executive Director Retail Bank: Ecobank Nigeria**
  Portfolio: Group Head Business Bank Ecobank Africa
  (11/2011 – 02/2012)

  Major Project
  Ecobank – Oceanic Integration
  - *Appointed to run the integration of Oceanic into Ecobank*
  - *Successful integration of Oceanic into Ecobank with 3000 staff*
  - *In the Integration Project I had to drive all the different disciplines in the 2 Banks to ensure that we had IT, Marketing, Distribution etc. all aligned.*
  - *Managing these multi-disciplinary teams through a full Project office,*

06/2003 – 12/2010 **ABSA**

- **Executive Director, Corporate Affairs & Sustainability**
  (01/2010 – 12/2010)

  Major Project
  - *Travelled with Presidential Delegation to all of the BRICS countries representing Business South Africa*
  - *Implemented a Sustainability Strategy for the Group – in conjunction with all the relevant Exco members*
  - *Staff 100*

VENETE KLEIN
Curriculum Vitae

Reason for leaving
- *I had agreed my exit date when I moved into this portfolio*

- **Executive Director, Retail Bank** – Including Retail Bank, Meeg Bank, AllPay Consolidated Investment Holdings
  (06/2005 – 01/2010)
- **Major Successes**
  - 25 000 staff
  - Meeting 10m customer target for 2008 – growing to 20% - this was a 1st for ABSA
  - Asset growth objective reached
  - Moved Absa into 1st place in terms of market share for liabilities (individuals) YOY June 08 to June 09 industry grew 11.5%, Absa's growth 20%
  - Meeg Bank
    Politically geared acquisition and integration of Meeg bank
  - Distribution
    Perfecting measurements of branches
  - ATM's
    Star productivity
    ATM languages (8)
  - International languages (4)
  - Launch of prepaid debit card
  - Launch of cash send
  - Customer service measurement reviewed and CSM and NPS implemented with world class bench marks
  - Best of the Best Programme
  - Leading Edge Programme
  - TIK Programme
  - Bright Future's Programme
  - Leadership Enablement Programme
  - Staff Indebtedness Programme
  - Absa Junior Board

Reason for leaving
- Due to a restructure of Exco, I agreed to move into the role in Corporate Affairs & Sustainability and also discussed my exit date from the group

- **Managing Executive**: Business Banking Services
  Portfolio: AgriBusiness, Franchising, Consumables, Black Business, Franchising, Medium Business and Public Sector
  (02/2005 – 06/2005)

Key Responsibilities
- *Managed 200 staff*
- *Portfolio R1,8b*
- *Assets R5b*
- *Liabilities R30b*
- *Medium Business Asset Growth – was the biggest achievement*
- *2000 staff members*

Reason for leaving
- I was promoted to Group Exco

- **General Manager Business Banking Services**
  Portfolio: AgriBusiness, Franchising, Consumables, Black Business, Franchising and Medium Business
  (12/2003 – 01/2005)

VENETE KLEIN
Curriculum Vitae

Key Objective/Responsibility
- *Medium Business & Agriculture Market share growth*
- *2000 staff members*

Reason for leaving
- I was promoted

- **General Manager: Agriculture**
  (06/2003 – 11/2003) Increased Market share
  Reason for leaving
  - My portfolio was expanded

08/1999 – 06/2003 **LAND BANK**

- **Chief Operating Officer**
  (01/2002 – 05/2003)
  The Stabilisation of Landbank Operations with 1500 staff

  Reason for leaving
  - I was Headhunted to a take up a role in a big bank and to function at a more Strategic level

- General Manager: Branch Network
  (08/1999 – 01/2002)
  - *Stabilising the Branch Network Cleaning up the Fraud & Corruption which was rife at the time 800 staff members)*

  Reason for leaving
  - I was promoted

07/1995 – 08/1999 **PEOPLES BANK**

- **Regional Manager**
  - *Building the best performing team & Region in the group*
  - *Staff 350*

  Reason for leaving
  - I was headhunted – to take up a role in Public Sector

09/1994 – 06/1995 **COMMUNITY BANK**

Area Manager
- *Built a distribution network which was the best in the country*
- *Appointed the required staff*
- *Established the systems required for the operations*
- *Staff 40*

Reason for leaving
- I was headhunted – to take up a role in a Regional leadership role

VENETE KLEIN
Curriculum Vitae

DIRECTORSHIPS & MEMBERSHIPS

Seasoned Board Member

Current – see further details on attached schedule

- Non-Executive Director: Senwes (22/08/2019)
- Non-Executive Director: SANBI (01/10/2018)
- Non-Executive Director: KLK Landbou (24/07/2018)
- Trustee: Accenture Foundation Trust (09/05/2018)
- Non-executive Director: PG Group (01/05/2013)

Discontinued

- Non-Executive Director: DB Schenker (01/10/2016 - 31/05/2019)
- Non-Executive Director: Calgro M3 Holdings Ltd (01/12/2015 - 14/02/2019)
- Non-Executive Director: Reserve Bank of SA (01/08/2015 - 27/07/2018)
- Trustee: South African National Defense Force Educational Trust (01/04/2015 – 09/06/2017)
- Chair-Person: IoDSA – (Institute of Directors of South Africa) (01/06/2013 – 25/05/2017)
- Governing Body Chartered Directors South Africa (01/11/2014 – 25/05/2017)
- Non-Executive Director: ESKOM (11/12/2014 – 12/05/2017)
- Non-executive Director: Old Mutual Wealth Proprietary Limited (01/03/2013 – 30/06/2016)
- Non-executive Director: ACSIS Wealth Managers (22/08/2012 – 19/11/2015)
- Non-executive Director: SABS – South African Bureau of Standards (01/03/2013 – 02/11/2015)
- Trustee: Community Impact Trust (01/07/2006 – September 2015)
- Ithala SOC – (November 2014 – 31/07/2015)
- Councilor of University of the Western Cape – (03/2014 – 08/2014)
- Non-executive Director: CBDA – Co Operatives Bank Development Agency (09/2013 – 08/2014)
- Non-executive Director: Proudly South African (06/2011 - 03/2013)
- Non-executive Director: Postbank South Africa (08/2012 –02/2013)
- Vice President: BUSA (Business Unity SA) (06/2010 – 07/2010)
- Executive Director: Ecobank Nigeria (2011 - 2012)
- Chairman: AllPay Consolidated Investment Holdings (2006 - 2011)

COMMISSION OF INQUIRY INTO STATE CAPTURE

- Non-executive Director: Rural Housing Loan Fund (2010 - 2011)
- Trustee: Absa Foundation Trust (2010 - 2011)
- Non-executive Director: Absa Trust (2006 - 2009)
- Non-executive Director: Absa Brokers (2006 - 2009)
- Non-executive Director: NBI (National Business Initiative) (2008 - 2010)
- Non-executive Director: Banking Association of SA (2008 -2010)
- Non-executive Director: MEEG Bank (2007 – 2010)
- Non-executive Director: Ombudsman for Banking Services (2005 - 2010)
- Chairman: Gotswelela (2008 - 2010)

Experienced in various standing committees and Industry Boards.

- Member: Proudly South African Business Forum
- Member: Defence Provincial Liaison Council, Gauteng
- Member: Standing Committee for the Revision of the Banks Act, 1990 (appointed by the Minister of Finance): South African Reserve Bank.
- Member: National Anti-Corruption Forum
- Member: Nedlac
- Member: IWF (International Women's Forum)
- Member of Aardklop Nasionale Kunstefees (discontinued)

SPEAKING ENGAGEMENTS

- The Global Leadership Summit Swaziland (15/11/2017)
- South African Responsible Gambling Foundation (03/11/2017)
- Africa for Africa - International Women in Leadership Summit 2017 (30 August 2017)
- Association of SA Quantity Surveyors (ASAQS) Annual Conference 2016 (07/06/2016)
- Good Hope-Women's Day (09/08/2015)
- Business Women's Association BWA (SA) – Leadership Census Launch June 2015
- General Electric Global Summit (20/05/2015)
- International Innovation Summit Cape Town (2014)
- Durban Christian Church – Financial Stewardship (2014)
- University of Free State – Women's Event (08/2013)
- Vodacom - Vodacom Advanced Executive Programme - (06/2013) - Keynote speaker
- Golden Key International Honour Society – University of Pretoria (Tuks) (10/2012) - Keynote address
- South African Supplier Diversity Council (SASDC) - Sandton (06/2012)- Keynote address
- Proudly South African – Women of Destiny Conference – (08/2012) – Keynote address
- GHCC – Woman's Day Address – (08/ 2012) – Keynote address
- AoG - Mitchell's Plain – Woman's Day Event – (08/2012) – Keynote address
- Verve Woman's Conference Rustenburg – (08/2012) – Keynote address
- Department of Science and Technology – Women and Financial Management – (08/2012) – Keynote address
- Department of Science and Technology – Women's Forum Launch – (05/2012) – Keynote address
- HCC – Process of Growth Conference – (05/ 2012) – Keynote address
- United Nations – New York: Issues of Financial Inclusion in South Africa

- Corporate Council for Africa – Washington DC
- International Women's Forum – Montreal (US)
- Department of Science & Technology – Women's Day Celebration – Keynote speaker
- Department of Infrastructure & Development – Keynote speaker
- HCC – News Girls Conference – Keynote Speaker
- DCC – Women's Day Celebration – Keynote Speaker
- Remax Estate Agents Conference – Keynote Speaker
- University of Free State – Addressed MBA student

PERSONAL ATTRIBUTES

- Executive
- Maturity
- Company
- Commitment
- Impact and
- Influence
- Builds Organizational capability
- Grows Senior Leaders
- Cross Boundary Collaboration
- Creates Business Value
- Deep Commercial Insight
- Customer Commitment, Foresight and Measurement
- Industry Trail Blazer
- Industry Innovator

REFERENCES:

- **Kobus Marais:** Chairman of KLK Landbou
  Contact number: 083 261 6858

- **Pumla Radebe:** Chairperson of Calgro M3 Holdings Ltd
  Contact number: 063 294 9936

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V. Klein - Directorship Experience

Directorships: Name of Company / Organization	Type of Company	No. of Directors on Board	Date of appointment	Capacity	Main Board	Audit, Risk & Compliance Committee	Nominations Committee	IT Governance Committee; Risk & Capital Committee	HR & Remuneration Committee	Social & Ethics Committee (& Sustainability – ESKOM)	Honorary Degrees Committee	People & Governance Committee	Served Under Chairpermanship of:
Current													
Senwes	Private		22/08/2019	NED	✓	✓							Danie Minnaar
KLK Landbou	Private		24/07/2018	NED	✓	✓							Kobus Marais
SANBI	Government Dept		01/10/2018	NED	✓	✓							Beryl Ferguson
Accenture Foundation Trust			09/05/2018	Trustee	✓								William Mzimba
PG Group	Private	13	01/05/2013	NED	✓	✓				✓			Garry Lubner
Kleninc Management Consultants	Private	1		CEO	✓		✓						Kleninc Management Consultants
Centuria 400	Private	2	18/04/2008	ED	✓		✓						Centuria 400
Klein Family Trust	Private	2	01/04/2005	Trustee	✓		✓						Klein Family Trust

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V. Klein - Directorship Experience .... *Continued*

Directorships: Name of Company / Organization	Type of Company	Date of appointment	Date of resignation	Capacity	Main Board	Audit, Risk & Compliance Committee	Nominations Committee	HR & Remuneration Committee	Social & Ethics Committee	Honorary Degrees Committee	Enterprise Architecture & Information Systems Committee	Tender Committee	Served Under Chairpermanship of:
Discontinued													
DB Schenker	Private	01/10/2016	31/05/2019	NED	✓								Carl Hinz
Calgro M3 Holdings Ltd	Private	01/12/2015	14/02/2019	NED	✓			✓					Pumla Radebe
Reserve Bank of South Africa	Government Dept	01/08/2015	27/07/2018	NED	✓			✓ CHAIRPERSON					Governor E L Kganyago
SANDF	Government Dept	01/04/2015	30/05/2017	Trustee	✓								Roy Anderson
IoDSA	NPO	01/06/2013	25/05/2017	Chair	✓		✓		✓	✓			Self
Chartered Directors Governing Body	NPO	01/11/2014	25/05/2017		✓				✓	✓			Wiseman Nkulu
ESKOM	SOE	11/12/2014	12/05/2017	NED	✓	✓			✓				Dr Ben Ngubeni
Old Mutual Wealth	Private	01/03/2013	30/06/2016	I-NED	✓	✓							Carmen Mynard
ACSIS	Private	22/08/2012	19/11/2015	I-NED	✓	✓	✓		✓				Andrew Bradley
SABS	SOE	01/03/2013	02/11/2015	I-NED	✓	✓	✓		✓				Jeff Molobela
Community Impact Trust	NPO	07/2006	09/2015	Trustee	✓								Graham Catto
Ithala SOC		11/2014	07/2014		✓	✓		✓					Malose Kekana
UWC Council	Government Dept	03/2014	08/2014	CM	✓					✓	✓ Chair	✓ Chair	Brian Williams
CBDA	SOE	09/2013	08/2014	NED	✓	✓	✓						Dr SP Makhesh
Post Bank SA	SOE	08/2012	02/2013	NED	✓	✓	✓						Maggie Modipa
Chair of the Post Office/Post bank Committee	SOE	08/2012	02/2013	Chairman	✓	✓	✓						Buhle Mthetwa
Proudly SA	NPO	06/2011	03/2013	NED	✓								Adv. Dali Mpofu
BUSA	NPO	06/2010	07/2010	VP	✓								Futhi Mtoba

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VK

VENETE KLEIN
Curriculum Vitae

V. Klein - Directorship Experience *continued...*

Directorships: Name of Company / Organization	Type of Company	Date of appointment	Date of resignation	Capacity	Main Board	Audit, Risk & Compliance Committee	Nominations Committee	HR & Remuneration Committee	Social & Ethics Committee	Honorary Degrees Committee	Enterprise Architecture & Information Systems Committee	Tender Committee	Served Under Chairpermanship of:
Discontinued													
Eco Bank Nigeria	Private	2011	2012	ED	✓	✓	✓						Arnold Ekpe
AllPay Consolidated Investment Holdings	Private	2006	2011	Chairman	✓								Self
Rural Housing Loan Fund	ANG	2010	2011	NED	✓								Thembi Chiliza
Absa Foundation Trust	NPO	2010	2011	Trustee	✓								Dr Dan Cronje/Garth Griffith
Absa Trust	Private	2006	2009	NED	✓								Willie Lategan
Absa Brokers	Private	2006	2009	NED	✓								Willie Lategan
National Business Initiative)	NPO	2008	2010	NED	✓								Cas Coovadia
Banking Association of SA	NPO	2008	2010	NED	✓								Cas Coovadia
Ombudsman for Banking	NPO	2005	2010	NED	✓								Adv. John Myburgh
Gotswelela	Private	2008	2010	Chairman	✓								Self
Afrikaanse Handels Instituut	NPO			President	✓								Self
Meeg Bank	Private	2007	2010	NED	✓			✓					Wiseman Nkuhlu

U14-VK-0034

"VK2"

VENETE KLEIN
CHIEF EXECUTIVE OFFICER
KLEININC MANAGEMENT CONSULTANTS

INTRODUCTORY BIO

Venete is an accomplished executive who has spent more than 4 decades in the financial services sector, which includes serving as a Non-Executive Director of the South African Reserve Bank.

Her broad range of experience includes being CEO of the biggest Retail Bank in South Africa for 5 years.

Today as a seasoned board member she serves on the boards of **PG Group Holdings, Accenture Foundation Trust and KLK Landbou.**

Venete also served on the Board of Calgro M3 Holdings - who was very active in the Social Housing environment in SA.

She spent most of 2009 & 2010 travelling with the Presidency, in order to conclude the BRICS transaction, with Brazil, Russia, India and China.

Venete until recently served as the Chairperson of the Institute of Directors of South Africa (IoDSA), as well as a Non-Executive Director DB Schenker and SANBI.

She is considered to be a financial powerhouse, humanitarian, mother and bridge-builder all rolled up into one rather formidable package. She is a role model to women all over the world. She is best known to have a leadership style that combines compassion with big business.

Although small in stature, her passion for creating business with heart is larger-than-life.

She retired from ABSA in December 2010, having successfully led the **Retail Bank for 5** years, where she was responsible for 25 000 staff and 11m customers. As Executive Director of Absa Retail Bank, her portfolio included Absa Africa. She went on to Ecobank where she was responsible for their Retail & Business Bank. She was based in Nigeria at that time.

She is well renowned for her contribution in shaping the South African Financial Services Sector, which she served for 30 plus years, proven by her appointment to the South African Reserve Bank Board.

She was named **Business Woman of the Year in 2009**.

She is a graduate of **Harvard** and studied at **3** of the **top** 5 Universities in the **world**.

For more information contact us at:
(c) 082 412 5759
(w) 012 993 5856
(f) 086 636 2072
www.kleininc.co.za
Kleininc Management Consultants
@Kleinincconsult

"VK3"

FROM THE DESK OF

LIONEL ADENDORF

Monday, 29 September 2014

Ms Lynne Brown
Minister of Public Enterprises
Private Bag X15
HATFIELD
0028

Honourable Minister,

NOMINATION: VENETE KLEIN TO ESKOM BOARD

In line with the prescripts as set out in the advert, inviting nominations for suitable persons for possible appointment to the boards of seven state-owned companies (SOC) within the public enterprises portfolio, that appeared in BusinessTimes of Sunday, 28 September 2014, please find my nomination of Mrs Venete Klein to the board of ESKOM, attached.

Mrs Klein, a seasoned board member, who is set to add immeasurable value in the areas of finance audit and more specifically governance to the board of ESKOM, is currently the chairperson of the board of the Institute of Directors of South Africa and is one of 25 chartered directors in South Africa.

Her many years as an executive in the financial services sector - having been responsible for the Retail Bank of Absa, where she managed 25 000 people, with an operating budget of R8b and responsibility for 11m customers - makes her a good candidate to help direct the board and company to achieve the development goals our government has set for itself and this particular SOC.

Mrs Klein, through her qualifications and years of experience in business and community development will indeed make the kind of contribution this SOC and our government require.

Kindest regards,

Lionel R. Adendorf
IDnr: 780219 5267 085

*PO BOX 325 BONNIEVALE 6730 *+27 61 494 1105 *LRADENDORF@YAHOO.COM

public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

NOMINATION FORM FOR POSSIBLE APPOINTMENT TO THE BOARD OF DIRECTORS OF A STATE OWNED COMPANY WITHIN THE PORTFOLIO OF THE DEPARTMENT OF PUBLIC ENTERPRISES

Ms Lynne Brown, MP
Minister of Public Enterprises
Private Bag X15
Hatfield
0028

Dear Minister Brown,

RE: NOMINATION OF A SUITABLE PERSON FOR POSSIBLE APPOINTMENT TO THE BOARD OF DIRECTORS OF (ESKOM) (NAME OF SOC)

I, LIONEL RICARDO ADENDORF hereby nominate VENETE KLEIN

to be considered for appointment to the Board of Directors of ESKOM (NAME OF SOC) which reports to the Minister of Public Enterprises.

Has the nominee been contacted by the nominator to determine their interest in being nominated?

☑ YES ☐ NO

NOMINATOR	NOMINEE
DATE: 29.09.14	DATE: 2/10/2014

Nominator's Information

1.	Full name(s)	Lionel Ricardo
2.	Surname	Adendorf
3.	Residential address	87 Frans Avenue, Bonnievale, 6730
4.	Telephone number (w)	021 – 402 3702
5.	Cellphone number	061 – 494 1105
6.	Email address	lradendorf@yahoo.com
7.	Employer	Dept. of Agriculture, Forestry and Fisheries
8.	Employer's address	Foretrust Building, Martin Hammerschlag Way, Foreshore, Cape Town
9.	Occupation	Dir: Communication Services
10.	Qualification (s)	ND: Journ; BTech: Journ (CPUT)
11.	Relationship to the Nominee	None

Nominee's Information

1.	Full name(s)	Venete Jarlene
2.	Surname	Klein
3.	Residential address	11 Numeral Street, Mooikloof Estate, Pretoria, 0081
4.	Telephone number (w)	012 – 993 5856/5863
5.	Cellphone number	082 412 5759
6.	Email address	venete@kleininc.co.za
7.	Employer	Kleininc Management Consultants
8.	Employer's address	517 Mendelssohn Street, Constantia Park, 0181
9.	Occupation	Retired Banker / Management Consultant
10.	Qualification (s)	Chartered Director / Various Senior Executives Qualifications
11.	Relationship to the Nominator	None

VENETE KLEIN
Curriculum Vitae

PERSONAL DETAILS

Full Names	:	Venete Jarlene Klein
Known As	:	Venete
Nationality	:	South African
ID Number	:	580914 0109 08 2
Address	:	11 Numeral Street, Mooikloof Estates, Pretoria
Gender	:	Female
Contact Details	:	© 082 412 5759 (w) 012 993 5856 (w) 012 993 5863 (f) 086 636 2072 / (f) 012 998 1462 venete@kleininc.co.za
Languages	:	English (Fluent) Afrikaans (Fluent) Xhosa (Basic) Zulu (Basic)

EDUCATION

	OAKLANDS HIGH SCHOOL, LANDSOWNE, CAPE TOWN
1976	**Matriculation**
	INSTITUTE OF SOUTH AFRICAN BANKERS
1984	**Bankers Exams**
	UNIVERSITY OF THE WESTERN CAPE
Discontinued	**B Com Honours (Management)**

INSEAD, France
The Challenge of Leadership

THE MIT ENDICOTT HOUSE, DEDHAM, MASSACHUSETTS, USA
Corporate Strategy

IMD, Lausanne, Switzerland
Mastering Top Management Dilemmas

INSEAD, SINGAPORE
Avira Programme

Harvard, Boston USA
Senior Executive Programme

THE NEW SCHOOL / UNIVERSITY OF COLUMBIA, NEW YORK
Executive Development Programme

COMMISSION OF INQUIRY INTO STATE CAPTURE

VENETE KLEIN
Curriculum Vitae

NELSON MANDELA PROFESSIONAL DEVELOPMENT - NEW YORK
International Banking

INTERNATIONAL DEVELOPMENT, DUBLIN)
Strategic Banking and Development Beyond the year 2000

University of Chicago, London, UK
GRCB Leadership Development Program "Executing the GRCB Strategy"

SHARING IN GROWTH AND DEVELOPMENT OF THE EDUCATIONAL SYSTEM

- **Visiting Professor at the University of Free State to MBA students**
- Lectured at University of Louisiana (US) to MBA students
- Lectured at Cornel University in US
- Lectured at **Stellenbosch University** to MBA students
- Lectured at **University of Western Cape** to MBA students
- Lectured at EFMA (European Financial Markets)

EMPLOYMENT SYNOPSIS

01/2011 – current **Kleininc Management Consultants**

- **Chief Executive Officer**
  Key success: Various small business Turned Arounds
  Strategic influence on various boards
  Public Speaking Engagements
  Mentorship of Senior Executives

11/2011 – 02/2012 **ECOBANK**

- **Executive Director Retail Bank: Ecobank Nigeria**
  Portfolio: Group Head Business Bank Ecobank Africa
  (11/2011 – 02/2012)

  Major Project
  Ecobank – Oceanic Integration
  - *Appointed to run the integration of Oceanic into Ecobank*
  - *Successful integration of Oceanic into Ecobank with 3000 staff*
  - *In the Integration Project I had to drive all the different disciplines in the 2 Banks to ensure that we had IT, Marketing, Distribution etc. all aligned.*
  - *Managing these multi-disciplinary teams through a full Project office,*

06/2003 – 12/2010 **ABSA**

- **Executive Director, Corporate Affairs & Sustainability**
  (01/2010 – 12/2010)

  Major Project
  - *Travelled with Presidential Delegation to 3 of the BRICS countries representing Business South Africa*
  - *Implemented a Sustainability Strategy for the Group – in conjunction with all the relevant Exco members*
  - *Staff 100*

  Reason for leaving
  - *I had agreed my exit date when I moved into this portfolio*

VENETE KLEIN
Curriculum Vitae

- **Executive Director, Retail Bank** – including Retail Bank, Meeg Bank, AllPay Consolidated Investment Holdings
  (06/2005 – 01/2010)
- **Major Successes**
  - 25 000 staff
  - Meeting 10m customer target for 2008 – growing to 20% - this was a 1st for ABSA
  - Asset growth objective reached
  - Moved Absa into 1st place in terms of market share for liabilities (individuals) YOY June 08 to June 09 industry grew 11.5%, Absa's growth 20%
  - Meeg Bank
    Politically geared acquisition and integration of Meeg bank
  - Distribution
    Perfecting measurements of branches
  - ATM's
    Star productivity
    ATM languages (8)
    International languages (4)
  - Launch of prepaid debit card
  - Launch of cash send
  - Customer service measurement reviewed and CSM and NPS implemented with world class bench marks
  - Best of the Best Programme
  - Leading Edge Programme
  - TIK Programme
  - Bright Future's Programme
  - Leadership Enablement Programme
  - Staff Indebtedness Programme
  - Absa Junior Board

Reason for leaving

- Due to a restructure of Exco, I agreed to move into the role in Corporate Affairs & Sustainability and also discussed my exit date from the group

- **Managing Executive:** Business Banking Services
  Portfolio: AgriBusiness, Franchising, Consumables, Black Business , Franchising, Medium Business and Public Sector
  (02/2005 – 06/2005)

Key Responsibilities

- *Managed 200 staff*
- *Portfolio R1,8b*
- *Assets R5b*
- *Liabilities R30b*
- *Medium Business Asset Growth – was the biggest achievement*
- *2000 staff members*

Reason for leaving

- I was promoted to Group Exco

- **General Manager Business Banking Services**
  Portfolio: AgriBusiness, Franchising, Consumables, Black Business , Franchising and Medium Business
  (12/2003 – 01/2005)

Key Objective/Responsibility

- *Medium Business & Agriculture Market share growth*
- *2000 staff members*

Reason for leaving

- I was promoted

VENETE KLEIN
Curriculum Vitae

- **General Manager: Agriculture**
  (06/2003 – 11/2003)
  Increased Market share
  Reason for leaving
  - My portfolio was expanded

08/1999 – 06/2003 **LAND BANK**

- **Chief Operating Officer**
  (01/2002 – 05/2003)
  The Stabilisation of Landbank Operations with 1500 staff
  Reason for leaving
  - I was Headhunted to a take up a role in a big bank and to function at a more Strategic level

- General Manager: Branch Network
  (08/1999 – 01/2002)
  - *Stabilising the Branch Network Cleaning up the Fraud & Corruption which was rife at the time 800 staff members)*

  Reason for leaving
  - I was promoted

07/1995 – 08/1999 **PEOPLES BANK**

- **Regional Manager**
  - *Building the best performing team & Region in the group*
  - *Staff 350*

  Reason for leaving
  - I was headhunted – to take up a role in Public Sector

09/1994 – 06/1995 **COMMUNITY BANK**

- **Area Manager**
  - *Built a distribution network which was the best in the country*
  - *Appointed the required staff*
  - *Established the systems required for the operations*
  - *Staff 40*

  Reason for leaving
  - I was headhunted – to take up a role in a Regional leadership role

DIRECTORSHIPS & MEMBERSHIPS

Seasoned Board Member

Current

- Governing Body Chartered Directors South Africa
  None

COMMISSION OF INQUIRY INTO STATE CAPTURE

VENETE KLEIN
Curriculum Vitae

- Councilor of University of the Western Cape – (01-03-2014)
  Member of Honorary Degrees Committee
  Chairman of UWC Tender Committee of Council
  Chairman of Enterprise Architecture and Information Systems

- Chair Person: IoDSA – (Institute of Directors of South Africa)
  Member of Remuneration Committee
  Member of Nominations Committee
  Member of Social & Ethics Committee
  Lead Independent Director

- Non-executive Director: Old Mutual Wealth Proprietary Limited
  Member of Audit Committee

- Non-executive Director: PG Group
  Member of Audit Committee
  Member of Social & Ethics Committee

- Non-executive Director: SABS – South African Bureau of Standards
  Member of Remuneration Committee
  Member of Audit and Finance Committee

- Non-executive Director: Acsis
  Member of Audit Committee

- Trustee: Community Impact Trust
  None

Discontinued

- Non-executive Director: CBDA – Co Operatives Bank Development Agency
  Audit Committee representative at Treasury
  Member of Treasury Audit Committee

- Non-executive Director: Proudly South African (03/2013)
  Member of Remuneration Committee

- Non-executive Director: Postbank South Africa (08/2012 – 02/2013)
  Chairperson of Postbank Committee – this was a bridge committee between Postbank Board and Post Office Board

- Vice President: BUSA (Business Unity SA) (06/2010 – 07/2010)
  None

- Executive Director: Ecobank Nigeria (2011 - 2012)
  Chairman – Integration Committee

- Chairman: AllPay Consolidated Investment Holdings (2006 - 2011)
  None

- Non-executive Director: Rural Housing Loan Fund (2010 - 2011)
  Member of the Remuneration Committee

- Trustee: Absa Foundation Trust (2010 - 2011)
  None

VENETE KLEIN
Curriculum Vitae

- Non-executive Director: Absa Trust (2006 - 2009)
  None

- Non-executive Director: Absa Brokers (2006 - 2009)
  None

- Non-executive Director: NBI (National Business Initiative) (2008 - 2010)
  None

- Non-executive Director: Banking Association of SA (2008 - 2010)
  None

- Non-executive Director: MEEG Bank (2007 – 2010)
  None

- Non-executive Director: Ombudsman for Banking Services (2005 - 2010)
  None

- Chairman: Gotswelela (2008 - 2010)
  None

- Past President: Afrikaanse Handels Instituut (2008 – 2009)
  None

Experienced in various standing committees and Industry Boards.

- Member: Proudly South African Business Forum
- Member: Defence Provincial Liaison Council, Gauteng
- Member: Standing Committee for the Revision of the Banks Act, 1990 (appointed by the Minister of Finance): South African Reserve Bank.
- Member: National Anti-Corruption Forum
- Member: Nedlac
- Member: IWF (International Women's Forum)
- Member of Aardklop Nasionale Kunstefees (discontinued)
- Standing Committee member: Revision of the Short-term Insurance Act (two terms / discontinued)
- Member of Standing Committee: Financial Policy and Services Board (discontinued)

ACHIEVEMENTS

- As Vice President – BUSA – Travelled with Presidential Delegates to BRICS countries (2010)
- Presented to United Nations - New York: Issues of Financial Inclusion in South Africa (2010)
- Represented South Africa at the 1st German – South African Business
- Forum (2009) Business Woman of the Year (2009)
- First female president of the AHI (in its 66 year history)
- (2008/2009) BBQ Sustainable Achiever Award (2007)
- Nominated: Top Woman in Business and Government
- (2007) Nominated: Shoprite / Checkers Business Woman of the Year
- (2007) Nominated: Shoprite / Checkers Business
- Woman of the Year (2006) Adjudicator in the Sanlam
- Financial Medial Awards (May 2006)
- Barclays International Retail & Commercial Bank (IRCB) Chairman's - Leadership Award
- (Madrid 2005) ABSIP award (Association of Black Investment & Securities Professionals) (2004)

VENETE KLEIN
Curriculum Vitae

- Agricultural Business Personality of the Year (2004)
- First Woman Deputy Chair of Agricultural Business Chamber
- (2004) Nominated: Shoprite / Checkers Business Woman of the Year (2002)
- SA Representative: African American Gateway for Business Women, Chicago (September 2000)
  SA Representative: Women in Agriculture, Kenya (May 2000)
- Selected to attend Professional Development Program in USA (July 1997 – December 1997)
  Nominated a Black Manager of the Year by the BMF (1996)
- Argus Business Personality of the Week (September 1996)
- Top Managerial Performer, Nedcor People's Bank (1996)
- Top Region, Peoples Bank, Western Cape (1995/6/7)

SPEAKING ENGAGEMENTS

- International Innovation Summit *Cape Town(2014)*
- Durban Christian Church – *Financial Stewardship (2014)*
- University of Free State – *Women's Event (08/2013)*
- Vodacom - *Vodacom Advanced Executive Programme - (06/2013) - Keynote speaker*
- Golden Key International Honour Society – University of *Pretoria (Tuks) (10/2012) - Keynote address*
- South African Supplier Diversity Council (*SASDC) - Sandton (06/2012)- Keynote address*
- Proudly South African – *Women of Destiny Conference – (08/2012) – Keynote address*
- GHCC – *Woman's Day Address – (08/ 2012) – Keynote address*
- AoG - Mitchell's Plain – *Woman's Day Event – (08/2012) – Keynote address*
- Verve Woman's Conference *Rustenburg – (08/2012) – Keynote address*
- Department of Science and Technology – *Women and Financial Management – (08/2012) – Keynote address*
- Department of Science and Technology – *Women's Forum Launch – (05/2012) – Keynote address*
- HCC – *Process of Growth Conference – (05/ 2012) – Keynote address*
- United Nations – New York: *Issues of Financial Inclusion in South Africa*
- Corporate Council for Africa – *Washington DC*
- International Women's Forum – *Montreal (US)*
- Department of Science & Technology – *Women's Day Celebration – Keynote speaker*
- Department of Infrastructure & Development – *Keynote speaker*
- HCC – News Girls Conference – *Keynote Speaker*
- DCC – Women's Day Celebration – *Keynote Speaker*
- Remax Estate Agents Conference – *Keynote Speaker*
- University of Free State – *Addressed MBA student*

PERSONAL ATTRIBUTES

- Executive
- Maturity
- Company
- Commitment
- Impact and
- Influence
- Builds Organisational capability
- Grows Senior Leaders
- Cross Boundary Collaboration
- Creates Business Value
- Deep Commercial Insight
- Customer Commitment, Foresight and Measurement
- Industry Trail Blazer
- Industry Innovator

VENETE KLEIN
Curriculum Vitae

References:

- **Dr Steve Booysen:** Former CEO of Absa
  Contact number: 082 453 5517
- **Prof Wiseman Nkuhlu:** Former Chairman of Meeg Bank
  Contact Number: 083 4577 054
- **Dale Hillary:** Former CEO of Change Partners
  Contact number: 082 800 1806
- **Thoko Didiza:** Member of Parliment
  Contact number: 084 563 5331
- **Adv. Dali Mpofu:** Chairman Proudly South African
  Contact number: 083 260 1433

COMMISSION OF INQUIRY INTO STATE CAPTURE

VENETE KLEIN
Curriculum Vitae

V. Klein - Directorship Experience

Directorships' Name of Company / Organisation	Type of Company	No of Directors on Board	Period Served	Capacity	Main Board	Audit Risk & Compliance Committee	Nominations Committee	HR & Remuneration Committee	Social & Ethics Committee	Honorary Degrees Committee	Enterprise Architecture & Information Systems Committee	Tender Committee	Serves Under Chairpersonship of
Current													
SABS	SOE	9	1	I-NED	✓	✓		✓					Bahle Sibisi
IoDSA	NPO		3	Chair	✓		✓						Self
Governing Body Chartered Directors South Africa	NPO	6	1		✓								Roy Anderson
UWC Council	Government Dept	30		CM	✓					✓	✓ Chair	✓ Chair	Brian Williams
PG Group	Private	13	1	NED	✓	✓			✓				Ronnie Lubner
Old Mutual Wealth	Private	9	1	I-NED	✓								Carmen Maynard
ACSIS	Private	8	1	I-NED	✓	✓							Andrew Bradley
National Treasury	Government Dept					✓							Vuyo Jack
Community Impact Trust	NPO	4	10	Trustee	✓								Dick van der Walt
Kleinlnc Management Consultants	Private	1	4	CEO	✓							Self	Kleinlnc Management Consultants
Centurio 400	Private	2	6	ED	✓							Self	Centurio 400
Klein Family Trust	Private	2	9	Trustee	✓							Self	Klein Family Trust

INTO STATE CAPTURE

VENETE KLEIN
Curriculum Vitae

V. Klein - Directorship Experience

Directorships: Name of Company / Organisation	Type of Company	No. of Directors on Board	Period Served	Capacity	Main Board	Audit Risk & Compliance Committee	Nomination Committee	HR & Remuneration Committee	Social & Ethics Committee	Honorary Degrees Committee	Enterprise Architecture & Information Systems Committee	Tender Committee	Served Under Chairpermanship of
Discontinued													
CBDA	SOE	8	10months	NED	✓	✓							Dr SP Makhesha
IoDSA	NPO		3	NED	✓			✓	✓				Richard Forster
Post Bank SA	SOE			NED	✓	✓							Maggie Modipa
Chair of the Post Office/Post bank Committee	SOE			Chairman	✓								Buhle Mthetwa
Proudly SA	NPO	14	1y3m	NED	✓								Adv. Dali Mpofu
BUSA	NPO		2	VP	✓								Futhi Mtoba
Eco Bank Nigeria	Private		1	ED	✓	✓							Arnold Ekpe
AllPay Consolidated Investment Holdings	Private		5	Chairman	✓								Sell
Rural Housing Loan Fund	ANG		1	NED	✓								Thembi Chilize

COMMISSION OF INQUIRY INTO STATE CAPTURE

VENETE KLEIN
Curriculum Vitae

V. Klein - Directorship Experience *continued...*

Directorships: Name of Company / Organisation	Type of Company	No. of Directors on Board	Period Served	Capacity	Main Board	Audit, Risk & Compliance Committee	Nominations Committee	HR & Remuneration Committee	Social & Ethics Committee	Honorary Degrees Committee	Enterprise Architecture & Information Systems Committee	Tender Committee	Served Under Chairpermanship of
Discontinued													
Absa Foundation Trust	NPO		1	Trustee	✓								Dr Dan Cronje/Garth Griffith
Absa Trust	Private		3	NED	✓								Willie Lategan
Absa Brokers	Private		3	NED	✓								Willie Lategan
National Business Initiative)	NPO		2	NED	✓								Cas Coovadie
Banking Association of SA	NPO		2	NED	✓								Cas Coovadie
Ombudsman for Banking Services	NPO		5	NED	✓								Adv. John Myburgh
Gotswelela	Private		2	Chairman	✓								Self
Afrikaanse Handels Instituut	NPO		1	President	✓								Self
Meeg Bank	Private		3	NED	✓			✓					Wiseman Nkuhlu

DECLARATION UNDER OATH

I, Venete Jarlene Klein ID number: 5809140109082, herewith swear under oath at Garsfontein Police Station that I,

- Have never been declared insolvent
- Do not have a crimal record
- Do not have any default judgements
- Have never been disqualified or placed on probation and have never been declared a delinguent Director.

Signed at Garsfontein Pretoria

Signature:.....

Date: 3/10/2014

PTA 14/10/03 10:55

MJ

2nd Joh Garsfontein Street

Garsfontein Saps

2014 -10- 03

CLIENT SERVICE CENTRE

SOUTH AFRICAN POLICE SERVICE

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK4"

MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Hatfield, 0028 Tel: 012 431 1116 Fax: 012 431 1039
Private Bag X9079, Cape Town, 8000 Tel: 021 461 8378/7 Fax: 021 465 2381/461 1741

Ms Venete Klein
PO Box 920240
Mooikloof
0081

Tel: 082 412 5759
Email: venete@kleininc.co.za

Dear Ms Venete Klein

Appointment as Non-Executive Director: Eskom Board

I am pleased to inform you of your appointment to the Board of Directors of Eskom ("Eskom Board") as a Non-Executive Director, with effect from 11 December 2014, for a three-year term, subject to annual review.

The term of appointment is subject to review by the Shareholder and confirmation at the Eskom Annual General Meeting. This review will be supported by the annual evaluation of the performance of the Eskom Board and its Committees. By accepting this appointment, you confirm that you are able to allocate sufficient time to meet the requirements of serving on the Board. I plan on holding an induction of all Directors prior to the first meeting of the Board, to elucidate on, amongst others, clarification of roles and the Shareholder's expectations.

Your fee structure will be based on the DPE-approved Remuneration Guidelines for State-Owned Companies. Directors' and Officers' liability insurance is maintained by Eskom, full details of which will be made available to you by Eskom.

Your appointment is regulated by the provisions of the Companies Act No. 71 of 2008, the Public Finance Management Act No. 1 of 1999, the Protocol on Corporate Governance in the Public Sector (currently under review) as well as the Shareholder's Compact entered into between the Eskom Board and myself.

I trust that the above is clear. If, however, you have any questions regarding this appointment, please do not hesitate to raise them with myself.

Please accept my sincere appreciation in anticipation of your commitment and contribution in steering Eskom towards its future success.

It would be appreciated if you can confirm your acceptance hereof by signing the attached statement and returning a copy to myself.

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 10/12/2014

COMMISSION OF INQUIRY INTO STATE CAPTURE

public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

I, _____, hereby accept the appointment as Non-Executive Director to the Board of Eskom. I undertake to observe and comply with the principles and provisions of all legislation relevant to Eskom, the Protocol on Corporate Governance (currently under review) and the provisions of the Shareholder's Compact to be entered into between Eskom and Government, to devote sufficient time for the execution of my responsibilities, to utilize my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Eskom, and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

_____ _____

Ms Venete Klein **Date:**

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK5"

Kameel Pancham

From: Malesela Phukubje <PhukubM@eskom.co.za>
Sent: Friday, 27 February 2015 9:00 AM
To: Venete Klein; Mark Pamensky
Cc: Zola Tsotsi; Tshediso Matona; Tsholofelo Molefe; chwayitam@yahoo.com; nazia.c@vodamail.co.za; viroshini naidoo; pat@patnaidoo.co.za; baldwin ngubane; norman baloyi; Romeo Kumalo; khozazw@telkomsa.net
Subject: RE: EskBoard meeting 26 February 2015
Attachments: Submission of Eskom's Corporate Plan to the DPE

Dear Ms Klein,

Thank you for your e-mail message. I have written to the DPE to inform the fact that the Board Meeting of yesterday was postponed at their request and that it will have a bearing on our ability to submit the Corporate Report as required. I attach a copy of the e-mail for ease of reference.

I will consult with the Chairman, the CE and the FD and request an extension from National Treasury for submission of the documents required in terms of section 52(a) and (b) of the PFMA as the section allows for submission "...or another period agreed with the National Treasury, before the start of its financial year..."

Regards,

Malesela Phukubje | Company Secretary
Office of the Company Secretary | Office of the Chairman | Third Floor T36
2 Maxwell Drive Megawatt Park | Tel : +27 11 800 8542 | Cell : +27 84 200 0087 | Fax : +27 86 662 3139 |
eFax: 0866623139
E-mail : phukubm@eskom.co.za
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REMEMBER YOUR POWER 49

From: Venete Klein [mailto:venete@kleininc.co.za]
Sent: Friday, February 27, 2015 7:34 AM
To: Mark Pamensky
Cc: Zola Tsotsi; Tshediso Matona; Tsholofelo Molefe; chwayitam@yahoo.com; nazia.c@vodamail.co.za; viroshini naidoo; pat@patnaidoo.co.za; baldwin ngubane; norman baloyi; Romeo Kumalo; khozazw@telkomsa.net; Malesela Phukubje
Subject: Re: EskBoard meeting 26 February 2015

Dear Board Members

The Corporate Plan is submitted in terms of section 52 of PFMA and Treasury Regulations section 29. Eskom is a schedule 2 company and must submit a corporate plan to the Executive Authority and National Treasury 30 days before the start of the new financial year . The plan and its annexures is therefore due for submission today, but board must approve it first.

Given the cancellation of our scheduled board meeting yesterday - I cannot see how will be effected. Resulting in us being in violation of this regulation.

Very concerning.

Regards

On 26 Feb 2015, at 10:31, "Mark Pamensky" <markp@bhs.co.za> wrote:

<11502261031180600 2.gif>

Dear Chairman,

It is with great surprise that I received an SMS message at approximately 22:21, last night, informing me that the Chairman had cancelled the Eskom board meeting scheduled for today.

In light of the fact that we board members have fiduciary duty to Eskom in terms of the Companies Act and the PFMA Act, and are required to conduct regular board meetings in accordance with pre determined process, a meeting cannot be cancelled unless there are very good reasons for it. We of course have no doubt that good reasons do exist, but would appreciate an explanation for such cancellation, as well as details of when the meeting will be reconvened.

The board urgently needs to address matters relating to the crisis Eskom finds itself in, and of critical importance is the need to align the board with the on goings in the war room, that board members are not aware of.

We look forward to hear from you at your earliest convenience.

Kind regards

Mark

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

"VK6"

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.

COMMISSION OF INQUIRY INTO STATE CAPTURE

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	

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK7"

Eskom	MINUTES OF THE ESKOM HOLDINGS SOC LTD BOARD MEETING	Unique Identifier	221-209
		Document Type	OCSDFM
		Revision	9
		Review Date	July 2016
		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 Diamini	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.

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-0062

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

COMMISSION OF INQUIRY INTO STATE CAPTURE

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 Ctwayila 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 28 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.

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom

MINUTES OF THE ESKOM HOLDINGS SOC LTD BOARD MEETING

Unique Identifier	231-209
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Review Date	July 2015
Office of the Company Secretary Department	

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;

COMMISSION INTO STATE CAPTURE

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: _____

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.

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK9"

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.

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-0072

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.

COMMISSION OF INQUIRY INTO STATE CAPTURE

- 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.

COMMISSION OF INQUIRY INTO STATE CAPTURE

Secretary

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

CHAIRMAN: _____ DATE: _____

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK10"

THOMSON WILKS SANDTON

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Sandton
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Sandton

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NGCEBTSHA MADLANGA INC

By Email

Our Ref	*Your Ref*	*Date*
S Thomson	Mr M Phukubje	26 March 2015

Dear Sirs

BOARD OF DIRECTORS' MEETING ESKOM HOLDINGS SOC LIMITED ("the Meeting")

1. Pursuant to the Meeting and the representations made by your counsel in support of a postponement it emerged that you required further specificity for the purpose of preparing your client's presentation.

2. To avoid prejudice to your client we provide further specificity to the allegation that your client has neglected, or been derelict in the performance of, the functions of director in that your client has not acted in good faith and for proper purpose nor has he acted with the degree of care, skill and diligence, that may reasonably be expected of a person carrying out the same functions in relation to the Company as those carried out by your client as follows:

   a. On 11 August 2014 your client, as a non-executive director, exercised executive powers by writing letters with the effect of binding the Company without the authority to do so. Copies of such letters are annexed hereto marked "A".

   b. Your client presented to the media the four areas where the inquiry will be focusing on being (1) poor performance of generation plants, (2) delays in the new build programme, (3) high cost of primary energy and (4) cash flow problems, whereas (1) and (2) were not discussed nor mandated by the Board at the Board meeting of 11 March 2015. In doing so your client acted outside the mandate of the Board putting the integrity of the inquiry process at risk.

U14-VK-0076

c. Your client mislead the Board in his proposal of the Acting Chief Executive Officer in that, in motivating the appointment, he advised the members of the board that he had spoken to the Minister who had approved the appointment whereas the Minster had indeed not given such approval.

d. We have not been able to obtain any documents pertaining to payments made to Mr Linnell or invoices received from him. Nor could we find any non disclosure agreement which would have been required to have been signed by Mr Linnell prior to his being invited to attend the meeting with the Board.

e. Malisela Sekhasimbe, General Manager Commodity Sourcing was suspended on 28th February 2015 because of his role in the Sumitomo matter. The Chairperson recommended that Mr Sekhasimbe to act as Group Executive Commercial and Technology in spite of the disciplinary process not having been concluded. The Board members were not aware of the suspension and may easily have been mislead had the suspension not been brought to their attention

Yours sincerely

DAVID BAILES
THOMSON WILKS

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK11"

Eskom

Dan Marokane
Group Executive (Group Capital)

Date:
11 March 2015

Dear Mr Marokane,

INVITATION TO A PRE-SUSPENSION MEETING

1. The Company is presently conducting an investigation into allegations of misconduct allegedly committed by you. The allegations of misconduct which will be investigated relate to, amongst others, the following –

   1.1. As the Chairman of the Emergency Committee you have been negligent in the management of the electricity system during the times of emergency that resulted to unneccessary load shedding.

   1.2. You were grossly negligent in managing the build programme for Medupi that resulted in delays and cost overruns.

   1.3. You acted irregularly in administering and managing the coal purchase contracts to the detriment of Eskom

2. The Company has not completed the investigations. The purpose of the investigations is to establish whether there are grounds for disciplinary action. Having regard to the –

   2.1. seriousness of the allegations; and

   2.2. the possibility that your presence may jeopardise the investigation into the alleged misconduct;

   the Company is of the view that you should be suspended on full pay pending the finalisation of the investigation.

3. You are temporarily suspended until further notice

U14-VK-0078

4. You are invited to make a representation to the Chairperson of the Board of Directors

5. The meeting will be held on 12 March 2015 at 09h45.

6. During the meeting you have the following rights-

   6.1. you are entitled to be present at the meeting;

   6.2. you are entitled to be represented at the meeting by a fellow employee or an employee representative;

   6.3. you are entitled to have the facility of an interpreter if so required;

   6.4. you are entitled to confer with your representative at reasonable times before, during and after the meeting;

   6.5. you are entitled personally, or through your representative, to question us as to the reasons why we believe that you should be suspended.

7. We envisage that our investigation should be completed within a period of four (4) weeks.

_____ _____

I, **Dan Marokane**, acknowledge receipt of this notice to attend a pre-suspension hearing.

_____ _____

SIGNATURE OF EMPLOYEE **DATE**

I hereby certify that the above rights have been read and explained to the employee.

_____ _____

SIGNATURE OF PERSON SERVING NOTICE **DATE**

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Pages	2
Words	370
Total Editing Time	2 Minutes
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Tags	Add a tag
Comments	Add comments
Template	letterheadtemplateJan201...
Status	Add text
Categories	Add a category
Subject	Specify the subject
Hyperlink Base	Add text
Company	Eskom

Related Dates

Last Modified	10/03/2015 6:39 PM
Created	10/03/2015 6:39 PM
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Related People

Manager	Specify the manager
Author	SD Suzanne Daniels
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COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK12"

Eskom

Tsholofelo Molefe
Finance Director

Date:
11 March 2015

Dear Ms Molefe,

INVITATION TO A PRE-SUSPENSION MEETING

1. The Company is presently conducting an investigation into allegations of misconduct allegedly committed by you. The allegations of misconduct which will be investigated relate to, amongst others, the following –

   1.1. You violated the tender process by being in contact with a bidder during an active tender process
   1.2. You acted negligently by procuring Finance for Eskom at inflated rates thereby adversely impacting Eskom

2. The Company has not completed the investigations. The purpose of the investigations is to establish whether there are grounds for disciplinary action. Having regard to the –

   2.1. seriousness of the allegations; and

   2.2. the possibility that your presence may jeopardise the investigation into the alleged misconduct;

   the Company is of the view that you should be suspended on full pay pending the finalisation of the investigation.

3. You are temporarily suspended until further notice

4. You are invited to make a representation to the Chairperson of the Board of Directors

5. The meeting will be held on 12 March 2015 at 10h30.

6. During the meeting you have the following rights-

6.1. you are entitled to be present at the meeting;

6.2. you are entitled to be represented at the meeting by a fellow employee or an employee representative;

6.3. you are entitled to have the facility of an interpreter if so required;

6.4. you are entitled to confer with your representative at reasonable times before, during and after the meeting;

6.5. you are entitled personally, or through your representative, to question us as to the reasons why we believe that you should be suspended.

7. We envisage that our investigation should be completed within a period of four (4) weeks.

_____ _____

I, **Tsholofelo Molefe**, acknowledge receipt of this notice to attend a pre-suspension hearing.

_____ _____

SIGNATURE OF EMPLOYEE **DATE**

I hereby certify that the above rights have been read and explained to the employee.

_____ _____

SIGNATURE OF PERSON SERVING NOTICE **DATE**

COMMISSION OF INQUIRY INTO STATE CAPTURE

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Pages	2
Words	331
Total Editing Time	9 Minutes
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Comments	Add comments
Template	letterheadtemplateJan201...
Status	Add text
Categories	Add a category
Subject	Specify the subject
Hyperlink Base	Add text
Company	Eskom

Related Dates

Last Modified	10/03/2015 6:48 PM
Created	10/03/2015 6:42 PM
Last Printed	10/03/2015 6:39 PM

Related People

Manager	Specify the manager
Author	SD Suzanne Daniels
	Add an author
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U14-VK-0083

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK13"

Eskom

Matshela Koko
Group Executive (Technology and Commercial)

Date:
11 March 2015

Dear Matshela

INVITATION TO A PRE-SUSPENSION MEETING

1. The Company is presently conducting an investigation into allegations of misconduct allegedly committed by you. The allegations of misconduct which will be investigated relate to, amongst others, the following –

   1.1. As the head of engineering, you caused the appointment of Alstom to execute the Control and Instrumentation contract for Medupi and Kusile projects when they were not technically qualified to do the job. This caused the delay on both the Medupi and Kusile projects

   1.2. You were grossly negligent by failing to control the welding quality issues at Medupi power station. This resulted in a 3 year delay for the Medupi project and a significant increase in cost overrun.

2. The Company has not completed the investigations. The purpose of the investigations is to establish whether there are grounds for disciplinary action. Having regard to the –

   2.1. seriousness of the allegations; and

   2.2. the possibility that your presence may jeopardise the investigation into the alleged misconduct;

   the Company is of the view that you should be suspended on full pay pending the finalisation of the investigation.

3. You are temporarily suspended until further notice

4. You are invited to make a representation to the Chairperson of the Board of Directors

5. The meeting will be held on 12 March 2015 at 11h15.

6. During the meeting you have the following rights-

   6.1. you are entitled to be present at the meeting;

   6.2. you are entitled to be represented at the meeting by a fellow employee or an employee representative;

   6.3. you are entitled to have the facility of an interpreter if so required;

   6.4. you are entitled to confer with your representative at reasonable times before, during and after the meeting;

   6.5. you are entitled personally, or through your representative, to question us as to the reasons why we believe that you should be suspended.

7. We envisage that our investigation should be completed within a period of four (4) weeks.

_____ _____

I, **Matshela Koko**, acknowledge receipt of this notice to attend a pre-suspension hearing.

_____ _____

SIGNATURE OF EMPLOYEE **DATE**

I hereby certify that the above rights have been read and explained to the employee.

_____ _____

SIGNATURE OF PERSON SERVING NOTICE **DATE**

COMMISSION OF INQUIRY INTO STATE CAPTURE

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Pages	2
Words	384
Total Editing Time	2 Minutes
Title	Business Unit or Division
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Comments	Add comments
Template	letterheadtemplateJan201...
Status	Add text
Categories	Add a category
Subject	Specify the subject
Hyperlink Base	Add text
Company	Eskom

Related Dates

Last Modified	10/03/2015 6:25 PM
Created	10/03/2015 6:25 PM
Last Printed	10/03/2015 4:40 PM

Related People

Manager	Specify the manager
Author	SD Suzanne Daniels
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Owner	Currently unavailable

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U14-VK-0087

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK14"

Eskom

Tshediso Matona
Chief Executive Officer

Date:
11 March 2015

Dear Mr Matona,

INVITATION TO A PRE-SUSPENSION MEETING

1. The Company is presently conducting an investigation into allegations of misconduct allegedly committed by you. The allegations of misconduct which will be investigated relate to, amongst others, the following –

   1.1. Failure to satisfactorily perform job requirements as set out in the job description or work plan which caused or resulted in a serious adverse impact on Eskom

2. The Company has not completed the investigations. The purpose of the investigations is to establish whether there are grounds for disciplinary action. Having regard to the –

   2.1. seriousness of the allegations; and

   2.2. the possibility that your presence may jeopardise the investigation into the alleged misconduct;

   the Company is of the view that you should be suspended on full pay pending the finalisation of the investigation.

3. You are temporarily suspended until further notice

4. You are invited to make a representation to the Chairperson of the Board of Directors

5. The meeting will be held on 12 March 2015 at 09h00.

6. During the meeting you have the following rights-

   6.1. you are entitled to be present at the meeting;

U14-VK-0090

6.2. you are entitled to be represented at the meeting by a fellow employee or an employee representative;

6.3. you are entitled to have the facility of an interpreter if so required;

6.4. you are entitled to confer with your representative at reasonable times before, during and after the meeting;

6.5. you are entitled personally, or through your representative, to question us as to the reasons why we believe that you should be suspended.

7. We envisage that our investigation should be completed within a period of four (4) weeks.

_____ _____

I, **Tshediso Matona**, acknowledge receipt of this notice to attend a pre-suspension hearing.

_____ _____

SIGNATURE OF EMPLOYEE **DATE**

I hereby certify that the above rights have been read and explained to the employee.

_____ _____

SIGNATURE OF PERSON SERVING NOTICE **DATE**

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Words	336
Total Editing Time	6 Minutes
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Comments	Add comments
Template	letterheadtemplateJan201...
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Categories	Add a category
Subject	Specify the subject
Hyperlink Base	Add text
Company	Eskom

Related Dates

Last Modified	10/03/2015 6:54 PM
Created	10/03/2015 6:50 PM
Last Printed	10/03/2015 6:48 PM

Related People

Manager	Specify the manager
Author	SD Suzanne Daniels
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Last Modified By	SE Salim Essa
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"VK15"

Eskom	MINUTES OF THE ESKOM HOLDINGS PEOPLE & GOVERNANCE COMMITTEE	Unique Identifier	221-[illegible]
		Document Type	CCGTE
		Revision	0
		Effective Date	2 July 2015
		Office of the Company Secretary Department	

MINUTES OF BOARD PEOPLE & GOVERNANCE IN-COMMITTEE MEETING 03/2015-16 HELD ON WEDNESDAY 1 JULY 2015 IN THE HUVO NKULU BOARD ROOM, EXECUTIVE FLOOR, MEGAWATT PARK

STRICTLY CONFIDENTIAL

PRESENT

MEMBERS

Ms C Mabude	Chairman (Tele-conference)
Ms N Carim	Member (Tele-conference)
Ms V Klein	Member (Tele-conference)
Dr P Naidoo	Member (Tele-conference)

IN ATTENDANCE

Mr W Venner	Committee Secretary

APOLOGIES

Mr R Kumalo	Member

1. **OPENING AND WELCOME**

The Chairman opened the meeting and welcomed all those present.

2. **APOLOGIES**

Apologies as above were noted.

3. **QUORUM**

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

4. **DECLARATION OF INTERESTS**

There were no declarations pertaining to items on the agenda.

5. **APPROVAL OF THE AGENDA**

It was noted that there was only one item one the Agenda.

COMMISSION OF INQUIRY INTO STATE CAPTURE

6. **MATTERS FOR APPROVAL**

6.1. **Report and review of the suspended executive and resolution of all relevant issues**

The Chairman reported that she had tasked Ms Klein and Mr Kumalo to review the process and procedures around the dismissal or reinstatement of the four executives who were suspended in March 2015 (Messrs T Matona, D Marokane, M Koko and Ms T Molefo). Three of these executives had settled, with one choosing to return

Ms Klein reported that she had discussed the Report into the affairs of Eskom ("the Report") with Denton's and had been advised that there was no evidence of any wrong-doing by any of the above named executives.

She had further discussed the suspensions of the executives with Senior Counsel who had advised that there was no legal basis to keep the said executive on suspension.

In response to a query as to how the separation of the other 3 executives was negotiated and whether they may have a legal claim against Eskom if the last executive was reinstated, it was reported that each case had been dealt with separately and differently and no individual had been forced to consider a separation agreement. None of the executives who settled had signed under duress.

Members agreed that, based on the facts given by Ms Klein, there was no legal reason not to reinstate the last executive.

It was agreed that all recommendations be put into one submission to Board to note that:

1. P&G had considered the preliminary findings of the Denton's Enquiry into the affairs o Eskom and the feedback from Senior Counsel.
2. 3 executives had left the organisation.
3. The fourth executive should be reinstated.

P&G's recommendations would be tabled to the Board on 2 July 2015 and the Board woul make a final determination on how to move forward.

Members expressed concerns around the number of acting positions in the executive at Esko and recommended that these had to be resolved as matter of urgency. Specific mention wa noted that three executive positions had become vacant as result of the death of Ms F Mol (Commercial Department), the resignation of Ms K Maharaj (Primary Energy Department) a the suspension of Mr M Sekhasimbe (Commercial Department) all of which would have impact on the business of the Commercial Department.

P&G noted with concern of the reinstatement of the said executive already being reported on the media

Resolved that:

1. the feedback on the Denton's report that there was no evidence of any wrong doing any of the executives is noted;

COMMISSION OF INQUIRY INTO STATE CAPTURE

2. a report should be tabled at Board to state that:
   2.1. People and Governance had considered the preliminary findings of the Denton's Enquiry into the affairs of Eskom and the feedback from Senior Counsel.
   2.2. Three executives had left the organisation.
   2.3. The fourth executive should be reinstated.
3. the Board should consider permanent appointments for all the acting positions in the Eskom executive management.

7. CLOSURE

There being no further matters for discussion the Chairman declared the meeting closed at 14h35.

SIGNED AS A CORRECT RECORD OF THE PROCEEDINGS

CHAIRMAN

DATE

COMMISSION OF INQUIRY INTO STATE CAPTURE

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK16"

Eskom	MINUTES OF THE ESKOM HOLDINGS SPECIAL BOARD IN-COMMITTEE MEETING	Unique Identifier	221-206
		Document Type	OCSDTE
		Revision	0
		Revision Date	July 2015
		Office of the Company Secretary Department	

MINUTES OF THE SPECIAL BOARD IN-COMMITTEE MEETING HELD ON 19 MARCH 2015 IN THE HUVO-NKULU BOARD ROOM, THIRD FLOOR, MWP

STRICTLY CONFIDENTIAL

PRESENT:

MEMBERS

Mr Z Tsotsi	Chairman
Dr B Ngubane	Member
Ms C Mabude	Member
Ms V Klein	Member
Ms V Naidoo	Member
Ms N Carrim	Member
Mr R Kumalo	Member
Mr N Baloyi	Member

OFFICIALS

Mr M Phukubje	Company Secretary

1. OPENING AND WELCOME

The Chairman welcomed all present and declared the meeting open

2. APOLOGIES

None.

3. QUORUM

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

4. DECLARATION OF INTERESTS

5. SAFETY/EVACUATION

The safety and evacuation process to be followed in the event of an emergency was presented and noted.

6. CONFIRMATION OF THE AGENDA

The agenda was confirmed as tabled.

7. Chairman reported that he has spoken to the Minister and she indicated that it is unlikely for Eskom to receive any further financial assistance. She said that she will speak to the Acting DG

and she will sit down with our CFO. She also wanted to know what Eskom will be saying about the downgrade tomorrow and he had responded that he didn't know. It was therefore imperative that the CFO & the Acting DG sit and discuss a joint response.

8. ITEMS FOR INFORMATION

8.1 New Age Contract

Chairman would speak to Ms. Klein who had explained that she would not sign because she was not comfortable with the resolution.

Mr. Baloyi also expressed his concerns to the effect that the Board should choose its items carefully, especially as the organization was in need. The second issue was that of the way in which it was done – processes where not followed properly.

Ms. Mabude said that the principles around how the New Age breakfasts were to be done could be discussed and clarified. It must be recorded that this contract did not follow due process on the basis of the fact that it was a commercial process and that the contract cannot be rescinded by Eskom. There was also a letter of demand and it was not going to be possible for Eskom to get engaged in a litigation.

It was agreed that an early termination clause should form part of all contracts in future.

8.2 Power Purchase Agreements (PPAs) for Short Term Energy procured by Eskom from Independent Power Producers (IPPs) and Municipalities.

It was noted that the round robin resolution for the PPAs for Short Term Energy procured by Eskom from IPPs and Municipalities had been approved by the majority, and Mr. Naidoo recused himself.

8.3 Suspended Executives

With regard to the Letters from suspended executives, including the CE, it was agreed that the position was clear that no charges would be preferred against the suspended executives at this stage. The Legal department was authorized to send the letter that had been prepared in this regard.

The Chairman explained the background as to who Nick Linnell was and that he (the Chairman had been introduced to him in a meeting with President. Mr Linnell had offered to co-ordinate the work that was supposed to be done. The Chairman stated that he did not offer the Board an opportunity to agree to appoint Mr Linnell and that this had been a mistake on his part and Mr Linnell had probably believed that the proper processes had been complied with and he then proceeded to undertake the work. He had asked whether there were charges which could be brought against the individuals concerned. He was told that he could meet with the complainants and other trade union representatives who then told him a number of things. Then came the Wednesday meeting and he did not inform the Board again as to the issue around the appointment of Mr Linnell. There was no contract for Mr Linnell, and there was no clarity as to who he was acting for. This was not broached with the Board again.

The Chairman accepted blame for that failure to take the Board, as well as the fact that work that was already being done (e.g. Interviews etc.). The people who were acting in place of the suspended executives were allegedly called into a meeting and knew beforehand that they would be acting. The Board needed to find out how this happened They were apparently called into a meeting and the acting CE met with them. The problem was that the Chairman's action had now compromised the process of the inquiry. It was agreed that the statement issued should be retracted & Mr Dlamini should advisee on how this will be done.

Resolved that:

- The ARC deals with the matter;
- It should be ascertained whether the Board was exposed in bringing the consultant in without the correct governance procedure being followed;
- The ARC should report back to the Board on what steps they are proposing to take with regard to this matter;
- Minister should be advised of the error of the nature/ contents of the statement;
- It is noted that the Minister had stated that the statement should not be sent out until briefing has been held with either the Minister or the acting DG.

Mr. R Kumalo joined the meeting

Resolution by the Board:

Break and resumed at 23:40, the Chairman was excused from the meeting. Dr. Ngubane was elected to chair the meeting.

The view was that the Board needed to make a call about the actions of the Board and the Chairman. The Chairman was an ordinary member of the Board and given the severity of the matter and what happened to the Company due to the downgrade. The downgrade occurred purely on governance and this was a reflection on the Board. Members felt that the decision of 11 March 2015 to institute an inquiry was correct, given what the company was going through. That member should now stay fully non-executive and that is how it must be done.

The Board cannot go back on decisions which have been made but the one thing the Board had control over was the independence of inquiry It was therefore very important how the process going forward was managed by the Board. At the end of the process the Board either goes down with the process or survives the process. The question before the Board was what it needs to do about the Chairman's actions. Two options were tabled of which one was to say that the Chairman should step aside as well for three months of the inquiry or based on the apologies, the Board could work together with him on the provision that he obeys the rules of governance.

The Board unanimously resolves that it had lost confidence in the Chairman as a Director of the Board and recommended his removal as a Director. It was agreed that supporting documents should be put together to indicate:

- Failure to get Board approval

- Matters considered as aggravating actions of the Chairman.
- Preparing and distributing a media statement in the name of the Board without Board approval.

The Board resolved that

1. Mr. R Kumalo is the delegated media person in the ARC; and
2. Dr B Ngubane is appointed as Acting Chairman of the Board.

The Board was prepared to take the risk of whatever the Minister might decide around the issue. It was agreed that all communications should go through ARC around this resolution and all matters related thereto.

The Chairman then came back to the meeting at 00:37

The proposal was that the Company Secretary should write to the Minister requesting a meeting as soon as the Minister was available, the sooner the batter given the inquiry, preferably on Friday or even the weekend. Sunday, Monday, the ARC decision to continue.

The meeting adjourned at 00:45

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

CHAIRPERSON

DATE

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK17"

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 I.

8. **FEES**

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

Signed at _____ on this the day _____2015

For and on behalf of Eskom

Signature

_____
Name of Signatory

_____
Designation of Signatory

COMMISSION OF INQUIRY INTO STATE CAPTURE

For and on behalf of
[Service Provider]

_____
Signature

_____
Name of Signatory

_____
Designation of Signatory

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK18"

Eskom

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:

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- 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

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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

COMMISSION OF INQUIRY INTO STATE CAPTURE

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COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK19"

Meeting – Eskom Board Members and Minister Ms Lynne Brown

1 April 2015

Attendees:

Ms L Brown MP	Minister of Public Enterprises
Ms. Venete Klein	Eskom Board Member (Chairperson of P&G Committee)
Ms. M Mokholo	Director-General (Acting)
Ms. Annelise van Wyk	DPE (Special Advisor to Minister)

Apologies:

Mr. M Pamensky	Eskom Board Member (Chairman of the IFC)
Ms. C Mabude	Eskom Board Member (Chairman Audit & Risk Committee)

Agenda

1. Update on the departure/resignation of Mr Zola Tsotsi (Mr Tsotsi).
2. Board Recommendation around terms of disengagement.
3. Appointment of Deputy Chairman.

Item One

- Ms Klein outlined events which followed the consultation with the Minister dated 20 March 2015;
- She confirmed that the Board engaged the services of Thompson Wilks Attorneys to advise the Board through the process;
- A Notice of Meeting was sent to Mr Tsotsi on 22 March 2015, calling him to a meeting with the Board on Wednesday, 25 March 2015. The Notice outlined that the Board had lost confidence in him and he was required to present representations to persuade the Board to reconsider its position.
- The meeting commenced at 18:00 on 25 March 2015 and was attended by the full Board. Mr Tsotsi was also present and was represented by Ngcebetsha Madlanga Inc Attorneys, who had briefed Mr Nazeer Cassim SC as counsel in the matter.
- Through his counsel, Mr Tsotsi requested a postponement of the meeting on the grounds that the notice given to him was short. They stated that, in effect, they

had been given one day's notice which for a matter as serious as the one under consideration was not fair.

- After deliberating on the matter the Board acceded to their request and it was agreed that the matter would be set down for Monday, 30 March at 20:00.
- During this time various stories were being run in the press – always articulating only the Chairman's point of view.
- The Board took a position not to be drawn into a public spat – which gained a lot of momentum during this time.
- On Monday at 17:00 the Board was advised through its attorneys that Mr Tsotsi had once again not had adequate time to prepare as he had spent the weekend of 27-29 March 2015 in Cape Town on Eskom business. Consequently, Mr Tsotsi's attorneys were requesting a postponement.
- The Board took the position to proceed with the meeting without Mr Tsotsi – as it was of the view that he was delaying the process. This was communicated to his counsel.
- At 20:00 the meeting commenced and Mr Tsotsi was in attendance with his legal team.
- Together with his counsel Mr Tsotsi presented his version in response to the allegations which had been made against him.
- After conclusion of the presentation, Mr Tsotsi asked the Board to consider what the impact of his removal from the Board would have on his life and on his family, as well as his ability to earn a living. He was then asked to recuse himself so that the Board could consider everything that had been presented.
- After significant deliberation – after which it became clear that the Board was still of the same view of no longer having confidence in the Chairman – the Board decided that it would engage the Chairman directly in terms of how it ought to disengage, being cognisant of his request to consider his interests.
- Two Board members were nominated to have an offline discussion with the Chairman – expressing the Board's view and encouraging him to disengage/resign rather than put this matter to a vote.
- After a lengthy dialogue, the Chairman addressed the full Board together with his legal representatives and advised the Board of his decision that:

1) he had decided to resign with immediate effect as both Chairman of the Board and non-executive director;
2) he be afforded a few days to empty out his office of personal belongings;
3) he be supported with payment for his legal representatives – which is standard in Eskom;
4) he be paid an amount equivalent to 3 months' board fees, taking into account that his tenure would have ended at the AGM;

- The Board accepted points 1-3, but pointed out that point 4 would require consultation with the Minister and her approval.

Item Two

- After discussing this matter, the Board undertook to present this request to the Minister – having considered that:
  1) the Board would need the Chairman to remain available for future legal matters pertaining to the suspension of the 4 executives;
  2) that in drafting such an agreement a non-disclosure clause could be included so as to prevent the Chairman from any further media exposure – which impacts negatively on the Eskom and the Shareholder. This was agreed upon and made reciprocal;
- Once all this was agreed – the two legal teams worked together in crafting a joint media statement – which was sent on to DPE communications for input and approval;
- The Board further unanimously appointed Dr Ben Ngubane to act as Chairman – until the Minister made an official appointment;
- The letter of resignation, together with the resolution supporting Dr Ngubane's appointment was sent to the Minister's office.

The Board – through Ms V Klein – has concluded the recommendation to the Minister for her consideration and feedback – who will advise Mr Tsotsi of the outcome.

Item Three

Ms Klein enquired from the Minister the thinking around the appointment of a Deputy Chairman. The Minister confirmed that she has asked her officials to look into this matter & revert to her for consideration.

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK20"

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Eskom	MINUTES OF THE ESKOM HOLDINGS AUDIT AND RISK COMMITTEE	Unique Identifier	221-200
		Document Type	OCS010
		Revision	0
		Effective Date	July 2015
		Office of the Company Secretary	

MINUTES OF THE SPECIAL AUDIT AND RISK COMMITTEE MEETING NO 02/2014-15 HELD ON 14 APRIL 2015 FROM 17h00 IN KGORONG BOARDROOM AT MEGAWATT PARK

STRICTLY CONFIDENTIAL

Reference Document 9.3(a)

PRESENT

MEMBERS

Ms C Matuda	Member (via teleconference)
Ms N Carrim	Member
Mr R Kumalo	Member (via teleconference)
Ms V Naidoo	Member

IN ATTENDANCE

Mr M Nkhabu	Senior General Manager: Assurance & Forensic ("SGM: A&F")
Mr C Kalima	Senior Manager: Procurement
Ms L Njaza	Middle Manager: Procurement
Ms K Crookes	Committee Secretary

APOLOGIES

Mr N Tsholanku	General Manager: Legal and Compliance ("GM: L&C")
Mr M Phukubje	Company Secretary

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom

MINUTES OF THE ESKOM HOLDINGS AUDIT AND RISK COMMITTEE

Unique Identifier	221-209
Document Type	OCSO1E
Revision	0
Effective Date	July 2015
Office of the Company Secretary	

1. **OPENING AND WELCOME**

The Chairman opened the meeting and welcomed all those present

2. **APOLOGIES**

Apologies as indicated above were noted

3. **QUORUM**

A quorum being present, the Chairman declared the meeting duly constituted

4. **DECLARATION OF INTERESTS**

No interest was declared pertaining to the matters on the agenda

5. **ESKOM INDEPENDENT INQUIRY**

The Commercial Department made a presentation to the committee in terms of the outcome of their negotiations held with the two potential service providers.

The outcome of the negotiations was as follows:

Dentons:

- The contract conditions were not accepted
- The price quoted is not fixed
- The total price quoted and resources provided may increase based on clarification sought from Eskom with regard to the Terms of Reference.
- The scope of work may not be concluded in the three month period as indicated

Savage, Jooste and Adams:

- The contract conditions were accepted
- Rates of the experts that they will use, fall under consultant rate fees
- The hours would be reduced from 3600 to 2400, thus decreasing the quoted price from R25.2mil to R37.8mil.
- The three month project timeline to execute the work is acceptable. They would be abl to indicate after the first month if there is a need to extend the three month period.
- The supplier cannot agree to a sectional completion of the scope but will do 95% work across the sections and then finalise all sections as part of the whole investigation.
- The supplier recommended that they utilize their premises in Pretoria and secure 24h security which will be included in the disbursements.

Commercial reported that, based on the above negotiated outcomes, they (commercial) recommended the following:

- That a rates based contract be concluded with Savage, Jooste and Adams,
- the Chief Executive be authorized, with the power to delegate further, to take all the necessary steps to give effect to the above, including the signing of the agreements, consents or other documentation necessary or related thereto.

The committee stated that they needed to understand, following the previous meeting held on 10 April 2015, wherein Dentons was recommended as the supplier of choice, why commercial was now recommending Savage, Jooste and Adams. Commercial reported that Denton's stated that they cannot cap their price as they needed to foremost understand the scope of the work. Denton also submitted their own proposed terms and conditions and stated that they were not comfortable with the Eskom NEC type contract. It was reported that Dentons further indicated that they could not commit to the three month timeline or the bi-weekly reports. In response to a query, Commercial stated that their recommendation was to enter into a contract with Savage Jooste and Adams as they had agreed to all the Eskom terms and conditions. A member maintained that Dentons had the necessary experience and resource capability to lead the enquiry. In response to a query, it was stated that Dentons did not have their own audit firm and would make use of SelekaXabiso, the price impact of which, had not been factored in. Commercial highlighted that the contract would have to be structured in a manner that reflected a rate based contract and the MWP site execution team would be expected to complete time sheets and provide regular reports to ARC. A member expressed concern about entering into a rate based contract. The Chairman stated that both suppliers had indicated that the scope of the investigation was wide and they could not commit to completing the enquiry within the 3 month period. She stated that Eskom reserved the right to terminate the contract at any time pending the outcome of the interim reports. The committee then agreed that commercial re-enter negotiations with both suppliers in respect of reaching agreement on the following:

- Pricing
- Three month timeline - full deliverables as per the terms of reference
- Interim reports (bi-weekly)

A member then expressed concern about the back and forth negotiation process with both suppliers and requested that the committee reach an agreement to only engage one of the suppliers. The committee then agreed that commercial should re-enter discussions with Dentons alone. The Chairman stated that Commercial should send an urgent email to Dentons indicating Eskom's position and also get a response from Dentons in terms of the specific clauses in the standard contract that they were not comfortable with. Commercial to get an agreement from Dentons to cap their price and commit to providing regular bi-weekly reports in order to expedite the investigation so as to facilitate that the four executives promptly resume their duties in Eskom.

The Senior General Manager: Assurance & Forensic ("SGM: A&F") asked the committee to confirm if they were comfortable to proceed with Dentons who would be using an external audit firm, namely SelekaXabiso. It was stated that all audit firms, including SelekaXabiso had been compromised and had done work for Eskom in the past and hence they could not be used to conduct a review of the Eskom Commercial processes. The Committee agreed that Dentons should be made aware of this.

Resolved that:

1. Commercial to send an urgent email to Dentons indicating Eskom's position and also get response from Dentons in terms of the specific clauses in the standard NEC contract th they were not comfortable with. Commercial to get an agreement from Dentons to cap th price and commit to providing regular bi-weekly reports in order to expedite the investigati so as to facilitate that the four executives promptly resume their duties in Eskom.

8. CLOSING

There being no further matters for discussion, the Chairman declared the meeting closed

SIGNED AS A CORRECT RECORD OF THE PROCEEDINGS

CHAIRMAN

DATE

COMMISSION OF INQUIRY INTO STATE CAPTURE

APPENDIX A – DETAILED FEEDBACK ON FINDINGS

Issue/Recommendation Raised as per Denton's Report	Actions Taken/already in place	Rating	Progress %
Commercial			
1. The principle of substance over form must be considered in the context of procurement. There appears to be a risk of procurement policies being approached formalistically as a 'tick box exercise'. The substantive approach could be achieved, inter alia, by (i) placing greater emphasis on the principles underlying the procurement process and monitoring achievement of these principles (in addition to compliance with the usual procedural requirements), and (ii) developing checks and balances to address high risk aspects where the usual procedural requirements could fail or be manipulated). The substantive approach to procurement should be reinforced by suitable training programmes, with a view of institutionalising the approach.	Purchasing in Eskom (PIE) 1 and 2 training material has been updated to educate procurement practitioners on the procurement process. PIE 1 training is ongoing the PIE 2 has been developed but training has not yet been rolled out. Practice note 6 in place to move BHEC from Functionality to Objective Criteria which will address the substance over form concern. The Delegation of Authority (DOA) training and accreditation has been rolled out. The Tender Committee Submission Analysis Model (SAM) is used to trend the submission types which in general provide sight of whether certain buyers are repeating certain transgressions or not and if so that remedial actions are taken by line managers.		
2. Learnings from failures in procurement processes should result in modification and enhancement of the SCM policy in order to institutionalise those learnings.	A process to identify learnings from failures is in place and is an on-going process informed by developments in the SCM and Legislative environments. The Eskom's Procurement and Supply Chain Management Procedure (32-1034) is amended from time to time in the form of signed and approved Position Papers issued in order to align with changes in business strategy, legislation, policy, industry trends, recognised good practice, as well as any other considerations which are necessary to maintain the efficiency and integrity of Eskom's procurement and supply chain operations. The Position Papers are communicated or published immediately on approval by Board Tender Committee (BTC) to ensure learnings are incorporated into the policy. Not all position papers explicitly link to a procurement process failure.		

"VK21"

U14-VK-0117

Issue Recommendation Raised as per Denton's Report	Actions Taken/already in place	Rating	Progress %
	Position Paper 1, 2, 3, 4 & 5 have been issued with some dealing with learning from failures. Audit (A&F) findings also feedback into the commercial process improvements including Fraud related matters.		
3. The manner in which different procurement processes are utilised must be reviewed. In this regard, guidelines should be developed to ensure that switching from one procurement process (such as open tender) to another (such as closed tender) is not manipulated in the context of a specific procurement exercise. In addition, such switching should be subject to enhanced scrutiny, for example by way of automatic referral to compliance audit.	The guidelines are provided in terms of the P&SCM procedure 32-1034. Refer to section 3.4.5.7 Cancellation and Re-issue of Tenders. The Submission Analysis Model allows for capturing of tender cancellations and also re-issues however this is not fully entrenched.		
4. There must be better follow up of audit findings to ensure that they are adequately addressed and that the learnings from audit findings are institutionalised.	The findings are now captured on the SAP QIM platform with an audit trail. These are institutionalised by means of the positions papers issued and inclusion in the Communities of Practice forums. Position paper 5 is one of the examples where the position paper was introduced to deal with audit findings and changes under Functionality criteria and the introducing of SHEQ as an objective criteria, based on the requirements of Preferential Procurement Policy Framework Act (PPPFA)		
5. Forensic investigations of allegations of misconduct involving executive interference in procurement processes should be prioritised. The mandate of such investigations must be sufficiently broad and resourced so as to be able to identify such interference and impose suitable sanctions.	Forensic investigation of allegations of misconduct involving executive interference in procurement processes are prioritised and dealt with as part of the Eskom A&F standard forensic investigation processes.		

U14-VK-0118

Issue/Recommendation Raised as per Deloitte's Report	Actions Taken/already in place	Rating	Progress %
6. Guidelines and checks and balances should be developed to prevent, mitigate and identify executive interference in procurement exercises. By way of example, the enhanced compliance function referred to below could be designed to form part of such a system of checks and balances.	Proactive Assurance is the mechanism that is used to safeguard the process as well as independent adjudicating committees. Refer to Procedure 32-1034 on the tender committees and independence i.e. 3.1.5.		
7. The practice of simply withdrawing tenders and reissuing them should be carefully considered to ensure that misconduct is not ignored and/or inadequately investigated.	Refer to number 3 above.		
8. The feasibility of utilising independent external service providers for the purposes of evaluation and adjudication should be explored	This is already provided for in the P&SCM procedure 32-1034. Refer to Section 3.4.6 Evaluation of Tenders subsection 3.4.6.1 paragraph 4 where a provision for third party for evaluation of tenders is allowed. Group Commercial Management is not in support of external parties participating in the adjudication of tenders. However proactive assurance to monitor this procurement processes is in place. Independent reviews are performed for transactions to the value of R 300m and above. Probity Checks are also performed to check for conflict of interest. On adhoc basis independent reviews are performed for transactions below the value of R 300m.	Closed Management Accepts Risk	
9. A more proactive and comprehensive approach to monitoring procurement processes should be developed	Eskom currently uses proactive assurance to monitor procurement processes. Independent reviews are performed for transactions to the value of R 300m and above. Probity Checks are also performed to check for conflict of interest. On adhoc basis independent reviews are performed for transactions below the value of R 300m.		

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-0119

Issue/Recommendation Raised as per Denton's Report	Actions Taken/already in place	Rating	Progress %
10. The compliance function must be enhanced and reinforced. This function must be independent from normal operational processes of Eskom. By the way of example, the feasibility of having a compliance function that reports directly to the Board or Eskom's shareholder should be explored.	The proactive assurance and probity function has been enhanced and now resides with A&F.		
11. The legal function must be enhanced and reinforced.	New structure underway.	Partially Implemented.	30%
12. The procurement processes applicable to coal and diesel must be reviewed and subject to enhanced scrutiny.	The contracting and procurement strategy for coal was reviewed and taken to Board Tender Committee of February 2016 for approval. Further, all coal related procurement follow a tender process. A process for the management of emergency fuel supply has been developed and will now follow the governance process for approval.	Partially Implemented.	75%
13. Develop a transparent and structured framework for credible BEE participation in primary energy supplies	Emerging Miner Strategy was approved as part of the Coal Supply Strategy in 2012. BEE participation in primary energy supplies is as per the Preferential Procurement Policy Framework Act (PPPFA) and Eskom's procurement procedure 32-1034 whereby suppliers are allocated scores based on their B-BBEE scorecard given that they meet Eskom's technical and pricing requirements. Furthermore Primary Energy requirements of 50% +1 black ownership are set out under Objective Criteria as per PPPFA. Eskom's Objective criteria are clearly communicated when coal enquiries are issued to the market. All suppliers are evaluated as per Technical and then for Price and B-BBEE but preference can then be given to black owned companies that have a shareholding of 50%+1.		

U14-VK-0120

Issue/Recommendation Raised as per Denton's Report	Actions Taken/already in place	Rating	Progress %
14. Changing the approach on securing Medium Term and Short Term Contracts to a competitive tender basis or conduct pre-qualification process to qualify suppliers	Included on the contracting and procurement strategy for coal reviewed and taken to Board Tender Committee of February 2016 for approval. Point 2.2and 2.3 of the resolution. This is now on the implementation stage.		
15. Conduct competitive tenders for the coal logistics especially for the coal transported by road	Current FCA/transporters contracts only expire in 2018. As per the mandate granted at the time, PED will go on open tender. Currently there is an approved strategy to address this. The opportunity to implement will only arise in 2018.		
16. Direct purchases from Chevron refinery in Cape Town should be revisited and ways to secure a more reliable and long term supply should be found.	Eskom has instituted negotiations with Chevron to conclude a supply contract for the Cape Town based power station.	Partly Implemented.	50%
17. For future diesel supplies a more rigorous supplier due diligence procedure should be put in place.	The Commercial team has now implemented Supplier ownership verification with CIPC as part of the supplier registration due diligence process to avoid potential conflict. This Supplier Ownership Verification with CIPC will be incorporated onto Shared Services vendor registration processes going forward as soon as an MOU is agreed with CIPC, SARS and SANAS.	Partly Implemented.	50%
18. Eskom's P&SCM policy must be reviewed to ensure that it is aligned with the Eskom's organisational structure and DoA framework.	New structure underway and the DOA will be aligned.	Partly Implemented.	30%

U14-VK-0121

Issue/Recommendation Raised as per Denton's Report	Actions Taken/already in place	Rating	Progress %
19. The approach used in involving cross functional teams in the evaluation of bids should be reconsidered. The SCM procedure should prescribe: 1) the process of appointing members to the bid evaluation committee, 2) the duration of the appointment and 3) the applicable terms of reference.	The guidelines are provided in terms of the P&SCM procedure 32-1034. All bid evaluation teams have terms of reference which are informed by 32-1034. Refer to section 3.1.5 on the constitution of the tender committees.		100%
20. Periodic supply chain performance reviews should be implemented to assess whether the sourcing methodology applied is likely to give rise to the desired outcome.	Eskom currently follows the 7X7 sourcing methodology. Management is confident that this method is standard across procurement literature and is also utilised in an adapted format by various other SOCs. Comparisons have been made to Transnet and PetroSA. Additional benchmarking will be conducted as part of the McKinsey contract.		100%
21. The merits of extending the scope of probity tests beyond the current spousal level should be considered.	Eskom Board has commissioned a study via the office of the company secretary to advice on the merits of same. The report is currently under review by management for implementation of the recommendations.	Partially Implemented.	50%
22. The merits of conducting a detailed comparative study on procurement methodologies applied by international state owned and private energy generation and distribution companies should be considered.	Eskom currently follows the 7X7 sourcing methodology. Management is confident that this method is standard across procurement literature and is also utilised in an adapted format by various other SOCs. Comparisons have been made to Transnet and PetroSA. Additional benchmarking will be conducted as part of the McKinsey contract.		100%
23. Where appropriate, the possibility of designing bespoke procurement procedures for particular types of procurement should be explored, without derogating from the principles of section 217 of the Constitution and related legislation.	Deviations are allowed in the current Procurement Framework. Procurement Strategies also address the issue. Additional benchmarking will be conducted as part of the McKinsey contract.		100%

U14-VK-0122

Issue/Recommendation Raised as per Denton's Report	Actions Taken/already in place	Rating	Progress %
24. Conduct the necessary feasibility assessment to determine if the Long Term Cost Plus collers can be refurbished or expended to increase production to contracted levels or higher.	The strategy has been approved and is being implemented as Capex has been allocated to cost plus mines. Projects are being approved at the Investment Committees for Capex projects at cost plus mines that will result in production improvements. Furthermore McKinsey and company are currently assisting Eskom in looking at all the Cost plus mines to determine how they can be optimised and possibly increase volumes.	Implemented	100%
25. Investigate how Long Term Cost Plus Agreements can be structured to improve BEE rating where it is required and investing in these mines (if feasible) to increase production which will have a large impact on reducing the transport costs significantly.	The Coal Supply Strategy was approved by Board in 2012 and outlined how the BEE (50%+1) should be achieved. Eskom's BEE requirement was shared with the mines and some suppliers such as Anglo Thermal coal have advised Eskom of their plan to seek a majority black shareholder in their cost plus mines. They have progressed significantly along this path. The other owner of cost plus mines is Exxaro who are already majority black owned. South32 will be engaged more robustly during extension projects such as Khutala Mine extension, to improve their black shareholding. All RFPs are now issued in line with the strategy.	Implemented	100%
26. Competitive tenders for the diesel logistics should be conducted, especially for the diesel transported by road.	An open tender has been issued for logistics of the diesel to Ankerlig. The evaluation process is underway.	Partially Implemented.	75%
27. Conduct thorough investigation into red flags areas of historic coal lever – coal and ad-hoc diesel.	Refer to number 48.	Implemented	100%
Generation			

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U14-VK-0123

[illegible] Part Raised as per Denton's [illegible]	Actions Taken already in place	Rating	Progress %
28. Eskom should review outage management process with regard to management planning, procurement and ownership to ensure enhanced delivery.	Optimised Tetris up to August 2016 to eliminate load shedding in winter 2016. Approved on 22 October 2015. A 5-year optimised Tetris plan has been developed. The Tetris plan provided guidance on what on what, when and how outage management should be executed. Outage Management has been reintegrated into Generation. Procurement improvement is being driven by the established contracts management function and enhanced training on contracts management. Refer to issue number 32 below for more actions implemented on maintenance contracts.		[illegible]
29. The funding for maintenance should be prioritised and strictly ring-fenced.	The process for maintenance funding to be prioritised and strictly ring-fenced has been reinforced to Generation executives who will ensure this is done. In addition, the SAP system, by design, ring-fences maintenance funding in the Income Statement.		[illegible]
30. The 80:10:10 strategy surrounding Generation sustainability should be reviewed on an ongoing basis.	The 80:10:10 strategy has been reviewed and submitted as part of the turnaround plan.		[illegible]
31. The UCLF statistics due to outage delays should be monitored and reported separately.	Monitoring and reporting of UCLF due to Outage Slip is in place. Reported monthly in Generation Division Plant Performance Report. A criterion for measuring UCLF due to Outage Postponement/Deferment has been defined. Monitoring and reporting of UCLF due to Outage Postponement/Deferment is in place. Reported monthly in Generation Division Plant Performance Report.		[illegible]
32. The technical information that is presented to the Board should be distilled and summarised so that the essence of the information can be made available to the Board for decision making.	The presentation format of technical information is reviewed before submission to Board and this will continue on an on-going basis. This has been distilled and summarised.		[illegible]

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Issue Recommendation Raised as per Denton's Report	Actions Taken/already in place	Rating	Progress %
33. The maintenance contracts should be performance based and enforced through more focused contract management.	Generation has changed the performance criteria for maintenance contracts for new negotiations. It should be noted that it will not be feasible to change all maintenance contracts by the due date as contracts are usually long term (not open for negotiation). In addition reports on contract management status for Generation, as well as SAP reports for CM close to end date are monitored for stations. Generation Sustainability has directed the establishment of the contracts management function, at site level, to derive greater value from contracts. Enforcement will be enhanced through training interventions to improve contact management competencies on site. Training has been completed in most of the sites and is ongoing.		
34. The Rotek capacitation initiatives should be reviewed and tailored as it exposes Eskom to risk of relying in single 'embedded' supplier.	User Requirement Specifications to quantify Eskom's needs from Rotek has been completed and these are detailed on the revised contracts with Rotek (ENK 261 and ENK 262) Rotek capacitation is reviewed at the ENK Steering Committee meetings bi-annually. Furthermore this is discussed with Rotek at various forums. E.g. GenProd.		
35. Standardise works procedures.	The standardised work procedure process had already been initiated as part of the Maintenance Strategies & Manage Work (MS&MW) project. This project started in October 2014 and is scheduled/on track for completion by the end of November 2016.	Partly Implemented.	75%
Group Capital			
36. Care should be taken in developing such programmes to ensure that contractor liability is not inadvertently transferred to Eskom. Appropriate legal support should be appropriated for these purposes. In this regard, a contracting strategy that mitigates and sufficiently transfers project risks	Developed and adopted the revised Eskom Project Life Cycle Model Developed and trained staff on Eskom Project Delivery Model and key competencies of Portfolio, Programme and Project management, Contracts management, Construction management, Commissioning and Project Control.		

U14-VK-0125

Issue/Recommendation Raised as per Denton's Report	Actions Taken/already in place	Rating	Progress %
between the parties must be explored in consideration of the unique needs of each project / programme.	Developed a Generic Mega structure with job profiles and competencies for new projects. Medupi and Kusile to adopt as required (as projects are ongoing and to limit disruption) Project Cost and Contract control system being implemented at Medupi and stuff being trained. Contracting strategy guideline has been developed and signed off by the GM. Implementation is ongoing. The Contracting Strategy details the guidelines to address the contractor liability and projects risks transfers: 1. Delay damages – Liquidated damages 2. Performance bonds 3. Retentions 4. Liability limitation 5. Warrantees 6. force majeure		
37. Eskom to review contracting strategy for its large and complex projects to match with skills base within the business	Contracting Strategy Guideline is developed and signed off. Aspects relating to skills have been included on section 3.1.6 of the strategy.		100%
38. Accountability for project target dates to be clearly defined and project staff not to be under any illusion as to what their responsibility is with delivering on targets. Regular independent reviews of project target deliveries should be conducted.	Productivity Initiatives are in place at both Medupi and Kusile Oversight, Monitoring & Assurance Centre (OMAC) has been established at Head Office level (MWP) to, independently of the projects, monitor performance and identify issues timeously for resolution.		100%

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U14-VK-0126

Issue/Recommendation Raised as per Denton's Report	Actions Taken/already in place	Rating	Progress %
39. Risks of projects should be identified prior to and during the construction phase and fully integrated into the project planning and decision-making process from project kick-off.	Project Risks at an operational and strategic level are identified, mitigated, monitored and recorded (on CURA) on a continuous basis. These are integrated on the projects planning and decision making process. Lessons learned are also integrated into the project decision making process. In addition these are kept and shared on the Knowledge Management Collaboration site.		
40. Contract management processes to be reviewed with a view to avoid ambiguity in the treatment of contractors for performance or non-performance.	A guide to Contract Management Competency Development has been developed and signed off. A framework is in place and based on the Contract Management Body of Knowledge process and is linked with Mentorship and Coaching for robust and authentic outcomes. The contract management competency development path and the project training status has been presented and accepted at the Mancoms of Medupi, Kusile and Gx Coal. Training on Basic requirements has been presented to ERE and other Projects as required. Training will be rolled out to the Projects and will be an ongoing process to develop people on various levels of competency in line with the framework.		
41. There is a need to strengthen Eskom's capacity to plan for the implementation and management of capital intensive projects. Although there is sufficient skill and expertise within the organisation, deploying Eskom engineers to work alongside contractors would fast track skills development on similar programmes for Eskom engineers.	Project Management Programme has been implemented and training commenced. The programme is addressing the skills gap amongst managers employed on Group Capital Projects. Curriculum is based on PCM training and augmented to meet the demands of the jobs in question. Classroom training is augmented by structured mentoring programme done by experienced mentors and specialists.		
42. A semi-autonomous Project Site Establishment should be constituted with the capacity to expeditiously attend the procurement, legal and technical issues on a day to day basis	Medupi: Dedicated Site Engineer and Legal Resource in place. Standard Eskom Procurement governance is followed; Site Tender Committee exists that can approve requests up to R100 million. Kusile: Kusile has on site procurement specialists as well as the technical personnel to proactively manage procurement related issues. Legal expertise, while not based on site, is		

U14-VK-0127

Issue/Recommendation Raised as per Denton's Report	Actions Taken/already in place	Rating	Progress %
	available and used frequently. Procurement decisions are made via properly constituted committees.		
43. The contract management support and oversight function that lies within the Contract Management Office must be strengthened to enable the unit to proactively intervene prior to risk escalating into cost or time related events.	The CMO structure has been approved in December 2015 and addresses the contract management support and oversight function. The appointment of resources has commenced. Reports are prepared to the CMO Steering Committee. Contingency Expenditure from the build projects is tracked and controlled. A CMO Oversight Committee is in place and reviews the minutes of the site claims and Variations and Compensation Events committees to ensure compliance to the Delegation of Authority and Responsibility Structure Standard, and each site committee has a CMO representative as an appointed member providing oversight.		100%
44. All procurement practitioners must be trained in contract management skills to enable them to contextualise the impact of properly designed sourcing strategies on the entire project implementation value chain.	Competency Framework has been developed and signed off. A Contract Management Competency Development Guide had been developed for Group Capital. A contract has been put in place with a service provider, in partnership with the EAL, to provide NEC, FIDIC and Contract Law training and internally, training related to an Introduction to Contract Management and PCM is offered based on request. Training has commenced.		100%
45. Adequate legal resources should be allocated to project managers to ensure that legally sound decisions are taken.	Each GM that is managing a complex project has been allocated a Chief Advisor (Contracts) who will work with legal to provide commercial support.	Partly Implemented.	50%

U14-VK-0128

Issue/Recommendation Raised as per Denton's Report	Actions Taken/already in place	Rating	Progress %
46. External technical expertise should be made available to objectively and independently advise project managers on the merits and demerits of pending modification requests. This however must be balanced with the timescale within which a decision must be made in order to avert delays that could arise from a drawn out consultative process.	Medupi: In accordance with the FIDIC Red and Yellow Book no designs are done internally and advice is provided by external consultants. Kusile: Arup Tata Power Engineers Consortium has been appointed to provide external technical expertise. Internal oversight committees are also in place to review the modifications request. (Technical Governance Committee and CMO Claims, Variations and Compensation Events Oversight Committee).		100%
47. Project planning processes to be implemented according to best practices followed internationally and appropriate project management training to be given to staff to increase skills base	Developed and adopted the revised Eskom Project Life Cycle Model. Developed and trained staff on Eskom Project Delivery Model and key competencies of Portfolio, Programme and Project management, Contracts management, Construction management, Commissioning and Project Control. Developed a Generic Mega structure with job profiles and competencies for new projects. Medupi and Kusile to adopt as required (as projects are ongoing and to limit disruption) Project Cost and Contract control system has been implemented and staff is being trained.		100%
48. The capacity of project managers and engineers must be strengthened to enable them to expeditiously attend to project management issues as and when they arise.	GCD will draw on existing panel contracts to supplement resource needs. A gap analysis showed that the current panel's scope does not cover Project Management in line with the Eskom Project Managements Methodology. The analysis was submitted to commercial as part of the RFP. A strategic motivation in line with National Treasury guidelines was reviewed by Corporate Finance and re submitted to the applicable General Manager (Corporate Finance) in January 2016. Commercial process commenced during April 2016 and appointment will be done in line with procurement process. Procurement process for the panel is not complete, therefore action remains open.	Partly Implemented.	50%

U14-VK-0129

Issue/Recommendation Raised as per Deloitte's Report	Actions Taken/already in place	Rating	Progress %
Finance			
49. Conduct thorough investigation into red flags areas of historic cost lever – coal and ad-hoc diesel.	A detailed analysis on coal issues and cost drivers has been completed for the historical and projected future coal cost landscape. The diesel concerns were closed based on the investigation performed by A&F. Follow up on issues raised on the investigation is part of the A&F normal follow up process.		
50. Conduct assessment of performance against design of BPP savings.	A measurement mechanism is in place. Audits have been performed by A&F and are also planned for the current financial year to assess the performance.		
51. Board level analysis on cash status over next 12-18 months. Include sensitivity analysis on risk assumptions and contingency plans.	Treasury reports the liquidity position through the following ways: • Daily short term liquidity position, with and without declared risks • Monthly to Treasury ALCO, Manco, Cashlab Report and presentation • Quarterly to Treasury Committee, Treasury Quarterly report and input into Shareholder Report • Ad hoc reports to shareholder and National Treasury The liquidity risk is currently analysed through the following: • Guiding principles in the Treasury mandate and Treasury Risk Management Framework • Monthly discussions in Treasury ALCO regarding all the financial risks, including liquidity risks and risk mitigation strategies • Bi-monthly focus in Treasury Interim (ad-hoc) ALCO on liquidity position and progress on funding initiatives • The Cashlab Report requires the business units to monthly update their liquidity projections, declare cash		

U14-VK-0130

Issue/Recommendation Raised as per Denton's Report	Actions Taken/already in place	Rating	Progress %
	flow risks versus budget and projections which are categorized into high and lower probability elements to facilitate detailed variance analysis. Treasury is also currently finalising its Liquidity Contingency Plan to formalise the procedures that Eskom will implement to fund shortfalls that may occur in stress situations or a liquidity crisis. The procedures need to address responsibilities, liquidity information, alternative solutions and communications strategy.		
52. In the medium to long term, remodel corporate plan based on historical performance.	The company is implementing the turnaround strategy and aligning to the Design to cost principles, the corporate plan is also based on the design to cost strategy. The DTC strategy incorporates both historic and forward looking statements. The Corporate plan was approved at Board in February 2016 and submitted to the Shareholder on 26 February 2016.		
53. Board to enforce reporting lines between Internal Audit and ARC. Empower Internal Audit and ARC.	Internal audit has direct access to ARC and also the revised structure includes a position for the Chief Audit Executive to report directly to ARC Chairman. Governance review has been completed and identified all areas that require improvement. Implementation is progressing. In addition a review of controls has been completed. Internal Audit has been supporting the Office of the CFO with assurance on the ARC concerns raised.		
Group Security			
54. Urgent attention must be given to the "business as usual" environment. Security standards and technology must be upgraded The implementation of the updated policies must be fast tracked.	In order to execute the EXCO mandate with regards to implementation of the Security Division, several organisational protocols had to be observed including engagement with our Key Stakeholders, Partners and Organised Labour.	Partly Implemented	30%

U14-VK-0131

Issue/Recommendation Raised as per Denton's Report	Actions Taken/already in place	Rating	Progress
The silo mentality of different divisions and units that deal with security must be addressed.	The engagement process has been concluded and the implementation of the new Security Division commenced on 01 June 2016. A formalised Security Division Business Plan and Key Performance Areas and Indicators (KPA's ad KPI's) is in place, has been approved and is being implemented. All findings have been incorporated into the Security Division Business Plan and Key Performance Areas and Indicators (KPA's ad KPI's) delivery Plan. Supporting initiatives have commenced to close the actions.		
55. GS to foster relationships with the SAPS to ensure that security risks are adequately addressed			
56. Ensure regular stakeholder meetings with contractors to address security risks and discuss sanctions for security breaches			
57. Employees to be continuously trained on security risks			
58. IT policies relating to information security must be implemented and compliance must be strictly monitored			
59. The adequacy of non-disclosure agreements (NDAs) and confidentiality undertakings required of employees and contractors should be reviewed and suitable steps taken			
60. Develop a comprehensive policy relating to information security, dealing with - IT aspects - Debugging - Security risks - Training etc.			
61. Conduct spot audits of security recording, reporting and NKP sites. Inspect occurrence books to see if security incidents were reported.			

MPUMALANGA STATE CAPTURE COMMISSION OF INQUIRY

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APPENDIX B – RATING CLASSIFICATIONS

1. Control rating/Overall Opinion Rating

The following ratings and definitions will be used rate the implementation of the recommendations tested:

The definitions of the respective finding statuses are as follows:

Status	Description
Implemented	Indicates that the agreed management action has been implemented in accordance with the audit plan.
Partly implemented	Indicates that in relation to the agreed management action plan, some evidence was provided but not all the elements of the recommendation were addressed.
Not implemented	Indicates that the evidence did not support meaningful movement towards implementation, where no evidence was provided, there is nothing that can be assessed.
Closed Management Accepts Risk	Indicates that the finding has been closed by the audit team but the agreed management action has not been implemented by the business because management decided to tolerate the risk.
Closed No Longer Applicable	Indicates that the finding has been closed by the audit team but the Recommendations have not been implemented by the business because they are no longer applicable

The definitions of the respective opinion statuses are as follows:

Opinion	Description
Satisfactory	The results of the follow up are regarded as satisfactory if all or most of the envisaged management actions to address the control deficiency have been implemented in time.
Partially satisfactory	The results of the follow up are regarded as partially satisfactory if all or most of the envisaged management actions to address the control deficiency have been partially implemented in time. **OR** Some of the envisaged management actions to address the control deficiency have been implemented in time.
Not satisfactory	The results of the follow up are regarded as not satisfactory if most of the envisaged management actions to address the control deficiency have not been implemented in time.

COMMISSION OF INQUIRY INTO STATE CAPTURE

AFFIDAVIT

I, the undersigned

VENETE JARLENE KLEIN

state that,

1.

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

2.

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

3.

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

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

4.

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

5.

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

6.

THE APPOINTMENT OF MR MOLEFE AS GROUP CHIEF EXECUTIVE OFFICER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.31.1 Regardless of Mr Molefe's age after the 5 year termination date, he would be allowed to retire from Eskom's service on the basis that he is aged 63.

6.31.2 The penalties prescribed by the Eskom Pension and Provident Fund ("EPPF") for retirement prior to age 63 will be waived (i.e. not paid by Mr Molefe).

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

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

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

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

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

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

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

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

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

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

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

i. bridge the gap to make up for the 10 years;

ii. waive penalties applicable to early retirement; and

iii. refund EPPF actual cost for additional service added, plus penalties applicable to early retirement."

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

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

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

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

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

MR MOLEFE'S EARLY RETIREMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8

REINSTATEMENT OF MR MOLEFE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.9.1 Mr Molefe abandoning the pension benefit;

8.9.2 Agreeing on a more acceptable benefit;

8.9.3 Mr Molefe returning to Eskom.

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

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

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

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

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

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

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

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

8.17 At this meeting I raised the following points:

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

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

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

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

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

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

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

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

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

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

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

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

VENETE JARLENE KLEIN
8 August 2018

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK1"

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S Daniels	V Klein	B Ngubane
Company Secretary	Chairman of People Governance	Chairman of Board
Date:	Date:	Date: .....

COMMISSION OF INQUIRY INTO STATE CAPTURE

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COMMISSION OF INQUIRY INTO STATE CAPTURE

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1. CONSTITUTION

The People and Governance Committee ("the Committee") is a committee of the Board and has been established to assist the Board in dealing with the nomination and remuneration of directors and senior executives, human resources strategies and policies and with its role as custodian of corporate governance.

The duties and responsibilities of the members of the Committee are in addition to those as members of the Board. The deliberations of the Committee do not reduce the individual and collective responsibilities of the Board members in regard to their fiduciary duties and responsibilities, and they must continue to exercise due care and judgment in accordance with their statutory obligations.

The Committee shall exercise its delegated authority as determined by the Board from time to time, in accordance with the DoA approved by the Board from time to time, subject to the provisions of the Companies Act, the PFMA and any other applicable legislation, the MoI and the Shareholder's Compact.

Members and officials shall, in exercising their duties, apply the principles and practices set out in King III or explain why they are not applying them.

2. COMPOSITION OF THE COMMITTEE

2.1 The Committee shall comprise at least three directors, the majority of whom shall be independent, non-executive directors, appointed by the Board

2.2 The Board shall appoint a chairman from the independent, non-executive members of the Committee.

2.3 The Chief Executive is a member of the Committee and shall recuse her/himself from meetings where s/he has an actual, potential or perceived conflict of interest.

2.4 The tenure of members of the Committee is at the discretion of the Board. The Board shall have the power at any time to remove any members from the Committee, and to fill any vacancies created by such removal.

2.5 The Committee may, as and when required, appoint independent advisors or consultants to assist in executing its duties, subject to the Eskom procurement procedures and general financial authorities set out in the DoA. The costs of appointment of such consultants or advisors shall be borne by the appropriate business unit, and failing clarity in this regard, this matter shall be determined by the chief executive.

2.6 The Chief Executive may appoint senior Eskom executives as officials, including the co-ordinating official, to assist the Committee. Officials shall not form part of the quorum and shall not have any voting rights.

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2.7 The co-ordinating official to the Committee shall:

2.7.1 provide assistance to the committee secretary in drawing up meeting agendas and preparing the necessary documentation; and

2.7.2 review the minutes of meetings for correctness prior to circulation to members;

2.7.3 ensure that all action items from each meeting are addressed by the responsible Eskom executives and that the list of outstanding matters is complete and action item responses are accurate prior to circulation to members;

2.7.4 prepare a list of all resolutions passed and ensure that they are actioned and reported to the Committee annually.

2.8 The Chief Executive shall, in consultation with the Chairman of the Committee, have the power at any time to remove any officials appointed in terms of clause 2.6 above from the Committee, and to fill any vacancies created by such removal.

2.9 A senior Eskom executive shall be delegated with authority to sign off all submissions to the Committee.

3. NORMATIVE/INFORMATIVE REFERENCES

3.1 Normative

3.1.1 Companies Act

3.1.2 DoA

3.1.3 MoI

3.1.4 PFMA

3.1.5 Shareholder's Compact

3.2 Informative

3.2.1 King III

3.2.2 ISO 9001:2008

4. DEFINITIONS

4.1 **Board** means the board of directors of Eskom from time to time;

4.2 **Business Day** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

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4.3 **Companies Act** means the Companies Act, 71 of 2008, as amended and includes its regulations;

4.4 **DoA** means the Delegation of Authority Framework approved by the Board from time to time;

4.5 **Eskom** means Eskom Holdings SOC Ltd;

4.6 **King III** means The King Report and Code on Governance for South Africa, 2009;

4.7 **MoI** means Eskom's memorandum of incorporation, as amended from time to time; and

4.8 **PFMA** means The Public Finance Management Act, 1 of 1999, as amended from time to time.

5. ABBREVIATIONS

Abbreviation	Description

6. ROLE AND RESPONSIBILITIES

6.1 **Role**
The role of the Committee is to assist the Board with Nomination, Remuneration, HR and governance matters.

6.2 **Responsibilities**
The Committee is responsible for:

6.2.1 **NOMINATION**

6.2.1.1 <u>Board</u>

6.2.1.1.1 Identifying and evaluating candidates to fill vacancies as and when these arise;

6.2.1.1.2 Ensuring that recommendations for the re-appointment of directors are based on and subject to a formal evaluation of directors' performance;

6.2.1.1.3 Ensuring that reference and background checks are conducted on candidates prior to nomination;

6.2.1.1.4 Reviewing the Board's size, composition, qualifications, skills, experience and making recommendations to the Board in regard to any adjustments that are deemed necessary;

6.2.1.1.5 Reviewing and assessing the independence of directors.

6.2.1.2 Board Committees

6.2.1.2.1 Reviewing and making recommendations to the Board on Board committee structures and membership;

6.2.1.2.2 Ensuring that formal terms of reference of Board committees are developed and reviewed annually.

6.2.1.3 Prescribed officers and senior executives

6.2.1.3.1 Identifying and evaluating candidates for nomination to fill prescribed officer and senior executive vacancies in Eskom, as and when these arise;

6.2.1.3.2 making recommendations to the Board on matters pertaining to the appointment, removal, and resignation of prescribed officers and senior executives and of Eskom;

6.2.1.3.3 Ensuring that the process for appointing prescribed officers and senior executives is credible and transparent.

6.2.2 **REMUNERATION**

6.2.2.1 Ensuring that the Remuneration Policy for Eskom:

6.2.2.1.1 Incorporates any remuneration guidelines and/or standards of the shareholder from time to time;

6.2.2.1.2 is confirmed by the company on an annual basis.

6.2.2.2 Ensuring that the remuneration payable to executive and non-executive directors and prescribed officers (Exco members) are approved by special resolution (except where such remuneration has been approved by the shareholder by special resolution within the previous two years, unless otherwise determined by the shareholder);

6.2.2.3 Within the parameters of the approved Remuneration Policy of Eskom, determining and recommending the individual remuneration packages, benefits, bonuses and adjustments to such packages of directors and, in consultation with the chief executive, the prescribed officers of the company;

6.2.2.4 Adhering to the following principles:

6.2.2.4.1 Implementing remuneration and incentive standards set by the shareholder;

6.2.2.4.2 ensuring that directors and prescribed officers are remunerated fairly and responsibly to ensure sustainability of the company;

6.2.2.4.3 ensuring that remuneration and incentive policies and strategies are aligned to shareholder compacts as well as organisational and individual performance;

6.2.2.4.4 disclosing sufficient detail of remuneration and incentive standards, policies and payment in the company's Integrated Report; and

6.2.2.4.5 adopting principles 2.25 and 2.26 on the remuneration of directors and senior executives as contained in King III;

6.2.2.5 Determining the criteria necessary to measure the performance of directors and prescribed officers in discharging their functions and responsibilities.

6.2.3 **SUCCESSION PLANNING**

Ensuring that appropriate succession plans are in place for executive directors, senior executives and prescribed officers.

6.2.4 **BOARD INDUCTION AND DEVELOPMENT**

6.2.4.1 Overseeing the development of a formal induction programme for new Directors;

6.2.4.2 Ensuring that inexperienced Directors are developed through a mentorship programme; and

6.2.4.3 Overseeing the development and implementation of a continuous director training programme.

6.2.5 **BOARD AND COMMITTEE EVALUATION**

Ensuring that the Board and its committees, as well as individual Directors, are evaluated on an annual basis.

6.2.6 **ETHICS**

Monitoring the effectiveness and implementation of the ethics management programme which includes the code of ethics; other key ethics policies and procedures; ethics training and awareness.

6.2.7 **HUMAN RESOURCES**

While it is the Chief Executive's responsibility to manage the organisation, the Committee should assess the effectiveness of the Human Resources strategies and policies, monitor the effectiveness thereof and review reports detailing the adequacy and overall effectiveness of the skills and people management processes in the Eskom Group.

U14-VK-0169

7. DELEGATION OF AUTHORITY

7.1 The Committee acts in terms of the responsibilities delegated to it by the Board as recorded in these terms of reference.

7.2 The Committee, in carrying out its responsibilities under these terms of reference is authorised to investigate any activity within its terms of reference.

7.3 The Committee has reasonable access to the Company's records, facilities, employees and any other resources necessary to discharge its duties and responsibilities subject to the Board approved process.

8. MEETING PROCEDURE

8.1 Meetings

8.1.1 The Committee shall hold sufficient scheduled meetings to discharge all its duties as set out in these terms of reference, subject to a minimum of one meeting every quarter.

8.1.2 Meetings, in addition to those scheduled, may be convened by the chairman of the Committee or at the request of a member, with the approval of the chairman.

8.1.3 The meetings of the Committee may be held in person, or by electronic communication as circumstances might require, provided that the required quorum is met.

8.1.4 Reasonable notice of meetings and the business to be conducted shall be given to members, even those for the time being absent from the Republic of South Africa, and officials of the Committee.

8.1.5. When the Committee deals with executive remuneration or nomination issues, such discussions may be held in-committee with non-executive directors only. The company secretary is responsible for taking and retaining the minutes of such in-committee meetings.

8.2 **Quorum**

8.2.1 The quorum for meetings shall be a majority of members present, in person or by electronic communication, throughout the meeting.

8.2.2 Where a member or official declares an interest and is recused from the meeting, the meetings remains quorate during her/his absence.

8.3 **Agenda**

8.3.1. The Committee must develop an annual agenda plan to ensure that all matters within its terms of reference are covered by the agendas of the meetings planned for the year.

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8.3.2 The number, timing and length of meetings and the agendas are to be determined in accordance with the annual agenda plan.

8.2.1 The chairman of the Committee may meet with the committee secretary and other officials prior to the meeting to discuss important issues and agree on the agenda.

8.4 Attendance

8.4.1 Committee members must attend all scheduled meetings of the Committee, including meetings called on an *ad hoc* basis for special matters, unless an apology, with reasons, has been submitted to the chairman of the Committee or the committee secretary.

8.4.2 If the chairman is absent from a meeting, any other non-executive member may act as chairman for that meeting, as agreed by those present, or as nominated by the chairman.

8.4.3 No member shall be entitled to appoint an alternate in his/her stead.

8.4.4 Members shall be fully prepared for meetings to provide appropriate and constructive input on matters under consideration.

8.5 Decisions/Noting

8.5.1 A decision carried by the majority of members present at a meeting, voting in favour of a decision, shall be a decision of the Committee. In the case of an equality of votes, the chairman shall not have a second or casting vote and the matter being voted on fails.

8.5.2 The Committee may refer a matter to the Board for a decision.

8.5.3 No official shall have a vote at meetings of the Committee.

8.5.4 In the case of round robin approvals, a resolution voted on in writing, including those submitted electronically, approved by 75% (seventy five per cent) of members within 10 (ten) Business Days after the resolution was submitted to them, shall be valid and effective as if it had been passed at a meeting of the Committee duly called and constituted.

8.5.5. Every member of the Committee, even those for the time being absent from the Republic of South Africa, shall receive notice of the resolution to be voted on in writing.

8.5.6 In the event of a member not being able to sign and return the signed round robin resolution within the period prescribed above, confirmation of approval of the resolution may be provided in writing and in electronic format and the resolution there after signed by the said member as soon as reasonably possible.

8.5.7 A round robin resolution shall be deemed to have been passed on the latest date on which it was signed or approved in writing by way of electronic means as envisaged above by the requisite number of members as provided for in paragraph 8.5.4.

8.5.8 Such a round robin approval shall be tabled at the next meeting for noting.

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U14-VK-0171

8.6 **Minutes**

8.6.1 Minutes of meetings shall be completed by the committee secretary within 10 (ten) Business Days after the meeting for review by the co-ordinating official where after it shall be circulated to members for comment.

8.6.2 The minutes must be verified by the Committee at its next scheduled meeting and signed by the chairman of the Committee.

8.7 **Reporting**

8.7.1 A written report on the matters considered and decisions taken by the Committee shall be submitted to the next Board meeting.

8.7.2 The chairman (or in his/her absence another member of the Committee) may highlight issues in the report for the attention of Board.

9. EVALUATION

9.1 The Committee shall ensure that an evaluation of its performance and effectiveness is conducted at least once a year.

9.2 An evaluation report must be submitted to the Board for consideration.

10. APPROVAL OF TERMS OF REFERENCE

10.1 The terms of reference shall be approved by the Board on the recommendation of the Committee.

10.2 It shall be reviewed on an annual basis and may, from time to time, be amended as required, subject to the approval referred to in clause 10.1 above.

11. REVISIONS

Date	Rev.	Remarks
7 May 2015	0	Annual review

12. DEVELOPMENT TEAM

This document was influenced and supported by the following:

Name	Designation
M Phukubje	Company Secretary (1 July 2014-30 September 2015)
S Daniels	Company Secretary (appointed 1 October 2015)
D Jackson	GM (Corporate Governance)
W Venner	Committee Secretary

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"VK2"

Khanyisa Mapipa

From:	Suzanne Daniels <DanielSM@eskom.co.za>
Sent:	Friday, 19 June 2015 03:02 PM
To:	Matsietsi Mokholo; Kim.Davids@dpe.gov.za
Cc:	Baldwin.Ngubáne@gmail.com; Venete Klein; Zethembe Khoza
Subject:	APPOINTMENT OF CHIEF EXECUTIVE OFFICER
Attachments:	20150619 DPEMIN Appointment of CE execution copy.pdf
Importance:	High
Sensitivity:	Confidential

Good Afternoon Matsietsi and Kim

Please find correspondence attached for the Minister's attention.

st regards
zanne

UZANNE DANIELS
Office of the Chairman
Eskom Holdings SOC Limited
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za

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COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom

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

Dear Minister Brown

APPOINTMENT OF CHIEF EXECUTIVE OFFICER

The above matter has reference.

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

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

i) He has a well-known track record in the market both nationally and abroad for being able to turnaround ailing companies and this experience has been demonstrated in the stability and marked improvement in performance he has brought to Eskom since he joined 63 days ago;
ii) His hands on approach to operational matters, particularly with regard to maintenance and load shedding, at the time of crisis which the company found itself in, has made high performance in Eskom, not negotiable;
iii) To support this culture, he has already revisited the approach to performance management so as to instil appropriate levels of accountability at all levels of staff thereby raising the bar on all fronts for his executive management team to follow;
iv) At the same time he has succeeded in harnessing the know-hows and experience of the current executive management committee in the most optimal manner to address the issues that have bedeviled the company for too long a time;
v) During his short tenure, he has successfully taken the Board into his confidence by presenting a turnaround plan at its meeting of 28 May 2015, which was also endorsed by the Board;
vi) His academic background and more particularly, his considerable financial acumen has already been demonstrated in the more positive outlook Eskom, and consequently South Africa, enjoys with the ratings agencies which are key to addressing the liquidity issues;
vii) Certainty of leadership at the top would allow for stabilising the management team internally together with allowing him to be able to attract the requisite skilled professional talent outside of Eskom to take up critical roles in Eskom which are vacant at present or may occur in the future and thereby create the confidence and predictability required of Eskom at this time;

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Eskom Holdings SOC Ltd Reg No 2002/015527/30

viii) His further ability to meaningfully engage the various stakeholders of Eskom, including the media, has really stood us in great stead; and

ix) Public confidence has increased exponentially in the period since the commencement of his secondment to Eskom.

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

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

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

Based on the foregoing, and whilst we appreciate that this process may demand some time, it may be prudent to extend the duration of the secondment agreement from Transnet in order to ensure that we do not have a period where he is not contracted to either Eskom or Transnet. As a matter of course, the first prize for Eskom would be a seamless transition from Transnet to Eskom with the effective date being 1 July 2015. I am available at the Minister's convenience to engage my Transnet counterpart on the issues and finalise the terms and conditions of the appointment.

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

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

Yours sincerely

Dr Ben Ngubane
INTERIM CHAIRMAN
Date: 19 June 2015
Not signed as electronically submitted

INTO STATE CAPTURE

"VK3"

Khanyisa Mapipa

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Friday, 19 June 2015 04:22 PM
To: Venete Klein
Subject: Fwd: APPOINTMENT OF CHIEF EXECUTIVE OFFICER

Regards
Suzanne Daniels

Sent from my Samsung Galaxy smartphone.

-------- Original message --------
From: baldwin ngubane <baldwin.ngubane@gmail.com>
Date:19/06/2015 15:50 (GMT+02:00)
To: Suzanne Daniels <DanielSM@eskom.co.za>
Cc:
Subject: Re: APPOINTMENT OF CHIEF EXECUTIVE OFFICER

Dear Suzanne,
At this stage I am not able to recommend to the Minister as decided by the P&G as the Minister cant confirm an acting person into a permanent position unless the person has acted for six months.
The last thing we want to do is to create controversy around Brian's presence at Eskom. The ridht approach as far as I am concerned is to request the Minister to accept extension for another three months.
Best,
Ben

On Fri, Jun 19, 2015 at 3:02 PM, Suzanne Daniels <DanielSM@eskom.co.za> wrote:

Good Afternoon Matsietsi and Kim

Please find correspondence attached for the Minister's attention.

Best regards

Suzanne

SUZANNE DANIELS

Office of the Chairman

Eskom Holdings SOC Limited

Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327

COMMISSION OF INQUIRY INTO STATE CAPTURE

Email: daniels.suzanne@eskom.co.za

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COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK4"

Eskom

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

Dear Minister Brown

EXTENSION OF SECONDMENT AGREEMENT OF BRIAN MOLEFE

The above matter has reference.

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

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

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

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

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

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

Yours sincerely

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

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"VK5"

MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Private Bag X8079, Cape Town, 8000 : 021 461 6376/7 Fax: 021 465 2301/461 4741

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

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

Dear Dr. Ngubane

Appointment of Chief Executive of Eskom

Your letter dated 23 June 2015 has reference.

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

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

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

CONFIDENTIAL

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

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

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 27/06/2018

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK6"

Khanyisa Mapipa

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Sunday, 13 September 2015 08:00 PM
To: Orcilla Ruthnam
Cc: Venete Klein; Baldwin.Ngubane@gmail.com
Subject: CE and CFO appointments
Attachments: Letter of advice_app of CEO_19 June 2015_(6190551_1).pdf

Importance: High
Sensitivity: Confidential

Good evening Orcilla

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

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

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

Best regards
Suzanne

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

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

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

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance
[illegible] | Orcilla.Ruthnam@dpe.gov.za

Khanyisa Mapipa

Subject: FW: Remuneration of prescribed officers
Attachments: Letter to Eskom re appointment of CEO pdf; Guidelines for Appointment of CEO of SOC.pdf

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: 14 September 2015 12:59 PM
To: Suzanne Daniels (DanielSM@eskom.co.za) <DanielSM@eskom.co.za>
Cc: Venete Klein <venete@kleininc.co.za>
Subject: RE: Remuneration of prescribed officers

Dear Suzanne
I was reading through the opinion and was concerned about paragraph 3.6 which indicated that the Department was contacted for a copy of the guideline referenced in the MOI. It is unfortunate that I was not approached.

r record, the guideline (attached) has been the Department's basis for advising the Minister and is therefore tten into all SOC MOIs as well as the updated Protocol. In terms of the appointment of the CFO, the MOI is clearer on the process, however, the guideline also covers the appointment.

Hence, Minister's letter of July (attached) was informed by these guidelines.

Please provide me with a copy of the document entitled "SOE Governance Oversight Document".

Many thanks

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance
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k on the following link to view directions to DPE http://www.dpe.gov.za/home.asp?id=1053

From: Venete Klein [mailto:venete@kleininc.co.za]
Sent: 14 September 2015 09:44 AM
To: Orcilla Ruthnam
Cc: Suzanne Daniels (DanielSM@eskom.co.za)
Subject: Re: Remuneration of prescribed officers

Thanks Orcilla, we await the feedback then.

Warm regards

Sent from my iPhone

On 14 Sep 2015, at 8:29, "Orcilla Ruthnam" <Orcilla.Ruthnam@dpe.gov.za> wrote:

FYI

From: Orcilla Ruthnam
Sent: 14 September 2015 08:22 AM
To: 'Ayanda Ceba Transnet Corporate JHB'
Cc: Lawrence Nevondo; Nokuthula Khumalo Transnet Corportate JHB (NokuthulaE.Khumalo@transnet.net); Karabelo Mosia Transnet Corporate (Karabelo.Mosia@transnet.net)
Subject: Remuneration of prescribed officers
Importance: High

Dear Ayanda
Please urgently provide me with a schedule of remuneration of prescribed officers (names disclosed in the Integrated Report) after the resolution of the AGM. In other words, the names and amounts including the 5.4% awarded at the AGM.

Many thanks

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance
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COMMISSION OF INQUIRY INTO STATE CAPTURE

public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

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

INTRODUCTION

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

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

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

1. SUCCESSION PLAN

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

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

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

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

2. DUE PROCESS

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

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

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

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

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

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

U14-VK-0185

3. APPOINTMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DECEMBER 2010

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK8"

Khanyisa Mapipa

From: Orcilla Ruthnam <Orcilla.Ruthnam@dpe.gov.za>
Sent: Wednesday, 16 September 2015 01:32 PM
To: Suzanne Daniels
Cc: Venete Klein
Subject: RE: Remuneration of prescribed officers

Noted, with thanks Suzanne

Regards

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

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Click on the following link to view directions to DPE http://www.dpe.gov.za/home.asp?id=1053

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

orning Orcilla

ase find the Bowman's supplementary opinion.

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

Best regards
Suzanne

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

Noted; thanks Suzanne

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

Please call should you wish to discuss further.

Regards

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

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Click on the following link to view directions to DPE http://www.dpe.gov.za/home.asp?id=1053

From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 14 September 2015 04:36 PM
To: Orcilla Ruthnam
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers
Importance: High

Orcilla, please use this version as I have inserted the headings into the various columns for easy reading.

Best regards
Suzanne

From: Suzanne Daniels
Sent: Monday, September 14, 2015 4:11 PM
To: 'Orcilla Ruthnam'
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers
Importance: High

Dear Orcilla

Please find the information attached as requested. The extracts are from the annual financial statements that are audited by the external auditors. (I have copied the extract from the financial statements and then converted it into a table.)

Please let me know if you need anything else.

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Monday, September 14, 2015 2:08 PM
To: Suzanne Daniels
Subject: RE: Remuneration of prescribed officers

Not yet, they are updating the table as we speak

Please also send me a similar table but with 13/14 figures as well as 2014/15.

"VK9"

Khanyisa Mapipa

Subject: FW: Remuneration of prescribed officers
Attachments: 20150923084545411.pdf

Importance: High

From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 23 September 2015 11:27 AM
To: Orcilla Ruthnam <Orcilla.Ruthnam@dpe.gov.za>
Cc: Venete Klein <venete@kleininc.co.za>
Subject: RE: Remuneration of prescribed officers
Importance: High

Hi there

e with the signed original.

t regards
Suzanne

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

Thank you Suzanne, much appreciated

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance
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public enterprises
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Public Enterprises
REPUBLIC OF SOUTH AFRICA

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Click on the following link to view directions to DPE http://www.dpe.gov.za/home.asp?id=1053

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

Dear Orcilla

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

Best regards
Suzanne

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

Noted, with thanks Suzanne

Regards

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Legal and Governance
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Click on the following link to view directions to DPE http://www.dpe.gov.za/home.asp?id=1053

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

Morning Orcilla

Please find the Bowman's supplementary opinion.

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

Best regards
Suzanne

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Sent: Tuesday, September 15, 2015 11:36 AM
To: Suzanne Daniels
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers

Noted, thanks Suzanne

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

Eskom

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

Dear Minister Brown

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

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

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

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

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Eskom Holdings SOC Ltd Reg No 2002/015527/30

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

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

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

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

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

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

Yours sincerely

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

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom	MINUTES OF THE ESKOM HOLDINGS SOC LTD PEOPLE AND GOVENRANCE COMMITTEE MEETING	Unique Identifier	221-204
		Document Type	OCSOTE
		Revision	0
		Revision Date	July 2015
		Office of the Company Secretary Department	

MINUTES OF THE PEOPLE AND GOVERNANCE COMMITTEE MEETING NO HELD IN THE HUVO NKULU BOARDROOM, MEGAWATT PARK ON 09 SEPTEMBER 2015 AT 11:46

STRICTLY CONFIDENTIAL

PRESENT

MEMBERS

Ms V Klein	Chairman
Ms N Carrim	Member
Ms C Mabude	Member
Mr Z Khoza	Member
Dr B Ngubane	Member

IN ATTENDANCE

Mr B Lolefe	Acting CE
Mr A Singh	Acting CFO
Mr M Phukubje	Company Secretary

APOLOGIES

No apologies were noted.

1. OPENING AND WELCOME

The Chairman welcomed all members and officials present and declared the meeting open.

2. APOLOGIES

There were no apologies.

3. QUORUM

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

4. DISCUSSION OF AGENDA ITEMS

The CE was briefed on the manner in which the meeting was organized and that it was a "disaster" in the sense that there was no good communication between Secretariat and HR. As a result of this, the pack, submission and the general coordination of the meeting was not what was expected.
The CFO stated that these could be complications which arise due to the transition phase and that matters would improve within the next two meetings or so, as the team aligned and started speaking the same language. It was agreed that this should not

recur in the future and that the CE would attend to it.

It was requested that the action list be aligned with the resolutions sought.

With regard to the Remuneration of Executives and that of Non-Executive Directors, the CE reported that the DPE had issued guidelines regarding the matter and that it was a shareholder matter. The Committee could however make its inputs and share the benchmarking with the Shareholder. He confirmed that feedback will be provided in the next P&G meeting in October 2015.

Management was requested to proceed with an STI and LTI view, which will be presented to the Committee. It was noted that there had been no LTI incentives in the 2014/2015 financial year and management was requested to go back and look into the current rules with a view to determining whether they would like to change these.

It was reported that the performance contracts for senior executives were available but unsigned as they would be affected by the Turnaround Plan which would be presented to the Board in the upcoming Board Breakaway. It was agreed that a letter of comfort from the CE confirming that performance agreements have been signed be presented to the Committee in its next meeting.

The Treasury Department's incentive scheme was discussed. There was consensus that Treasury should not have its own, stand-alone incentive scheme. It was agreed that management would look into the matter, review the scheme and report to the Committee

The issue of executive vacancies was discussed and it was proposed and agreed that the positions of CE and FD be filled first and that this proposal be presented to the Board, after which it will be circulated to the Shareholder for information.

A proposal was tabled that the Acting CE and Acting CFO be appointed as directors of the company for the duration of their appointment. The proposal was supported and it was resolved that this be presented to the Board in its next meeting.

The Chairman requested that the structure be presented by October 2015.

There being no further matters for discussion, the Chairman declared the meeting closed at 12h31.

SIGNED AS A CORRECT RECORD OF THE PROCEEDINGS.

CHAIRMAN: _____ **DATE:** _____

COMMISSION OF INQUIRY INTO STATE CAPTURE

Khanyisa Mapipa

From: Malesela Phukubje <PhukubM@eskom.co.za>
Sent: Thursday, 10 September 2015 10:38 PM
To: Venete Klein
Subject: Re: P&G IN COMMITTEE DRAFT MINUTES 09 SEPTEMBER 2015

Noted thanks. Will make changes and distribute.

Sent from my Zest T1 Smartphone

On Sep 10, 2015 10:35 PM, Venete Klein <venete@kleininc.co.za> wrote:
the matter around exec vacancies should read

P&G deliberated on confirming the CE & CFO - approval would be sought by the board.

This will be followed by a letter to the Min of DPE recommending the confirmation of these appointments.

Also, did we not receive an apology from Giovanni? If so pls record as such

Sent from my iPhone

On 09 Sep 2015, at 20:02, "Malesela Phukubje" <PhukubM@eskom.co.za> wrote:

Dear Ms. Klein,

Please see the attached Draft Minutes for your input. I would appreciate your input before I send it to the members.

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
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<P&G IN COMMITTEE MINUTES 09 SEPTEMBER 2015.docx>

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

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"VK11"

Eskom

MINUTES OF THE ESKOM HOLDINGS SOC LTD BOARD MEETING

Unique Identifier	221-209
Document Type	DCSDFM
Revision	0
Review Date	July 2014

Office of the Company Secretary Department

MINUTES OF THE SPECIAL ESKOM BOARD MEETING 10-2015/16 HELD ON 10 SEPTEMBER 2015 AT VENUE 7, ESKOM LEADERSHIP DEVELOPMENT CENTRE, MIDRAND FROM 16H00

STRICTLY CONFIDENTIAL

PRESENT

Dr BS Ngubane	Acting Chairman
Ms N Carrim	Member
Ms M Cassim	Member
Mr Z W Khoza	Member
Ms V J Klein	Member
Mr R Kumalo	Member
Mr G Leonardi	Member
Ms C Mabude	Member
Dr P Naidoo	Member
Ms V Naidoo	Member
Mr MV Pamensky	Member

OFFICIALS

Mr B Molefe	Acting Chief Executive ("Acting CE")
Mr M Phukubje	Company Secretary
Mr A Singh	Acting Chief financial Officer ("Acting CFO")

APOLOGIES

None

BY INVITATION

None

IN ATTENDANCE

Ms S Daniels	Committee Secretary
Mr W Venner	

COMMISSION OF INQUIRY INTO STATE CAPTURE

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

1. OPENING AND WELCOME

The Acting Chairman welcomed members to the meeting.

2. APOLOGIES

Apologies as above were noted.

3. QUORUM

A quorum being present, the Acting Chairman declared the meeting duly constituted.

4. DECLARATIONS OF INTEREST

There were no declarations of interest pertaining to items on the Agenda.

5. SAFETY AND EVACUATION PROCEDURE

The safety and evacuation process to be followed in the event of an emergency was presented and noted.

6. ADOPTION OF THE AGENDA

The Agenda for the meeting was approved. It was requested that Item 9.2, Diesel report be dealt with first and then Item 9.3 McKinsey mandates.

7. ITEMS FOR DISCUSSION AND/OR APPROVAL

7.1. Ad-Hoc Diesel Audit as discussed at Audit & Risk Committee
Reference document 9.2 (a) (b) (c) (d)

The SGM: A&F joined the meeting for the purposes of the discussion.

The Ad-Hoc Diesel Audit as discussed at Audit & Risk Committee was tabled for information, details of which were included in the meeting pack.

According to management the following were key factors that played a significant role in the decision to use ad-hoc suppliers:

- The OCGTs were installed as peaking generators only, intended to operate for 2-3 hours a day maximum. Fuel supply contracts and logistics were then concluded around this operating regime in 2008. The contracts were of 10 year duration with an end date of 2018.
- Due to constraints in the grid that emerged in 2012 already, the OCGTs were required to operate for up to 17 hours a day progressively from 2012 to date.
- Because of the increased OCGT load factor, additional suppliers had to be introduced to supplement the contracted suppliers who had reached their contracted capacity

limits. Contracted capacity consisted of contracted volume capacity plus logistics capacity. Logistics capacity became the primary driver of increased use of ad hoc suppliers.

- With high continuous usage (14-17 hours at 425 KL/hour) delivery capacities of contracted suppliers often reached their limits and supplementary suppliers were required to keep the tank levels healthy to avoid fuel-out trips. For example in the first 4 months of the current financial year, logistics capacity primarily increased the use of ad hoc suppliers.
- It was important to note that there was no preset volume allocated to the ad hoc suppliers as this was driven by the capacity required by Eskom.

It was noted that the concern raised by members had been around the process itself and not the actual awarding of the tenders for short term diesel purchases.

The emergency procurement of fuel oil for Coal Fired Power Stations and diesel for OCGTs during the period September 2012 to February 2013 was ratified by EXCOPS and BTC during February and March 2013 respectively. The review therefore excluded the period before March 2013 as the Board then ratified whatever took place prior to that period.

The Board Tender Committee then approved that a new tender be issued issue to the open market for the purpose of constituting a panel of service providers who would supply a minimum of 25% of the required quantities for fuel oil and diesel to Eskom on an "as and when required basis" for a 5 year period. In the interim, management continued to use ad hoc suppliers.

The following criteria for new ad hoc suppliers was set:

- Have a valid wholesale license;
- Evidence of a credible source of diesel, and
- A letter of financial support

A&F was of the view that the criteria was not adequate.

With respect to General Controls it was reported that the sourcing of suppliers was based on word of mouth from both Eskom employees who knew the diesel suppliers and probably the other source was word of mouth from the market itself as the bulk of them were unsolicited. A&F was of the view that the process required a robust internal evaluation process before approval to be captured on the Vendor Master, which evaluation process was not evidenced.

The suppliers were evaluated on whether they comply with the 3 criteria ratified by the Board, however evidence of this evaluation and approval did not exist. There was evidence that the two suppliers met 2 of the 3 criteria. There was no evidence that evaluation and approval process took place.

With regard to the Process of allocation of suppliers once on the panel, according to management, once the supply was on the database they had an opportunity to be requested

to supply Eskom with Fuel (only these suppliers who were on the data base). The process was initially at random

In respect of Performance assessment and re-selection for use management reported that the suppliers were re-selected or not re-selected based on their performance. However there was no evidence that this actually happened.

A&F performed independent probity checks relative to these suppliers and found no evidence of conflict of interest from both Eskom employees who were involved in the value chain, Exco and the Board.

With respect to the specific controls issues related to 2 suppliers, it was found that the appointment of these 2 followed the same process and there was no extraordinary change to accommodate them. The last criterion were not complied with (obtaining the letter of support).

It was reported that A&F had recommended that Management should consider the potential savings as well as logistical efficiencies to be realised by contracting directly with Chevron. A&F was alive to the socio economic benefits that may be forfeited by doing away with the creation of a market for Ad-Hoc diesel suppliers. This was a cost benefit analysis exercise worth considering particularly under the current environment.

If the decision was to continue with a panel of Ad-Hoc suppliers, then the adjudicating process relating to the evaluation of the final offers from the short-listed diesel suppliers needed to be finalised as a matter of urgency and contracts should have been concluded with the successful suppliers. There had been pro-active assurance on the tender process for the new panel, which found the process overall to be fair, transparent and free of conflicts of interest.

The Chairman stated that that management should have reported to the Board under Committee to implement the ad-hoc purchases. A member requested that the strategy in terms of procuring diesel in the light of recommendations from ARC should be tabled for information.

In response to a query as to why ad-hoc suppliers were used instead of contracted suppliers it was reported that as soon as Eskom hit the load factor it required more than the 5 million litres of diesel per the contract with the normal suppliers. This was beyond the capacity of the oil companies to supply due to logistics. In order to de-risk the supply chain it was necessary to source from the ad-hoc suppliers to make up the difference between the 5 million litres and up to the required 7 to 7,5 million litres being used. The logistical problems emanated from the decanting facilities which could not supply the difference as well as Eskom's own facilities for receiving the diesel.

- The Chairman recommended that the issue be left to the Acting CE to review the processes and make a report in due course.

9.1 Audit & Risk Committee ("ARC") Report
Reference document 8.1 (a)

The ARC Committee Reports Template for the meeting held on 10 February 2015, 14 April 2015, 8 May 2015, 27 May 2015, 5 August 2015 and 4 September 2015 was taken as read and noted, details of which were included in the meeting pack.

Resolved that:

9.1.1 the reports of the Audit & Risk Committee meetings held on 10 February 2015, 14 April 2015, 8 May 2015, 27 May 2015, 5 August 2015 and 4 September 2015 are noted.

9.2 Social, Ethics & Sustainability Committee ("SESC")
Reference document 8.2 (a)

The SESC report for the meeting held on 14 August 2015 was taken as read and noted, details of which were included in the meeting pack.

Resolved that:

9.2.1. the Social, Ethics & Sustainability Committee report for the meeting held on 14 August 2015 is noted.

9.3 People & Governance ("P&G") Committee
Reference document 8.3 (a)

The P&G Committee Reports for the meetings held on 20 May 2015 and 9 September 2015 were taken as read and noted, details of which were included in the meeting pack.

Resolved that:

9.3.1 the People & Governance Committee reports for the meetings held on 20 May 2015 and 9 September 2015 are noted.

9.4 Investment & Finance Committee ("IFC")
Reference document 8.4 (a) (b) (c)

The IFC reports for the meetings held on 2 July 2015, 31 July 2015 and 6 August 2015 were taken as read and noted, details of which were included in the meeting pack.

It was reported that the IFC Terms of Reference had been approved by the Board previously but on investigation after the meeting it was found that they had not been tabled for approval. This would be done at the next Board meeting.

Resolved that:

9.4.1 the Investment & Finance Committee reports for the meetings held on 2 July 2015, 31 July 2015 and 6 August 2015 are noted.

9.5 Board Review and Build Programme Review Committee ("BRBPR")
Reference document 8.5 (a) (b) (c) (d)

The BRBPR reports for the meeting held on 29 July 2015, the Dashboard and the briefing note – update on Eskom IDM programme were taken as read and noted, details of which were included in the meeting pack.

In response to a query it was confirmed that the BRBPR Terms of Reference had been approved by the Board on 28 May 2015. It was requested that a copy thereof be included in the next Board pack for information.

Resolved that:

9.5.1 the Board Review and Build Programme Review Committee report for the meeting held on 29 July 2015, the Dashboard and the briefing note – update on Eskom IDM programme are noted; and

9.5.2 a copy of the Board Review and Build Programme Review Committee Terms of Reference should be included in the next Board pack for information.

9.6 Board Tender Committee
Reference document 15.3 (a) (b)

The Board Tender Committee Reports for the meetings held on 3 June 2015, 21 July 2015 and 18 August 2015 were taken as read and noted, details of which were included in the meeting pack.

Resolved that:

9.6.1 the Tender Committee reports for the meetings held on 3 June 2015, 21 July 2015 and 18 August 2015 are noted.

11 ITEMS FOR DISCUSSION AND/OR APPROVAL

11.1 Memorandum of Incorporation ("MoI)
Reference document 9.1 (a) (b) (c) (d)

The Draft revised MoI was tabled for information, details of which were included in the meeting pack.

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

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

Resolved that:

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

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

11.2 Conversion of Loan

Reference document 11.2 (c) (d)

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

Resolved that:

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

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

11.3 Executive Vacancies

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

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

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

Resolved that:

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

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

12. CLOSURE

There being no further matters for discussion, the Chairman declared the meeting closed at 19h50.

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

CHAIRMAN: _____ DATE: _____

COMMISSION OF INQUIRY INTO STATE CAPTURE

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

It was noted that a person could be confirmed for a position they had been acting in after 3 months without advertising. However a recommendation could be submitted at any time and the Cabinet process took 6 weeks to confirm the appointment.

Resolved that:

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

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

12. CLOSURE

There being no further matters for discussion, the Chairman declared the meeting closed at 19h50.

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

CHAIRMAN: _____ DATE: 29/04/16

"VK12"

Venete Klein

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: 11 September 2015 08:33 AM
To: Venete Klein
Subject: RE: Urgent - final drafts attached
Attachments: 20150910 DPEMIN Appointment of CE final draft.docx; 20150910 DPEMIN Appointment of CFO final draft.docx

Importance: High

Fixed up the gremlins :)

-----Original Message-----
om: Venete Klein [mailto:venete@kleininc.co.za]
nt: Thursday, September 10, 2015 9:38 PM
: Suzanne Daniels
ubject: Urgent

Hi S, what are the chances of having the letters with DPE before 10 in the morning?

Sent from my iPhone

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

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COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom

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

Dear Minister Brown

APPOINTMENT OF GROUP CHIEF EXECUTIVE OFFICER

The above matter has reference.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Yours sincerely

Dr BS Ngubane
INTERIM CHAIRMAN
Date:

INTO STATE CAPTURE

"VK13"

Venete Klein

From: Masenya Selatswa <Masenya.Selatswa@dpe.gov.za>
Sent: 02 October 2015 02:55 PM
To: Baldwin.ngubane@gmail.com; DanielSM@eskom.co.za; Venete Klein
Cc: Orcilla Ruthnam; Lawrence Nevondo; Keromamang Mhlongo
Subject: Re: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom
Attachments: SKMBT_C36415100214370.pdf

Good day

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

Please acknowledge receipt.

Thank you,

Kind regards,

Mr Selatswa Masenya
Registry
Ministry of Public Enterprises

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

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

COMMISSION OF INQUIRY INTO STATE CAPTURE

MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Hatfield, 0028 Tel: 012 431 1113/1150 Fax: 012 431 1029
Private Bag X9079, Cape Town, 8000 Tel: 021 461 6378/7459 Fax: 021 465 2981/461 1741

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

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

Dear Mr Molefe

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

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

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

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

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

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

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

Yours sincerely

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

CC: Dr Ngubane, Interim Chairperson of the Eskom Board

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-0211

public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

I, _____, in my capacity as Chief Executive Officer, hereby accept the appointment as an *ex officio* member of the Eskom Board. I undertake to observe and comply with the principles and provisions of all legislation relevant to Eskom, the Protocol on Corporate Governance and the provisions of the Shareholder's Compact between the Board of Eskom and the Minister of Public Enterprises, to devote sufficient time for the execution of my responsibilities, to utilize my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Eskom and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

_____ _____

Mr Brian Molefe **Date**

COMMISSION OF INQUIRY INTO STATE CAPTURE

MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X18, Hatfield, 0028 Tel: 012 431 1118/1150 Fax: 012 431 1039
Private Bag X9078, Cape Town, 8000 Tel: 021 461 6376/7/469 Fax: 021 465 2381/461 1741

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

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

Dear Dr. Ngubane

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

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

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

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

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

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

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

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

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

Yours sincerely

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

COMMISSION OF INQUIRY INTO STATE CAPTURE

MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Private Bag X9079, Cape Town, 8000 Tel: 021 461 5378/7/459 Fax: 021 465 2381/461 1741

Mr Anoj Singh
Chief Financial Officer
Eskom Holdings SOC Limited
P.O. Box 1091
Megawatt Park
Johannesburg
2000

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

Dear Mr Singh

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

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

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

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

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

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

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

Yours sincerely

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

CC: Dr Ngubane, Interim Chairperson of the Eskom Board

COMMISSION OF INQUIRY INTO STATE CAPTURE

public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

I, _____, in my capacity as Chief Financial Officer, hereby accept the appointment as an *ex officio* member of the Eskom Board. I undertake to observe and comply with the principles and provisions of all legislation relevant to Eskom, the Protocol on Corporate Governance and the provisions of the Shareholder's Compact between the Board of Eskom and the Minister of Public Enterprises, to devote sufficient time for the execution of my responsibilities, to utilize my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Eskom and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

_____ _____

Mr Anoj Singh **Date**

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK14"

Khanyisa Mapipa

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Friday, 09 October 2015 03:30 PM
To: Venete Klein
Subject: FW: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Fyi

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

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

Regards

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

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ck on the following link to view directions to DPE http://www.dpe.gov.za/home.asp?id=1053

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

Hi Orcilla

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

Please call if you need to.

Best regards
Suzanne

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

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

Hi Suzanne

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

Regards

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

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Click on the following link to view directions to DPE http://www.dpe.gov.za/home.asp?id=1053

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

Dear Orcilla

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

Best regards
Suzanne

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

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REENERGIZE YOUR POWER 49

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

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

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

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

Your prompt response will be highly appreciated.

Regards

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

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

Good afternoon

Receipt is hereby confirmed.

Regards
Suzanne

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

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REMEMBER YOUR POWER 49

COMMISSION OF INQUIRY INTO STATE CAPTURE

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

Good day

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

Please acknowledge receipt.

Thank you,

Kind regards,

Selatswa Masenya
Registry
Ministry of Public Enterprises

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

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

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"VK15"

"ESK1"

Eskom

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

Dear Minister

REMUNERATION: MR B MOLEFE

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

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

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

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

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

- 10.8% below the median of Mercer
- 5.4% below the median of PE Corporate Services and
- 37.9% below the average of Deloitte Consulting. The Deloitte benchmark is based on listed JSE companies of similar size.

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Tel +27 11 800 2000 Fax +27 11 800 [illegible] www.eskom.co.za
Eskom Holdings SOC Ltd Reg No [illegible]

M.K

COMMISSION OF INQUIRY INTO STATE CAPTURE

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

EXECUTIVE	POSITION	TOTAL GUARANTEED PACKAGE
B Molefe	Chief Executive	R7 858 000.00

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

Thanking you in anticipation.

Yours sincerely

Dr Baldwin Ngubane
CHAIRMAN
Date: 15/10/15

APPROVED

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

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK16"

"ESK3"

Eskom

STRICTLY PRIVATE AND CONFIDENTIAL

Mr B Molefe

Dear Brian

OFFER OF EMPLOYMENT

I have pleasure in confirming your appointment in the following position:

Designation: GROUP CHIEF EXECUTIVE

1. Conditions

You will be required to enter into a fixed term Employment Contract. This Offer of Employment is also subject to Eskom's Conditions of Service - abridged version attached.

2. Remuneration Package

Your remuneration package will be structured as follows:

- Total guaranteed package of R 7 656 000.00 per annum.
- 70% of the total guaranteed amount will be deemed to be pensionable earnings as a basis for the calculation of certain benefits, for example, pension fund.
- The package may be structured to provide for a car allowance and 13th cheque.

In addition, the package will be influenced by factors described below.

3. Deductible Benefits

Deductions are applicable to the following benefits:

- Pension Fund – A contribution of 20.8% will be calculated on pensionable earnings of 70% in accordance with the rules and regulations of the Eskom Pension and Provident Fund.

Head Office
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PO Box 1091, Johannesburg, 2000, SA
Tel +27 11 800 2000 Fax +27 11 800 3803 www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/015527/06

COMMISSION OF INQUIRY INTO STATE CAPTURE

OFFER OF EMPLOYMENT (Continue)

- Medical Aid – Subject to your agreement with the Chairman that you continue with your chosen medical aid, you will be required to subscribe to one of the Eskom approved Medical Aid Schemes (presently Bestmed, Bonitas or Medihelp).
- Death Benefit Scheme (Funeral Policy) – The payout related to this scheme is equal to R15 000.
- Group Life Cover (non-taxable). This benefit is calculated at three times your total guaranteed package.

4. Taxable benefits

The following benefits are taxable:

- Supplementary Medical Cover.
- Stated Benefits (Disability Cover).
- Installation or upgrade / maintenance of a security system at your home will be borne by Eskom, however, the entire benefit (including installation and guarding services) received by you will be taxable. The asset will depreciate over a period of 3 years in terms of the executive protection policy. Should you resign before expiry of the three year period, you will be liable to reimburse Eskom equal to the depreciated value.
- You will be liable for the tax portion of all tax counselling and financial planning fees, limited to R12 000.00 per annum.
- Bank fuel card for operating and maintenance expenses on your car.

5. Non-taxable Benefits

The following benefits are non-taxable:

- Use of the Executive gymnasium at Megawatt Park Health Centre.
- Payment of Professional fees (maximum of 2 work related institutions).
- Group Life Cover – equal to three times annual pensionable earnings.
- Home installed telephone for business usage.

6. Short Term Incentive Scheme (STI) - Annual Performance Bonus

Annual performance ratings are determined according to predetermined targets and resultant payouts are taxable.

7. Long Term Incentive Scheme (LTI)

As an executive, you will automatically participate in Eskom's Long Term Incentive Scheme, which is based on annual taxable grants vesting over periods of three (3) years. In the event of the vesting date occurring beyond the specified term of the contract, all such granted values would be deemed to have accrued to you and will be calculated as part of the final payment to you. Such final payment shall be fully inclusive of any amounts owed to you in terms of Eskom's Long Term Incentive Scheme rules.

M.12

Much.

OFFER OF EMPLOYMENT (Continue)

Please sign below, acknowledging receipt of this letter, and return it to me at your earliest convenience. Your appointment is effective from 1 October 2015.

An appointment will be arranged to discuss the structure of your total package to suit your personal tax requirements and other needs. Anton Minnaar and his Executive Support Team will assist you with all the support functions. Please contact Anton directly on tel. (011) 800-3088.

Kind regards

Dr Baldwin Ngubane
CHAIRMAN
Date: 09/11/15

ACKNOWLEDGMENT OF RECEIPT:

Signature
B Molefe

11.11.15.
Date

COMMISSION OF INQUIRY INTO STATE CAPTURE

M.K

"VK17"

Venete Klein

From:	Suzanne Daniels <DanielSM@eskom.co.za>
Sent:	09 November 2015 07:09 AM
To:	Venete Klein
Subject:	Revised letter for your consideration
Attachments:	020 Appointment Letter Brian Molefe revised.doc; 021 Appointment Letter A Singh revised.doc
Importance:	High
Sensitivity:	Confidential

n part of the 49Million initiative...
p://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

STRICTLY PRIVATE AND CONFIDENTIAL

13 October 2015

Mr B Molefe

Dear Brian

OFFER OF EMPLOYMENT

I have pleasure in confirming your appointment in the following position:

Designation: GROUP CHIEF EXECUTIVE

1. **Conditions**

   You will be required to enter into a ~~standard~~ fixed term F Band Executive Employment Contract. This Offer of Employment is also subject to Eskom's Conditions of Service - abridged version attached.

2. **Remuneration Package**

   Your remuneration package will be structured as follows:

   - Total guaranteed value of R 7 ~~032~~ 656 000.00 per annum.
   - 70% of the total guaranteed value will be deemed to be pensionable earnings as a basis for the calculation of certain benefits, for example, pension fund, housing loan, etc.
   - The package may be structured to provide for a car allowance and 13th cheque.

   In addition, the package will be influenced by factors described below.

3. **Deductible Benefits**

   Deductions are applicable to the following benefits:

   - Pension Fund – A contribution of 20.8% will be calculated on pensionable earnings of 70% in accordance with the rules and regulations of the Eskom Pension and Provident Fund.

COMMISSION OF INQUIRY INTO STATE CAPTURE

- Medical Aid – Unless you can provide proof that you are on the medical aid of your spouse / partner, you will be required to subscribe to one of the Eskom approved Medical Aid Schemes (presently Bestmed, Bonitas or Medihelp).
- Death Benefit Scheme (Funeral Policy) – The payout related to this scheme is equal to R15 000.
- Group Life Cover (non-taxable). This benefit is calculated at three times your total guaranteed package.

4. **Taxable benefits**

The following benefits are taxable:

- Supplementary Medical Cover.
- Stated Benefits (Disability Cover).
- Installation or upgrade / maintenance of a security system at your home will be borne by Eskom, however, the entire benefit (including installation and guarding services) received by you will be taxable. The asset will depreciate over a period of 3 years in terms of the executive protection policy. Should you resign before expiry of the three year period, you will be liable to reimburse Eskom equal to the depreciated value.
- You will be liable for the tax portion of all tax counselling and financial planning fees, limited to R12 000.00 per annum.
- Bank fleet card for operating and maintenance expenses on your car.

5. **Non-taxable Benefits**

The following benefits are non-taxable:

- Use of the Executive gymnasium at Megawatt Park Health Centre.
- Payment of Professional fees (maximum of 2 work related institutions).
- Group Life Cover – equal to three times annual pensionable earnings.
- Home installed telephone for business usage.

6. **Short Term Incentive Scheme (STI) - Annual Performance Bonus**

Annual performance ratings are determined according to predetermined targets and resultant payouts are taxable.

7. **Long Term Incentive Scheme (LTI)**

As an executive, you will automatically participate in Eskom's Long Term Incentive Scheme, which is based on annual taxable grants vesting over periods of three (3) years. In the event of the vesting date occurring beyond the specified term of the contract, yet you are entitled to the grant, such grant would be deemed to have accrued to you and will be calculated as part of the final payment to you which final payment shall be fully inclusive of any amount owed or that may become owing in terms of Eskom's Long Term Incentive Scheme to you.

Please sign below, acknowledging receipt of this letter, and return it to me at your earliest convenience. Your appointment is effective from 1 October 2015.

An appointment will be arranged to discuss the structure of your total package to suit your personal tax requirements and other needs. Anton Minnaar and his Executive Support Team will assist you with all the support functions. Please contact Anton directly on tel. (011) 800-3088.

Kind regards

Dr ~~B S~~Baldwin -Ngubane
CHAIRMAN

ACKNOWLEDGMENT OF RECEIPT:

Signature _____ Date _____

COMMISSION OF INQUIRY INTO STATE CAPTURE

ABRIDGED VERSION OF ESKOM'S CONDITIONS OF SERVICE

The following is an abridged version of Eskom's Conditions of Service:

1. The normal working day, which includes a lunch break of forty-five (45) minutes, is from 08:00 until 16:45 from Monday to Friday.
2. The employee shall:

   2.1 Not become involved in any part-time work without the consent of Eskom.
   2.2 Assign all rights which he/she may have in and to any invention, process, new and useful art and/or any new and useful improvement thereof, which may be invented or designed by the employee in the course and scope of his/her employment with Eskom and the employee hereby assigns all such rights in favour of Eskom. Further the employee undertakes to sign all the necessary documents to enable Eskom to obtain patent rights in such invention or design.
   2.3 Assign and cede to Eskom all his/her rights as author of any work which is subject to copyright in terms of the Copyright Act, 1978 produced in the course and scope of his/her employment with Eskom. The employee indemnifies Eskom against any claims resulting from the infringement by him/her of the copyright of any other author.
   2.4 Conform to, obey and abide by any rule, regulation or law of Eskom which may be in force from time to time and to the hours of work insofar as these are applicable to the employee in the capacity in which he/she is employed.
   2.5 Not cede, assign or hypothecate his/her right and claim to any monies payable to him/her in respect of his/her employment with Eskom, except with the consent of Eskom.

3. Infringement of any of the Conditions of Service, or rules of Eskom, will render the employee liable for dismissal, suspension or any other disciplinary action which Eskom in its discretion may deem fit in accordance with the disciplinary code.
4. The employee declares that he/she has no conscientious objection to working Saturdays, Sundays and public holidays and to work overtime and shift work if required to do so. If the employee objects, notice must be given in advance (prior to signing acceptance hereof).
5. During the first four weeks of employment one week's notice of termination can be given by either party.
6. After expiration of the first four weeks of employment, two weeks notice of termination of employment is required. After 12 months of service, not less than four weeks' notice is required.
7. The employee shall not submit his/her resignation and Eskom shall not terminate his/her employment whilst absent on annual, accumulated, sick or special leave.
8. Annual, accumulated and special leave will also not be granted after an employee has submitted his/her resignation.
9. Eskom shall be entitled to terminate the employee's employment immediately and without any notice for misconduct or breach of any Eskom rule or Condition of Service or as a result of any false information furnished in the application for employment.
10. Eskom at all times reserves the right to transfer the employee to any place where such employee's services are required.
11. Leave is granted in several categories, however, the main categories are described below:

    11.1 Annual leave - accrues on an annual basis on each service anniversary date or deemed starting date at the rate of 21 calendar days per completed year of service.
    11.2 Occasional leave - accrues on an annual basis on each service anniversary date or deemed starting date at the rate of 9 calendar days per completed year of service.
    11.3 Service leave – 42 calendar days is credited after 6 years continuous service and thereafter accrues at the rate of 7 calendar days per annum for each completed year of service.
    11.4 Sick leave - amounts to 45 calendar days per completed year of service, accumulative to a maximum of 180 calendar days.

"VK18"

Eskom

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

Dear Minister

RETIREMENT ARRANGEMENTS –BRIAN MOLEFE

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

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

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

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

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

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COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-0232

RETIREMENT ARRANGEMENTS – BRIAN MOLEFE (Continued)

- That Eskom carries the cost of such penalties (to be paid over to the EPPF).
- In the event that Mr Molefe's contract is not extended beyond the 5 year termination date, he will not be allowed to subscribe to any other SOC or government pension fund.
- Should the contract be extended, however, it is important to note that the cost of any subsequent penalties (actuarial value) will decrease proportionately.

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

Yours sincerely

Dr Baldwin Ngubane
CHAIRMAN
Date: 25/11/15

COMMISSION OF INQUIRY INTO STATE CAPTURE

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		Document Type	CCGTE
		Revision	0
		Effective Date	July 2015
		Office of the Company Secretary.	

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

STRICTLY CONFIDENTIAL

PRESENT

Members

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

Officials

Mr A Minnaar	Executive Support Manager
Ms S Daniels	Company Secretary

APOLOGIES

Mr L Giovanni	Member

1. OPENING AND WELCOME

The Chairperson opened the meeting and welcomed all those present.

2. APOLOGIES

Apologies as above were noted.

3. QUORUM

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

4. DECLARATION OF INTERESTS

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

COMMISSION OF INQUIRY INTO STATE CAPTURE

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5. SAFETY AND EVACUATION

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

6. ADOPTION OF THE AGENDA

The agenda as tabled was adopted.

7. MATTERS FOR APPROVAL OR INFORMATION

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

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

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

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

The following resolutions were thus being requested:

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

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

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

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

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

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

RESOLVED THAT:

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

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

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

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

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

RESOLVED THAT:

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

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7.3. Office of the Group Chief Executive
Proposed salary increases

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

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

RESOLVED THAT:

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

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

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

The GCE was excused from the meeting.

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

RESOLVED THAT:

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

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		Office of the Company Secretary	

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

7.5 Group Chief Executive: Conclusion of contract

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

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

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

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

RESOLVED THAT:

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

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

i. bridge the gap to make up for the 10 years;

ii. waive penalties applicable to early retirement and

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

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

8. CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

8.1 Minutes of the Previous Meeting
Reference Document 5.1(a)

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

RESOLVED THAT:

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

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

9. MATTERS ARISING FROM PREVIOUS MINUTES

9.1 Matters arising
Reference Document 6.1(a)

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

10. GENERAL

There were no further matters for discussion.

COMMISSION OF INQUIRY INTO STATE CAPTURE

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11. CLOSURE

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

SIGNED AS A CORRECT RECORD OF THE PROCEEDINGS

CHAIRPERSON

25/5/2016
DATE

COMMISSION OF INQUIRY INTO STATE CAPTURE

RESOLUTION

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

1. The current Eskom Pension and Provident Fund (EPPF) rule that Employees may proceed on retirement from age 50 with 10 years' service, remains applicable.

2. In cases where Executive Director's (appointed on fixed term contracts) decide to take early retirement and there is a shortfall regarding the EPPF 10 years' service rule, Eskom shall:

   i. Bridge the gap to make up for the 10 years'

   ii. Waive penalties applicable to early retirement

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

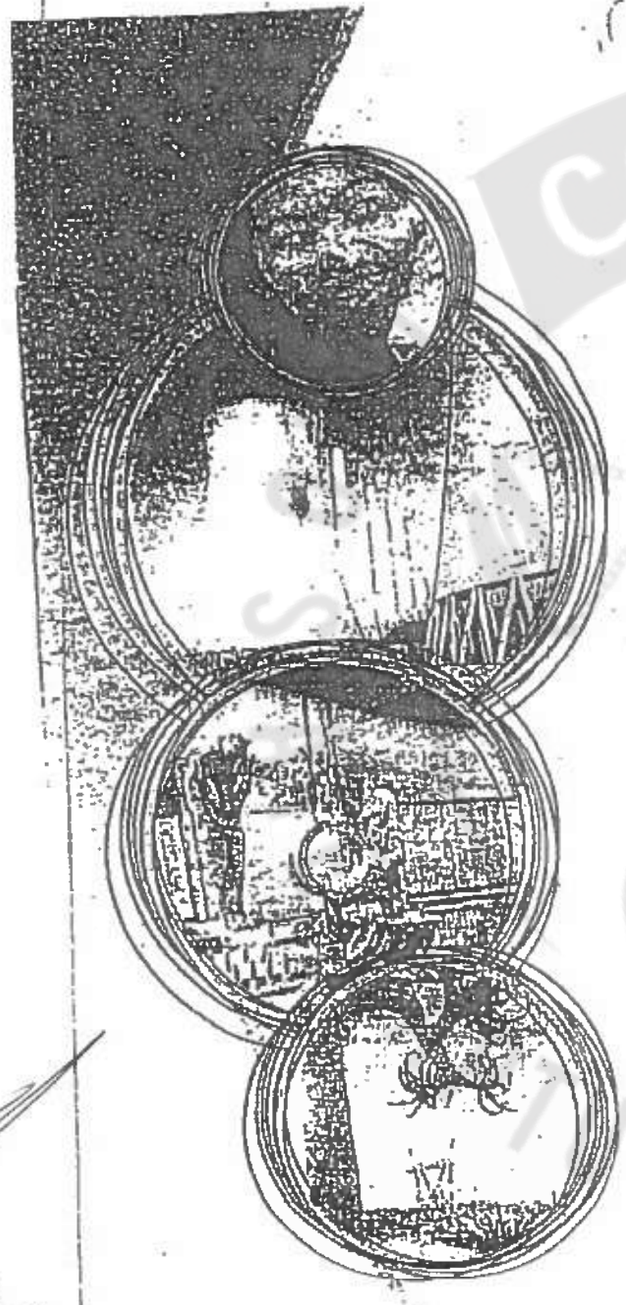
Dr B S Ngubane

CHAIRMAN: ESKOM

Ms V J Klein

CHAIRPERSON: PEOPLE AND GOVERNANCE COMMITTEE

COMMISSION OF INQUIRY INTO STATE CAPTURE



Eskom

CONFIDENTIAL

EXECUTIVE DIRECTORS
Early Retirement

9 February 2016

U14-VK-0241

Eskom

- The current GCE and CFO have been appointed on a 5 year term contract.
- The appointments of individuals at this level on a fix term contract base is not a standard practice in Eskom
- To address retirement within the rules of the EPPF it is recommended that the Board approve improved retirement benefits for executive directors appointed on fix term contracts.
- Within the Remuneration and Benefit Practice, Board does have the discretion to allow Executives (F-band) to early retire within the rules of the EPPF. This means that penalties may be waivered and additional service may be granted.
- This has been granted to most executives that have early retired from Eskom

U14-VK-0242

Eskom

- Previous Executives retired with these benefits:
  - No penalties plus 5 years additional service
  - Latest approved by the previous Board – Dr S Lennon - no penalties plus 5 years additional service

U14-VK-0243

Eskom

Principle decision to be taken by Board regarding the early retirement of Executive Directors (ED's) appointed on fixed term contracts.

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-0244

Eskom

The early retirement ruling applicable to ED's appointed on fixed term contracts should be amended and articulated as follows:

- The current EPPF rule that Employees may proceed on retirement from age 50 with 10 years' service remains applicable.
- In a case where there is a shortfall in the years' service by an ED, Eskom shall:
  - Bridge the gap to make up the 10 years'
  - Waive penalties applicable to early retirement
  - Refund EPPF actual costs relating to the additional service added and penalties applicable to early retirement

U14-VK-0245

"VK20"

Unique Identifier	221-209
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Revision	0
Review Date	July 2015
Office of the Company Secretary	

Eskom

ESKOM HOLDINGS SOC LTD
BOARD BREAKAWAY

MINUTES OF THE BOARD BREAKAWAY 1-2016/17 HELD ON 18 & 19 APRIL 2016 AT THE MOUNT GRACE COUNTRY HOTEL, MAGALIESBURG FROM 09H00

DAY 1: IN-COMMITTEE DISCUSSION

PRESENT

Board Members

Dr BS Ngubane	Chairman
Ms N Carrim	Member
Ms V J Klein	Member
Mr G Leonardi	Member
Ms C Mabude	Member
Dr P Naidoo	Member
Ms V Naidoo	Member
Mr B Molefe	Group Chief Executive ("GCE")
Mr A Singh	Chief financial Officer ("CFO")

Officials

Ms S Daniels	Company Secretary

By invitation

None

In attendance

Ms A van der Merwe	Board Secretary (Consultant)

APOLOGIES

Mr MV Pamensky	Board Member

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Eskom	ESKOM HOLDINGS SOC LTD BOARD BREAKAWAY	Unique Identifier	221-209
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		Office of the Company Secretary	

1. SAFETY AND EVACUATION PROCEDURE

The safety and evacuation process to be followed in the event of an emergency was presented by the Security Manager of Mount Grace.

2. OPENING

2.1 Welcome

The Chairman welcomed members to the Board Breakaway and noted that it would be preceded by an in-committee discussion.

2.2 Apology

The apology as listed above was noted.

3. IN-COMMITTEE DISCUSSION

The Chairman apologised for his absence from the country during the troubling times which had also resulted in the loss of two Board members. He suggested that members should start considering the content of a formal media release and strong response to the recent incidents and media coverage following the conclusion of the Board Breakaway and formal Board meeting later in the week, noting the need for a response that was well structured. He recommended that the Board should meet with the Eskom communications' team for this purpose. The Chairman thanked Ms Mabude for acting as chairperson in this absence and for having to bear the brunt of the negative events, including all other Board members. He reported on his recent visit to China and the USA and the purposes thereof.

The Chairman commented on the recent Mail & Guardian (M&G) article and noted the need for the Board to stand united in this unwarranted and unfair attack. He noted that the Board had worked well with management and had made huge progress with the business to date. This in itself warranted a strong but professional rebuttal.

The GCE supported the Chairman's views and thanked the Board for its support to management during these times. He noted that this Board had now presided over 8 months of no load shedding. In addition, he pointed out that the M&G article had not resulted in any further significant media articles as the allegations in the M&G article were completely unsubstantiated. He urged the Board not to allow this to distract the Board from the business at hand. The GCE commented on allegations made by the previous chair of the Eskom Board and the factual information in possession of Eskom that in fact refuted his allegations. He furthermore highlighted a number of imminent positives which gave him confidence in the future.

Ms Mabude commented on events during the Chairman's absence. She noted that there was substantial communication between Board members and that the instruction from DPE was for Board members not to respond to the M&G article which had made it even more difficult for Board members. The Board had a session to discuss the M&G article as well as the response from Mr Khumalo to the media and the outcome of these discussions was agreement not to respond to the media articles as requested by DPE. She reported that the Board had also tasked her with the assistance of others to meet with Mr Khumalo in order to discuss his engagement with the media notwithstanding the Shareholder's instructions. She explained the challenges experienced in this regard resulting in Mr Khumalo eventually returning her calls. She then had a one-on-one discussion with him and conveyed the sentiment of the Board to ensure stability and to remain united. Ms Mabude tabled her surprise when she was informed of Mr Khumalo's resignation and remarked that she was not sure if his resignation was triggered by these discussions or whether he had in fact planned to resign notwithstanding.

The Chairman also reported on his discussions with Ms Cassim regarding her decision to tender her resignation and noted the pressure she had been put under to resign. He requested her to communicate her position to the Shareholder. Ms Klein commented on the challenging time and the need for some Board members like her to also engage with other boards of which they were members, due to enquiries received. She noted that this was a very uncomfortable position to be in and, to exacerbate the situation, the husbands of some of the female directors had also been attacked.

Dr Naidoo agreed that the Board needed to establish a combined front and weather the storm. Mr Khoza commented on the importance also of the Board having come together to express individual opinions and frustrations, noting that the open debate had been of value and that all other Board members had abided by the request not to respond. It would however be good if there could now be a combined media release and the Board was given an opportunity to reaffirm its commitment to its statutory and fiduciary duties.

Ms Naidoo shared her views and noted the difference of opinions regarding the need for a response to the media coverage. She noted that she was of the opinion that there should have been a response considering the repercussions and impact she had personally experienced on a professional level. Various allegations had been targeted at her due to the non-response. In her opinion, the actions of Mr Khumalo had in fact made things worse as the non-response by other members of the Board had not been seen in a positive light. It was thus important to carefully consider the content of any response.

Ms Carrim thereafter commented on the impact of the events on her personally, which she had taken in her stride. However, a number of rumours had now surfaced and had come to her attention regarding the AGM possibly being brought forward, rotation issues, the possible

perception that the Minister would have asked Board members to step down, etc. She tabled her discomfort with this and her concern regarding the possible negative impact of this on Board members. The Chairman confirmed that he was not aware of the AGM being brought forward and that the Minister would have raised this with him by now if this was indeed the plan.

The CFO acknowledged the impact of all of this on members of the Board but highlighted the effect it was having on all employees, which also needed to be addressed. Similar to Board members, the majority of employees did not want to be associated with a company that would be involved in unethical and/or corrupt practices. He remarked that in his view this was a critical matter that needed to be addressed.

Ms Klein explained that a number of members of the Board had indicated possibly stepping down and that the idea to bring the AGM forward had thus been raised as a possibility to facilitate such a process. The Chairman noted that any enquiry of this nature should be addressed to the Company Secretary. He tabled his concern over communication outside the formal channels and structures which could result in misconceptions and confusion being created.

The GCE commented on the lowering of standards of the burden of proof which was a very concerning development in South Africa. He remarked that for Board members to be referred to as corrupt without any substantive evidence was not only unfair but also unconstitutional. The Chairman also highlighted the risks posed to the country as a whole as a result of this irresponsible behaviour. The GCE shared his views on the bigger picture behind the recent events, noting that in his opinion the Board should not allow itself to be dragged into the battle field.

In response to a question, the Chairman confirmed his view that a formal response was required, considering also that the Board was now having an in depth look at the business and would have important facts to communicate externally as part of the outcome thereof. He requested that the GCE should start working on a draft response together with the Corporate Affairs team for consideration by the Board and final sign off by the Shareholder prior to release. He also noted that the two members of the Board who had resigned would be formally thanked for their services as part of the communique.

The CFO then commented on the general statement made by the Minister of Finance on more than one occasion regarding the parastatals not performing as required. He noted that these statements had not been challenged to date. The GCE shared his views on the desired approach to the continuous requests from National Treasury for information, confirming that information should be provided as and when requested. He stressed his believe that in the

end the truth would prevail and that it would be evident that there had been no wrongdoing on the side of Eskom.

The discussion was concluded on the basis that a formal response would be prepared over the next day or two for consideration by the Board prior to the conclusion of the formal Board meeting later in the week.

4. CLOSURE

The in-committee discussion was followed by the Board Breakaway session that commenced at 11h00.

SIGNED BY THE CHAIRMAN AS AN ACCURATE RECORD OF THE PROCEEDINGS

CHAIRMAN _____ DATE _____

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK21"

Eskom

EXECUTIVE EMPLOYMENT CONTRACT

EMPLOYMENT CONTRACT

entered into between

ESKOM HOLDINGS SOC LIMITED

(Registration No. 2002/015527/30)

and

BRIAN MOLEFE

(Identity No. 6512285778086)

COMMISSION OF INQUIRY INTO STATE CAPTURE

WHEREBY IT IS AGREED AS FOLLOWS:

1. INTERPRETATION AND PRELIMINARY

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

1.1. words importing -

1.1.1. any one gender include the other gender;

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

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

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

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

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

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

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

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

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

1.2.7. "Commencement Date" means 1 October 2015;

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

1.2.9. "Executive" means Brian Molefe (Identity No. 6612285778086);

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

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

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

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

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

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

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

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

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

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

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

1.8. where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in this interpretation clause;

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

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

2. APPOINTMENT OF EXECUTIVE

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

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

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

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

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

3. PERIOD OF EMPLOYMENT

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

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

3.3. In dealing with the Executive's conduct, performance or any other issue arising from or in relation of the Executive's employment with the Company, the Company shall be guided by *inter alia*, the Company's disciplinary, performance management, grievance and other procedures applicable from time to time, with the Board specifically having the discretion

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

4. EFFECT OF TERMINATION OF EMPLOYMENT

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

5. SUSPENSION OF EMPLOYMENT

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

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

5.2. be entitled to his Remuneration Package.

6. DUTIES OF EXECUTIVE

The Executive shall -

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

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

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

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

6.2.2. which competes with the Business.

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

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

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

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

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

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

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

7. REMUNERATION

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

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

8. SHORT TERM INCENTIVE SCHEME

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

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

9. LONG TERM INCENTIVE SCHEME

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

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

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

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

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10. PENSION AND PROVIDENT FUND

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

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

11. MEDICAL AID

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

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

12. GROUP LIFE ASSURANCE AND FUNERAL BENEFIT

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

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

13. ADDITIONAL BENEFITS

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

13.1.1. Bank Fleet Card

13.1.1.1. The Executive shall be entitled to use the Company's Bank Fleet Card, in order to conduct his duties and responsibilities for the

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

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

13.1.2. **Financial/Tax Planning Fees**

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

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

13.1.3. **Personal Security**

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

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

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

13.1.4. **Telephone Services**

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

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

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

14. ANNUAL LEAVE

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

15. SICK LEAVE

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

16. CONFIDENTIALITY

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

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

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

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

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

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

17. INVENTIONS, DISCOVERIES, COPYRIGHT AND DOCUMENTS

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

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

17.3. Insofar as may be necessary the Executive hereby assigns to the Company and/or any Group Company the copyright in all present and future works eligible for copyright, including, without

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

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

18. STIPULATIO ALTERI

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

19. GENERAL

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

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

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

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

19.5. No relaxation or indulgence which either Party may show to the other shall in any way prejudice or be deemed to be a waiver of its rights hereunder nor shall such relaxation or

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

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

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

20. DOMICILIA CITANDI ET EXECUTANDI

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

20.1.1. the Company:

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

20.1.2. the Executive:

Physical: 759 Camelford Road, Cornwall Hill Estate, Irene, 0178
Postal: P.O. BOX 18, CORNWALL HILL, 0178
Telephone: 012 6671885

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

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

20.4. Any notice to a Party -

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

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

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

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

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

21. RESIGNATION

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

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

22. ELECTRONIC AND OTHER COMMUNICATIONS

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

23. RULES, REGULATIONS AND POLICIES

The Company has various rules, regulations, policies and procedures ("the Policies") in place which may be amended from time to time in the sole discretion of the Company. The Policies may be accessed via the Company's intranet, alternatively copies may be requested from the Company's human resources department. It is the Executive's obligation to familiarise himself with all of the Policies and ensure that he complies therewith.

24. SEVERABILITY

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

25. COSTS

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

26. ARBITRATION

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

Signed at *Megawatt Park* this 7th day of March 2016.

FOR: ESKOM HOLDINGS LIMITED

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

Name: B S Ngubane CHAIRMAN

Date: 15/03/16

Place: Megawatt Park

Witness: _____

Witness: _____

Signed at Sandton this 7th day of March 2016

BRIAN MOLEFE

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

Name: B Molefe GROUP CHIEF EXECUTIVE

Date: 7.3.16

Place: Sandton

Witness: _____

Witness: _____

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK22"

Eskom	ESKOM HOLDINGS SOC LTD BOARD OF DIRECTORS	Unique Identifier Document Type Revision Review Date Office of the Company Secretary

MINUTES OF THE SPECIAL ESKOM BOARD MEETING 08-2016/2017 HELD ON 7 NOVEMBER 2016 AT MEGAWATT PARK AT 10H00

PRESENT

Board Members

Dr BS Ngubane	Chairman
Ms V.J Klein	Non-executive director
Ms C Mabude	Non-executive director
Mr MV Pamensky	Non-executive director
Mr B Molefe	Group Chief Executive ("GCE")

Officials

Ms S Daniels	Group Company Secretary & Acting Head Legal & Compliance ("GCS")

In attendance

Ms N Moffat	Secretariat

APOLOGIES

Dr P Naidoo	Non-executive director
Mr A Singh	Chief financial Officer ("CFO")
Mr ZW Khoza	Non-executive director
Mr G Leonardi	Non-executive director

SAFETY AND EVACUATION PROCEDURE

The safety and evacuation procedure to be followed in the event of an emergency was presented and noted.

1. OPENING

1.1 Welcome

The Chairman welcomed everyone to the special meeting of the Board which had been called at short notice.

COMMISSION OF INQUIRY INTO STATE CAPTURE

1.2 Apologies and quorum

Apologies were as noted above. It was confirmed that the notice of the meeting had been duly given and that a quorum was present. The meeting was declared duly constituted.

1.3 Adoption of the agenda

The agenda as tabled was adopted.

2. DECLARATION OF INTERESTS

The GCS noted that all members were affected parties in respect of the item on the agenda. The GCS would make the requisite qualification in respect of the declaration

3. MATTERS FOR DISCUSSION

3.1 State of Capture Report

Mr Pamensky stated that in a normal situation a board would take a step back after seeing the so-called allegations as contained in the State of Capture Report ("the Report") and would consider starting an investigation into the content of the Report. However, in this particular instance, the Board was dealing with the Report in this meeting and in his opinion there was no need to institute an investigation into management and the Board. Furthermore, the Board was fulfilling its fiduciary responsibilities to the company and was dealing with the issue in a correct manner as opposed to an internal investigation.

Ms Klein supported Mr Pamensky's viewpoint but suggested that a specialised legal unit composed of individual counsel undertake a detailed interrogation of the Report.

The GCS informed the Board that the following actions/processes had already been put in place:

a. Since receipt of the Report, the legal department had summarised the amount of times that Eskom was mentioned and comparing this against what information was submitted to the Public Protector and where references were made in the Report to information that had not been provided by Eskom. All evidence would then be categorised with the aim of building a case for a review based on procedural and substantive reasons; and

b. The current legal team employed in the interrogation of the Report could possibly be expanded to cover various areas of the content as there could be certain types of information that may have been illegally handed over and which could result in criminal proceedings.

The Chair and GCE remarked that it was important that the Report should be challenged forcefully and via all available avenues.

The GCS indicated that there were aggravating circumstances present where there was an agreement with the Public Protector to respond, which agreement the Public Protector did not adhere to.

An in-depth discussion on the way forward took place and it was agreed that there were three steps to be taken that had to be considered. Firstly, to lodge an application to declare the report *ultra vires*, secondly to apply for a review of the Report and lastly, to institute an action in delict against the Public Protector for malicious proceedings.

Ms Klein noted that she was comfortable about the steps to be taken by the Board. She enquired about the process of removal of the Board members. The GCS replied that the Company's shareholder could remove members of the Board in terms of the provisions of the Companies Act and the Eskom Memorandum of Incorporation. The GCS noted that allegations had been made against some of the Board members, but not all. She also confirmed that all declarations of interest had been made available to the Public Protector. The GCS pointed out that some contractual information was in the possession of the Public Protector which the Company had not provided to her. She further confirmed that the Public Protector had been provided with written responses to all the questions which had been raised by her.

The meeting agreed that an experienced communications liaison should also be appointed to assist the Board in its communication strategy.

IT WAS RESOLVED THAT:

3.1 The Group Company Secretary be and is hereby authorised to proceed with the following steps, to the extent possible based on legal opinion:

- lodge an application to declare the State of Capture Report *ultra vires*;
- lodge an application for the Report to be formally reviewed; and
- Institute an action in delict against the Public Protector for malicious proceedings.

U14-VK-0270

3.2 An experienced, external communications specialist be sourced and appointed to assist the Board in its communication strategy.

4. CLOSURE AND DATE OF NEXT MEETING

The Chairman thanked the members for their participation and declared the meeting closed.

Following the meeting, an in-committee discussion took place.

Next Board Meeting: 29 November 2016
Cape Town

SIGNED BY THE CHAIRMAN AS AN ACCURATE RECORD OF THE PROCEEDINGS

CHAIRMAN

DATE

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-0271

Eskom	ESKOM HOLDINGS SOC LTD BOARD OF DIRECTORS	Unique Identifier Document Type Revision Review Date Office of the Company Secretary

4. CLOSURE AND DATE OF NEXT MEETING

The Chairman thanked the members for their participation and declared the meeting closed.

Following the meeting, an in-committee discussion took place.

Next Board Meeting: 29 November 2016
Cape Town

SIGNED BY THE CHAIRMAN AS AN ACCURATE RECORD OF THE PROCEEDINGS

CHAIRMAN

DATE 19/12/16

COMMISSION OF INQUIRY INTO STATE CAPTURE

STATEMENT

On Wednesday 2 November 2016, a report entitled 'State of Capture' prepared by the former Public Protector, Advocate Thuli Madonsela, was released.

The report did not make any findings. Instead it made what were termed "observations", based, (the report acknowledged), on an investigation not completed. It deferred a proper investigation to a commission of inquiry to be established at a future date. The outgoing Public Protector has directed the President – in whom the Constitution vests the power to appoint commissions of inquiry - to appoint one, and further directed the Chief Justice to designate a particular judge to head it.

It is a matter for regret that the report was prepared in haste to meet a deadline related to the Public Protector's own departure from office. That her office continues, as all State offices do, and that any uncompleted function is completed by a successor in that office, was not a consideration in the report.

"Observations" made in the report relating to, inter alia, my conduct, are in material respects inaccurate, based on part-facts or simply unfounded. What the previous Public Protector has done is not herself to investigate to completion, or to allow her office to complete what she initiated too late to complete herself. She has also determined on recording "observations" without, in crucial respects, putting intended harmful disclosures to me first – as she was by law required to do. She has effectively deferred my constitutional right to be heard to a future date, and to a further body, which she has ordered others to assemble.

If such a body is indeed by law to be assembled, and carry out the task, it will not be for some time – as recent experience indicates.

In the meanwhile harm is done – to the institution it has been my honour to lead in the most difficult times, to its reputation and to my own. I say nothing of the harm, too, to others close to me.

I am confident that, when the time comes, I will be able to show that I have done nothing wrong and that my name will be cleared. I shall dedicate myself to showing that an injustice has been done by the precipitate delivery of 'observations', following an incomplete

investigation, which the former Public Protector has drawn back from calling 'findings'. The truth will out.

I have, in the interests of good corporate governance, decided to leave my employ at Eskom from 1 January 2017. I do so voluntarily: indeed, I wish to pay tribute to the unfailing support I have had since I took up office from the chairman, the Board and with those with whom it has been my privilege to work. Together we brought Eskom back from the brink.

I will take time off to reflect before I decide on my next career move.

I wish to reiterate that this act is not an admission of wrongdoing on my part. It is rather what I feel to be the correct thing to do in the interests of the company and good corporate governance.

I wish to thank the shareholder representative, Ms Lynn Brown, the board, the executive team and all Eskom employees for their hard work and guidance in steering the company out of very difficult times during the twenty months that I was privileged to be the Group Chief Executive.

I go now, because it is in the interests of Eskom and the public it serves, that I do so.

Brian MOLEFE

11 November 2015

COMMISSION OF INQUIRY INTO STATE CAPTURE

M.K.

"VK24"

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

11 November 2016

Dr. B Ngubane
Chairman
Eskom SOC
Megawatt Park
SUNNINGHILL

Sir

EARLY RETIREMENT –EMPLOYEE NO 4610263

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

My last day of service will be 31 December 2016.

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

Yours Sincerely,

11.11.16.

Brian MOLEFE

COMMISSION OF INQUIRY INTO STATE CAPTURE

RESOLUTION

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

1. The current Eskom Pension and Provident Fund (EPPF) rule that Employees may proceed on retirement from age 50 with 10 years' service, remains applicable.

2. In cases where Executive Director's (appointed on fixed term contracts) decide to take early retirement and there is a shortfall regarding the EPPF 10 years' service rule, Eskom shall:

   i. Bridge the gap to make up for the 10 years'

   ii. Waive penalties applicable to early retirement

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

Dr B S Ngubane

CHAIRMAN: ESKOM

Ms V J Klein

CHAIRPERSON: PEOPLE AND GOVERNANCE COMMITTEE

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK25"

Eskom "ESK17"

MEDIA STATEMENT

Eskom GCE Brian Molefe voluntarily steps down

Friday, 11 November 2016: It is with a great sense of loss and regret that the Board of Eskom announces a decision by Eskom Group Chief Executive Brian Molefe to step down in the interest of good corporate governance.

In an effort to clear his name following the release of former Public Protector Thuli Madonsela's report on her "observations" about the so-called state capture, Mr Molefe has decided to voluntarily step down to reflect and take time off.

Eskom Chairperson Baldwin Ngubane said the decision taken by Mr Molefe was regrettable but understandable.

Since joining Eskom in April 2016, Mr Molefe and his executive management team have turned around the company's operational and financial performance, with 15 months of no load shedding, the impact of which has been enjoyed by every South African citizen. The improved performance of the power generating units coupled with additional capacity from some of our new build projects has resulted in a stable power system, with excess capacity being exported to neighbouring states.

The company's liquidity position has also improved significantly, with liquid assets increasing by 81.6% from R24.1 billion a year ago, to R43.8 billion at 30 September 2016 in the face of CPI growth reported to be 5.1% as at 1 April 2016. The group has access to adequate resources and facilities to continue as a going concern for the foreseeable future.

The Eskom Board sincerely thanks Brian Molefe for his relentless dedication to turning Eskom around, solidifying a capable executive team and putting it on a sound growth trajectory.

Eskom will soon be announcing the interim leadership arrangements once agreed with our Shareholder Representative, the Honourable Minister Lynne Brown.

ENDS

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Email: mediadesk@eskom.co.za

COMMISSION OF INQUIRY INTO STATE CAPTURE

M.K

"VK26"

Eskom	ESKOM HOLDINGS SOC LTD PEOPLE & GOVERNANCE COMMITTEE	Unique Identifier	
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		Office of Company Secretary	

MINUTES OF THE SPECIAL MEETING OF THE BOARD PEOPLE & GOVERNANCE IN-COMMITTEE 06/2016-17 HELD ON 21 NOVEMBER 2016 AT 10H30 AT THE HUVO NKULU BOARDROOM, MEGAWATT PARK

STRICTLY CONFIDENTIAL

PRESENT

Members

Ms V J Klein	Non-executive director (Chairperson)
Mr Z Khoza	Non-executive director

Officials

Ms S Daniels	Group Company Secretary (GCS)
Mr A Minnaar	Office of the Group Chief Executive Officer*
Mr A Singh	Chief Financial Officer (CFO)*

In attendance

Dr P Naidoo	Non-executive director
Ms A van der Merwe	Board Secretary
Adv J Gauntlett	Senior Counsel
Mr R Moodley	Cliffe Dekker Hofmeyr

APOLOGIES

Dr B Ngubane	Non-executive director
Mr G Leonardi	Non-executive director
Ms C Mabude	Non-executive director
Mr B Molefe	*Ex officio* Member (Group Chief Executive) (GCE)

*For part of the meeting

1. OPENING

1.1 Welcome

The Chairperson thanked Mr Khoza and Dr Naidoo for making themselves available at such short notice for this special meeting of the committee. It was noted that Dr Naidoo had been invited to attend the meeting considering the nature of the items on the agenda.

1.2 Apologies and Quorum

The apologies were noted.

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A quorum not being present, it was noted that no formal decisions would be passed at the meeting and that the items on the agenda would be discussed in general. Any formal decisions required would be dealt with via round robin resolutions.

1.3 **Adoption of Agenda**

The Group Company Secretary requested that the item relating to the report issued by the Public Protector be dealt with first as the attendees present had timing constraints.

But for the change in the order of the items, the agenda as circulated was adopted as is.

2. **MATTERS FOR DISCUSSION**

2.1 **Office of the Group Company Secretary and Legal & Regulatory**
Public Protector: State of Capture Report ("the Report")

The GCS reminded the meeting of the previous discussions and the proposed review of the Report as one of the potential options for Eskom to consider. She noted that the different options on the way forward had been thoroughly debated with the legal team and the main purpose of today's discussion was for Adv Gauntlett to provide the members of the Committee with a report on the legal opinion in this regard.

Adv Gauntlett thereafter addressed the meeting and shared his views on the matter, confirming that first of all the decision not to pursue an interdict against the release of the Report had turned out to be the correct advice. The question now turned around the reviewability of the Report and Adv Gauntlett summarised the formal legal opinion provided some time ago. He confirmed that the manner in which the Report had been compiled, consisting of observations only and no findings, made it impossible in law to review the Report. The opinion of the legal team was therefore that an application for a review of the Report by Eskom would not succeed.

In respect of the judicial commission of enquiry, Adv Gauntlett noted that in his opinion this would happen at some point in time, albeit at a slower pace than intended. For this purpose, the investigation being done by the Eskom legal team was of immense value and importance. He noted that Eskom had also committed to investigating the allegations made in the Report and in the event of the judicial commission of enquiry not proceeding as envisaged, then Eskom could reassess its position as far as its own investigations and reporting were concerned. Some intensive work was required from now until February 2017 in preparation of the judicial commission.

The members posed questions to the legal representatives and shared their own views on the matter. Mr Moodley explained the approach taken as far as the key issues and the investigation was concerned and the focus on matters for which information had not as yet been provided to the Public Protector. He remarked that it was difficult to put a timeframe to this process. Adv Gauntlett noted that it was not an indefinite process and that the team would have to be ready by February 2017 to present findings to the Board. Mr Moodley explained that the possibility of an

application for access to some of the information in the possession of the Public Protector was also being considered. Adv Gauntlett expanded on the nature of the work to be done in respect of the key issues. The GCS enquired whether interaction with the Board members would be required prior to February 2017 as part of the process. Mr Moodley confirmed that he would be in a better position to provide a clearer picture on the way forward towards the end of November. The GCS proposed that a high level plan in this regard be prepared for submission at the meeting of the Board at the end of the month.

Dr Naidoo commented on the unique nature of the Hendrine coal specifications to achieve the lowest cost objective as well as the historic nature of the Glencoe contract which spanned over 25 years. He explained the call on hardship made by the supplier. Mr Moodley confirmed that he had been involved in this contract since about 2009.

The Chairperson enquired over Eskom's own investigation and when and how such process would be triggered. Adv Gauntlett shared his views in this regard and confirmed that a report on the internal investigations could only be released at an appropriate time. He quoted examples of how large corporates had dealt with negative findings around a potential failure in internal procedures, confirming that same would be addressed and tightened up where necessary.

In response to the Chairperson's question regarding the position of individual Board members and their right to legal advice and representation, Mr Gauntlett remarked that based on his perception there were no specific allegations concerning non-executive members of the Board that would warrant such action at this point in time. However, each individual Board member was obviously entitled to secure own legal advice at any time. It was however early days and a more informed opinion could potentially be provided in due course.

Adv Gauntlett and Mr Moodley were excused from the meeting. The Chairperson thanked the GCS and the legal team for their hard work to date.

The CFO was excused from the meeting.

2.2 Office of the Group Chief Executive Officer
Long term incentive scheme: Ratification of Grant 12 due in April 2016

Mr Minnaar joined the meeting and explained that the document circulated at the meeting related to Grant 12 that was due on 1 April 2016 and that had been decided to deal with the allocations on the same basis as the previous grant, except for Messrs Koko and Masango. The Committee was now required to review and to confirm that it was comfortable with the approach where after all grants in terms of the scheme would be up to date. Mr Minnaar responded to questions and explained the mechanism of the scheme.

The GCS noted that she had an interest in this matter and excused herself from the meeting.

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In response to a question from the Chairperson, Mr Minnaar confirmed that a flat line increase of 6% had been approved across the board, except in respect of Messrs Koko and Masango where increases above 5% had been recommended and approved as part of an adjustment to the market norm, in addition to the 5% increase. The Chairperson noted that she then needed to understand the recommendation of the two times multiple in respect of Grant 12 as far as the relevant individuals were concerned. The Chairperson requested a short adjournment to enable her to discuss the matter with the Group Chief Executive Officer.

When the meeting resumed, the Chairperson reported that she had discussed the matter with the CFO and that the CFO would discuss the matter with the GCE and would give feedback to the P&G chairperson. The Chairperson also commented on the job profile of the GCS and the meeting confirmed its preference for the position of Head of Legal & Compliance as well as that of Group Company Secretary to be split. Whether combined or split, the Chairperson noted the need for the remuneration package of the Group Company Secretary to also be revisited. She highlighted some additional concerns arising from the list as signed off by the GCE that required a re-consideration. Mr Minnaar acknowledged the approach suggested by the Chairperson but also highlighted the impact of the failure to achieve all the targets as per the Shareholder Compact. The meeting highlighted a number of concerns as far as fairness of treatment of certain individuals was concerned which also needed to be revisited. The Chairperson undertook to have the schedule approved as soon as possible. It was suggested that the Chairperson be authorised to sign the schedule on behalf of the Committee once she was comfortable with the proposal in respect of each of the items of concern as discussed.

The GCS re-joined the meeting.

2.3 Board composition and resignations

The GCS confirmed that Mr Pamensky would be resigning with effect from 25 November 2016. The Chairperson requested that the resignation letter by obtained and the GCS confirmed that she would be meeting with his legal team later in the day in order to regularise the process.

The GCS pointed out that the Minister was expected to announce the appointment of new directors shortly and that an induction programme had been compiled for the new members of the Board. She also extended an invitation to current Board members to attend the induction.
Mr Khoza requested that a formal correspondence regarding the need for additional Board members again be sent to the Minister. Mr Minnaar also requested formal resignation letters in order to remove relevant individuals from the system. He agreed to engage with the GCS in this regard.

The Chairperson extended a special word of appreciation to each member of the Board who had walked this challenging road with the Board and the Company.

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2.4 GCE recruitment process

Mr Minnaar confirmed that there was a recruitment process in place for the appointment of a Group Chief Executive Officer. He explained the detail of the process. In response to a question from the Chairperson, he confirmed that this could be revisited in February 2017. The Chairperson noted that at this point in time the need was to consider the interim arrangement. She communicated the formal request of Ms Mabude that the GCE be requested to consider extending his tenure.

The meeting discussed the possible scenarios and the preferred approach in this regard in the interest of Eskom. It was noted that a formal letter of resignation still had to be received.

The interim GCE arrangement was debated and the attendees shared their views in this regard. The positives and negatives of either an internal individual or a non-executive member of the Board acting in this capacity were highlighted and discussed. In response to a question from the Chairperson, Mr Minnaar confirmed that in his view a member of the Board would be more appropriate under the circumstances. He noted that there had been 7 GCE's in a period of 6 years which in itself was de-stabling for the business. The meeting interrogated the various options. In the absence of the other members of the Committee it was agreed that the matter would be further interrogated at the next meeting of the Board.

2.5 GCE Termination of Employment Letter

Mr Minnaar quoted from the draft letter to be signed by the Chairman of the Board, addressed to the GCE and confirming acceptance of this early retirement. He explained the approach in respect of the retirement benefit and approval of early retirement with the F24 benefits as previously approved in respect of the GCE in the event of his 5 year contract not being renewed.

Mr Minnaar noted that in respect of the long term incentive scheme, it had been proposed that the payments in respect of Grant 11 and Grant 12 only be made in 2018 and 2019. He noted that the vesting would be fixed now at 50% notwithstanding the performance of the Company at the time. The approach in respect of the suspense account was explained.

The terms of the letter as quoted were noted and supported in principle by the attendees.

3. CLOSURE

The Chairperson thanked the attendees for their participation and declared the meeting closed.

Date of next meeting: 7 February 2017

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SIGNED AS A CORRECT RECORD OF THE PROCEEDINGS

CHAIRPERSON DATE

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom	ESKOM HOLDINGS SOC LTD PEOPLE & GOVERNANCE COMMITTEE	Unique Identifier	
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CHAIRPERSON

DATE 20/3/2017

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK27"

Eskom

This Memorandum of Incorporation was abridged and adopted by Special Resolution passed by the Shareholder of the Company on 1 July 2016 and initialled by the Chairperson for the purpose of identification.

MEMORANDUM OF INCORPORATION OF

ESKOM HOLDINGS SOC LTD

Registration number: 2002/015527/30

Which is a state-owned company, may have up to 15 director(s) who shall not be entitled to appoint alternate directors, is authorised to issue securities as described in clause 8, and is referred to in the rest of this MOI as "the Company".

This MOI is in a form unique to the Company, as contemplated in section 13 (1) (a) (ii) of the Companies Act 71 of 2008, as amended.

Adoption of MOI

This MOI was proposed by the Board of the Company in accordance with section 16 (1) (c) (i) (aa) and was adopted by Special Resolution passed by the Shareholder of the Company on 1 July 2016 in accordance with section 16 (1) (c) (ii) in substitution for the existing MOI of the Company in accordance with section 16 (5) (a) and initialled by the Chairperson for the purpose of identification.

Preamble

The Company is a pre-existing company as contemplated in item 2 of Schedule 5 of the Companies Act and was incorporated in accordance with the Enabling Legislation to carry on the business of providing energy/electricity and related services, including the generation, transmission, distribution and retail thereof, it being recorded that the Company is also subject to the provisions of the PFMA.

The Government is the sole Shareholder of the Shares in the Company and the rights attached to those Shares are exercised by the Minister. This Memorandum of Incorporation regulates the Company and its relationship with its Shareholder, subject to the provisions of the Legislative and Policy Framework.

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-0285

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COMMISSION OF INQUIRY INTO STATE CAPTURE

Public
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U14-VK-0287

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1 INTERPRETATION

In this Memorandum of Incorporation-

1.1 Capitalised words that are not defined in this MOI will bear the same meaning in the Companies Act or the PFMA, unless the context provides otherwise.

1.2 Unless the context provides or requires otherwise, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:–

1.2.1 "Ad Hoc Committee" means an ad hoc committee established by the Board from time to time for a specific task or objective and dissolved after the completion of the task or the achievement of the objective;

1.2.2 "Administrator" means the person appointed by the Shareholder in terms of clause 3 of this MOI;

1.2.3 "Approval of the Shareholder" means a written notice from the Shareholder to the Company recording the Shareholder's approval of a matter or a copy of a Shareholder's resolution granting approval of a matter.

1.2.4 "Auditing Profession Act" means the Auditing Profession Act, No. 26 of 2005;

1.2.5 "Board" means the "board" of the Company from time to time, as defined in the Companies Act, which is also the Accounting Authority for purposes of the PFMA;

1.2.6 "Business Day" means any day other than a Saturday, Sunday or official public holiday in the Republic;

1.2.7 "Group Chief Executive" means the group chief executive of the Company;

1.2.8 "Group Chief Financial Officer" means the group chief financial officer of the Company;

1.2.9 "Companies Act" means the Companies Act, No. 71 of 2008 as amended, consolidated or re-enacted from time to time and includes all schedules thereto and the Regulations;

1.2.10 "Company" means Eskom Holdings SOC Ltd, Registration no. 2002/015627/30 or whatever other name it may be known by from time to time;

1.2.11 "Company in general meeting" means a formal meeting of, or a resolution passed by, the Shareholder;

1.2.12 "Consultation/Consult" means a formal engagement requested by one party, at such time, in such manner and at such place agreed to between the parties, having first provided the other party, in writing, with such relevant information as the party might reasonably require, including information that the party may specifically request, to allow the party to consider the matter upon which the party is being Consulted.

1.2.13 "Corporate Plan" means the three-year plan of the Company as contemplated in the PFMA read with the Treasury Regulations, regulatory framework as set out in the Electricity Regulation Act, Companies Act and other legislation governing and prescribing the role and functions of the Company, which plan must include (but is not limited to):–

1.2.13.1 strategic objectives and outcomes identified and agreed on by the Shareholder in the Shareholder's Compact;

1.2.13.2 strategic and business initiatives as embodied in business function strategies;

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1.2.13.3 key performance measures and indicators for assessing the Company's performance in delivering the desired outcomes and objectives;

1.2.13.4 a risk management plan;

1.2.13.5 a fraud prevention plan;

1.2.13.6 the SMF;

1.2.13.7 a financial plan addressing –

1.2.13.7.1 quarterly projections (for the first year) of revenue, expenditure and borrowings against annual targets;

1.2.13.7.2 asset and liability management;

1.2.13.7.3 cash flow projections;

1.2.13.7.4 capital expenditure programmes; and

1.2.13.7.5 dividend policies;

1.2.13.8 such other issues as may be required in terms of the PFMA from time to time;

1.2.14 "Deliver" means in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 26 of this MOI and the Companies Act, including Table CR3 of the Regulations, and "Delivered" and "Delivering" shall have the corresponding meaning as the context may indicate;

1.2.15 "Directors" means the "directors" of the Company from time to time, as defined in the Companies Act;

1.2.16 "Directive" means the directive given by the Shareholder in terms of clause 3 of this MOI in which the Shareholder states the steps to be undertaken to remedy a situation contemplated in clause ** and which will include the reasons for issuing the directive and time within which the steps must be taken;

1.2.17 "Distribution" means a "distribution" as defined in the Companies Act and "Distribute" and "Distributed" shall have the corresponding meaning as the context may indicate;

1.2.18 "DoA" means the Delegation of Authority Framework approved by the Board from time to time governing the principles and conditions upon which the Board shall delegate authority;

1.2.19 "Effective Date" with reference to any particular provision of the Companies Act, means the date on which that provision came into operation in terms of section 225 of the Companies Act otherwise the date set out as the Effective Date in the Shareholders' resolution adopting this MOI;

1.2.20 "Electronic Address" means in regard to Electronic Communication, any email address furnished to the Company by the Shareholder;

1.2.21 "Electronic Communication" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No. 25 of 2002;

1.2.22 "Enabling Legislation" means the Eskom Conversion Act, No. 13 of 2001 as amended or any legislation that replaces it;

1.2.23 "Exco" means the members of the Executive Management Committee of the Company from time to time;

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1.2.24 "Ex Officio Director" means an "ex officio director" of the Company from time to time, as defined in the Companies Act;

1.2.25 "Financial Assistance" has the meaning set out in section 45(1) of the Companies Act;

1.2.26 "Financial Year" has the meaning set out in clause 27 of this MOI;

1.2.27 "Gazette" means the Government Gazette of the Republic;

1.2.28 "Government" means the Government of the Republic;

1.2.29 "Guidelines" means the 'guidelines for the appointment of a Chief Executive for a State Owned Enterprise' as issued by the Minister from time to time;

1.2.30 "Ineligible or Disqualified" means ineligible or disqualified as contemplated in the section 69 of the Companies Act or as contemplated in clause 14.13 of this MOI which shall apply not only to Directors but also to members of Board committees and Prescribed Officers;

1.2.31 "Law" means any law of general application, as amended and re-enacted from time to time, and includes the common law, constitution, decree, treaty, ordinance, by-law, order, regulation or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law;

1.2.32 "Legislative Framework" means the legislative and regulatory framework from time to time in force which relates to or affects the Company including, the Companies Act, the PFMA, the National Treasury Regulations, the Enabling Legislation, National Energy Regulator Act, Electricity Regulation Act, the National Nuclear Regulator Legislation and Regulations and any and every other Law, which relates to or affects the Company;

1.2.33 "Material" means 'material' as defined in the Companies Act;

1.2.34 "Memorandum of Incorporation" or "MOI" means this Memorandum of Incorporation of the Company, as amended from time to time;

1.2.35 "Minister" means the Minister of Public Enterprises in her/his capacity as the representative of the Government and the Executive Authority (as defined in the PFMA) of the Company, or if any other Minister is designated as being the representative of the Government or the executive authority, then that Minister acting in such capacity;

1.2.36 "Month" means a calendar month;

1.2.37 "Notice" means notice in writing and delivered according to the provisions of the MOI and more particularly the provisions of clause 28 of the MOI;

1.2.38 "Office" means the registered office of the Company;

1.2.39 "Ordinary Resolution" means a resolution adopted with the support of more than 50% (fifty per cent) of the Voting Rights Exercised on the resolution at a Shareholder's Meeting, or by the Shareholder acting other than at a meeting, as contemplated in section 60 of the Companies Act;

1.2.40 "Ownership Control", in relation to the Company, means the ability of the Shareholder, in accordance with the provisions of section 1 of the PFMA, to exercise any of the following powers to govern the financial and operating policies of the Company in order to obtain benefits from its activities:

1.2.40.1 to appoint or remove all or the majority of the Directors;

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1.2.40.2 to appoint or remove the Company's CE;

1.2.40.3 to cast all, or the majority of, the votes at meetings of the Board;

1.2.40.4 to control all, or a majority of, the voting rights at a general meeting of the Company.

1.2.41 "Person" includes a Juristic Person;

1.2.42 "PFMA" means the Public Finance Management Act, No. 1 of 1999, as amended;

1.2.43 "Policy Framework" means any and every , directive, guideline, framework, or policy , from time to time in force concerning and affecting the Company or its Subsidiaries and the relationship between the Shareholder, the Company and the Board from time to time and which comprise, without limitation, the Strategic Intent Statement, the Shareholder's Compact, the SMF, the Corporate Plan, Governance Codes of Good Practice and Protocol's from time to time, the Delegation of Authority Framework and the SMF.

1.2.44 "Prescribed Officers" means a person who, within a company, performs any function that has been designated by the Minister of Trade and Industry in terms of section 66(10) of the Companies Act which, for the avoidance of doubt, includes any member of Exco;

1.2.45 "Present" shall have the meaning ascribed to the term "present at a meeting" in the Companies Act;

1.2.46 "Public Audit Act" means the Public Audit Act, No. 25 of 2004;

1.2.47 "Regulations" means the regulations published pursuant to the Companies Act from time to time;

1.2.48 "Remuneration Policy" means the Remuneration Policy of the Company which will incorporate any "Remuneration Guidelines" and/or "Standards" published by the Minister from time to time which will be confirmed by the Company on an annual or biennial basis as contemplated in clause 13.1.1.3 of this MOI;

1.2.49 "Republic" means the Republic of South Africa;

1.2.50 "Revenue Fund" has the meaning set out in section 1 of the PFMA;

1.2.51 "Round Robin Resolution" means a resolution passed other than at a –

1.2.51.1 Shareholder's Meeting, which –

1.2.51.1.1 was submitted for consideration to the Shareholder; and

1.2.51.1.2 was voted on in Writing by the Shareholder or by a duly authorised representative on behalf of the Shareholder, within 20 (twenty) Business Days after the resolution was submitted to the Shareholder as contemplated in section 60 (1);

1.2.51.2 meeting of Directors, in respect of which 75% (seventy five per cent) of the Directors voted on in Writing by signing a resolution, within 10 (ten) Business Days after the resolution was submitted to them as contemplated in section 74;

1.2.52 "Securities" means "securities" as defined in the Companies Act;

1.2.53 "Securities Register" means the register of issued Securities of the Company required to be established in terms of section 50(1) of the Act and referred to in clause 8 hereof;

1.2.54 "Shareholder" means the Government represented by the Minister;

1.2.55 "Shareholder's Compact" means the agreement, entered into pursuant to the Treasury Regulations, between the Shareholder and the Board annually;

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1.2.56 "Shareholder's Meeting" means with respect to any particular matter concerning the Company, a meeting of the Shareholder who is entitled to Exercise Voting Rights in relation to that matter;

1.2.57 "Shares" means one of the units into which the proprietary interest of the company is divided and issued, or to be issued, by the Company;

1.2.58 "Sign" and "Signature" include, respectively, lithography, printing, electronic signature or signing by a mechanical or electronic process or means;

1.2.59 "Significance and Materiality Framework" or "SMF" means the agreement between the Minister and the Company for the purposes of the PFMA, in particular sections 51, 54 and 55 thereof and pursuant to Treasury Regulations, in particular regulation 28.3.1 thereof, which sets out a framework of levels of significance and materiality applicable to certain matters and transactions and the process that must be followed for authorisation by the Executive Authority;

1.2.60 "Special Resolution" means a resolution adopted with the support of at least 75% (seventy five per cent) of the Voting Rights Exercised on the resolution at a Shareholder's Meeting or by the Shareholder acting other than at a meeting, as contemplated in section 60 of the Companies Act;

1.2.61 "Standing Committee" means a permanent committee of the Board with a continued existence established by the Board or in accordance with the Legislative or Policy Frameworks to deal with a specified set of duties. This includes Ad Hoc Committees;

1.2.62 "Strategic Intent Statement" means the primary tool used by the Shareholder to communicate its expectations of the Company strategy and which contains the Company's strategic purpose, scope of business, core business, constitution thresholds or investment strategy developed by the Shareholder in consultation with sector departments, National Treasury and the Presidency of the Republic and taking into account an assessment of the interaction between the policy and regulatory environment with the financial and operational goals of the Company to ensure shareholder value optimisation and achievement of wider socio-economic objectives;

1.2.63 "Subsidiary" means a "subsidiary" of the Company, as such term is defined in the Companies Act;

1.2.64 "Treasury Regulations" means the regulations made by the National Treasury of the Republic in terms of section 76 of the PFMA and any amendment thereof or substitution thereof from time to time;

1.2.65 "Voting Rights", with respect to any matter to be decided by the Company, means the rights of the Shareholder to vote in connection with that matter; and

1.2.66 "Writing" includes Electronic Communication.

1.3 In this MOI, unless the context clearly indicates otherwise:

1.3.1 Words importing the singular number shall include the plural number and vice versa.

1.3.2 Words importing any one gender shall include the other two genders.

1.3.3 Words importing natural persons shall include Juristic Persons (whether corporate or not and including partnerships and trusts) and vice versa.

1.3.4 References to the Shareholder entitled to vote Present at a meeting or acting in person shall include the Shareholder represented by duly authorised representatives (which

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duly authorised representatives may be natural or Juristic Persons) as contemplated in this MOI or acting in the manner prescribed in the Companies Act.

1.3.5 Reference to a section by number in this MOI shall be a reference to the corresponding section in the Companies Act and or the PFMA, as applicable, unless otherwise stated.

1.3.6 A reference to a clause by number refers to a corresponding provision of this MOI.

1.3.7 Clause headings are for convenience only and are not to be used in its interpretation.

1.3.8 Reference to any provision of any Law shall include such provision as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such Law. Any reference to a particular section in a Law is to that section as at the date of adoption of this MOI, and as amended or re-enacted from time to time and/or an equivalent measure in a Law, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in this MOI are changed, the relevant provision of this MOI shall be read also as if it had been amended as necessary, without the necessity for an actual amendment.

1.3.9 Subject to the preceding clause, any words or expressions defined in any Law shall, unless the context otherwise requires, bear the same meaning in this MOI as in the Law in which they are defined. If any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision.

1.3.10 Reference to a Shareholder represented by a proxy shall include a Shareholder represented by (i) an agent appointed under a general or special power of attorney; or (ii) the Minister.

1.3.11 Any reference to a notice shall be construed as a reference to a Written notice, and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Companies Act and/or the Regulations.

1.3.12 If the Companies Act is amended at any time to confer any right or benefit on the Company, then this MOI shall be deemed to have been amended so as to result in the Company enjoying the full benefit of any such amendment to the Companies Act.

1.4 The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.

1.5 The words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding words.

1.6 The words "other" and "otherwise" shall not be construed eiusdem generis with any preceding words where a wider construction is possible.

1.7 Any reference in this MOI to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented.

1.8 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.

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1.9 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

1.10 This MOI shall be deemed to authorise the Company to do anything which the Act empowers a Company to do if so authorised by its MOI unless that authority is expressly excluded.

2 INCORPORATION AND NATURE OF THE COMPANY AND GOVERNING PROVISIONS

2.1 Juristic Personality

2.1.1 The Company is a pre-existing company as defined in the Companies Act and, as such, continues to exist as a public company as if it has been incorporated and registered in terms of the Companies Act, as contemplated in Item 2 of Schedule 5 of the Act, and this MOI replaces and supersedes the MOI of the Company applicable immediately prior to the filing hereof.

2.1.2 The Company was registered and incorporated on 1 July 2002 in terms of the Enabling Legislation and operates as a State Owned Company as defined in Section 1 of the Companies Act being listed as a major public entity in Schedule 2 of the PFMA.

2.2 Governing Provisions

The Company shall be governed by:

2.2.1 the unalterable provisions of the Companies Act subject to:

2.2.1.1 any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this MOI in accordance with section 15(2)(e)(iii); and

2.2.1.2 any exemption granted in accordance with the provisions of section 8;

2.2.2 the alterable provisions of the Companies Act (subject to any negation, restriction, limitation, qualification, extension or other alteration set out in this MOI in accordance with section 15(2)(a)(ii)); and

2.2.3 the provisions of this MOI (subject to and in accordance with section 15(2)); and

2.2.4 the provisions of the Legislative Framework; and

2.2.5 the provisions of the Policy Framework.

2.3 Conflicting Provisions with the Companies Act

In any instance where there is an inconsistency between a provision, be it express or tacit, of the Companies Act and:

2.3.1 A provision of the PFMA then:

2.3.1.1 the provision of both the Companies Act and the PFMA apply concurrently, to the extent that is possible to apply and comply with the one inconsistent provision without contravening the second (section 5 (4) (a)); and

2.3.1.2 to the extent that it is impossible to apply or comply with the inconsistent provision without contravening the second the applicable provision of the PFMA shall prevail except to the extent provided otherwise in sections 30 (8) or 49 (4) as provided for in section 5 (4) (a) of the PFMA.

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2.3.2 a provision of the Policy Framework the provision of the Companies Act shall apply to the extent it has not been altered by the MOI in which case the provisions of clause 2.4.4 of the MOI shall apply.

2.4 Conflicting Provisions with the MOI

In any instance where there is a conflict between a provision, be it express or tacit, of this MOI and:

2.4.1 an unalterable provision of the Companies Act; the unalterable provision of the Companies Act shall prevail;

2.4.2 an alterable provision of the Companies Act: the provisions of this MOI shall prevail; and

2.4.3 a provision of the PFMA: the provisions of the PFMA shall prevail; and

2.4.4 a provision of the Policy Framework: the provisions of this MOI shall prevail, provided that if:

2.4.4.1 the provision of the Policy Framework simply adds to but is not inconsistent with this MOI; or

2.4.4.2 the provisions of this MOI provide for the Policy Framework to prevail; or

2.4.4.3 the Companies Act does not require the MOI to take precedence over that provision of the Policy Framework;

the provisions of the Policy Framework shall prevail.

3 PURPOSE, POWERS AND CAPACITY OF THE COMPANY

3.1 The objective of the Company is to provide energy/electricity and related services, including the generation, transmission, distribution and retail thereof. In doing so it has all the powers to implement this mandate subject to any limitations set out herein, the Shareholder's Compact, the Strategic Intent Statement and any other limitations imposed by the Shareholder. In fulfilling its obligations, it is specifically acknowledged that the Company has a developmental role and will through its activities promote transformation, economic development, broad based black economic empowerment and may support relevant national initiatives.

3.2 In addition to the Strategic Intent Statement which shall be issued by the Shareholder by 30 April each year, the Shareholder may, after Consultation with the Board, require changes to the mandate and objectives of the Company if-

3.2.1 it is reasonably necessary to do so; or

3.2.2 it is in the best interest of the Company.

3.3 The Company is not subject to any restrictive conditions or prohibitions contemplated in section 15(2) (b) or (d);

3.4 The Company has, subject to section 19(1)(b)(i), all of the legal powers and capacity of an individual which are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii);

3.5 Notwithstanding anything to the contrary contained herein or any omissions from this MOI of any provisions to that effect, the Company may do anything that the provisions of the

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Legislative Framework or the Policy Framework empower it to do if not expressly prohibited in terms thereof.

3.6 The Company shall not:

3.6.1 appoint to or remove a Director from the Board; or

3.6.2 appoint or remove the Chairperson of the Board, Group Chief Executive or Group Chief Financial Officer other than as provided for in terms of this MOI.

3.7 It is specifically recorded that only the Shareholder, in exercising its Ownership Control in terms of section 63 (2) of the PFMA, may appoint or remove Directors in accordance with the provisions of section 66 (4) (a) (i) of the Companies Act.;

3.8 The Shareholder may direct the Company to take any action specified by the Shareholder if the Company:

3.8.1 is in financial difficulty or is being mismanaged;

3.8.2 fails to perform its functions effectively or efficiently;

3.8.3 has acted unfairly or in a discriminatory or inequitable way towards a person to whom it owes a duty under the Legislative or Policy Framework;

3.8.4 has failed to comply with any law or any policy envisaged in the Legislative or Policy Framework;

3.9 A Directive contemplated in clause 3.8 must state in writing:

3.9.1 the reasons for issuing the directive;

3.9.2 the steps which must be taken to remedy the situation; and

3.9.3 a reasonable period within which the steps contemplated in clause 3.9.2 must be taken.

3.10 If the Company fails to comply with the Directive as contemplated in clause 3.8 within the stated period, the Shareholder may:

3.10.1 after having given the Company a reasonable opportunity to be heard; and

3.10.2 after having afforded the Company a hearing on any submissions received,

3.10.2.1 initiate an investigation into the matter in accordance with terms of reference determined by the Shareholder; and /or

3.10.2.2 where circumstances so require, appoint a person as Administrator to assume responsibility for and to ensure fulfilment of the Directive to the extent as may be further determined in writing by the Shareholder from time to time.

3.11 If the Shareholder appoints an Administrator in terms of clause 3.10.2.2:

3.11.1 the Administrator may do anything which the Company might otherwise be empowered or required to do by or under the Legislative or Policy Framework and this MOI to the exclusion of the Company and any of its directors, officers or employees;

3.11.2 the Board may not, while the Administrator is responsible for fulfilling the Directive, exercise any of its powers or perform any of its duties relating to the Directive or matters incidental thereto;

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3.11.3 a director, officer, employee or a contractor of the Company must comply with a directive given by the Caretaker.

3.12 The Shareholder shall:

3.12.1 review the performance of the Company regularly whilst it is under administration of the Administrator; and

3.12.2 while the intervention continues, review the intervention and the performance of the Administrator regularly; and

3.12.3 within six months or any shorter period of time as may be determined by the Shareholder in writing, of appointing the Administrator and thereafter at intervals of every three months, , table a report on the Administrator's findings in the National Assembly.

3.13 Once the situation has been remedied to the satisfaction of the Shareholder and the Company is able to perform its functions effectively, the Shareholder shall terminate the appointment of the Administrator.

3.14 Notwithstanding clause 3.10, the Shareholder may dissolve the Board if the Shareholder, on good cause shown, loses confidence in the ability of the Board to perform its functions effectively and efficiently. The Shareholder may dissolve the Board only:

3.14.1 after having given the Board a reasonable opportunity to be heard; and

3.14.2 after having afforded the Board a hearing on any submissions received.

3.15 If the Shareholder dissolves the Board, the Shareholder

3.15.1 may appoint an Administrator to take over the functions of the Board and to do anything which the Board might otherwise be empowered or required to do by or under this Act, subject to such conditions as the Minister may determine; and

3.15.2 shall, as soon as it is feasible but not later than three months after the dissolution of the Board, replace the members of the Board in the manner as contemplated in this MOI.

3.16 The costs associated with the appointment of an Administrator shall be for the account of the Company.

3.17 The appointment of the Administrator terminates in accordance with the provisions of clause 3.13 or when a new Board is in place in terms of clause 3.15.2.

3.18 If the Board, any of its members or any officer or employee of the Company is alleged to have committed financial misconduct as contemplated in Chapter 10 of the PFMA then the Shareholder must initiate an investigation into the matter and if the allegations are confirmed, the Shareholder must ensure that appropriate disciplinary proceedings are initiated immediately.

3.19 Notwithstanding this section, the Shareholder retains the right at any time to approach a competent court for relief in any matter the Shareholder considers appropriate.

3.20 The Company shall not, without the prior Written approval of the Shareholder: –

3.20.1 enter into any transaction which exceeds or falls outside of the limits prescribed by the Shareholder's Compact or the SMF;

3.20.2 establish or participate in –

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3.20.2.1 the establishment of a company; or

3.20.2.2 a significant partnership, trust, unincorporated joint venture or similar arrangement;

3.20.3 acquire or dispose of a significant shareholding in a company or a significant asset;

3.20.4 commence or cease a significant business activity;

3.20.5 commit the Company or its Subsidiaries to borrowings which confer rights to a lender to convert debt into Shares of any kind;

3.20.6 undertake or agree to a significant change in the nature or extent of the Company's interest in a significant partnership, trust, unincorporated joint venture or similar arrangement;

3.20.7 approve the candidate nominated by Board for the position of the FD;

3.20.8 issue, or approve the transfer of, any Shares in the Company; and

3.20.9 subject to clauses 4.1 and 4.2 below, amend the provisions of this MOI.

provided that the provisions of the PFMA are not contravened.

3.21 In addition to the limitations and restrictions set out in clause 3.6 and 3.20 above, the Board shall ensure that –

3.21.1 the proposed Board-approved Shareholder's Compact for the following Financial Year to be submitted to the Shareholder by 30 September of each year;

3.21.2 the annual budget, the Corporate Plan and the Shareholder's Compact of the Company shall be presented and/or submitted to the Shareholder prior to 28 February of each year; and

3.21.3 the Company discloses to the Shareholder all changes to terms and conditions of trade which may have a Material impact on the Company.

3.22 Subject at all times to the PFMA, the Shareholder may, in exceptional circumstances specify any limitations regarding the general authority of the Company to raise or borrow funds from time to time for the purposes of the Company, or secure the payment of such sums provided that the borrowing programme in terms of the Shareholder's Compact is not affected.

4 AMENDMENTS TO MOI

4.1 Save for correcting patent errors in spelling, punctuation, reference, grammar or similar defects on the face of the MOI, which the Board is empowered to do, all other amendments of the MOI shall be effected in accordance with section 16(1) of the Companies Act and the provisions of this MOI.

4.2 The Board shall publish a notice of any alteration of the MOI correcting a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the MOI on the Company's website, furnish a copy of the alteration to the Shareholder, and file the notice of such alteration as contemplated in section 17(1) of the Companies Act.

5 THE MAKING OF RULES

The Board is prohibited from making, amending or repealing any rules contemplated in section 15(3) of the Act and the Board's capacity to make such rules is hereby excluded.

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6 AUTHORISED SHARES IN THE COMPANY, ALLOTMENT AND ISSUE

6.1 Authorised Shares in the capital of the Company

6.1.1 Subject to the Enabling Legislation, the Company is authorised to issue no more than 100 000 000 000 (one hundred billion) ordinary Shares of no par value and the same class, which shall rank *pari passu* in all respects and each such ordinary Share entitles the Shareholder to:-

6.1.1.1 attend, participate in, speak at and vote on any matter to be considered at any meeting of the Shareholder;

6.1.1.2 vote on any proposal to amend the preferences, rights, limitations and other terms associated with that Share;

6.1.1.3 participate proportionally in any Distribution made by the Company to the Shareholder;

6.1.1.4 participate in Distributions to the Shareholder;

6.1.1.5 receive proportionally the net assets of the Company upon its liquidation/dissolution; and

6.1.1.6 Exercise any other rights attaching to the ordinary Shares in terms of the Companies Act or any other law.

6.2 At the date of this MOI, there are 63 000 000 001 (eighty three billion and one) ordinary Shares in issue. The issued ordinary Shares are held by the Shareholder.

6.3 The Board shall not have the power to amend the authorisation (including increasing or decreasing the number) and classification of Shares (including determining rights and preferences) as contemplated in section 36(2)(b) read with section 35(3) of the Companies Act.

6.4 Subject to provisions of the Companies Act and the Enabling Legislation, the Company may from time to time by Special Resolution passed by the Shareholder: -

6.4.1 increase or decrease the number of its authorised Shares;

6.4.2 reclassify any Shares that have been authorised but not issued;

6.4.3 classify any unclassified Shares;

6.4.4 create any class of Shares and establish any preferences, rights, limitation or other terms in respect of any class of Shares so created, in terms of section 37 of the Companies Act;

6.4.5 alter the provisions of this MOI with respect to the objects and powers of the Company;

6.4.6 convert any Shares in the Company to Shares of a different class, whether issued or not, and in particular (but without derogating from the generality of the aforegoing) convert ordinary Shares or preference Shares to redeemable preference Shares, provided that moneys other than dividends due to the Shareholder or the amount payable on the

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redemption of any preference Shares shall be held in trust by the Company indefinitely until lawfully claimed by the Shareholder; and

6.4.7 to the extent that the Company immediately before the Effective Date has authorised but unissued par value Shares in its capital of a class of which there are issued Shares, issue the unissued Shares of that class at par or at a premium or at a discount.

6.5 The Board shall not have the power to issue: -

6.5.1 authorised Shares as contemplated in section 36 of the Companies Act; or

6.5.2 options relating to the allotment or subscription of authorised Shares or other Securities and secured and unsecured debt instruments as contemplated in sections 42 and 43 of the Companies Act; or

6.5.3 capitalisation Shares or offer a cash payment in lieu of awarding a capitalisation Share in accordance with section 47 of the Companies Act,

without an Ordinary Resolution of the Shareholder.

6.6 <u>Certificates of Securities</u>

The Securities issued by the Company shall be evidenced by certificates, which shall contain the information specified in section 51(1) of the Companies Act, and which shall be issued in the manner prescribed in section 51 of the Companies Act.

6.7 <u>Register of Securities</u>

The Company shall establish and keep a register of its issued Securities at its Office in the manner specified in section 50 of the Companies Act.

7 PRE-EMPTION ON ISSUE OF ORDINARY SHARES

7.1 Save if –

7.1.1 ordinary Shares are to be issued for the acquisition of any asset or for an Amalgamation or Merger;

7.1.2 the Shareholder by Ordinary Resolution approves the issue of ordinary Shares for any other purpose without this clause applying;

7.1.3 a capitalisation issue of ordinary Shares is to be undertaken;

7.1.4 ordinary Shares are to be issued in terms of option or conversion rights;

7.1.5 ordinary Shares are to be issued for a subscription price which is not a cash amount payable in full on subscription,

the Shareholder has a right, before any other Person to be offered and within a reasonable time, to subscribe for all the ordinary Shares to be issued. The offer to the Shareholder shall be Delivered in Writing specifying the number of ordinary Shares offered, and specifying a time (which shall not be less than 14 (fourteen) Business Days after the date of the offer) by which the offer must be accepted and the requisite portion of the subscription price paid, failing which it shall be deemed to be rejected. After the expiration of the time within which an offer may be accepted, or on the receipt of a response from the Shareholder

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that it declines to accept the ordinary Shares offered, the Board may, subject to the aforegoing provisions and clause 9.20.8 of this MOI, issue such ordinary Shares.

9 PROHIBITION REGARDING BENEFICIAL INTERESTS

The Company shall not permit its Shares to be held by, and registered in the name of, one Person for the Beneficial Interest of another Person, as set out in section 56(1) of the Companies Act.

9 RESTRICTION ON THE TRANSFER OF SHARES

In addition to any other prescribed obligations which the Shareholder may agree to, no Shares shall be transferred without the prior Written consent of the Shareholder.

10 TRANSFER OF SECURITIES

10.1 The Shareholder is the holder of all the issued Shares which relate to the Company as set out in clause 6.2 above.

10.2 Where the Shareholder may elect to sell, cede or transfer any of the Securities in the Company the instrument of transfer of any such Securities shall be signed by both the transferor and the transferee and the transferor shall be deemed to remain the holder of such Securities until the name of the transferee is entered in the Securities Register.

10.3 Subject to such restrictions as may be applicable, (whether by virtue of the preferences, rights, limitations or other terms associated with the Securities in question), any Shareholder or holder of Securities may transfer all or any of its Securities by instrument in Writing in any usual or common form or any other form which the Board may approve.

10.4 Every instrument of transfer shall be Delivered to the Office of the Company, accompanied by:

10.4.1 the certificate issued in respect of the Securities to be transferred; and/or

10.4.2 such other evidence as the Company may require to prove the title of the transferor, or his/her right to transfer the Securities.

10.5 All authorities to sign transfer deeds or other instruments of transfer granted by holders of Shares for the purpose of transferring Securities which may be lodged, produced or exhibited with or to the Company at its Office shall, as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at such of the Company's Office at which the authority was first lodged, produced or exhibited. Even after the giving and lodging of such notice, the Company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the Company as being in order before the giving and lodging of such notice.

10.6 All instruments of transfer, when registered, shall either be retained by the Company or disposed of in such manner as the Board shall from time to time decide. Any instrument of

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transfer which the Board may decline to register shall (unless the Board shall resolve otherwise) be returned on demand to the person who lodged it.

10.7 Securities transfer tax and other legal costs payable in respect of any transfer of Securities pursuant to this MOI will be paid by the Company to the extent that the Company is liable therefore in Law, but shall, to that extent, be recoverable from the person acquiring such Securities.

11 SHAREHOLDER'S AND DIRECTORS' RIGHT TO INFORMATION

11.1 The Shareholder shall have the rights to all such information relating to the Company as contemplated in this MOI, or in accordance with the Legislative or Policy Framework.

11.2 The Board shall procure that detailed management accounts of the Company and its Subsidiaries shall be prepared on a quarterly basis and submitted to the Shareholder within the Month after the end of the quarter or such other period as may be agreed by the Shareholder and the Company in Writing in respect of which such accounts are being prepared. Any Director or the Shareholder shall be entitled to request from time to time such accounting and other information as may be reasonably required by such Director or the Shareholder.

12 RECORD DATE

If, at any time, the Board fails to determine a Record Date as contemplated in section 59(1) of the Companies Act, the Record Date for the relevant action or event is as determined in accordance with section 59(3) of the Companies Act.

13 SHAREHOLDER'S MEETINGS AND ROUND-ROBIN RESOLUTIONS

13.1 <u>Convening of Shareholder's Meetings and Annual General Meetings</u>

13.1.1 Subject to any exemption which may be granted to the Company in terms of the Companies Act, the Board shall convene an Annual General Meeting at least once a year but no later than 18 (fifteen) Months after the date of the previous Annual General Meeting or within an extended time allowed by the Companies Tribunal, on good cause shown, which must, at a minimum, provide for the following business to be transacted –

13.1.1.1 presentation of the integrated report, comprising –

13.1.1.1.1 the Directors' report;

13.1.1.1.2 report of the external auditors;

13.1.1.1.3 audited Financial Statements for the immediately preceding Financial Year, subject to the provisions of section 64(3) of the Companies Act;

13.1.1.1.4 an audit committee report; and

13.1.1.1.5 the social and ethics committee report;

13.1.1.2 appointment of Directors by the Shareholder, to the extent required by the Companies Act, this MOI or the PFMA;

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13.1.1.3 consideration of the Remuneration Policy of the Company and confirmation that such Remuneration Policy is in accordance with any 'Remuneration Guidelines' and/or Standards' published by the Minister from time to time;

13.1.1.4 approval of the remuneration payable to non-executive Directors by Special Resolution (except where such remuneration has been approved by the Shareholder by Special Resolution within the previous two years, although this may be considered on an annual basis if so required by the Shareholder);

13.1.1.5 approval of the remuneration payable to executive Directors and members of Exco by Ordinary Resolution;

13.1.1.6 appointment of an Auditor for the current Financial Year, subject to the provisions of section 84(3) of the Companies Act;

13.1.1.7 noting of the audit fees for the previous Financial Year under review;

13.1.1.8 authorising the Board to fix the audit fees for the current Financial Year;

13.1.1.9 appointment of an audit committee, subject to clause 15 below;

13.1.1.10 approval of the Distribution to the Shareholder, if any, which shall have been recommended by the Board in accordance with any Distribution policies applicable to the Company, from time to time and the provisions of clause 24 of this MOI and any applicable provisions of the PFMA, on condition that the Shareholder may not approve a Distribution higher than that recommended by the Board. In the event Board resolving not to declare a Distribution such resolution to be noted by the Shareholder;

13.1.1.11 noting of the Shareholder's Compact for the current Financial Year;

13.1.1.12 consideration and/or approval of the SMP;

13.1.1.13 consideration of the performance of the Board, through the Board performance appraisal report for the previous Financial Year; and

13.1.1.14 any matters raised by the Shareholder, with or without advance notice to the Company.

13.1.2 The Shareholder or Board may, subject to the provisions of section 61 of the Companies Act, convene a Shareholder's Meeting at any time.

13.1.3 The Company authorises the Minister to call a Shareholder's Meeting for the purposes of section 61(11) of the Companies Act.

13.1.4 The Shareholder's Meetings referred to in clauses 13.1, 13.1.2 and 13.1.3 above shall be held in Johannesburg, Pretoria or Cape Town, provided however, that in exceptional circumstances, such meetings shall be held at any other place as the Shareholder deems fit.

13.1.5 The Company shall, as determined by the Board, either –

13.1.5.1 hold a Shareholder's Meeting in order to consider one or more resolutions; or

13.1.5.2 as regards such resolutions that could be voted on at a Shareholder's Meeting, other than an Annual General Meeting, instead require such resolutions to be dealt with by Round Robin Resolution of the Shareholder.

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13.1.6 Within 10 (ten) Business Days after the Shareholder adopts a Round Robin Resolution, the Company must Deliver a statement describing the results of the vote, consent process, or appointment to the Shareholder.

13.1.7 The Company must hold a Shareholder's Meeting or put the proposed resolution to the Shareholder by way of a Round Robin Resolution: --

13.1.7.1 at any time that the Board is required by the Companies Act or the MOI to refer a matter to the Shareholder for decision; or

13.1.7.2 whenever required to fill a vacancy on the Board; and

13.1.7.3 when otherwise required in terms of section 61(3) of the Companies Act or by this MOI.

13.2 Notice of meetings of the Shareholder

13.2.1 Subject to compliance with section 62 of the Companies Act, an Annual General Meeting and a general meeting of the Shareholder shall be convened by giving notice of at least 15 (fifteen) Business Days to the Shareholder.

13.2.2 A notice of a Shareholder's Meeting must be in Writing, in plain language and must include: -

13.2.2.1 the date, time and place for the meeting, and the Record Date for the meeting;

13.2.2.2 the general purpose of the meeting, and any specific purpose contemplated in section 61(3) (a) of the Companies Act if applicable;

13.2.2.3 in the case of the Annual General Meeting, the complete Financial Statements to be presented and directions for obtaining a copy of the complete annual Financial Statements for the preceding Financial Year;

13.2.2.4 a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the Shareholder's Meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;

13.2.2.5 a reasonably prominent statement that: --

13.2.2.5.1 the Shareholder shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Shareholder's Meeting in the place of the Shareholder or give or withhold Written consent on behalf of the Shareholder in a decision by Round Robin Resolution of the relevant Shareholder;

13.2.2.5.2 a proxy need not be a Shareholder;

13.2.2.5.3 a Shareholder may appoint more than 1 (one) proxy to Exercise Voting Rights attached to different Securities held by that Shareholder in respect of any Shareholder's Meeting;

13.2.2.5.4 the proxy may delegate the authority granted to he/him as proxy, subject to any restriction in the instrument appointing the proxy he/himself;

13.2.2.5.5 participants in a Shareholder's Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Companies Act in order to reasonably satisfy the person presiding at the Shareholder's Meeting that the right of that

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person to participate and vote, either as the Shareholder, or as a proxy for the Shareholder, has been reasonably verified; and

13.2.2.5.6 participation in the Shareholder's Meeting by Electronic Communication is available, and provide any necessary information to enable the Shareholder or its proxy to access the available medium or means of Electronic Communication and advise that access to the medium or means of Electronic Communication is at the expense of the Shareholder or proxy, except to the extent that the Company determines otherwise.

13.2.3 A Shareholder's Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 13.2.4 below, only if every Person who is entitled to Exercise Voting Rights in respect of each item on the agenda of the Shareholder's Meeting is Present at the Shareholder's Meeting and votes to approve the ratification of the defective notice.

13.2.4 If a Material defect in the form or manner of giving notice of a Shareholder's Meeting relates only to one or more particular matters on the agenda for the Shareholder's Meeting:-

13.2.4.1 any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and

13.2.4.2 the Shareholder's Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified in terms of clause 13.2.3 above.

13.2.5 A non-Material defect in the form or manner of Delivering notice of a Shareholder's Meeting, or an accidental or inadvertent failure in the Delivery of the notice to the Shareholder to whom it was addressed if the Company elects to do so, does not invalidate any action taken at the Shareholder's Meeting.

13.2.6 The Shareholder or its proxy, who is Present at a Shareholder's Meeting:--

13.2.6.1 is regarded as having received or waived notice of the Shareholder's Meeting if at least the required minimum notice was given;

13.2.6.2 has a right to:—

13.2.6.2.1 allege a Material defect in the form of notice for a particular item on the agenda for the Shareholder's Meeting; and

13.2.6.2.2 participate in the determination whether to waive the requirements for notice, if less than the required minimum notice was given, or to ratify a defective notice; and

13.2.6.3 except to the extent set out in clause 13.2.6.2 above, is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Shareholder's Meeting.

13.3 <u>Proceedings at meetings of the Shareholder</u>

13.3.1 The Annual General Meeting shall deal with and dispose of all matters prescribed by the Companies Act and the provisions of this MOI and may deal with any other business raised by the Shareholder or any other business laid before it.

13.3.2 The quorum necessary for the commencement of a Shareholder's Meeting or for a matter to be considered at a Shareholder's Meeting shall be the Shareholder Present in

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person or represented by proxy. Business at any Shareholder's Meeting may only be conducted while a quorum is Present.

13.3.3 The appointment of a proxy to represent the Shareholder in any Shareholder's Meeting or Annual General Meeting of the Company shall be in accordance with the provisions of the Companies Act and this MOI.

13.3.4 A Shareholder's Meeting may be conducted by way of Electronic Communication or by any one or more persons participating in the Shareholder's Meeting by Electronic Communication.

13.3.5 Any Shareholder's Meeting may be postponed or adjourned as provided for in the Companies Act.

13.3.6 If within 1 (one) hour from the time appointed for the Shareholder's Meeting, a quorum is not Present,

13.3.6.1 for the meeting to begin, the Shareholder's Meeting shall be postponed, without motion or vote or further notice to the date, time and place, as agreed to by the Shareholder as soon as reasonably practicable after the date of such postponed or adjourned meeting;

13.3.6.2 for consideration of a particular matter to begin, if there is no other business on the agenda of the meeting, consideration of the matter may be postponed without motion or vote or further notice to the date, time and place, as agreed to by the Shareholder as soon as reasonably practicable after the date of such postponed or adjourned meeting.

13.3.7 No further notice is required to be Delivered by the Company of a Shareholder's Meeting that is postponed or adjourned as contemplated in clause 13.3.6 above, unless the location or time for the Shareholder's Meeting is different from a location or time announced at the time of postponement or adjournment, in the case of a postponed or adjourned Shareholder's Meeting.

13.3.8 The chairperson of the Board shall preside as chairperson at every Shareholder's Meeting of the Company. If the chairperson is not Present at the Shareholder's Meeting, or if she is not Present within 30 (thirty) minutes after the time appointed for holding the Shareholder's Meeting, the Shareholder shall choose any non-executive Director Present to be chairperson of the Shareholder's Meeting. If no such Director is Present or if none of the non-executive Directors Present are willing to chair the meeting, then the Shareholder (or a duly authorised representative thereof) shall be entitled to chair the Shareholder's meeting.

13.3.9 The chairperson may, in accordance with section 64(10) of the Companies Act, with the consent of any Shareholder's Meeting at which a quorum is Present (and shall if so directed by the Shareholder's Meeting), adjourn the Shareholder's Meeting from time to time and from place to place, but no business shall be transacted at any adjourned Shareholder's Meeting other than the business left unfinished at the Shareholder's Meeting from which the adjournment took place.

13.3.10 When a Shareholder's Meeting is adjourned as a result of a direction given in terms of any applicable provision in the Companies Act, notice of the adjourned Shareholder's Meeting shall be given in the manner prescribed by such provision but, save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned Shareholder's Meeting. No Shareholder's

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Meeting may be adjourned beyond a period of 60 (sixty) Business Days from the date on which the adjournment occurred.

13.3.11 Every resolution of the Shareholder is either an Ordinary Resolution or a Special Resolution.

13.3.12 A Round Robin Resolution signed by the Shareholder or by a duly authorised representative on behalf of the Shareholder, within 20 (twenty) Business Days after it has been submitted to the Shareholder in terms of section 60 of the Companies Act, shall be as valid and effective as if it had been passed at a Shareholder's Meeting of the Company duly convened and held.

14 DIRECTORS

14.1 General

14.1.1 The Shareholder shall have the exclusive power to appoint Directors pursuant to the provisions of section 68 (4) (a) (i) of the Companies Act and section 63(2) of the PFMA.

14.1.2 The Board shall consist of a minimum of 3 (three) Directors and a maximum of 15 (fifteen) Directors, the majority of which shall be Directors that are not employed by the Company ("non-executive Directors") and at least 2 (two) of which shall be Directors who are employees of the Company, being the Group Chief Executive and the Group Chief Financial Officer ("executive Directors").

14.1.3 It is specifically recorded that the executive Directors are not ex officio directors as contemplated in section 66 (4) (a) (ii) of the Companies Act.

14.1.4 No Director shall be entitled to appoint an Alternate Director.

14.1.5 The Shareholder shall endeavour to ensure that the Board shall: -

14.1.5.1 be appropriately balanced in terms of executive and non-executive Directors;

14.1.5.2 be representative of the gender and race demographics of the Republic;

14.1.5.3 be appointed on the grounds of their knowledge and experience which, when considered collectively, should enable the Board to attain the objects of the Company;

14.1.5.4 when viewed collectively, possess appropriate skills and experience relevant to the business of the Company; and

14.1.5.5 not include persons who are Ineligible or Disqualified, as set out in section 69 of the Companies Act.

14.1.6 The Shareholder shall have the right to appoint a Director to the Board, who may be a Government official, whenever the Shareholder deems it necessary, subject always to the provisions of the Companies Act, this MOI and the Policy Framework.

14.2 Appointment of non-executive Directors

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The non-executive Directors shall be appointed by the Shareholder for a period of 3 (three) years at a time ("a term"), which appointment is reviewable annually, provided that no non-executive Director is appointed for longer than 3 (three) consecutive terms.

14.3 Process of appointment and removal of the Group Chief Executive

14.3.1 The Shareholder shall, on behalf of the Company, have the exclusive power, in exercising its Ownership Control pursuant to the provisions of sec 63 (2) of the PFMA, to appoint and remove the CE as an employee of the Company in accordance with the Guidelines

14.3.2 The Shareholder may request the Board to identify, nominate and evaluate potential candidates for appointment as the Group Chief Executive in accordance with the Guidelines and to submit a shortlist of candidates to the Shareholder to assist the Shareholder with the appointment.

14.3.3 The Shareholder's act of appointment of the Group Chief Executive binds the Company to the exclusion of the Board.

14.3.4 The Minister shall be noted as a party to any contract of employment between the Company and the Group Chief Executive.

14.3.5 The Group Chief Executive shall report to the Board and shall only become an executive Director of the Company if appointed to the Board by the Shareholder in terms of clause 14.1.1 of this MOI.

14.3.6 The Shareholder shall, on behalf of the Company, have the exclusive power to remove the Group Chief Executive as an employee of the Company which removal would constitute a dismissal as envisaged in terms of Section 186(1)(a) of the Labour Relations Act 66 of 1995 ("the LRA"). Consequently, the provisions of the LRA apply to any such removal.

14.4 Process of appointment of the Group Chief Financial Officer

14.4.1 The Board shall identify, nominate, evaluate and appoint a candidate for the position of Group Chief Financial Officer, provided that the Shareholder shall, in Writing, approve such candidate prior to the appointment by the Board.

14.4.2 If the Shareholder does not approve the candidate nominated by the Board for the position of the Group Chief Financial Officer, the Shareholder shall be required to provide a Written substantive motivation to the Board as to why the Shareholder does not approve the candidate nominated by the Board.

14.4.3 Provided the Shareholder provides such Written substantive motivation to the Board, such candidate shall not be appointed as the Group Chief Financial Officer and the Board shall identify and nominate an alternative candidate for appointment as the Group Chief Financial Officer and the process contemplated in this clause 14.4 shall be repeated until such time as an appointment has been made.

14.4.4 The Group Chief Financial Officer shall only become an executive Director of the Company if appointed to the Board by the Shareholder in terms of clause 14.1.1 of this MOI.

14.5 Chairperson of the Board

14.5.1 The chairperson of the Board shall be appointed by the Shareholder.

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14.5.2 The Company in general meeting shall be entitled to designate an acting chairperson (from any of the non-executive Directors) and determine the period for which such acting chairperson is to hold office and any other terms and conditions applicable to such appointment until the Shareholder appoints the chairperson.

14.5.3 The chairperson of the Board shall chair all the meetings of the Board. If the chairperson is not Present at any such meeting or if she is not Present within 30 (thirty) minutes after the time appointed for holding the meeting, the Directors Present shall choose any non-executive Director to be chairperson of the meeting.

14.5.4 The Director appointed as chairperson of the meeting in terms of clause 14.5.3 above shall act as chairperson: -

14.5.4.1 for the duration of the meeting until the meeting is adjourned; or

14.5.4.2 for such a period of time after the adjournment of the meeting at which such Director was appointed as chairperson until the chairperson of the Board becomes available.

14.5.5 The chairperson of the Board shall not be appointed or serve as the chairperson of a Standing Committee (save for the People and Governance Committee) or as the chairperson of a Subsidiary board.

14.6 Appointment of Directors to the boards of the wholly-owned Subsidiaries of the Company

14.6.1 For so long as the Government is the sole Shareholder, it is recorded that the board of a wholly-owned Subsidiary of the Company should, subject to clause 14.6.2 below and any other law applicable to the Subsidiary, comprise employees of such Subsidiary or the Company.

14.6.2 It is recorded that, should any wholly-owned Subsidiary of the Company wish to appoint directors who are not employees of the Subsidiary or the Company, such appointments shall be approved by the Shareholder in Writing.

14.7 Remuneration of Directors

14.7.1 The Board or the committee of the Board responsible for remuneration matters of the Company shall determine the remuneration of the individual Directors and Exco within the framework of the Remuneration Policy and which remuneration shall be approved by Special Resolution or Ordinary Resolution as contemplated in clauses 13.1.1.4 and 13.1.1.5 respectively of this MOI.

14.7.2 Non-executive Directors may be paid all travelling, hotel and other expenses properly incurred by them in or about the performance of their duties as Directors, including, those expenses incurred in attending and travelling to and from meetings of the Directors or any committee of the Directors or at any Shareholder's Meeting.

14.8 Powers of Directors

14.8.1 Subject to clause 3.8 , the management and control of the Company shall be vested in the Board which, in addition to the powers and authorities expressly conferred upon it by section 66 (1) of the Companies Act, sections 49 to 56 of the PFMA, this MOI, , may Exercise all such powers, and do all such acts and things, as may be Exercised or done by the Company and are not, in terms of this MOI or the Legislative and Policy

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Framework, expressly directed or required to be Exercised or done by the Company in general meeting or with the prior Written consent of the Shareholder.

14.8.2 The Board may, subject to the provisions of section 66 of the PFMA, delegate, any of its powers or functions to any Directors, employee(s) and/or to committees. The delegation shall be Exercised lawfully, within prescribed powers and authorisation levels and in terms of the Company's policies, directives and procedures.

14.8.3 The delegation: -

14.8.3.1 may be made on and subject to any conditions determined by the Board;

14.8.3.2 may be given together with the power to sub-delegate subject to the provisions of the PFMA and the Companies Act and further subject to any conditions so determined (if any);

14.8.3.3 shall be communicated to the delegate in Writing and such Written communication must contain full particulars of the matters being delegated and of the conditions determined under clauses 14.8.3.1 and 14.8.3.2 above, if any, and where the power of sub-delegation is also conferred, must state that fact, as well as any conditions determined under this clause 14.8.3.2 if any; and

14.8.3.4 shall be reviewed on a regular basis.

14.8.4 The Board may, without requiring the consent of the Shareholder, and in accordance with clause 14.8.3 above from time to time revoke, withdraw or vary such powers contemplated in this clause 14.8.

14.9 Recognition of the DoA

It is recorded that the DoA records (but does not create) certain limitations on the powers of the Directors, which limitations arise as a result of this MOI, the Companies Act and the PFMA. It is further recorded that it is the intention of the Board that it shall delegate certain of its powers and functions to Directors, employees and/or committees as contemplated in the DoA by passing a resolution of the Board adopting the DoA in accordance with the principles set out in clause 14.5 above.

14.10 Proceedings at Meetings of Directors

14.10.1 The Directors may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.

14.10.2 The company secretary or a Director may at any time: -

14.10.2.1 when authorised by the Board; or

14.10.2.2 if requested by at least 1 (one) Director which request shall also be approved by the chairperson of the Board; or

14.10.2.3 if requested by at least 2 (two) Directors of the Company

convene a meeting of the Board.

14.10.3 The Board shall determine the period of notice which shall be given for meetings of Directors and/or for Round Robin Resolutions and may determine the form or medium of giving such notice, which may include Electronic Communication. It shall be necessary to give notice of a meeting of Directors and/or for Round Robin Resolutions to all Directors even those for the time being absent from the Republic.

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14.10.4 A meeting of Directors shall proceed even if the Company has not given the required notice of such meeting in accordance with clause 14.10.3 above or if there was a defect in the giving of the notice, provided that all Directors:-

14.10.4.1 acknowledge actual receipt of the notice of the meeting concerned; and

14.10.4.2 are Present at the meeting; or

14.10.4.3 waive notice of the meeting.

14.10.5 A meeting of Directors may be conducted by one or more Directors participating in the meeting by Electronic Communication.

14.10.6 The quorum for a meeting of Directors shall be not less than a majority of Directors.

14.10.7 Subject to exclusions in the Companies Act, each Director shall have 1 (one) vote on a matter before a meeting of Directors.

14.10.8 Resolutions of the Directors in a meeting shall be decided by a majority of votes. In case of an equality of votes, the chairperson shall not have a casting vote (in addition to he/she vote as a member of the Board or a Board committee) and the matter being voted on fails.

14.10.9 Subject to the Companies Act and this MOI, a Round Robin Resolution, signed and approved by not less than 75% (seventy five per cent) of the Directors shall be as valid and effective as if it had been passed at a Board or Board committee meeting, duly called and constituted.

14.10.10 Resolutions adopted by the Directors –

14.10.10.1 must be dated and sequentially numbered; and

14.10.10.2 are effective as of the date of the resolution, unless the resolution states otherwise.

14.10.11 The company secretary shall attend meetings and record the minutes of the meetings. Where it is not at all possible for the company secretary to attend any such meeting, the Board or Board committee, as the case may be, shall ensure that minutes are recorded, kept and prepared for that meeting. The Director or any other person elected by the Board or Board committee to record and keep minutes of a meeting held by making use of Electronic Communication shall, as soon as is reasonably possible after such meeting has been held, provide the company secretary with a copy of the minutes of the meeting.

14.11 Removal of Directors

14.11.1 Despite anything to the contrary in the Companies Act, this MOI, or any agreement between the Company and a Director, or between any Shareholder and a Director, the Shareholder shall be solely responsible for the removal of a Director in accordance with the provisions of Section 83(2) of the PFMA, provided that the Director concerned shall:

14.11.1.1 be removed by an Ordinary Resolution adopted at a Shareholders Meeting as provided for in section 71 (1) of the Companies Act; and

14.11.1.2 have been given 15 (fifteen) Business Days Written notice of the meeting and the resolution; and

14.11.1.3 be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to the vote.

14.11.2 Where an allegation contemplated in section 71(3) of the Companies Act has been made the Board must determine, by resolution, whether that the Director has either:

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14.11.2.1 become ineligible or Disqualified to be a Director of the Company in terms of the Companies Act; or

14.11.2.2 become incapacitated to the extent that such Director is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable time; or

14.11.2.3 neglected or been derelict in the performance of the functions of a Director.

14.11.3 Before the Board may consider a resolution contemplated in clause 14.11.2 above the Director concerned must be given:

14.11.3.1 notice of the meeting and the resolution proposed to be passed at such meeting and a statement setting out reasons for the resolution, with sufficient specificity to reasonably permit the Director to prepare and present a response; and:

14.11.3.2 a reasonable opportunity to make a presentation, in person or through a representative, to the meeting before the resolution is put to the vote.

14.11.4 Where the Board has made a determination as contemplated in 14.11.2 then the Board, having regard to the provisions of section 5(4) of the Companies Act, shall not remove the Director but must, within 24 hours of having made its determination, refer its determination to the Shareholder in which case the provisions of clause 14.11.1 shall apply *mutatis mutandis*.

14.12 Rotation of Directors and filling of vacancies

14.12.1 If a Director ceases to hold office or a term of office of any Director is due to expire, the Shareholder shall, in compliance with the provisions of section 70 of the Companies Act, ensure that necessary steps are taken to appoint the requisite number of eligible persons as Directors in the place of the retiring Directors as soon as possible. In this regard the Board shall, where possible, advise the Shareholder within a reasonable time of such impending vacancy.

14.12.2 The Shareholder shall fill in any vacancy that arose on the Board by a new appointment as contemplated in terms of section 70(3) (a) of the Companies Act.

14.12.3 A person shall cease to be a Director and a vacancy on the Board shall arise: -

14.12.3.1 when the Director's term of office expires as contemplated in clause 14.12.3.3 below;

14.12.3.2 if, subject to the provisions of 14.11.2, any of the circumstances referred to in section 70(1)(b) of the Companies Act occur, which include the following; if the Director: -

14.12.3.2.1 resigns (provided that such resignation is given by Written notice to the Shareholder and the Company);

14.12.3.2.2 dies;

14.12.3.2.3 in the case of an *Ex Officio* director, ceases to hold the office, title, designation or similar status that entitled the person to be an *Ex Officio* Director of the Company;

14.12.3.2.4 becomes incapacitated to the extent that the person is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable period, subject to section 71(3) of the Companies Act;

14.12.3.2.5 is declared delinquent by the court or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company, in terms of section 162 of the Companies Act;

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14.12.3.2.5 becomes ineligible or Disqualified in terms of section 69, subject to section 71(3) of the Companies Act; or

14.12.3.2.7 is removed as a Director by:-

14.12.3.2.7.1 a resolution of the Shareholder in terms of section 63 (2) of the PFMA and in accordance with the provisions of 14.11.1; or

14.12.3.2.7.2 a resolution of the Shareholder in terms of section 63 (2) of the PFMA and in accordance with the provisions of 14.11.2; or

14.12.3.2.7.3 an order of the court in terms of section 71(5) or (6) of the Companies Act; or

14.12.3.2.7.4 if s/he is absent from Board meetings for 3 (three) consecutive meetings without leave of the Board and the Shareholder resolves that the office be vacated;

14.12.3.3 In the case of non-executive Directors:-

14.12.3.3.1 a Director's appointment is reviewed and he/his term is terminated prematurely to the 3 (three) year term;

14.12.3.3.2 a Director has served for a 3 (three) year term, and fails to be re-appointed as Director for a 2nd (second) term; or

14.12.3.3.3 a Director has served for 2 (two) consecutive 3 (three) year terms, and fails to be re-appointed as a Director for a 3rd (third) term;

14.12.3.3.4 a Director has served for 3 (three) consecutive 3 (three) year terms, which 3rd (third) term has now expired.

14.12.4 Unless the Shareholder resolves otherwise, a Director shall also cease to hold office and a vacancy shall arise if:-

14.12.4.1 s/he is Knowingly interested to any contract or proposed contract with the Company and fails to declare he/his interest and its nature in the manner required by the Companies Act and the PFMA; or

14.12.4.2 s/he assigns he/his estate for the benefit of her/his creditors, or suspends payment or files a petition for the liquidation of her/his affairs, or compounds generally with her/his creditors; or

14.12.4.3 s/he ceases to be an employee of the Company or is suspended as an employee of the Company and the Shareholder has resolved to remove such director in accordance with the provisions of clause 14.11.1.

14.12.5 In addition, if the CE or FD ceases to hold office as a Director for any reason whatsoever, he/his appointment as CE or FD (as the case may be) shall ipso facto terminate without prejudice to any claims for damages which may accrue to he/him as a result of such termination in accordance with applicable employment laws; provided however, that s/he shall not be precluded from being employed in any other position of the Company by virtue of the fact that s/he is no longer a Director.

14.13 Ineligibility or Disqualification of Directors

14.13.1 A person is ineligible to be a Director of the Company if the person-

14.13.1.1 is a Juristic Person;

14.13.1.2 is an unemancipated minor, or is under a similar legal disability; or

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14.13.1.3 does not satisfy any qualification set out in the MOI.

14.13.2 A person is Disqualified to be a Director of the Company if-

14.13.2.1 a court has prohibited that person to be a Director, or declared the person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 69 of 1984; or

14.13.2.2 save under authority of the court, the person -

14.13.2.2.1 is an unrehabilitated insolvent;

14.13.2.2.2 is prohibited in terms of any public regulation to be a Director of the Company;

14.13.2.2.3 has been removed from an office of trust, on the grounds of misconduct involving dishonesty;

14.13.2.2.4 has been convicted, in the Republic or elsewhere and imprisoned without the option of a fine, or fined more than the prescribed amount for theft, fraud, forgery, perjury or an offence: -

14.13.2.2.4.1 involving fraud, misrepresentation or dishonesty;

14.13.2.2.4.2 in connection with the promotion, formation or management of a company, or in connection with any act contemplated in section 69(2) or 69(5) of the Companies Act; or

14.13.2.2.4.3 under the Companies Act, Insolvency Act, 1936; Close Corporation Act, 1984; Competition Act, 1998; Financial Intelligence Centre Act, 2001; Securities Services Act, 2004; or Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004.

15 FINANCIAL ASSISTANCE AND BORROWING POWERS OF THE COMPANY AND COMPANY'S SUBSIDIARIES

15.1 Financial Assistance

15.1.1 The Company is prohibited from and shall not have the power to –

15.1.1.1 authorise the provision by the Company of Financial Assistance to any person for the purpose of, or in connection with, the subscription of any option, or any Shares, issued or to be issued by the Company or a Related Person or Inter-Related company, or for the purchase of any Shares of the Company or a Related or Inter-Related company;

15.1.1.2 provide any direct or indirect Financial Assistance to a Related or Inter-Related company or corporation, or to a member of a Related or Inter-Related corporation or to a person Related to any such company, corporation, or member,

15.1.1.2.1 except, in each case, where –

15.1.1.2.2 the Shareholder has approved such Financial Assistance, either for the specific recipient or generally for a category of potential recipients (and the specific recipient falls within that category), by Special Resolution adopted within the previous two years; provided that where the Shareholder is requested to approve the provision of specific Financial Assistance, the Board shall, at the request of the Shareholder, provide such information to the Shareholder as the Shareholder may

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require, to satisfy the Shareholder that the conditions set out in clauses 15.1.1.2.3, 15.1.1.2.4 and 15.1.1.2.5 below have been met, or will be met; and

15.1.1.2.3 the provisions of the PFMA have been met; and

15.1.1.2.4 the provisions of section 44 and/or 45 (as the case may be) of the Companies Act have been met; and

15.1.1.2.5 the Board is satisfied that –

15.1.1.2.5.1 immediately after providing the Financial Assistance, the Company would satisfy the solvency and liquidity test prescribed in section 4 of the Companies Act; and

15.1.1.2.5.2 the terms under which the Financial Assistance is proposed to be given are fair and reasonable to the Company.

15.1.2 The Company shall be prohibited from providing any direct or indirect Financial Assistance to any Director or Prescribed Officer of the Company or to a person Related or Inter-Related to any such Director or Prescribed Officer save in respect of any Financial Assistance which has been approved in terms of section 45 of the Companies Act and in terms of clause 15.1.1.2 above and contemplated in accordance with the terms of employment applicable to Prescribed Officers, subject always to the provisions of section 45 of the Companies Act.

15.2 <u>Board's power to effect borrowing</u>

Subject to the provisions of the PFMA (and, in particular, section 65 of the PFMA), the Board may raise or borrow funds from time to time for the purposes of the Company, or secure the payment, of such sums as is in accordance with its Corporate Plan and the borrowing programme submitted to the Shareholder, unless otherwise determined by the Shareholder subject to clause 3.22 of this MOI.

15.3 <u>Company's power to issue guarantees, indemnities, security or to enter into other transactions that bind the Company to any future financial commitment</u>

The Company may not –

15.3.1 issue a guarantee, indemnity or security; or

15.3.2 enter into any other transactions that bind, or may bind, the Company or the Revenue Fund to any future financial commitment,

unless the provisions of the PFMA, in particular, section 66 thereof, are complied with.

15.4 <u>Financing and funding structures</u>

The Board shall, in accordance with the PFMA and the Enabling Legislation, consider and determine the funding structures of the Company having regard to the funding requirements of the Company from time to time.

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16 PERSONAL FINANCIAL INTEREST AND DECLARATION BY DIRECTORS

16.1 For purposes of this clause 16, "Director" includes a Prescribed Officer and a person who is a member of a committee of the Board, irrespective of whether or not the person is also a member of the Board.

16.2 The Company shall establish a policy that will deal with Personal Financial Interests and conflicts of Interest of Directors and employees of the Company, which shall be consistent with the provisions of the Companies Act and the PFMA.

16.3 If a Director has a Personal Financial Interest or Knows that a Person Related to the Director, as described in section 2 of the Companies Act, has a Personal Financial Interest in respect of any matter to be considered by the Board, the Director: -

16.3.1 must disclose the Interest and its general nature in Writing before the matter is considered at the meeting;

16.3.2 must disclose to the meeting any Material Information relating to the matter, and that is known to the Director;

16.3.3 may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;

16.3.4 if Present at the meeting of the Board, must leave the meeting immediately after making any disclosure contemplated in clause 16.3.2 or 16.3.3 above;

16.3.5 must not take part in the consideration of the matter, except to the extent of the disclosures contemplated in clauses 16.3.2 or 16.3.3 above;

16.3.6 while absent from the meeting as provided in clause 16.3.4 above: -

16.3.6.1 shall be regarded as being Present at the meeting for the purpose of determining whether sufficient Directors are Present to constitute a quorum of the meeting;

16.3.6.2 shall not be regarded as being Present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and

16.3.7 must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.

16.4 If a Director of the Company acquires, or Knows that a Related Person has acquired, a Personal Financial Interest in an agreement or other matter in which the Company has a Material Interest, after the agreement or other matter has been approved by the Company, the Director shall promptly disclose to the Board, the nature and extent of that interest, and the Material circumstances relating to the Director or Related Person's acquisition of that interest, as the case may be.

16.5 If, in the reasonable view of the other non-conflicted Directors, a Director or the Related Person in respect of such Director, has a Material Interest in the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.

16.6 A decision by the Board, or a transaction or agreement approved by the Board, is valid despite any Personal Financial Interest of a Director or Person related to the Director, only if: -

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16.6.1 it was approved following disclosure of that interest in the manner contemplated in section 75 of the Companies Act; or

16.6.2 despite having been approved without disclosure of that Personal Financial Interest, it

16.6.2.1 has subsequently been ratified by an Ordinary Resolution of the Shareholder following disclosure of that Personal Financial Interest; or

16.6.2.2 has been declared to be valid by the court in terms of section 75(5) of the Companies Act.

16.7 A Director may at any time disclose any general Personal Financial Interest in advance by delivering a Written notice to the Board setting out the nature and extent of that interest for the purposes of this clause 16 until changed or withdrawn by such Director in Writing.

16.8 A court, on application by any Interested Person, may declare valid a transaction or agreement that had been approved by the Board, or Shareholder as the case may be, despite the failure of the Director to satisfy the requirements of this clause 16 and section 75 of the Companies Act.

16.9 The provisions of this clause 16 do not derogate from those Directors' duties prescribed by the PFMA and the Directors shall be required to comply both with the provisions of this clause 16 and the provisions of the PFMA.

17 INDEMNIFICATION AND DIRECTORS' INSURANCE

17.1 For the purposes of this clause 17, "Director" includes a former Director, a Prescribed Officer, a person who is a member of a committee of the Board or of the audit committee of the Company, irrespective of whether or not the person is also a member of the Board.

17.2 Subject to the provisions of the PFMA, the Company may –

17.2.1 not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a Related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation unless the conviction is based on strict liability;

17.2.2 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company. For purposes of this clause 17, "service to the Company" includes services which are directly linked to the activities of the Company, and services which the Company consents to or acknowledges; and

17.2.3 directly or indirectly indemnify a Director for –

17.2.3.1 any liability, other than in respect of –

17.2.3.1.1 any liability arising in terms of section 77(3)(a), (b) or (c) of the Companies Act or sections 88(2) or (3) of the PFMA, or from wilful misconduct or wilful breach of trust on the part of the Director; or

17.2.3.1.2 any fine contemplated in clause 17.2.1 above;

17.2.3.2 any expenses contemplated in clause 17.2.2 above, irrespective of whether it has advanced those expenses, if the proceedings –

17.2.3.2.1 are abandoned or exculpate the Director; or

17.2.3.2.2 arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 17.2.3.1 above.

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17.3 Subject to the provisions of the PFMA, the Company may purchase insurance to protect –

17.3.1 a Director against any liability or expenses contemplated in clause 17.2.2 or 17.2.3 above; or

17.3.2 the Company against any contingency including but not limited to –

17.3.2.1 any expenses –

17.3.2.1.1 that the Company is permitted to advance in accordance with clause 17.2.2 above; or

17.3.2.1.2 for which the Company is permitted to indemnify a Director in accordance with clause 17.2.3.2 above; or

17.3.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with clause 17.2.3.1 above.

17.4 The Company is entitled to claim restitution from a Director or of a Related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 78 of the Companies Act.

18 AUDITORS

18.1 Subject to clause 18.2 of this MOI, Auditors shall be appointed, and their duties regulated in accordance with the provisions of sections 90, 91, 92 and 93 of the Companies Act, the Auditing Profession Act and applicable provisions of the Public Audit Act.

18.2 The Company shall not be required to appoint an Auditor for any Financial Year in respect of which the Auditor-General has elected, in terms of the Public Audit Act, to conduct an Audit of the Company.

18.3 Subject to the provisions of the Companies Act, the Auditing Profession Act and the Public Audit Act, all acts done by any Person acting as Auditor, shall, as regard to all Persons dealing in good faith with the Company, be valid notwithstanding that there was some defect in that appointment.

18.4 Nothing precludes the election by the Company at its Annual General Meeting of an Auditor other than one nominated by the audit committee referred to in clause 19 below, but if such an Auditor is elected, the appointment is valid only if the audit committee is satisfied that the proposed Auditor is independent of the Company.

18.5 In considering whether, for the purposes of the Companies Act, a Registered Auditor is independent of the Company, the audit committee must –

18.5.1 ascertain that the Auditor does not receive any direct or indirect remuneration or other benefit from the Company, except –

18.5.1.1 as Auditor; or

18.5.1.2 for rendering other services to the Company, to the extent permitted in terms of the Companies Act;

18.5.2 consider whether the Auditor's independence may have been prejudiced –

18.5.2.1 as a result of any previous appointment as Auditor; or

18.5.2.2 having regard to the extent of any consultancy, advisory or other work undertaken by the Auditor for the Company; and

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18.5.3 consider compliance with other criteria relating to independence or conflict of interest as prescribed by the Independent Regulatory Board for Auditors established by the Auditing Profession Act,

18.6 in relation to the Company, and if the Company is a member of a Group of Companies, any other company within that Group of Companies.

19 AUDIT COMMITTEE

19.1 In terms of section 94 of the Companies Act, the Board shall propose, and the Shareholder shall appoint, an audit committee. In the event that the Shareholder elects not to appoint any person proposed by the Board to the audit committee, the Board shall propose an alternate person for appointment by the Shareholder.

19.2 The audit committee shall comprise at least 3 (three) members, all of whom shall, subject to clauses 19.5 and 19.6 below, be non-executive Directors of the Company and whose appointment shall comply with (i) section 77 of the PFMA read with the Treasury Regulations; and (ii) to the extent that the provisions of section 94(5) of the Companies Act and Regulation 42 do not conflict with section 77 of the PFMA read with the Treasury Regulations, section 94(5) of the Companies Act and Regulation 42.

19.3 The audit committee shall meet at least 4 (four) times in a year to execute its duties.

19.4 The Board shall, subject to clause 19.5 below, propose a chairperson for the audit committee, for approval by the Shareholder at the Annual General Meeting.

19.5 In accordance with the Treasury Regulations the chairperson of the audit committee shall be independent, be knowledgeable of the status of the position, have the requisite business, financial and leadership skills and may not be the chairperson of the Board or a person who fulfils an executive function in the Company.

19.6 Each member of the audit committee must –

19.7 satisfy any applicable requirements prescribed by the Minister of Trade and Industry from time to time in terms of section 94(5) of the Companies Act.

19.7.1 not be –

19.7.1.1 involved in the day-to-day management of the Company's business or have been so involved at any time during the previous Financial Year;

19.7.1.2 a Prescribed Officer, or full-time employee, of the Company or another Related or Inter-Related Person, or have been such an Officer or employee at any time during the previous 3 (three) Financial Years; or

19.7.1.3 a Material supplier or customer of the Company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that Director is compromised by that relationship; and

19.7.2 not be a Related Person to any person who falls within the criteria in clauses 19.7.1.1 to 19.7.1.3 above.

19.8 The Board must appoint a person to fill any vacancy on the audit committee within 40 (forty) Business Days after the vacancy arises.

19.9 The audit committee shall execute all the functions as may be prescribed from time to time by the Companies Act (as read with the Regulations) and the PFMA (as read with the Treasury Regulations).

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19.10 The Company may determine that its audit committee will perform the functions required by section 94 of the Companies Act on behalf its Subsidiaries.

19.11 The Company must pay all expenses reasonably incurred by its audit committee, including, if the audit committee considers it appropriate, the fees of any consultant or specialist engaged by the audit committee to assist it in the performance of its functions.

19.12 No person shall be elected as a member of the audit committee, if she is ineligible or Disqualified and any such election shall be a nullity. A person who is ineligible or Disqualified must not consent to be elected as a member of the audit committee nor act as a member of the audit committee. A person placed under probation by a court must not serve as a member of the audit committee unless the order of court so permits.

20 SOCIAL AND ETHICS COMMITTEE

20.1 In terms of section 72 (4) of the Companies Act, the Board must appoint a social and ethics committee unless it has been exempted in terms of the Companies Act from having to have a social and ethics committee.

20.2 The Company may determine that its social and ethics committee will perform the functions required by Regulation 43 on behalf of its Subsidiaries.

20.3 The social and ethics committee shall comprise at least 3 (three) members, all of whom shall be Directors of the Company, at least 1 (one) of whom must be a Director who is not involved in the day-to-day management of the Company's business, and must not have been so involved within the previous 3 (three) Financial Years and whose appointment shall be in compliance with the Companies Act and any regulations published thereunder.

20.4 The social and ethics committee shall meet at least once a year to deal with and attend to all functions and matters that are required to be dealt with by the committee in terms of the Companies Act and any regulations published thereunder.

20.5 The social and ethics committee shall execute all the functions as may be prescribed from time to time by the Companies Act (as read with the Regulations) and the PFMA (as read with the Treasury Regulations).

20.6 The social and ethics committee of the Company is entitled to—

20.6.1 require from any Director or Prescribed Officer any information or explanation necessary for the performance of the committee's functions;

20.6.2 request from any employee of the Company any information or explanation necessary for the performance of the committee's functions;

20.6.3 attend any Shareholder's Meeting;

20.6.4 receive all notices of and other communications relating to any Shareholder's Meeting; and

20.6.5 be heard at any Shareholder's Meeting on any part of the business of the meeting that concerns the committee's functions.

20.7 The Company must pay all the expenses reasonably incurred by its social and ethics committee, including, if the social and ethics committee considers it appropriate, the costs or the fees of any consultant or specialist engaged by the social and ethics committee in the performance of its functions.

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U14-VK-0320

MEMORANDUM OF INCORPORATION	Document Identifier	240-65847669	Rev	0.

21 BOARD COMMITTEES

21.1 Other than the statutory committees of the Audit Committee and the Social and Ethics Committee the Board may, in terms of section 72 of the Companies Act, establish Standing Committees and Ad Hoc Committees.

21.2 The Minister takes cognizance of the Standing Committees established by the Board as set out in clause 21.4 below, however should the Board wish to establish new Standing Committees, such committees may only be established with the prior Written consent of the Minister.

21.3 Furthermore, in the application by the Board to the Minister of a new Standing Committee, the Board must submit Written terms of reference including *inter alia* the need for such a committee, the functions of the committee and any other information required by the Minister. The number of Directors appointed to serve on the committee will be at the discretion of the Minister.

21.4 Standing Committees at date of this MOI (in addition to those required by the Companies Act) include: -

21.4.1 People & Governance committee;

21.4.2 Tender committee;

21.4.3 Investment and Finance committee; and

21.4.4 Risk Committee

21.5 No person shall be appointed as a member of a Board committee, if s/he is Ineligible or Disqualified and any such appointment shall be a nullity. A person who is Ineligible or Disqualified must not consent to be appointed as a member of a Board committee nor act as such a member. A person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.

21.6 Meetings of a committee of the Board shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.

22 PRESCRIBED OFFICERS

22.1 No person shall hold office as a Prescribed Officer, if s/he is Ineligible or Disqualified. A person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in he/him being a Prescribed Officer nor act in such office nor undertake any such functions. A person placed under probation by a court must not consent to be appointed to an office or undertake any functions which would result in he/him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.

22.2 A Prescribed Officer shall cease to hold office as such immediately s/he becomes Ineligible or Disqualified in terms of the Companies Act.

23 COMPANY SECRETARY

23.1 The Board must appoint the company secretary from time to time, who –

23.1.1 shall be a permanent resident of the Republic and remain so while serving as company secretary; and

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Given Search and Seizure in terms of section 69 of the Companies Act, 71 of 2008 and the regulations thereunder on the date and time specified on the indicated system as for review.
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MEMORANDUM OF INCORPORATION	Document Identifier	240-65347859	Rev	0

24.2 The Board, after Consultation with the Shareholder, shall develop an appropriate Distribution or similar policy and framework for the Company taking into account, *inter alia*, the Corporate Plan and strategic objectives which shall be reviewed on a regular basis. In addition, the Company shall be entitled to invest sufficient funds of the Company for the adequate capitalisation and on-going investment in Subsidiaries deemed appropriate. Such capitalisation or investment, and expenditure incurred in respect of industry restructuring, delivery of universal services or any other socio-economic activities carried out by the Company upon the request of the Shareholder shall be taken into account in calculating any Distribution and other payments payable to the Shareholder.

24.3 Without derogating from the provisions of clause 24.1 above and subject to the requirements of the Companies Act and clause 13.1.1.10 of this MOI, the Board may resolve to Distribute or deal with, in any way authorised by the Companies Act, all or any part of the amount for the time being standing to the credit of any of the Company's reserves or any share capital of the Company.

25 ACCOUNTS

25.1 The Board shall cause to be kept such Accounting Records and books of account as are prescribed by the Companies Act and the PFMA.

25.2 The Financial Statements, books of account and other books and documents of the Company shall be kept at, or be accessible from, the Office of the Company or (subject to the provisions of section 25 of the Companies Act, and the PFMA) at such other place as the Board thinks fit, and shall be open to inspection by the Shareholder and the Board during normal business hours.

25.3 The Board shall, in accordance with sections 30 and 31 of the Companies Act and section 55 of the PFMA, cause to be prepared and presented at the Company's Annual General Meeting such reports as are referred to in those sections and required in terms of this MOI.

25.4 Subject to the provisions of the Companies Act, a copy of the documents referred to in clause 25.3 above shall be Delivered or sent by post to the registered address of the Shareholder at least 15 (fifteen) Business Days before the Annual General Meeting, so that such period shall not include the day on which such documents are Delivered or sent, or deemed to be Delivered or sent, or the day on which the meeting is to be held. Alternatively, the Shareholder may give the Company an Electronic Address in which case a copy of the said documents may be Delivered to the Shareholder at that address.

26 NOTICES

26.1 Notices and documents required to be published as contemplated in sections 15(3)(e) or 17(1)(a) of the Companies Act shall be Delivered by the Company to the Shareholder by hand delivery to the registered address of the Shareholder or by transmission through the post in a prepaid letter, by telefax or any Electronic Communication addressed to the Shareholder at its registered address or Electronic Address (as the case may be).

26.2 The Shareholder chooses the address of the permanent office of the Shareholder in Pretoria as its registered address or such other address (including an Electronic Address) as the Shareholder shall upon Written notice be entitled to change.

26.3 The Shareholder after having furnished an Electronic Address to the Company, by doing so-

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MEMORANDUM OF INCORPORATION	Document Identifier	240-65347659	Rev	0

26.3.1 authorises the Company to use Electronic Communication to give notices, documents, Records or statements or notices of availability of the aforegoing to it; and

26.3.2 confirms that same can conveniently be printed by the Shareholder within a reasonable time and at a reasonable cost.

26.4 Every notice calling any general meeting shall comply with the provisions of the Companies Act unless otherwise determined by the Board.

27 FINANCIAL YEAR

The Financial Year of the Company is the 12 (twelve) Month period ending on 31 March of each year. The Financial Year may not be changed by the Board without the prior Written consent or approval of the Shareholder and subject to the PFMA and the requirements of section 27(4) of the Companies Act.

28 WINDING UP

Subject to the provisions of the Companies Act, the Company shall not be wound up or be placed into "business rescue" as contemplated in the Companies Act without the prior Written consent of the Shareholder.

29 SUBSIDIARIES

The Company may, from time to time, form or acquire further Subsidiaries, subject to the provisions of this MOI, the PFMA and the Enabling Legislation.

30 PROTECTION OF WHISTLE-BLOWERS

The Company shall establish and maintain a system to receive disclosures contemplated in section 159 of the Companies Act.

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"VK28"

Eskom

Mr B Molefe
UN: 06102515

Dear Brian

EARLY RETIREMENT

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

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

The following payments are due to you:

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

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

1. **Pension Fund**

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

COMMISSION OF INQUIRY INTO STATE CAPTURE

2. **Suspense Account**

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

3. **Occupational Diseases**

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

4. **Certificate of Service**

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

5. **Eskom Property**

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

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

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

6. **Tax Certificate**

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

I wish you every success for the future.

Yours sincerely

Dr Baldwin Ngubane
CHAIRMAN
Date: 24/11/16

"VK29"

Eskom

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

Dear Minister Brown

RATIONALE BEHIND THE RETIREMENT OF MR BRIAN MOLEFE

The above matter has reference.

Mr. Molefe served in numerous high ranking South African organisations at executive level, essentially to stabilize and ensure the future sustainability and performance of those organisations. Given his sound track record, he was considered the best candidate to turn Eskom around and after a six months acting period it was clear that he would be the best candidate to pursue this role.

The Eskom reality at the time was that of a very unstable organisation. The previous Chief Executive was in the role for only six months and Eskom already had six (6) Chief Executives since 2007.

Other challenges facing the board were:

1) Numbers/information provided to Board lacked integrity, as the information generated changed from day to day. This concern was also strongly raised by Shareholder Representative, Minister Lynne Brown.
2) The deputy President was running the war room.
3) The Board had going concern problems and Eskom was
4) Heading for stage 3 load shedding – which, would have been catastrophic for the economy.

The entire Executive Committee was disabled and Board urgently needed to find a suitable candidate to ensure stability, sustainability and turnaround at the same time.

At the time of appointing the new GCE, the Board considered the abovementioned challenges as well as the following:

1) The phenomenal turnaround of Eskom under Mr. Molefe's leadership during the 6 months acting period.
2) The cost and risk of embarking on a new search if Mr. Molefe did not accept the 5yr contract – as all previous Eskom GCE's were permanent appointments.
3) The stability of Eskom and the impact of destabilizing the organization, on the economy
4) Succession
5) Precedent as this had been extended to other GCE's previously

6) The rules of the Eskom Pension Fund

Key roles of a board include the following:

1) Providing Strategic Direction to the organization
2) Ensuring Stability
3) Ensuring Succession
4) Creating Shareholder Value

With the above in mind approval was requested from the shareholder to approve the appointment of Mr. B Molefe. On agreement Mr. Molefe was appointed on a full time contract as all other executives in Eskom. This was later changed to a 5-year contract at the minister's request. Although three to five-year term contracts appear to be the norm in Government, this is not standard practice in Eskom, or in the general business environment for that matter. In Eskom all executives are employed on permanent employment contracts to ensure continuity of the business.

To secure the appointment on a 5 year contract the board approved retirement benefits within the rules of the fund. It is a fact that the growth in retirement investments and pension funds start off slow but increases exponentially towards the end of an employee's working life. Due to the nature of these engagements and the short term contractual obligations in Mr Molefe's case, he was deprived of the growth opportunity in a single pension fund.

To breach this gap, the following contractual stipulations were approved by Board:

- Regardless of Mr Molefe's age after 50, he be allowed to retire from Eskom's service.
- That the penalties prescribed by the Eskom Pension and Provident Fund (EPPF) for retirement prior to age 63, be waived.
- That Eskom carries the cost of such penalties (to be paid over to the EPPF).
- Early retirement is provided for within the rules of the fund

All this was done in the acknowledgement of the enormity of the task at hand as it related to the practical realities of Eskom and the precarious challenges of the broader economy.

It is important to note the following:

- All previous executives who retired early from Eskom received some type of benefit, for example, management board members pre 2000 were granted an additional 5 years' service.
- This is an operational issue and board previously approved all early retirements.
- Funding arrangements regarding Mr Molefe's early retirement did not involve any payments to him, but these were made directly to the EPPF.
- The concerning issue is the leakage of the information which must be investigated. This was a direct transaction between Eskom and the EPPF.
- Due to the risks involved, no future term contracts should be considered. This was also an issue in the SAA Colman Andrews case.

The correct information applicable to Mr. Molefe is that he received the following payments in December 2016:

Cash salary	R 575 679.91
Leave	R 226 278.84
STI	R 2 110 185.00
Total	R 2 912 143.75

The following summary compares other early retirements with that of Mr Molefe:

EARLY RETIREMENTS

1)

Age: 53 and 10 months

Years' service: 30 years and 2 months

No penalties and additional years' service payment to fund: R9 102 393.53

Package: R 1 746 173.92

Ratio: 1: 5.21 (Valued paid to total package)

2)

Age: 56

Years' service: 32 years

No penalties and additional years' service payment to fund: R12 413 647.49

Package: R3 300 000.00

Ratio: 1: 3.76

3)

Age: 52 and 7 months

Years' service: 15 years

No penalties and additional years' service payment to fund: R4 569 581.83

Package: R 1 637 000.00

Ratio: 1: 2.79

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4) **Mr. B Molefe**

Age: 50

Years' service: 18 months

No penalties and additional years' service payment to fund: R 30 103 915.62

Package: R 8 000 000.00

Ratio: 1: 3.76

As board we believe that we have fairly applied our mind in this very difficult matter, particularly as we had to ensure the stability, sustainability and turnaround of Eskom.

Further, we believe that we acted within our delegated authority as well as the rules of the pension fund.

During Mr Molefe's acting stint, he quickly became the darling of the entire South African community as the result of his achievements, which practically eradicated the niggling load shedding and the prevention of possible total blackouts.

It is unfortunate that after the release of the Public Protectors report, he has gone from being a venerated turnaround specialist to being an instant pariah in the public space.

Consequently, no one wants to credit him for the phenomenal success achieved in the 18 months of his tenure as GCE, even though South Africa is currently enjoying his legacy – from load shedding to excess capacity which today is being on sold to other countries on the continent.

We believe, the efficacy of our decision to lock in Mr Molefe as we did, will stand the test of any prescribed scrutiny.

In addition, Ernst and Young has been retained to conduct a forensic investigation into the unauthorized release of information pertaining to this matter and we should be in a position to update you during the course of this week.

I trust that Minister will find this in order.

Yours sincerely

Dr BS Ngubane
CHAIRMAN
Date:

COMMISSION OF INQUIRY INTO STATE CAPTURE

BACKGROUND

Eskom

Name	Term
Ian McRae	9 years (1985 – 1994)
Allen Morgan	7 years (1992 – 1999)
Thulani Gobodashe	7 years (2000 – 2007)
Jacob Maroga (2007)	2 years 6 months (1/5/2007 – 30/10/2009)
Moho Makwana	9 months (Acting during the period to finalize J. Maroga's exit)
Brian Dames	3 years 8 months (1/7/2010 – 31/3/2014)
Colin Matjila	6 months Board member acting
Tshepiso Matona	8 Months (1/10/2014 – 31/5/2015)
Zefhombe Khoza	Board member acting
Brian Molefe	1 year 8 months (1/10/2015 – 31/12/2016)

BACKGROUND

Eskom

2

Name	Term
Ian McRae	9 years
Allen Morgan	7 years
Thulani Gcabashe	7 years
Jacob Maroga (2007)	2 years 6 months
Mpho Makwana	9 months acting
Brian Dames	3 years 8 months (1/7/2010 – 31/3/2014)
Colin Matjila	6 months Board member acting
Tshediso Matona	8 Months (1/10/2014 – 31/5/2015)
Zethembe Khoza	Board member acting
Brian Molefe	1 year 3 months (1/10/2015 – 31/12/2016)

U14-VK-0330

Eskom

ESKOM HOLDINGS SOC LTD
BOARD OF DIRECTORS

Unique Identifier	
Document Type	
Revision	
Review Date	

Office of the Company Secretary

MINUTES OF THE SPECIAL ESKOM BOARD MEETING 02-2017/18 HELD ON 24 APRIL 2017 IN THE HUVO NKULU BOARDROOM, MEGAWATT PARK, SUNNINGHILL AT 14H00

PRESENT

Board Members

Dr BS Ngubane	Chairman
Mr ZW Khoza	Non-executive director
Ms VJ Klein	Non-executive director
Ms C Mabude	Non-executive director
Dr P Naidoo	Non-executive director
Mr A Singh	Chief Financial Officer (CFO)

In attendance

Ms S Daniels[1]	Group Company Secretary & Interim Head: Legal & Compliance ("GCS")
Mr A Patel	Cliffe Dekker
Ms A van der Merwe	Board Secretary

APOLOGIES

Mr G Leonardi	Non-executive director

1. OPENING

1.1 Welcome

The Chairman welcomed everyone to the special meeting of the Board that had been called at short notice to discuss the matter concerning the early retirement of Mr Brian Molefe and the recent media statement released by the Minister of Public Enterprises.

1.2 Apologies and quorum

The apology of Mr Leonardi was noted. It was confirmed that a quorum was present and the meeting was declared duly constituted.

[1] Ms Daniels attended the meeting in her capacity as Interim Head: Legal & Compliance

COMMISSION OF INQUIRY INTO STATE CAPTURE

2. DECLARATION OF INTERESTS

No specific declarations were made in respect of the matters on the agenda.

3. MATTERS FOR APPROVAL

3.1 Group Chief Executive (GCE): Early retirement

Ms Daniels addressed the meeting in highlighted the following salient points:

- Mr Molefe's official date of employment was 1 October 2015. At the time that his contract of employment was signed, there was a different Memorandum of Incorporation and Delegation of Authority Framework in place.
- A formal request for approval of his employment contract had been sent through to the Minister of Public Enterprises (the Minister) in her capacity as representative of the Shareholder and she had requested some changes to the conditions of employment, one of which was that the contract be changed to a fixed term contract.
- The offer of employment was formally signed on 11 November 2015.
- As a result of the change to a fixed term contract there was a need to also address the implications of the retirement benefits. In her response to the conditions of employment, the Minister had not addressed the retirement matter.
- In February 2016 the People & Governance Committee (P&G) approved the change to Mr Molefe's retirement benefits.
- No response had been received from the Minister to the letter of 25 November 2015 that had been referred to in the meeting of the P&G Committee in February 2016.
- The change in retirement benefits as approved by the P&G Committee was reported to the Board in April 2016 as part of the formal committee report included in the Board meeting pack.

Ms Daniels continued with her address, explaining the timeline as to the request from Mr Molefe for early retirement in November 2016. She pointed out that the Eskom Pension Fund (EPF) and Eskom were two separate legal entities and that the board of the EPF was entitled to not approve the change in Mr Molefe's retirement benefits as approved by the P&G Committee based on financial considerations. In response to a question from Ms Mabude, Mr Patel explained the rules of the EPF, confirming that the board of EPF would have a higher authority on a matter of this nature than the Eskom Board. In response to a question from the Chairman it was confirmed that no indication had been given by the board of the EPF that

the proposed change in retirement benefits for Mr Molefe had not been accepted by the EPF board. A letter in this regard from the EPF had in fact been tabled at a meeting of the P&G Committee in November 2016 where Mr Molefe's application for early retirement had been discussed. Mr Molefe would have turned 50 on 28 December 2016 and based on the fact that the EPF had made the relevant calculations as set out in the letter it had been taken that the EPF had accepted the change in his retirement benefits.

Ms Daniels again reminded the meeting that Mr Molefe's contract of employment had been approved by the Minister and that her input had been incorporated prior to the signing thereof. She informed the meeting that, based on the opinion of the legal team, the Minister's approval for the payment of the retirement benefits following the early retirement would not have been required. The contract of employment as approved by the Minister had clearly stated that the employment conditions were subject to the rules of the EPF and not retirement laws in general. The application for early retirement had thus been done within the boundaries of the EPF rules.

In response to a question from Ms Klein, Mr Patel confirmed that he was of the opinion that the required decision-making process had been followed. He pointed out that a question that could be posed was whether the decision to buy-out Mr Molefe's years of service was fair and reasonable. In response to a reference to the relevant period being 13 years as opposed to 10 years, Ms Daniels explained that the additional 3 years was based on a penalty in the event of early retirement.

Ms Daniels confirmed that Mr Molefe was legally entitled to apply for early retirement. His application had been considered by the P&G Committee and the Eskom Board and had thereafter been referred to the EPF for consideration. Mr Patel noted that no confirmation had as yet been received of the formal approval of the early retirement application by the EPF. In response to a query from Ms Klein regarding calculations that would have been made in November 2015, Ms Daniels confirmed that electronic communication in this regard was dated November 2015.

Ms Daniels thereafter explained the implications of the Minister's statement to the meeting. In the event of the Minister having the authority to decline the payment of the retirement benefit, which the Eskom legal team did not believe she had as pointed out, then the Eskom Board would have no option but to rescind its earlier decision to accept Mr Molefe's application for early retirement. Mr Molefe would then have to be informed that his application for early retirement had not been approved and that he would therefore have to report for duty. Monies paid to him relating to the early retirement would also have to be repaid.

Mr Patel pointed out that the approval of an application for early retirement was within the authority of the Eskom Board and the EPF. In response to a request from Ms Mabude for clarification as to the nature of the Minister's concern and whether this related to the decision in February 2016 to change the retirement benefits or the decision in November 2016 to approve the application for early retirement, Ms Klein explained that in the event of the retirement benefits not having been changed, Mr Molefe would have received a payment of R5 million from the EPF with no cost to Eskom. She reminded the meeting however of the rationale for changing the retirement benefits as a result of the Minister's instructions for the employment contract to be changed to a fixed term contract and the risk to Eskom of losing Mr Molefe as Group Chief Executive.

Ms Daniels quoted from the letter that had been sent to the Minister, dated 25 November 2015, in which the employment conditions had been spelled out and again confirmed that no response had been received from the Minister to this letter. Ms Klein reminded the meeting that the view was always that Mr Molefe would eventually retire from Eskom and that the pension benefit would not have been bought out if he had moved over to another pension fund.

Mr Patel noted that in his opinion, the Minister had the following main concerns:

- Not understanding the rationale for the decision in February 2016 to change the retirement benefits and buy the pensionable service out.
- Not understanding why the pensionable service was then bought out considering that Mr Molefe had only been in Eskom's service for a period of approximately 18 months.

Mr Patel further remarked that in his opinion the Minister did not have an issue with the methodology of the calculation and that her views relating to the governance process was not correct. However, her statement as to the rationality of the decision needed to be considered.

Mr Khoza enquired whether the implications of rescinding the decision were clearly understood and that Mr Molefe could either return to work or resign and take Eskom to court. Ms Daniels pointed out that the EPF was in fact the entity that had made the payment to Mr Molefe and that Eskom would probably have to then take legal action against the EPF.

Mr Patel informed the meeting that in his opinion there were the following possible scenarios:

- The Minister could bring a court application to have the decision set aside based on alleged recklessness; or
- The Board could resolve to rescind its earlier decision to accept the application for early retirement; or

- An attempt could be made to reach some sort of settlement with Mr Molefe should he not wish to return to Eskom.

Ms Daniels tabled her discomfort with the settlement option which could be regarded as a "golden handshake" and which the Minister had pointed out was not applicable in this case. The meeting discussed the various options and Mr Khoza suggested that the statement issued by the Minister should be considered line by line in order to identify the most appropriate option. The Chairman remarked that in his opinion, rescinding the decision was the only option that the Board had. Mr Singh pointed out that depending on the position taken by Mr Molefe, the process of appointing a full time Group Chief Executive for Eskom could be frustrated for an extended period of time.

As part of a discussion on the options, Mr Singh proposed that a letter be sent to the Minister that spelled out the different options and indicated the Board's preferred option. Ms Daniels agreed with Mr Singh, pointing out that based on the provisions of the new Memorandum of Incorporation of Eskom, the Minister would have to be consulted on the matter. Mr Singh also commented on the implications of the reference to "reckless" in the statement that had been issued by the Minister. In his opinion a separate letter in this regard also had to be addressed to the Minister. The Chairman supported Mr Singh's views that the two matters had to be dealt with separately. Dr Naidoo remarked that the implications of rescinding the decision to accept the application for early retirement would have to be spelled out in the letter to the Minister. Ms Klein requested that these implications be considered as part of the discussion.

Mr Patel shared his views on the matter, noting that in his opinion the decision in February 2016 to approve the change in retirement benefits was correct but that the decision in November 2016 to accept the application for early retirement could potentially be attacked on the basis of this being unreasonable. Dr Naidoo pointed out that in his opinion the Board did not have many other options in November 2016 but to accept the application. Ms Klein questioned Dr Naidoo's views as Mr Molefe had clearly indicated that he was leaving Eskom. Mr Patel again pointed out that when the decision was made in February 2016 it was based on the understanding that Mr Molefe would remain in Eskom's employment for at least the contract period of 5 years. This assumption however changed in November 2016 as a result of Mr Molefe's decision to leave.

The Chairman requested Ms Daniels to prepare a document to form the basis for a discussion with the Minister and to spell out the various options with the implications of each option. Mr Khoza suggested that a formal legal opinion on the implications thereof should form part of the document. It was important to point out that rescinding the decision could only be done

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with Mr Molefe's consent or via a court order. If the matter went to court then both Mr Molefe as well as the EPF could potentially oppose the matter.

Ms Daniels remarked that the statement of the Minister relating to the decision of the Board being reckless also needed to be dealt with on an urgent basis considering the potential implications thereof to the Board and individual directors. She noted that the external auditors had requested a copy of the statement issued by the Minister. Ms Mabude remarked that similar decisions had been made in the past. Ms Klein agreed but noted that the quantum of the amount involved in Mr Molefe's case seemed to be the main reason for this decision being challenged.

The Chairman stated that he would give feedback to the Board following the meeting with the Minister the next day. If necessary, an urgent meeting of the Board would again have to be called. Dr Naidoo again repeated that in his opinion the Board was comfortable with the decision that had been taken in February 2016 regarding the change in retirement benefits.

IT WAS RESOLVED THAT:

3.1.1 the different options open to Eskom in respect of the early retirement of Mr Brian Molefe and the resultant retirement benefit, together with the implications of each option, as discussed during the meeting be communicated to the Minister of Public Enterprises by the Chairman of the Board in an attempt to reach consensus on the most appropriate way forward as far as the matter was concerned; and

3.1.2 feedback on the outcome of the discussions with the Minister be provided to the Board with a view to a final decision being made.

Mr Patel was excused from the meeting.

3.2 Safety at power stations

The Interim GCE and a team of Eskom management joined the meeting to highlight the serious concerns relating to the safety at a number of power stations in Mpumalanga as well as the potential threat to contractors, employees and senior management of Eskom.

A detail report on recent events following a march by members of SANCO was given to the Board. General Rakau also briefed the meeting on the role of the security firm that was the first line of defence at the power stations. In response to a question from the Chairman, the

General explained that it was for the police to decide whether or not to involve the National Defence Force in the matter.

The General Manager of Kusile Power Station reported that the workforce was now also being prevented from entering the plant, resulting in substantial loss in productivity. Similar challenges were being experienced at Duvha.

The Chairman remarked that the Minister of Public Enterprises (the Minister) needed to be informed of the situation as a matter of urgency. Ms Klein observed that it was obvious that Eskom was under siege. The meeting discussed the demands for tenders to be awarded to members of the local communities. Ms Mabude pointed out that much had been done to date to benefit the local communities but that Eskom's governance procedures could not be circumvented and that tenders could not be awarded without due process having been followed. The Chairman proposed that a detailed report be prepared for submission to the Minister.

The team left the meeting with the interim GCE and General Rakau remaining behind.

The meeting discussed the actions to be taken in order to address the situation as a matter of urgency. It was agreed that the issue had to be addressed at the highest level possible. Ms Klein noted that if Eskom was destabilised it would have a major impact on the country's growth aspirations. For this reason, in addition to the threat to life, the matter had to be seen in a very serious light and needed to be urgently dealt with. Dr Naidoo shared his views of the actions to be taken including, amongst others, stepping up security measures and securing the power stations.

The meeting agreed that it was the responsibility of the Board to urgently bring this matter to the attention of the Minister.

4. CLOSURE

The Chairman thanked the members for their participation and declared the meeting closed.

U14-VK-0338

SIGNED BY THE CHAIRMAN AS AN ACCURATE RECORD OF THE PROCEEDINGS

CHAIRMAN DATE

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-0339

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SIGNED BY THE CHAIRMAN AS AN ACCURATE RECORD OF THE PROCEEDINGS

CHAIRMAN

23/06/2017.
DATE

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom

ESKOM HOLDINGS SOC LTD
BOARD OF DIRECTORS

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Review Date	

Office of the Company Secretary

MINUTES OF THE SPECIAL ESKOM BOARD MEETING 03-2017/18 HELD ON 2 MAY 2017 AT THE CHAIRMAN'S OFFICE, MEGAWATT PARK, SUNNINGHILL AT 14H00

PRESENT

Board Members

Dr BS Ngubane	Chairman
Mr ZW Khoza	Non-executive director
Ms VJ Klein	Non-executive director
Ms C Mabude*	Non-executive director
Dr P Naidoo	Non-executive director
Mr A Singh	Chief Financial Officer (CFO)

In attendance

Ms A van der Merwe	Board Secretary

APOLOGIES

Mr G Leonardi	Non-executive director
Ms S Daniels	Group Company Secretary & Interim Head: Legal & Compliance ("GCS")

*For part of the meeting

1. OPENING

1.1 Welcome

The Chairman welcomed everyone to the special meeting of the Board that had been called at short notice to discuss the matter concerning the early retirement of Mr Brian Molefe and the recent media statement released by the Minister of Public Enterprises.

1.2 Apologies and quorum

The apologies of Mr Leonardi and Ms Daniels were noted. It was confirmed that a quorum was present and the meeting was declared duly constituted.

2. DECLARATION OF INTERESTS

No specific declarations were made in respect of the matter on the agenda.

U14-VK-0341

3. MATTERS FOR APPROVAL

3.1 Group Chief Executive (GCE): Early retirement

The Chairman requested the Board Secretary to read from the note prepared by the GCS which served as a reminder of the previous discussions by the Board concerning the possible options following the public announcement by the Minster of Public Enterprises that she did not agree with the Board's decision regarding the early retirement of the GCE, Mr Brian Molefe, and that she had requested the Board to revisit the matter and to put forward a palatable pension proposal.

It was confirmed from the note that at a meeting with the Minister on 25 April 2017, the Minister had been informed that:

- Based on the relevant rules of the Eskom Pension and Provident Fund (EPPF) there was no alternative pension proposal in order for the GCE to retire early and should Eskom wish for the GCE to retire early, Eskom would have to pay for the pensionable service as per the rules of the EPPF.
- Eskom had paid the relevant amount to the EPPF in terms of the rules of the EPPF
- The Board was of the opinion that it had acted within the rules of the EPPF and Eskom's Memorandum of Incorporation and that its actions had been reasonable and rational considering all the factors and dynamics at the time.
- The office of the Minster had been kept abreast of developments at all material times.
- A number of options had been considered by the Board and, based on legal advice received, it was noted that the Board would have no option but to rescind its decision in November 2016 to accept the application for early retirement made by the GCE.
- In view of this, and in the interest of Eskom and all concerned, the preferred option would be a rescission of the previous decision to approve the early retirement application and for the GCE to return to his position within Eskom and the Board.

The meeting discussed the different options and it was agreed that, considering the legal risks associated with all options other than the rescission, the Board was of the view that the GCE should be engaged on the basis of a rescission of the Board's prior decision to accept his application for early retirement. It was furthermore agreed that Mr Khoza and Ms Klein would be mandated to engage Mr Molefe on behalf of the Board to obtain his consent to the Board's rescission of its earlier decision.

The meeting confirmed that considering that it did not have the support of its principal for the approval of the early retirement application and the fact that there were legal risks associated

with all the other options, the proposed option would be a fair and clean solution in the interest of all concerned. A legal process would introduce substantial and extended uncertainty which was not in the interest of Eskom. Mr Khoza also pointed out that the Board had in fact not expected the application for early retirement and although it had been accepted, this was in fact a surprise as his sudden departure was not actually regarded as being in the interest of Eskom.

Ms Mabude joined the meeting.

Ms Klein provided a summary of the discussion to Ms Mabude, confirming that the Board was in support of the option of a rescission of the approval of the early retirement application.

It was confirmed that following the engagement with Mr Molefe and in the event of him being in agreement, then:

- the Minister of Public Enterprises would be informed accordingly;
- an appropriate media release would be prepared and circulated for input from Board members, including Mr Molefe; and
- a formal legal opinion addressing and confirming the appropriateness of this option would be prepared.

In the event of the GCE not being in agreement, the Board would be advised accordingly and would reconvene to discuss the way forward.

The Chairman requested Mr Khoza and Ms Klein to meet with Mr Molefe as soon as possible and to report back to the Board, via the Chairman, on the outcome of the discussions. It was agreed that the GCS would be requested to prepare a letter for Mr Molefe to sign, should he agree with the proposal. In the interim, the imminent meetings forming part of the recruitment process for a new GCE would be postponed until further notice. Ms Klein requested the CFO to convey the Board's decision to the GCS and to ensure, with the GCS, that all legal requirements to give effect to this decision were properly dealt with.

It was again noted that considering the Minister's response to the matter, the Board had no option but to rescind its original decision to accept the early retirement application. The

meeting requested Ms Klein and Mr Khoza to also brief the Interim GCE, if necessary, following the engagement with Mr Molefe.

The meeting discussed the administrative and legal implications of the consensual rescission option. A member commented that the GCE had in fact not resigned but had applied for early retirement. The fact that the Board's decision to approve the application would now be rescinded would mean that the status quo would prevail. In response to a question from Ms Klein regarding the possible impact of this matter on the CIPC enquiry, the CFO confirmed that the GCS had submitted the necessary information to CIPC to confirm that the Board had been applying its mind to all material matters in fulfilling its fiduciary and statutory duties to Eskom.

IT WAS RESOLVED THAT:

3.1.1 the Board elects to rescind the decision to approve the application in November 2016 of the Group Chief Executive, Mr Molefe, for early retirement ("the application");

3.1.2 Mr Khoza and Ms Klein be and are hereby mandated on behalf of the Board to engage with Mr Molefe in an attempt to procure his return as Group Chief Executive of Eskom with immediate effect and to thereafter report to the Chairman on the outcome of the engagement at their earliest convenience;

3.1.3 in the event of Mr Molefe agreeing to return as Group Chief Executive of Eskom with immediate effect, the Minister of Public Enterprises be informed accordingly and all administrative, legal and public relations implications and requirements be appropriately addressed; and

3.1.4 in the event of Mr Molefe refusing to return as Group Chief Executive of Eskom with immediate effect the Board would enforce its rights following its decision to rescind its approval in respect of the application and would meet to discuss all implications of the processes (legal and other) that would have to follow.

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4 CLOSURE

The Chairman thanked the members for their participation and declared the meeting closed.

SIGNED BY THE CHAIRMAN AS AN ACCURATE RECORD OF THE PROCEEDINGS

CHAIRMAN

20/05/2017.
DATE

"VK32"

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

Date 12 May 2017

Dear Minister Brown,

RESIGNATION AS DIRECTOR OF ESKOM HOLDINGS SOC LTD

I refer to my previous letter of resignation dated 7 June 2016 as well as the postponement of that request dated 30 June 2016, attached herewith.

I now wish to confirm that I will be resigning as director of Eskom, with immediate effect.

Please accept this as written notice of my resignation as required in terms of the MoI.

As such, it is respectfully requested that my immediate release be accepted.

I truly appreciate the opportunity that you afforded me to serve on this board.

Being part of the turnaround of this phenomenal organization will remain with me always.

Difficult as it was at times, I can truly say that I have been stretched beyond measure and have grown through this experience.

As stated previously, my decision to step off the board is motivated by the potential conflict of interest when the Reserve Bank implements Twin Peaks – due to the Cell Captive that we conduct in Eskom.

I will remain eternally grateful to you for affording me the opportunity to serve our amazing country, in this very small way.

I wish you Minister, my fellow board colleagues as well as every member of the Eskom team, continued success. I shall remain a staunch Eskom ambassador.

Yours sincerely

Venete Klein

COMMISSION OF INQUIRY INTO STATE CAPTURE

COMMISSION OF INQUIRY INTO STATE CAPTURE

STATEMENT BY VENETE KLEIN

INTRODUCTION:

1. I have been approached by the evidence leader appointed by the Portfolio Committee on Public Enterprises ("**the Portfolio Committee**") to provide input in respect of the matters which I am led to believe will form the focus of the Portfolio Committee's Inquiry into the Eskom Board ("**the Inquiry**"). I have volunteered to provide a statement in respect of the relevant matters, in the interests of fully ventilating such matters and assisting the Portfolio Committee in the execution of its mandate. Although I have endeavoured to address all such matters as comprehensively as possible, this statement should not be construed as being conclusive of my position on the issues in question, nor should my failure to deal with any item in this statement be construed as a waiver of my rights in that regard, which rights remain reserved.

2. I have endeavoured to address all relevant matters (as conveyed to me by the evidence leader) thematically, and in a generally chronological manner. In order to deal fully with one theme at a time, this has required me occasionally to jump forwards and backwards in time when moving from one theme to another. I believe that this is the most efficient way in which to set out my statement.

3. By designation, I am a Chartered Director (CD) SA and have graduated from various international executive programmes, including the Senior Executive Programme at

Harvard University and the Executive Development Programme at the New School, in New York. In addition, I hold a number of international qualifications from MIT, INSEAD, IMD and Wits. I have served as an Executive Director and Non-Executive Director on various Boards, including the Barclays Group Ltd, the Reserve Bank and Old Mutual Wealth. Until recently, I served as the Chairperson of The Institute of Directors Southern Africa. I have garnered various achievements and awards as a result of my recognised performance in my career, including but not limited to the Business Woman of the Year Award; The Barclays International & Commercial Bank Leadership Award, the Nedcor People's Bank Top Managerial Performer Award and the Association of Black Investment & Securities Professionals Award.

4. On 11 December 2014, I was appointed by the Minister of Public Enterprises, Lynne Brown ("**the Minister**") to serve as a non-executive member on Eskom's Board of directors ("**the Board**"), after being nominated to serve on the Boards of both Eskom and South African Airways. Eskom was at that point in dire straits, having faced going concern difficulties and with the country having been subjected to stage 3 load shedding. I felt impelled to make myself available to serve on the Board in order to lend my expertise to the cause of addressing the crisis facing Eskom and the country as a whole. I took up this position without any thought of financial gain.

ISSUES FACING ESKOM AT THE TIME OF MY APPOINTMENT

5. I was invited to a meeting with the Minister on 12 December 2014, where she outlined the challenges facing Eskom at the time and the things that she felt the Board needed to

focus its attention on. The meeting was attended by a number of new Board members as well as 2 members of the previous Board who had been reappointed to the Board, namely Ms C Mabude as well as Mr Z Tsotsi (as Chairman). My key take out from this meeting was that we, as a Board, urgently needed to apply ourselves to:

5.1. The issue of load shedding, which at that time had been ongoing for about 6 months and was at stage 3;

5.2. The going concern status of Eskom;

5.3. The fact that the Minister could not rely on the accuracy of any information provided by Eskom;

5.4. The "war room" which was being run by the Deputy President of the Republic of South Africa and supported by a number of high ranking government officials.

6. The first Board meeting following my appointment took place on 16 January 2015. The agenda items included, amongst others, a "war room" update, selective demand curtailment, a financial status update, consideration of Board committee handover reports, a media communication review, risk register consideration, debt management, turnaround strategy, Eskom fleet, panel of experts/International advisory committee and the Public Finance Management Act 1 of 1999 ("**PFMA**") section 51 indemnity. I recall having left this meeting feeling rather concerned both by the enormity of the challenges which had correctly been highlighted by the Minister, and by the fact that Eskom did not appear to have concrete strategies in place to address these concerns.

7. On 29 January 2015 we received a report on plant performance, giving reasons for the continued load shedding. I recall that no real solutions were offered. Instead, the report seemed simply to harp on about how big the challenges were. I did not experience the comfort that would ordinarily be instilled by an executive which has a firm handle on these types of matters.

8. On 29 January 2015, I also received a letter from the Department of Public Enterprises ("**DPE**"), by way of which the Minister requested Eskom to provide the information mentioned below in respect of each of its directors by the close of business that day:

   8.1. Directorships in the companies that they currently occupy;

   8.2. Shareholding and/or investments;

   8.3. Whether there are any current or potential contracts/dealings between any of these companies and Eskom;

   8.4. Interests of related persons as contemplated in section 75 of the Companies Act 71 of 2008 ("**Companies Act**");

   8.5. Any additional information that may be relevant to the above; and

   8.6. Certified copies of their main qualifications.

9. The DPE confirmed having received my declaration of interest in the following entities:

   9.1. Centuria 400 (Pty) Ltd;

   9.2. Klein Inc Management Consultants (Pty) Ltd;

   9.3. Klein Family Trust;

9.4. Community Impact Trust;

9.5. Institute of Directors Southern Africa;

9.6. ACSIS;

9.7. Old Mutual Wealth (Pty) Ltd;

9.8. South African Bureau of Standards – SABS;

9.9. PG Group;

9.10. Governing Body Chartered Directors South Africa;

9.11. Ithala SOC Ltd.

10. I complied with the DPE's request within the specified deadline.

THE NEW AGE BREAKFAST DEAL

11. I understand that the issues emanating from the contract between Eskom and TNA Media (Pty) Ltd ("**TNA**") relating to the so-called "The New Age breakfast deal" had been discussed by the Board in November and early December 2014, before my appointment to the Board. My first and only engagement on the issue came about on 2 March 2015, when a resolution proposing to ratify the expense incurred in this regard and resolving not to take any action against Mr Matjila (as he was no longer a member of the Board) was circulated for approval by way of round robin. I categorically refused to sign the resolution as I did not agree with its contents, particularly as Mr Chose Choeu was still employed by Eskom at the time, and I believed that action needed to be taken against him.

12. My position in relation to the proposed round robin resolution regarding the TNA matter is reflected in the minutes of the Board in-committee meeting of 19 March 2015. These minutes record that the Chairman of the Board indicated that he would speak to me regarding this issue, which never happened. Despite my disagreement, the round robin was accepted as (to my knowledge) I was the only Board member who refused to support and/or sign the resolution.

13. In addition to the aforesaid, it was noted by the Board that the contract with TNA was of a commercial nature, and therefore could not simply be rescinded by Eskom at its own volition. It was accordingly agreed that all future contracts of that nature should have an early termination clause included for Eskom's benefit. A resolution to this effect was ratified at the Board meeting of 28 May 2015.

14. My main consideration in taking the position that I did in relation to the TNA matter was that, owing to the information at hand, I did not believe that the approach proposed in the round robin resolution was in the best interests of Eskom.

GOVERNANCE ISSUES AT THE TIME OF MY APPOINTMENT AND THE DENTONS INQUIRY

15. Given the shear enormity and complexity of the business, the Board's function is largely discharged through the efforts of various standing Board sub-committees, such as the Audit and Risk Committee ("**ARC**"), the People and Governance Committee ("**P&G Committee"**) and the Board Tender Committee ("**BTC**"). Each of the board sub-committees has its own chairperson, delegation of authority and terms of reference,

which guide the functioning of the sub-committees in conjunction with Eskom's Memorandum of Incorporation ("**MOI**"), Board Charter, the King III and IV codes on Corporate Governance and applicable legislation.

16. A consequence of the aforesaid is that many matters falling within the delegated authority of the various sub-committees would not necessarily serve before the full Board. Only matters which meet the specified threshold in terms of the relevant materiality framework will serve before the Board. For example, the authority to approve contracts with a value up to R750 million is fully delegated to the executive, while the authority to conclude contracts with a value of over R750 million up to "Investment Decision" or "Budget level" is fully delegated to the BTC. As a result, only contracts with a value of above "Investment Decision" or "Budget level" will come before the full Board for approval. This means that multiple substantial contracts could be approved and concluded on the authority of the executive and the BTC, without the balance of the Board ever coming to know thereof.

17. As a result, members of the Board are required to trust that the checks and balances provided by the corporate governance structures are adhered to and adequately ensure the rigour of all decision making processes. In addition to the above, the Board members rely heavily on the institutional knowledge and guidance received from the executive in relation to all such decision making processes, including decisions made by the Board. This reliance is in accordance with the Companies Act. This, however, can result in difficulties from a corporate governance perspective, especially when decisions are taken based upon information and guidance received from the executive, only for it subsequently to

be disclosed to the media that pertinent information was omitted or inaccurately submitted to the Board.

18. In early 2015, I was appointed as Chairperson of the Social Ethics and Sustainability Committee, at which time I also served as a member of the Investment & Finance Committee and the P&G Committee. I later became the Chairperson of the P&G Committee and a member of the ARC. I am not certain of the exact date of my appointment as Chairperson of the P&G Committee, as during the first few months of the tenure of the new board there were a number of rotations of Board members within the Board sub-committees.

19. During the course of these rotations and after the suspension of 4 executives (I address the issue in relation to these suspensions below), Mr Khoza became Acting Chief Executive Officer and I was moved to chair the P&G Committee in or about March/April 2015. Later, in about June 2015, I was replaced as Chairperson of the P&G Committee by Ms Mabude, only to later be reinstated as Chairperson in or about August 2015.

20. The instability regarding the members of the committees also contributed to the governance issues, as Board members were always working with new people who were not familiar with the challenges that the Board faced.

21. Furthermore, the Board struggled with not having all the required information at hand when submissions were presented. It now appears that many of the submissions that were considered in my time contained misleading information or completely omitted

critical information. What compounded matters even further for me, is that there are now differing versions of matters that I previously thought that I fully understood.

22. I believed that I was part of a success story in that we went from stage 3 load shedding at a cost of *circa* R434 million per day to the economy to no load shedding in my tenure on the Board. I regarded this as one of my finest moments in terms of contributing to the country, which, after all, was my only motivation for agreeing to serve on the Board.

23. I understand my appointment to the position of Chairperson of the P&G Committee to have been motivated by the substantial experience I have acquired in this particular field of corporate governance during the course of my career, as demonstrated above. The primary mandate of the P&G Committee is to assist the Board in dealing with the nomination and remuneration of directors, senior executives, human resources strategies and policies. The P&G Committee is also the custodian of corporate governance to the benefit of Eskom. Following my re-appointment as Chairperson of the P&G Committee in August 2015, I served in that capacity until my resignation from the Board on Friday, 12 May 2017.

24. As chairperson of the P&G Committee, I was frequently called upon to mediate at executive level when matters could not be resolved. I always endeavoured to deal with these matters as discreetly as possible in the interests of the people concerned and the organisation as a whole. Similarly, I was called upon to deal with a number of "people management" issues that were escalated to the chairman of the Board, and which I handled with the same discretion. I attended to all of my functions as chairperson of the

P&G Committee with the rigour and efficiency demanded of anyone occupying a position of that importance.

25. On Sunday, 8 March 2015 the Board received a request to attend a Board meeting on Monday, 9 March 2015 in order to make decisions in accordance with a Board memorandum dated 9 March 2015. I found it concerning that we had been called to a critical meeting on less than 12 hours' notice. In any event, I had a prior engagement and I duly declined the invitation.

26. I understand that the issues raised at the meeting by Mr Tsotsi, in his capacity as Chairman of the Board, were of such a nature (for example, regarding an independent investigation into Eskom) that those who attended wanted the entire Board present. The meeting was therefore rescheduled for 11 March 2015. Since I had not attended the meeting on 9 March 2015, I had to rely on the minutes of this meeting as well as the aforementioned memorandum.

27. In terms of the memorandum, the Board was requested by Mr Tsotsi to take a resolution to commission an inquiry into the technical, commercial and structural status, as well as any acts and/or omissions which had contributed to the deficiency of generating and distribution capacity, of Eskom. Mr Tsotsi also proposed that this inquiry should be completed within a period of 3 months and that the Board subcommittee delegated to spearhead this inquiry should appoint an independent investigator, free of any influence or suspicion.

28. I found it concerning when reading the minutes of the meeting that the Chairman referred to the Presidency having expressed concern, presumably to the Chairman, regarding the performance of Eskom. The meeting agreed to invite the Minister to address the issues as articulated by the Chairman.

29. At the meeting of 11 March 2015 the erstwhile Group Chief Executive Officer, Mr Tshediso Matona, again outlined the problems facing Eskom, which included:

    29.1. Exits of senior executives through resignations and retirements, which required him to reshuffle the team;

    29.2. Engagement with labour as staff morale was a big challenge;

    29.3. Gaps in information provided to the "war room";

    29.4. Unlikelihood of savings targets being met for the financial year due to serious leakage in primary energy costs;

    29.5. The liquidity buffer of R20 billion had decreased to R4.9 billion as 2 expected loan amounts had not been received;

    29.6. The non-payment of substantial amounts owing by Municipalities.

30. Minister Brown also addressed the Board that day, once again expressing her concern around the Board getting a handle on the business.

31. After the Minister left, the Board convened a Board in-committee meeting where Mr Tsotsi again presented his memorandum proposing an inquiry into corporate governance issues at Eskom, and sought the Board's support in that regard. It was agreed that:

31.1. A forensic inquiry would be established, and would be driven by the P&G Committee and the ARC;

31.2. The ARC would be the custodian of the inquiry and would engage with other committees as and when necessary.

32. Mr Tstotsi proposed that those Executive Committee members who were supposedly implicated in the matters forming the focus of the inquiry should be asked to step down during such inquiry. However, the Board was concerned about the continuity challenges this would occasion, especially given the fragility of the company at the time. The members agreed that there was a trust deficit between the Board and the Executive Committee members allegedly implicated in the matters forming the focus of the inquiry and that it would therefore be in the best interest of the inquiry if they were asked to step aside for the period of the inquiry in order for it to be concluded within the proposed 3 month period.

33. The Board members expressed the view that they would prefer to do a fact finding exercise before asking the relevant executives to step aside. There was concern that acting with haste may result in Eskom finding itself in a position where it has to fight cases in the Labour Court. Mr Tsotsi explained that this would slow down the inquiry and that a lot of work had already been undertaken. Based on that, Mr Tsotsi then advised that the Group Executive: Commercial & Technology, Group Executive: Group Capital, Financial Director & Group Chief Executive would be suspended. The reasons provided by Mr Tsotsi were, *inter alia*, that the Financial Director had met with tenderers during a tender

process, while in respect of the Group Executive: Commercial &Technology there was an allegation of misconduct which included another staff member.

34. Mr Tsotsi had recommended that Mr Malesela Sekhasumbi act as Chief Executive Officer. I found this recommendation to be concerning as Mr Sekhasumbi was on suspension and Mr Tsotsi did not share this with the Board when he made his recommendation. This did not sit well with me. Unfortunately, this matter was not recorded correctly in the minute of the Board in-committee meeting and reflects that it was Mr Tsotsi that advised the Board that Mr Sekhasumbi was not a suitable candidate as he was on suspension.

35. 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.

36. At the Board in-committee meeting of 19 March 2015, Mr Tsotsi introduced Mr Nick Linnell as the independent consultant who was to work with the Board. It was of concern to the Board that no proper process was followed to engage Mr Linnell's services. The Board accordingly expressed discomfort with the engagement of Mr Linnell. Moreover, the Board felt that the Chairman's actions had compromised the Board as well as the integrity of the inquiry.

37. The Board unanimously agreed at the Board in-committee meeting on 19 March 2015 that it had lost confidence in the chairman (i.e. Mr Tsotsi) and would recommended his removal as a director due to:

37.1. His failure to seek or obtain Board approval for the appointment of a consultant (i.e. Mr Linnell);

37.2. His actions in terms of the suspensions;

37.3. Preparing and distributing a media release without Board approval.

38. This information was shared with Mr Tsotsi on his return to the meeting of 19 March 2015. Furthermore, the Board had resolved to inform the Minister regarding this breakdown between the Board and the Chairman.

39. At the meeting of 19 March 2015 the Board elected Dr Ngubane who at a later stage became the Chairman of the Board to act as chairperson until we had communicated our resolution with the Minister.

40. The Board subsequently had various meetings with Mr Tsotsi and his counsel. Mr Tsotsi ultimately agreed to resign as a member of the Board.

41. During this time several of the suspended executives indicated that they wanted to settle as they did not want to return to Eskom.

42. Mr Matona referred his matter to the labour court.

43. My reason for supporting Mr Matona's departure was that he did not appear to have a handle on the turnaround of the organisation, which was particularly critical at that point

in time. Dr Ngubane met with him and discussed his possible departure from Eskom. An agreement was reached with Mr Matona and he exited the services of Eskom.

44. Mr Morakane also requested an exit discussion, which was handled by Messrs Khumalo and Khoza.

45. Various meetings were held with Ms T Molefe, with Mr Khoza concluding her exit discussion.

46. I was present at a meeting with Mr Koko. He was the one executive who was not interested in leaving the employ of Eskom. He indicated that he wanted his job back. Upon objecting to this, I was mandated by the Board to engage with a senior partner of Dentons in order to establish whether or not Mr Koko had been, by way of the inquiry, found guilty of any wrongdoing. In this regard, I contacted Mr Noor Kapdi of Dentons, who indicated that they had not found any evidence of wrongdoing by any of the suspended executives. In order to satisfy my own discomfort, I decided to engage with Mr Jerry Kaapu of Bowman Gilfillan, who advised that Eskom could not keep someone on suspension if the inquiry did not find any evidence of wrongdoing. Dentons also provided a letter confirming the above.

47. It is worth remembering that none of the suspended executives were ever charged with specific wrongdoing – the reason for their suspension was purely as guided by Mr Tsotsi, namely that they might have interfered with the inquiry.

48. The haphazard manner in which the aforementioned suspensions were driven by Mr Tsotsi was consistent with the general corporate governance challenges faced by Eskom from before the time I joined the Board (as articulated in the media at the time and noted by the Minister in the new Board's initial interactions with her). For example, we often received meeting packs (sometimes consisting of two or more lever arch files of documentation) the day before the relevant Board meeting, which obviously did not allow adequate preparation time.

49. During May 2015, Ms Daniels was appointed at Senior General Manager ("**SGM**") in the office of the Chairman, and as such attended most board and committee meetings.

50. Initially, the erstwhile Company Secretary, Mr Malesela Phukubje, tried his best but it seems to me that he did not have adequate support from the staff employed in the secretariat department. Mr Phukubje left the employ of Eskom in September 2015. He was replaced by Ms Suzanne Daniels. She introduced more structure and efficiency to the operations of the office of the secretariat. The quality of documentation improved significantly at that time and the secretariat seemed to function much better on the whole. I believe this may, in part, have been the result of the engagement of an external support, Ms Annamarie Van der Merwe, to assist Ms Daniels in performing her functions. During that time, meetings were scheduled correctly, the general quality of secretariat work improved, the Board Charter and the various terms of reference were updated and the secretariat team appeared to be more motivated. However, concerns did later arise when Ms Daniels made herself available to also serve as Head of Legal in addition to fulfilling her other functions as Company Secretary and SGM in the office of the Chairman. I will address that slightly later on in my statement.

THE APPOINTMENT OF MR MOLEFE AS GROUP CHIEF EXECUTIVE OFFICER

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

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

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

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

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

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

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

54. Prior to Mr Molefe's secondment from Transnet, the Board had basically become operational and spent many late nights trying to stabilise the business. As mentioned above, there was a trust deficit between the Board and the executive team, which was largely due to the inability of the executives to get a handle on the issues which plagued Eskom at the time as well as various allegations of impropriety in conducting their duties. The Board viewed the situation as an exceptional circumstance which necessitated its "hands on" approach to the day to day running of the organisation. Mr Molefe's appointment to the position of acting Group Chief Executive Officer allowed the Board an opportunity to step back into its rightful role of fiduciary oversight.

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

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

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

THE APPOINTMENT OF MR MOLEFE AS CHIEF EXECUTIVE OFFICER

58. On 19 June 2015, Ms Daniels sent a letter to the Minister on behalf of Dr Ngubane, in his capacity as then interim Chairperson of the Board, in which he motivated for the appointment of Mr Molefe as Chief Executive Officer of Eskom. It appears however from correspondence between Dr Ngubane and Ms Daniels, during this time, that Dr Ngubane advised Ms Daniels that the motivation for the appointment of Mr Molefe was premature as he had not yet served 6 months as Acting Chief Executive Officer. He further advised that the correct approach would be to motivate for an extension of Mr Molefe's secondment to Eskom.

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

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

61. The P&G Committee decided to obtain this legal opinion as it was cognisant of the fact that its intention to recommend (to the Board, and ultimately, the Minister) the appointment of Mr Molefe without following the ordinary external search process may

amount to a deviation from the terms of the MOI. It was therefore agreed that the prudent approach would be to obtain a legal opinion regarding the permissibility of appointing a Chief Executive Officer without following the usual process of the Board providing the Minister with a shortlist of candidates from which the Minister would appoint the Chief Executive Officer.

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

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

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

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

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

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

67. On 9 September 2015, the P&G Committee met to discuss the issue of vacancies in the executive team. The meeting resolved that it was important to first address the vacancies in the office of the Chief Executive Officer and Chief Financial Officer and that approval in this regard must be sought from the Board.

68. On 10 September 2015, the Board resolved that the P&G committee should submit a recommendation to the Minister around the appointment of a Group Chief Executive Officer.

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

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

71. On 2 October 2015, the Minister approved the appointment of Mr Molefe as Group Chief Executive Officer. In this regard the Minister addressed a letter to Dr Ngubane, on which I was copied, enclosing copies of the letters she had addressed to Mr Molefe and Mr Singh. These letters confirmed Mr Molefe's and Mr Singh's appointments as Group Chief Executive Officer and Chief Financial Officer, respectively. Furthermore, the letters indicated that their appointments would be effective as at 1 October 2015. No indication of the terms of the respective appointments was made in the letters.

72. On 8 October 2015, I received an email from Ms Daniels drawing my attention to email correspondence between herself and Ms Ruthnam, in which:.

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

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

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

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

73. On 16 October 2015, Dr Ngubane addressed a letter to the Minister regarding the proposed terms of Mr Molefe's appointment and remuneration. The contents of this letter were informed by various inputs received by the P&G Committee from Mercer, PE Corporate & DeLoitte on chief executive remuneration packages.

74. The Board was officially advised in November 2015 that Cabinet had approved the terms of Mr Molefe's appointment for a period of 5 years, but that Mr Molefe had already signed a contract permanently appointing him to the position of Group Chief Executive Officer. I understand that Dr Ngubane had presented a permanent contract of employment (and

not one for a 5 year term) to Mr Molefe on 9 November 2015, and that Mr Molefe had signed it on 11 November 2015.

75. On 12 November 2015 (after Mr Molefe had signed his permanent contract of employment), I received an email from Ms Daniels enclosing a draft offer of employment letter, dated 13 October 2015. The letter specified that Mr Molefe would enter into a fixed term employment contract with Eskom, however, the term of the contract was not specified.

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

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

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

all previous Group Chief Executive Officers had permanent contracts of employment). We placed confidence in Mr Minnaar's guidance as he had been involved in the appointment of 7 previous Chief Executive Officer's in the preceding 6 year period.

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

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

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

81.1. Regardless of Mr Molefe's age after the 5 year termination date, he would be allowed to retire from Eskom's service on the basis that he is aged 63.

81.2. The penalties prescribed by the Eskom Pension and Provident Fund ("**EPPF**") for retirement prior to age 63 will be waived (i.e. not paid by Mr Molefe).

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

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

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

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

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

84. The P & G Committee met on 9 February 2016 to deliberate on the conclusion of the contract with Mr Molefe, including the aforementioned issue relating to his pension benefits. In order to better understand the distinction between appointing Mr Molefe on a fixed term versus permanent basis, and the options available to the Board for addressing Mr Molefe's concerns over the impact of a fixed term contract on his ability to grow an adequate pension benefit, the Board sought input and guidance from Mr Minnaar (in his capacity as Executive Remuneration Officer). Mr Minnaar explained to the P&G Committee at the meeting that as a result of Mr Molefe's short term contracts in the numerous public entities in which he had served at executive level, Mr Molefe had been deprived of the opportunity to grow a pension benefit in a single fund.

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

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

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

i. bridge the gap to make up for the 10 years;

ii. waive penalties applicable to early retirement; and

iii. refund EPPF actual cost for additional service added, plus penalties applicable to early retirement."

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

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

87. The resolution of the P&G Committee meeting of 9 February 2016 was approved by the Board on 19 April 2016.

88. On 7 March 2016, Mr Molefe signed a second contract of employment for a fixed five year term, with effect from 1 October 2015 and terminating on 30 September 2020.

DUVHA RECOVERY ACCELERATION:

89. During the meeting of 10 September 2015, the issue in relation to the Duvha recovery acceleration was discussed. The board resolved that Eskom does not accept the conditions and costs from the technology providers (Doosan-Babcock and Flour) and Insurers and that it must push back to get a resolution that restores the plant to *ex-ante* conditions, with like to like technology and with the required warrantees. The following resolution was made in this regard:

89.1. The Board approved the cash settlement offer of R4.906 billion, following which Eskom would receive a formal cash settlement offer. It was accepted that the executive's insistence on the restoration of the plant to *ex-ante* conditions, with like to like technology would result in a cash shortfall as the settlement offer of R4.906 billion was not based on a like for like technology.

89.2. The outcome of the Bid Conversion Process should be presented to the BTC seeking formal closure of the current commercial process.

89.3. Eskom should revert to the original BTC mandate approved on 4 August 2014, and the BTC mandates that were adopted on 9 December 2014 and May 2015 were revoked.

89.4. Eskom should negotiate and conclude a cash settlement based on the insurer-offered technology (Posiflow) as opposed to like for like technology.

89.5. The final investment of the settlement amount received was delegated to the Investment and Finance Committee. Commercial approvals were reserved for approval at the Board Tender and Procurement sub-committees.

90. The issues relating to the Duvha matter were delegated to the sub-committees as mentioned above. These issues were therefore never discussed before the Board again. I am therefore not aware of anything further in this regard than what I have set out above.

91. During March 2016, Amabhungane published the "spider gram" which showed alleged connections between Board members and the Gupta family. 4 Board members resigned pursuant to this. Coupled with the earlier departure of Mr Norman Baloyi and Mr Zola Tsotsi, this meant that the original full board of 14 members was now down to 8 members being the Group Executive Officer, the Chief Financial Officer and six non-Executive members, with one other living abroad. This instability affected the governance of the organisation and placed a disproportionate burden on the remaining members.

THE COAL SUPPLY CONTRACTS

92. In the meantime, issues around Eskom's various coal supply contracts have been discussed at Board level on numerous occasions. The procurement process regarding the coal supply contracts had been identified as an area of concern in the Dentons report. At the Board meeting of 21 September 2015 a discussion took place regarding an article appearing in the media in respect of Eskom's coal supply contracts, and specifically that concluded with Tegeta. The Board mandated the ARC to initiate an investigation into all contracts involving mines in the Delmas area, including but not limited to historical contracts with Tegeta, which predated my appointment to the Board to establish whether the correct procurement processes were followed. In addition, it was decided that coal samples should be collected from each of the relevant mines in accordance with the Standard Coal Quality Management process, and that such samples should be transported under supervision to the contracted laboratories and for the entire coal analysis process to be witnessed and video recorded. I considered the discussion and proposed actions to

constitute a reasonable and appropriate initial response to the concerns raised around the relevant coal supply contracts.

93. On 18 November 2015, the chairperson of the ARC, namely Ms Cassim, reported at a meeting of the Board that the ARC's investigation had revealed that the entire procurement process was flawed. In addition, she pointed out that the procurement process followed in that regard was so integrated that it was difficult to determine at what point in the process the controls had been inadequate and, hence, at what point the regularity and/or impropriety had been permitted to influence the process. Ms Cassim sought the Board's approval for "management" to conduct a thorough investigation. It was noted that the management would decide whether the Assurance and Forensics department would be commissioned to do this piece of work or whether an external resource should be involved. The Board determined that a two pronged approach should be followed which would, firstly, consider the current controls and identify weaknesses and, secondly, interrogate and understand the areas of apparent collusion which resulted in the current situation.

94. The Board was further advised that certain implicated staff had already been suspended on account of the ARC's investigation. It was agreed that the matter should remain a standing agenda item for the ARC, which would be required to provide regular feedback to the Board. The ARC was given 7 days to report back to the Board on the issues discussed at this meeting. On a personal level, I had been concerned that using internal staff to conduct the investigation could potentially compromise the process, but I was assured by

the Chief Executive Officer, Mr Molefe and the Chief Financial Officer, Mr Singh, that they would monitor the responsible Officers with the requisite oversight.

95. On 7 June 2016 I tendered my resignation as a member of the Board. My resignation was largely motivated by a potential impending conflict of interest that I expected to arise when the Twin Peaks legislation is enacted as a result of my position at the time as a member of the Boards of both the Reserve Bank and Eskom. Although my letter of resignation does not state this expressly, I was also experiencing huge pressure as a non-executive director and was concerned about the state of affairs at Eskom and the possible exposure and reputational risk this may have on my career. . However, I agreed, at the request of the Minister, to postpone my resignation until October 2016, as the Minister had advised that she would appoint additional members to the Board. From October 2016 I followed up with the DPE every month in regard to when the new Board members would be appointed.

MR MOLEFE'S EARLY RETIREMENT

96. Shortly after the release by the Public Protector of her report Mr Molefe enquired from me whether he qualified for the pension pay out benefit. I was not sure as I was of the view that the resolution only kicked in after he had served a period of 5 years or beyond. I therefore asked Mr Minnaar, who confirmed that Mr Molefe did indeed qualify. I was surprised by this, as I was of the understanding that Mr Molefe needed to serve out at least the 5 year term of his initial appointment in order to qualify for this benefit. I

accepted that this would be debated by the Board, which I believed would still have the final say on the matter

97. At a special board meeting on 7 November 16, the board asked Mr Molefe about the allegations in the State of Capture report. Mr Molefe shared with the board his side of the story and the impact it had on his family. After that meeting, Mr Molefe mentioned to me that he would be sending his letter that night. That did not happen.

98. During a press conference on 11 November 2016, Mr Molefe indicated that he had decided to leave his employ at Eskom. Mr Molefe indicated, in a press statement, that his decision to step down was motivated by the reputational risk to Eskom as a result of the findings made by the Public Protector in her report of 2 November 2016.

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

100. On 11 November 2016 Eskom issued its own press release in which it confirmed Mr Molefe's decision to step down.

101. On 21 November 2016 the P&G Committee met to deliberate on various issues, including the State Capture Report and Mr Molefe's decision to step down. I made it clear at the

commencement of the meeting that the meeting was not quorate and, therefore, that no decisions could be taken at the meeting. This is reflected in the recording minutes of the meeting.

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

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

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

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

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

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

104. Further to the above, I have now been advised that as the decision related to the removal of the Group Chief Executive Officer, the matter required the Minister's approval as per Eskom's Memorandum of Incorporation, adopted on 1 July 2016.

105. The minutes of the meeting of 21 November 2016 also reflect the Board members' concern over the combining of the role of the Company Secretary and the Head of Legal. In my view, the consolidation of the two roles disposed of a measure of the independence and accountability one would experience where the roles of the Company Secretary and the Head of Legal are kept separate. The Board did not have the benefit of having an independent Head of Legal against which it could test the advice received from the secretariat in this regard.

106. I, and I believe other members of the Board, was concerned about Ms Daniels' workload as Company Secretary, Head of Legal and SGM in the office of the Chairman. This concern was against the backdrop of the numerous challenges faced by Eskom at that point in time, and the risk created by Ms Daniels not being able to fully apply herself to matters requiring her attention, in her capacity as Head of Legal. Our concerns in that regard were compounded by the strong reliance which Dr Ngubane placed on Ms Daniels for supporting him in the performance of his role. Ms Daniels effectively functioned from within Dr Ngubane's office, accompanying him to most meetings in Parliament and on various international engagements. As a result, Dr Ngubane mostly interacted with the Board through Ms Daniels. This created tension amongst the Board

members, many of whom felt isolated in regard to certain issues and decision making processes. I was particularly concerned that this arrangement would make it difficult for Ms Daniels if a situation arose where the Board required action to be taken against Dr Ngubane, as has been done in respect of the previous chairmen.

107. I had also become concerned by that point that the workload being carried by the Board was too much to expect of the few remaining Board members. I accordingly asked the Company Secretary at the meeting of 21 November 2016 to write to the Minister to enquire into the status of the appointment of new Board members.

108. On 24 November 2016, and without having sought approval from either the P&G Committee, the Board or the Minister, Dr Ngubane addressed a letter to Mr Molefe communicating Eskom's acceptance of Mr Molefe's request for early retirement. Upon being made aware of this letter, I asked the Company Secretary, Ms Daniels, who had approved the acceptance communicated by Dr Ngubane. In response she advised that the decision to accept Mr Molefe's early retirement did not require Board approval (and had ostensibly been approved by Dr Ngubane on his own). This is contrary to what we were advised at the P&G committee meeting on 21 November 2016. Dr Ngubane claims to have been told by Mr Minnaar that the P&G Committee had approved the letter, which it clearly had not.

109. I understand that Mr Minnaar called for actuarial values of the amount to be paid out to Mr Molefe if he qualified for early retirement. I also recall Mr Minnaar mentioning the financial implications of Mr Molefe's early retirement to me at some point, however, this was done in passing and did not amount to a fully-fledged discussion with

respect to the amounts involved nor was this communicated to me in formal correspondence.

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

MCKINSEY'S & TRILLION

111. I had been aware of McKinsey's prior appointment as a strategic partner, as this was noted at the Board meeting of 10 September 2015. Immediately upon that having been brought to the Board's attention, and at that same meeting, I declared a possible conflict of interest as I was in discussions with McKinsey at that point in time in regard to possibly assisting it on a consultancy basis in Africa (as this assignment did not materialise I did not receive any remuneration from McKinsey's). The issue was put to a vote and the Board members agreed that there was no conflict of interest and declined my request to recuse myself from the discussion.

112. At the meeting of 10 September 2015, the Board resolved:

112.1. to appoint McKinsey as the sole partner for the financial and strategic matters of:

112.1.1. Cash flow and profitability targets for the Financial Year 2016;

112.1.2. Updating the business cases for the Medupi and Kusile powerplants;

112.1.3. Development and dissemination of the new design to cost strategy;

112.1.4. Adapting Eskom's governance model to ensure delivery of the new strategy;

112.2. that McKinsey should be contracted on a fixed cost basis with a total contract value of R101 733 124.80 for a period of 8 months;

112.3. that the Group Executive for Commercial and Technology is given the necessary authority to execute this contract in line with Eskom's Delegation of Authority.

113. During 2016 parliamentary questions were put to the Minister regarding work done by Trillion as part of the McKinsey's contract. I was not aware that Eskom had done any work with Trillion, and I was therefore not uncomfortable when I read in the media that Eskom had apparently indicated to the Minister that Eskom had not paid any amount to Trillion. Trillion had never been mentioned as part of the McKinsey contract when same was presented to the Board for approval.

114. At a meeting of the Board on 29 November 2016 this issue was raised as a matter of concern and, in response, Mr Singh advised as follows:

114.1. An additional contract (i.e. to that mentioned above) had been awarded to McKinsey by the Board Tender Committee which resulted in the conclusion of a Master Service Agreement ("**MSA**");

114.2. The MSA gave McKinsey the authority to sub-contract. McKinsey had therefore sub-contracted Trillion;

114.3. Management had revisited the MSA with McKinsey, being concerned about procurement on a single source basis;

114.4. The MSA with McKinsey was subsequently terminated.

115. At this meeting we were also advised that Trillion had done work for the Eskom Finance Company as well as some work in risk assessment. These matters had not previously come to the Board.

116. The matter was not aired beyond this and certainly not to the extent to which it has been aired in the media recently. The full gravity of this matter surfaced with the Gupta leaked emails, which was after I had resigned from the Board.

117. It is important to note that there were two agreements, namely, the MSA and the fixed term contract of 8 months. In respect of the fixed term contract, which was deliberated on at Board level, I did not see the need to ask questions at the time as it related to work that had already been allocated.

118. Given the explanation provided by Mr Singh, I accepted that the Minister would be updated accordingly. However, judging by the media reports, it would now appear that the Minister was not provided with the explanation given to the Board at that point in time.

IMPULSE INTERNATIONAL (PTY) LTD

119. At a Board in-committee meeting on 2 March 2017, Dr Ngubane shared information that he had received from a source as well as through an anonymous letter from the staff regarding, amongst other things, the so-called "Impulse matter" and various other allegations of misconduct by Mr Koko, the Acting Chief Executive Officer at the time. At the same meeting, I shared concerns which had been raised with me by members of staff regarding how Mr Koko was managing them. The Board determined to meet Mr Koko for purposes of addressing the issues that had been raised by the staff. I pointed out that, since Mr Koko had been warned upon his appointment as Acting Chief Executive Officer not to become embroiled in any issues or allegations of impropriety, the allegations concerning his conduct could constitute grounds for suspension on account of him having ignored the Board's precaution. Ms Daniels also shared allegations which had come to the attention of the Minister, and which the Minister wanted a formal investigation to be conducted in respect of.

120. The Board accordingly met with Mr Koko to share the issues indicated above and to request his comments in response. Mr Koko agreed to respond to Dr Ngubane in writing. I did not see a copy of Mr Koko's response, however, the matter was further addressed with Mr Koko at a meeting of the Board of 28 March 2017. At the Board meeting of 28 March 2017, Mr Koko agreed that the allegations against him were serious and could give rise to his suspension, as previously noted by me. The Board accordingly agreed that Cliffe Dekker Hofmeyer Attorneys be appointed to fully investigate the allegations concerning Mr Koko. Terms of reference were subsequently

agreed upon and Cliffe Dekker Hofmeyer Attorneys was instructed to complete the investigation and produce a report within 30 days. During this time, the Board was required to deal with a number of media queries in regard to Mr Koko. I had stepped down from the Board before the report was completed.

121. On 14 April 2017 I was requested by Mr Koko, the acting Chief Executive Officer at the time, to call the Minister to discuss the matter of Mr Molefe's pension payout, after a media article was published in this regard. The Minister wanted to know if the R60m value that she had picked up in the papers was correct. I explained to her that it did not sound right but that I was sure we had done everything by the book (as had been done previously).

REINSTATEMENT OF MR MOLEFE

122. The following Wednesday, 19 April 2017, we were summoned to the Minister's office to discuss Mr Molefe's pension payout. At the Meeting, the Minister enquired as to why Mr Molefe had qualified for the pension payout, considering that he was on a 5 year contract. In response to the Minister's query, we explained that this was the first time that any Eskom Group Chief Executive Officer was on a fixed term contract and that the Board was in quandary when advised (after signing the permanent contract on 11 November 2015) that there ought to have been a term attached to Mr Molefe's contract. We further explained that Mr Molefe had some concerns regarding the perceived loss of the pension benefit which he understood would have emanated from his permanent employment at Eskom, which is what led to us recommending a solution

to the Minister in Mr Ngubane's letter dated 25 November 2015. It was only at this point (at the meeting with the Minister on 19 April 2017) that I became aware that our recommendation was never accepted by the Minister.

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

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

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

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

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

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

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

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

126. The main point of contention was that we were operating under the previous Memorandum of Incorporation ("**MOI**"), in terms of which the Minister was not required to sign off on the exit of the Chief Executive Officer. Also, according to Ms Daniels, the resolution of the P&G Committee adopted on 9 February 2016 stood. According to her, this had the effect that Dr Ngubane did not require approval from the Board to affect the signing of the application for early retirement by Mr Molefe. This, coupled with the feedback from the EPPF to the effect that Mr Molefe qualified for early retirement in terms of the EPPF rules, gave me comfort that we had acted completely within the rules and the mandate of the Board. It therefore came as a surprise to me to learn that the pension arrangement didn't carry the Minister's blessing.

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

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

    128.1. Mr Molefe abandoning the pension benefit;

    128.2. Agreeing on a more acceptable benefit;

    128.3. Mr Molefe returning to Eskom.

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

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

131. Early the next morning (i.e. on 20 April 2017]) Mr Molefe called me and explained that he had been thinking about how best to resolve the matter, and that if he agrees to forego all retirement benefits he would effectively still be in the employ of Eskom. I

shared the information conveyed in the call with both the Company Secretary and the Chairman, Dr Ngubane.

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

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

134. On 24 April 2017, the Board met to discuss the events as published in the media as well as the Minister's concerns in the meeting of 19 April 2017. The board was also updated on the discussions with Mr Molefe on 19 April and 21 April 2017.The meeting was attended by Mr Adiel Patel of Cliffe Dekker Hofmeyer attorneys. Mr Patel explained to the Board that the EPPF Board had the option to decline the request by Mr Molefe in respect of his early retirement.

135. At the meeting of 24 April 2017 Ms Daniels further advised that the Minister's approval for the pay out of retirement benefits was not required. I also confirmed with Mr Patel

whether the proper decision making process had been followed. He confirmed that it was his view that the required decision making process had been followed.

136. At this meeting I raised the following points:

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

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

137. The Board met on Tuesday, 2 May 2017 in order to look at the various options at its disposal, at which point we also considered the upshot of the legal opinion received from senior counsel on 28 April 2017. Ms Daniels prepared a summary of the legal opinion, which she submitted to the Board for consideration at its meeting of 2 May 2017. We were informed that senior counsel's advice was that Mr Molefe's return was the most plausible resolution to the dilemma faced by the Board.

138. On 2 May 2017, the Board took the view that, subject to confirmation by another Senior Counsel, should Mr Molefe be amenable to returning to Eskom and if it was plausible

(given that he was by now a Member of Parliament), his return to Eskom could solve more than just the issue of the R30 million.

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

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

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

142. I appreciate now that the mere rescission (if that is legally possible) of the acceptance of Mr Molefe's application for early retirement does not necessarily automatically mean

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

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

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

145. In so far as I have referred to documents above, they are documents within the possession of Eskom and which I believe may be made available to the evidence leader, if so required.

19 October 2017

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-0396

02

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-0397

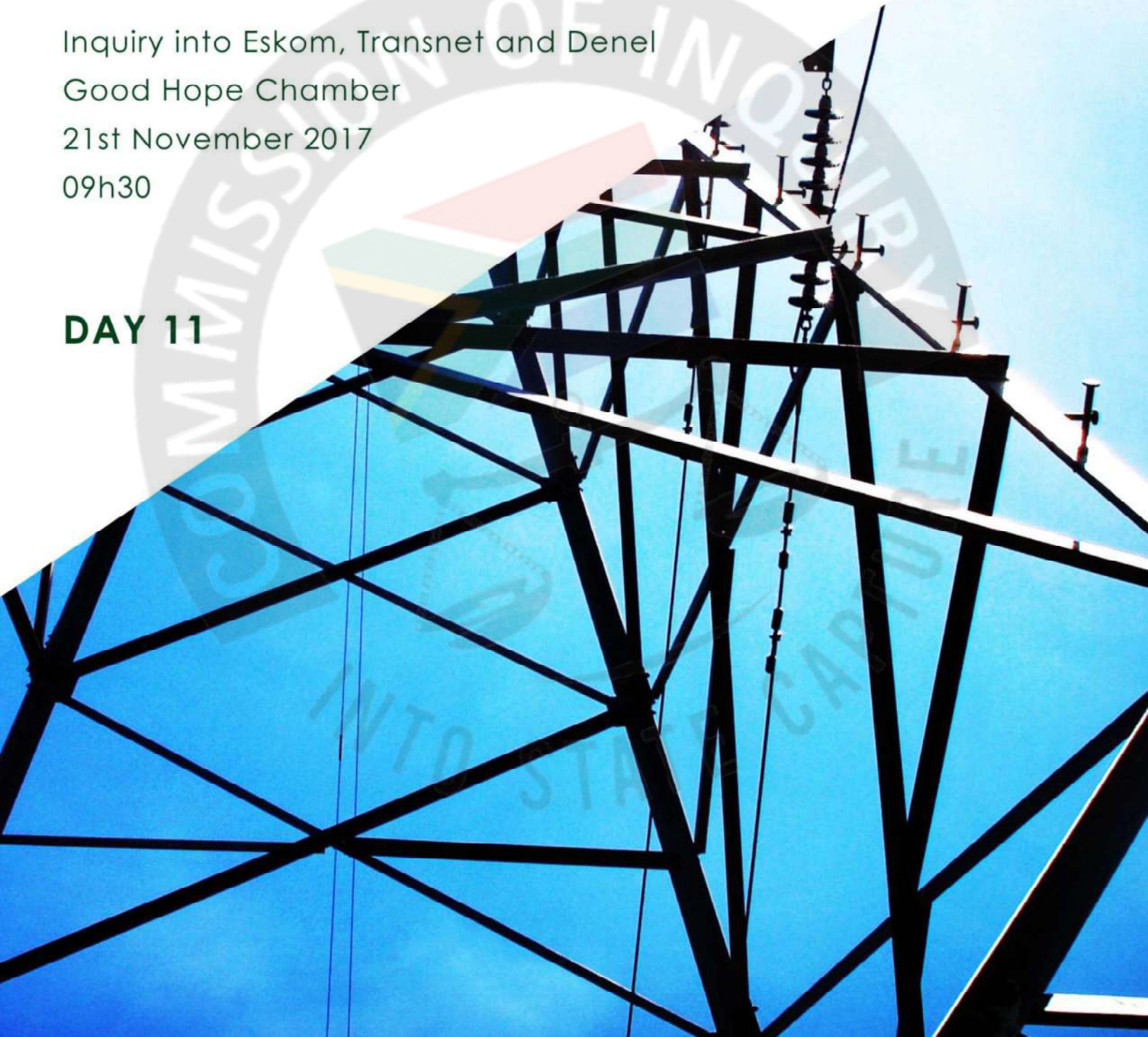
PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

PORTFOLIO COMMITTEE ON PUBLIC ENTERPRISES

Inquiry into Eskom, Transnet and Denel
Good Hope Chamber
21st November 2017
09h30

DAY 11



21st November 2017 – Parliament RSA

[00h03:25 - START OF AUDIO] Morning Session

Ms L Mnganga-Gcabashe - I'm wai ng for the technology to be sorted out, is it sorted out? Is the witness this one? Good morning Honourable members. Honourable members you are welcome and good morning to our guest and... Shall we con nue? You are all welcome to the rst session of our long day of this oversight enquiry. Let me give the opportunity for the indica on of the a endance.

Mr Mocumi [Secretary] - Good morning the ac ng chairperson for the...the chairperson for the enquiry will be joining us later in the day and then we've got an apology from Honourable Singh who is a ending the commi ee that deals with poli cal funding and Honourable Kwankwa and then Honourable Nobanda is also not in... is out with a I think it is an IPU or something like that.

Ms L Mnganga-Gcabashe - Thank you very much, the apology is accepted. I take that the apologies are accepted by the commi ee. I can see all Honourable Swart as if you're raising your hand, are you? Ok. Honourable Gungubele and followed by Honourable Swart.

Honourable Gungubele - Thank you Honourable Chair for the opportunity. I think it is correct to say before we start as a commi ee it is important to express our view with regard to the news of an a empt to bribe the evidence leader, which is being invest...which is being inves gated. We s ll treated now as an allega on but very, very serious accusa on if it is found to be true, and we take a dim view with regard to that, and we support thorough inves ga ons in the ma er and the meous nding so that we can be able to deal with the outcome. If it is true, we must state our view. It will be one of the most...it will be one of the low points of our lives as government. Thank you very much.

Ms L Mnganga-Gcabashe - In that order Honourable Swart followed by Honourable Mazzone.

[00h07:04]

Honourable Swart - No Chair, thank you and I just want to endorse my colleague's statement following the revela on in the newspapers of the weekend, the Sunday Times. We see this as another a empt to in midate our evidence leader if the allega ons are proven true, and we welcome a full inves ga on into this issue obviously again the allega ons need to be found to be true. But we must see this against the backdrop of a empts to in midate members, witnesses and an a empt to in midate Advocate Vanara that we dealt with last week's threats to disobey him this is totally unacceptable and we need to express our strongest opposi on to any a empts to in midate our evidence leader. It is in fact an a empt, if the allegations are proven true, to intimidate this committee and parliament's work in this oversight enquiry. So thank you Chair, we need to express ourselves very strongly on that and support a full inves ga on to ascertain the veracity of the allega ons, but we have no reason to doubt the version of Advocate Vanara as presented. Chair, thank you for that opportunity to address you.

Honourable Mazzone - Chairperson thank you very much. Chair, of course these allega ons are incredibly serious. Chair I would encourage you as Chairperson of this commi ee to please write a le er to the Speaker on behalf of this commi ee asking that this inves ga on take top priority. Chair I also note that the ethics commi ee deals with inves ga ons that include the execu ve as well as members of parliament, Advocate Vanara of course is not a member of parliament nor member of the execu ve, and therefore Chairperson if there's any truth to these ma ers I also encourage parliament to take immediate ac on if these allega ons are deemed to be true, or if there's any truth to the allega ons, if there's prima facie evidence that these are true in terms of the preven on and comba ng of Corrupt Ac vi es Act, because it has taken place outside

the ambient of the ethics rules and powers and privileges of parliament due to the fact that Advocate Vanara does not fall...is it is not a member of the execu ve or parliament. Chairperson once again, I would like to congratulate Advocate Vanara for taking what I think is the right course of ac on immediately, keeping it to himself, not going public, wri ng an a davit and I encourage any member of this commi ee or any member that's appeared before this commi ee to not keep quiet and if anyway there is any form, shape, or any hint of in mida on or bribery, to immediately come forward. This inves ga on is too important to South Africa for us to ignore these kind of things and certainly everyone that appears before this commi ee and that is involved in this commi ee must be above reproach.

[00h10:00]

Ms L Mnganga-Gcabashe - Thank you Honourable Luyenge.

Honourable Luyenge - Without repea ng what the honourable members that has spoken before me Chairperson, I want also to register my shock to this news, and looking forward to an appropriate inves ga on that will be actually unearthing the wrongs as we pursue this process. Thank you.

Ms L Mnganga-Gcabashe - Honourable Shivambu.

Honourable Shivambu - No, thank you Chair, I arrived a bit late. But I would think that we should also elevate the issue to the public protector because the Execu ve Members Ethics Act clearly s pulate that if a member of the execu ve violates the execu ve ethics code, the public protector is the one that should inves gate such a viola on. I think in Sec on 3 of the Execu ve Members Ethics Act, so I think that addi onal to the Ethics Commi ee of Parliament inves ga ng the clearly wrongful ac ons of Bongo, there must be another process as well that is referred to the public protector so that the necessary sanc ons are brought forth. We have no reason to doubt the Advocate Vanara and let us of course wait for the process to be completed and we insulate parliament from henchmen. Thank you.

Ms L Mnganga-Gcabashe - Honourable Luyenge.

[00h11:57]

Honourable Luyenge - No, Chair, I want to maybe ask the la er speaker on the ma er, at least so that we extend the decorum of the house to also reach here, to say no at least to call the Honourable Minister by the rst name is inappropriate and then we must respect that because he is s ll an Honourable member.

Ms L Mnganga-Gcabashe - Yes, yes, please can we resist from calling each other through names that are not acceptable to parliament as members of parliament. I note all the contribu ons made by the members and some proposals. We'll go through those proposals and see which ones are in line with the processes of parliament, which step needs to be taken first and we'll do that. Thank you very much members, shall we proceed? Advocate Vanara are you ready now? Ok, I'll start with the reading, but are you ready?

Advocate Vanara - Yes, I'm ready to proceed ma'am, thank you.

Ms L Mnganga-Gcabashe - Good morning ma'am and you're welcome. I'm reading for you.

"In accordance with section 16 of the Powers, Privileges and Immunities of Parliament and Provincial Legislature Act 2004, a s a witness to this oversight enquiry, please be informed that by law you are required to answer fully and sa sfactory all the ques ons lawfully put to you or to produce any documents that you are required to produce in connec on with the subject ma er of the enquiry, notwithstanding the fact that

the answer or the document could incriminate you or expose you to criminal or civil proceedings or damages. You are, however, protected in that evidence given under oath or a rma on before a house or a commi ee may not be used against you in any court or place outside parliament, except in criminal proceedings concerning a charge of perjury or a charge rela ng to the evidence or documents required in these proceedings. Please be aware that in terms of sec on 17 (2) of the Powers, Privilege and Immuni es of Parliament and Provincial Legislature Act, a person who wilfully furnishes a house or a commi ee with informa on or makes a statement before it which is false or misleading commits an o ence and is liable to a ne or to imprisonment for a period not exceeding 2 years. You are required to take an oath or a rm that the evidence you are about to give is truthful. You may choose to take the oath or the affirmation." Which do you prefer?

Ms Venete Klein - The oath Honourable Chair.

Ms L Mnganga-Gcabashe - Please proceed.

Ms Venete Klein - I swear that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth so help me God.

[00h15:36]

Ms L Mnganga-Gcabashe - Thank you very much. Over to you Advocate Vanara.

Advocate Vanara - Thank you ma'am, good morning to yourself, the Honourable members, Ms Klein, the guests of the commi ee, and colleagues. Miss Klein can you for the record state your full names?

Ms Venete Klein - My name is Venete Jarlene Klein.

Advocate Vanara - The commi ee has invited you to these proceedings because at some point in the recent history you have been a member of the Eskom board. Can you just explain to the commi ee how you became a non-exhaus ve director, when, whether or not you s ll part of the board and if not when you le , and what role or which commi ees did you serve, and in what capacity did you serve in those commi ees. Thank you.

[00h17:00]

Ms Venete Klein - Thank you advocate. I was appointed to the board of Eskom on the 11th of December 2014 by the Honourable Minister of Public Enterprises, Minister Lynne Brown. During this me I served on quite a few di erent commi ees, which I have included in my statement. It wasn't always possible to give you the exact dates because at the outset the commi ees changed quite a bit, you know, as people were trying to nd their feet. But from the start I was on the commi ee I was chairperson of the social ethics and sustainability commi ee. I was also on the IFC commi ee; I was also on People and Governance. A er a while and I'll go into, I'm sure you'll talk about the suspensions later of the execu ves, round about that me Mr Khoza, who was chairman of People and Governance, became the ac ng CEO. I then became chairperson of People and Governance for a few months. A few months later I think roundabout July I was moved o People and Governance and that was given to Ms *Chwayita Mabude* and later I think round about September month I then again became chairperson of People and Governance. It was just as things were moving around and people were trying to nd their space. Later on I think it was around about December of that year 2015 I became a member of audit and risk as well, and in June of...sorry, roundabout April of 2016 when there was all the noise around Eskom and who was connected to who and, you know, I just looked at this and I said, you

know, I don't...I've been a banker all my life, I don't know that I want to be involved with this. Besides that I was also serving on...I also serve on the board of the South African Reserve Bank and the Twin Peaks legisla on was before government, and based on the possible con ict of interest, I then approached the Minister. I wrote to Minister and I said 'Minister, look I'm sorry, I can't do this anymore.' That together with the fact that by that time we had actually come out of load shedding, I felt that I have done all I could at the me to do that which I thought was the role that I was coming here for, which is to help South Africa through a very dark me. So I resigned and I was going to step down at the AGM of 2016. About 3 days prior to the AGM the Minister called me to a mee ng with Dr Ben Ngubane and told us that she had received three more resigna ons, and asked please if I would nd it in my heart to remain on at least till about October to give her a chance to get some more members of the board, which I agreed to. Since then, I actually on a monthly basis since October ll May when I eventually then resigned, May of 2017, I contacted DPE on a monthly basis to check when the other board members would start. And of course with what happened on the 12th of May when I realised what SA INC's response was on the return of Mr Molefe, I decided to, you know, I couldn't continue. And I wrote to Minister and said, 'Look I'm sorry I know that you short of people but I really cannot continue.'

[00h20:22]

Advocate Vanara - It is customary for the board upon its appointment to have an inaugural mee ng with the shareholder representa ve, when did this mee ng happen, if it did? And what are the issues that we brought into your sharp focus but the shoulder representa ve?

Ms Venete Klein - Thank you Advocate. Yes, you're right. One day a er our appointment, which happened on the 11th of December, we were called to a mee ng at the Minister's o ce and in a endance were a number of the new board members together with 2 members from the previous board who had remained on. It was the chairman, Mr Zola Tsotsi, with Ms Chwayita Mabude, those were the two members from the old board and of course the new members. They were not all present, but the my main take outs of that mee ng were, the main thing that Minister had said to us was Eskom is in dire need of… of a group taking or coming to grips with the issues at the me. Because at that stage we were already in load shedding stage 3. Load shedding had been ongoing for about 6 months at that me but we were already in load shedding stage 3. That was the one thing that she said to us, we got to get our hands on this business...around the business very quickly because we've got to see what can be done about curbing load shedding, which like I said was already at stage 3. The second thing she said was obviously there was a problem with the cash ow at that stage, there were going concern challenges. The… the third thing was that the… the, the company was actually being almost run out of the war room. We had a deputy president in there with a lot of high… high ranking government o cials who were running the war room. And then fourthly, the one thing she said was that, you know, she could not rely on the informa on coming out of the war room. And I think it was beyond that she couldn't rely on it, I think informa on going to the war room, this is what I picked up a erwards, was o en being ques oned as in one week it was one set of informa on, the next week you know, when you spoke about here to date it should have been the same with the new weeks being di erent, but then the previous weeks was also di erent.

[00h22:29]

So there was huge pressure on this board to come in as quickly as possible and see how we could literally get the line in the sand and try and understand the business the best way they knew how.

21st November 2017 – Parliament RSA

[00h22:55]

Advocate Vanara - You have prepared a statement, it doesn't have pages but it is 145 paragraphs… I, do you con rm that the statement dated 19th October 2017, it ends at a hundred pages, paragraph 145- [Interrupted]

Ms Venete Klein - That is correct sir.

Advocate Vanara - … And you have given permission to the commi ee to u lise this statement as part of your submission to it. Is that correct?

Ms Venete Klein - Absolutely right.

Advocate Vanara - I must apologize upfront that we are not going to deal with everything in the statement… [Interrupted]

Ms Venete Klein - It's ok.

Advocate Vanara - … in these proceedings but it is nonetheless considered in its en rety in this proceedings.

Ms Venete Klein - Thank you.

Advocate Vanara - I want us to move… to at a me when you received correspondence from the Department of Public Enterprises reques ng directors or non-execu ve directors to make some declara ons. When was that and what was your response to that?

[00h24:20]

Ms Venete Klein - Thanks Advocate. On the 29th of January just soon a er we'd started, I mean, remember we were appointed on the 11th of… of December the previous month. I received a le er from the Department to say that this is the list of the declared companies that I'm associated with. Can I please con rm that it's correct. I then went through everything again to make sure that I had covered everything and complied with the deadline which was given to us and I assume I have no… I don't know that it was sent to everybody but this was de nitely what happened to me.

Advocate Vanara - The New Age breakfast deal, what is it that you know about this deal? And what was your involvement, if any.

Ms Venete Klein - Having gone back and read all the minutes of the previous board where the New Age deal actually, had actually happened. I remember my rst engagement with the New Age deal was… and I only just read it because I wanted to understand what had happened there. There was a round robin resolu on sent to the board on the 2nd of March reques ng us to ra fy the proposal, certain proposals which was basically that, you know, that the board wasn't going to take any ac on against any individual and, you know, that because this was subject to some inves ga on that had been done. My problem with that, I've always been a bit of a disciplinarian and I have, I struggled with the fact that the recommenda on was that we could not take ac on against anybody because Mr Matjila had already le the organisa on. And we couldn't terminate the contract apparently because there was no exit clause. But I think my biggest concern there was that one of the sta members men oned, who is the group execu ve of corporate a airs, who is s ll there to this day, is men oned and is men oned as someone who had played some role in it and I refused to sign this… I wouldn't support the round robin resolu on. I said, 'you know, we need to take ac on against the

people who are responsible. And, you know, for you to tell me that we can't take ac on against them because they've left, that doesn't apply to Chose Choeu because he's s ll there,' and that's the reason that I refused to sign it Honourable Vanara. And, but it looks like I was the only person who did not sign it and it was ul mately accepted. And if I can just add, the mee ng of the 19th of March, the chairperson realising that I was not going to be swayed said he would have an o ine discussion with me but that's the same day that many other things happened that we will talk about later and he never did get to speak to me about it.

[00h27:21]

Advocate Vanara - In paragraph 14 of your statement, can you read for the record that paragraph?

Ms Venete Klein - Sure. "My main consideration in taking the posi on that I did in rela on to the TNA ma er was that, owing to the informa on at hand I did not believe that the approach proposed in the round robin resolu on was in the best interest of Eskom." And like I said for two reasons; the rst one was there was going to be no ac on taken against anybody and, and, the reason was because the people, Mr Collin Matjila had le but like I said Mr Chose Choeu was s ll there and the fact that the contract wasn't being terminated.

Advocate Vanara - There's evidence before the commi ee about developments that took place prior to you joining the board in December of 2014. And that evidence comes from the former nance director of Eskom Miss Molefe, who tes ed before the commi ee, that when this contract was signed there had been an internal inves ga on conducted by Sizwe Ntsaluba Gobodo, which had nd this transac on to have been an irregular expenditure. Are you aware of that?

[00h29:02]

Ms Venete Klein - That, the complete report I don't think it was ever brought to us. I know from my side what I was uncomfortable with was that all the noise that we'd heard about it, for me meant that we should end it but apparently there was...one of the minutes that I read a er you asked me the ques on was feedback from one of the board members was that this was a commercial transac on and there was no escape clause or no exit clause and all further commercial transac ons must have an exit clause in place. So, but no I didn't go into the contract itself sir.

Advocate Vanara - This transac on is historical in nature and it predates the tenure of your board. Does anybody who introduces this round robin resolu on explain to you as new board members that are meant to take a resolu on to basically say nothing should, there shouldn't be any consequence in respect of what happened on this ma er? Are you informed that in December prior to your appointment, prior to the dissolu on of the old board and leading to the appointment of your board, there had been concerns raised by the external auditors of Eskom around the same transac on where they had been insistent that they wouldn't append their signature to the annual reports of the company without this ma er having been raised as a ma er of emphasis.

Ms Venete Klein - I don't believe that that was ever brought to the board in the way that you've just said. What I do remember is in the round robin resolu ons there were various… the resolu ons they wanted us to approve and like I've complained to you I was uncomfortable that wasn't an escape clause or an exit clause for something that didn't have commercial value which seemed to have been the ques on. And that there was going to be no... people were not going to be held liable. Those were my concerns. It was discussed at the mee ng of the 19th, like I said, and I think at that mee ng other board members raised concerns but

whether they signed the resolu ons or not I can't tell, all I know is that I refused even a er the delibera on to sign it.

Advocate Vanara - Over and above the reserva ons that you had based on the informa on you had at the me. If this informa on that I'm disclosing here to you now was brought to your a en on, what would've been its e ect on your decision… on this par cular issue?

[00h32:10]

Ms Venete Klein - My decision was it wasn't going to be supported and I would have hoped to have persuaded more people not to support it. If I'd, like to say, you know, it was a ma er of emphasis the previous board had had it raised by the auditors, that level of detail I don't think was in anywhere, in any way discussed with the board.

Ms L Mnganga-Gcabashe - May we just pause a li le bit Advocate? While we just want to deal with the mike. It's a ec ng the recording.

[Fixing mike]

Ms L Mnganga-Gcabashe - You may proceed Advocate.

Advocate Vanara - In short what you saying or rather let me let you speak for yourself. I know now what your a tude was to the round robin decision or resolu on. What I've shared with you now will it have strengthened your resolve to oppose this resolu on or would it have persuaded you otherwise?

Ms Venete Klein - De nitely have strengthened my resolve and maybe have made me more vocal at the mee ng to get others to see it that way as well.

[00h33:21]

Advocate Vanara - Let's then move to the governance issues. We're not going to deal with all of them and I must thank you for a very detailed statement which I think would enable the commi ee. You deal here with what happened when you joined the board from the corporate governance perspec ve as well as the Denton enquiry. Can you, just in brief, take the commi ee through the issues around corporate governance, the concerns that you had, what are the things that had to be improved and what is the relevance of this Denton enquiry around corporate governance?

Ms Venete Klein - Thank you Advocate. I think, let's just put it this way, I serve on quite a few boards; I have for a long me. But nothing could have prepared me for what I found at Eskom when I got there. Just the sheer enormity of the, of the, opera on… the level of complexity with which we as a board, a new board, had to deal with and as well as the fact that we didn't seem to have had proper support in place right from the very beginning. I say it in my statement, I'm sure you would have seen it, that one of my biggest issues was you'd get decks and decks like this, two or three the day before a mee ng and I mean as new board members there is no way that you could apply your mind being a new board member to read through that level of detail and that quantum of detail and, and, and really come up with decisions that would be right for the organisa on. Because it just felt to me like the board was just always being ooded with, with stu , that was the rst thing. Secondly, I think that we had the right structures in place, I mean, we had the subcommi ees of the board was there, we, we had a delega on of authority, the memorandum of incorpora on all the stu that a typical board would have was there. But the way things were presented to the board for me was

problema c because number one, the quantum was just too much and I'm not sure if it is because of the execu ve changes that Eskom over the years and maybe the lack of experience of people of how to properly cra these things in the way that the board can get the gist of the issues that needs to make decisions on or what, whether it was just the way it always was done and nobody ever complained about it. So for me that was really, really, problema c.

[00h36:22]

The other thing which was of a, which I think is underes mated is the levels of authority within an organisa on such as Eskom. At execu ve level for, like for example on contracts and tenders; for execu ves, at execu ve level decisions up to 750 million can be made. A er that up to 1,5 billion which is a materiality framework or up to our investment or budget level that goes to the board tender commi ee. It's only when it's over the investment level that it ever comes to the board, so the board doesn't see that many contracts and tenders at all. It's… I think the size, the sheer size of the numbers for me was overwhelming, being a banker and having seen how you hold people accountable, you know, I struggled with that. I did address it was it a couple of mes but I was told because of the sheer volumes of what Eskom does it wasn't possible to make it smaller, it would just compress work. So as I said in number 17; the board, given all of what I've just explained, had to rely on the checks and balances which was provided within the governance structures and we tried as best as what we can I certainly did to adhere within that, in the decision-making processes that we had. And we had to rely heavily, being a new board, on the ins tu onal knowledge within Eskom, which I must say you had some people you s ll do, people who are extremely knowledgeable. But always front of mine was, you know, how do you do the best with what you have and ask the right ques ons and… and that about sums it up Chair.

[00h38:10]

Advocate Vanara - Do you allude in your statement in paragraph 19 to the rota ons, but in paragraph 20 you are referring to the instability that the rota on was causing, can you elaborate on that?

Ms Venete Klein - During the rst few months, as I think we would all know by now, Eskom was very, very turbulent. We had the suspensions of the execu ves, you had the Chair exiting, you had you had various people moving around, and based on that the commi ees had to be recon gured, because obviously the Chair doesn't sit on any particular...on, on a committee but he does sit on People and Governance. So you'd need to constantly move people around that was the rst thing. Secondly, with one of the board members taking on the role of ac ng chairperson, that obviously also created a problem cause then that commi ee became available, or, or needed a chairperson. And that was at the me of Denton, so there was a lot of work to be done in People and Governance. That is when I was moved from social ethics and sustainability into People and Governance and later out again to something else. So there was a lot of rota on at that me.

Advocate Vanara - You making reference to, and I know you've tes ed around the bulkiness of the documenta on you get the lack of me you would have to prepare for mee ngs, but you making a profound statement in the last sentence...second last sentence of paragraph 21, can you read that for the record.

Ms Venete Klein - The second last and last, Advocate?

Advocate Vanara - Yes.

Ms Venete Klein - It now appears that many submissions that were considered in my me contained misleading informa on or completely omi ed cri cal informa on. What compounded ma ers even further

for me, is that then there, sorry...is that there are now di erent versions of ma ers that I previously thought that I fully understood.

Advocate Vanara - We'll get back later to what you mean about that. But what is the role of the People and Governance commi ee that you chaired?

[00h40:48]

Ms Venete Klein - Advocate, it is to ensure that the succession in the organisation is taken care of, it's to ensure that the governance frameworks are applied, applied to or applied with. Like for example, that there are terms of references for every commi ee, that there's a board charter, that once per year you do the board evalua on. It's really to ensure that we take care of the, the policy documents around governance in, in the organisa on as well as the remunera on and appointment of senior execu ves, policies around appointments of, of people. But more so, also the... it's not just about appointment of senior execu ves, but it's the people issues in the organisations. People issues as it relates to discipline, people's issues as it relates to the complete labour force any labour ac on that may be out there. Basically monitoring and measuring things such as number of frauds, corruptions, the number of people on suspensions with pay, and on a monthly basis to monitor and watch over that.

Advocate Vanara - So your commi ee would have been...would have played a role in the recruitment of Mr Brian Molefe as group chief execu ve and Mr Anoj Singh as the nance director, is that correct?

Ms Venete Klein - That is correct Advocate.

Advocate Vanara - We'll deal with that later on. Before we get there, in March 2015 you have the first task as a board; it relates to a ma er introduced by Mr Tsotsi, your then chairperson, rela ng to an enquiry to be conducted. Can you explain to the commi ee how does this get to the board, what is it that is brought to the board, how does the board deal with this issue, and the role of the Minister of Public Enterprises?

Ms Venete Klein - Thank you Advocate. Late on the evening of the, of March 8th, I received a request to a end a mee ng on the morning of the 9th. And a ached to the request was a list of about 9 resolu ons that was sought to be approved at the mee ng on the 9th. I had great di culty with this because certainly the world of governance that I come from we don't call meetings unless it's, you know, it's critical to call them, like within a 12-hour period, that's the rst thing. And secondly, I had made...I had previous engagements so I couldn't make it, but the mee ng con nued because some members were available. And apparently at the mee ng the members felt that the ma ers that required the resolu on on, ma ers like, you know, that there must be an enquiry, that the enquiry must be for 3 months that, you know, we need to look at people who may be implicated. It was really, I mean, it actually cra ed...it was really I felt it prescribed how the board needed to proceed. But because I didn't a end the mee ng I had to rely on the minutes of that par cular mee ng so that I could follow what had happened. Apparently at the mee ng itself according to the minutes, because of the gravity of the ma ers that the chairperson wanted the resolu ons taken on, the view was that, you know, we can't unilaterally make this decision we want an en re board here; that was the rst thing. And secondly, chairperson I think at that mee ng also raised the point that he got a call from the Presidency and the members felt I mean, you know, the President of South Africa doesn't deal with ma ers such as this. So it's best that if anybody is going to talk to us the Minister must come and explain to us if this is indeed coming from outside of the Chairman himself. And it was for that reason that the mee ng then was rescheduled for the 11th of March where the Minister was invited to a end.

[00h45:50]

Advocate Vanara - At the mee ng of the 11th it would appear that you a ended that mee ng is that correct? What transpires at the mee ng?

Ms Venete Klein - Firstly we started o with the, with the board mee ng with, with the normal board mee ng because the Minister was going to be arriving a bit later. So, I mean, you see I would list...I list it for you there the kind of issues that the ex or the then CEO, you know, he took us through the fact that he was worried about the rota on of people, losing skill and the engagement of labour. He gave us all of the issues that were top of mind for him, that happened in the board mee ng prior to the Minister's arrival. Minister then joined us for an in-commi ee mee ng, and the board put it to the Minister that we were concerned that, you know, we were being given a list of direc ves or basically instruc ons from the chairman on how to handle various things.

[00h46:50]

I remember the Minister giving us what to me was the same four things; she did not say 'that's not what you supposed to do.' She didn't say 'you will do that' she said it's 'what I've asked this board to do is to get their hands around the four issues like I explained the load-shedding being one, going concern being another, the fact that I cannot trust any informa on that I get from you...from, from Eskom and the fact that the war room is running the opera on. This board has got to grapple with that and come to terms with how to run this organisation.' She left by saying, 'I can't tell you guys what you have to do about it but I expect some level of trac on around the issues that have asked you... that I've raised,' and she left. It was very short meeting I think it was about 30 minutes or so.

Advocate Vanara - You back to you're in commi ee mee ng a er the Minister's left. You had missed the mee ng on the 9th and you've had to rely on the minutes, but my understanding is Mr Tsotsi introduces...re introduces the subject ma er that he had introduced on the 9th in your presence. What is it that Mr Tsotsi is introducing to the board and what are his mo va ons for the resolu ons he is proposing

Ms Venete Klein - Mr Tsotsi again brings out the nine-point resolu on, which is that an enquiry has got to be done, that it's got to take no more than 3 months, that anybody who's going to according to him slow down the enquiry must be asked to step aside in this time, that we've got a look at contracts; there are about 9 things that... and I've got it, I can let you... I can let the commi ee have that, the nine things. I must say, you know, my resolve or probably the ght in me on the Sunday night to say look you know we can't get prescribed to, you're sitting there and you've got all of these things coming at you; load shedding is not ge ng solved and that's, I go on to say that later, every interac on with the execu ve at the me was how the ma ers were ge ng worse, not how they were ge ng be er.

[00h49:30]

And you got a Minister literally saying to you, 'guys get a grip, get your hands around this, I'm expecting to see some changes here.' And I cannot talk for anybody else; I can only talk for myself. At the me knowing as well that the biggest issue was that all informa on or most informa on coming out of Eskom going to the War Room, and there was lots of noise in the media, there just seemed to be so many versions of the truth. I think at that stage I felt maybe it's not a bad idea to pull...to get a line in the sand and start understanding what actually are the biggest issues that we are facing here. So I think I wouldn't say rolled over and play dead, but at that stage I conceded it may not be a bad idea to get a line in the sand so that I started to see

the issues that's got to be addressed, so that we can make that 3 year tenure of the board meaningful and at least try to correct some of what then was wrong.

Advocate Vanara - Mrs Matshela Koko, Dan Marokane, and then group chief execu ve Tshediso Matona and Ms *Tsholofelo Molefe* gets to be put on suspension, why?

[00h50:55]

Ms Venete Klein - I'm a board member for 2 months, we're asked to get to grips with what's going on. The board at that par cular mee ng expressed concern because you would see in my statement prior to the Ministers arrival that one of the biggest things that the then CEO was concerned about was the exits of senior o cials through resigna ons and re rements, he was worried about that. So the board didn't unilaterally just say look these are the four people they must go, in fact if anything the board asked, 'could we not just do some form of a fact- nding quick and dirty so that one could determine, you know, who are the people that would possibly hold us back.' I must say the then chairman of the board was adamant that there are four people would slow us down and when pushed to say but, you know, what do you mean by that? He said, 'look', he gave us examples, he said that the then CFO had been involved or met with some people who were tendering for an organ...some tender on the table, and he felt that that was why it's best that she stepped aside because there was...it was...I suppose if you look at it now, maybe an integrity issue. That's what we were told, ok. The second person that he had something to say about was Matshela Koko, where there was some discussion of misconduct with a sta member and he for that reason... so he actually mo vated why these were the four members of sta , and I remember the only C...the only CA on the board was Mark Pamensky, and I remember at the meeting Mark saying that, 'but you know we can't take CFO out of here. I mean you can't do that. We are already struggling, how do we do that?' And various other board members were concerned, but at the end of the day I think Zola Tsotsi was strong enough to convince us that if we wanted to get this done, and done it...and done expedi ously, that would be the best way to do it.

Advocate Vanara - Let's look at the FD's role and its significance to the loans or the bond relating to Eskom. Let's look at the significance of the group chief executive. What message or rather let me put it this way, do you ever consider the impact of that decision on the markets and how they would pursue Eskom?

[00h53:55]

Ms Venete Klein - Like I said we de nitely did look at it but I think nothing could have prepared this new board for what happened in the media with the suspensions. You'll remember that was when we had our rst downgrade and it was called a downgrade based on governance and it was par cularly around the ma ers that you've just raised. But being between a rock and a hard place, si ng there and you're told you got to get your hands around this animal which didn't seem like it was being properly managed at the me… I mean… I commented on that, every mee ng and interac on that I had just felt like the glass was half empty, there was just, there were no answers. We just needed more money for diesel and more money for diesel and this was all outside of budget and we didn't have answers, and I think that is what eventually convinced certainly convinced me, we needed something di erent and that is when for me the decision to support in spite of wan ng to have done the fact nding rst… took over.

Advocate Vanara - Do I get to your tes mony to be con rming that your decision contributed to the downgrade of Eskom's ra ng?

Ms Venete Klein - Advocate Vanara I think it is common knowledge, it was all over the press at the me that that was the reason for the downgrade. The suspensions at the me, as you say when your people were out there trying to raise funds, and that was the rst me that we got that downgrade which was round about, I think it was about April of 2015.

Advocate Vanara - I seem to be ge ng a picture and correct me if I'm wrong, that you're kind of put under pressure to consider these suspensions, which is why eventually acceded not withstanding some of your reserva ons? Is that a fair re ec on?

Ms Venete Klein - That's de nitely right, Sir.

Advocate Vanara - Now that the four are gone and of course nancial implica ons, there is an inves ga on to be conducted, who must conduct this inves ga on?

[00h56:36]

Ms Venete Klein - One of the resolu ons that Mr Tsotsi had for us to consider and agree to was that the inves ga on would, the original document said that it would be run by himself and audit and risk was being run by Ms Chwayita Mabude. In the later documents it was that audit and risk with the support of People and Governance must take control of the inves ga on itself.

Advocate Vanara – Mr...is it Nick Linnell? What do you know about him, regarding the inves ga on that was meant to have taken place?

Ms Venete Klein - Mr Zola Tsotsi alluded to the fact that a lot work had already been done on Eskom and brought in Nick Linnell as a consultant who would work together with audit and risk in se ng up the terms of reference and then working with whoever the service provider would be. The board was very, very, unhappy with this, the board felt that this had been, it felt like it had been pre-planned, there'd been work that had been brought onto the table that this board had no knowledge of, we were not involved with securing the services of Nick Linnell or anybody else and it was at that stage that the board started losing con dence in… in… Mr… Tsotsi. I just want to, if I may Advocate, just take you back to paragraph 34. On a personal level what really worried me at that stage was that when a decision needed to be made on who was going to act for the CFO, the CE etc, etc, Mr Tsotsi put forward the name of a young man by the name of, I don't know if he's here but anyway, a gentleman by the name of Malesela Sekhasimbe to take over as ac ng CEO because remember by now we, we had suspended people, we now needed people to pull the roles. I think what, what, was really for me a very bi er pill to swallow was when I learnt that Malesela Sekhasimbe was actually on suspension for some or other ma er and the chairman chose not to tell us that Malesela was on suspension, but o ered up this gentleman's name to become the ac ng CEO.

[00h59:24]

I think what for me was a li le di cult, however, was that when I went to the minutes, a er I spoke to you Advocate, to, to prove that point that the chairman had given us the name of somebody was actually on suspension to come in and act as the CEO, I found that the minute which had been signed o actually said the opposite of that. It said that this board had wanted to bring Malesela Sekhasimbe to be the chairman, sorry, to be the ac ng CEO and that he Zola Tsotsi had to stop that because the guy was on suspension. Now, fortunately for me though I do keep a lot of records and I've managed to track down the le er that we eventually issued against Mr Tsotsi as to why the board lost con dence in him and this is in that later. So even though the minutes said that he Mr Tsotsi had to correct the board and say the guy's on suspension, the

le er clearly says that Mr Zola Tsotsi wanted to bring somebody from suspension to come and run this company. So that was really for me in bad taste and I lost complete con dence.

Advocate Vanara - Now you're pain ng a picture of a distortion of the minutes. It'll be interes ng then to understand how do board minutes at Eskom, during your tenure, get to be approved and con rmed by those decision-makers so that instances of this nature are eliminated?

Ms Venete Klein – Ja, that's a very good ques on Advocate Vanara. Let's just say that when I arrived at, for example, social ethics and sustainability where I then became the chairman right from the beginning from about January February, my very rst mee ng they wanted me to sign off minutes for the whole of 2014 and I refused. So I don't think that minute taking was ever top of mind and I mean in any event if you sign off a minute a year later you cannot possibly remember what was in it. So I do believe that the minute that I'm referring to,which I am led to believe was signed o by Dr Ben a er Zola Tsotsi le was probably signed o in error because that de nitely was not what had happened at the mee ng.

Advocate Vanara - You talk about a le er that will con rm your asser ons, what is this le er, from whom is it, and to whom is it addressed?

[01h02:05]

Ms Venete Klein - It's a le er from Thomson Wilks, who are the lawyers, who the board had appointed to assist with the charging of Mr Zola Tsotsi and one of the charges was this ma er of Malesela Sekhasimbe who was on suspension that he wanted to bring back in the role of ac ng chair. The second ma er was the day a er the 19th Mr...the 20th of March Mr Zola Tsotsi released a media statement about the enquiry with a whole lot of detail that had never come past this board and the board just felt that he was bringing it into disrepute and disregarding the, the, role of the board. The third charge against Mr Tsotsi at the me was the appointment of Nick Linnell who, which had not come past the board, this board had no input, it was Nick Linnell was imposed on us and those were the three things that we charged Mr Tsotsi on.

Advocate Vanara - And what happened to this, to these charges?

Ms Venete Klein - We had various mee ngs with Mr Tsotsi and his legal advisors and a er a couple of those mee ngs Mr Tsotsi agreed to leave Eskom as a director and as chairman of the board.

[01h03:34]

Advocate Vanara - Mr Tsotsi doesn't leave long a er the suspensions of these four execu ves. He seems to have played a cri cal role in persuading if not going to an extent of exer ng some form of pressure on you to agree to the suspensions. He's now gone… there is an inves ga on. Now if there are suspicions that he had brought forward, which were the basis of the suspensions, one assumes that the inves ga on then gets to deal with these allega ons. It might not be the enquiry itself, it might be a completely di erent inves ga on. The cause for the suspension of these o cials does it get to be inves gated? If so, by whom? If it was inves gated what was the outcome of that inves ga on?

Ms Venete Klein - The mo va ons that we received for why people had to be suspended was exactly that, the mo va ons. They were mo va ons to get the board to concede to do the enquiry. Remember none of the, of the, execu ves were ever charged and as I've shared with you I got a clean bill of health on the last, we'll talk about that later, the one member who then was brought back. But none of the board members or none of the execu ves, like I said the story with the CFO having met with somebody or poten al person who

was involved with some tender, that wasn't it, we didn't get the details on it, that was only used to encourage us to get the suspensions through, to my mind. And then the allega ons about, you know, something irregular with the fellow sta member that apparently was an ongoing thing that it happened in the organisa on some me back, it wasn't, it hadn't been current. It was just the kinds of stu he was trying to put to us that we've got to get these people out of the way so that these things can happen and happen quickly.

Advocate Vanara - So the long and the short of it is those four o cials were suspended for no legi mate reason?

Ms Venete Klein - At the me the legi macy was impressed upon us in terms of ge ng it done and ge ng it done quickly and I think what gave me comfort was the fact that these guys were not being charged with anything. We were not charging them, they were not being told 'look you've done this and that's wrong' but they were told that they're not being charged and it was all about ge ng this enquiry done in 3 months. That's what the driving force behind that enquiry was.

[01h07:02]

Advocate Vanara - Understand then, now we know and this is your tes mony before this commi ee that having all of that which Mr Tsotsi and company had told you as you sit there today, is there any speci c basis in law that you could say this is why we had suspended these o cials?

Ms Venete Klein - No Advocate Vanara I can't, other than to say that as a board member appointed to a board for 3 years with the days rolling down and you're being told by people who'd been there before you that this is a way to deal with it and deal with it quickly. The ma ers was of such a nature that we believed something needed to get done. With the bene t of hindsight the board did try to resist in doing a fact nding mission before, not before the enquiry but before the suspensions, and like I said we were persuaded else we were persuaded not to go that route.

Advocate Vanara - And your decision has costed Eskom a downgrade and that decision would necessarily have costed a fruitless and wasteful expenditure, the top brass of exco with all its exper se was si ng idling at home when Eskom were calling for their services for no reason. Is that what you're telling me the commi ee today?

[01h08:59]

Ms Venete Klein - I'm not sure that I follow what you are saying? Are you asking if our decision cost the downgrade? Is that the ques on?

Advocate Vanara - I thought we done that? We're done with that… we done with that. I'm asking you… your decision to suspend the top brass of exco, the group chief execu ve, the nance director, Dan Marokane and Koko. Those were the top brass of exco, would you agree with that?

Ms Venete Klein - That's correct.

Advocate Vanara - You si ng there today, you say there was no reason in law for them to have been suspended and I'm saying they were si ng idling at home during their suspension, highly competent, highly quali ed individuals being paid while si ng at home. The company is calling for their skills and competences for no reason. Is that what happened?

Ms Venete Klein - With the informa on that I had at my disposal at that me Sir, that is the decision that we made and if it was a bad decision it was based on the informa on that I had at hand at that me.

Advocate Vanara - Ms Tsholofelo Molefe, you are a woman, she is a black young highly quali ed individual who happens to be a nance director at one of the… biggest state-owned company. When you go back to bed at night knowing exactly how unfairly you treated her, being a woman, the challenges that women go through. How do you feel?

[01h11:25]

Ms Venete Klein - I suppose not good. I mean she is a talented young woman. I suppose what I could have done at the me was fought harder to keep her there, which obviously we...I was persuaded not to. So to answer your ques on being somewhat...somewhat of a proponent for women's rights, I ja, we could have done...we could have done more to keep her.

Advocate Vanara - Have you since the incident to date extended an apology to her for what...for the role at least that you played in her suspension?

Ms Venete Klein - No, I did not Advocate Vanara because my role was never to compromise the prejudice *Tsholofelo* Molefe. I was there as a director and made the decision based on the informa on at hand; so the answer is no I have not.

Advocate Vanara - Given the opportunity would you take that opportunity an extend the apology?

Ms Venete Klein - Absolutely.

[01h12:24]

Advocate Vanara - Would you like to take this opportunity to do so now?

Ms Venete Klein - If she's listening; *Tsholofelo if* the decision that we take has prejudiced you in any shape or form you have my uncondi onal apology for that.

Advocate Vanara - Let's then move ma'am to the appointment of Mr Molefe. To cut the long story short, I'm aware that he was rst seconded from Transnet, but I'm more interested on how he became employed as the group chief execu ve. Can you take the commi ee through the process?

Ms Venete Klein - Thank you Advocate. On the 17th of April 2015 Mr Molefe was seconded for a 3-month period to Eskom. As I said in my statements, you know, within days of Mr Molefe arriving as a board member I must say I started ge ng comfort that he had his hands...when I say he had his hands around it let me explain it this way. I think it was a Friday that he started, that Saturday and Sunday he spent the en re weekend with the en re team, the same team who had been there before, and by the Monday there was a board mee ng whereby he came and briefed the board on his understanding what the challenges were and how he thought, you know, he could go about addressing some of those. I must say it gave me...it was my rst me in a board mee ng at Eskom that I felt that somebody was not talking about the glass half-empty but a glass half full, and what it was that could be done to correct it and that gave me a lot of courage or a lot of encouragement that is. Mr Molefe's secondment was going to be until all the end of...the end of June, I think it is, and then sometime in June there was a letter sent by Ms Daniels, that's on...I'm talking about 58, paragraph 58, Ms Daniels sent a le er to the Minister's office from Dr Ben stating that the P & G, which had met in between and we were looking at to appoint Mr Molefe on a permanent basis. During that me as P &

G what we also felt was that we wanted to make sure that we doing this by the book, because our MOI calls for a nomina on of 3 to go to Minister and in this par cular case because we had what we thought was a preferred candidate, we wanted to make sure that it was legally feasible to do. So we got a legal opinion...so we got a legal opinion, which said it was possible. Ms Daniels, like I said on the 19th of June, sent the le er to Minister's office, but a few hours after that Dr Ben sent a mail on which I was copied to say, 'look I think it's premature, you can't ask for Mr Molefe to be made permanent unless he's at least done 6 months within the job.' But, so based on that the letter was withdrawn and there was the second letter sent to Minister Brown requesting for the extension of Mr Molefe's, sorry, secondment for a further 3 months, which then ended end of September.

[01h16:44]

Advocate Vanara - The secondment ended but then the process gets to be ini ated for him to be appointed permanently, who ini ates this process, how is this process ini ated, does this process take into account the applicable prescripts that regulate the appointment of Senior execu ves?

Ms Venete Klein - The legal opinion that we sort was to cover exactly what you've just asked. Is it possible that one can go forward with one name vs. three, which is obviously what's requested or called for in the MOI, and the opinion said that it was possible, we needed then just write to Minister in that regards. Minister, when she gave us the second secondment, also asked us to work on the appointment or the permanent appointment because we couldn't just roll on their secondments, cause I'm sure Transnet they were having the own challenges as he had been li ed out there. What we then did was we got the opinion and Minister in a le er when she approved the second secondment then also said, 'can I please have the legal opinion that you said you've already received?' Then on the on the 13th of September, which is almost at the end of the month now, the 13th of September Ms Orcilla Ruthnam who is the head of Governance at DPE writes to ask about the legal opinion, and what she asks is whether in the legal opinion that was received what...did we take into account the guidelines for appointment of execu ves...chief execu ves of State-owned enterprises. Now what we had done up till then, we'd given all of the Eskom documentation, the MOI, and all of the recruitment documenta on but we had not had that guideline, which Ms Ruthnam sent to us. On the 14th...that was on the 13th...on the 14th of September, and I'm now at par 64, we sent that o to our a orneys, Bowman Gil llan, to ask, you know, how do you do this. And Bowman Gil llan then taking that into account as well comes back and says, 'if you want to you can do this but then you need to do a devia on for Minister's approval,' and that was the decision then to do that. On...if I can just, if I can just add on the 9th of September there was a P & G, where the concern around the number of ac ng roles were highlighted, and the view of P & G at the me was that rather than worry about the P & G ac ng or the ac ng roles at exco, we needed to con rm the CEO and the CFO roles. We couldn't go and appoint people and not have those roles lled. On the mee ng...at the board mee ng of the 10th of September P & G put the solu on to the group, to the board, and the board supported that a le er can go to Minister asking for the appointment of Mr Molefe.

[01h20:12]

Advocate Vanara - Let's go a bit backwards to paragraph 63. There is a letter dated 27th June 2015 from the Minister and response to an earlier le er addressed to her by Dr Ngubane, and can you read for the record from the third sentence, in the third sentence where the Minister requested.

Ms Venete Klein - 63? 63, are you talking about the Minister ended her le er, that one? Is that what you're asking Advocate?

Advocate Vanara - No, no, it says the Minister...

Ms Venete Klein - ...also requested...

Advocate Vanara - Yeah.

Ms Venete Klein - Alright got it. The minister also requested that the board deals expedi ously with the process of appoin ng the new chief execu ve o cer in accordance with the MOI, the Labour Rela ons Act, the Eskom employment policies and procedures. The Minister ended her le er by reques ng sight of the full legal opinion and recommenda on on the op mal route to follow in the appointment of the chief execu ve o cer.

[01h21:29]

Advocate Vanara - Now we know that you had proposed a devia on. What was the reason for not following this par cular or the normal process for recruiting the group chief execu ve, par cularly that the shareholder representa ve seems to be reminding the board of the process.

Ms Venete Klein - I think it's safe to say Advocate Vanara that having come into an organisa on, which was so unstable and having after a few months seeing the turnaround, I mean, by August of that month we'd already started seeing the last of load shedding. This board was really convinced; well let me talk for myself not for the board, I'm sure you'll check with everybody else. I was convinced that based on what we had when we arrived and the fact that we had a clock cking backwards which is a three year tenure, and the fact that South Africa was su ering load shedding at the cost of R434 million a day, circa R434 million rand a day, the fact that we had an individual who came in who seemed to be able to grapple with the issues and turn it so quickly was certainly my mo va on that he was somebody that should be considered for the job.

Advocate Vanara - That mo va on must acknowledge its shortcomings; one, that there could possibly have been other be er candidates in the market who could do an equally good if not a be er job, are you prepared to make that concession?

Ms Venete Klein - It was possible, it was possible but if I could just add, Advocate Vanara. With everything the board was dealing with at the me and the fact that we came in, we had the downgrade as you correctly said for some decisions that was made previously, I don't think we had margin for error and we believed that this was the decision...the best decision given what we had at that me.

[01h23:48]

Advocate Vanara - Fast forward that decision of yours to where you sit at today looking backwards at; one, the public protector's report on State capture, the e ect that the report had on your best candidate, with your candidate then stepping down at Eskom, that you are to date, or at least Eskom and the shareholder are in court ba ling around the issues of his employment at Eskom. You s ll insist with the bene t of hindsight this was the best decision that you people made at the me?

Ms Venete Klein - Advocate Vanara what happened with State capture has changed many people's lives, and if there's one thing that I would pray is that we'd have an opportunity to do a proper enquiry, quickly, so that those who are found guilty of wrongdoing must feel the full wrath of the law. Having said that, when it comes to the candidate at the me the decision that we made was based on what we had in front of us and not what we have today. In fact, everything that I see the media today just leaves me cold with some of what

seems to be going wrong all the me, but we did not have that bene t at that stage. But on State capture, I reiterate, I wish we could get it started immediately or soon as possible so that we can nd people guilty if there's any wrongdoing, and people will be held accountable for the full extent of the law.

[01h25:42]

Advocate Vanara - Let's move to the pension, because I am mindful of the me. The thirty odd million Rands paid to Mr Molefe or to, not to Mr Molefe, to Eskom pension fund. Can you just talk the commi ee through the mee ngs where the People and Governance had discussions around this proposal, what would the details of this proposals?

Ms Venete Klein - Advocate I think it's important that I just take you back to where we ended o in terms of how Mr Molefe was appointed. So on the 2nd of October we get a le er from Minister con rming Mr Molefe's appointment from the 1st of October. The di culty was that nowhere in that le er was there any term in terms of how long this role was going to be. It was...remember where certainly the informa on that I had at hand is that every single CEO and Eskom had had 6, sorry, sorry, 7 CEOs in that last 6 years, so the people doing the appointments I would have thought were industry thought leaders cause they had so many through the revolving door. On the rst we get this le er to say that Mr Molefe and Mr Singh are now appointed. On the 8th of October I received an email from Daniels sta ng that...it's an email between her and Ms Ruthnam, the person who is responsible for governance in Department of Public Enterprises, where Ms Ruthnam articulates the fact that it's a five-year contract. Now, the di culty that I'm faced with at this stage is that according to Eskom and what Eskom has always done, it's always been full time jobs...permanent jobs. So in this email between Ms Daniels and Ms Ruthnam, Ms Ruthnam says that..., this is the 08th of October now, this is number 72, Ms Ruthnam says she will check with, she will check whether Minister needs to write to the board to clarify the ma er of the ve years or whatever it is. And I think it's also important to re ect at this stage for the commi ee that I serve on other boards as well where there are ve year terms for senior government o cials, and there are others that are permanent. So, so you know, I don't know that we've got it completely sorted at this stage, which way it goes but in this par cular case we get told that, you know, we'll, there'll be...Ms Ruthnam will find out whether Minister will write back to us about the tenure now.

[01h28:52]

On the 16th of October Dr Ben addresses a le er to Minister wherein he proposes various income bands based on surveys that we had gone and done with Mercer, with Deloi e, with PE Corporate and others, because we wanted to make sure that the salary bench or the salary band was correct. I think this is where I'd like the commi ee maybe just to stay with me, because I think this is at the nub of what happened with the Molefe ma er. The issue with Molefe ma er goes horribly wrong in that the board had wri en and had expected as per every other CEO this would be a permanent appointment; then the whole issue about pensions and whether he quali es or not is not in conten on at all because that's how Eskom always did it. So we wai ng for this le er from Minister. I get no feedback on any le er that comes from Minister to con rm that it's a 5-year period. On the 9th of November Dr Ben hands Brian Molefe a contract, it's called a xed term contract, which Brian signs and in that it talks about his pension bene ts, his medical aid bene ts, etc. It's pre y important to note the date, that's on the 9th. It talks of a xed term. There's no term in it, which means a term could be 10 years, 15, 20...there is no term. It's considered if you ask the people in Eskom what does it mean...it meant a full- me job, not a 5-year job. I have in this week received an email that was sent from the Department to Ms Daniels dated the 4th of November, remember Dr Ben had already go en Mr Molefe to sign this xed term contract with no contract...with no term on it, on the 09th. On the

4th of November the le er that we had been wai ng for con rming the tenure of 5 year arrives with Ms Daniels. On the morning of the 9th of November Ms Daniels writes to the execu ve of remunera on asking him to do the contract with what Minister has said, for 5 years. The di culty is the le er or the contract that gets given to by Dr Ngubane to Mr Molefe does not state a term. So I believe that we need to ask Ms Daniels why she sat on it for 5 days and she was responsible for Dr Ngubane's office. Why she got Dr Ngubane to give Mr Molefe a contract with no term in it. Because had that been followed through to the le er as was requested by the department the issue of whether there was a pension or no pension would not have been a discussion point. Advocate I hope that...I've got all that information for you.

[01h32:13]

Advocate Vanara - Now, thanks for, for, that informa on and if need be we would not hesitate to call Ms Daniels back to ask the ques ons. But I want us to go back to the pension, it does appear in a mee ng in February 2016 your commi ee that you chaired was seized with the ma er. So not withstanding what Ms Daniels would have dealt, how she would have dealt with the le er from the Minister with speci c instruc ons around the contract that it became apparent, and it was accepted to everybody, that this was a xed term of 5 year contract of employment. What then happens in the mee ng of the People and Governance in February 2016 around the pension discussions?

Ms Venete Klein - Thank you Advocate and I think I only pointed that out to just say to you that had we followed sequen ally the requests and instruc ons from the Department there would have been no need to have a discussion on pensions at all, that was my only reason for ar cula ng it like I did. When we now had... now we sat with this scenario where Mr Molefe had signed a contract, which is now a xed term contract with no term on it, so according to him this is full- me. Then we get the le er later, which now says now you've got to sign a di erent contract which is now for 5 years. Mr Molefe then at that stage said to us; guys, you know, I've gone from one state-owned company to another. Always on 5 years, on 5 year, on 5 years. My mo va on and really being keen on Eskom was because I thought I could re re here. So myself and the chairman together with the head of remunera on, execu ve remunera on Mr Anton Minnaar, sat together and we had a discussion on what does this mean, and I remember saying, 'so what are we, what are we taking away from him, or what are we asking him to do by going from a full term contract which he's got, full term being no term, and trying to persuade him to take the ve-year contract.' And one of the things that Anton said to us was what we are taking away from him is his ability to re re from Eskom. I said ok so what does that mean. And then he took us through what had happened previously with all other CEOs who'd obviously be in there for longer terms, one excepts that, that a er their tenure they would be given a 5-year 'bonus' in recogni on for services rendered over the me that was the rst thing.

[01h35:13]

So there was a 5-year term, we said ok… So, so what else is there we can do? He said well there is a rule that says if you've been in the organisa on for 10 years and you are 50 years old the organisa on would then pay for certain things, pay for certain waivers of penalties etc that had been done before. So we said ok. Looking at that then a er 5 years Mr Molefe would be 55 then that same rule could apply except he wouldn't be there for 10 years. So we discussed it and we took it to P&G where Mr Minnaar came and did the presenta on to P&G to explain to us that this had been done on numerous occasions for other CEOs and told us about the rule in 1992 or 1999 where Jan Maree actually said any CEO who leaves gets an addi onal 5 years in pension. That's just been there all the me. So with that in mind, Mr Minnaar brought the proposal, the resolu on to People and Governance where he explained the process, as I explained it to you now. And

People and Governance accepted that a er 5 years Brian Molefe would be 5 years, he would be 55. The only thing that would mean is he hadn't been there for 10 years and at that stage we agreed that we could buy that addi onal 5 years for him. Now if you read the minutes it's not that clear and I'm sure you would have seen the minutes. But if I actually went and re- listen to the actual transcript or I've got a transcript of the actual explana on that Mr Minnaar gave and it is clear from here that this was going to happen a er 5 years. It was also going to be with the maximum of his be 55 at the me with an addi onal 5 years. Not 60, not 50 with, 60 with the 13 years that was paid out a erwards.

Advocate Vanara - We now know that that mee ng where Mr Minnaar brought the le er was incorrect.

Ms Venete Klein - That's a different meeting, Sir. That one you're talking about the end of it. This is, this is a quorate mee ng on the 9th of February. You're referring to back end when the early re rement kicks in.

[01h37:52]

Advocate Vanara - My apologies, my apologies. So the People and Governance then properly cons tuted takes this decision but they're wri ng to the Minister. There's a le er addressed to the Minister communica ng this proposal. What is the purpose of the le er to the Minister? What, what are you trying to obtain from the Minister?

Ms Venete Klein - Advocate Vanara, let me just go back. Remember the mee ng that this happened where this discussion happens where the resolu ons is taken, is the 9th of February 2016. The le er you are referring to is as a result of us knowing or nding out now on the, on the 11th of November 2015, we're in a quandary. We si ng here now with a man who has signed a document that says it's a xed term contract with no period. And now we're asking him to go from there and go to sign one that's where it says for 5 years. It's at that stage that Mr Molefe expresses his discontent because he was of the impression that this was a full- me job and at that stage the board realised we had a dilemma which we must try and correct. So all the discussions around like I explain 50 years old and, and, and 10 years' service that's when that happened. We then wrote to the Minister informing her of a proposal around his pension bene ts. Now I must say from the 25th of November un l the 09th of February we heard nothing. So as far as I'm concerned, you know, I'm si ng in a mee ng with a company secretary, skilled company secretary, and another's company secretary with her which was 35 years' experience and somebody who's just employed over the last 17 years how many CEOs, the people know what they're doing inside, and I rely on that that it's ok for us to pass a resolu on even though we hadn't heard back from the Minister. So we had not heard back from the Minister at that stage. I'll, I'll talk to you more about what happened at the mee ng with the Minister when she called us in when she wasn't happy with the pension a bit later.

[01h40:11]

Advocate Vanara - Ok before we get there, before we get there. You, before si ng in February 2016 to pass this resolu on you had 4 months earlier returned to the shareholder representa ve making a proposal. That must surely have taken into account that issue of the pension has now become a material condi on of employment for Mr Molefe. Is that correct?

Ms Venete Klein - I would agree with that Sir.

Advocate Vanara - And because the Minister has showed her representa ve, has got a say you on the employment of Mr Molefe, he would nat- she would naturally have a say on those terms and condi ons. Thus you wri ng to her seeking for her approval, is it correct?

Ms Venete Klein - No. My understanding was never it was her approval. Ms Daniels had told us that it's not an approval that we're seeking we are advising Minister of how we going to resolve the ma er. In fact I was listening to Ms Daniels presenta on where she said everything that Minister had given us input had been incorporated into the, into the… contract. So I would have assumed that that, remember we as the board didn't always get all the informa on that came between the department, certain things we did but not always.

Advocate Vanara - Forget about Ms Daniels. I'm asking you as a non-execu ve director with a duciary duty to the company. You had wri en a le er through your chairperson to the shareholder representa ve with what you call a proposal to the Minister. You've on record admi ng that the pension issue of Mr Molefe was a material condi on of employment which surely the Minister had a say about it. What is your understanding about that?

[01h42:30]

Ms Venete Klein - Advocate Vanara you are making it very di cult for me to tell me to forget about Ms Daniels. Unfortunately, as a director I rely on the people inside who know the system be er than I do and if Ms Daniels tells me we do it's for no ng and there is no problem with it, she sat in the mee ng when the resolu on was passed. I had no reason not to believe that was correct and I don't think I was bridging my duciary responsibilities, I ask ques ons and I had, and I relied on answers that I was given.

Advocate Vanara - As a non-execu ve director with duciary du es, you do ask for advice, you are then not absolved from your responsibili es of s ll applying your mind to the advice. That is what I meant by 'forge ng Ms Daniels' maybe it came across a bit harsh, it was not intended as such. I'm trying to understand why you with your duciary du es having taken a decision to write a proposal to the Minister on what you are saying was a material condi on of employment, which the Minister had to have a say in it. Why would you accept and advice then that says, 'no, but this is just for informa on?'

Ms Venete Klein - Let me answer it this way. In the minutes it says we have received no feedback from the Department, it actually says that in the minutes. It goes on to then call for Mr Minnaar to come and present the resolu on and the thinking around it. My understanding at that stage is having applied and being fully cognisant of my duciary responsibili es is that that is ok at that stage.

Advocate Vanara - Let us wrap up, the me is against us. The pension payout made to Eskom pension fund is clearly not consistent with the resolu on rightly or wrongly that you took in the February mee ng; is that correct?

Ms Venete Klein - It is correct Sir.

[01h45:33]

Advocate Vanara – Now, on what possible resolu on then could this pension have been made to the Eskom pension fund because he clearly does not meet what you had passed on as a resolu on, he did not meet those requirements. How then do we s ll get monies taken from Eskom paid over to the pension fund for those funds to be paid over to Mr Molefe as his pension?

Ms Venete Klein - I think let's start with...when the resolu on was taken it was taken on the basis of a er a 5-year term this is what would be considered, let's start with that. I think that's where you are correct in saying that it shouldn't have happened, because it shouldn't have. When Mr Molefe applied for early

re rement that le er sta ng or reques ng early re rement never came to P&G. It went to the chairman of the board, I never saw it, I didn't know what the contents of it was, and apparently it didn't go to the Minister as well. I think in my notes it said...I said it went to the Minister, but I'm told it didn't, but in any case. So, when on the 21st of November...that's the mee ng that you speak of, which was in quorate, we had a meeting to discuss State capture and what the...what Eskom's actions were gonna be or what we were going to consider, we had senior counsel. Because it was a special P & G there were only two members of P&G and the rest were other board members, which meant we were not quorate as a P & G.

[01h47:48]

The very first line of the minutes stated that. So when Anton Minnaar came in and read an extract, he didn't bring a submission, he didn't come and say this is what being considered; he read an extract of the le er that was going to Dr Ben regarding Brian's request. We noted it in principle, bearing in mind at the rst instance the minute is clear this is not a decision making commi ee. So my understanding by no ng what was being said not on a submission, but on an extract of a le er, was that this was going to come to a full P&G for considera on or at least by round robin a er, which depending what P & G says it will go to a full board for discussion; where things like, but it's not five years, the guy can't...he can't qualify. There was apparently in his contract...oops sorry, apparently in his contract there was something about a 6 - month exit clause. The board may have said 'you're in breach,' there were a lot of things that the board may have said, but that never happened. A er Anton le P&G where there was no approval and it's clear from the minutes, he took it to Dr Ben...now I didn't walk with him so I don't know, this is what I was told, that apparently he took it to Dr Ben's beans o ce and I'm told that Dr Ben signed it. I'm sure you'll have an opportunity to ask Dr Ben and Mr Minnaar exactly how that works. When that happened and when I heard this, I then followed up to say but where is this thing? I was told by Miss Daniels and once again you can check with Ms Daniels, she told me in the presence of another board member and you can check it with her, 'we do not need a full board signature on this the resolution of February stands.' That is why even when asked by the Minister in April of this year when this thing blew up in the media; I was s ll convinced that we had done things exactly according to the delega on of authority and within the rules and policies of Eskom. And to con rm that, on the mee ng of the 24th of April, and I know I'm kinda jumping forward, Ms Daniels together with Aadil Patel from Cli e Dekker came and went line by line on how this board had followed the exact, correct process with the approval of that payment...not the payment, with the applica on. So, you know, Advocate Vanara, when I sit here today and you tell me that this is wrong for these 15 reasons, I say, where were these people that why didn't they tell us it was wrong before. There were opportuni es even a er Mr Molefe le for people to have acknowledged that we've made a mistake here, and I'm happy to say that the mistake was mine if I know it was, but in the minutes I in fact say to Mr Patel, 'please explain to me where we've gone wrong,' and he said, 'this was done to the letter of the law.'

[01h51:02]

Advocate Vanara - Just to close this aspect as you sit there ma'am on the understanding of the pension that Eskom paid an X amount of money to the Eskom provident and pension fund; there was no resolu on within Eskom board or it's subcommi ee for this money to be paid to Mr Molefe under the circumstances under which it was paid, do I understand you correctly?

Ms Venete Klein - Ok, let me just make sure that I understand. Are you referring to the resolu on of February or are you referring to the resolu on to pay him out early re rement? Early re rement?

Advocate Vanara - No. No. No. Remember your resolution, you're on record as saying the money that was paid by Eskom to the fund was not consistent with your resolu on for the reasons that you've articulated, is that correct?

Ms Venete Klein - Listed with the resolution of February? That's what I'm checking, ja.

[01h52:32]

Advocate Vanara - Now, is there a subsequent resolu on that you are aware of in terms of which this money gets to be paid by Eskom to the pension fund.

Ms Venete Klein - No Advocate, there isn't another resolu on.

Advocate Vanara - As you sit there, if there's no resolu on authorising this payment from Eskom to the Pension Fund isn't this then the of monies from Eskom taken through to the pension fund, paid over to Mr Molefe camou aged as a pension?

Ms Venete Klein - It's interesting questions, that certainly not how I saw it until you asked it. But remember from our perspec ve...from my perspec ve, let me not talk for anybody else, we had done everything 100% correct. Where it went wrong was what happened at the back end and when I queried it, I was told that Dr Ben had the requisite mandate he did not need the board, board approval sign it o . So when you ask me about theft, I think that's asking for an opinion. I'm not sure that I'm qualified to answer that, cause that certainly was not how I understood it at the me when it happened.

[01h54:05]

Advocate Vanara - The last thing that I want us to talk to is a mee ng that yourself, Dr Ngubane, Mr Khoza, Dr Pat Naidoo and Ms Mabude had, must have taken place between 12 and 2 o'clock in the a ernoon where you presented a report on the process to recruit the new group chief execu ve; do you recall that mee ng this year?

Ms Venete Klein - The new group chief execu ve are we talking about when we were going external?

Advocate Vanara - Yes.

Ms Venete Klein - Yes, I recall.

Advocate Vanara - I do have a recording of that mee ng and if there are issues in dispute we would play the recording, but at that mee ng a er you had disposed of the issue of the group or recruitment process...the external process, you discuss the issue of suspending Mr Matshela Koko, s ll remember that? Or do you need the recording to be reminded?

Ms Venete Klein - I think please play the recorder cause I can't remember that being the same, I can't remember a discussion with recrui ng and suspension at the same me.

Advocate Vanara - Ok, Chair, I know that this is taking me, is going to take me. But it is very, very important that we don't move o this ma er before we have played the recording; with your permission can we proceed?

[01h56:12]

Ms L Mnganga-Gcabashe - Granted, granted Advocate.

Advocate Vanara - Thank you Ma'am. The commi ee secretary can assist the commi ee to play the mee ng and I'd ask the members to listen a en vely and yourself Miss Daniels to listen a en vely. Sorry ma'am... Ms Klein, you spoke so much of Ms Daniels, I'm sorry.

Ms L Mnganga-Gcabashe - While you are se ng up let me take this opportunity to welcome Honourable Rantho after having been on leave of absence. Welcome Ma'am, we did receive your apology that you are going to arrive in a bit late today.

Honourable Rantho - Thank you.

Ms L Mnganga-Gcabashe - You're welcome. We can stretch Members, but don't move from your seats.

[01h58:25 - REST]

[02h00:20 - RESUME]

Ms L Mnganga-Gcabashe - Honourable members, let's take a break for 5 minutes and our guest, exactly 5 minutes thank you. Comforts break.

[02h00:35 - COMFORT BREAK]

[02h10:36 - RESUME]

Ms L Mnganga-Gcabashe - Honourable members, we are con nuing, thank you.

[02h11:01 - RECORDING STARTS PLAYING]

[Please note that the quality of the audio in the recorded meeting is not good enough to be stringently relied upon in this transcription]

Venete Klein - … or also just a… [Interrupted]

Dr Ben Ngubane - So just give a background.

Venete Klein - … A background?

Dr Ben Ngubane - Yes.

Venete Klein - Within, within Eskom there is a set process of how to go about appoin ng a group chief execu ve because obviously we seem to be the experts in terms of ge ng a CEO in every year or every second year. So we go out with a, with a search rm, Chair you then put together a subcommi ee made up of some of us to look at the search rms who are on the table. There were four; there was a Wood, a Wood Romaine because it is ja, a Wood, Woodburn, Woodburn Mann, Mindcor… [Interrupted]

Dr Ben Ngubane - Mindcor.

Venete Klein - … Spencer Stuart… [Interrupted]

Dr Ben Ngubane - Uh huh.

Venete Klein - … and… [Interrupted]

Dr Ben Ngubane - The fourth one would be?

Venete Klein - … The fourth one…

Dr Ben Ngubane – Woodrow [? ? ?]

[02h11:48]

Venete Klein - No, no, no but anyway there was a fourth one, there was a fourth one.

Dr Ben Ngubane - Talent Africa?

Venete Klein - No it wasn't Talent Africa. It was one of these big ones as well but any case they decided to withdraw the fourth one because they felt that they'd done too many… they've got too many CV searches on at the moment so they didn't want… [Interrupted]

Dr Ben Ngubane - Ok.

Venete Klein - … they didn't want to, to be exposed. So we then saw; myself, Dr Pat and Zethembe then saw three of the of the three people which was Woodrow Mann, Wood… [Interrupted]

Ben Ngubane - Woodburn.

Venete Klein - … Woodburn Mann…

Dr Ben Ngubane - Mindcor.

Venete Klein - … Mindcor and Spencer… [Interrupted]

Dr Ben Ngubane - Spencer…

Venete Klein - … Spencer Stuart. We saw those three. I must say all three presenta ons were pre y much, pre y alike. The cos ngs looked pre y much the same but it would be the di eren ator for me and I, I waited un l last, I let my colleagues actually score them rst to see which one they recommended, w as Woodburn Mann. And the reason for that was Woodburn Mann seemed to have had the be er under-, more deeper understanding, Dr Ben, of how Eskom works. Right up to how things will be, has got to be prepared for the Minister and the got to go to Cabinet etc.

[02h12:55]

They had done appointments of… was it Thulani Gcabashe

Dr Ben Ngubane - That's right.

Venete Klein - They did the appointments of three or four of our previous CEOs.

Dr Ben Ngubane - Ok.

Venete Klein - … And we just thought given that background they're an organisa on who clearly then knows how Eskom works and that system about us. They also seemed a little bit more… flexible, Chair, regarding how they would go about it. Because others were saying they couldn't do it in a shorter period of time, they couldn't be flexible on their rates, basically they were going to decide who the candidate was and we were going to have very li le input. And we know being a state-owned en ty that even once we go forward with

our nomina ons, with our recommenda ons the Minister s ll has the right to make a decision. So we didn't want to sit with the position where somebody would stand up in the media and say that wasn't the preferred candidate, we needed to make sure that we had that covered.

[02h13:45]

So that was then Woodburn Mann. They then came forward, I think Dr Ben Ngubane, if I could just say that at the same time we'd gotten word from the Minister's office that she wanted this appointment to be brought to her in terms of the candidates by mid-April so that she could take it to Cabinet mid-May. We looked at that and we said look we know it's tight, we put it to all three firms and Woodburn Mann actually confirmed that they would be able to do it for us. Then, also the thing was that remember the current incumbent started ac ng beginning of December, so we needed to be mindful, Dr Ben, that if we didn't land this plane by at least middle of May there would be a problem in that the current incumbent would have then acted for more than six months, which obviously leads to more complica ons in terms of you almost automa cally con rm. So we needed to make sure we could ck all the boxes on that and I think we were comfortable giving that as a background to then recommend Woodburn Mann. They'd come forward… [Interrupted]

Dr Ben Ngubane - How do you spell that Wood…

Venete Klein - Woodburn is W double O D.

Dr Ben Ngubane - Yes.

[02h14:55]

Venete Klein - B U R N.

Dr Ben Ngubane - Ja.

Venete Klein - And Mann separate M A double N.

Dr Ben Ngubane - M A…

Venete Klein - M A double N… They then came back, we, we went back to them and said look that we in terms of the selec on panel we liked what they were saying can they just interact with us now regarding the price. They then nego ated down from their normal 30% and I speak under correc on to about 27,5%, which is the normal fee. You know Dr Ben, the reason that the team felt strongly that this would be the right approach is given the, the level of interest in Eskom and what we do right or wrong…

Dr Ben Ngubane - Ja.

Venete Klein - … That we could then hold them up to the external world to say we did not do the short lis ng ourselves, we did not do the ve ng ourselves. It was done by a reputable company, one of the top ...[inaudible] ...in the country. And also, you know, to be able to give the board a sense of fairness and equity and transparency. Because if we were to do it ourselves we can rest assured it's now again my cousin or your friend or your family member who came for the job and all kinds of things will come out ten years from today. So I think… [Interrupted]

Dr Ben Ngubane - Very professional.

Venete Klein - … Ja.

Dr Ben Ngubane - Mm.

[02h16:06]

Venete Klein - Going about that in this par cular way I think gave us, it ticks all the boxes where people can't turn around and say that we in uenced it in any shape or form. They're reputable, they're not cheap, but also with the right level of la tude for us or the Minister to s ll be able to direct as required.

Dr Ben Ngubane - Now probably we can assume that everyone has no interest in this ma er?

Venete Klein - No, absolutely.

Dr Ben Ngubane - So that's a declaration… [Interrupted]

[Overtalking inaudible]

Venete Klein - … Don't have everybody there… [Interrupted]

Dr Ben Ngubane - Sure.

Venete Klein - In fact just between the two of us by ini ally when I said Woodburn Mann I said, the young man Andrew Woodburn, I said he's a, he's pompous son of a, son of a gun. I know his father and his, his father well…

Dr Ben Ngubane - Trevor and son.

Venete Klein - Trevor, I know Trevor. Not that we connected but I've known him over the years and but I must say what we heard that day this young man has really matured and grown so he's really has followed in his father's footsteps but pretty well received all through South Africa, but no declared interest certainly not from my side.

Dr Ben Ngubane - Ok.

Venete Klein - Ja.

[02h17:07]

Dr Ben Ngubane - … Giovanni…

Giovanni Leonardi - [Inaudible]

Dr Ben Ngubane - … You heard everything?

Giovanni Leonardi - Just a, just a question …. [Inaudible]… or what about the process?

Venete Klein - Ja, no, no. the, the ini al process Giovanni is a, that's a good question because what they are busy doing is they're already busy putting together a long list of about 12 to 15 people, which they would perceive to be the best people in the market. We would need to from our side internally write, in fact that was the next step in the process, once the board agrees this. There will be a le er directed to every exco member and to every board member so that people can't say they weren't given an opportunity. Everybody can come forward and say we'd like, we'd like to be. But obviously that, Dr Ben, would need to go through the P&G because obviously because somebody that we know is going to be problema c. You know, we not

probably going to put the name through if it's, you know, if it's like myself you'll probably turn around and say to me listen man you haven't got what it takes Venete because you're too busy. We need to have a level of sani za on that happens before the internal list also goes there. But everybody will get a fair chance if they believe that they've got what it takes, they will put it forward and we will as a commi ee need to look at it and then add that to the long list.

[02h18:25]

Dr Ben Ngubane - But the Minister talked of an open process. It means advertising… [Overtalking inaudible]

Uniden ed man - Public sector.

Venete Klein - That's exactly, but before we even go adverts what we, what we do is we send at least the internal people a list.

Dr Ben Ngubane - Ok, ok.

Venete Klein - Then Dr Ben, the advert goes out, it was supposed to go out last week but obviously we realised we didn't dot all the i's and cross all the t's. The advert, if we're happy here will be in the newspaper this…

Dr Ben Ngubane - Week.

Venete Klein - No, no, no this Sunday.

Dr Ben Ngubane - Ok.

Venete Klein - This Sunday's newspaper.

Dr Ben Ngubane - Sure.

[02h18:50]

Venete Klein – Which has got the biggest reach.

Dr Ben Ngubane - Excellent.

Venete Klein - Because then it's open to all but we wanted to make sure that exco at least as well as the board has something in their hand ahead of me.

Dr Ben Ngubane - Sure.

Venete Klein - Ja.

Dr Ben Ngubane - Giovanni you are sa s ed?

[002h19:00]

Giovanni Leonardi - I thought it might be… [Inaudible]... Thank you very much.

Dr Ben Ngubane - Ok.

Chwayita Mabude - Giovanni this means you can apply for the posi on as well.

[Laughter]

Giovanni Leonardi - Ok thanks… [Laughter]… [Inaudible]

Dr Ben Ngubane - Alright and then we, we can have the resolu on then. I think everybody's happy. [Overtalking inaudible]

Venete Klein - And just to say Chair before we just pass that as a resolu on also to make sure that when we looked at what is, you know, what is out there, what do CEOs earn etc, I mean we're into the remuneration side. We've actually taken Mercer, Deloitte and PE Corporate Services just by way of a guide to see so what, because, I mean, you couldn't also say it's an open mandate the person can earn 100 million, they never going to earn 100 million so we needed to give some level of guidance. We also made sure that they understood out there that the person we're looking for must have run an organisation with turnover, if I remember it correctly, of about what did we say?... [Overtalking inaudible]… How many billion?

Dr Ben Ngubane - 163 billion revenue.

Chwayita Mabude - Turnover.

[02h20:01]

Venete Klein - No, no, no that is our actual numbers.

Chwayita Mabude - Oh are they.

Venete Klein - Our actual number annual turnover at the moment revenue is 163 billion… [Overtalking]… But we couldn't put 163 billion because, because then there'll only be one man in this whole country and that is the man who is currently running the joint for us on an interim basis… [Laughter]… so we needed to make it slightly less, I think we made it something like 50 billion.

Dr Ben Ngubane - Eish.

Venete Klein - And then there also...because they had 1 billion in there before so I said but hold on then the pot is too big. Anybody could have run a company with 1 billion or something like that. Then the other thing was also they had sta members, as long as it was more than five and so I said no that's also too little, we need to make it more than ten. So that at least you start making the pot a bit smaller. A bit more focused.

Dr Ben Ngubane - Ok.

Venete Klein - Ok. So Dr Ben that is by way of… [Overtalking inaudible]… feedback that is what we've considered, ja.

[02h20:50]

Zethembe Khoza - But what is guaranteed is that we will be able to step by step monitor the process… [Interrupted]

Venete Klein - Yes, every step of the way.

Zethembe Khoza - … And they will be giving feedback depending on us other… [Inaudible]…

Dr Ben Ngubane - Then the interview panel… I take it the four people who are doing this work will have to be… [Interrupted]

Venete Klein - Dr Ben, I almost think that given the gravity of the ma er I think you need to be on that panel as well because remember you need to also give Minister comfort…

Dr Ben Ngubane - … Ok.

Venete Klein - … that… that you, you know, you sanc on because I mean we may not pick something up that you may pick up. So look it was the four of us but I think you need to be part of that panel Dr Ben. What do you think from a governance perspec ve?

Dr Ben Ngubane - It's your employee, it's his employee.

Suzanne Daniels - According the MoI the, it is actually the Minister but the, she does ask the board and in this case she did ask the board to make the, the selection and the recommendation. So it would be appropriate… [Interrupted]

Dr Ben Ngubane - Ok.

Suzanne Daniels - … if you joined… [Overtalking]… you know you may not be, you may not need to join the initial… [Interrupted]

[02h21:50]

Dr Ben Ngubane - But you should Chair it as P & G.

Venete Klein - Ja, I'll Chair it and Dr Ben what maybe we need to do as the initial work, the long list, the [inaudible] that I don't [inaudible] But as when we get serious we've got the top 6 or 7 people, when we start going into interview a er that also. Because don't forget they also get, they get checked by na onal intelligence, there's a whole check for, you know, judgements and stu checked by na onal intelligence. I mean by the time we're through with this man or woman, we're going to know the … of their shoe size. When we get to that level I think that's where you get involved. Otherwise it could be quite a, because I think we're going to meet the… [Interrupted]

Dr Ben Ngubane - But then we mee ng this month.

Venete Klein - Ja, that is, Dr Ben we don't have a choice and that's where I'm going to look at my colleagues and say we need availability. And if it is difficult during the day we're going to do what we need to do but we can't be the reason that this can't work.

[Overtalking inaudible]

Dr Ben Ngubane - I mean if the mee ng is a er hours… [Interrupted overtalking inaudible]

Venete Klein - … after hours is uncomfortable. Even if we start let's say for an entire week from 5 to 10, 5 o'clock. I know some of us have got a love life but we're still busy planning… [Laughter]… Others of us are settled so we'll work with your program, if there's any hot dates in between we will, that's the only reason we will take cognisance, But…

[02h22:59]

Dr Ben Ngubane – The parasite can only survive [Laughter]

Venete Klein - … In...on what now?

Dr Ben Ngubane - If the main one is s ll good. [Laughter]… So the parasite, don't worry about parasites.

Venete Klein - No…

[Laughter and overtalking inaudible]

Dr Ben Ngubane - In terms of melines, we should have the interviews by middle of March. Can we do that?

Venete Klein – I think Dr Ben but that will be pushing it, I'll tell you why, because remember it only on... what is Sunday's date going to be? The 7th?

Dr Ben Ngubane - The 7th.

Venete Klein - The 7th. You see we also need to get enough me so people can respond. We normally give them ten [inaudible]… so the 6th, the 6th.

Dr Ben Ngubane - The 6th.

Suzanne Daniels - Giovanni are you back on line?

[02h23:44]

Dr Ben Ngubane - Giovanni?

Giovanni Leonardi - I am here.

[Overtalking]

Venete Klein - Sunday's the 6th Dr Ben so I think, look they are already working, they are already searching and prowling. Ok, so they already having I'm sure people that they think, not that they've approached people, but they've got a list.

Dr Ben Ngubane - No I know, but in terms of the public it must be ten days… [Interrupted]

Venete Klein - It must be ten days to be reasonable.

Dr Ben Ngubane - Sure.

Venete Klein - So it's ten days from the 6th so that takes us to the 16th.

Dr Ben Ngubane - Alright.

Venete Klein - Then we've got to give them about say four days that takes us to the 20th to do their si ing.

Dr Ben Ngubane - Alright.

Venete Klein - Ok so that takes us to the 20th. So if we can maybe get ourselves ready from about the 23rd on to start working on the long list.

Dr Ben Ngubane - Sure.

Venete Klein - The 23rd. Can I just…

[02h24:23]

Suzanne Daniels - The 23rd of March?

Venete Klein - I think on the 23rd of March to start with that long list, with the si ing. In about a week a er that we should be ready with the short list. And then I think we should be ready for interviews, Dr Ben, by the rst week of next month, of April.

Dr Ben Ngubane - Ok.

Venete Klein - We can s ll give it to the Minister.

Dr Ben Ngubane - Ja.

Venete Klein - By, by… [Inaudible] Because she needs it in time to get it to Cabinet… [Inaudible]

Dr Ben Ngubane - Ja, ja.

Venete Klein - In May. So we can still make… [Interrupted]

Dr Ben Ngubane - The short list by the end of March?

Venete Klein - No, she doesn't actually get the short list.

Dr Ben Ngubane - Oh sorry.

[02h24:51]

Venete Klein - She'll, we'll, when it gets to Minister when we say to her these we've vetted everything. We've assured and we've gone through.

Dr Ben Ngubane - Oh.

Suzanne Daniels - Actually Ms Klein, in terms of the MoI; it does say that you can submit a short list of candidates to the shareholder.

Dr Ben Ngubane - Oh there you go.

Suzanne Daniels - To assist the shareholder with the appointment. So what you can do is give her the… [Interrupted]

Venete Klein - The rst view? The rst view?

Dr Ben Ngubane - Ja, ja the rst pass.

[02h25:12]

Suzanne Daniels - No, no. When you give the, when you've done the interviews etc you give a list so maybe your top three or… [Interrupted]

Venete Klein - But that's what I meant. I wouldn't go with the whole short list of finalists… [Overtalking inaudible]

Suzanne Daniels - No, no.

Venete Klein - No we need to give her… [Overtalking inaudible]

Dr Ben Ngubane - Three! Three's about… [Overtalking inaudible]

Venete Klein - We need to give at least… [Interrupted]

Dr Ben Ngubane - Three would be accurate… [Overtalking]

Venete Klein - We need to give her at least three op ons for her to choose from.

Dr Ben Ngubane - Sure.

Venete Klein - Ja. But Dr Ben what I will rm up for the group now is exact dates and melines.

Dr Ben Ngubane - Alright.

Venete Klein - Which I will, I'll speak about… [Overtalking inaudible]… a template so that we can all tick off to make sure we're comfortable with dates and timeline.

Dr Ben Ngubane - Ja.

[02h25:39]

Venete Klein - But we're still moving towards a date in about mid-April to Minister with three names.

Dr Ben Ngubane - Ja.

Venete Klein - But now we must just understand one thing at this level, Dr Ben, if it's not somebody internal that we may choose the person and Minister may choose the person, but at this level the person could take up to 3 to 6 months to become available. That's the only downside of an external appointment, if it is that. Obviously you've got the benefit of an internal appointment that you don't have that. But we got to make sure that we minute this accordingly so that it doesn't look like we are prescribing who is gonna get the job.

Dr Ben Ngubane - Ja.

Venete Klein - This is an open, fair, transparent process. And I will build that into a meline just in case anybody gets hold of our meline... to say can you see here, connect the dots and get the wrong version again.

Dr Ben Ngubane - Ok.

Venete Klein - So I'll get back to the board if it's ok within the next two days. Where're we today, Thursday, Friday? ...[overtalking, unintelligible]... can I get it to you by Monday cause I want to make sure that I properly go through the dates and I want to make sure with the search firm, I don't also want to put them into a date that they can't deliver, cause then we all failing. So Dr B, if I can give it to you by Monday... so we can ck that all o .

Dr Ben Ngubane - Ok, so we need the resolu on.

Suzanne Daniels - The resolu on would be con rmed with the process is in order, so that the board accepts...

Dr Ben Ngubane - Ok.

Suzanne Daniels - ...the process as it was documented by Ms Klein...

Venete Klein - Yes.

Suzanne Daniels - ...and then the… [Overtalking inaudible]… the appointment of Woodburn Mann is approved and that the meline will be con rmed by the Chair of People and Governance and the ini al work will be done...this is just the ac on...the ini al work will be done by the People and Governance commi ee and then at the appropriate me Chairman will... [Overtalking, unintelligible]... and then obviously along the way Chairman can also decide whether you want to brief the rest of them.

Dr Ben Ngubane - Ok.

Venete Klein - That's in order. Chair can I just abuse the committee just for one minute, very simple it must go to the Minister around the increase of F-bands. What is your meline on that because Anton gave me this; this is to say, you know, this is just a document to say that, you know, in the last so many years to say that F-bands across the market has received overall increase of 37.9%, where our people have only received 23.6%. By when does she need this cause this is to say that we're proposing a 6.5% increase.

[02h28:10]

Suzanne Daniels - Oh, ok I would recommend this from my previous experience that we start that early. We usually do this in the run up to the AGM... [Interrupted]

Venete Klein - But she must get it before the me so that she can apply her mind with her people.

[02h28:22]

Suzanne Daniels - Well, which I usually start now. So I would recommend that it is actually an appropriate me for it to start, because you will recall last time, Minister wasn't comfortable to do it and then she didn't do it at the AGM, but later. So this is ne for that process, but I would recommend that if the board so feels we can send it earlier.

Venete Klein - I mean, we sell a good mo va on here; Dr Ben this is actually for your signature. So Suzanne if you can just work through this...

Suzanne Daniels - Ok.

Venete Klein - This is just obviously to say, you know, what has been the background, everybody else at this level grew about 37%, our people have grown at 23%. I mean CPI we looking at it coming in at 6%, but what I said to him is keep it slightly higher, keep it at 6.5 so if she wants to shave anything off, she's not shaving it CPI because we already falling behind. Ok, so Suzanne I'll leave this with you, so if the board is happy, Dr Ben you comfortable with that, then you can start this as part of your process because you would have needed that in any case... [Overtalking, unintelligible]

Suzanne Daniels - Ok, just a correc on to... [Interrupted]

Dr Ben Ngubane - Giovanna, hello...

Giovanni Leonardi - [inaudible, unintelligible]

Dr Ben Ngubane - We are adop ng the resolu on now; are you agreed?

Giovanni Leonardi - I agree, yes.

Dr Ben Ngubane - Thank you very much, so everyone has agreed, thank you very much for your support. Giovanni thank you... is there another issue? That is Giovanni...

Giovanni Leonardi - [Inaudible] … can you compare with the date of the AGM and the next board mee ng, please?

[02h30:00]

Suzanne Daniels - Giovanni can I email you, I just want to check the calendar...thank you, alright.

Giovanni Leonardi - That's fine, thank you, thank you.

Dr Ben Ngubane -Thank you.

Venete Klein - Chair the ma er that is rather sensi ve, how do we deal with that one. Can I maybe give a bit of background?

Suzanne Daniels - You can give background, do you want to stay or must I leave?

Venete Klein - No, no I think you should be here to record.

Suzanne Daniels - Should I record it?

[02h30:25]

Venete Klein - Ja, um...it's a bit sensitive in that, you know, I've been approached as have some of the board members by quite a few exco members regarding how they are currently being managed in a very, very...in a very militarized way. I'm not sure if all of you've heard it, but I'm talking to you about what's come back to me. And people have spoken to me... [inaudible] ... commi ee of People and Governance on the basis of anonymity to a point where they are so scared that they are going to lose their jobs because there are all kinds of things happening; people are being suspended, people are...and what worries me Chair, I put this on the table to you as the Chair of the board, is that this is not happening in terms of the governance framework of People and Governance because in terms of our MOI, I think when you go through execu ve suspensions, this happens with the knowledge of the board, at least with the knowledge of People and Governance, this seems not to be the order of the day at the moment. So Chair, I open this up for discussion because I'm not too sure as Chair of People and Governance what to do with this other than to bring it to my colleagues and say guys we seem to have...we si ng on a cking me bomb. Can I just, Dr Pat seem to know... [Overtalking, inaudible]... also anonymous.

Dr Ben Ngubane - When I was told by the former chairperson of SABC of all things about what was happening at Eskom I couldn't believe it. I said do you know? I said no, tell me. It was the same story that so much is going wrong, everyone is unhappy, exco etc, someone senior has been suspended under sought of very unclear condi ons, you know, so. And then this morning I get this note... [Interrupted]

[02h32:21]

Venete Klein - An anonymous note?

Dr Ben Ngubane - Ja.

Venete Klein - Confirming everything that we've said and more.

Dr Ben Ngubane - ... which then really puts me in a zzy.

[Overtalking inaudible]

Venete Klein - ...e ec vely says that the suspensions that we are aware of is not the only ones being planned.

[Overtalking inaudible]

Chwayita Mabude - Can I say something?

Venete Klein - Ok, let's just get her input first before we do. Tell me what you want to say.

Chwayita Mabude - I got from di erent people, how many. One, two... from three people that there is a problem, and people are suspended... get suspended, unpaid not suspended, unpaid… unpaid leave for…

Venete Klein - Ok, that is a sanc on, a sanc on for something.

Chwayita Mabude - … Ok. For things that are not en rely all their fault and people are... the execu ves are so scared at any single me that they could be suspended and to a point where they are not able to voice out their views because it could be the wrong view and they get suspended. So there's just a problem with that. One was telling me, he was saying 'aye, one could say it's a benefit, but it's too much,' because the person was saying, 'people have been relaxed by Eskom'... [Interrupted]

Dr Pat Naidoo - People have been what?

Chwayita Mabude - ... relaxed.

Dr Pat Naidoo - Ok.

[02h34:08]

Chwayita Mabude - So this, the harsh move has caused a bit of people being on top of their toes... but the level now is a bit too much. So we... the person was giving a report, but also analysing the pros and cons of the situa on, and saying it could be... the person went to the point of analysing genera on and the things that have been happening and the fact that people know if anything goes wrong, so people are on their toes, but it's the level is too much. And I indicated that the board has done something because when we took the current ac ng CE we had that in mind and we even had an agreement as a commi ee to say the Chair must be on close alert with the CE, and monitor the CE. But it's not easy because the Chair is acting; I mean he's not here full me and the Chair is not as ac ve and to a point where I even thought maybe we chat to review as a committee and ask it to be the one who's suggested to come close… closely monitor this thing else we'll be si ng in the situa on of turning people around, asking di erent people to act, which then result to more problems, what if people would be, my trying to understand what is happening when you do something when you ask the CE to move to allow another one to act. So there are many problems, but we need to do something.

[02h36:01]

Dr Ben Ngubane - We've asked Mr Khoza to handle this CEO.... [Interrupted]

Venete Klein - We've already... we've already done that. We've realised that problem, so we actually asked Zethembe to walk with him on the road. So that's, that's in place. But it's very difficult for Zethembe if he's not called upon, you know, to in a par cular case. I mean, Zethembe has had many discussions with him [Inaudible] Zethembe has had many discussions with him a er hours, but it's always after the fact cause Dr Ben it just feels like the young man believes it's shoot, fire, aim. You do everything first and then you aim afterwards; you can't do that to your people.

Dr Ben Ngubane - Well for instance, he told me that he was sending Masango to Harvard University for study.

Venete Klein - Nothing wrong with that.

Dr Ben Ngubane - Nothing wrong with that. So I said but why don't you send people to China where there is a state university on technology instead of teaching them leadership skills at Harvard. So he said no good idea, he listens to that. There was no hint that, you know, that there was coercion or a strange situa on. Now this document that...documents otherwise, you know, that... [Interrupted]

[02h37:16]

Venete Klein - For those of you who have got really what the sense is, is that Abram is going to Harvard in April, but that Abram must pay them from today already, he mustn't get work. What is that? A contract? Ok, let's get back to Pat...Dr Pat.

[Overtalking]

Dr Pat Naidoo - ....There was another person who said are you aware that two execu ves have been suspended; head of genera on and head of new build. I said what are you playing a prac cal joke on me?

Venete Klein - Now who's new build and who's generation?

[Overtalking]

Suzanne Daniels - Abram and Majola.

Venete Klein - And this was when...

Dr Pat Naidoo - This year... I said 'ah, are you playing a practical joke on me?' I said we just met them and I didn't say this to them before, I said after that I said; 'but hold it! We just met with the guys last week'... [Interrupted]

[Overtalking inaudible]

[02h37:58]

Dr Ben Ngubane - No, I don't think that Abram is suspended because they're all attending exco.

Chwayita Mabude - No Abram, there's something happening to Abram. No matter what I... [Interrupted]

[Overtalking]

Venete Klein - ... because here it does say that somebody... wasn't it that Anoj was sent to Abram to tell him, that you gonna go to Abram to tell him.

Dr Ben Ngubane - Ja, but I'm saying he's not suspended yet.

Venete Klein - That's certainly the intention because it looks like it's becoming public knowledge.

Suzanne Daniels -... because he is at exco, he is at exco today.

Venete Klein - Ok, so while you're reading this... [Interrupted]

Dr Pat Naidoo - I think somebody's playing a practical joke on us too because genera on and new build, those are the two areas that we don't want disturbed at all.

Venete Klein - I don't think they're playing Dr Pat. There's an anonymous letter...can I just check though around the table for those who... [Inaudible]

Dr Ben Ngubane - ... so can I make a prac cal sugges on that Zethembe and I go and have a consulta on with the ac ng CEO?

Dr Pat Naidoo - Certainly, certainly, go do that.

Dr Ben Ngubane - ... Because as a resolu on of the board.

Zethembe Khoza - Yes, yes, because you have to give him the le er, you have to give him the complaints, he must respond in writing why he can't be suspended.

Dr Ben Ngubane - ...that's it.

Zethembe Khoza -... he must give it in wri ng. Once we've got that we'll review it, if we have to we'll carry on.

[02h39:16]

Dr Ben Ngubane - Sure.

Suzanne Daniels - But your sugges on is slightly di erent to what Chairman is asking.

Venete Klein - Chairman wants consulta on.

Suzanne Daniels - Consulta on asking, but then... [Interrupted]

Zethembe Khoza - On the consulta on which we're gonna give him the letter, then he must respond to the le er.

Suzanne Daniels - But you said the reasons why not to suspend, so that's a slightly different decision.

[02h39:40]

Zethembe Khoza - ... [Overtalking inaudible]... but if he responds to this le er and the sensi vity in the le er and the issue that needs to be inves gated because some of them they can cost they say it shouldn't be on the premises.

Suzanne Daniels - Ok, but then you're recommending that the board must consider suspension.

Venete Klein - Can I maybe weigh in, can I weigh in?

Zethembe Khoza - Sure.

Venete Klein - ...to add to that. Suzanne... [Interrupted]

Suzanne Daniels - I just wanted clarity... [Interrupted]

Venete Klein - No, no, no, but as a lawyer you are asking the right questions, it's just, remember where we are at the moment. We are sitting knife's edge. This board has done so much but we have been made cannon fodder because of a whole lot of reasons and quite frankly I think 80% of that has got to do with Matshela himself. The people out there don't want him as the CEO. We came under the gun when we made this guy or offered him the role of interim, that's when Dentons and everything else became a problem. So if we do act swiftly, that letter gets into the public space, that together what we've already been told that we put him there is going to be enough for people to say 'public protector take this lot because they are… ' If we on the other hand are smart to sit with him and say this is the gravity of the ma ers, when you where put into the chair you were given one condition that you don't mess with the people because you your words, we know your reputa on. You have ignored us, this is what we've got, you've ignored us, what do you have to say for yourself? And based on that response I think…once before [Overtalk]

[02h41:10]

Dr Ben Ngubane - …a choice [Overtalk inaudible]

Venete Klein - You don't have a choice Dr Ngubane

Chwayita Mabude - Chair I think also we need to calculate, do some calcula ons based on the fact that we are at this process, and this process has got tight timelines. And we also don't want to be amending with the issues that come up in the minutes. The mee ng that you two are going to have, must be precise and also indicate that we are really unhappy as a board. But please keep a close eye on him and monitor and please and if needs be we need to be here… [Overtalk]

Venete Klein - [Overtalk] Can I...can I help you with that. I think you are one step behind what's already happening…and I mean this is where Dr Ben you and Zethembe… [Inaudible] We realised we are going to need to do that…be there for him…monitor him….from the very day….We are now here in spite of that we've got this. We cannot….we can't measure anymore. This board will be seen to be complicit in that behaviour. We cannot…we can't…we can't measure anymore.

[02h42:28]

So what I'm suggesting is that discussion of measuring, monitoring, support back in December…now in March, and the opposite of what we said has happened. So as a responsible board, we now need to sit with him and say to him: "What we've told you was the condition of your 'acting', you've breached. And you've taken yourself out. Now give us one good reason why we don't suspend you while we investigate?" We don't have a choice.

Dr Ben Ngubane - [Overtalk unintelligible] whatever he puts down as a response on the ma ers that are raised and then the issues and the plea to the board, is what …. [Unintelligible]. If he decides not to do anything, he will be suspended. [inaudible]

Venete Klein - If he says: "I'm happy that you do the investigation. I will not interfere. I will not fire another person. I will lead properly." We may reconsider it. [Overtalk unintelligible]

[02h43:27]

Dr Ben Ngubane - This is a situation where you can't have…'nice'. We are no longer going to be 'nice'. This is a …We do, do that. When people…once the matter reach this particular level we suspended people before… [Overtalk unintelligible] be fair and be ght

Venete Klein - Dr Ben I just want to propose one other thing.

Dr Pat Naidoo - No let me say something before you proceed with something… [Unintelligible] what I heard now the concurrence…there's some concurrence there. I would rather recommend we don't go too much over the context …I'm not saying we don't do what you say…I'm saying leave the context first…let's look at process. We're at the process now whereby we're going to prepare a new incumbent as in the appointment of a permanent CEO. That process has started. It gives us an opportunity to possibly move him out of posi on… [Unintelligible] and say: 'Right the process has now commenced. You're going to be an applicant,' (or something like that) …" use another discussion item, but put him o site, right, and we put Mr Khoza as ac ng CEO. [Laughter from a male a endee of the mee ng] [Overtalk + laughter] We can say it nicely… Mr Khoza from the Board will be ac ng CEO while we go through this process as everybody… [Overtalk]

Dr Ben Ngubane - Strangely enough, that's what I thought.

Dr Pat Naidoo - Oh okay… [Overtalk + unintelligible]… we talk straight mother. What are the issues that will see that…. who are the issues? Put it on the table. Let's sort it out. What are the issues?... [Unintelligible] we mustn't… [Unintelligible]… because this thing is ready to hurt Kusile.

Dr Ben Ngubane - I know. It will hurt us badly.

Dr Pat Naidoo - It will hurt us bad.

Venete Klein - Dr Pat I hear you, but here's my question. [Overtalk]… Whatever we do… whatever we do… and I'm not… I mean [Overtalk]

Dr Ben Ngubane - Are you nished? Are you nished?

Dr Pat Naidoo - Yes [Laughter] Mr Koko [Overtalk + laughter]… Let me hold his hand.

Venete Klein - Dr Pat the ques on we must ask ourselves – what message do we send outside?

Dr Pat Naidoo - Ja… the message must be strong… very strong.

Venete Klein - No, no, no. [Overtalk]

Dr Pat Naidoo - Discipline.

Venete Klein - What message are we sending out? We just taking him out, we're putting him over there again… [Unintelligible] or this Board will not take you… don't take anybody messing with our people. We've got to be very careful.

Dr Pat Naidoo - But the policy is, don't go too much for… [Unintelligible + overtalk]

Venete Klein: No, no, no, no… Dr Pat I'm sorry…

Dr Pat Naidoo - … go for communication…

Venete Klein - Dr Pat…. guys as directors I'm sorry. You don't sit here that you've got to be nice to people. You've got to make decisions. If your people are going to get hurt…then you must take the blows that comes with it. But I'm sorry, we can't…what you propose and what you say is: "Let's, you know, get by a thousand more cuts." You said our people are taking cuts everyday… [Overtalking unintelligible]

Dr Pat Naidoo - Because what I'm saying is that is reserved for the next step because he will apply for the job. The job is adver sed, he will apply, you can si it out in that process quietly … [Overtalk + unintelligible]

Dr Ben Ngubane – Sorry, but obviously this is going to lead to some inves ga on. Yes.

[02h46:32]

Dr Pat Naidoo - No but we'll handle the investigation…. because if that process… That's what I'm saying now.

Dr Ben Ngubane - No, no, no… The consequences of us starting an investigation on this… on the basis of this.

Dr Pat Naidoo - But we shouldn't put too much emphasis on that… don't put too much emphasis on that.

Venete Klein - No, no Pat, please we can't pussyfoot around this. This is people drama and real issues here. This is senior people to be suspended.

Dr Pat Naidoo - But all I'm saying is, I mean, it's anonymous.

Venete Klein – No, no, no.

Dr Pat Naidoo - It's not clear.

Venete Klein - Pat did you hear the people spoke to me ...[Overtalk unintelligible]… Pat did you hear people spoke to me? Pat did you hear people spoke about?... Guys… [Overtalk unintelligible] we can't get into a situation where we are going to take all the accolades and every time we must take a firm stance, we buck… [Overtalk]

[02h47:18]

Dr Ben Ngubane - We saw the Minister in Cape Town.

Venete Klein – Okay, please. What is...what the Minister said? Does she know about?

Dr Ben Ngubane - The Minister is very… no, no, no she didn't… but she knows of the elements contained in this le er…That Willy has been suspended, Majola…

Uniden ed Male - My God!

Dr Ben Ngubane - That other people were fearing for their lives… and Abraham was… oh no in fact she said the Premier of Mpumalanga challenged her on Abraham…

Uniden ed Male - Oh boy!

Dr Ben Ngubane - … and she didn't really know… ja… what… so we needed to handle this ma er somehow because it's become very sensitive, and very poli cal.

Venete Klein - I mean he one day said to me that I will go straight to hell one day because… because I'm very fast o the draw. When you mess with your people… that's the only thing that will keep us from sinking… [Overtalk]

Dr Ben Ngubane - Can you raise the other legal issue? About the…what is this thing called…Impulse?

Suzanne Daniels - Oh… The Minister gave us a list of transac ons. She said she had gone on an imbizo and that's why… [Unintelligible] So the rst was about, she asked Chairman to look at the other issue. She's given us a few names of companies. The one company had a contract faced with it similar to those kinds of allega ons on a sole-source basis. And then it's been increased three times from 148 million to 222 million. There's another contract that was placed at one of the OEM's without going through procurement processes on a single source basis and it's almost up to a billion rand. So she wants us to verify whether these transac ons are actually true. And there was another… I think there was another transac on

Dr Pat Naidoo - Are these new transac ons?

Dr Ben Ngubane - Ja… these are in our time… This is what really worried me. This has happened in our time… it's not history.

Venete Klein - And you three are BTC.

Dr Ben Ngubane - Ja. It's not history. March 2016. Impulse, ini ally 49million was granted under emergency. Then it was modi ed to 93 by the end of January 2017. In other words there's been a very repeat…

Suzanne Daniels - Yes.

Dr Pat Naidoo - What is that?

Dr Ben Ngubane - Star ng with emergency.

Suzanne Daniels - Well we…

Dr Pat Naidoo - Yeah… but what is that Impulse story.

Suzanne Daniels - No, but we don't know, that's why we still have to do the investigation. But what we're saying is this came via Mr Mot…

Dr Ben Ngubane - So we have no choice but to do an inves ga on.

Dr Pat Naidoo - All right. What's your back-up plan?... [Overtalk + unintelligible]

Venete Klein – Let me put it to you this way, I think given the gravity of not just the suspensions of people, but if Matshela stays in the seat, people are not going to co-operate to the level that they ought to, to continue the investigation. That's the one. Number two – You said it – we have suspended people for a lot

less – why are we not suspending now? Why? What…how do we defend not suspending him okay? And number three – the back-up plan is very simple for me – and now this is where you guys must help me. I actually asked the 2 or 3 people that spoke to me: "What do say we should contemplate?" Very simple. All three people said to me: "Please let Anoj act." And I said: "Why?" They said: "He knows the business but he also knows how to treat people." I give you what I heard. I have no vested interests. I don't want to be there. I'm giving you what I heard. I don't even know if Anoj wants to act Chair. You, I mean…but I think as a board you've got to be sensible guys. Because this is going to be big. This thing is going to break you guys… [Overtalk]

[02h51:26]

Dr Ben Ngubane - I am sure it's in the media already.

Venete Klein - But we've got to be careful that that does not get to the media before we act… [Overtalk]

Dr Pat Naidoo - This is going to be big me.

Zethembe Khoza - Let's agree we speak to him, we'll give him a meline to respond Chairperson on the allega ons – all of the allega ons that are si ng here. And when the allega ons come back… [Unintelligible] the response comes back… the Chairperson will convene the Board – we look at it and make a decision.

Venete Klein - We need to be…we need to be available for a urgent board meeting because this… we don't want to see this last beyond Sunday because this is the kind of stuff that's going to feed and get bigger. Chair I just have one request and I'm going to say this probably because I want…feel I need to give you and Zethembe Khoza a li le bit of ground cover – It's all about perception outside. If you two go and speak to him alone, they are going to say: "Can you see now how they are keeping these people out." I want to go with you not because I need to be there but… [Overtalk unintelligible]… People & Governance. I want to sit there with both of you so that if any ques ons are ever asked, we were in this together. I don't want just the two of you to do it – unless you feel very strongly about it.

Dr Ben Ngubane - So no, no, no… I wanted actually to say why can't all of us sit around with him this a ernoon [Overtalk unintelligible]… no let me finish here. We'll call him here and then we read this thing… [Overtalk unintelligible]

Venete Klein - We have to do interviews for the Chief Procurement Officer. But now why can't we do that Chair and come back here because I don't even know where he is. Is he around?

Suzanne Daniels - I'm not sure

Dr Ben Ngubane - Interviews for…?

Venete Klein: Chief Procurement O cer.

[02h52:54]

Dr Ben Ngubane - What's happening there?

Zethembe Khoza - Oh we're doing it outside.

Venete Klein - We're doing it outside. I've been invited to sit on a panel that does the Chief Procurement Officer but I mean…

Dr Ben Ngubane - Oh…didn't we have a chief procurement o cer?

Dr Pat Naidoo - Ja… what is the change?

Zethembe Khoza - We moving to technology… we are going to appoint a new…

Dr Ben Ngubane - Is that so?

Zethembe Khoza - Ja.

Dr Ben Ngubane - There's no conflict in that?

Venete Klein - Our colleague over here has some news on it. But apart…the information that we got…that I got was that the person who was doing procurement was not really fast on the bu on. They were quite slow… [Overtalk]

Zethembe Khoza - Procurement is a profession [Overtalk]

Dr Ben Ngubane - Okay.

[Overtalk unintelligible]

Venete Klein - So that's the reason that they came over to BT… to People and Governance and got mandate to bring in a new CPO.

Dr Ben Ngubane: No…what I'm just trying to… [Overtalk] what I want to clarify… [Overtalk]

Dr Pat Naidoo - [Overtalk]… I was also thinking that Chair

Dr Ben Ngubane - The CPO is not… [Unintelligible]… to the interim CEO… [Laughter]… Because if that is the case… [Laughter]… we just need to be sure.

Zethembe Khoza - It was done quite earlier.

Dr Ben Ngubane - Okay.

Venete Klein - Ja That was… we signed that of November I think.

[Overtalk]

Dr Pat Naidoo - Now from a public point of view I feel strictly we should consider my earlier statement. Let's see how best we can slip over this quietly by using the announcement of advertising the chief executive's post and given that the interim chief execu ve is going to apply for it, we've asked him to step aside. And in the mean me, while he stepped aside he can put his applica on in – so we keep it neat and clean… [Overtalk unintelligible] ...three months bye bye...[overtalking unintelligible]... These people did not … [Unintelligible] in the IFP. They could never be part of the IFP [Laughter]

[02h55:06]

Venete Klein - Dr Pat… Dr Pat I hear you but… [Overtalk]

Dr Ben Ngubane - But in the IFP those decisions were taken by one man… [Laughter]

Venete Klein - Dr Pat right now the thing that will give this board… [Overtalk]

Pat Naidoo - No I agree with what you're saying.

Venete Klein - No, no, no… but what I'm saying is – the thing that will make this board shine is by being as decisive with this… [Unintelligible]… as what we were two years ago.

Dr Pat Naidoo - I agree with that… I fully agree with that… 100 percent.

Venete Klein – So to side step… [Unintelligible + overtalk]

Dr Pat Naidoo - We re-package it that's all I'm saying. After that we re-package everything.

Venete Klein - If we re-package everything it's still cannon fodder. We need to now start.

Dr Pat Naidoo - Okay let's talk at six o' clock.

Venete Klein - Ja six o' clock [Overtalk + unintelligible]

Dr Ben Ngubane - Wait, wait, wait… can't we make it 5? My wife has… you know we have a death in KZN.

Dr Pat Naidoo - Oh sorry.

Dr Ben Ngubane - Ja, so, you know… if I can do it say 5.

Venete Klein - Okay the problem is we've got interviews Dr Ben that only ends at 5… [Overtalk] Okay – the other way we can do it. The other way we can do this is we get ourselves to the interviews quickly – then we have – but you see I wouldn't want this conversation to happen in somebody else's office…

Dr Ben Ngubane - No, no it must happen here you see… but coming back from there at 5 – because our interviews they were supposed to start at 2.

Dr Ben Ngubane - Okay… then 5 is ne – let's make it 5.

Venete Klein - No. No – we are not going to make it back for 5.

Dr Ben Ngubane - How far are you from here?

Venete Klein - It's about... they said… [Overtalk] it's about 30 min.

Dr Ben Ngubane - Okay… [Unintelligible]… 6… let's… let's try and say half-past ve.

Venete Klein - Okay Dr Ben let us push. So let us go now.

Chwayita Mabude - Can I apologise?

Venete Klein – No, this is one me you are not going to get out of it! Dr Ben I want to just… [Overtalk]

Dr Ben Ngubane - When does your interview start?

Venete Klein - It's supposed to start at 2'o clock. We must s ll get there. Dr Ben I want to just lay a complaint. Every time there's a problem, this one wants to run away. Last time in front of the camera, now again she wants to run away.

Dr Ben Ngubane - She refuses to… [Overtalk + unintelligible]...because things were hot.

[Laughter]

Dr Ben Ngubane - And some people noticed that…they asked me why was the Board Member not with you guys? [Laughter]

Venete Klein - This time… [Overtalk + unintelligible]

Uniden ed Male A endee - The little one is at home when I'm fighting… [Laughter + overtalk + unintelligible]

Venete Klein - Dr Ben I'm sorry can…we can run to get to the interviews.

Dr Ben Ngubane - Can you inform Matshela that the Board would like a mee ng with him at half-past ve.

Uniden ed Male A endee - Half-past ve?

Dr Ben Ngubane - Let's say six. Let's make it six. I'm going to make phone calls… [Overtalk + unintelligible]

[02h57:32 - END OF RECORDING]

[02h57:33]

Advocate Vanara - Thank you ma'am. Does that ring a bell?

Ms Venete Klein - Yes, yes Advocate it de nitely does.

Advocate Vanara - This mee ng must have taken place around March 2017, do you have any speci c date in mind?

Ms Venete Klein - Not really no. I know that the 2nd of March is when the Impulse things came up. So I suppose it would have been around about that me.

Advocate Vanara - Let's spend me not on the recruitment process of the external GC. I want us the focus on the discussions around the suspension of Mr Koko. It is very apparent at least from myself that you were very vocal at this mee ng in light of the informa on at the disposal of the members of the special board mee ng and you wanted ac on done and that ac on couldn't wait for tomorrow. Is that a fair observa on?

Ms Venete Klein - I think the… tape actually spells, it spells that out yes.

Advocate Vanara – That...at this mee ng yourself, Dr Ngubane, Ms Mabude, including Mr Khoza… to a certain extent even Dr Pat Naidoo, there was unanimity on the seriousness of the allega ons that the individual concerned had been spoken to even before he was recommended as the ac ng chair... ac ng group chief execu ve way in December, and that his behaviours con nued to be erra c. And it becomes very clear at this mee ng that a decision has been taken by the special board to suspend him. Is that your understanding?

Ms Venete Klein - I was certainly pushing for that as you could hear because of how he was treating and handling the people. If I could just also say Advocate Vanara, it wasn't the rst me. When he became the ac ng CEO I actually was the one who said to him that I will be watching closely how you deal with people because he had a bit of a reputa on of how he mishandled...manhandled people.

Advocate Vanara - If the, if those reports that served before the special board are anything to go by, the o cials at Eskom including senior execu ve must have been faced with somebody close to a Hitler. What is your view?

[03h01:01]

Ms Venete Klein - I'm not sure that I would call it a Hitler but I do know that Mr Koko had introduced di erent colour cards, people would be given a red card or green card and it was all kinds of cards for punishment or penal es, which I had a par cular problem with which I did address.

Advocate Vanara - Now the red card yellow cards aside, I'm talking about the allega ons before the commi ee. Abram Masango is to be sent to Harvard University in April but hence forth shouldn't be given work. There is execu ves that are suspended that are on paid leave that the board acknowledges, does not even know about this, and when in terms of the MoIs the board should have known about these things. These are the discussions that I've listened to. That notwithstanding it becomes very apparent, to me at least, that at that me the ve of you have decided to suspend Mr Koko but that Mr Khoza had introduced an element of a procedural aspect, in other words you had to a ord the man an opportunity before you could take the decision. And it is very clear that the decision has already been made and you leading the charge. You were not pussyfoo ng around this thing. The man had already been given an opportunity, he has squandered the opportunity, the gun has been loaded, there's a mee ng at 6 o'clock where the board is going to pull the trigger that is my observa on, is that consistent with yours?

[03h03:06]

Ms Venete Klein - Actually no it's not. I was really pushing very hard as you could hear there and I mean it's no secret that I have no, I have not been a fan of Mr Koko's for exactly the reason that he treated people as badly as he did. But at that mee ng it sounded like there were, it, it, everybody wasn't in unison with me. It was myself and Dr Pat pushing quite hard for it, but not everybody felt that it was going to be an automa c suspension. So the discussion and the resump on of that mee ng was to be able to se le it that night. To be able to talk to him and as you can hear the issue of the… the process, you know, where you give a guy an opportunity to tell you why he should or should not be suspended, that is s ll being discussed as we leave. So it wasn't as if everybody had agreed at that stage, not according to me.

Advocate Vanara - The, Ms Mabude… had made it clear in that mee ng that these are serious allega ons, we had given this man an opportunity, he has messed up and Dr Ngubane is clear that something must give in. Not tomorrow, he's on record, not tomorrow that very same day. We're going to the mee ng at 6 o'clock. What happens at that mee ng?

Ms Venete Klein - My remembrance of it we discussed the issues and I had almost felt like of the board members had gone cold from the me that we had le because, I mean, I was determined, this is it, you know, we're just simply going to go like you said load the gun and we going to pull the trigger. But by the me I got back there it felt to me like I was now a lone voice in the wilderness and besides I don't think everybody was part of that mee ng you'll remember it was going to be myself, Dr Ben, Dr Pat and sorry not Dr Pat, myself, Dr Ben, Zethembe Khoza was going to meet with him. I don't think it was the full board that evening.

Advocate Vanara - What I'll- [Interrupted]

Ms Venete Klein - Open to correc on though, I mean, if you say it's a full board I just, I don't remember.

Advocate Vanara - Now by full board I mean those ve execu ves that are discussing this issue excluding the, now excluding the interna onal or the director that is in, outside the country. The ve of you were to be at the 6 o'clock mee ng, you insis ng that Ms Mabude should be there because she's got a tendency of talking inside the board, when you must execute she disappears, that those are your observa on. Is she at the 6 o'clock mee ng?

[03h06:27]

Ms Venete Klein - I must admit I'm struggling to remember. I, I am of the view she wasn't. I don't think she, she came… I'm not sure. I'll, we'll have to check that… Advocate.

Advocate Vanara - The only issue I observe or I listened to was Mr Khoza saying we need to a ord him an opportunity before taking the decision. My understanding of Mr Khoza, he was not opposed to the suspension… neither was Dr Ngubane opposed to the suspension, Ms Mabude was fully suppor ve of the suspension. The only person who was opposed to the suspension is Dr Pat Naidoo; Dr Pat Naidoo suggests that instead of a suspension you guys need to sugar-coated this whole incident. You must not suspend Mr Koko but rather tell him and the na on that the only reason that you removing him as the ac ng group chief execu ve is because the posi on that he's ac ng in has been or will soon be adver sed. And that because he could poten ally apply that is the reason why you are removing him as the ac ng chief execu ve. That is what I hear from that recording. Did you hear anything di erent?

[03h08:27]

Ms Venete Klein – Sorry, is it Dr Pat who said that?

Advocate Vanara - Yes.

Ms Venete Klein - No, I think that is what he said, I mean, if listening to it, it was a bit of a bad recording but if I cast my mind back I think that that could be what he said yes.

Advocate Vanara - Now it is clear that the ve of you at that mee ng are persuaded. The man has to be suspended. The only slight di erence is, sorry the four of you not the ve well the h one is not pro suspension but is pro removal…… Now… that's why I'm saying the gun has been loaded. It can't wait for the next day. You were busy with other responsibili es; you had to rush back to Megawa Park for that mee ng… So are we clear now as to what is the earlier mee ng and what the a tude is on the earlier meeting?

Ms Venete Klein - I'm certainly clear on what my a tude is to that mee ng, which remained into the second part of the mee ng as well.

Advocate Vanara - Ja, I'll find a bit problema c that I've played you the en re recording and you seem to be only interested in what you were saying and not what the others were saying when you spent most of the me in the mee ng trying to persuade others to pull the trigger that evening.

Ms Venete Klein - Advocate I've listened to the recording like everybody else. On going back there, and I think I address it in paragraph 120, when we went back there the process issue that you alluded to that Mr Khoza had introduced which is 'you've got to give the guy an opportunity to tell you why he shouldn't be suspended,' in terms of the rules and Eskom policies and that is exactly what happens there. We go and you will remember that I wasn't even supposed to be part of the group that was going to go and talk to him that

night. You'll remember I kind of had to force my way in to say as chairperson of People and Governance I wanted to make sure that we weren't going to go light touch here, because he's got the reputa on I want to be there to make sure that that happens.

[03h11:24]

So we go into that mee ng and, and, like I said I'm, I can't remember if Dr Pat was there. I do remember that I was there; Zethembe Khoza was there as well as Dr Ben Ngubane. We went and we spoke to Matshela Koko, told him about the seriousness of this ma er. I in fact took him back to the original discussion we had when he was appointed when I had said to him, you know, if you overstep the line with the people quite frankly for me that's it because you cannot be in a posi on of power and mess with your people. You may be strong technically but if you're not strong with people, unfortunately, it's not going to hold the course. At that mee ng this was put to him and he was given the charges, not the charges, he was given the allega ons as it was given to us in terms of the le er that we were given, the input from the Minister etc. And at that mee ng he was going to come back in the wri ng to the chair and like I said in my statement he'd, I never saw a copy of that. He may have gone back to the chairmen, I'm sure you'll get that from the chairman, but I certainly got no further feedback from them.

[03h12:35]

Advocate Vanara - Now ma'am not, that fast, not that fast. I'm s ll at the 12 o'clock mee ng that ends just before 2 o'clock. I want us to be clear around what you decide in that mee ng because that mee ng is cri cal for what is going to happen at 6 o'clock. I've told you my reading or my understanding of what transpired there. Yourself, Dr Ngubane, Mr Khoza and Ms Mabude have made up your minds the man has to be suspended…… It's clear from the recording we've just played, the only person in that mee ng who is not pro suspension is Dr Pat Naidoo who says don't suspend remove him as ac ng. The reason you o er to him and the na on is because the posi on is to be adver sed and he may apply. Do you have a di erent understanding to this one that I'm pu ng to you, of that mee ng?

Ms Venete Klein - I don't have a di erent view. Where I'm coming from is to say that he de nitely according to me must be suspended, it's as simple as that. There are people on that recording who's talking about process. I think you said it was Dr...Mr Khoza who men oned that you got to give him an opportunity to say why he should not be suspended. At the mee ng that evening, that 'why he must not be suspended' is given to him as a reason for, as part of the discussion. Every allega on is put before him and at that mee ng which is what I address in 120; he says he's going to come back to Dr Ngubane in wri ng and that is something you must pick up with Dr Ngubane. If you ask me today if he should have been suspended, the answer is yes. If you asked me then I said it on that tape many mes, the answer was yes.

[03h15:18]

Advocate Vanara - Not that you cannot dispute my observa ons of the earlier mee ng; we get to the 6 o'clock mee ng, the ques on is why is Mr Koko not suspended?

Ms Venete Klein - Like I've said before Advocate Vanara, I was pushing for it and I believe that I persuaded most of my colleagues based on what was said that that needs to get done, but there was a process issue in terms of the Eskom policy, which is if you gonna suspend, we've suspended people before and you've heard me talk about it before, we would always put it to you to give us the reason as to why you ought not to be

suspended. In this par cular case he was coming back to Dr Ngubane in wri ng, which is why that suspension did not happen on that night.

Advocate Vanara - I challenge that asser on on this basis; you knew at the 12 o'clock mee ng that you were going to a ord him an opportunity at 6 o'clock. And at 6 o'clock you were expec ng him to respond to the allega ons and at 6 o'clock you were going to take a decision. Something not inconsistent with what you, Dr Ngubane and company had done when you suspended Matshela Koko, Dan Marokane and *Tshediso Matona,* do you remember that? You had called them into a mee ng, you read the le ers or you a orded them an opportunity to state why they would not be suspended, do you remember that? Please record your response Ma'am.

Ms Venete Klein - Yes, I do Sir.

Advocate Vanara - So what you had envisaged for Mr Koko in March 2017 was exactly the similar process. It's very clear from the earlier meeting, the question is what is it that Mr Koko told you when you afforded him the opportunity to persuade you guys not to suspend him.

Ms Venete Klein - Not having the bene t of the recording of that but, if my memory serves me well, at that mee ng with Mr Koko was rather quiet and pensive, didn't respond much other than to say he would respond to Dr Ben in wri ng. That part I remember well.

Advocate Vanara - But you were not dependent on Mr Koko you had a orded him the opportunity, if he didn't want to take the opportunity there and then what stopped you from pulling the trigger as you did with the likes of Matona, Marokane and Molefe.

[03h19:12]

Ms Venete Klein - What stopped me was that the chairman and Dr, sorry, the chairman and Mr Khoza seemed comfortable that he was going to respond in wri ng. So I wasn't going to push that. I mean I was one of three representa ves; I wasn't the only person there.

Advocate Vanara - You men oned that from the 12 o'clock mee ng down to the 6 o'clock mee ng there seemed to have been a change in a tude in your colleagues, did I get that correct?

Ms Venete Klein - Yes, it certainly seemed like it because like you said we were in unison about the three...you know, the way we would handle this and we get there and it seems a li le di erent.

Advocate Vanara - There must have been then a novus actus interveniens, the must have been this unnatural powerful act that intervenes. You have not met Koko to provide your reasons, but already the a tude seems to be changing, which you observe. So there must have been something happening to change this at tude; you agree with me?

Ms Venete Klein - No, I didn't mean that it changed in-between. What I meant was at the mee ng itself we weren't as for vociferous as what we were at the 12 o'clock mee ng, that's what I meant.

Advocate Vanara - But that change of a tude what would have informed it, because just four hours earlier you were singing from the same hymn book. What changes, what is it that happened that makes some of your colleagues seem to be reading from a di erent scripture book.

Ms Venete Klein - Advocate Vanara I cannot answer that for you other than to say I was of the same view, I am praying that you gonna be pu ng it to the same people and ask them what changed their mind cause my mind was not changed.

Advocate Vanara - You see I'm asking this because there is tes mony before the commi ee; it comes in the form of Mr Qoma. Remember him?

Ms Venete Klein - I do and I listened to the tes mony, I heard what he had to say.

[03h21:45]

Advocate Vanara - Mr Qoma has tes ed before the commi ee that in his interac ons with Mr Khoza in Mr Khoza's house in KZN when he presented an opinion on how to redeem the image of Eskom. Mr Khoza accepted the opinion but indicated to him that this opinion, I mean what he was recommending, was not going to be implemented because the Minister of Public Enterprises, Ms Brown, is captured, that he himself Mr Khoza is captured. To make the point to him, Mr Qoma, Mr Khoza cites exactly this mee ng that I'm referring to at 6 o'clock as a typical example of why he says the Minister and he himself Mr Khoza are captured. Because according to Mr Qoma, Mr Khoza when he realised that you guys were ready to pull the trigger he phoned one of the 'G' brothers and that one of the 'G' brothers then phoned the Minister to stop the suspension. Now, as you sit there ma'am, having observed this change in behaviour from the 12 o'clock mee ng to the 6 o'clock mee ng, does this explana on...or this tes mony of Mr Qoma make sense or is it a plausible explana on for why you did not pull the trigger at the 6 o'clock mee ng.

[03h24:24]

Ms Venete Klein - It's a hard one and I'll tell you why. If I had been there when the phone call was made I could help this commi ee to say I know for a fact that that had happened. All I can say to you something did happen; I don't know what it was. But you heard, you played through the whole thing you heard how was vociferously I pushed for it, but something happened I can't explain it. So, I really pray that you can gonna be able to put...I've heard Mr Qoma, I mean I've heard that and I hope that you're going to be able to ask Mr Khoza the ques on directly. Something happened; I just don't know what it is. But we were, I mean, I was intent, in fact I was determined that that's what we needed to do.

Advocate Vanara - It's very clear from the meeting that you knew about the erratic behaviour of this gentleman. Considering your duciary responsibili es to the company why did you recommend that he be appointed ac ng group chief execu ve?

Ms Venete Klein - Interes ng ques on, I must tell you he was not my number one recommenda on to start with. The point is, the person that we wanted to recommend for the posi on just did not want to take up the role because I think Eskom by this me was, I mean, you...we had di erent issues every week, it was challenges of leadership, it was...there were always issues in Eskom we were dealing with. But for that exact same reason Matshela Koko was never my rst choice.

Advocate Vanara - You're not answering my question ma'am. Matshela Koko was appointed by the Minister to act a er Mr Molefe had le or stepped down, it was on the recommenda on of the board for which you are part and parcel of, the ques on is; knowing what you knew at the me why did he make the list of the recommended candidates to the Minister and did you disclose what you knew at the me about the individual to the Minister?

Ms Venete Klein - He made the list Advocate Vanara because there were very few execu ves le at Eskom who could run the show, because most of the experienced execu ves that either le or were not available because we spoke to some of them they just weren't interested because of the challenges at the me. The ques on about did we disclose it to the Minister, the answer is 'no'. But the way we dealt with it, I certainly dealt with it, is in our very rst interac on a er he was accepted or the proposal for him to act was accepted, I actually said to him that, 'the way you've treated people before does not bode well for this posi on, you are strong technically but when it comes to the people you are not that strong, you are on no ce that we will be watching.' That was unfortunately the best that we could have done at that time not having had 20 people to choose from. Sorry, if I could just add one more thing. Remember previously as well a board member went an acted and, I mean, even in this par cular case a er Mr Molefe le , again there was a request that may be a board member, in fact you would have heard it as well goes and acts. But this me we were running out of board members as well, we were like 5 or 6 board members le , we were really running out of op ons.

[03h28:31]

Advocate Vanara - But that you were short of skill, competent individual sits right at your door because you chased away Matshela Koko...sorry, Tshediso Matona for no reason, you chased away *Tsholofelo Molefe* for no reason, you chased away Dan Marokane for no reason; so what do you blame for that?

[03h28:58]

Ms Venete Klein - I'm actually glad you came back to that ques on because the one thing I omi ed to tell you earlier Sir, is we didn't chase people away for no reason they were suspended like I explained to you, because of input that we had received by our previous Chair. Before we could se le any ma er, before the Dentons report was done, every single one of those people barring Tshediso came back and said, 'we don't want to come back to Eskom.' So, people where not chased away, people stepped forward and said, 'we don't want to be here anymore.'

Advocate Vanara - What was the trigger for that? I mean these people never said we don't want to wait to work for Eskom before you guys unnecessarily put them on suspension. It was a er you put them on suspension unfairly so and without any basis. Molefe's testimony is she decided that there has been a breach of trust rela ons because of the suspensions. So you can't want to run away from the suspensions. The suspensions were the cause for Molefe to part ways with Eskom. You are saying now Tshediso Matona wanted to come back, why didn't...why wasn't he allowed to come back?

Ms Venete Klein - And you asked me that in our original discussions, which is why I've included it in my, in my statement. That my opinion, may not be every bodies opinion, I didn't believe that Tshediso had his hands around the business. Every mee ng that we had a ended it was about the problems, he was not o ering any solu ons; that was my personal view.

Advocate Vanara - So you've created a problem for yourself. You chased away competent people, you si ng with a problem, you looking around you can't nd anybody to add, and whose problem is that? Is it a problem of South Africans who had put you people in charge of Eskom, or is it your problem as the board?

Ms Venete Klein - I concede Sir that every decision that we have made good or bad was made at the me with informa on we had at hand. There were many good decisions and there were a few very bad ones amongst them.

Advocate Vanara - That you did not tell the Minister this cri cal informa on, don't you think the board misled the Minister?

[03h31:39]

Ms Venete Klein - I'm not sure that I can agree that the board mislead the Minister. We went forward with the proposal of a name with a person that we thought at that stage could do the job, given that as you correctly said were out of choices. So I don't know that we mislead the Minister. I think what the board did do from a responsibility perspec ve is a er it had...a er the Minister had agreed that he could add, that we set with him and we took him through the mo ons of what we expected from him, par cularly addressing the issues of shortcomings.

[03h32:13]

Advocate Vanara - The Minister was the ul mate decision maker on whether or not Mr Koko was to act group chief execu ve, isn't that correct?

Ms Venete Klein - That is correct sir.

Advocate Vanara - Now, you spoke eloquently about corporate governance and you were complaining about informa on bombarding and less me you were given and how the execu ves misled you by providing inaccurate informa on as a decision maker. That's your tes mony before isn't it?

Ms Venete Klein - It's correct.

Advocate Vanara - Now applying the same principles to the Minister who had to decide who to appoint as group chief execu ve. Don't you think it was cri cal of the board to disclose all the material facts, it knew about the candidates that it was forwarding to the Minister for her considera on?

Ms Venete Klein - That's a fair a comment.

Advocate Vanara - Now why didn't you do it? Why did you place the Minister in a posi on where you expected her to make a decision but you did not play open cards with her?

Ms Venete Klein - Advocate Vanara, I'm not sure that I agree with you 'we didn't play open cards with her'. We went forward with the recommenda on of the person that we thought would be able to do the job and when the decision was made that he was sanc oned by the Minister we sat down and gave him exactly what we expected. We saw that as a mi ga ng strategy. I don't know that is misleading the Minister.

[03h34:06]

Advocate Vanara - You see this is, this is, exactly my problem. You know of a reason that poten ally disquali es this individual to act as group chief execu ve. You're not the decision makers. You're placing somebody else who is the decision maker in a posi on that she does not have a full picture of who she must appoint because you are not telling the Minister. But this fellow we are recommending you...to you has got these defects. That is the point I want to understand, why you nd it di cult to tell the Minister that part and quickly a er the Minister has made the decision, you quickly go the other way around and you say you see

now you've been appointed, you not a boy, don't repeat what we know about you. Why don't you disclose to the Minister the character of this individual?

Ms Venete Klein - Well I must tell you Advocate Vanara, I hear you but I don't think we misled the Minister and I believe that we had adequately mi gated what we believed was a problem. Given the limited choices that we had as a collec ve.

Advocate Vanara - Si ng there ma'am, having considered the responsibility that the shareholder, through her appointment of you, the hope… and the aspira ons on the millions of South Africa whom you represented in that board. When you consider some of the dis- of the issues we've just gone through now. Are you proud to look them into their faces and say you did a good job on their behalf?

Ms Venete Klein - We could certainly have done better.

Advocate Vanara - No further ques ons ma'am.

Ms L Mnganga-Gcabashe - Thank you very much Honourable members. Thank you very much Advocate and I'm taking hands… Honourable Luyenge, Honourable Mazzone, Honourable Rawula, Honourable… Swart, Honourable Gungubele… Honourable Marais… Honourable Tseli… My list is closed… thank you. In that order members.

[03h37:37]

Honourable Luyenge - … Thanks- [Interrupted]

Ms L Mnganga-Gcabashe - Excuse me. Ma'am… do you need a break? A few seconds? No, ok. Ok proceed.

Honourable Luyenge - Thanks, thanks very much Chairperson… Ms Klein thank you very much for… for your presentation… having noted that you are… well equipped and professional in as far as the corporate world, I have a few ques ons to ask. One, what do you think the Minister iden ed in you to qualify as one of the, of the board members? And in her interac on with you… she put some issues as challenges at Eskom… and in your response or commitment… you made her to believe that you would add value in that organisa on. Can you really say… in other board members a similar kind of a no on that seeks to iden fy quali es and expertise that is needed at Eskom governance actually took place like it happened to you? Ok, you can respond.

Ms Venete Klein - Thanks Honourable Luyenge. Can I just check that last one about other board members and I'm not sure that I got that one.

Honourable Luyenge - Do you think other board members were actually… checked appropriately if they have expertise that will add value at Eskom?

Ms Venete Klein - Thanks Honourable Luyenge. I think… I think when the Minister looked at the CV she must have seen that I had been serving on quite a few boards and I assume that she meant that that would add value to the Eskom team from a governance perspec ve given that I had, I had, governance exposure before. So I would assume that that's why the Minister thought I would have quali ed to serve on the Eskom board. The issues and the challenges that she raised which I think were...like I said it four mes, it was load shedding, it was the governance, sorry it was load shedding, it was the issue of the nancial instability at the me, it was the documenta on or the inaccuracy of informa on amongst others.

[03h40:58]

I think my, normally my a en on to detail would have helped with that because, you know, I've had a long history of opera onal exposure where running a bank, where obviously when you do things you do it correctly and you try your best to, to, get it right rst me. In terms of my peers on the board I've been blessed enough to have been involved with the actual not the assessment but it's like a peer review of, of, the members. And those members who did not, who did not maybe have the experience on boards, one thing I will give them and Eskom is that they've go en members to go and chair, sorry, join the Ins tute of Directors. I know about four members who had to go and join the Ins tute of Directors, try and understand corporate governance a li le bit be er and I think in doing that become a li le bit more e ec ve. I just think all told the team tried very hard but the challenges were overwhelming. Honourable Luyenge I'm not sure if I answered all of your ques ons.

Honourable Luyenge - Can you say… in the board membership during your era at Eskom they have, they had enough and su cient exper se to… to execute their duty in accordance with the policies of Eskom and the Public Finance Management Act. Was there professionalism in terms of the execu on of their du es? I've listened to you and other witnesses talking about impromptu, impromptu mee ngs that are being called to take cri cal decisions and at no stage and point where you actually raised a concern as they relate to the policies of Eskom… Mee ngs were called a er hours; you regarded those as late mee ngs, as if it's just a normal kind of a mee ng that is called at that par cular point in me.

[03h43:19]

Ms Venete Klein - Honourable Luyenge look in terms of the, in terms of the board charter there actually is room made for late, not for late but for urgent mee ngs to happen. I mean there is actually, it's part of the charter, if it is a cri cal event, you know, that you can have it. But you would have heard me say my very rst interac on, I think it was on the 9th of May, sorry 9th of March when I start, 8th of March when I started. I had a par cular problem with being sent a document with 9 resolu ons that we must make a decision on tomorrow because for me that's not corporate governance at its best. So typically you don't mind being called to a mee ng if it's a crisis but you wouldn't want that to be the order of the day because that's not how you manage corporate governance. In terms of the board membership and did they have enough exper se; I suppose there were areas where there could have been, it could have been strengthened. In fact when we started I think we had, we had one CA and there was a request to the Minister to please bring us addi onal in- some addi onal skills, another CA. Because, you know, there was a lot of nancial detail and data to work through, so we de nitely did call. Also ini ally when we started we found that we or we felt we didn't have enough technical exper se, which is why the… the engineer from abroad was also appointed. So I must say where we felt that we did not have adequate cover we did raise it and I must say we did get support from the Minister in that regard.

Honourable Luyenge - What was your role as a board when the execu ves were actually in a ng gures and amounts of moneys being paid to especially the Gupta aligned companies? Maybe have you heard anything that relates to the Gupta family in terms of the preferences, the preferen al treatment that that they might be having because other witnesses have indicated that there was that kind of a no on where the Gupta aligned companies were actually given priority and prepayments were made for, for, for their companies and others were actually… where there were contracts, contracts, had to be stopped before me. And such prepayments were done even without existence of any, of any contract. So I just want to ask that as a professional, as a governance leader, did you come across that? And if anyone in other pla orm in an

inves gative kind of a pla orm with evidence to say this is how this family has bene ted in front of you would you say you know that you, you, you were never suspicious of, of, any of that, of that nature?

[03h46:48]

Ms Venete Klein - Honourable Luyenge you'll remember the, the TNA ques on, I mean, I think I made it very clear how I felt about that. In serving on the commi ees that I did I never really got to see any of the contracts or payments, I mean, some of the things that Advocate Vanara did raise with me as for example the, the, the issue of the McKinsey contract. And the McKinsey contract came to the board in September, 10th of September 2015. But what that was, was, just to support the, the, execu ve in terms of the corporate plan. It was going to be for a 8 month period and it was going to be at 103 million. There was no men on of the Guptas or any of the Gupta companies in that. What's come out later was the whole issue around Trillian, which obviously the full board was not aware of. So I can't even give you a comp...input on that. In terms of prepayments; we, I was not involved with that that must have, that went through board tender commit- BTC. The one that I did see was the 1, 6 billion Op mum Coal, the coal… the coal contract. There was a need for us to do it. There was a round robin for us to sign, to sign o for coal because there was this coal required. This came to us on the 8th of December…

[03h48:14 - END OF AUDIO]

[03h48:14 - END OF DISK 01]

[00h00:00 - START OF DISK 02]

Ms Venete Klein - ... signed o actually turned out to be something else, which we picked up in the papers or in the media a erwards.

Honourable Luyenge - The last one...[Inaudible]... that relates to Mr Tsotsi, the then chairperson of the board mo va ng for the appointment of someone who was suspended. What did you do, what was your contribu on to that e ect? Or what was it showing generally if HR person would do that, what would that say to the public about that par cular board? And the issue that relates to Brian Molefe, his re rement or leaving employment in accordance or with condi ons that were said insinua ng in some instances that his term will be 5 years and there's also a xed kind of a term that he actually signed, and then when he le there was that confusion and then what is it that you can say about such kind of an ins tu on with such glaring kind of misdemeanours and you were part... you were part of that.

Ms Venete Klein - Honourable, about Sekhasimbe I think what really didn't sit well with me is that, you know, as a chairperson recommending that we bring somebody back who's on suspension to come and run the company, that didn't sit well with me. And that was part of the reason that Zola Tsotsi was eventually charged by the board. And that's why I said to you even in my statement I said that the minute... the board minute actually had the reverse; the board minute said that Mr Tsotsi corrected the board cause the board wanted to bring Mr Sekhasimbe. So for me it was a case of as board how can you, you know, how can you as the Chair ask the board to bring back somebody who is on suspension to come and run the company? That I had a problem with.

[00h02:15]

Ok, I hope that answers your ques on. Regarding Mr Molefe and the ve-year contract. Yeah, I agree with you, I mean, that was never the inten on. The fact that it that it went horribly wrong at the end for me is...I

can't even begin to explain it. I mean it is...I call it maladministra on. Having said that, I have been at pains to indicate to you that as a board we have checked and checked and checked and got opinions from lawyer upon lawyer that we had done things correctly. So I am concerned I'm also concerned, you know, that mistakes like that get made, but I do want to also say this to the committee, 'much as we can be of an opinion and you know at the end of the day the commi ee will decide how it views this, the one thing we must not forget is that this was the very rst me that Eskom had appointed a CEO on a 5 year contract, and to expect that you go from one straight into another with everybody now understanding how that works. Remember as a board member I don't...I'm not opera onal, none of board members are, we rely on the people inside to guide us. But if I look back on this now, I can tell you now that the people who were running it, the people who were pushing CEOs through that revolving door, 7 in the last 6 years, simply took what they knew to be the policy and modi ed it for a 5 year contract. And I think that's where the biggest, I don't know if it's a mistake, but I do believe that there's a margin for a debate on when... I'm not sure in government when the ve year contract kicked in, but have we considered that we've now correctly implemented this and that people aren't just copying and pasting a policy of yesterday and making it a policy today. I hope that answers you Honourable Luyenge.

[00h04:21]

Ms L Mnganga-Gcabashe - You're welcome. Honourable Mazzone?

Honourable Mazzone - Thank you Chairperson. Ms Klein, let me ask you what is your feeling about this tendency that we have in our state-owned en es and you've just referred to the revolving door policy and you've spoken about gross mismanagement, and you yourself have questioned very seriously the corporate governance at Eskom, do you think that we add any value to our state owned en es by simply rota ng people from a board of one state-owned en ty to the board of the next, and then when something, you know, there's some kind of hiccup or these some kind of a scandal they simply get rotated to the next state-owned en ty.

Ms Venete Klein - Honourable Mazzone I think that is exactly the problem. I think we rotate people and we probably, we could go out and get addi onally skilled people, but let me also say this to you, I as a career banker would never have gone to a state-owned en ty I would never, because I mean, somebody actually said to me when I joined are you going to commit career suicide. And I think that's part of the problem. When people do go in with good intent and people who are skilled they get pulled into some of the things that are so entrenched that they damage their careers permanently.

Honourable Mazzone - Ms Klein tell me, as an Eskom board member and an in your posi on and the people that serve with you, what is your monthly remunera on?

Ms Venete Klein - I think we average about between 30 and 40 depending. When it's a full board of about 15, I think our board allows for 15 people, it will be about 30000 but obviously the less people on the board the more work you've gotta take on, it could be about 50...about 50.

Honourable Mazzone - Now, as a board member you yourself, were you ever requested by anyone on your board or personally to meet with anyone in the Gupta family, to meet with anyone from the Zuma family or to meet with Mr Salim Essa?

Ms Venete Klein - I've never been requested to meet with anybody, but let me say this at the breakfast mid 2015, Salim Essa came up to me, introduced himself, gave my gave me a business card and that was the end

of it. I got a business card I gave him a business card, cuz I also run a business and that was the end of it. But, I've never been asked to do business or to meet with... never met the Guptas, never met the Zumas.

[00h06:53]

Honourable Mazzone - Ok, now you served on the on the board when the Denton report was released, could you and bearing in mind we have me limits here, could you brie y explain to this commi ee what happened when the Denton report was tabled to the board commi ee, and how you felt when Dr Ngubane requested that... and I can quote you because I know what it says. He said that the ndings were too damning and that the report had to go back and it had to be polished and then when many organisa ons including myself PIAD the request, your board decided to release it but a highly redacted version, and in actual fact 92.5% of the report was redacted; so could you just explain to me as a board member how you felt about that?

[00h07:40]

Ms Venete Klein - Honourable Mazzone I think it's important, which is why I also brought in the piece about the three months, because there's been a lot of noise say that this board had s ed the level of inves ga on, the level of work that must get done, but you would see from the resolu ons that we got from Zola Tsotsi it was 3 months from the start, so that's the first thing. The first report that we got had quite a lot of peoples' names in it, companies' names in it etc. Never forget the first meeting; I think that the meeting you're referring to when Dr Ben said there's a lot of damning informa on. The ques on that was asked was, has this been corroborated, bearing in mind we had agreed on a 3-month program. And what the Denton's people said to us that these are the ones that have not been corroborated. The view of the board at the me was if you pushed out a report with uncorroborated facts or uncorroborated allega ons with people's names on it, the organisa on and the board could be sued. So it was based on that and based on what was done for the three months that they then removed certain things of what was uncorroborated. But what was corroborated remained in that report. I think it's important to talk about it the releasing of the redacted version. A day before we'd agreed, because there was a lot of pressure, in fact I think you were the one who brought the application to say 'you're sitting on this report why aren't you releasing the report.' There was a mee ng, if fact I happened to be at a par cular mee ng, myself, Dr Ben and Zethembe Khoza were si ng and discussing it to say look we've got to do this, I mean, the public must get this report. At the meeting Matshela Koko was present and then Ms Daniels as our company secretary. We agreed we gonna have a media brie ng the next day, and, but we also agreed that Ms Daniels would that night get an opinion on releasing the report. This wasn't now the one with the uncorroborated ones... names that's been removed, but the corroborated things, we're going to push that out. We agreed that Ms Daniels would get an opinion. I must tell you it was greatly, it was such a surprise for me the next morning si ng there, when I am of the view that the report as we knew it was going to be issued, when Ms Daniels walked up and and you... if if anybody watched it you would know Ms Daniels is the one who presented it. Before that, before Ms Daniels walked to the mike, I was of the impression that it was going to be the normal report. She shared with us a erwards that the lawyers had said that it had to be redacted, and I think that you pick up in the media as well. Cause the media was...they went wild about why did we call a media brie ng and we give a redacted version, which obviously a erwards was released. But I must say that was a par cular point where I was very uncomfortable that what we as a board, it wasn't the full board, had agreed with the understanding that she would check it, then went out as redacted, cause I think it also caused untold damage.

[00h10:44]

Honourable Mazzone - Right, now a lot has been said about the informa on that the board obtained from lawyers and you... and I quote you here, you said the pension fund...sorry I'm just trying to find it here...' Mr Patel had told us from Cli e Dekker A orneys that absolutely everything was above board regarding Mr Molefe's pension payout.' And you've spoken about the consultation with attorneys and advice given by attorneys etc, etc. Now, surely as a board you realised that you're getting incorrect information not once, not twice, but as you've said to us this morning on a con nuous basis. Now my ques on is why do you suspend someone like Mr Matona on the basis of legal advice that you're getting that's flawed, and why don't we start looking at di erent a orneys to use because I see, and please forgive me, but it's quite obvious to all of us here that you are con nuously blaming a orneys and other people on whom you... from whom you counted on to give you a correct the evidence, but you don't seem to be blaming your law rms that you were using that were giving you this incorrect informa on.

Ms Venete Klein - That's a very good ques on, I mean, I must just say that when it came to Mr Matona we didn't have a legal opinion, there wasn't a legal opinion there. This was based on input given to us by our Chairman like I said before, it wasn't really, it wasn't about Mr Matona. But I do agree with you that, you know, where we are using I think par cular law rms over and over I think maybe it is me to maybe broaden the pot. And also I think it also...sorry...Honourable Mazzone, speaks to the fact that within Eskom we've also gone... is also been a revolving door at the head of legal, I mean you know, Ms Daniels just took on the role as head of legal, just before her N*eo* Tsholanku had le . You know so, so we were also bleeding skills generally. So, and I think with that also you had a rela onship between a par cular head of legal and a rm giving you informa on, interpre ng it, and giving it to the board. The board was hugely reliant on opinions. I think if anything if I have any advice to give to any board member is exercise the right that you have where you can also go and get opinions of your own.

[00h13:15]

Honourable Mazzone - Yes, ok. In terms of the way the board operated around the Brian Molefe pension issue, I think you'll agree that the whole country and certainly parliament is deeply disturbed by revela ons that came out that there was a resigna on, and then it wasn't viewed as a resigna on, it was viewed as a secondment, and then there was a reinstatement, and then there was another resigna on, and there was this upping and ahhing. And it's certainly no secret from your statement that we have here that you were, you were incredibly impressed with the Mr Molefe's involvement in fixing...well you basically say here that in your opinion he xed load shedding. Now I would put it to you that I have the opinion that there is a clear a empt by Dr Ngubane and by Mr Molefe to allow the board to believe that things were above board and uncertainty in line with your policies to a degree where the board was misled. Now, you yourself have said that today that you were misled, as a board you certainly weren't given the correct informa on. Why do you think as a board you were not given the correct informa on, and also do you agree with the fact that not only your board but boards before you have entered into what I consider to be a very problema c prac ce of buying years of service for a member, as they did for Mr Molefe, which we heard from the pension fund when they came and appeared before us. And we not talking about chump change here, we're talking about millions and millions of rands and I must say when you answer this please keep in mind that, you know, this isn't money that belongs to individual people, this is money that belongs to South Africans. So we, you know, you as a banker, and I had a look at the board that you sit on, and certainly many of the boards that you sit on here are reputable, and certainly many of them would be horri ed if they knew about this kind of prac ce; why did the board allow this to happen in the rst place?

[00h15:35]

Ms Venete Klein - Honourable Mazzone, I think you are right when you say that, you know, the whole issue around pensions broadly does need to be looked at, because it's not chump change. This... these are big amount of monies. Understand though in the case of Mr Molefe, as I tried to explain earlier, we were put into a posi on, which I thought, which I believed, I s ll believe this board never should have been in. This board requested for a permanent appointment, the way that we got the sequencing of informa on led us to a posi on where we were basically over a barrel. We had go en somebody to sign a contract, which actually was the wrong contract and we shouldn't have done it because we actually had the correct informa on in our possession at the me when that happened.

[00h16:22]

Honourable Mazzone - Ms Klein do you think it's fair to say then that this board was misled using a system of smoke and mirrors. In other words create chaos so that no one knows what's going on.

Ms Venete Klein - It's possible, I mean, I certainly can tell you if I look back at many of the things, the example I gave you of the 1.6 coal... that Op mum Coal thing. I mean, and I'm sure others will tes fy to this; what we were given is not what ul mately happened. So, you know, we were given informa on that wasn't always correct. So you know, so there is de nitely a problem. But your point about having a look at the whole pension scenario I think does need to be looked at, but I think also bearing in mind it's not new. I'm not sure how the other boards did it with their Ministers, but other boards, I mean, you, you heard that... what's it... John Maree, just unilaterally decided that everybody gets 5 years extra. Now if you consider what a CEO earns, you put 5 years on top of that, this is not chump change. So, I do believe it is something that does warrant further inves ga on.

Honourable Mazzone - And then my last question Chair, it's my last question for this round if you will allow me. As I've said, you are quite vocal in your admiration of Mr Molefe, and you speak about it a lot in this and that's why I refer back to it. You then speak about the public protector's report that came out, 'The state of capture,' and you cite that as the reason for Mr Molefe's resignation, and you are quite adamant that it was a resigna on because it would do brand damage. As a board member who clearly was quite in awe of Mr Molefe what was your feeling when you found out that for example, Chair I just don't want to get the numbers wrong, 58 telephone calls had happened between Mr Ajay Gupta and Mr Molefe between August 2015 and March 2016. Because clearly, I mean, the public protector's report I'm sure you as a South African, you know, hold the public protectors o ce in the standard that we will do. So, did this a ect your opinion of Mr Molefe and did it certainly make you ques on some of the decisions that were taken by your board during his me as CEO?

[00h15:35]

Ms Venete Klein - Honourable Mazzone let me answer you this way. As a board member the rst we...I felt we needed to do ,was to give Mr Molefe an opportunity to sit and come and tell us what this is about, and that is exactly what the board did on the 7th of November. We said, 'here is the public protector's report, there's a lot of things in here, you give us your version of what happened.' I think every board needs to do that. And Mr Molefe did come and tell us his side of the story, I believe he's here today and I'm sure he will give you his side of the story. But I maintain what I told you earlier; the public protector's report I believe must be... we need to get an enquiry done and we need to have it done quickly and those who are found to have done things wrong must be held to the highest standard and face the full wrath of the law.

Honourable Mazzone - Thank you Chair.

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[00h19:22]

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

Honourable Rawula - Thank you very much Chair. Welcome Ms Klein. Chair, one comment though that if you look at the pa ern there's a lot of inconsistency from the board star ng with Mr Matshela and then Mr Matona and then Mr Brian Molefe in terms of how they treat their CEOs. It's a serious inconsistency if you were to contrast the three. But my ques on comes to the suspension of Mr Matona and the CFO, Ms Molefe. And you say in your statement you personally supported the removal of Mr Matona because you believe that he did not have a turnaround strategy and my curiosity is that when did you pick that up and what did you do about it; that's number one. Because we heard from the previous witness's here that there was a meeting that was supposed to have been scheduled for the 8th of March, which could not con nue because the board did not agree on the enquiry resolu on that was seeking to make that inves ga on. And they do not agree with the reason that was sponsored by the Chairperson un l the mee ng was then called on the 11th where the Minister was present. And a resolu on came there out of that mee ng where both of them had to be suspended, and my ques on is who suspended them, was it an ini a ve of the board or was it an instruc on of the Minister. We have heard the witness from Mr Qoma here where he made his substan ve argument that in his own view as a reputa on manager the Minister let poor judgement, she had a poor judgement and she appeared as a person that did not know what she was doing. As a result she herself has costed the opera ons of Eskom. Now, I want you to if you can just comment on the points that I've just made.

Ms Venete Klein - Thank you Honourable. I'm not sure if I understood the inconsistencies of the three CEOs; it was Matona, it was Molefe and Koko, you talking about the di erences?

Honourable Rawula - O mike [inaudible]

Ms Venete Klein - Ok Mr Matona was suspended, Mr Molefe we never had that issue with and then Mr Koko wasn't suspended, you talking about that one mee ng where he wasn't suspended, ok. I think I said it earlier Honourable that I'm a bit of a disciplinarian, people who know me knows that, I want to...I want to make sure that people are held accountable. So when it comes to Mr Koko I've been at pains to say this and, and I couldn't respond to the question about 'so what changed.' I think you will ask the people who was involved with that what changed for them, nothing changed for me, I wanted him suspended. Mr Matona, like I've explained is I didn't have a problem with Mr Matona as an individual, but the chairperson really led the charge in saying to us 'there no charges against these people, however, if we want to get this thing done in 3 months this board has got to get their hands dirty, we got to do these things, we go a do it quickly.' That was I think what mo vated me or encouraged me to at least go along with what was being proposed. In terms of the CFO suspension? Oh no you asked what did I have against...what did I have against Matona? Cause I said he didn't have his, his hands around the business.

[00h23:59]

In my statement cause I think Advocate Vanara helped me with that ques on, when I rst met him. I've actually pointed out that every mee ng that we had with Mr Matona, Mr Matona is such a gentleman, but every mee ng was about the problems, there wasn't one sugges on of how he was going to turn it around. And in fairness, I mean, let's be fair to the man, maybe if we gave him another 6 months or a year he may have, I don't know. But as a board member I was mindful of one thing, the Minister told us 'get your hands

around the business.' South Africa was si ng at stage 3 load shedding, we had going concern problems, we didn't have me.

[00h24:27]

So, and like I said in my report, I think Mr Matona is an absolutely wonderful person, a personal view because Advocate Vanara asked me was that I didn't think that he had his hands around the business, that's my view. Then in terms of who suspended the people? It de nitely was on the instruc on of the board that the people were suspended, I mean, it wasn't anybody else coming and giving us instructions on what to do. I certainly, and if instruc ons were given, they may be given to anybody...to other people I have not heard it. Then regarding the Minister's poor judgement, which is what we've heard from previous witnesses. I can just say to you I've interacted with the Minister over a period of time I've not once heard her give me something that was con ic ng, something that was later called a lie, or an instruc on that she wanted me to execute on. I really can't... so I can't talk to the poor judgement piece of it that I can't respond to. There may be other people with di erent opinions, but I can't respond to that, sir.

Honourable Rawula - Ok, now regarding the pension fund of Mr Brian Molefe. What we have seen, we have seen Eskom board bending backwards to accommodate Mr Brian Molefe. We got evidence where the board wanted to ini ate amendment to the rules of the pension just to make sure that Mr Brian Molefe is accommodated, and you have sang praises for him that he has delivered the country in terms of the load shedding. Did at some point the board felt that they are indebted to Mr Brian Molefe and hence the willingness to bend backwards to a point that you were willing to give...make a calcula on of 30 million, and so far we have received evidence that he has already been advanced, been paid almost 72 million...7.2 million about 7.2 / 7.3 million, but there's money that has been paid to him, which because of the pension rules could not be amended as you guys have envisaged, that money has to be paid back. Can you tell us if that money has been paid, what is now the posi on of Eskom board regarding the money that has been already advanced to Mr Brian Molefe?

Ms Venete Klein - Honourable, I must say I don't agree that the board bent backwards to accommodate Mr Molefe. You are right, and I say it in my statement that I believe in my view that he had done a lot to turn Eskom around. In fact I don't think that, I mean, today there might be a di erent view, but if you look back at the me when we were contrac ng Mr Molefe and pu ng him on to permanent or onto a xed term contract, that year Mr Molefe was nominated as South African of the year. I mean, I'm like every other South African member, maybe a bit closer because I was working with the individual to see what he was doing, but a lot of people who would have otherwise cri cized Eskom turned around and were really applauding the results at the me. That's the one thing; I don't believe that we both bent backwards it all. What I did explain to you earlier was because Mr Molefe was the rst CEO in the history of Eskom to go onto a 5 year contract we were...this board was faced with the conundrum. And we would not have faced the conundrum if we didn't get Mr Molefe to sign a contract with no term rst, which is equivalent to permanent, and then want to change it. And that is an administra ve issue that was not a board not applying itself. The board had wanted him to be permanent, which is what we thought he was going to be as per every other appointment before him.

[00h28:47]

But when Ministers le er of the dated the 1st, clearly specifying a 5-year term was not given to us in due me so that Mr Molefe would have been CEO... I mean if I knew that it was de nitely 5 years, this is the contract, we would have said to him sorry that's it brother, you know you need to then go and negotiate with the

Minister if... you know... then we can't give you the job cause that's what it is. This board was not given that opportunity Mr Molefe signed a contract which is equivalent to permanent and only a er that did we get the con rma on, which by the way wasn't really inside of Eskom at that me, that is unfortunately what created the opportunity us then to go into a very di cult nego a on, which we would have chosen not to have had.

Honourable Rawula - I'm told that I only have a minute left. Let me ask my last question. My last question is that Eskom had a contract with, or there was supposed to have been a service based on a contract with McKinsey, which was subcontrac ng Trillian, but we got evidence that whilst McKinsey was paid almost in excess of 1 billion, which McKinsey has commi ed to pay back, there was never a contract because it was never approved by treasury. But Eskom has paid McKinsey that amount of money, which by the way remains an unlawful payment, and further Eskom has even given Trillian which Eskom does not have a contract with Trillian, which Trillian has got a contract with McKinsey, but for some reason Trillian was paid directly by Eskom. So can you talk to us because that simply means there was an unlawful payment that was made to McKinsey because there was no contract, but further there was awful payment to Trillian because Trillian did not even have any arrangement with...and you don't even know how much other money that could have been solicited from Eskom on a similar arrangement without contracts. As you as a board can you tell us why would Eskom under your guidance as board be so careless and reckless like that with public funds?

[00h31:24]

Ms Venete Klein - Honourable I unfortunately I'm not going to be the best person to give you the answer to that. Advocate Vanara did ask me to give him what I knew about the McKinsey contract. The only thing that served on the McKinsey contract in front of the entire board was a contract with McKinsey for a period of 8 months for a total of 103 million rands, which was going to be on the...which was going to be about the corporate plan but that was the sum total of it. The contract you are referring to is the 'master service agreement' which did not serve before the en re board. So I would want to suggest, I don't want to waste your me on it, but if I can please ask that, you know, when we have people either from the full board who sat on BTC if you can run that by them because I didn't prepare for that ques on because it never came to the full board. Like I explained to you 750 million cap went to execu ves, anything outside of the, of the investment level or budget came to the full board and that never came to the full board. So I would suggest that if you can hold that one for somebody from BTC to give you input I would appreciate it.

Honourable Rawula - Thanks Chair.

Ms L Mnganga-Gcabashe - Thank you very much Honourable Luyenge, Honourable Swart. I'm sorry not Luyenge, thank you very much Honourable Rawula. [Laughter]… Honourable Swart.

Honourable Swart - Thank you Chairperson and thank you Ms Klein, are you ok? Do you want some water? It's been a long morning. One of the challenges that I've got is the fact of understanding the governance at Eskom with the board commi ees when we know the public nance management act lays certain responsibili es on the board. So I just no ced your last response to that ques on about the 750 million and almost saying but I, we know nothing about it. But the public nance management act places responsibili es upon the board. Now, you with your very experienced background it's a bit of a concern that it seems that the board does not accept responsibility for a lot of the decisions taken.

[00h33:38]

And your paragraph 21; '… furthermore the board struggled with not having all the required informa on at hand when submissions were presented.' Now surely that is unacceptable because in terms of the, both the Companies Act and the PFMA, it can't be so. The board accepts the responsibility; '… it now appears that many of the submissions that were considered in my me…' that's your me '… contained misleading informa on or completely omi ed cri cal informa on.' So you say that's now in hindsight. But rstly do you accept responsibility or is this a governance issue that there's a breach of the PFMA act, you understand what I'm saying? You, you were the chairman of subcommi ees but the board must accept responsibility at the end of the day and it seems that there have been substan al breaches of the public nance management act on your own version here.

Ms Venete Klein - Honourable Swart, I have to agree with you and I'm going to go as far as to say that one of my rst concerns at Eskom, I raised it earlier, as a banker was the level of the delega on of authority down. I mean for any execu ve to have 750 million rands worth of decision-making power, as a banker, was in my mind I couldn't t it in there. The problem however, and this is something and I'm hoping, you know, the enquiry will decide on the way forward but as part of a solu on going forward I think things like this, the delega on of authority, the size of an organisa on of Eskom must be reconsidered. You are right, the board takes accountability for everything that happens but if a delega on of authority says that management can decide up to 750 and everything that goes wrong goes wrong there the boards are si ng ducks because you're not going to see that come to you.

[00h35:40]

Because in terms of the scale and the delega on of authority, which by the way had been signed o in 2013 that's how long this has been looked at, the last me it was looked at. That is unfortunately where it sits. So I'm not trying to pass the buck on the McKinsey thing and say I don't know that's not what I'm saying. I'm saying in terms of delega on of authority it never came to this board, but that the board would be held accountable of course for all of it but the board, this has got to be reviewed.

Honourable Swart - Thank you. So one of the other issues of the public nance management act; '… is to be very careful in terms of your general responsibili es to ensure that within your sphere of in uence that accoun ng authority (that's the board) to prevent any prejudice to the nancial interests of the state,' that would include the SOCs. These are very general but there are binding we know that. Now the, the decisions on the 11th of March rela ng to the suspension of those four execu ves; you come in with your experience, you are now challenged, there's a Mr Tsotsi is saying this must happen so that there's an enquiry that lead to the downgrade of the credit ra ng once that it been taken place. Surely with your experience the suspension of four execu ves; your nancial director, your other, the three, your chief...your CEO, your two other group execu ves, surely it must have been foreseeable that that would have a serious implica on for the nancial standing of Eskom. Because we already know that the ra ngs agencies were watching and there's an immediate downgrade that we know the implica ons of that. So with hindsight surely that was not a wise decision.

[00h37:25]

Ms Venete Klein - With our, sorry are you still…

Honourable Swart - Yes. Continue that's fine.

Ms Venete Klein - No, like I, I think I conceded that this morning. It wasn't a wise decision but and this is not an excuse this is the reality of what we faced at the me; you were si ng at the helm of a company cos ng this country 430...circa 434 million that is the calcula ons that were done, a year not a year a day in terms of load shedding at stage 3. That was the same me, I'll never forget, we had the State of the Na on Address some me in February and the one thing that we were worried about is that the lights were going to go o while this was happening. So you've all of this going on, so what you needed to balance as a board member is do you take a decision, which by the way you heard me say, wasn't necessarily our rst op on. We wanted to debate and nd more detail as to why these people needed to be suspended. But we were persuaded given the gravity of Eskom with its nancial challenges as well as the load-shedding etc. This was going to be the quickest way to do it. Now at the me that sounded like the right thing.

Honourable Swart - I understand that and I'm sorry I need to interrupt you because of the limited me. But you've served on various boards; you're very experienced, have you ever experienced something like this in your life before where your four top execu ves are suspended at once? Who's going, who's going to be the opera on? Surely that is unheard of…. Sorry, sorry. The ques on is ever...have you ever experienced anything like that in your life before? No?

[00h39:05]

Ms Venete Klein - Absolutely not… [Interrupted]

Honourable Swart - Thank you.

Ms Venete Klein - … which is why we pushed back.

Honourable Swart - I understand and I appreciate the fact that you did. Now you have said that you would support a full commission of enquiry into the whole issues and, and, and the term is used 'state capture' is that in agreement, are you in agreement with that? And do you, you were asked ques ons about links to the Gupta families. Have you read subsequently about state capture of Eskom and are you aware of some of the informa on in that regard? It's a very general ques on but you supported a commission of enquiry into many malfeasance at Eskom. Is that correct?

Ms Venete Klein - Ja, absolutely sir.

Honourable Swart - But have you read the public protector's report?

Ms Venete Klein - I have.

Honourable Swart - And you're aware that Eskom has not taken it on review?

Ms Venete Klein - Very, that's actually a cri cal point.

Honourable Swart - So that, the President has taken it on review on a very small legal point but the factual ndings in the public protectors report stand. Would you agree with that? They stand, they are, I mean it's, it's common knowledge because they have not been taken on review.

[00h40:14]

Ms Venete Klein - Let me answer you this way. I spoke to you about the mee ng of the 21st of November where that… [Interrupted]

Honourable Swart - Sorry I really need to interrupt you. You would agree that the factual ndings stand?

Ms Venete Klein - No sir, I want to respond to that if I may?

Honourable Swart - But it's a simple ques on, yes or no?

Ms Venete Klein - The informa on that I have received is that we could not take it on review because there were no ndings. That, and that's the informa on we were given by legal, various senior counsel, because there's a board resolu on where the board said you will take this on review and we were told by our head of legal and senior counsel we could not. The only reason the President could take it was because that was the nding that he has got to establish a commission set up by, I think, the Chief Jus ce.

Honourable Swart - I, I appreciate that and again you indicated relying on, on, legal advice. But let me just give you an example on page 315. 'A nding is; it appears that the conduct of Eskom was solely to bene t Tegeta in awarding contracts and doing, in doing so funded the purchase of OCH and is thus a severe viola on of the PFMA.' That's a nding and is thus a severe viola on of the PFMA. Now if I as a, with my limited legal understanding that is a nding that is standing and there are a lot of factual ndings. Yes, it's couched in 'it appears, it appears,' but I appreciate that you got legal advice and you chose not to...not to contest that but those factual ndings remain in the public domain and they indicate a level of state capture, which is I'm sure if you read that is of great concern to you. Would you agree with that?

[00h42:00]

Ms Venete Klein - Absolutely and in fact can I just say that I sit on the board of the Reserve Bank where we've gone exactly with what you've said. We've gone; we've taken it on review etc, which is what I really struggled with in Eskom's case that we didn't. Do you remember I've left there more than 6 months ago but having said that I've gone back and I was told categorically here are the opinions to say we could not take it on review.

Honourable Swart – Correct. Thank you for that. That that does clarify issues. I quickly want to relate back to that March, the four suspension...because we now, we've got evidence from Ms Daniels that two days before that on the 9th of March she was invited to a mee ng with Mr Salim Essa. Two days before that mee ng with the head of Genera on Mr Matshela Koko where she was told these suspensions are going to happen in 2 days me by Mr Salim Essa who we know is a right hand man to the Gupta family. Now you have obviously got no knowledge of that but that is evidence that is before us and obviously it will be tested and people can come and contest that and say it's not true, but on the basis of what we've heard at this stage is that not a great concern to you given the fact of what happened on the 11th of March when those four execu ves were suspended? That somebody outside of the company would have known of that and, furthermore, that one of the people that were to be suspended was the nancial director who had opposed the signing of The New Age breakfast deal, which relate to a Gupta related company. Do you put the dots together?

Ms Venete Klein - I was horri ed when I heard Ms Daniels say that. I could not believe it. So I'm really, I mean I, that's why I say this thing must get going now really.

[00h43:48]

Honourable Swart - Last ques on. You see a commission of enquiry is one thing but as many have said and as I've said in parliament, there's nothing to prevent the ins tu on now of criminal and civil ac on at this stage now based on the prima facie evidence that can be contested in a court of law. Is it not a concern to you that

there doesn't seem to be much progress in inves ga ng the prima facie allega ons that are contained in various reports including the public protector's report?

Ms Venete Klein - Absolutely agree… [Interrupted]

Honourable Swart - Thank you Chair.

Ms Venete Klein - … That's something that we need to do.

Honourable Swart - Thank you, my, my me is expired. Thank you too.

Ms L Mnganga-Gcabashe - You're welcome. Honourable members we are pushing because in 50 minutes me we'll have to go back to...we'll have to go to the house because there's nance bill that requires 50 + 1 a quorum for vo ng. So that's why I'm pushing that we don't break for lunch, we'll just nish this session of our enquiry today and then we'll break when we have to a er that and if we break for lunch and then proceed for the house. Can we agree on that and then we'll come back a er vo ng… Thank you… shall we con nue now, Mr Gungubele it's your turn.

Honourable Gungubele - Thank you Honourable Chair. Let me start by saying, Ms Klein, you, you come across as somebody who is willing to assist, but I struggle to reconcile with some of your inconsistencies. For instance… in paragraph 35 you are saying; '… no reasons were given for the suspension of the four execu ves…' now I'll ask you this ques on. Were you part at some stage in Eskom of a, of a process of explaining to the sta , and this is a very important thing because it is going to be recorded...were your part of explaining to the sta why the four were suspended, to the sta in Eskom?

[00h46:38]

Ms Venete Klein - If I recall correctly the Chairman asked me to accompany him to one or two sessions where he spoke to people… [Interrupted]

Honourable Gungubele - So, so you were part of explaining?

Ms Venete Klein - Ja, ja.

Honourable Gungubele - What was explained?

Ms Venete Klein - Why the enquiry was taking place and why people had to… [Interrupted]

Honourable Gungubele - But no, no you're not helping me Ms Klein. What were you explaining...the content. You were part of the Chair to explain why the four were suspended. What was explained? I want the content. Say you tell me one or two things.

Ms Venete Klein - I must say I am struggling Honourable Gungubele with what you're saying because I was present, I was asked… [Interrupted]

Honourable Gungubele - Ms Klein, my questions are clear. I've looked at your quali ca on; you are a very clear person and a clear minded person. Your background is very credible. So I'm saying to you the things you have, your quali ca ons here explain you are, your academic authority, your capabili es. And I'm saying now that you agree you were with the Chair to explain why the four was suspended. Tell me one or two things that were told to the sta why were the four suspended.

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[00h48:04]

Ms Venete Klein - That… there's an enquiry going to be star ng and that people would need to be steppest... need to step aside so that we can nish the enquiry within a full 3 month period.

Honourable Gungubele - So were, in your view were those the reasons for, for suspension?

Ms Venete Klein - Absolutely.

Honourable Gungubele - But you are saying here, you are saying here; 'to my understanding none of the suspended execu ves were given reasons for their suspension.' how do you reconcile the two?

Ms Venete Klein - They were never, they weren't suspended because of particular reasons. They were put aside or asked to step aside so that the enquiry could be done within 3 months period. That is exactly what was said in the previous as well.

[00h48:49]

Honourable Gungubele - Let's leave that ok because I don't think it's going to assist. Let's leave that very quickly. Let's go to your conversa on with the, with the evidence leader. You said at 12 o'clock as far as you remember you were the only one vociferous...you were the only one vociferous. But later you are surprised that in the a ernoon… you were the only one vociferous, later you are surprised in the a ernoon that you are the only one vociferous. I'm not sure if you understand what I'm asking?

Ms Venete Klein - No, no. I hear you.

Honourable Gungubele - Because you said and what you remember at 12 o'clock you are the only one but as Mr Vanara was con nuing with you, you say you realised that people were no longer as strong in the a ernoon as they were in the morning. Can you reconcile the two?

Ms Venete Klein - In the recording that we listened to there were quite a few people who were adamant that that suspension happens now and then we le .

Honourable Gungubele - Can you repeat what you just said now?

Ms Venete Klein - Sorry?

Honourable Gungubele - Can you repeat what you just said now?

Ms Venete Klein - I said in the morning, listening to that recording, there were quite a few people who felt the same way that this has got to be done and it's got to be done now.

[00h50:16]

Honourable Gungubele - But you've said several mes it's going to be repeated here. You've said several mes to Mr Vanara as far as you remember you were the only person who was actually pushing on this ma er. You were not even sure what other people were saying. Now you are saying you are beginning to remember now the other people and I'm, I'm saying dealing with these inconsistencies you don't have to agree but the records are going to demonstrate.

Ms Venete Klein - Ja.

Honourable Gungubele - It's ok. Let's leave it there. Now the ques on is being asked… did the mee ng take place at 6 o'clock and you are said, you are only 5 people by the way if I remember, you were asked if Mabude was there, you say you don't know.

Ms Venete Klein - I can't remember. Because I remember she… [Interrupted]

Honourable Gungubele - But, but sorry, it's only five of you.

Ms Venete Klein - … Ja I remember she said she didn't want to come and you'll remember… [Interrupted]

Honourable Gungubele - No, no, no. No, no. You say you can't remember… [Interrupted]

Ms Venete Klein - I don't remember.

Honourable Gungubele - … whether she was in the mee ng but it's only five of you. Can you, can you make us understand that?

[00h51:17]

Ms Venete Klein - Ja. It would have been myself, Dr Pat… is Mr Khoza… [Interrupted]

Honourable Gungubele - Are you not sure whether Ms Mabude was there or not? [Interrupted]

Ms Venete Klein - … No, no I, I don't think she was there but Dr Pat was there… [Interrupted]

Honourable Gungubele - … You. We are ge ng closer now. You say you don't think she was there?

Ms Venete Klein - … I don't, in fact I'm almost certain she wasn't there. I'm almost certain she wasn't… [Interrupted]

Honourable Gungubele - But to Mr Vanara you said you are not sure whether she was there or not.

Ms Venete Klein - … and I was basing that on the fact that in the morning she was saying she's not going to be there, that's what I was basing it on.

Honourable Gungubele - What happened at 6 o'clock Ms Klein?

Ms Venete Klein - We got back there, there was a mee ng, we called Mr Koko into the mee ng and Dr Ben put to him the chargers that had been levelled at him in terms of the anonymous le er as well as the things that Minister had said, and he was asked for a reason why we should not be suspending him and he then gave us, he...the response was that he will respond to Dr Ben in wri ng.

Honourable Gungubele - And then what happened later?

Ms Venete Klein - I never got a response back from Dr Ben as to what that was. I never got a response from Dr Ben.

[00h52:32]

Honourable Gungubele - To, ll to date?

Ms Venete Klein - Till to date. There was the next mee ng that's why I'm not sure… [Interrupted]

Honourable Gungubele - What, what month did this… [Interrupted]

Ms Venete Klein - In March

Honourable Gungubele - … month did this take place?

Ms Venete Klein - It was in March.

Honourable Gungubele - 2015?

Ms Venete Klein - 20- no, no, no. 2016… [Overtalking inaudible]…

Ms Venete Klein - No, no hold on. Where are we? 2017, sorry 2017.

Honourable Gungubele - 2017.

Ms Venete Klein - Yes.

Honourable Gungubele - When did you leave Eskom?

[00h52:53]

Ms Venete Klein - On the 12th of May.

Honourable Gungubele - And this happened when?

Ms Venete Klein - I don't have the exact date… [Interrupted]

Honourable Gungubele - The month.

Ms Venete Klein - [O mike answer inaudible]… no it was in the month of March. Then there was a further… [Interrupted]

Honourable Gungubele - You le May.

Ms Venete Klein - I le in May.

Honourable Gungubele - Un l May, you didn't know what happened?

Ms Venete Klein - No, no that's not what I said Honourable Gungubele.

Honourable Gungubele - Ms Klein I'm asking a ques on… [Interrupted]

Ms Venete Klein - No and I'm responding.

Honourable Gungubele - … You had a meeting… [Interrupted]

[00h53:16]

Ms Venete Klein - Yes.

Honourable Gungubele - … at 6 o'clock… [Interrupted]

Ms Venete Klein - Yes.

Honourable Gungubele - … Koko was going to respond later to the Chair?

Ms Venete Klein - He was going to in wri ng.

Honourable Gungubele - By May you le not knowing what happened with regard to that?

Ms Venete Klein - No, there was another mee ng on the 28th of May; sorry the 28th of March… let me go there. There was a mee ng on the 28th of March where this thing was then discussed with Mr Koko. My only disadvantages, I don't have the date of that first meeting… [Interrupted]

Honourable Gungubele - What was discussed with Mr Koko?

[00h53:45]

Ms Venete Klein - The issues of the allega on of the charges that was brought against him.

Honourable Gungubele - What came out of that mee ng?

Ms Venete Klein - That he wasn't suspended. He acknowledged in that mee ng that his ac ons is suspendable, he is due, he could be suspended based on what I had, in fact his words; 'based on what you Ms Klein have given me the day that I was rst appointed, when you spoke about the people, I should be suspended,' but the decision of the board at that mee ng of the 28 was not to suspend him.

Honourable Gungubele - I'll tell you to go and check the records on what you have just said compared to what you're saying now. There is another gross inconsistency I can tell you now. Because you said the last me you remember it's when Koko said he was going to come and you didn't know what happened later, but now there's a mee ng that you remember. But, however, in 2015 March, let me just Chair quickly go to this... in 2015 March can you tell us about your knowledge of the IT tender that was scrapped and extension of the T-Systems contract, because 2015 January you were there leading a subcommi ee.

[00h55:03]

Ms Venete Klein - But the subcommi ee never dealt with any of these… [Interrupted]

Honourable Gungubele - Which com- which subcommi ee were you leading in January?

Ms Venete Klein - … January or which, which March?

Honourable Gungubele - 2015.

Ms Venete Klein - January 2015 I had just started and I was Chairperson of audits, sorry, of SES (Social Ethics and Sustainability), which didn't look at projects… [Interrupted]

Honourable Gungubele - Ok, let's leave that. 2015 February, do you know anything about the bailout?

Ms Venete Klein - No sir. Which bailout are you talking about?

Honourable Gungubele - 23 billion bailout being paid to Eskom.

Ms Venete Klein - We got given feedback to say that government was in the process of paying over 20...23 billion rands but I mean there were… [Interrupted]

Honourable Gungubele - What was the purpose?

Ms Venete Klein - It was to support Eskom because that was the me of the going concern problems.

Honourable Gungubele - What were the elements of that?

Ms Venete Klein - No I don't have that.

[00h55:55]

Honourable Gungubele - You don't have?

Ms Venete Klein - I can get it for you… [Interrupted]

Honourable Gungubele - 2015 which subcommi ee were you leading in February?

Ms Venete Klein - S ll Social Ethics and Sustainability.

Honourable Gungubele - Any knowledge about Tegeta contract with Eskom?

Ms Venete Klein - No.

Honourable Gungubele - This happened in 2015 March, what were you leading, which subcommi ee were you in charge of?

Ms Venete Klein - Social Ethics and Sustainability.

Honourable Gungubele - When did you start PG?

Ms Venete Klein - I think it was about the end of March of 2015.

Honourable Gungubele - End of March.

Ms Venete Klein - End of March.

[00h56:25]

Honourable Gungubele - So you don't know about Tegeta?

Ms Venete Klein - No.

Honourable Gungubele - Which happened in March?

Ms Venete Klein - No but People and Governance would not deal with Tegeta.

Honourable Gungubele - But there are issues of governance here?

Ms Venete Klein - But People and… [Interrupted]

Honourable Gungubele - Procurements, procurements of contracts, procurements of contracts in the PFMA are ma ers of governance impera ves. Do, do you disagree?

Ms Venete Klein - … I can't… [Interrupted]

Honourable Gungubele - There are under 2017 in terms of the cons tu on, I think I'm forge ng the sec on, but they are governances ma ers… How you procure, which processes you follow… So you know nothing about it?

Ms Venete Klein - … Honourable Gungubele in terms of the terms of reference of People and Governance there is absolutely nothing to do with any procurement contracts in there.

Honourable Gungubele - On governance?

Ms Venete Klein - On governance. There is absolutely nothing… [Interrupted]

Honourable Gungubele - In Eskom?

Ms Venete Klein - … In Eskom.

[00h57:19]

Honourable Gungubele - Sjoe!

Ms Venete Klein - It may be an issue for future but certainly not for People and Governance. You don't look at… [Overtalking inaudible]

Honourable Gungubele - Right, towards closure ma'am, you… you leading...you said P&G is what and what?

Ms Venete Klein - People and Governance.

Honourable Gungubele - Huh?

Ms Venete Klein - People and governance.

Honourable Gungubele - Governance. The key word is governance that I'm interested in. Now you, you explain your concern about defec ve reports either misleading, either omi ng cri cal informa on and so on and so on. Whose responsibility was there monitoring an evalua on system in Eskom? Did it fall under your commi ee?

[00h58:00]

Ms Venete Klein - Monitoring and evalua on would have been audit and risk.

Honourable Gungubele - It didn't fall under you?

Ms Venete Klein - No, no.

Honourable Gungubele - It had nothing to do with governance?

Ms Venete Klein - You see you can pull everything into governance but understand… [Interrupted]

Honourable Gungubele - So tell me, tell me ma'am what are the, what are the major features of governance as led by you?

Ms Venete Klein - … That our board charter is correct, that our terms of references are… [Interrupted]

Honourable Gungubele - What does the board charter deal with?

Ms Venete Klein - The overall func oning of the board.

Honourable Gungubele - Tell me three or four things that are there in the board charter?

Ms Venete Klein - That the company's run sustainability, sustainably, that the succession is done correctly, that your mee ngs are run on me, that the number of board members are re-, you know, that sits on the boards are suitably skilled. Those are all things that comes out of the charter.

Honourable Gungubele - What do you understand by Governance?

[00h58:50]

Ms Venete Klein - The running and the controlling of a business.

Honourable Gungubele - So it's got nothing to do with the procurements and all these things. You're monitoring evalua on, there's no rela onship between those?

Ms Venete Klein - I believe that if that is, I don't say that there's got nothing to do with it but in terms of the terms of references of each of the subcommi ees it's very clear what the subcommi ees are responsible for.

Honourable Gungubele - Right, next ques on. Let's come to Dentons report, where Eskom paid 20 million… When, when Shahid asked this question… that on the terms of reference individuals conduct are not included. Was it before the process of Denton? Or was it a er the process?

Ms Venete Klein - Sorry who is Shahid?... [Interrupted]

Honourable Gungubele - When Shahid asked this ques on in a le er drawing your a en on as Eskom. That the inves ga on of individuals conduct doesn't seem to be included in the terms of reference. Do you remember about that?

Ms Venete Klein - Ja.

Honourable Gungubele - Was it before they started the process of the, of the inves ga on or was it a er?

[01h00:01]

Ms Venete Klein - I don't know when that le er arrived. I don't know about that.

Honourable Gungubele - Excuse me?

Ms Venete Klein - I don't know when the le er from Shahid arrived.

Honourable Gungubele - What don't you know?

Ms Venete Klein - I don't know when the letter...I don't know which letter you're referring to.

Honourable Gungubele - Do you know that a ques on was once raised with regard were the individuals conduct in the terms of reference. Do you remember an exercise that was drawing a en on of Eskom to the involvement in the terms of reference of the individuals conduct as part of the inves ga on, you don't remember that?

Ms Venete Klein - No, I don't sir. I can go and check; I don't remember it.

Ms L Mnganga-Gcabashe - Please round o .

[01h00:35]

Honourable Gungubele - Let me close by saying, I don't think there's anything you remember, thank you ma'am.

Ms L Mnganga-Gcabashe - Honourable Marais... Marias.

Honourable Marais - It's Marais. Thank you Chair, it seems I have to make up some time. [Nou moet hy net links of regs sit want ek kan nie so praat nie.] Just shi this way please. Thank you. I just want to go to the one issue; I know when you were only appointed in...on the 11th of December and prior to that this was this whole issue around The New Age breakfast deal and I've noted that you were against it and actually at the round robin board mee ng decision it was actually approved, to put it that way, can I just have your view on this money spent on such a marke ng exercise being a board member for Eskom.

Ms Venete Klein - Not having been there at the me and having read the documents I felt that they didn't get the value which is why part of the reason I didn't say I didn't support it. That from a commercial perspec ve together with the fact that I felt people needed to be held accountable like I said earlier, and obviously that was not the recommenda on on the actual round robin that was sent, which is the reason why I didn't sign it.

Honourable Marais - Ok. By me did it come to your knowledge that there's a link to the Gupta family as far as the companies concerned involved in this.

Ms Venete Klein - I think a er that it became public knowledge that it was, cause I think it was reported on in the press as well. At the me when it came here I was not aware of it, no.

Honourable Marais - Running for your period as a board member, was it a custom by me that people or the board intend to have round robin decisions on various issues or was this a single issue that was handled that way?

[01h02:48]

Ms Venete Klein - No, I think they were a number of round robins but, I mean, that is standard. If there's pressure on things, you know, the boards typically can allow that. I think what we did was we've actually increased the number of people who's got to sign up from 50% to 75% just to make sure that people apply their minds to the round robins, and that you don't do as many round robins, you know, where you should have mee ngs to discuss these things.

Honourable Marais - Would you agree that in the case of round robin decisions it's a very di cult situa on because you can't actually directly interact as you si ng around a round table as a board and discuss it directly with each other, and you contend that business of serious issues could actually be pushed through when you run a company on the round robin decisions as a board.

[01h03:45]

Ms Venete Klein - I totally agree, which is why we tried to make it more di cult in terms of the number of par cipants and signatories to it, to try and make it a li le bit more di cult so that we try and force management to not go the round robin route but rather call for mee ngs or keep it for the next mee ng.

Honourable Marais - I want to refer to point 29 at your mee ng of the 11th of March 2015 when the CEO that point in me was Mr Matona. 29.5, this is actually quite a serious issue that the liquidity bu er of 20 billion had decreased at that point in me to 4.9 billion as two expected loans had not been received. Together with that it's a 29.6; the non payment of substantial amounts owing by the municipali es, and we all know as we sit in this room today what is the amounts or some amount owed by municipali es; what ac on steps did the board members put in place together with the CEO to address this speci c issue?

Ms Venete Klein - 29.6? The number 29.6?

Honourable Marais - Ja, 29.6.

Ms Venete Klein - I think Honourable if you look at it that was one of the things that this board was non-wavering on. We were si ng with an organisa on where we were asking government for help. We didn't have money, in fact the going concern problem was of such a nature that a er 2 or 3 months there wasn't going to be money to pay the people, yet we were si ng with municipal debts that were ballooning and we kept on being told, 'but you can't force the municipali es to pay we tried to do it before it doesn't work, you'll get political interventions.' And we said we cannot, we cannot accept money from government if we do not try everything humanly possible to collect that which is outstanding. That was one of the things that...this board may have done things wrong...but that's one of the things that this board had ini ated and today you have payment plans with various municipali es, which wasn't there before. There wasn't even an appe te to try and recover that money before. And I can tell you it took us many months and many ghts with execu ves who kept on telling us that the last me they did this the Minister of this phoned, the Minister of that phoned, every me they were going to pull the plug they got called from all over; you cannot take on the municipali es. Well we decided we could not sit here and honour our duciary duty if we did not apply pressure, and we then went around... we went and put in place de nite steps of, we gave them warning, we met with SALGA, we met with CoGTA, we met with everybody concerned but it was clear, 'you owe us money you gonna pay it.' Which is why today there is a payment plan, it may not be perfect but at least there's a plan in place, which wasn't there before.

Honourable Marais - You refer to now at one stage it was actually the cash ow was of such a nature that there may not be enough money to pay the sta . At this point in me, before you le how would you describe the sta morale in Eskom?

[01h06:58]

Ms Venete Klein - I think that was when Mr Matshela Koko was running the show. We've spoken about that at length, and I think the morale wasn't good at that stage. People were uncomfortable, they didn't know from a leadership perspec ve what to expect.

Honourable Marais - Seeing what happened with other execu ves within the company that has been suspended, in your view as a board member was there over me ou low of capable sta from Eskom to other ins tu ons or businesses.

Ms Venete Klein - Absolutely yes. In fact I think the biggest concern is, it certainly was in my me, was the people at nuclear, I mean, this skills has been built up over a period of thirty odd years, and I think there's a

new nuclear plant being built somewhere in the Arab Emirates, United Arab Emirates, and I mean people are just li ing and dropping, and I think that there's a huge concern about skills ou low speci cally in that space cause, I mean, we've got a huge nuclear opera on running and we need people there that knows what they're doing.

Honourable Marais - I want you view as the ex-board member as talking about it today as we sit here you also a taxpayer and you also buy electricity through your municipality, and you know what's going on here with NERSA and the applica on for tari s, and you get the feeling that the cash ow problems in total of Eskom is now actually the founda on is laid that the general member of public or the taxpayers it should foot the bill now going forward; what's your view on this?

[01h08:51]

Ms Venete Klein - I think a lot needs to be done to bring the cost of electricity down in this country, a lot need to be done. I'm not sure that it is a journey I think that Eskom started a couple of years ago, which is stripping out costs, making the business more e cient, looking at alternate electricity in this country. But the is something that struck me when I was there, which I didn't never appreciate it before is that Eskom funds a whole lot of ini a ves and only gets the money two years later through the NERSA process. And one of the examples of that is the IPPs. The IPP monies is only recovered backend. It doesn't get paid in advance to say now you go and spend this money on IPPs. You spend it rst and then you recover it and that is something I don't think that the communi es in South Africa fully understand, that it's easy to make a decision to go and fund an ini a ve, but we don't always say that is a direct ow through to the taxpayer. So many of the decisions I think at Eskom is problema c, could be problema c but I think that more needs to happen in terms of educa ng people around how those numbers are actually made up.

Honourable Marais - Last three ques ons, very quickly. I've no ced that you engaged with Minister Lynne Brown, it's clear, did you at any stage engage with the Deputy Minister?

[01h10:12]

Ms Venete Klein - Which Deputy Minister we talking about Sir?

Honourable Marais - Ben

Ms Venete Klein - No, I don't know him at all.

Honourable Marais - Ok .

Ms Venete Klein - And I think by the me he came into...into power in Minister Brown's department I'd already le .

Honourable Marais - Ok, I'm just asking for it record purposes. And did you engage at any stage in your life with any member of the Gupta family?

Ms Venete Klein - No, never, besides the person I told you I met at a breakfast one morning and that was handing over of business cards; that's it.

Honourable Marais - Did you at any stage when you were a board member engage with the president of South Africa?

Ms Venete Klein - Yes, but it was for the Reserve Bank of South Africa, it had nothing to do with Eskom.

Honourable Marais - Not in this connec on?

Ms Venete Klein - No, no.

Honourable Marais - Ok, thank you very... [Interrupted]

Ms Venete Klein - Sorry, sorry, just one thing. He visited Eskom one day, he visited there about I think 2015 / 2016 and it was a handshake; I think it was since 2015 / 2016 it was a handshake. But I mean as engaging one-on-one to speak with the president; no.

Honourable Marais - Ok, thank you very much Chair.

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

[01h11:17]

Honourable Tseli - A ernoon Ms Klein. There are two incidents where you declared con ict of interest while you were s ll a board member of Eskom, and I want to start with the incident where you were...Eskom was awarding a contract for R101m to McKinsey. You declared con ict of interest because at the me you were discussing a possibility of you doing some work for McKinsey and there are some board members who thought there is no con ict of interest in that respect that led to the board even vo ng as to whether there is a con ict of interest or not. And the outcome from what you are saying is that there...was that there is no con ict of interest. Did the Chair by then a er the vo ng did he change your mind that there was con ict of interest even if you were at that stage discussing the possibility of you doing some work for McKinsey.

[01h12:40]

Ms Venete Klein - For McKinsey's, ja. No, it didn't... I actually when I saw McKinsey's on the agenda I said, 'guys because I'm a management consultant I may be because I was talking to them about doing some work for them in Africa,' so I said, ' look, you know, here I would like to recuse myself.' The board then said to me it wasn't necessary because it wasn't any work that related to the Eskom setup and they asked me to stay. I didn't change my mind on that, you know, I would have been happy to step aside if they'd asked me to. That's why I raised it as a con ict.

Honourable Tseli - But the point I'm making is that were you s ll convinced that that cons tute con ict of interest even if the board has decided somehow.

Ms Venete Klein - No, when the board said there wasn't a con ict I was comfortable with that because the engagement with McKinsey's was on the basis I was going to be helping them with some work outside in Africa. So I accepted that.

Honourable Tseli - The second con ict of interest is by the me you wanted to resign from the board, the Minister says...that was in June on the 7th of June 2016... the Minister says don't resign now and the con ict of interest was around the Twin Peaks legisla on and also the fact that you were even s ll saving on the board of the Reserve Bank, you thought Reserve Bank *vis*-à-*vis* Eskom cons tutes a con ict of interest. The Minister says don't resign now can you wait un l around October somewhere there. You decide to wait un l some me May or so, the following year. What happens?

Ms Venete Klein - The con ict was not direct, Eskom... the Twin Peaks legisla on was in the process of being passed, it had been delayed so many mes. The reason for the poten al con ict was that Eskom managers and owns the biggest cell cap ve, it's like the biggest self insurance company in Eskom itself. So my concern was si ng on the board of the Reserve Bank and si ng on the port of Eskom if there was ever a problem between where Eskom self funding unit of the insurance were under scru ny for any reason and the Reserve Bank who is monitoring the oversight of that, there would be a direct con ict, which is the reason that I put it forward to say that here is a poten al be con ict. But at the me the Minister asked me to stay on that act had not been promulgated. It's now been promulgated; it was promulgated a er I le Eskom.

Honourable Tseli - The 101 million contract for McKinsey, what was the irregular about that contact?

[01h15:37]

Ms Venete Klein - I don't think it was irregular, remember it...the projects comes to the board if it's over, if it's outside of the investment level limit or outside of budget. My understanding on that cause y'all remember up to 750 million execu ves can actually sign, so that should have been able to be signed there, but it was outside of budget. They needed approval for help with corporate plan and the items that I listed there, and they asked the board for approval for that 101 million for 8 months. That's how that came through to us.

Honourable Tseli - The coal supply contractor, the audi ng risk commi ee upon inves ga on says it was fraught, from the tes mony that you gave us and from what you indicated this morning, what correc ve measures were applied by the board to deal with this par cular issue?

[01h16:41]

Ms Venete Klein - Audit and Risk gave regular feedback to the full board in terms of the monitoring and evalua on, which if you read this statement I was concerned at the me that it was being monitored by the people on the inside and I was concerned that, you know, there was room for, you know, manipula on if it...if that were the case. But we were given the assurance by the CFO and the CE that they would oversee it themselves with audit giving feedback to the board on the improvement there of over me.

Honourable Tseli - What role did you play speci cally with regard to the coal supply contracts?

Ms Venete Klein - My only role was being a member of audit and risk and assessing and making sure that those monitoring and evalua ons were being done on a regular basis and regularly fed back to the board.

Honourable Tseli - So it means you were very key, because you were chairing the audit and risk commi ee that found the contract to be flawed, I'm I right?

Ms Venete Klein - No, Sir... no, Sir, I never chaired audit and risk, I was just a member of audit and risk.

Honourable Tseli - The appointment of Mr Molefe as CEO, paragraph 52, the board was unanimous in agreeing that that was the best appointment, mo vated by the load-shedding the issue of the nances, data and the war room issue and you are saying you...some only had problems when it came to the appointment without an external search process; from what you are saying. And you are saying the board even came to the extent of sough ng legal opinion with regard to this par cular issue. Is there any legal opinion that you can provide to the commi ee with regard to that par cular issue.

Ms Venete Klein - Absolutely Sir, in fact there are two legal opinions. The rst legal opinion spoke about the fact that you could appoint... you could actually recommend one person to the Minister. Then the Minister's o ce came back and said in terms of the appointment of CEO for state-owned en es was that taken into account? That then went back to the lawyer and there was a second opinion received based on that speci c ques on. But we can make that available to the commi ee.

Honourable Tseli - I'm concluding Chair. The role played by Ms Daniels, we...in providing legal assistance and also a company secretary, will you agree with me that at some stage there are certain things that could have been done be er by herself as a legal opinion that led to some of the challenges that you were talking about now.

[01h19:54]

Ms Venete Klein - That it could have been done better by me or by Ms Daniels? I'm sorry I didn't get that.

Honourable Tseli - By Ms Daniels. I'm saying the role that she was playing as a person who was providing legal assistance to the board, will you agree with me? What's your take? Will you agree with me that at some stage there are certain things that could have been done be er in terms of providing that legal assistance to the board maybe that led to some of the challenges that we are talking about.

Ms Venete Klein - I totally agree with that Sir, and I think it was and I say it in there, it's based on the fact that Ms Daniels had actually had three roles and I think people forget that. She was appointed as the general manager, and sorry there was a mistake in here, I said senior general manager. She was appointed as general manager in the o ce of the Chairman, which means she was really the support to the Chairman; she gave the Chairman a lot of support. Then she became company secretary and with that obviously she brought in support from outside in the name of Ms Anna-Marie van Der Merwe who had thirty odd years of experience, and then she took on the role of head of legal. Now I'm not gonna say Ms Daniels took on all these things by herself, I think it's because she was doing well in other areas that she probably was given more and more responsibili es. My concern was that as you correctly say, some of the legal opinions that were taking place were actually coming through and it felt like it was splintered and that is when I became concerned that the pressure on her was so much she couldn't handle all of it, which is why I think it was in November last year that she decided that she wanted to take on the one role only.

Honourable Tseli - Thanks Chairperson.

Ms L Mnganga-Gcabashe - Thank you very much. Members I'm afraid we have to break now, go to the house and come back. We'll have our lunch when we come back then. Please, thank you. Yes, we have to rush back to the house.

Honourable Swart - I'm sorry Chair, how many more speakers are there, is it only one?

Ms L Mnganga-Gcabashe - Two. But I'm told there is a message that you must come now to the house.

Honourable Rawula - But can we eat. No, I'm very hungry. I'm diabe c.

Ms L Mnganga-Gcabashe - No, we are was ng me by deba ng. I just want to allow the Members that want to go to the house and vote, and then you come back. Can we...those that {not English] Members, the message...the first message was saying that there is going to be a break at 3, but now there's a...then I sent my secretary back to check exactly what is going to happen and now the message has come back to say we

must come back to the house, the vo ng is about to start and I'm hearing Members that they heard the bell...they are hearing the bell?

[01h23:18]

Honourable Swart - Sorry Chair, I've just heard that the doors already locked.

Ms L Mnganga-Gcabashe - They are locked?

[01h23:34]

Honourable Swart - Ja.

Ms L Mnganga-Gcabashe - So what are you sugges ng that we proceed with the two or break?

Honourable Swart - That we con nue Chair, I'm sorry.

[Overtalking]

Ms L Mnganga-Gcabashe - There are two views that we break for lunch, others are saying we proceed with the two and then we break. Can we be orderly please Members, can we be orderly. And our guest... can we be orderly please, thank you very much. There are two views members...con nue?

Honourable Swart - I would propose that we con nue Chair with the witness and then we could excuse her, it's been quite a long morning and there's only two more so it's literally 10 /20 minutes and that's it. Who's... [Interrupted]

Ms L Mnganga-Gcabashe - Honourable Gordhan because I can see that Honourable Rantho is back, I'll...Honourable Gordhan and then Honourable Rantho will follow.

Honourable Gordhan - Thank you Chair... cut me out... ja, many have tried, don't worry.

Ms L Mnganga-Gcabashe - Proceed Honourable Rantho... I mean Honourable Gordhan.

[01h24:39]

Honourable Gordhan - Ms Klein, thank you very much for being here. In about May 2014 Minister Brown is appointed in her current posi on. Soon therea er quite a few members of that board are changed, you are then appointed, am I right, to the board at that me?

Ms Venete Klein - That's correct Honourable Gordhan.

Honourable Gordhan - What process was followed to get yourself appointed?

Ms Venete Klein - There was an adver sement in the paper, I think it was SAA and Eskom. And I was nominated and I was asked whether I would stand. And a er a lot of pondering I decided it's not a bad idea let me step forward, and that's how my CV went in and of course many months later I got appointed on the 11th of December.

Honourable Gordhan - Now there have been frequent references by my colleagues to, and by yourself, to what happens in sub commi ees. But as I understand it governance processes are subcommi ees process

matters, discuss matters, make recommendations which are then put to the board and they're not necessarily accepted at the board level they may even be changed at the board level, am I right?

[01h26:05]

Ms Venete Klein - For the most part... oops... for most part Honourable Gordhan, yes. In the case of board tender though it's a bit di erent, I mean, just remember that not all tenders come to the board, and like I explained it earlier, anything up to 750 million has got...can be signed o at execu ve level, anything up to investment and over budget level goes to the board. Other than that from 750 up to investment level is at BTC, board tender committee. So the board doesn't see it.

Honourable Gordhan - So the Koeberg steam generator issue would have come to the board.

Ms Venete Klein - Do... I'm not sure... was this in my time? I don't think that that was in my time. You're talking about AREVA and Wes nghouse, Sir?

Honourable Gordhan - Yes.

Ms Venete Klein - Ja, no. I think that was before this board. We actually just picked it up where the court case and what actually happened in the court case. But the actual decision wasn't made by this board.

Honourable Gordhan - Ok. Now this was clarified to some extent but let's help us again, cause all sorts of informa on gets thrown around so, am I right about what I heard that neither you nor any member of your family is associated in any way with any Gupta related rm?

Ms Venete Klein - That is correct, Sir.

Honourable Gordhan - So, it's not true that Mr Harold Klein is a co-director of the company Shiva Uranium?

Ms Venete Klein - First time I've heard it and it definitely isn't true.

Honourable Gordhan - No, no, just asking you.

Ms Venete Klein - De nitely isn't true.

Honourable Gordhan - Ok. So in your stay from May 2014 to your departure in 2017 there have been a number of interes ng developments, one of them is the IT tender and the controversy around T-Systems, you aware of it?

Ms Venete Klein - I am aware of it, and like we've said earlier board takes full accountability, but that didn't come to full board.

Honourable Gordhan - But when as a member of a governance commi ee you become aware that there are governance issues, whether it's New Age, whether it's the steam generator, whether it is the T-Systems issue; what do you do?

[01h28:30]

Ms Venete Klein - You go and you speak to the people concerned and try and get to the bo om of what's going on.

Honourable Gordhan - So, did you get to the bo om of it?

[01h28:36]

Ms Venete Klein - Not that one, no I didn't.

Honourable Gordhan - Why?

Ms Venete Klein - Just, have you got the date on that one? I think that was January?

Honourable Gordhan - 2015.

Ms Venete Klein - January 2015, I was not chairperson of People and Governance.

Honourable Gordhan - No, you don't have to be the chairperson to take responsibility, you're a board member.

Ms Venete Klein - Honourable Gordhan if I had gone every me I had heard that there was a problem in Eskom, I would probably have slept there.

Honourable Gordhan - Did you raise the issue at a board level to say you seem... there seem to be some governance issues here can you have clarity?

Ms Venete Klein - On the TNA one... [Interrupted]

Honourable Gordhan - I don't think you should make your responses so frivolous.

Ms Venete Klein - On the TNA one I did.

Honourable Gordhan - Do you accept my point? Nobody is asking you to lose sleep; I'm asking you whether as a member of a board and as a leading member of the Ins tute of Directors of South Africa, you see governance issues broadly as your responsibility? That's all.

Ms Venete Klein - I agree.

Honourable Gordhan - So, don't talk about sleep.

Ms Venete Klein - I agree.

Honourable Gordhan - And, so where did you fail?

Ms Venete Klein - To use your words; by not taking it in to the board and saying I want a full delibera on on this ma er, which seems to be coming out.

[01h29:50]

Honourable Gordhan - And so that adds to the corrup on stories that we hear now totally if unfolding in its totality, because there was no check and balance from the board at that point in me, which includes yourself.

Ms Venete Klein - I wouldn't say there's no checks and balances, the fact that I maybe didn't take it in, like you correctly pointed out at the me, doesn't suggest that there were no checks and balances.

Honourable Gordhan - No, no, on this par cular ma er.

Ms Venete Klein - On that par cular ma er.

Honourable Gordhan - No, there are any series of ma ers that we can put to you.

Ms Venete Klein - Ok.

Honourable Gordhan - Alright, so let's go to another issue that my colleagues have raised; the suspension of the four o cials. You said you were the only person that objected to the suspension.

Ms Venete Klein - No, no, no, that's not what I said. We were talking about some other suspensions at that stage.

[01h30:35]

Honourable Gordhan - Ok. So let's talk about Mr Matona and company. What reasons were given for their suspension?

Ms Venete Klein - At the me the view was that they would slow down the enquiry, which was agreed would only be for 3 months and that there were no charges brought against anyone of them, but that we'd asked them to step aside in the interest of ge ng this enquiry done, expedi ously.

Honourable Gordhan - And you agreed with that narra ve?

Ms Venete Klein - Not ini ally, but I was persuaded to a erwards.

Honourable Gordhan - What persuaded you?

Ms Venete Klein - The fact that we needed to get our hands around the business, we needed to get the going concern issues sorted out, we were si ng... [Interrupted]

Honourable Gordhan - So how was Mr Matona and company standing in your way. I mean you actually suspend a CFO who would have helped you to resolve going concern issues, but you suspend her.

[01h31:25]

Ms Venete Klein - And that is what we shared earlier, Honourable Gordhan, that that was one of the biggest opposi ons that this board had. The board wanted to do a detailed piece of work. The board want to go and see exactly what it was why we needed to suspend, par cularly the CFO, to your point; but we were persuaded otherwise.

Honourable Gordhan - So the miracle would have been performed by the Dentons inves ga on.

Ms Venete Klein - Sorry, I couldn't hear you.

Honourable Gordhan -The miracle would have been performed by the Dentons inves ga on. That would have uncovered... [Interrupted]

Ms Venete Klein - Yes.

Honourable Gordhan - ... whether your concerns were valid or not.

Ms Venete Klein - No, whether we could get to the base lining of what was wrong in Eskom at the time.

Honourable Gordhan - But how were you gonna do that?

Ms Venete Klein - By having a look at the contracts management, go by having a look at the, the di erent processes were being followed, by making sure that where there were allega ons those were being checked.

Honourable Gordhan - So that inves ga on took place?

Ms Venete Klein - That did take place.

Honourable Gordhan - What report is that contained in?

Ms Venete Klein - In the Dentons report.

Honourable Gordhan - But you just said it wasn't the Dentons report.

Ms Venete Klein - No, it was ... [Interrupted]

[01h32:26]

Honourable Gordhan - I put it to you, let me repeat my ques on and I know it's been a long day for you, so let me repeat my point; four people get suspended, in fact the next ques on I should have asked you is what informa on was given to you that those four, anyone of those four people would stand in the way of uncovering in inverted commas "the truth."

Ms Venete Klein - None.

Honourable Gordhan - But you s ll believe the narra ve that they would stand in the way.

Ms Venete Klein - Part of the mo va on Honourable Gordhan, which was discussed this morning, was in the case of Tsholofelo that she had met with somebody to do with some tender. That was the mo va on that was given to us by the then Chair. In the case of Mr Koko that there was some alleged thing with another sta member. Those, because obviously we were pushing, we wanted to do a bit of a deep dive and we were being persuaded that the inves ga on would be slowed down if the four people were to remain.

[01h33:31]

Honourable Gordhan - And Mr Tshediso Matona?

Ms Venete Klein - There wasn't any, any reason given just to say. No, no there wasn't any reason just say the four people… [Overtalking inaudible]

Honourable Gordhan - So, so as, as, as a person who has contributed quite formidably it seems in terms of the paperwork to making sure that there is good governance in the private sector in South Africa, you stood by and allowed an innocent person to be suspended and virtually smeared?

Ms Venete Klein - The answer has to be, yes, sir.

Honourable Gordhan - Ok. On the Dentons report, so there are many versions of the Dentons report it appears. Am I right? And what did the board do to make sure that a genuine Dentons report actually was presented where it was required? Why were the changes allowed? And by whom were those changes directed to be made?

Ms Venete Klein - The basis of the enquiry was for 3 months… it's just I'm finding it a little bit di cult to follow because I've got my Honourable colleagues here helping me.

Ms L Mnganga-Gcabashe - Members please, please.

Ms Venete Klein - I can't, I'm struggling to hear… [Interrupted]

Ms L Mnganga-Gcabashe - My apologies, my apologies ma'am.

Ms Venete Klein - The Dentons report or the Dentons program was going to be for 3 months, the enquiry was going to be for 3 months, was one of the resolu ons as agreed with Zola Tsotsi. When the report was brought to the audit and risk commi ee a er about 2 months, the allega ons, all the allega ons had been listed but we were told they were not all corroborated. The view of the board at the me was you could not put out… [Interrupted]

Honourable Gordhan - What percentage was corroborated?

[01h35:15]

Ms Venete Klein - … Probably about 50%

Honourable Gordhan - Ok, so what did you do about the 50%?

Ms Venete Klein - That 50% was then put into the formal report, which became the Dentons report as we know it today. All of those ndings were broken up into the di erent subcommi ees to take control of the issues that needed to be corrected in the organisa on. And at last count everything except for one had been resolved, all of the ma ers covered in the Dentons report. That was the feedback… [Interrupted]

Honourable Gordhan - But according to public knowledge the Dentons report, apart from the technical things that needed to be dealt with alright, it seems to suggest that there was rampant corrup on in Eskom, which included board members and top management, is that true?

Ms Venete Klein - I cannot comment because I do not know about that. I mean… [Interrupted]

Honourable Gordhan –No, no, is it true? Was it in the report or not in the report?

Ms Venete Klein - I don't know that it's in the report sir.

[01h36:08]

Honourable Gordhan - I beg your pardon?

Ms Venete Klein - That certainly was not. If you say board members; I looked at that rst report I saw no board members names in there unless they were previous board members that I didn't iden fy with I don't know.

Honourable Gordhan - Did the Minister have any role in direc ng changes be made to the Dentons report?

Ms Venete Klein - Not as far as I know.

Honourable Gordhan - Modi ca ons of any kind?

Ms Venete Klein - Not as far as I know. She only got the report once it was corroborated. It was shared with her. That's my understanding.

Honourable Gordhan - How do you?

Ms Venete Klein - That was my understanding.

Honourable Gordhan – No, but how do you know? You say it with such authority; she only got it at this point. How do you know the copy wasn't given to her beforehand or somebody that you don't know about?

Ms Venete Klein - I don't know that Sir.

Honourable Gordhan - You don't know ok. Now the Tegeta deal and the guarantee given by Anoj Singh of 1.6 billion rands via Absa, that's a viola on of the PFMA… Correct?

Ms Venete Klein - I totally agree with you.

[01h37:01]

Honourable Gordhan - What did the board do about that?

Ms Venete Klein - At the me when it was brought to the board for signature we were of, what actually, what came to us by way of round robin was 1.6 billion rand for coal supply, which was an urgent need by the organisa on that came to us on the 8th of December 2015. It was based on that that I said I would not sign up to this unless we have an IFP where we at least get a bit of technical background as to why this is required. An IFP was then conducted rst thing on the morning of the 9th and a er input from Dr Pat who then Chaired that for us in terms of the technical, why it was necessary, why we needed the coal; I was then comfortable to sign that o . The going… [Interrupted] at it over to you

Honourable Gordhan - What's the guarantee got to do with supply of coal? Sorry… [Interrupted]

Ms L Mnganga-Gcabashe - Honourable Member please round o . Thank you.

Honourable Gordhan - No I've got 20 more ques ons Chair. I'm only… [Laughter]… ja. No but I think these are important for clarity purposes so that both the public that's watching and ourselves understand exactly what Ms Klein has to o er, but I'll take your guidance Chair. This is a guarantee, a bank guarantee what's it got to do with the supply of coal? This is a guarantee that enabled Tegeta to buy Op mum… It's got nothing to do with the supply of coal.

[01h38:23]

Ms Venete Klein - Honourable Gordhan what we got as a round robin resolu on was for the purchase of coal. There was nothing about a guarantee in there.

Honourable Gordhan - Ok. Subsequently long before your departure from Eskom you would have heard that there was this guarantee given?

Ms Venete Klein - No. That… [Interrupted]

Honourable Gordhan - You only heard it a er you le Eskom?

Ms Venete Klein - No, no Honourable Gordhan that came out at a media conference where about 2 months or 3 months ago where one of the media people asked Anoj Singh about a guarantee. That was the rst me I'd heard about it. I had not known there was a guarantee issued prior to that.

Honourable Gordhan - So is it possible that the senior o cials at Eskom kept that away from some members of the board?

Ms Venete Klein - I don't think it's possible I think it's de nite that that's what happened.

Honourable Gordhan - Ok Chair…. maybe one or two last points. One is...now you le in 2017 right?

Ms Venete Klein - Yes.

Honourable Gordhan - So in October 2016 nuclear procurement is shi ed to the Eskom. Was that done with the board's prior approval?

[01h39:31]

Ms Venete Klein – No, I remember the mee ng very care-, very clearly Honourable Gordhan. There was apparently a mee ng between I think it was Mr Koko at the me and the Minister of Energy, and it was brought to the board's a en on a er the mee ng had taken place. And I remember the board feeling very strongly about the fact that this is passing the buck because Eskom was never going to be running with that nuclear procurement and the board had, it was a long session where the board said why are we taking this on and you know mee ng with the Minister of Energy surely our Minister, Minister Brown, should've been involved or at least given some direc on on it.

Honourable Gordhan - So also during your term of o ce there was this prepayment 600 odd million rands to Tegeta. Again the board wasn't aware of that?

Ms Venete Klein - No. I certainly was not, Sir.

Honourable Gordhan - That wasn't the ques on. The board wasn't… [Overtalking]

Ms Venete Klein - The board may have been aware of it because there was a board… tender commi ee, a board tender commi ee a BTC who dealt with it. But the actual transac on was never escalated to the board.

[01h40:38]

Honourable Gordhan - Last ques on. Mr, second last ques on, Mr Pamansky… or Pamensky to be more accurate, joined the board at about the same me as yourself.

Ms Venete Klein - That's correct.

Honourable Gordhan - Alright. Now again as a governance member and chair at various stages and being part of the Ins tute of Directors of South Africa, the issue of the con ict of interest in Mr Pamensky's role on the Eskom board and in Oakbay Resources, did that ever arise?

Ms Venete Klein – No, it didn't in fact. So that we're clear Honourable Gordhan, we don't sit and go through, I personally as governance, didn't go through every person's con ict of interest that was dealt with by

company secretariat. It was only where there were problems that they would come and discuss it with me. But that never arose in my time; it certainly didn't come to me.

Honourable Gordhan - Was there a con ict of interest?

Ms Venete Klein - Mr Pamensky believes there wasn't, I don't know.

Honourable Gordhan - No what do you think, you're the governance Guru.

Ms Venete Klein - Without looking at the actual structures it's very di cult to say.

Honourable Gordhan - No, no he's on the board of a company that's doing business with Eskom.

Ms Venete Klein - It's enough room to go and ask the ques ons and go and look at it more deeply I would assume.

Honourable Gordhan - Well it appears that you didn't quite get to the point to where you did ask the ques on. So the last point Chair is in the context of, of, all the informa on that's available at the moment where it is not well known to most who want to listen and believe that Eskom is one of the captured en es as far as state capture. How do you feel about your role and the period that you served on the board?

[01h42:22]

Ms Venete Klein - I say it in my statement, I thought it was one of my nest moments un l I realised all the things and all the noise in the papers. I've said it before you arrived Honourable Gordhan, I just pray this enquiry into state capture will happen and happen quickly so that those responsible for wrongdoings will be held fully accountable… in front of the law.

Honourable Gordhan - Thank you.

Ms L Mnganga-Gcabashe - Honourable Rantho it's your turn ma'am.

Honourable Rantho - Thanks Chair. And let me also appreciate your coming to the mee ng or to the enquiry and come and clear some issues that we do not understand. My main concern or my main problem as I'm listening to you is that the view that you are giving us is that the legal team within Eskom, the legal team within Eskom, is not helping the board or the execu ve members that are working within Eskom because most of the issues that we have raised- that you have spoken about… are of legal opinion coming from your legal people from, from, Eskom and some of them are very much challengeable… by law if I can say so even by the Cons tu on of the country. Do you agree with me on that?

[01h44:07]

Ms Venete Klein - Referring speci cally to the issue of state capture and report and the review, I totally agree with you because the legal opinion that we got said one thing where the board said another. I also did indicate Honourable Rantho that I think over me the legal department has become smaller and smaller so I think that's why if you listen to Eskom today most of the opinions are from outside. They get outside opinion so I think there's probably a need to strengthen the legal department, but yes a lot of the opinions we're ge ng are from outside and some of them have been proven to be wrong.

Honourable Rantho - I was once confronted by a number of people...communi es here in South Africa on the issue of load shedding. I was of the same view that you have that the arrival of Mr Brian Molefe in your

ins tu on made a big di erence and it actually helped us, I was of the same opinion like, like you did. I was convinced to accept that his appointment in Eskom has, has, been a very, a very good act to get ng Mr Molefe in the issue of and help us in the load shedding. But there is an opinion outside there that says the load shedding actually was just a, was done purposely so that Mr Molefe will be taken in as to become a CEO to remove somebody so that Mr Molefe can come in and become a CEO of Eskom. So that all the deals that are being kept to, for them to, to, run through especially by, because there are deals that the board cannot get through because of the apparently the execu ve that are within Eskom, so Mr Molefe were, was raked in because of that. Is that the, a correct opinion or is just what people are assuming outside there?

[01h46:36]

Ms Venete Klein - That's a very di cult one for me to answer because I must say what I saw when we arrived from a load-shedding perspec ve was caused by many years from 2008 un l 2014 when I joined of non...of not paying a en on to maintenance. I mean we've got this interna onal best prac ce or standard which talks of 80 / 10 / 10. 80% of the me your electricity ow is 100% perfect, 10% of your me you'll take down your machinery for maintenance and the others is 10% things will break. But with the me we started we were at 69% of me that we were up, which is why we were in load shedding. And the story this board was given was that it was from 2008 that there was a decision to keep the lights on at all cost. What it meant was it didn't ma er if a thing was going to be breaking in a year's me according to the guarantee, you couldn't take that out of commission, you needed to keep it on. So if you say that it was orchestrated I think it's got to be properly inves gated and if that is found to be true then I'll buy it, but that's certainly not what I saw.

Honourable Rantho - When, when you reappointed Mr Molefe with all the contracts that you have… the ve-year contract the… all the, all the English that you have in appoin ng Mr Brian Molefe and he stepped down and he was reappointed again when, you reappointed him even if it was for few minutes or for few hours, did you reappoint him with a new contract, which was clear to you that you would understand and that he would also understand that in the near future the contract is standing is, is, is like this because you had a, I think I am really surprised that a big company like, like, Eskom wouldn't know that if we are...if we are taking a person from a certain organisa on to our organisa on to come and help us in this organisa on, we need to set up standards. I mean that that can happen in a preschool also if a preschool is, does not have a, a, a teacher. The teacher that will be coming to help this preschool that would, that will have a certain standard that that teacher will have to follow. In your, in your case as Eskom seemingly there was no standard, there was no contract that was in place, you were just say, you were just en ced, if that is the correct word... en ced by the impression that Mr Molefe has put in front of you and then you just raked him in and put him in, in, in the, in the ins tu on without even looking at the legal impact of it. That is why I'm asking your legal people within Eskom are they really doing a, their correct job? Is that… do you have the same, the same view as… as I am having?

[01h50:03]

Ms Venete Klein - Honourable Rantho let me say this to you, I think Eskom being as old as it is has never had this level of… maybe, I don't even know what to call it, maladministra on around the appointment of an individual. I think it has got something to do with the fact that this is the rst me that a CEO in this organisa on is put onto a 5 year contract. And I think with that I would like to believe that the people who have been doing the actual contrac ng for many years and have go en it right for many years actually did not know how to convert from what they had as permanent all the years to a xed term contract and do it in

a way that makes sense. But I believe you're going to be bringing more people who actually does the administra on and I'm sure you'll be able to get that from them.

Honourable Rantho - Thank you. Is it possible that you can explain the character of Mr Anton Minnaar when I say the character of Mr Anthony Minnaar I don't mean his usual character but the character within the company? What type of a person, what was… was he of help in the, in, in, in building or developing Eskom or was he actually in Eskom to take down Eskom?

Ms Venete Klein - As Chairperson of People and Governance I think I was the one who probably worked the closest with Anton Minnaar in the me I was there, I don't know about previous boards. Anton Minnaar comes across as somebody who has been...who has been in Eskom for the last 16 years I think and in the last 16 years he's been responsible for bringing in and, not bringing in, but doing the paperwork around the appointments, pensions, increases of all senior execu ves in Eskom. He comes across as a person who has been at Eskom for many years and somebody that I don't believe would play with his pension, somebody who takes his job quite seriously. So I would be surprised if there was a view that he would be taking down Eskom. If anything I think he always tries to do the right thing but there maybe, you may be asking the ques on from a par cular purpose I'm not sure.

[01h52:27]

Honourable Rantho - Because is he the, I take it he is the one who facilitated all the reappointment or the administra on work that should be done in, in, in Eskom in re, in appoin ng a CEO in or reappoin ng a CEO and administering the issues maybe that concerns with, with, that that concerns the pension funds of, of, execu ve that is why I'm asking what his role within the company. Because I take it a person who is, who has who is being appointed and has got a legal background should be, who is appointed in that's, in that posi on that he has appointed, should be looking at ethical… ethical conduct of, of, of members, ethical issues of, of, of the company so as to get to the decision that he has taken in facilita ng all the, the, the issues that were happening around especially around the… the reappointment of Brian Molefe. Can you explain further?

Ms Venete Klein - I think it's important to note that Anton Minnaar is not a lawyer. Anton Minnaar is an administrator, you know. So he would be the go-between between the pension fund, he would be the go-between between the Department of Public Enterprises. But administra vely he would basically execute on what the board has decided, you know, so he's really just the administrator. The legal opinions or the legal input and the contrac ng would have been received from our legal department.

[01h54:10]

Honourable Rantho - The, the Minister… asked for a le er in the… when, when, when he got that le er that he was looking for during the, it was during the reappointment neh or… yes. The Minister then, what was the a tude of the Minister when she got that le er? Did she agree on the issues that were wri en in the le er or did she have some other ques ons or raise other...raise issues that were in that concerned her in that le er that was given to her?

Ms Venete Klein - Honourable Rantho I'm not sure which le er we're referring to, do you know which one?

Honourable Rantho - It's the letter that was… I think there's a letter that was written that the Minister asked for. It's during the re, it during the, the, the issue of, of the… of the Pension Fund and the reappointment of it is, it's during that me. It's, it's a le er that was wri en during that me, it's just that I can't nd the page now. I did not mark it here.

Ms Venete Klein - I'm not sure. Look I was with, with the...when the pension fund issue rst hit the papers I was with to go and sit with the Minister, but I'm not sure if there were any other le ers that went a er that. I'm not aware of that Honourable Rantho.

Honourable Rantho - Maybe I will get it some me and maybe I will give the ques on to somebody else. Ok… The, the, I'm also concerned about the, the 6 o'clock mee ng of the board… I did not hear you maybe I was I was a li le bit late I came a li le bit late in the mee ng. I was not sure what really transpired in that mee ng that when Mr Koko, when all of you took a decision that Mr Koko must be released or must be suspended. Then you come to a 6 o'clock mee ng there's a di erent view on the issue or you did, when you went to that mee ng were you going there to that mee ng to go and suspend him or for him to give reasons. Because you are speaking about the, about reasons that you want from him in saying 'give us reasons why can't we suspend you,' were you not having a decision, a clear decision to suspend him and just give him reasons of suspending because you had, you had reasons for suspending him. You s ll believe that he was supposed to be suspended.

[01h57:27]

Ms Venete Klein - I believed that he should have been suspended, which is what I've been saying. At the mee ng, the earlier mee ngs which we were listening to the recordings on, it became very clear that the most people wanted him suspended but I think it was Mr Khoza who put on the table the issue of process, the policy issue when you suspend someone which was exactly the same that happened to the other four people that was suspended previously. You call people in and you say to them you give us the reasons why you believe you ought not to be suspended and that is what happened there as well. The thing is though that he then was going to be responding to Dr Ngubane in wri ng on why he ought not to be suspended. Where I was at a bit of a dif- disadvantage is I didn't realise that we were going to be playing that tape because then I would have had that exact minute, I would have known the dates, I know for a fact that we met again on the 28th of March where that same thing was discussed and he even acknowledged, he acknowledged the fact that I had warned him previously about his behaviour towards sta . I just need to go back and nd the exact date when the rst mee ng, the one that we listened to the recording on today happened.

[01h58:38]

[O mike conversa on inaudible]

Ms L Mnganga-Gcabashe - You're welcome. Thank you very much ma'am it has been a long day and we appreciate your coopera on for this interac on of the commi ee with you and the informa on and the clarity that you have given to the oversight enquiry assists us in a great deal to have a more understanding on what transpired within the board and the company itself during your tenure. And, and for that we really appreciate your staying for this long and we wish you a safe journey back to your des na on and once more thank you.

Ms Venete Klein - Thank you Chair.

Ms L Mnganga-Gcabashe - Honourable members let me take this opportunity to convey our sincerest, sincere apologies to you especially ma'am because you are arrive very early today, that we are delaying, we had, there are delays and we s ll have to break for up to maybe 16:00 hours, but I did send a message to you and she s ll, you are s ll ok and we appreciate that very much and also I'm aware that we are behind me for another witness that is going to come a er you. We apologise, we are apologising in advance. We...

members we are breaking and I would like us to quickly grab some eats so that we go back to the house and then we'll reconvene at 16:00 hours. Thank you very much.

[02h00:34 - BREAK]

[02h04:16 - RESUMES]

Ms L Mnganga-Gcabashe - Honourable members, we are resuming our session. Honourable members this session has to take us only for 2 hours, we should nish by 6:15pm. It's now going for 4:15pm; 16:15 exactly we are star ng and then we are nishing at 18:15.

Good a ernoon Ma'am again, good a ernoon. I think everything has been explained to you. Approach please. Are you ok Ma'am, ok I'll start reading and then I'll ask the question yes you'll... no, no I'll start reading, I'll pop the question then you'll answer. Yeah you'll use it when you answer; you'll use your mic.

"In accordance with sec on 16 of the Powers, Privileges and Immuni es of Parliament and Provincial Legislature Act 2004, as a witness to this oversight enquiry, please be informed that by law you are required to answer fully and sa sfactory all the ques ons lawfully put to you or to produce any documents that you are required to produce in connec on with the subject ma er of the enquiry, notwithstanding the fact that the answer or the document could incriminate you or expose you to criminal or civil proceedings or damages. You are, however, protected in that evidence given under oath or a rma on before a house or a commi ee may not be used against you in any court or place outside parliament, except in criminal proceedings concerning a charge of perjury or a charge rela ng to the evidence or documents required in these proceedings. Please be aware that in terms of sec on 17 (2) of the Powers, Privileges and Immuni es of Parliament and Provincial Legislature Act, a person who wilfully furnishes a house or a committee with informa on or makes a statement before it which is false or misleading commits an o ence and is liable to a ne or to imprisonment for a period not exceeding 2 years. You are required to take an oath or a rm that the evidence you are about to give is truthful. You may choose to take the oath or the affirmation." Which do you prefer?

Please proceed Ma'am, read your... read that.

Ms ***Viroshini Naidoo -*** I swear that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth so help me God.

Ms L Mnganga-Gcabashe - Thank you very much. Over to you Advocate Vanara.

[02h08:28]

Advocate Vanara - Thank you Chair. Ms Naidoo can you for the record state your full names.

Ms Viroshini Naidoo - My name is *Devapushpum Naidoo,* but I'm known as Viroshini.

Advocate Vanara - You have prepared a statement for the commi ee, it is an 18 page statement together with annexures, do you con rm that?

Ms Viroshini Naidoo - Yes, I do.

Advocate Vanara - And with your permission the statement has been shared with members of the commi ee, do you have any objec on to that?

U14-VK-0491

03

COMMISSION OF INQUIRY INTO STATE CAPTURE

SUBMISSION BY BOARD OF ESKOM HOLDINGS SOC LIMITED

(REGISTATION NUMBER 2002/015527/30)

TO

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

COMMISSION OF INQUIRY INTO STATE CAPTURE

1. INTRODUCTION

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

2. DISCLAIMER

2.1. This submission is made to the Committee subject to the conditions set out in this paragraph 2.

2.2. Due to the pressures of time as more fully set out in Eskom's letter dated 16 November and previous correspondence to the Portfolio Committee from Eskom, there may be information that is not available at the moment of making this submission. Eskom undertakes to provide such information before the end of the enquiry.

2.3. This submission is made reserving all Eskom's rights as a Company and that of Board members individually and collectively including without limitation their rights in terms of the Constitution of the Republic of South Africa 1996, the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act No. 4 of 2004 and the Rules of the National Assembly.

2.4. Myself and any other current board member or official that gives evidence in this Inquiry may not be able to recall events from memory during question time and will attempt after the hearing to submit any further documents requested by the Committee. Failure to recall an event should not be interpreted as a refusal to respond to the question.

2.5. In the preceding weeks various former officials and one former Board member have made serious false and unsubstantiated allegations about the board and individual current and past board members. I would like to draw the Committee's attention to the fact that while in some instances in our written submission we refer to a few of these inaccuracies, the failure to deal with such inaccuracies or to counter them in this submission or in the oral evidence should not be interpreted as acceptance by myself or the Board either individually or collectively, that such allegations are truthful.

3. CHALLENGES FACED BY ESKOM

3.1. In order for the Committee to appreciate the current challenges around liquidity and governance at Eskom, it is important to give some background of how these challenges emerged. These challenges are interrelated and related to structural and historical problems.

3.2. The importance of Eskom to the country, its people and economy cannot be overstated. Eskom generates approximately 95% of the electricity used in South Africa and approximately 45% of the electricity used in other parts of the African continent. Eskom generates, transmits and distributes electricity to industrial, mining, commercial, agricultural and residential customers and re-distributors.

3.3. I will deal firstly with the structural challenges. The challenges that the Board found when I was first appointed as a Board member in 2014, date back to the beginning of Eskom.

3.4. Eskom as a Company is 94 years old.

3.5. The Electricity Commission (Escom) was established in terms of the Electricity Act of 1922 to "stimulate the provision, wherever required, of a cheap and abundant supply of electricity for the economic advancement of the Republic of South Africa". While it was run along strict business lines, the objective was largely the provision of service for public benefit and not for profit. The organisation was directed by a chairman and six other commissioners, all appointed by the State President for their knowledge and experience in the various sectors of the economy and in the electricity supply industry. The entity was non-regulated and set pricing according to its business requirements at the time.

3.6. On 1 July 2002, when Eskom was converted from a statutory body to a public company, known as Eskom Holdings Limited in terms of the Eskom Conversion Act, 13 of 2001. Eskom's two-tier governance structure of an Electricity Council and a Management Board was replaced by a Board of Directors.

3.7. Today, Eskom is also regulated under licences granted by the National Energy Regulator of South Africa, originally under the Act (41 of 1987), replaced by licences under the Electricity Regulation Act (4 of 2006) and by

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

3.8. Unlike its non-profit mandate at inception, Eskom today operates with a **commercial, compliance, and socio-economic** mandate in keeping with achieving social, financial, and environmental sustainability. Fulfilling its **commercial mandate**, Eskom must ensure that it is financially viable to continue to operate and to raise debt to fund its business operations and capital expansions.

3.9. In fulfilling its **compliance mandate**, Eskom needs to comply with the various licences and also live by the various government policies that govern state-owned enterprises and companies in general.

3.10. Finally, Eskom's **socio-economic mandate** helps South Africa achieve its broader developmental objectives of rural electrification, free basic electricity, job creation, and skills and supplier development.

3.11. Ladies and gentlemen, at this point, allow me to pause for, at this point, many mayquestion whether it was these governance shifts that led Eskom down its current path?

3.12. On the surface, it may appear so, but the deep-rooted reality is that the answers lie in its boom and bust cycle – consistently moving in waves of excess capacity and capacity constraints, in line with economic fluctuations, over the decades. The boom cycle is typically represented by excess capacity, increase in sales, and excellent plant performance, while the bust cycle manifests itself through a shortage of capacity and poor plant performance.

3.13. So, while it may appear that Eskom recently took a stumble, the reality is that its operational and financial performance is expected in line with the bust and boom of the national economic flux.

3.14. A story that sounds overly familiar is the bust of the early 1980s. Complying with a request made in the mid-seventies and in the interest of the national economy to delay certain capital projects, Eskom lost three to four years of generating expansion, leading to the spate of power outages in the early eighties and an expensive capacity expansion programme, supported by government guarantees.

3.15. The 1983 De Villiers Commission of Enquiry was established as a result of concerns around the process and progress of the capital expansion programme and associated costs and impact on the economy. Power outages were frequent as a result of the unavailability of capacity and poor plant performance. At the time, plant availability was recorded at 72%. The new build at the time housed technology that was able to accommodate low-quality burn as a result of the poor sustainability of mines and poor quality of coal mined then. This followed the boom of the nineties and excess capacity due to the economic downturn experienced in the country. Plant performance was operating optimally, with 90:7:3 achieved, that is, 90% availability of plant, 7% planned outages, and 3% unplanned outages achieved in 1998. Eskom responded by driving a marketing initiative to increase sales and established Eskom Enterprises in 1999 to transition to new business operations and to grow new markets.

3.16. It was during this boom cycle that the new democratic government finalised the Energy White Paper in the late 1990s, outlining additional principles relating to Eskom's monopoly status and the proposition of breaking up the sector into a separate system and market operator and regional electricity distributors. This also included the fateful decision of cancelling the construction of new generation plant in anticipation of private investment by independent power producers. It, furthermore, kick-started the process to develop regional electricity distributors or REDS, as per a Cabinet decision. The REDS were subsequently cancelled in 2008, despite Eskom having ring-fenced its operating units in preparation for the transition.

3.17. The bust that followed in 2007/2008 is well known – labelled by Eskom's PR fraternity and engineers as load shedding. Load shedding was a consequence of a combination of events arising from the earlier deferral of planning and investment decisions by the new government, a similar unsound decision made by the Government in the mid-seventies. These

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

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

3.19. Eskom's strategy at the time included:

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

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

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

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

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

2010-2014

3.23. From 2010 to 2014, Eskom drove a recovery programme, achieving an increase healthy profits. Nersa had granted above-inflation tariff increases of an average of 31% in July 2009 and 24.8% in April 2010. Government's support included R430 billion in financial support, with R350 billion in guarantees, to deliver the country's electricity capacity expansion programme.

3.24. The country hosted a successful FIFA World Cup to which Eskom contributed by keeping the lights on. A new chief executive was appointed, and all vacancies in the executive management committee were filled.

3.25. The 2010 IRP was promulgated, providing guidance on the new expansions and diversification opportunities for greater regional development and electricity imports. The IRP provides a medium- to long-term plan that directs the expansion of electricity supply (including private and own generation) and power purchases from regional projects and demand initiatives in South Africa over the period 2010 to 2030. The IRP determines the timing and mix of the projects and provides the basis according to which NERSA will license projects.

3.26. Eskom subsequently signed on independent power producers to boost supply and diversify the national energy mix. Plans were in place to return the previously mothballed power stations and bring new units online. With the intent to ensure that IPPs obtained fair access on the transmission network, the government tabled the Independent System Market Operator (ISMO) Bill. This outlined energy planning, feasibility studies, IPP procurements, and market administration. This was, however, withdrawn in 2014/2015, as global implementation outlined potential risks.

3.27. In March 2011, in an effort to secure an energy-efficient future, Eskom, government, and business partners launched the biggest long-term countrywide saving movement called 49M. The objective of 49M was to change behaviour and to encourage all citizens to become more energy efficient, thereby protecting the planet, saving power, and sparing one's pocket.

3.28. The campaign was championed by the former Deputy President, Kgalema Motlanthe, and the former Minister of Public Enterprises, Minister Malusi Gigaba. The campaign, driven by Eskom's Corporate Affairs Division, included advertising across radio, TV, and print media, and it reached South Africans through the participation of corporates and retail partners, who activated the 49M campaign among staff, suppliers, and customers nationwide. The movement urged every South African to "Lift a Finger", which was all it took to switch off a light when not in use. The symbol of the key messages "Remember Your Power" and "If you are not using it, switch it off" was a yellow reminder string, a thread that tied these messages together. This became the single biggest effort driving South Africans at the time.

3.29. The success of the campaign is, today, evident from the reduction in electricity demand and sales, an increase in off-the grid supplies, an increase in energy-efficient products such as solar geysers, LEDs, and CFLs, and from energy-efficiency ratings on products in the marketplace.

3.30. Despite recording a net profit of R5.2 billion for the 2012/2013 period, Eskom continued to navigate through its financial and operational challenges. Funding new investments and the obligation to assure affordability for households and businesses remained key challenges flowing from the revenue gap resulting from the MYPD3 revenue determination.

3.31. Keeping the lights on, stabilising the short-term finances while managing an 8% annual average tariff increase allowed by Nersa, securing funding for the build programme, making progress on the build programme, and re-engineering the business for more effective performance remained critical in 2012/2013.

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

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

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

2014/15

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

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

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

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

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

4 Launching a coal independent power producer programme

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

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

3.36. When I assumed my role as a board member at the end of 2014, I was surprised to learn that the landscape was more complex than what I perceived it to be as an ordinary citizen.

3.37. The month prior to my appointment, Eskom had yet again announced the development of a turnaround strategy to arrest the operational and financial decline and to stabilise the business. The Turnaround Strategy focused on four key areas: operational sustainability, revenue and customer sustainability, sustainable asset creation, and financial sustainability.

3.38. Eskom was still implementing load shedding, now in stage 3 impacting daily lives and industrial production.

3.39. Eskom's narrative still read, I quote: "We have communicated for an extended period that the national power system is constrained due to the lack of available generating capacity. To balance and protect the power system, we have to apply demand management practices, which include utilising OCGTs and pumped-storage schemes, as well as relying on independent power producers (IPPs), interruptible load agreements, load curtailment by key industrial customers, and energy efficiency efforts by other customers. When sufficient demand savings are not realised, we have to resort to controlled, rotational load shedding."

3.40. The company still faced financial challenges despite recording a profit of R3.6 billion (2013/14: R7.1 billion) and recording internal cost savings of R9 billion. Government provided an equity injection of R23 billion and conversion of its subordinated loan to equity (R23 billion + R 60 billion =

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

3.41. The build programme was behind schedule and had started later than it should have as a result of government's attempts to bring in IPPs. Undertaking a capital expansion programme of such a magnitude 20 years after the completion of such previous programmes was met by a loss of skills and a lack of construction experience. The additional challenges of insufficient funding, labour unrest and demands on the build sites, poor contractor performance, and significant cost overruns on the project resulted in significant delays, which ultimately escalated costs even further. Eskom was hopeful at the time that it would synchronise its first unit at Medupi by the end of 2015. The unit was commercialised on 23 August 2015, eight years after starting construction on 14 August 2007. At the start of construction Eskom had optimistically projected that the last unit of Medupi would be commissioned in 2015.

3.42. In addition to these challenges, Eskom experienced a significant safety incident at the Ingula construction site, where six contractors lost their lives onsite. This was painful for the company and resulted in additional time loss, as the Department of Manpower requested a shutdown of the site to conduct the necessary investigations.

3.43. The lessons learnt were expensive to both the company and country and were regrettably experienced at Medupi, Kusile, and Ingula at the time. Only the 100 MW Sere Wind Farm came in on budget and on time, having been commercialised on 31 March 2015.

3.44. In addition, operational performance was also deteriorating. Generation plant availability (EAF) declined to 73.73% for the year 2014/15, compared to 75.13% in the previous year. Unplanned maintenance (UCLF) had deteriorated significantly from 12.61% in 2013/14 to 15.22%, partly due to the Duvha Unit 3 incident and the Majuba silo collapse.

3.45. The financial health of the organisation remained under pressure given the flat demand and rising operating costs particularly in primary energy such as liquid-energy fuel to run OCGTs and the cost of maintenance.

3.46. Despite this, the renewable programme was progressing well as Eskom purchased 6 022GWh from IPPs during the year, at a cost of R9.5 billion.

3.47. Ladies and gentlemen, as the newly appointed Board this was the backdrop which sketched the enormity of the task at hand. It was a responsibility which each of us agreed to shoulder. We had no choice but to take a principled stand and take the necessary action for the benefit of our country.

3.48. Undeterred, we garnered our individual strengths to tackle the challenges and possible irregularities that were brought to our attention through our engagement with the executives.

3.49. The Board agreed to meet more frequently to address operational and financial challenges. We established two-task teams, one a build and the second an operational task team, each chaired by a Board member and which included executives from the business. The objectives were to fast-track the build programme and to arrest load shedding. I have no doubt that it was this hands-on approach and key focus of the Board and the leadership of Mr Molefe at the time that saw the build programme being fast-tracked and load shedding ceased when it did.

3.50. We resolved as a board to take bold and decisive decisions, for the benefit of Eskom, the shareholder and the country at large.

2015/2016:

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

3.52. At the end of the financial year 2015/16, slightly more than 12 months from the time that the new Eskom Board was appointed, we had challenged and changed the fundamental assumptions that guide this complex business. Through the Design-to-cost strategy we had made steady progress and had seen notable improvements. This had contributed to operational and financial sustainability for the company and had resulted in reliable electricity supply for the country.

3.53. It was extremely heartening to receive many team based presentations at the Board. Ordinary employees came forward and shared with delight their achievements. Majuba's collapsed silos was initially planned to be repaired in a few years. After a submission or two, this work was completed in a few months; all three silos were completely recovered and Majuba returned to a full and proud production of 6 x 600 MW of generation output.

3.54. Due to the able leadership of the new chief executive and his team, load shedding was terminated and we had made excellent progress on the new build programme with the commercialisation of Medupi Unit 6 in August 2015 and Ingula Unit 4 on 10 June 2016. To date the programme has been successfully fast-tracked with all four units of Ingula, Medupi Unit 5 and Kusile unit 1 having been connected to the grid.

3.55. We have developed a sustainable capital investment plan that prioritises projects closely aligned to our strategic objectives. These include our new build programme, the recovery of our generation asset base, completion of environmental projects and improvements in our transmission and distribution grid infrastructure.

3.56. We had taken full advantage of the equity injections by the shareholder and the conversion of the shareholder loan to equity.

3.57. We established a cohesive team between Board and Management and made an indelible contribution to achieving our combined success.

3.58. At the end of the financial year 2016/17 the performance reflected a concerted effort by the business to improve efficiencies, resulting in surplus capacity, increase cross-border sales, supported by improved plant performance.

3.59. Eskom is now open to support new investments in South Africa and across our borders. The move from a constrained power system to surplus capacity is a result of improved generation plant performance, units from our new build programme being commissioned and independent power producers being included in our mix.

Corporate Governance

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

3.61. I am confident that with the right leadership and intervention by the shareholder to try and deal with the structural reasons for the liquidity crisis within Eskom, Eskom can be restored to what it was.

4. ESKOM TRANSACTION WITH TNA MEDIA

4.1. On 14 April 2015, TNA Media (Pty) Limited ("TNA Media") concluded a sponsorship agreement with Eskom " in terms of which, amongst others, TNA Media would grant Eskom, amongst others, the following –

4.1.1. live broadcast of events for at least 60 (sixty) minutes;

4.1.2. advertisements in the NEW Age;

4.1.3. two tables, of 10 (**t**en) guests each at events; and

4.1.4. a sponsorship speech, from the podium, before start of the events.

4.2. The duration of the contract was for 3 (three) years and to terminate on 30 April 2017.

4.3. The sponsorship fee payable by Eskom was R 43 200 000.00 (forty-three million, two hundred thousand rand), excluding Value-Added Tax ("VAT") for 36 (**thirty-six**) business briefing events at the cost of R 1 200 000 (one million, two hundred thousand rand) each.

4.4. The parties could cancel the agreement in the case where one of the parties breaches any terms of the sponsorship agreement.

4.5. Either of the parties could also, terminate the sponsorship agreement if any of the parties is declared "bankrupt" or any administrative receiver or simil.ar officer, is appointed in respect of "whole or part of the assets of either party."

4.6. The agreement between Eskom and TNA Media was authorised and signed by Mr Collin Matjila who was the acting group Chief Executive Officer of Eskom.

4.7. Management of Eskom raised its concerns about the sponsorship agreement in light of commitment made by Mr. Matjila to TNA due to his lack of delegated authority, to conclude the sponsorship agreement and the absence of budget from which to pay the sponsorship fees. The Board through its committees, established that Matjila had acted *ultra vires* and committed Eskom to a sponsorship fee that was not budgeted for in that financial year.

4.8. SizweNtsalubaGobodo were instructed to carry out a forensic review of the sponsorship deal. SNG confirmed that Matjila had exceeded his powers by committing Eskom to an amount of R 3 600 000.00 (three million, six hundred thousand ran**d**) without consulting the Executive Committee ("Exco") of

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

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

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

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

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

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

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

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

5.3. The Board decided to suspend the procurement process of replacing T-Systems to enable T-Systems to continue providing services to Eskom because T-Systems was well acquainted with Eskom's existing IT systems and to discontinue their services, would have had a negative impact on security of supply.

5.4. Eskom saved approximately R 800 000 000.00 (**eight hundred million rand**) by continuing to use the services T-Systems because T-Systems allowed certain functions which were the responsibility of T-Systems to be carried out "inhouse" by Eskom.

5.5. The agreement between Eskom and T- Systems is valid until April 2018.

5.6. Mr Sal Laher was suspended by Eskom in November 2014. The reason for his suspension was that he failed to follow procurement processes. The Board has been advised that there was an amicable settlement between Eskom and Mr. Sal Laher. Mr. Sal Laher was paid a severance package.

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

6.1. On or about the 20th of April 2015 Mr Brian Molefe ("**Molefe**") was seconded from Transnet to Eskom to assist with operational requirements at Eskom. Molefe was initially seconded for a period of 3 months, which initial period was later extended for a further 3 month period. In total, Molefe was on secondment for 6 months.

6.2. On the 28th September 2015 the Minister of Public Enterprises – Minister Lynn Brown announced that the cabinet had approved the appointment of Dr Ben Ngubane as Chairperson of Eskom's Board and Mr Brian Molefe as the Group Chief Executive and Mr Anoj Singh as the Chief Financial Officer at Eskom.

6.3. On the 24th of September 2015, a draft offer of employment was prepared for Molefe on the basis that the Group Chief Executive - Molefe would be appointed on a permanent basis as a Standard F - Band Executive. The offer of permanent employment became effective from the 1st of October 2015. A formal letter was addressed to the interim Chairperson - Dr Ben Ngubane from the Minister of Public Enterprises on the 2nd of October 2015 in terms of which the Minister formally approved the appointment of Molefe. No mention is made in that letter whether the Molefe employment contract would be on a permanent basis or a fixed term

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

6.4. On the 2nd of October 2015 a letter was also addressed from the Minister to Molefe confirming his appointment. It is important to note that no mention is made of the term of the employment contract. The inference drawn based on the letter of the 2nd of October 2015 addressed from the Minister to the Chairman as well as the letter addressed from the Minister to Molefe also on the 2nd of October 2015 that Molefe's employment was on a permanent basis as no mention is made of a fixed term.

6.5. A standard F- Band contract of employment based on permanent employment was prepared on the 7th of October 2015. This employment contract was not signed by either Eskom as the employer or Molefe as the employee. On the 16th October 2015, a letter was addressed to the Minister from the Eskom Chairman requesting approval for the remuneration of Molefe, in terms of which the proposed total costs to company, was to be increased. This letter is indicative that the understanding by the Eskom board was that the employment of Molefe would be done on a permanent basis.

6.6. On the 1st of November 2015, the Minister responded to the letter of 16 October 2015, where she approved the proposed remuneration package to Molefe. This letter was addressed to the Chairperson and was received by the company secretary on 4 November. In that same letter she further expresses her view that the period of employment for Mr. Molefe be recorded as 5 years subject to annual performance reviews. This is the first time that Eskom is advised that the tenure of Mr. Molefe's employment be on a fixed term basis and not permanent.

6.7. An offer of employment on a permanent basis which had been prepared was signed by Dr. Ngubane on the 9th of November 2015 The offer of employment was co-signed by Mr. Molefe on the 11th of November 2015. It appears the chairperson may not have been aware of the letter sent to him and the company secretary by the mInisater ont eh 4th of November.

6.8. It is important to note that the appointment letter did not state the specific term of tenure of the employment, although it was made clear that the offer of employment would be on a fixed term basis.

6.9. On or about the 16th of November 2015, various retirement issues were discussed between Mr. Molefe and the Chairperson. A specific term to be considered was whether Mr. Molefe would be entitled to early retirement at the end of his fixed term contract should his contract not be renewed. The Eskom Pension and Provident Fund was consulted on or about the 16th of November 2015

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

6.10. In that letter Eskom specifically requests the following:

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

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

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

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

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

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

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

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

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

6.12.2. Waive penalties applicable to early requirement;

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

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

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

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

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

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

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

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

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

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

6.21. In the same letter a second option considered was a non-consensual rescission in terms of which in the event that Mr. Molefe did not consent to a rescission of the decision taken to provide him with early retirement, Eskom would have to launch a court application to overturn its decision taken on the 21st of November 2016 (to approve early retirement for Mr. Molefe, as well as attempt to overturn the Eskom Pension and Provident Fund's decision made pursuant to rule 28.3 of the EPPF rules. If Eskom does not bring this application, the Minister may institute an action against Eskom on the basis that its decision of 21st November 2016 to accept early retirement was irrational and unreasonable. This option would only be considered if Mr. Molefe did not agree to a rescission of his approval for early retirement.

6.22. The third scenario envisages resignation in terms of which Mr. Molefe's application for early retirement be rescinded and thereafter Mr. Molefe retains the option to resign from Eskom's employ. In this scenario he would be entitled to his normal retirement benefits in terms of the Eskom Pension and Provident Fund Rules. Eskom agreed that the employee may return the monies paid to him which were linked to his early retirement. Under the final option being a settlement payment, the parties may agree that Mr. Molefe's approval of his early retirement be rescinded and in that instance they would pay him a settlement amount to be agreed on.

6.23. On the 11th of May 2017 a letter was addressed to Mr. Molefe by Eskom in terms of which it is recorded that the Board has taken a decision to rescind the initial decision to approve his early retirement. It is further recorded that the Board requests Molefe to resume his duty as Group Chief Executive by the 15th of May 2017 on the basis of a reinstatement agreement to be signed.

6.24. On the same date, namely the 11th of May 2017, Molefe concluded a contract to be reappointed as Group Chief Executive Officer. In that reinstatement agreement Molefe agrees that he resumes his duties as Group Chief Executive Officer and to pay to the Eskom Pensions and Provident Fund all the amounts due to the Fund which were paid to him pursuant to his early retirement. The period between 1 January 2017 and 15 May 2017 is regarded as unpaid leave.

6.25. It should be noted that in terms of the Eskom Pension and Provident Fund member's guide to benefits clause 3.3(*d*) provides for early retirement with separation benefits. The following is recorded:

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

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

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

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

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

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

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

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

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

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

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

7. SUSPENSION OF FOUR EXECUTIVES

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

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

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

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

7.4. All this resulted in Eskom having to seek increasing funding from Treasury and it was also anticipated that funding shortfalls will continue. The memorandum also referenced serious and embarrassing issues relating to tender and other expenditure disputes some which become the subject of court actions which increased negative perceptions of Eskom.

7.5. It was also stated in the memorandum that such problems and failings create consequential risks which extend far beyond the Company and South Africans. It has a serious impact on the economy which covers all sectors and postponed foreign and domestic investments some of which are cancelled outright. In turn this creates increased unemployment and pressure on the fiscus.

7.6. The Board has been reliant on Executives for information. It was felt that the Board is obliged to establish the reasons for the crisis through a factual enquiry so that it could address the causes. It was therefore proposed that an independent external inquiry be held which was referred to a deep dive investigation and that the Board should act immediately given the serious impact of these problems on Eskom and the economy as a whole.

7.7. Based on the severe risk of further outages and little independent understanding of the facts it was felt that the Board should immediately act to establish firsthand the causes of these challenges and intervene to arrest them or deal with them. It was recommended that the Board urgently authorise and mandate an independent external enquiry for this purpose.

7.8. It was also recommended that this enquiry should be unimpeded by the management and the Board and other policy stake holders. It must be credible and objective and it must have a mandate to be penetrating and unhindered. The Board must create the space and environment within the ompany for the investigators to be unimpeded and with no influence from Management.

7.9. The Chairperson then placed this resolution which was drafted by him before the Board. It was further recommended that the investigation must be mandated to a Board sub-committee who will then draft Terms of Reference and will be mandated with oversight of the enquiry. The resolution proposed that the Board

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

7.10. At the board meeting, Mr. Tsotsi reported to the Board that the Presidency had expressed concern that the impact of Eskom and the power outages on the country was being understated. It was felt that the Board should get to the bottom of matters and establish the exact causes of the problems so that it could take decisive action. Mr Tsotsi said that he had been requested to ask the Board to authorise an independent external enquiry.

7.11. A discussion among Board members followed and aspects of the Resolutions were changed for example the Board decided that the Finance Director should be approached to fund not the Minister of Finance. Mr Tsotsi reported that an independent resource had already been identified by the Presidency to carry out the resolution and he, the chairperson, had already gotten a document in that regard.

7.12. Board members raised a number of objections including that they were not comfortable with making a major decision such as this based purely on a two (2) page document and the concern that for a period of three (3) months both the Board and Management focus would be taken away from resolving the matters at hand. Others felt that there were insufficient facts placed before the Board to make such a far-reaching decision. Members also felt that if as the chairperson said this was a request from the Presidency it should simply have been a directive to the Board from the Presidency or the shareholder representative in which case the resolution should state that the enquiry was a request from the Presidency. It was also felt that while deviations from procurement processes were allowed when warranted it would be necessary to understand why the Presidency required this deviation for this committee.

7.13. In response to these concerns Mr Tsotsi said that it would be prudent to receive a direct communication from the shareholder representative being the Minister around the issue and he undertook to discuss the feeling of members with the shareholder.

7.14. At the meeting of 9 March it was resolved that the request for the establishment of an external and independent enquiry was noted. Secondly it was resolved that the board should engage with the Minister of Public Enterprises to obtain clarity around the Terms of Reference the Scope of Objective and Achievement of the Board of Enquiry.

7.15. Due to the concerns raised by the board members on the 9th March another board meeting was convened this time with the Minister in attendance in order to clarify the issues raised in the previous meeting. This meeting was held on the 11 March at 12 mid-day. The meeting started at 10 am with the Minister in attendance. At this meeting the Minister once again raised concerns about the Eskom board getting to grips with the operational issues and to try and resolve the underlying reasons for the load shedding and other problems.

7.16. From 12 noon the board held an in-committee session. At this in-committee session Mr Tsotsi once more proposed that an enquiry be done and that certain executives be asked to step aside during the course of this enquiry to ensure that the enquiry remains independent and without interference.

7.17. The Minister made it clear that she has no authority as to instruct the board as to what to do but mentioned certain issues of great concern to her such as the negative developments in the South African economy being the fall of the Rand, the Standards and Poor two (2) year review leeway period granted to the country, the low growth of the economy and the possible effect of a downgrade of the sovereign credit rating. She was also concerned about the February level of load shedding. In the meeting with the Minister various questions were raised by board members such as the cancellation of the meeting of 26 February 2015.

7.18. After further discussion it was agreed that the enquiry would occur and that executives who are responsible for areas which will be the focus of the enquiry should step aside temporarily for the duration of the enquiry in order not to impede it. The meeting with the Minister lasted from 10h00 till 12h00 thereafter the board went into an in meeting. At the meeting further discussions were held about the enquiry. Board members felt that based on the motivation and the concerns around the impact of the challenges at Eskom on the economy that there is a need for a fact finding enquiry. However the board did not accept all the recommendations by Mr Tsotsi on how the enquiry should be conducted. It felt that rather than a committee comprising of the chairperson it should be the Audit and Risk committee that should be the custodian of the process and it should where necessary engage with other committees.

7.19. Mr Tsotsi once more highlighted the fact that he believed it was necessary for the employees to step aside. Board members raised a question regarding what impact this would have on the operations of the business given issues of continuity. Some board members still wanted a fact finding exercise to be undertaken before actual suspension were implemented as this would be necessary to avoid acting against possibly innocent executives. In response to these concerns Mr Tsotsi suggested that some of the executives were involved in wrongdoings and listed these.

7.20. Mr Tsotsi identified people who needed to be requested to step aside, as the Group Executive; Commercial and Technology; Group Executive Group Capital; the Finance Director and Chief Executive Officer. An Aide Memoire was presented by him which contained a draft suspension letter and contained specific instances of alleged wrongdoing by three (3) executives.

7.21. Board members felt that it would be better if subcommittees discussed the matters first and ensure that proper processes were followed. In response Mr Tsotsi advised that a lot of ground work had already been done in this regard and a report can be given to board members at a later stage. He felt that the most important thing is that the enquiry is done and it should be done soon. Board members pointed out that it would be of great concern especially in the market for Eskom to suspend the Financial Director and the Chief Executive at the same time. Mr Tsotsi alleged that the Finance Director had problems about her as because she had allegedly met with Tenderers during a tender process. The board members nevertheless felt that the enquiry should not focus on individuals but rather areas of responsibility which is why people should be allowed to step aside for its duration.

7.22. After further discussion it was then resolved that the enquiry should proceed and that the executives concerned should be placed on leave and that the Audit and Risk committee and the people in Governance Committee should work on the Terms of Reference. The Board also requested that an opinion be sought from a labour lawyer to ensure due process be followed.

7.23. The stepping aside of the Executives were for a period of three (3) months only after which it was understood that they would come back in view of the fact that there were no findings of wrongdoing against them as yet.

7.24. Given the crisis that the country faced and the impact on the ongoing load shedding on the economy and having weighed up all the necessary facts decided

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

7.25. I would further like to point out to the Committee that the report of alleged wrongdoing which Mr Tsotsi referred to in the meeting of 11 March has never been presented by Mr Tsotsi despite such a request.

7.26. The board became even more concerned about Mr. Tsotsi's after the decision was taken on the 11th March 2015. This concern related to the Terms of Reference of the enquiry and Mr. Tsotsi's insistence on engaging consultant Mr. Nick Linnell without a proper procurement process.

7.27. During a meeting on 14 March 2015 after Mr Tsotsi left the meeting and Dr Ngubane acted as the chairperson, Board members expressed concerns around the conduct of Mr Tsotsi. Concerns related to the fact that Mr Tsotsi appeared to be involved operationally which was not the role of non-executive directors. It was accepted that Mr Tsotsi is entitled to perform his duties as chairperson but he should not be allowed to sign contracts and engage in operational matters. Other concerns about the chairperson were putting our press statements about the enquiry without the Boards approval.

7.28. In a meeting held on 19 March 2015 Mr Tsotsi acknowledged that he had appointed Mr Nick Linnel without proper processors and he apologised for this. Board members felt that certain actions of Mr Tsotsi had compromised the independence of the enquiry and the Board took certain decisions. The Board resolved that in order to avoid such lapses, the Audit and Risk Committee should deal with the matter to ensure a fair and transparent process. The Board had a long discussion at that meeting and confirmed that they believed based on the crisis faced by Eskom and its impact on the economy that a fact finding investigation was necessary but that it is important that it be done in a manner that ensures independence and integrity. The conduct of Mr Tsotsi up to that point concerned the Board members to such an extent that they discussed two options which either meant that Mr Tsotsi should step aside for the three (3) months as well or based on his apologies for his action the Board could work with him and provided that he obeys the rules of governance.

7.29. A decision was taken to express a lack of confidence in Mr Tsotsi. bOard memebers were very unhappy about the fact he had a report purportedly drafted outside Eskom but had not produced such report. There were othr

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

7.30. After the enquiry two (2) of the four (4) executives indicated that they would not like to come back to Eskom after the enquiry was concluded and agreed on a settlement with Eskom. Mr Matona took Eskom to the labour court but later settled. One (1) of the executives Mr Koko decided to return. Eskom agreed for Mr Koko to return.

7.31. It has been suggested in the media and here at this committee that the reason for Eskom's downgrade was based on the suspensions of the four (4) executives. I think it is important to point out that while that was one of the reasons, other reasons were cited by Standard and Poor. In their Standard and Poor stated that in their opinion *"material execution risk remains associated with the government's support plan, and that Eskom's operating performance has not yet stabilised due to rising costs and the very tight generation capacity margin in South Africa."*

7.32. Faced with a crisis of the magnitude Eskom faced at the time the Board was concerned to bring stability to the Company and applied its mind, had discussions both in board meetings and in Audit and Risk committee and People and Governance.

7.33. In para 4.17 of Mr Tsotsi's statement he indicated that he was on the line with 52 individuals trying to defend what was essentially an "indefensible" position regarding the suspension of the individuals. Based on the fact that he is the person who came to the Board with the suggestion of the enquiry and the suspension of the individuals Mr. Tsotsi knew that this statement was factually incorrect.

8. PREPURCHASE OF COAL FROM OPTIMUM

Background

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

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

Eskom Coal Strategy

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

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

Financial Sustainability:

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

Generation of least cost production:

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

Security of Supply:

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

Logistics Optimization:

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

Market Transformation:

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

8.3. Financial sustainability is the overarching objective of the Eskom coal strategy, with several Eskom initiatives identified to achieve the cost targets

8.4. Therefore**,** the approach of the Eskom Coal Strategy is to optimise value from the existing cost-plus mines by:

8.4.1. Providing the required capital to cost-plus mines where a clear positive business case for Eskom's long-term coal cost exists;

8.4.2. Implementing initiatives to maximise the volumes of cost-plus mines while minimising unit costs;

8.4.3. Ensuring the optimisation of any approved capital (for example, capital scrubbing and timeous delivery of projects);

8.4.4. ensuring increased cost-plus mine volumes, which also reduce the share of short-/medium-term coal and overall Eskom coal bill; and

8.4.5. using Eskom's position to support country developmental objectives in a cost-effective way.

8.5. Allow me to provide the context with regard to prepayments. Firstly, prepayment is a common commercial practice that is used widely and is not unique to Eskom contracts. It is used in large projects, coal mining contracts, and emergency supply contracts. The principle of prepayment is prevalent in Eskom's cost-plus supply contracts with large mining houses such as Anglo American, South 32 (formerly BECSA), and Exxaro. These mining houses supply approximately 80% of Eskom's coal, while Tegeta supplies less than 5% of the coal volumes required by Eskom.

8.6. History can attest that this was common practice in the industry. For example, in the 1960s, Eskom negotiated a long-term (40-year) contract for Komati Power Station, paying for the actual cost of mining, including an agreed profit margin. Since Eskom could obtain capital at a cheaper rate than the mining house, it also provided most of the capital associated with the colliery. This was done due its costly experience at Klip Power Station, where the colliery had run out of coal before the station had come to the end of its useful life. The lessons learnt over the years is how we achieve a balanced risk exposure to both parties.

8.7. Eskom used the prepayment method in the past when coal stocks were low. This was to secure coal stocks and to avoid load shedding.

8.8. The first Eskom coal emergency arose in 2008 after load shedding due to constrained coal supply conditions. During the 2008 emergency, the Eskom Board approved advance payments to the value of R400 million to enable suppliers to undertake projects needed to supply coal. To this end, Eskom concluded a coal processing contract with prepayment terms. The agreement was with Isambane, who eventually paid off the prepayment.

8.9. Furthermore, a prepayment in the form of a loan was provided in 2008 to buy equipment to process coal. The loan was recovered in 12 consecutive instalments from 1 March 2008.

8.10. Eskom also entered into loan agreements to assist Rand Mines for capital expenditure. The first loan was payable over a period of 20 years until 31 December 2013. The second loan was in 1998, and it will be paid in full by December 2017. Eskom also assisted another Rand Mines operation with a loan, which has since been paid, for bridging finance.

Prepurchase of Coal from Optimum

8.11. On 8 December 2016 a round robin resolution was submitted to the Board by management.

8.12. The round robin was accompanied by a submission which contained the motivation for the round robin. The submission was titled: Prepurchase of coal from Optimum Coal Mine (Pty) Ltd.

8.13. The background to this was that Mr Koko in his capacity as Chief Executive Generation on 6 December 2015 wrote a letter to the Department of Mineral Resources. The letter dealt with the security of coal supply to the Hendrina Power Station. Referring to Optimum, the second paragraph of the letter read as follows:

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

8.14. The letter further went on:

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

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

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

8.16. Mr Koko expressed his concern around the question of business rescue and indicated while they appreciate the turnaround of the business the *"erratic display of business stability"* may compromise security of coal supply to Hendrina in the short to medium term.

8.17. He indicated given the serious risk of security of supply to Hendrina Power Station, Komatie Power Station and Arnot Power Station is of key national interest which is why he thought it appropriate to bring it to the attention of the Director General in the Department of Mineral Resources. Mr Koko then requested intervention by the Department of Mineral Resources to obtain a resolution of the problem of coal supply.

8.18. The Director General of Department of Mineral Resources responded in a letter indicating that they will engage with parties and will take certain steps to assist considering the significant risk to the country. The Department requested that Eskom play an active role in supporting the rescuing of the mine and in return for securing the honouring of the current contract up to 2018 to consider making a pre-payment for up to one years coal supply. This was to ensure that supply is guaranteed and averting any national crisis.

8.19. The resolution authorized the chief executive officer, and the group executive Generation and the chief financial officer to conclude a pre purchase agreement with to negotiate a prepurchase of coal agreement with the proposed owners of Optimum.

8.20. The motivation for the round robin was stated that Eskom faces a supplier risk of coal to the Hendrina power station of 5.5 Mtpa by OCM as result of the business

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

8.21. The funding of the pre-purchase was going to be secured by reducing the working capital inventory from 54 days to 40 days. Eskom was going to achieve a value benefit of R238.9 million.

8.22. The motivation further indicated that the proceeds of the R1.86 billion pre-payment of coal were to be used by optimum to extinguish existing liabilities to ensure the business continues as a growing concern. It further stated that the shutdown of Optimum could potentially result in thousands of job losses.

8.23. Board members had a number of questions including whether the price was the best price. The board also said that the matter must be discussed at an IFC meeting rather than merely via round robin which IFC meeting took place the following day on 9 December.

8.24. After being satisfied regarding this, the board resolved to approve the round robin resolution subject to all the necessary regulatory approvals having been obtained by Eskom and the supplier respectively as and when necessary. The management and company secretary would know that any amount above R1.5 billion has to be approved by the executive authority being the Minister and therefore the board assumed that they would do this.

8.25. Based on all the submissions, the board believed that this payment was for the pre-purchase of coal from the Optimum coal mine. The board was therefore shocked to see in the press sometime in July 2017 that management had converted what was meant to be a pre-payment into a guarantee.

8.26. In her evidence to parliament Ms Susan Daniels made it clear that she was aware from at least 10 December that the prepurchase was converted into a guarantee. She stated that on the 10th of December Ms Caroline Henry who was a senior general manager for the treasury department in Eskom decided that instead of laying out the 1.6 billion in cash she would prepare a note and rather request that a guarantee in favour of the Tegeta to be issued through ABSA. According to her own evidence, she would have worked on the guarantee with Ms. Henry. This guarantee would be for three months and she stated in her evidence that

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

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

9. ESKOMS RESPONSE TO PUBLIC PROTECTOR

9.1. The Public Protector sent questions to Eskom management before she released her report in November 2016.

9.2. Management through Mr. Brian Molefe, Mr. Anoj Singh and Ms. Ayanda Nteta, responded to the questions which were sent to Eskom and the Public Protector does deal with some of the responses from Eskom management in her report.

9.3. The Eskom Board of Directors ("the **Board**") was not given an opportunity to deal with issues raised by the Public protector in her report. The Company Secretary and head of Legal Services Ms. Suzanne Daniels responded to issues raised in the report but did not consult the board on such responses in spite of the fact that reference was made to some board members and the board. To date Board does not have access to the response which Ms. Daniels sent to the Public Protector.

9.4. The Board, even though it was constituted with new members except the Chairperson, has a few comments regarding some of the observations by the Public Protector on Eskom. The board sought legal advice about any action it could take regarding the report but was advised due to there being no findings, only observations, any review would not be successful. The Public Protector's comments about Eskom are in pages 310 to 315 of the Public Protector's report. The one issue which the Public Protector raises in respect of Eskom, is the pre-payment for coal to TEGETA Exploration and Resources (Pty) Ltd ("**TEGETA**") in April 2016.

9.5. The Public Protector also dealt with the relationship between the Gupta family and individual former Board members of Eskom. Im not able to comment on this and some of the former members of the Board, have dealt with this issue before this committee.

9.6. The Public Protector seems to suggest in her report that the Eskom Board breached its fiduciary duties to uphold the values enshrined in section 217 of the Constitution of the Republic of South Africa, 1996 ("the **Constitution**") as well as section 50 of the Public Finance Management Act No. 1 of 1999 ("**PFMA**") in approving the pre-payment for coal to TEGETA.

Prepayment for coal from Tegeta

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

9.8. This submission by management required the following resolution from the BTC

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

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

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

The "Salient Facts" are inter alia as follows –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9.14.1. there is a discount of the price;

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

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

Public Protector's Observations

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

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

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

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

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

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

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

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

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

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

9.20. The Public Protector says that the responses given by Eskom appear to not make commercial sense as it appears that coal could have been sourced directly from OCM at a reduced rate.

9.21. OCM was under business rescue and the business rescue practitioners were not prepared to sell coal to Eskom at a reduced rate because they said that OCM went into business rescue precisely because the purchase price of coal paid by Eskom was low.

9.22. Eskom was not aware of the price at which OCM was selling coal to TEGETA and therefore, it could not negotiate for a lower price than it paid TEGETA.

9.23. The pre-payment of TEGETA was found to be in line with the policies of Eskom and it made "made commercial sense" by the Senior General Manager (Assurance and Forensics) at Eskom (see page 190 of the Public Protector's report).

9.24. In conclusion, the Public protector did not make any finding in respect of the breach of fiduciary duty by the Eskom Board but speculated about the form of

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

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

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

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

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

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

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

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

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

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

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

11. CONCLUSION

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

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

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COMMISSION OF INQUIRY INTO STATE CAPTURE

IN THE MATTER RELATED TO:

THE STATE PORTFOLIO COMMITTEE'S OVERSIGHT INQUIRY INTO CORPORATE GOVERNANCE AT STATE OWNED ENTERPRISES – CORPORATE GOVERNANCE AT ESKOM HOLDINGS SOC LIMITED ("ESKOM")

and

CHAIRPERSON: MS LUNGI MNGUNGA-GCABASHE

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CHAIRPERSON: MS LUNGI MNGUNGA-GCABASHE

STATEMENT OF DR BALDWIN NGUBANE

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1. **Introduction**

1.1 The Chairperson of the Portfolio Committee's Oversight Inquiry into Corporate Governance at State Owned Enterprises ("**the Committee**") has invited me, in my capacity as the former Chairperson of the Board of Directors of Eskom ("**the Board**"), to appear before the Committee and give evidence on certain issues relating to governance at Eskom.

1.2 I have been requested to provide information to the Committee by way of a written submission and to further prepare to answer certain questions to be posed by members of the Committee in relation to the issues contemplated above. I note that no specific or direct questions have been made available to me or raised as part of the Committee's invitation to direct my preparation for the hearing.

1.3 A set of eight broad issues have been identified and presented for my attention. One of such issues[1] has a sub-set of two further broad issues.

1.4 The issues in question are stated as follows in the Committee's invitation:

1.4.1 The procurement process of IT services to replace the then service provider, namely T-Systems, including the Board's knowledge of the circumstances surrounding the suspension of Mr Sal Laher;

1.4.2 The procurement process of the Duvha Boiler Refurbishment and the award of the tender to Dongfang (<u>the decision to award this tender was set aside by a Court</u>) (sic), including:

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[1] See para 1.4.2

(a) The involvement of the Board and its Committees in the procurement process; and

(b) The internal processes which led to the apparent irregular selection of Dongfang.

1.4.3 The circumstances surrounding the suspension of Messrs Tshediso Matona, Matshela Koko, Dan Marokane and Ms Tsholofelo Molefe and the reasons for the termination of services of the various executives who left Eskom;

1.4.4 The employment of Mr Molefe as Group Chief Executive at Eskom;

1.4.5 The construction and the eventual payment of pension benefits to Mr Molefe;

1.4.6 The employment of Mr Anoj Singh as Financial Director at Eskom;

1.4.7 Eskom's response to the Public Protector's Report on the State of Capture, dated 14 October 2016; and

1.4.8 The purchase of Optimum Coal Holdings by Tegeta from Glencore.

1.5 I deal with each of the identified issues in paragraph 2 below in the order as set out in paragraph 1.4 above, which is also the same order appearing in the Committee's invitation sent to me dated 21 November 2017.

1.6 I express my gratitude to the Committee for accommodating my request for an extension to enable me to prepare for the hearing. I have made a reasonable effort, under the circumstances, to utilise the time afforded me as well as I could, in order to assist the Committee in the best manner possible in its inquiry.

1.7 Taking into account the abovementioned issues, it is imperative for me to provide the Committee with the timeline of the tenure of my position as the former Chairperson of the Eskom Board as this appears to be the focal point of the hearing. My submission has, accordingly, been prepared taking this context into account.

1.8 In relation to my statement, as indicated in the invitation by the Chairperson of the Committee, I am the former Chairperson of the Board. I was appointed as a member of the Board in December 2014. I then served as the Chairperson of the Board from October 2015 until June 2017. Before then, I had been appointed as the Acting Chairperson of the Board from 15 March 2015. As such, my understanding is, as

already indicated above, that the context of the Committee's invitation is concerned with and limited to this period, that is between 15 March 2015 and June 2017, which is inclusive of my acting period.

1.9 Due to the open and broad nature of the issues that I am required to provide answers to, I have made an effort to focus on providing the Committee with as much of the information that falls within my personal knowledge in the said capacity as former Chairperson of the Board to the best of my recollection.

1.10 I wish to point out, however, that for various reasons, some of the issues raised in the Committee's invitation unfortunately fall outside of my personal knowledge as the former Chairperson of the Board. Some of these issues may, for example, have arisen prior to my tenure and/or, by virtue of Eskom's delegation of authority and materiality framework, did not require either the Board's approval or my direct involvement as the former Chairperson of the Board.

1.11 Furthermore, it is important to note that as part of Eskom's governance structure as a public entity or state-owned company/enterprise, the Chairperson of the Board (including myself at all relevant times, was) is not part of the procurement process and there may also be those issues that would be referred to the Board for purposes of noting only, and not necessarily for deliberation and/or approval. I am saying this whilst remaining cognisant of the Board's roles and responsibilities in the overall control and management of Eskom.

1.12 For better context, where possible, I illustrate my explanation by way of documentary evidence at my disposal. Otherwise most of the documents I rely on in this submission may already be before the Committee and/or are in the public domain and/or may be obtained directly from Eskom upon request.

1.13 For the reasons more fully set out below, I respectfully bring it to the attention of the Committee that I could not, however, collect and collate all of the documents which I refer to in this statement and which may become relevant during the hearing. Further, I may also not be able to recall all of the requisite details relating to some or all of the pertinent issues as my role as the Chairperson of the Board was not operational or executive in nature.

1.14 In certain instances, it is possible that some of the information I may provide for the purpose of this inquiry may have already been shared with the Committee by some of the former Board members and/or Eskom's executives, either by way of written submissions to, and/or question-and-answer sessions with any such former Board members and/or executives during the hearing before, the Committee. To the extent

that it is not inconsistent with, or contradictory to, what is contained in my statement and my entire evidence to the Committee, I respectfully submit that such information (including supporting documentation thereto, where applicable) may remain relevant to, and have to be taken into account as an integral part of, my submission.

1.15 In light of the abovementioned reasons, I may not be (fully) equipped to provide specific answers to specific questions which may only arise or be posed by members of the Committee, for the first time at the hearing.

1.16 Under the circumstances, I respectively reserve all the rights that I may have in terms of the Constitution of the Republic of South Africa, any other applicable law, including common law, rule of law and/or natural justice. This includes, without limitation, the opportunity, if and to the extent appropriate, or required or so advised, to consider any new information which may only be brought to my attention or become accessible to me at or after the hearing and to supplement my written submission to the Committee.

I now proceed to deal with each matter as raised by the Committee below.

2. Issues raised by the Committee

2.1 The Procurement Process of IT Services to replace the then Service Provider, namely T-Systems, including the Board's knowledge of the circumstances surrounding the suspension of Mr Sal Laher

2.1.1 To the best of my knowledge, the procurement process which was aimed at replacing T-Systems commenced before I was appointed as an ordinary member of the Eskom Board. My understanding is that in February 2015, the Executive Committee Procurement Sub-Committee ("**EXCOPS**") made a determination to cancel the procurement process of IT services aimed at replacing T-Systems.

2.1.2 EXCOPS' motivation for the abovementioned cancellation was presented before the Eskom Board Tender Committee ("**BTC**"). In my capacity then as an ordinary non-executive member of the Board, I chaired the meeting at which such presentation was made. This meeting took place on 24 February 2015.

2.1.3 During the presentation, the reasons for EXCOPS' motivation for the cancellation of the intended replacement tender process were articulated to the BTC as being the following:

2.1.3.1 Around December 2014, more than 50% of senior Eskom employees, who were critical to the management of the Eskom IT Division, accepted voluntary severance packages, an option which at the time had been made available to Eskom employees in general, and left Eskom;

2.1.3.2 The departure of the said employees resulted in depletion of skilled resources and thus a lack of requisite capacity within the IT Division of Eskom, as the affected positions were quite senior. This negatively affected Eskom's Generation Division;

2.1.3.3 By virtue of the crisis in Eskom's Generation Division, as manifested in persistent load shedding at the time, the view was then formed that bringing in a new IT service provider, which would be unfamiliar with the Eskom Generation business, would simply exacerbate the electricity supply problem which was already prevalent during that entire period;

2.1.3.4 T-Systems' continued involvement, as the then existing IT service provider, which was already familiar with the power station system in Eskom[2] would be in both Eskom's and the country's best interests; and

2.1.3.5 That under the circumstances, it made commercial sense for Eskom to extend T-Systems' contract, and to cancel the procurement process which was then aimed at replacing them.

[2] I am advised that T-Systems used to be known as arivia.kom, a subsidiary of Eskom, Transnet and Denel. Arivia.kom was established following a merger of the IT divisions of the said 3 (three) state owned companies. Its main object was specifically to service the IT requirements of Eskom, Transnet and Denel. It was subsequently sold as a going concern and became known as T-Systems.

2.1.4 On the strength of the abovementioned motivation by EXCOPS, the BTC approved the recommendation for cancellation of the procurement process to replace T-Systems. The procurement process was then cancelled upon the BTC approving EXCOPS' recommendation as supported by the abovementioned presentation.

2.1.5 My understanding was and still remains that in terms of the Eskom SCM Procedure, Eskom was (and still remains) entitled to cancel any procurement processes. Paragraph 3.4.5.7 of the SCM Procedure states, *inter alia*, that *Cancellation/re-issuing of tenders may occur any time after the tender has been issued to the market and before contract award.*

2.1.6 I point out, however, that these events, which formed part of EXCOPS motivation, occurred before my appointment to lead the Eskom Board. Save for what is stated herein, I did not have any (other or further) role to play in this procurement process.

2.1.7 Please note that I have no personal knowledge relating to Mr Sal Laher's suspension. The only knowledge I have is based on the records I have seen, including statements made by some of my former co-members of the Board at Eskom.

2.1.8 In the said context, the understanding I have is that Mr Sal Laher was suspended by Eskom in November 2014 on the basis that he had failed to follow procurement processes. I do not have any knowledge as to what such procurement processes related to. My understanding is also that there was a negotiated settlement between Eskom and Mr Sal Laher, based on which he accepted, and was then paid, a settlement amount.

2.1.9 As already mentioned, save for the above, I have no personal knowledge of the circumstances surrounding Mr Laher's suspension. This matter arose and was settled prior to my time as the former Chairperson of the Board.

2.2 **The Procurement Process of the Duvha Boiler Refurbishment and the award of the tender to Dongfang (the decision to award this tender was set aside by a Court) (sic), including (a) the involvement of the Board and its committees in the Procurement Process and (b) the internal processes which led to the apparent irregular selection of Dongfang**

2.2.1 Prior to providing the Committee with details regarding the procurement process relating to the Duvha Boiler Refurbishment as well as the involvement of the Board and its Committees in this regard, I wish to clarify the factual inaccuracy contained in the Committee's invitation.

2.2.2 On 28 March 2017, Eskom awarded Tender Corp 3571, to Dongfang. Aggrieved by Eskom's decision to award the Tender to Dongfang, Alstom S & E Africa (Pty) Ltd ("**Alstom**") and Murray & Roberts/Shanghai Electric Consortium ("**MRSEC**") instituted litigation proceedings on or during April 2017, in the High Court of South Africa, Johannesburg. The litigation proceedings are categorised into two parts, namely, the Urgent Interdict (Part A) and the Review Application (Part B).

2.2.3 In part A, both Alstom and MRSEC sought to urgently interdict Eskom and Dongfang from implementing the award of the Tender, pending the final determination of the relief sought in part B of the legal proceedings. In part B, Alstom and MRSEC seek an order reviewing and setting aside Eskom's decision to award the Tender to Dongfang and remitting the submissions to Eskom for re-adjudication. Part A was heard by Judge Makume on 23 June 2017 and the outcome handed down on 30 June 2017.

2.2.4 For the convenience of the Committee, and although such document is publicly accessible, I attach hereto a copy of the court order handed down by Judge Makume on 30 June 2017 marked as annexure "**BN1**". On perusal of the court order, you will note that in paragraph 2, Judge Makume held that:

> *"2. Pending final determination of the relief sought in part B of this application and part B of the intervening application, the First and Second Respondents are interdicted from taking any steps to implement or execute any contract pursuant to the award of the Tender advertised under RFP Corp 3571*

pertaining to the manufacturing, factory acceptance testing, procurement shipping and delivery to site, installation, testing and commissioning of the pulverised coal fired boiler as part of the return to service of Unit 3 at Duvha Power Station (the tender)."

2.2.5 For the purpose of this submission, it is not necessary for me to deal with the allegations of Alstom and MRSEC, which allegations are currently being defended by Eskom in court. I am advised that the Review Application, being the main application in which the court will consider the process adopted by Eskom in awarding the Tender to Dongfang for the purpose of assessing its compliance with the relevant statutory and policy framework, is still to be heard. As such, **the decision to award the Tender to Dongfang, has not, as at the date of this submission, been set aside by a court of law**.

2.2.6 For the purpose of adequately addressing the Committee's question regarding the involvement of the Board and its Committees in the procurement of Duvha, I find it necessary to briefly explain the powers and responsibilities of the BTC, which committee was responsible for overseeing this transaction.

2.2.7 In terms of clause 22.6.2 of the Board Charter, the Eskom Board may from time to time, by resolution, establish such other Committees of the Board to assist in the discharge of its responsibilities. One of the Committees established by the Board is the BTC.

2.2.8 According to the Terms of Reference of the BTC, which Terms I annexe hereto marked "**BN2**", the BTC was established to assist the Board in its responsibility in making commercial process decisions to the benefit of Eskom. In fulfilling its mandate, the BTC is required to apply the relevant King Code Principles.

2.2.9 In terms of paragraph 2.4.2.5 of the Terms of Reference, the BTC is authorised to approve tenders and contracts with a value from R750 million up to investment decision to budget. This includes acquisition and disposal of movable and immovable property, operational expenditure and the provision and acquisition of services.

2.2.10 Paragraph 3 of the BTC Terms of Reference deals with the responsibilities of the BTC and provides that the BTC is responsible for, *inter alia*,:

(a) *approval of tenders and the awarding of contracts up to the maximum of the investment decision/budget;*

(b) *approval of procurement strategies for specific transactions from R750 million up to investment decision or budget;*

(c) *ensuring that all the above are done to ensure fair, equitable, transparent, cost-effective and competitive procurement processes; and*

(d) *ensuring inclusion of provisions in the standard conditions of tender which enable Eskom to reserve its right not to award a particular tender to the highest ranked or highest scoring tenderer and/or to not award it at all, in order to ensure that it is able to leverage and maximise the socio-economic and developmental objectives that are enshrined in various government policies, provided that the evaluation factors to be considered in the exercising of this right are clearly set out in the tender invitation for proposals.*

2.2.11 Having briefly set out the authority and responsibilities of the BTC, I now provide a summary of the internal process adopted by Eskom in implementing the Duvha refurbishment programme. In providing the said summary, I will also highlight the role played by the BTC in the eventual awarding of the Tender to Dongfang. In providing the said summary, I point out that in line with the BTC's Terms of Reference and Eskom's Delegation of Authority Framework, I, as the Chairperson of the Board, did not sit as a member of BTC.

2.2.12 As stated above, I reiterate the fact that the Review Application is still to be heard by the court. My understanding is that currently, there is a dispute, in court, between the parties as to the confidentiality of certain documents and/or the relevance thereof in the finalisation of the Review proceedings. As such, you will note that, in certain instances, the documents attached in relation to the Tender process have been redacted. This is for the purpose of ensuring the protection of such

confidential and commercially sensitive information of all the parties involved in this litigation.

2.2.13 By way of brief background, as you may be aware, on 30 March 2014, an explosion occurred at Duvha Boiler Unit 3 which caused extensive damage to the boiler and the surrounding areas. Pursuant to the damage, Eskom duly submitted a claim to its insurer[3] for compensation.

2.2.14 After various engagements with AIG, Eskom entered into a settlement agreement with the Consortium of insurers and reinsurers, who agreed to compensate Eskom for the damage to Unit 3 at Duvha. A portion of the settlement amount in the sum of R1, 698, 959, 535.00 constituted a cost differential that Eskom would be obliged to repay to the insurers and reinsurers in the event that it was unable to conclude a binding contract for the replacement of the damaged boiler at Unit 3, by 30 March 2017. It was therefore necessary for Eskom to initiate, complete and award a tender for the replacement of the damaged boiler and conclude a contract with a supplier by that date.

2.2.15 Eskom, in order to urgently replace the damaged boiler, initiated its procurement process. In this regard, on 01 August 2016, the BTC, as it was empowered to, approved the procurement strategy and mandate to negotiate and conclude a contract for engineering, procurement and construction and replacement of the boiler as part of the return to service of Duvha Unit 3.

2.2.16 As set out above, the BTC is the appropriate authority with the power to decide on the award of a tender of this magnitude, involving as it did, an expenditure in excess of R750 million. The BTC also has the power to delegate its authority for the award of the tender, should it so decide.

2.2.17 On 18 August 2016, Eskom issued the RFP with a submission deadline of 1 November 2016. Two RFP clarification meetings were held with potential bidders on 13 September 2016 and 6 October 2016 and the deadline for submission was extended to 22 November 2016 based on the bidders' requests which were accepted by Eskom. The relevant

[3] Duvha Unit 3 is insured by a consortium of insurers, with the lead insurer being AIG.

portion of the RFP is annexed hereto as "**BN3**". Paragraph 2 of the RFP describes the evaluation process and criteria for the selection of the preferred bidder.

2.2.18 Paragraph 1.5 of the RFP expressly drew the attention of the bidders to the relevant provisions of the Preferential Procurement Policy Framework Act ("**PPPFA**") and informed them that Eskom reserved the right not to award the tender to the highest scoring bidder in accordance with those provisions.

2.2.19 The evaluation process contemplated in the RFP was a two-stage approach. The first stage was termed desktop evaluation and required the evaluation of the competing bids in order to assess, among other criteria, compliance with mandatory requirements, functionality evaluation and price and preference evaluation in order to short-list the top two bidders[4] with whom Eskom would engage in the second phase of the evaluation.

2.2.20 The second stage of the evaluation contemplated negotiations with shortlisted/competing bidders. Pursuant to such negotiations, the bidders would be required to submit their best and final offers ("**BAFO**"), based on which Eskom would finally select the successful bidder with whom a contract would then be concluded.

2.2.21 By 22 November 2016, the closing date for Tender submissions, Alstom, MRSEC, Dongfang, Shany Engineering (Pty) Ltd, Sinohydro South Africa (Pty) Ltd and Rafoko SA had submitted their bids.

2.2.22 Eskom conducted tender evaluations for the mandatory criteria from 25 to 28 November 2016. The bids of Shany Engineering (Pty) Ltd and Sinohydro South Africa (Pty) Ltd were found to be non-compliant with the mandatory criteria and, on that basis, were eliminated from further evaluation.

2.2.23 Arising from phase one of the evaluation process, Eskom sought clarification from the remaining bidders concerning aspects of their bids, all of which contained several material deviations, assumptions and

[4] This was subsequently amended by Eskom in circumstances I shall set out below.

exclusions which tended to complicate the evaluation process. Such clarification was sought to aid Eskom with price normalization.

2.2.24 During December 2016, Eskom sent clarification questions to Alstom, Dongfang, MRSEC and Rafako SA, all of whom had met the mandatory requirements and satisfied the functionality threshold.

2.2.25 On or about 22 December 2016, Eskom conducted a preliminary financial evaluation of the bids. I have already indicated that all four bids had significant exclusions and deviations. Accordingly, individual interaction was required with each of the four bidders to clarify the issues identified pursuant to the preliminary financial evaluation.

2.2.26 As part of this exercise, Eskom held pre-negotiation clarification meetings with Alstom, Dongfang, MRSEC and Rafako SA from 9 to 17 January 2017. At that point in time, no short-listing referred to in the RFP could be done because of the material deviations and exclusions contained in those remaining four bids.

2.2.27 Because of the risk associated with several deviations and exclusions contained in the remaining bids, the evaluation team resolved to approach, and accordingly made a written submission, to the BTC for the amendment of paragraph 1.4 of the RFP so as to extend the short-listing of the top two bidders to a minimum of two bidders and a maximum of four bidders.

2.2.28 This amendment was considered necessary and justifiable because of the possibility that the deviations and exclusions of the remaining bids could ultimately affect the successful and timely conclusion of the Tender process, resulting in the consequential exposure for the payment of the financial penalty by Eskom to the insurers and reinsurers of approximately R1.7 billion in terms of the settlement agreement.

2.2.29 On 20 January 2017, the BTC considered the submission of the evaluation team and resolved to authorize the required amendment of the RFP. This resolution was adopted pursuant to the powers vested upon the BTC in terms of Eskom's SCM Procedure.

2.2.30 Further, the amendment was made by the BTC in accordance with the provisions of paragraph 1.5 of the RFP which empowered Eskom to (a)

modify the Tender or any part thereof, at any time before the award and (b) negotiate with any one or more suppliers.

2.2.31 I respectfully submit that the amendment was rational and justifiable, having regard to the considerations upon which it was based and the objectives sought to be achieved thereby. That amendment is recorded in paragraph 2.2 of the resolution of the BTC which is annexed hereto and marked "**BN4**".

2.2.32 After the above resolution of the BTC, the evaluation team proceeded to conduct further evaluations of the remaining four bids based on the applicable evaluation criteria. The bid of Rafako was excluded from further evaluation because Rafako had indicated in writing that their submitted price was budgetary.

2.2.33 At the conclusion of phase one, as reflected in the evaluation report Revision 1, Eskom resolved to short-list three bidders, namely Alstom, MRSEC and Dongfang and invited them to the second stage of the evaluation, namely negotiations. A copy of the evaluation report prepared by the evaluation team (Revision 1) is annexed hereto and marked "**BN5**". All of the bidders elected to participate in the negotiations unconditionally.

2.2.34 In keeping with the competitive nature of the procurement process, negotiations with each of these bidders were held separately from 27 January to 27 February 2017. The details of these negotiations were set out in the invitations to negotiations addressed to each of the short-listed bidders, agenda for the negotiations and the minutes of those negotiations.

2.2.35 After the negotiations, Eskom invited all three bidders to submit their BAFO's on 3 March 2017. All of them did so. Those offers were then evaluated by the evaluation team which thereafter prepared a submission to the BTC on 08 March 2017. A copy of that submission is annexed hereto and marked "**BN6**".

2.2.36 It is important to point out that KPMG was appointed at the commencement of the procurement process in accordance with Eskom's SCM Procedure to ensure the fairness and transparency of the entire procurement process.

2.2.37 In its report, KPMG concluded that the process followed by Eskom was fair and in line with Eskom's SCM Procedure. It raised the concern regarding the recommendation for the award of the Tender to Dongfang on the basis that there was a need for Eskom to undertake a sensitivity analysis so as to address the risk associated with the award of the Tender to either Alstom or Murray & Roberts.

2.2.38 On 8 March 2017, in its resolution, the BTC noted the Duvha Unit 3 Recovery Project status and approved the recommendation to conclude a contract with Dongfang. BTC also authorised the Group Executive: Group Capital to take all the necessary steps to give effect to the above. A copy of the resolution is annexed hereto marked "**BN7**".

2.2.39 Following upon that resolution of the BTC and as informed by the issues raised in the draft KPMG proactive assurance audit report, dated 8 March 2017, Eskom appointed SekelaXabiso to assist in undertaking the sensitivity analysis to address those issues. SekelaXabiso did so and thereafter provided a report. SekelaXabiso, in its report, confirmed the rationale adopted by Eskom in arriving at its decision.

2.2.40 Based on the sensitivity analysis that was performed by Eskom with the assistance of SekelaXabiso, the evaluation team prepared a further submission to the BTC for noting dated 27 March 2017. Verbal feedback was given to BTC on 7 April 2017, as contained in the submission of 27 March 2017. A copy of that submission is annexed hereto and marked "**BN8**".

2.2.41 Having regard to the implementation of the Tender process as set out above, I submit that at all times, the BTC acted within the scope of its mandate and that its decision to conclude the contract with Dongfang was rational and justifiable on the basis of the information presented to it. On 28 March 2017, Eskom and Dongfang signed a written contract following upon the award of the Tender, which contract is currently interdicted from being implemented, in terms of part A, the interim interdict but is now in the process of being reviewed in part B of the legal proceedings.

2.2.42 I trust that the above provides clarity regarding the internal process which led to the selection of Dongfang and the involvement of the Board and its Committees in the procurement process of Duvha.

2.3 **The circumstances surrounding the suspension of Messrs Tshediso Matona, Matshela Koko, Dan Marokane and Ms Tsholofelo Molefe and the reasons for the termination of service of the various executives who left Eskom**

2.3.1 This matter falls outside of my tenure as the former Chairperson of the Board. My understanding is that Mr Tsotsi, in his capacity then as the Chairperson of the Board, motivated for the Board to urgently authorise the appointment of an independent investigation to be conducted by an external service provider.

2.3.2 It is also my understanding that Mr Tsotsi motivated for the suspension of certain key executives, whilst the investigation was being conducted. Apparently, he had suspected such executives of wrongdoing.

2.3.3 The affected positions included those of the Group Chief Executive Officer, namely, Mr Tsediso Matona ("**Mr Matona**"), Group Executive, Commercial and Technology, namely Mr Matshela Koko ("**Mr Koko**"), Group Executive Group Capital, namely Mr Dan Marokane ("**Mr Marokane**") and the Finance Director, namely Ms Tsholofelo Molefe ("**Ms Molefe**") respectively.

2.3.4 The investigation was eventually conducted but on different terms to those which Mr Tsotsi had initially proposed to the Board. The investigation was undertaken by a different service provider, namely Dentons Attorneys, and not Mr Nick Linnel, who had been appointed by Mr Tsotsi.

2.3.5 After the investigation was concluded, however, Mr Matona, who had filed a labour dispute case against Eskom, negotiated and settled his dispute out of Court and left Eskom. Mr Marokane and Ms Molefe also left the employ of Eskom. Only Mr Koko returned to his position at Eskom.

2.4 **The employment of Mr Brian Molefe as Group Chief Executive at Eskom:**

2.4.1 Mr Brian Molefe ("**Mr Molefe**") was seconded to Eskom as the Acting Group Chief Executive Officer ("**GCEO**") on 17 April 2015, for a period of 3 months. Prior to his secondment to Eskom, Mr. Molefe was a Group Chief Executive Officer at Transnet.

2.4.2 On 23 June 2015, I addressed a letter to the Minister, Lynne Brown, requesting her support and endorsement for the extension of Mr. Molefe's secondment as Acting GCEO for a further period of 3 months. Two further aspects were also contained in the letter, namely that a) the People and Governance Committee ("**P&G Committee**") had resolved to seek the full-time appointment of Mr. Molefe to the position of GCEO and b) Ms Venete Klein ("**Ms. Klein**") was tasked with procuring a legal opinion on the most optimal approach to follow to give effect to the appointment of Mr. Molefe.

2.4.3 The legal opinion was obtained from Bowman Gilfillan on 18 June 2015. Such opinion concluded that Eskom could appoint a GCEO without having to conduct an external search process and that the Board could provide the Minister with a shortlist of one candidate only, whom the Minister could elect whether to appoint or not.

2.4.4 On 27 June 2015, the Minister responded to my letter. In essence, the Minister agreed to the request for the extension of Mr. Molefe's secondment and also requested the Board to deal expeditiously with the appointment of a new GCEO in accordance with Eskom's Memorandum of Incorporation, Labour Relations Act and Eskom's employment policies and procedures. The Minister also requested to be provided with a copy of the complete legal opinion obtained.

2.4.5 On 13 September 2015, the legal opinion was transmitted by Ms. Suzanne Daniels ("**Ms. Daniels**") to Orcillia Ruthnam ("**Ms. Ruthnam**") - Chief Director: Governance of the Legal and Governance Department at the Department of Public Enterprises.

2.4.6 On 14 September 2015, Ms. Ruthnam responded to Ms. Daniels and enquired whether or not Bowmans had considered the *"Guidelines for the appointment of a Chief Executive Officer for a State - Owned Enterprise". Ms.* Ruthnam also enclosed a copy of the guidelines in her communication to Ms. Daniels.

2.4.7 On the same day, the abovementioned Guidelines were sent to Bowmans for a supplementary opinion. The issue to be reconsidered being whether or not in light of the provision of the Guidelines, the proposed process of appointing Mr. Molefe on a permanent basis as GCEO was competent.

2.4.8 On 15 September 2015, the supplementary opinion was received. In that opinion, Bowmans advised that the Board was actually required to make recommendations to the Minister on the top 3 candidates in the order of priority and that any proposed deviation from that requirement required the Board to notify the Minister in writing together with reasons for the deviation. On 16 September 2015, the supplementary opinion was forwarded to Ms. Ruthnam.

2.4.9 Ms. Klein subsequently submitted a notification of Eskom's departure from the application of the Guidelines by way of a letter to the Minister. I understand the letter was sent to her office by Ms. Daniels on 16 September 2015 with a signed version following thereafter, on 23 September 2015. I also understand that the Minister did not object to the departure.

2.4.10 On 10 September 2015, the Board resolved that the P&G Committee should submit a recommendation to the Minister around the appointment of Mr. Molefe as GCEO. On 11 September 2015, and pursuant to the aforesaid resolution, I addressed a letter to the Minister advising her of the Board's resolution to propose permanently employing Mr. Molefe as GCEO. A draft employment contract was annexed to the letter for the Minister's consideration and approval. I attach hereto a copy of the said letters marked "**BN9**".

2.4.11 On 2 October 2015, the Minister approved the appointment of Mr. Molefe as GCEO. In this regard, the Minister addressed a letter to me, copying Ms. Klein and also enclosing letters addressed to Mr. Molefe and Mr Anoj Singh ("**Mr. Singh**"). The letters confirmed their appointments as GCEO and Chief Financial Officer ("**CFO**") respectively with effect from 1 October 2015. However, there was no indication of the duration of their respective appointments contained in such letters. Copies of the said letters are attached marked "**BN10**".

2.4.12 On 7 October 2015, a permanent contract of employment was prepared based on the inference drawn from the Minister's letter dated 2 October 2015 and addressed to Mr. Molefe, in that, no mention of a fixed term employment contract was made in that letter.

2.4.13 On 8 October 2015, Ms. Klein received an email from Ms. Daniels, drawing her attention to the exchange of email communication between

Ms. Daniels and Ms. Ruthnam regarding the term of appointment of Mr. Molefe. Ms. Ruthnam advised that the Minister had approved a five-year term for Mr. Molefe. Ms. Daniels had requested that Ms. Ruthnam verify this as Mr. Molefe's appointment letter had not stipulated a five-year term and secondly, that all previous GCEOs, at Eskom, were appointed on a permanent basis. Ms. Ruthnam advised that the five-year term was a cabinet requirement. Nonetheless, she said she would revert on whether or not the Minister would need to address the Board on the issue. According to Ms. Klein, she received no further correspondence on the issue and, under the circumstances, presumed the issue was resolved.

2.4.14 On 16 October 2015, I addressed a letter to the Minister on the proposed terms of Mr. Molefe's appointment and remuneration. The contents of the letter were informed by various inputs – P&G Committee from Mercer, PE Corporate and Deloitte on chief executive remuneration packages. The Board's understanding was that Mr. Molefe's employment would be on a permanent basis.

2.4.15 On 1 November 2015, the Minister responded to my letter of 16 October 2015, in which she approved the proposed remuneration package to Mr. Molefe, a copy of the Minister's approval is attached hereto as **"BN11"**. The Minister further recorded that the term of Mr. Molefe's appointment was for a period of 5 years, subject to annual performance reviews. The Minister's letter was addressed to me as the then Chairperson of the Board, and was received by Ms. Daniels on 4 November 2015.

2.4.16 On 9 November 2015, I presented Mr. Molefe with a permanent contract of employment. For some reason or other, the Minister's letter dated 4 November 2015 sent to me and received by Ms. Daniels, did not come to my attention or the attention of the Board.

2.4.17 On 12 November 2015, Ms. Klein received an email from Ms. Daniels enclosing a draft offer of employment letter dated 13 October 2015 which specified that Mr. Molefe would enter into a fixed term employment contract with Eskom but the term was not specified. The Minister approved the proposed remuneration but confirmed that the term of employment would be for a fixed term of 5 years and the Board was tasked with the challenge of having to change the signed permanent contract to a five-year fixed term contract.

2.4.18 On or about 16 November 2015, Mr. Molefe was advised of the Minister's decision and various retirement issues were discussed between Mr. Molefe and myself. Following such discussions, I advised the Board that Mr. Molefe was willing to accept the five-year contract. I also advised the Board that Mr. Molefe had, however, expressed concerns regarding the perceived pension benefit which he understood to emanate from his permanent employment at Eskom.

2.5 **Construction of the pension benefits for Mr. Brian Molefe**

2.5.1 Upon considering the impact of losing Mr. Molefe in the event that a resolution could not be reached on the terms of his appointment, Ms. Klein and I sought the guidance of Mr Anton Minnaar ("**Mr. Minaar**"): Executive Remuneration Officer at Eskom. Mr. Minaar was involved in the appointment of 7 previous GCEOs at Eskom in the then preceding six-year period. Mr. Minaar advised that all Eskom's previous GCEOs were employed on a permanent contract basis and that based on the fixed five-year term contract, Mr. Molefe would not be able to accumulate an equivalent pension benefit during his service at Eskom.

2.5.2 Based on the abovementioned advice, it was then agreed that an arrangement could be put in place to ensure that Mr. Molefe was not adversely affected in respect of his pension benefits. On 25 November 2015, Mr. Minaar assisted me in drafting a letter to the Minister, recommending that a retirement arrangement be reached with Mr. Molefe in order to allay his pension concerns, a copy of the said letter is attached as "**BN12**".

2.5.3 The arrangement proposed with the guidance of Mr. Minaar was such that:

2.5.3.1 Regardless of Mr. Molefe's age after the expiry of his five-year contract, he would be allowed to retire from Eskom's service on the basis that he was aged 63;

2.5.3.2 The penalties prescribed by the Eskom Pension and Provident Fund ("**EPPF**") for retirement prior to the age of 63 would be waived and not payable by Mr. Molefe. Eskom would then carry the costs of such penalties to be paid over to EPPF;

2.5.3.3 In the event that Mr. Molefe's employment contract was not extended beyond the five-year period, he would not be allowed to subscribe to any other state owned companies or government pension fund; and

2.5.3.4 Should the employment contract be extended, the costs of any subsequent penalties would decrease proportionately.

2.5.4 The effect of the abovementioned arrangement was considered to be such that Mr. Molefe would be in the same position that he would have been in had he retired from Eskom at the age of 63. The Board was in support of the arrangement.

2.5.5 On 25 November 2015, the terms of the arrangement were communicated by Ms. Daniels to the Minister's office. Receipt of the said letter was acknowledged and an undertaking made to bring its contents to the Minister's attention.

2.5.6 As at 9 February 2016, however, a formal response to the letter addressed to the Minister had still not been received and at that time, there was no formal contract of employment with Mr. Molefe.

2.5.7 On 9 February 2016, the P & G Committee met to deliberate on the conclusion of a contract of employment with Mr. Molefe, including the issue relating to his pension benefits. In order to better understand the distinction between appointing Mr. Molefe on a fixed term, as opposed to a permanent contract, basis and the options available to the Board for addressing Mr. Molefe's concerns, Mr. Minaar guided the Board. As already mentioned, Mr. Minaar explained to the Board that due to Mr. Molefe's short term contracts with numerous public entities in which he served at executive level, he was deprived of the opportunity to grow a pension fund in a single fund.

2.5.8 It was then resolved at the meeting of 9 February 2016 that:

"7.5.1 the current EPPF rule that Employees may proceed on retirement from the age of 50 with 10 years' service remains applicable;

7.5.2 in cases where an Executive Director (appointed on a fixed term contract) decides to take an early retirement and there

is a shortfall regarding the EPPF 10 years' service rule, Eskom shall:

i. bridge the gap to make up for the 10 years;

ii. waive the penalties applicable to early retirement; and

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

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

A copy of this resolution is attached and marked "**BN13**".

2.5.9 It was the intention of the P&G Committee that the arrangement had to be structured in such a way that the benefit would only accrue to Mr. Molefe upon completion of his five-year term and that Mr. Molefe would not be able to participate in any other government pension fund after qualifying as per the resolution. Such intention was communicated to the Minister on 25 November 2017.

2.5.10 On 7 March 2016, Mr. Molefe signed a second contract of employment for a fixed term of 5 years with effect from 1 October 2015 and terminating on 30 September 2020. On 19 April 2016, the Board approved the resolution of the P&G Committee meeting of 9 February 2016.

2.5.11 On 6 September 2016, it was decided to increase the long-term incentive award for Mr. Molefe to two times the annual pensionable earnings on the basis that the amount was relatively low based on the benchmark against similar long - term incentive awards to the Chief Executives at this level.

2.5.12 On 24 October 2016, the P&G Committee approved the additional award in the form of an increase to Mr. Molefe's long-term incentive to two times the annual pensionable earnings.

2.6 **The eventual payment of pension benefits to Mr Brian Molefe:**

2.6.1 On 11 November 2016, Mr. Molefe formally submitted his request for an early retirement in terms of the EPPF rules read together with the resolution of 9 February 2016. In the same letter, he also indicated that his last day of service would be on 31 December 2016, copy of the said letter is attached marked "**BN14**".

2.6.2 On 15 November 2016, EPPF provided an early retirement calculation for Mr. Molefe based on an exit date of 31 December 2016. The total cost to Eskom for early retirement would be an amount of R25, 80 204.19.

2.6.3 On 21 November 2016, Molefe's retirement letter was discussed at a Special P&G Committee meeting. During the meeting, the terms of the letter requesting early retirement were supported.

2.6.4 On 24 November 2016, the response was provided to Mr. Molefe in which I approved his request for early retirement in terms of Rule 28 and Rule 21.4 of the EPPF rules. I also confirmed that all penalties would be waived and further that early retirement be on the basis that Mr. Molefe be deemed to have achieved the age of 63, a copy of my approval letter is attached hereto marked "**BN15**".

2.6.5 On 23 March 2017, the amounts paid to Mr. Molefe in respect of his salary, up to December 2016, were R575, 679.91, leave due to him in an amount of R226, 278.84 and a short-term bonus to the end of December 2016 in the amount of R2, 110, 185.00. The total amount paid to Mr. Molefe was the sum of R2, 912, 143.75.

2.6.6 On 19 April 2017, the Minister called a meeting to discuss Mr. Molefe's pension pay-out. It became evident at this meeting, that my letter to the Minister dated 25 November 2015 was not accepted by the Minister. The Minister stated in no uncertain terms that funds in the amount of R30, 103, 915.62 paid to EPPF in respect of Mr. Molefe's early retirement would not be permissible and should be repaid.

2.6.7 Following the meeting with the Minister, Ms. Klein and Ms. Daniels had a meeting later on that evening with Mr. Molefe, where it became apparent that he was already paid out 30% of the pension benefit in January 2017

and was also receiving monthly pension payments of R100, 000.00 since then.

2.6.8 According to Mr. Molefe, he only received R7, 700, 000.00 from the EPPF on being admitted to the EPPF and of this sum, R4, 300, 000.00 was transferred from the Transnet Pension Fund to the EPPF.

2.7 **The Employment of Mr Singh as Financial Director at Eskom:**

2.7.1 On 1 August 2015, Mr. Singh assumed the role of CFO at Eskom on secondment from Transnet where he held the position of CFO from about July 2012, having acted as the CFO since about 2009.

2.7.2 On 28 September 2015, the Minister announced that cabinet had approved the appointment of Mr. Singh as the CFO at Eskom in conjunction with Mr. Molefe's appointment as GCEO and my appointment as Chairman.

2.7.3 On 2 October 2015, when the Minister approved the appointment of Mr. Molefe as GCEO and addressed a letter to me to this effect, a copy of Mr. Singh's appointment letter was also enclosed therein. The letter confirmed Mr. Singh's appointment as CFO from 1 October 2015. However, there was no indication of the duration of his appointment. Please also see paragraph 2.4.11.

2.8 **Eskom's response to the Public Protector's Report on the State of Capture, dated 14 October 2016:**

2.8.1 The responses to issues that were raised by the Public Protector during her investigation were prepared by, and submitted to the Public Protector, by the Company Secretary and Head of Legal Services, Ms. Daniels.

2.8.2 The Board did not respond to the Public Protector's report. When the report was published and made available to it, the Board sought and obtained legal advice and guidance from senior counsel on what its rights and obligations were. In particular, the Board sought guidance as to whether or not it could take the report on review on the basis that the Public Protector had not given the Board and/or any of the individual directors specifically mentioned in the report an opportunity to respond to the issues raised therein in relation to them.

2.8.3 Senior counsel's opinion was that the Public Protector's report did not contain any findings but instead, it contained what he referred to as being observations. On that basis, he opined, the report could not be taken on review.

2.8.4 In amplification of his views, senior counsel pointed out that the primary remedial measure employed in the Public Protector's report was that a judicial commission of inquiry had to be established and that this remedy fits logically and appropriately with an investigation that was not as detailed as it might otherwise have been.

2.8.5 In other words, as counsel concluded, the impact of the report was to record a number of potential violations of law based on the information that was made available to the Public Protector and the call for a commission of inquiry to be appointed to make the final findings on these allegations of unlawful conduct.

2.8.6 The Board accepted senior counsel's advice. Hence no further action was taken in relation to the Public Protector's report.

2.9 **The purchase of Optimum Coal Holdings by Tegeta from Glencore:**

2.9.1 **Pre-purchase of Coal from Optimum**

2.9.1.1 On 8 December 2015, a round robin resolution was submitted to the Board by management. The submission was titled: Pre-purchase of Coal from Optimum Coal Mine (Pty) Ltd ("**OCM**").

2.9.1.2 The motivation for the round robin dealt with the security of coal supply to the Hendrina Power Station in light of the fact that OCM was placed under business rescue.

2.9.1.3 As part of motivating for this transaction, Mr Koko indicated that given the serious risk of security of supply to Hendrina Power Station, Komatie Power Station and Arnot Power Station (all of which are of key national interest), he considered it appropriate to bring this to the attention of the Director General in the Department of Mineral Resources. Mr Koko then requested intervention by the Department of

Mineral Resources to obtain a resolution of the problem of coal supply.

2.9.1.4 The Director General of the Department of Mineral Resources responded in a letter indicating that they would engage with the parties and take certain steps to assist in considering the significant risk to the country.

2.9.1.5 The Department requested that Eskom play an active role in supporting the rescuing of the mine and return for securing the honouring of the current contract up to 2018, to consider making a pre-payment for up to one-year coal supply. This was to ensure that supply was guaranteed and averting any national crisis.

2.9.1.6 It was indicated that with the funding of the pre-purchase of coal, Eskom was going to achieve a value benefit of R238.9 million. The motivation by management further indicated that the proceeds of the R1.86 billion pre-payment of coal were to be used by OCM to extinguish existing liabilities to ensure that the business continues as a going concern. It further stated that the shutdown of OCM could potentially result in thousands of job losses.

2.9.1.7 Pursuant to the abovementioned motivation / recommendation, the pre-purchase of coal was then approved by the Board by a round robin resolution on 9 December 2015.

2.9.1.8 Based on all the submissions made by management, the Board believed that this payment was for the pre-purchase of coal from OCM. The Board only learnt from the press in July 2017 that management had, in fact, converted what was meant to be a pre-payment for coal into a guarantee.

2.9.1.9 On the 10th of December 2017, Ms Caroline Henry who was a senior general manager for the treasury department in Eskom decided that instead of laying out the R1.6 billion in cash, she would prepare a note and rather request that a guarantee in favour of Tegeta be issued through ABSA.

2.9.1.10 According to Mr Singh (Eskom's former CFO), "The issuance of this guarantee was brought to the attention of various treasury officials via emails... who all thus had knowledge that the guarantee was issued. This is over and above Ms Caroline Henry the Head of Eskom Treasury – by and large this was the Treasury EXCO. This evidences the fact that the issuing of the guarantee was not concealed or kept from the site of the responsible officials in any way" [5](*sic*).

2.9.2 **Purchase of Optimum Coal Holdings (Pty) Ltd ("OCH") by Tegeta from Glencore**

2.9.2.1 In December 2015, the sale and purchase agreement for the sale of shares and claims ("**SPA**") was signed. Tegeta purchased all of the shares in the issued share capital of OCM and purchased claims against OCM from OCH for an amount of R2, 100, 000, 000.00

2.9.2.2 The suspensive conditions of the SPA were, *inter alia*, that-

2.9.2.2.1 Eskom must consent to the sale and purchase of shares by Tegeta;

2.9.2.2.2 Release of the guarantee provided by OCH to Eskom;

2.9.2.2.3 Tegeta to issue a guarantee to Eskom in respect of its obligations in the CSA; and

2.9.2.2.4 Cession and assignment of rights in CSA to Tegeta.

2.9.3 To my knowledge, Eskom was not involved in the purchase of OCH by Tegeta (which was a commercial transaction between two private companies), nor the negotiations of the terms of the SPA. The role which was played by Eskom was to secure its interest in the coal supply by OCM (Pre-purchase of coal from OCM by Eskom) and to that extent, the

[5] Written Narrative of Evidence to be presented by Anoj Singh on 5 December 2017 – Para 82 & 83

conditions precedent mentioned above, were inserted to protect Eskom's interests.

2.9.4 My understanding is that, Eskom's involvement in the sale and purchase of shares and claims by Tegeta from the Business Rescue Practitioner of OCM was limited to the approval of the cession and assignment of the coal supply agreement from OCH to Tegeta and this was confirmed by the Public Protector in page 251 of her report.

2.9.5 My understanding is further that on 8 April 2016, Tegeta made an offer to supply additional coal for the Arnot Power Station from OCM over a period of five months. This offer was made subject to a pre-payment to be made by Eskom for the supply of such coal.

2.9.6 The Board was advised that the purpose of pre-payment was to secure coal for Eskom, more particularly, of the high quality that was required by Arnot Power Station and further to ensure Tegeta's ability to meet the production requirements for both Hendrina and Arnot Power Stations in the short term.

2.9.7 In line with the above, on 11 April 2016, Eskom management approached the BTC to consider, on an urgent basis, the purchase of coal from Tegeta to supply Arnot Power Station for five months. The benefits for extending these Short-Term Contracts were presented to the BTC as including the following:

2.9.7.1 the fact that the coal was being mined and could be delivered without delay;

2.9.7.2 to alleviate the coal shortfall at Arnot Power Station due to the closure of Arnot colliery;

2.9.7.3 to alleviate the shortfall of coal requirements at Kriel Power Station due to the underperformance of Kriel Power Station Underground mine; and

2.9.7.4 by procuring this coal for Arnot and Kriel Power Station, it would assist towards building stock days.

2.9.8 The abovementioned requested approval by management was made in terms of Eskom's SCM Procedure, which provides, *inter alia*, that whilst Eskom does not encourage the provision of advance payments, an

advance payment may be an acceptable strategy for Eskom in certain circumstances. For example:

2.9.8.1 in cases where the supplier will have to make a big capital outlay before starting with the contract; and

2.9.8.2 it will only be issued on condition that the relevant contractual provisions relating to advance payments also need to be included in the contract.

2.9.9 The BTC approved pre-payment to Tegeta in the requested sum of R659, 558, 079.38 (six hundred and fifty-nine million five hundred and fifty-eight thousand and seventy-nine rand and thirty- eight cents) inclusive of VAT. The approval was made subject to the following conditions:

2.9.9.1 Eskom had negotiated a 3,5% discount with Tegeta;

2.9.9.2 Tegeta had obtained adequate and appropriate security for the transaction to safeguard Eskom's interests; and

2.9.9.3 Eskom management had provided a rationale for the commercial value that the transaction would have for Eskom.

2.9.10 My understanding is that in the Eskom environment, pre-payment of this nature is not necessarily unique and has been done in the past. It forms part of the procurement mandate approved by the BTC in 2008. It is used in large projects, coal mining contracts, and emergency supply contracts.

2.9.11 In this regard, it is also noteworthy that, in her report, the Public Protector stated that "*After evaluating the responses received from Eskom, it is clear that they do have the requisite policies in place which provide for a prepayment of coal to be made. This is in line with various agreements put in place by Eskom after the energy crisis in 2008.*"[6]

2.9.12 However, the Public Protector also made the comment that "*Eskom had previously done extensive due diligence on OCM which formed part of the Co-Operation Agreement, they were aware of exact production*

[6] See page 310, para s) of the Public Protector's report on the State of Capture.

outputs for coal and the price of coal being supplied by OCM. At the time of concluding the contract with Tegeta for the supply of coal to Arnot power station, Eskom was fully aware that the sale of all shares in OCH to Tegeta had not gone through. It appears to not make commercial sense for Eskom to contract with Tegeta for a higher price of coal knowing exactly where the coal was being received from."[7]

2.9.13 To that end, I point out that a preliminary legal opinion obtained by Eskom on this transaction indicated that Eskom was not in contravention of the PFMA in executing this transaction as it related to irregular and fruitless and wasteful expenditure. Financial sustainability is the overarching objective of the Eskom coal strategy – optimise value from the existing cost-plus mines (Paras 8.2 – 8.4)[8]

3. Conclusion

I trust that this submission will assist the Committee in the finalisation of its inquiry.

DR BALDWIN NGUBANE

DATE: 05/03/18

COMMISSION OF INQUIRY INTO STATE CAPTURE

[7] See page 311, para u) of the Public Protector's report on the State of Capture

[8] Submission by Board of Eskom to Portfolio Committee

U14-VK-0567

PMG PARLIAMENTARY MONITORING GROUP

Eskom Inquiry: Ben Ngubane

Public Enterprises

07 March 2018

Chairperson: Ms Z Rantho (ANC)

Audio
Eskom Inquiry: Ben Ngubane 1
Eskom Inquiry: Ben Ngubane 2

Documents
Dr Baldwin Ngubane submission - part 1
Dr Baldwin Ngubane submission - part 2
Dr Baldwin Ngubane submission - part 3

Meeting Summary

The Committee heard evidence from Former Eskom Board Chairperson Dr Baldwin Sipho "Ben" Ngubane.

The Committee questioned Dr Ngubane on the pre-purchase of coal from Optimum Coal Mine (OCM); former CEO Brian Molefe's resignation; the suspension of the four executives; his relationship with the Gupta family; and corporate governance during his tenure as Eskom Board Chairperson at the power utility.

In his statement, Dr Ngubane, he informed the Committee that in the funding of the pre-purchase of coal, Eskom was told it was going to achieve a value benefit of R238.9 million. The motivation by management indicated that the proceeds of the R1.86 billion pre-payment of coal was to be used by Optimum Coal Mine (OCM) to extinguish existing liabilities to ensure that the business continued as a going concern. The shutdown of OCM would potentially result in loss of thousands of jobs.

The Committee said it was not happy or impressed with Dr Ngubane's responses to questions. It was of the view that Dr Ngubane refused to take responsibility for the collapse of corporate governance at Eskom.

The Committee noted inconsistencies in Dr Ngubane's answers when compared with evidence provided by others appearing before the Committee Inquiry.

During questions by Members, Dr Ngubane looked to the Chairperson and said he could not sit in the Committee and "listen to this rubbish" – referring to the manner of questions being asked. The Chairperson told Dr Ngubane that he could not use such language in Parliament. Both the Members and the witness needed to be patient with each other.

When asked to draw conclusions from evidence before the Committee, Dr Ngubane kept telling the Committee to wait for the Commission of Inquiry into state capture to commence its work so that evidence could be presented there and witnesses could be cross examined.

Meeting report

The Chairperson said the Committee was scheduled to meet with Dr Ben Ngubane, former Eskom Board Chairperson, and Ms Dudu Myeni, former South African Airways (SAA) Board Chairperson. Dr Ngubane was running late due to traffic, but was on his way to Parliament. Ms Myeni indicated via email to the Committee that she was not in a healthy condition to travel to Cape Town via airline or road, and her doctor had booked her off from travelling. She however made a written submission and hoped that it would suffice. The Committee needed to engage with each witness that provided a written submission to the Committee and therefore her submission could not be supplied.

The Chairperson said that Ms Myeni had told her what illness she had but was not at liberty to share in front of the media. She would disclose the illness to members privately.

Committee members requested that Ms Myeni should appear before the Committee Inquiry in not more than seven days.

The Chairperson said Minister Malusi Gigaba had asked for an additional 10 days to be given to him so that he would able to source the information from the Department of Public Enterprise and come with credible information before the Committee. The Chairperson asked for input from Committee members on this.

Dr Z Luyenge (ANC) said that 10 days was a fair request.

Ms Mazzone suggested that the Minister be asked to appear before the Committee on 13 March 2018 since there was no sitting or cabinet meeting on that day.

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The Chairperson said the Committee was scheduled to meet with the Guptas and associates on 13 March 2018, and the Committee needed to be prepared to continue on the 14th. The 'associate' of the Guptas referenced was Mr Duduzane Zuma.

Dr Luyenge suggested that the Committee meet with the Guptas first, but if the Minister would only available on the 13th then they could meet with the Minister first.

Mr M Dlamini (EFF) agreed that the Committee should meet with the Guptas first, followed by Minister Gigaba.

Mr R Tseli (ANC) asked if the lawyer of the Gupta brothers was the same lawyer for Mr Duduzane Zuma.

The Chairperson replied that Mr Duduzane Zuma had his own lawyer and would be interrogated separately from the Guptas even though the invitation was for the Guptas and Mr Zuma to appear on the same day.

Mr S Swart (ACDP) asked if there was written confirmation that the Gupta brothers would definitely appear before the Committee on 13 March 2018.

The Committee Secretary responded that the lawyers of the Gupta brothers had indicated that the brothers would attend the inquiry on the date they had been invited to appear.

Mr Swart was doubtful that the Gupta brothers would in fact appear.

The Chairperson said that the Committee would write to the Chair of Chairs and request more time for the Committee on 13 March 2018 so that they could deal with Minister Gigaba, Mr Duduzane Zuma, and the Gupta brothers.

The Chairperson said the Committee would now be interacting with Dr Ben Ngubane, the former Eskom Board Chairperson.

Witness: Dr Baldwin "Ben" Ngubane
The Chairperson read the oath to Dr Ngubane who took the oath to tell the truth.

Dr Ngubane read his statement.

Adv Vanara: Firstly, I would like to confirm that your statement forms part of record of proceedings in its entirety together with annexures. Secondly, I would like to go a board meeting on 2 March 2017 that you were you were chairing.

Dr Ngubane: I think it was a People and Governance (P&G) board committee meeting on 2 March.

Adv Vanara: What were the issues you discussed at that meeting?

Dr Ngubane: I think there were a couple of issues touching on the recruitment process and other P&G issues. However I brought to that meeting a document that I found on my desk which was not dated or signed, and contained certain allegations about Mr Matshela Koko. I gave this document to the Board members and we came to the conclusion that we had to give this document to Mr Koko and ask him to respond by end of the working day. The statement was duly given to Mr Koko. Somewhere in the afternoon before the scheduled meeting he came to me and said the timing was not sufficient. He also told me that he was facing a lot of difficulties as acting Group Chief Executive because he was moving people around at Medupi and Kusile because of certain serious issues such as fictitious companies being created and funded, but he was handling this as the Group Chief Executive. I went back to my colleagues, and when we came to the meeting at about 6pm the intention was to suspend Mr Koko and institute an inquiry, but in our discussions it emerged that we needed to give him 48 hours to respond before we could suspend. Also there was no name to the document which made this not a grievance letter but a whistleblower document. I was reminded that Eskom policy requires whistleblowers to be dealt with through the Audit and Risk (A&R) committee and through the Assurance and Forensic division of Internal Audit. We then took a decision to submit this document to the A&R committee who subsequently dealt with it through Assurance and Forensic, which eventually led to the inquiry taking place.

Adv Vanara: The subsequent Acting Chair of the Board testified here on this particular issue that it was your unilateral decision not to suspend Mr Koko. That is Mr Zethembe Khoza. What is your response to that?

Dr Ngubane: I don't know where he takes that from. We had a meeting and discussed this matter quite extensively. And then ultimately I said we should refer the issue to A&R and let it be handled as a whistleblower document. There was no time where I took the decision alone. We were all at the meeting.

Adv Vanara: We do have on record the meeting in question, and if you want we could play the meeting. It was very clear that it was not only the complaint you had received but rather most members of the Board had received various complaints in respect of the same individual. That meeting was clear that there would be a meeting at six o'clock and Mr Koko would be called in to give reasons why he should not to be suspended. Is that your recollection?

Dr Ngubane: That is correct.

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Adv Vanara: Your testimony is that you outside of the meeting went to meet Mr Koko.

Dr Ngubane: After he received the document to which he had to respond, he then asked to see me.

Adv Vanara: I guess you didn't know what he wanted to see you about?

Dr Ngubane: I assumed that it was because of the document he had received and had to respond to, so I granted him the meeting.

Adv Vanara: Sorry, you have lost me a bit. You assumed it was in connection with a document he had received?

Dr Ngubane: No. he got the document to which he had to respond or else face suspension.

Adv Vanara: How did he get the document?

Dr Ngubane: It wasn't me who delivered the document personally if I remember correctly. There are people at Eskom who do those tasks.

Adv Vanara: I guess the question is on whose instruction was that document sent to Mr Koko?

Dr Ngubane: It was a decision of the meeting we had earlier where we decided that he must respond or face suspension.

Adv Vanara: I recap the decision of that meeting to which you agreed. He was to be called at six o'clock to provide reasons why he should not be suspended. In other words at six o'clock he comes to a meeting, and he is given the allegations against him, and is told to respond to those allegations.

Dr Ngubane: Your take puts it differently. The earlier meeting took the decision that we must get a response from him in terms of the allegations. And the decision was that he would be suspended if those reasons or responses were not to the satisfaction of P&G or the Board.

Adv Vanara: That record will show that you people had already taken a decision to suspend him until you were persuaded by Mr Zethembe Khoza to call that meeting at six o'clock where he would be given an opportunity to respond in the same manner when you called the meeting on the 11th of March to suspend Mr Matshela Koko, Mr Tshediso Matona, and Ms Tsholofelo Molefe. That is the process you followed, isn't it?

Dr Ngubane: That as a totally different process which was brought upon us.

Adv Vanara: That record is very clear. It has not been disputed by any of the other Board members that attended the meeting. You had made up your mind, having been persuaded by other Board members that you wanted him gone as in yesterday until you were persuaded by Mr Khoza at two o'clock. What is it that persuaded you personally from what Mr Koko told you, resulting in your not suspending him?

Dr Ngubane: The issue of time was raised for the first time. That before suspending we need to give a person 48 hours to respond as to why the person should not be suspended. That arose for the first time in my meeting with him.

Adv Vanara: What is the other reason beside the 48 hour notice that stopped you from suspending him, if any?

Dr Ngubane: This was a dynamic process. You may have formal discussion in your minutes, but we were all at Megawatt Park talking about this, and it was clear that we had also omitted the policy requirement that this must got to A&R who must deal with it through Assurance and Forensic. It's a policy at Eskom. To suspend him directly on a whistleblower note without having gone through this process would have been illegal.

Adv Vanara: You took into consideration that this was a whistleblower document. What other reasons if any did you take into consideration?

Dr Ngubane: This was part of the discussions we were having. Obviously he would have taken us to the CCMA and Labour Court and won if we had taken steps that were not in law or policy.

Adv Vanara: To add to the reasons, so it was a threat of litigation?

Dr Ngubane: Yes.

Adv Vanara: Let's look at these three reasons you have advanced. To entertain how rational your decision was. One ...

Dr Ngubane: It wasn't just my decision. We were there as members of the Board and members of P&G. I did not just say "No, suspension anymore. It was a product of our consultation".

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Adv Vanara: I take your evidence to the extent that you are testifying that. But I need to take into account what other Board members have said as well. But on your version it was a collective decision. 48 hours had lapsed and you had not suspended him so we can tick that off as not the reason he was eventually not suspended.

Dr Ngubane: No. By that time we had referred the matter to the A&R committee. We had taken it further, and eventually it led to dealing with the issue.

Adv Vanara: That after 48 hours he had not been suspended?

Dr Ngubane: That's correct.

Adv Vanara: Who was the Chairperson of Audit and Risk, was it not Ms Mabude?

Dr Ngubane: Yes.

Adv Vanara: She was at the earlier meeting of P&G.

Dr Ngubane: Correct.

Adv Vanara: She was also vocal that Mr Koko had to go.

Dr Ngubane: Correct.

Adv Vanara: Over and above the whistleblower report, there were other issues that you had raised, including yourself. You had a note from a meeting between yourself and the Minister where the Minster had raised serious concerns about said individual. Is that not correct?

Dr Ngubane: That's correct.

Adv Vanara: Why were those factors not considered in the meeting as part of the reasons not to suspend, is that not correct?

Dr Ngubane: Absolutely.

Adv Vanara: Why did that package of other issues, except the whistleblower which formed part of your decision to suspend him, not stand at the six o'clock meeting to suspend him barring the whistleblower?

Dr Ngubane: I don't have a copy of the whistleblower document before me, but there were many issues raised in that document, and it was the collectiveness of those issues that made us decide to suspend him. And also, I checked the note from the Minister with the same Board members and we knew that it was something that has to be dealt with.

Adv Vanara: The point I am making Doc is that you had received this whistleblower note which you had shared at that P&G meeting earlier that day, correct?

Dr Ngubane: That's correct.

Adv Vanara: Over and above that document, you contributed other reasons why he should go. You have just admitted to that.

Dr Ngubane: That's correct

Adv Vanara: And Ms Mabude contributed additional reasons why the man had to be suspended.

Dr Ngubane: That's correct.

Adv Vanara: Ms Klein who said you people must stop pussy footing around this man and advanced reasons around why this man had to go.

Dr Ngubane: That's correct.

Adv Vanara: In your meeting with Mr Koko, and one of the reasons you did not suspend was because of the whistleblower report. I understand that, and I am saying put it aside. Why when you were at that meeting based on the contributions of yourself, Ms Klein, Ms Mabude, and others at the meeting which had made you come to the conclusion that he must go, why on the basis of that meeting did you not suspend him?

Dr Ngubane: But I have said Advocate that the issues contained in that document encompassed a lot of other matters. However, even if it was on a single matter that had been seen on its own separately, you would still have to follow procedure in suspending a person.

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Adv Vanara: We have dealt with the 48 hour issue and the reasons in terms of eliminating. There is only one reason, and that is the threat of litigation. That same board, and I heard your response earlier on how you treated Tshediso Matona, Tsholofelo Molefe, and others differently, but you still maintain it was the same Eskom policy applied by the same board. How can you explain the different standards that your Board applied to different people?

Dr Ngubane: You are bringing me to a more complex situation. When Chairman Tsotsi said the four people must be suspended, we differed with him because he did not give us cogent reasons as to why they must be suspended. And remember this was our very first meeting as a new Board in March. We said the reasons he was giving us were defamatory, unsubstantiated, and we could not suspend them. We suggested that they take special leave while the concerns he had raised were being investigated. It was Head of Legal he had brought into the meeting who said special leave only applied in special cases. Not for investigation purposes. That's how we ultimately agreed to go with the suspension. Our resistance to that led him to call in the Minister to our meeting on 13 March where we voiced our concerns. But the Minister while not saying "Suspend the people" also raised her concerns. The concerns were from the War Room which was claiming it was not receiving consistent information from management at Eskom and therefore it could not develop strategies to turn around Eskom and stop load shedding. After that we resolved to go on with the investigation, but the people concerned were heading the departments that the investigation dealt with and therefore they must be put aside for three months. It was clear this would be for three months and they would be informed of the outcome. That's how we took that decision. On 14 July 2015 Mr Saeed Suleiman who was the link between the A&R committee chairperson and the Dentons inquiry wrote a letter stating;

"Dear Ms Cassim,

Investigation into the affairs of Eskom Holdings SOC Ltd.
1. I refer to the above,
2. I note that the terms of reference in respect of the investigation do not require that misconduct by any specific individual be investigated,
3. Accordingly make no recommendations concerning action against any specific individual.

Yours sincerely
Saeed Suleiman, on behalf of Dentons".

That's why I said you were bringing in a very different situation. Here was a set of allegations which were known by all of us. Before there were nebulous allegations being made such as Mr Tsotsi saying Ms Tsholofelo Molefe had contacted people who had tendered during the evaluation of tenders. He promised a document that would detail all those allegations but he never did.

Adv Vanara: But the point I am making is that arising from your decision on 11 March you were taken to court by Tshediso Matona. What is your answer?

Dr Ngubane: Yes, I was at the CCMA with Mr Matona. I persuaded him that...

Adv Vanara: We will get to those details. I just want you to confirm that Matona did take you to the Labour Court as a result of your decision.

Dr Ngubane: Yes.

Adv Vanara: Then subsequent to this incident after Mr Molefe came back and you terminated or rescinded your decision to re-employ him, he took you to court?

Dr Ngubane: As far as I know he took the Minister to court. Not the Board.

Adv Vanara: The Democratic Alliance (DA) took you to court because of your decision is that correct?

Dr Ngubane: That's correct.

Adv Vanara: Solidarity took you to court on the same decision, correct?

Dr Ngubane: Partly true. Essentially the DA and Solidarity wanted to block Mr Molefe's return and his receiving any benefits.

Adv Vanara: Essentially, the point I am making is it is decisions you made. The EFF also joined in challenging your decisions. If you couldn't suspend Mr Koko for threat of litigation, why did the same threat of litigation not prohibit you from taking some of the decisions that you went to court for and which you eventually lost?

Dr Ngubane: I really don't follow. Here was a situation where we were not giving enough time, and the allegations were contained in a whistleblower document. Those were very different circumstances.

Adv Vanara: Just to make you understand so that we move on from this point, I am entertaining the rationale of this threat of litigation

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having persuaded you against you suspending this person after you had taken a clear decision to suspend him. How sustainable is that in light of the various other decisions that you took?

Dr Ngubane: I beg to differ. Circumstances were quite different. Here we had taken a decision but not based on legal requirement and on Eskom policy requirement. We had taken a decision. If one is made aware that the decision we have taken is not correct, is there anything wrong to following the right procedure because we then referred it to the A&R committee to deal with it. We took action to proceed in a proper way where we would be sure we followed the rules.

Adv Vanara: Did you receive a call from the former Minister of Public Enterprises not to suspend Mr Koko on that day?

Dr Ngubane: No. we had met almost half the day or the entire day talking about this matter. The Minister used to call me quite often, particularly when she finished work in Parliament or whatever, to ask me about the happenings in Eskom because there were a huge number of concerns in terms of stability and so on. She did phone me, but she had phoned many other times before.

Adv Vanara: I am asking a very specific question. Did the former Minister of Public Enterprises Ms Brown call you at any time between your earlier meeting where you took the decision to suspend Mr Koko, and before or during the meeting when you were to suspend Mr Koko?

Dr Ngubane: She phoned me, but that was not about Koko.

Adv Vanara: It was about what?

Dr Ngubane: It was about Eskom business. I did not keep a note of the conversation I had, but it was about a whole lot of processes that dealt with stability.

Adv Vanara: You can't recall them?

Dr Ngubane: I can recall them. For instance there was an issue about archival for some of our power stations; there was an issue of succession; there was an issue of management. If I go back, Mr Abram Masango wanted an urgent meeting with me. I was at Tintswalo having another meeting with business people totally unrelated to the business of Eskom. So I said to him "If it is so urgent come, come and see me. I will be here till around 5pm". He came and told me he wanted me to intervene because Matshela Koko was forcing him to go to Harvard. Harvard has a programme for upgrading the skills of Eskom people. They go there on rotation. Even Brian Molefe went there to learn about the management of nuclear power stations and so on. He said Matshela was wanting him to leave his work and go to Harvard. He had family issues with that. I should intervene because it was causing a problem between him and Matshela. Subsequently I called them both to the meeting and asked him to explain why Abram had to go to Harvard at all costs. Matshela explained that it was a rotational system. He had ordered Masango to take his lot on the Harvard issue. After a long discussion, Abram had agreed to go.

Adv Vanara: I am sorry Doc. I don't have time. The Minister called you to discuss business of Eskom. What is it that the Minister called you about?

Dr Ngubane: For a briefing of what is happening at Eskom.

Adv Vanara: Remember we eliminated these calls between you and the Minister which are natural and normal. We are between your two o'clock meeting and the six o'clock meeting where you said the Minister called. I want to know what it is that the Minister called to talk to you about.

Dr Ngubane: I have told you that this was to me a normal call.

Adv Vanara: Whether it was abnormal or normal, I want to know the reason, what is difficult about you saying "The Minister called wanting me to go to her residence or this and that"?

Dr Ngubane: We had a number of meetings with the Minister with the company secretary present, with Ms Venete Klein present to discuss various issues around Eskom. I really don't know what you want me to say.

Adv Vanara: I give up Doc. There is evidence before this Committee that you received a call where the Minister instructed you not to suspend Mr Koko. What is your response to that?

Dr Ngubane: I presume she told this to some people. I talked to the Minister, it was on my phone, and it wasn't on speaker, so I don't know where that comes from.

Adv Vanara: I just want to move to the employment of Mr Molefe. On page 18, why did you write to the Minister in the first place about the employment of Mr Molefe?

Dr Ngubane: Because the Minister's rule was that she would only get letters from the Chairman.

Adv Vanara: I understand the protocol part of it, but what was the rationale behind writing to the Minister regarding Mr Molefe's

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employment issues?

Dr Ngubane: Because the change from permanent employment to fixed term caused a lot of problems in terms of handling Mr Molefe's benefits and so on. Therefore with the possibility of Mr Molefe going, because he said he had lost out a lot from moving from one organisation to another, P&G worked out a proposal to keep Mr Molefe at Eskom by all the things I have ...

Adv Vanara: I am not there as yet. I am at a stage where Mr Molefe was seconded from Transnet and then you recommended that he be appointed permanently, and you had engaged lawyers that advised on the process. Then you wrote to the Minister that letter of 9 November 2015 about Mr Molefe's employment. I am saying what is it you wanted from the Minister, did you want the Minister to say "Yes I am employing this person?

Dr Ngubane: Let's go back. Mr Molefe came at the height of load shedding. Within three months we started to notice changes. The whole mindset at Eskom began to change. Where the person at Generation was not talking to the person at Transmission, and the person at Transmission was not talking to the person at National Control, all of this changed. There was synchronisation of the actions of all the main players: Generation, Distribution, National Control. It was a significant shift. The three months were ending, and the rationale was we cannot remove this man at this point when we are seeing progress.

Adv Vanara: Let me be correct, you wanted the Minister to employ Mr Molefe?

Dr Ngubane: It was to ask her to extend by three months which she did. But the problem was not completely over then. We were still struggling with New Build projects. We were spending huge amounts of money on diesel. The program was not completed. I wasn't the only one who decided. It came from P&G to request the Minister to keep Molefe here because he is doing a good job.

Adv Vanara: I am not asking you to justify why you wanted him to be employed. All I am asking is when you wrote to the Minister, when you had now made the decision that you wanted to keep your man you wrote to the Minister to engage the terms of Mr Molefe's employment.

Dr Ngubane: But we had to do that because ...

Adv Vanara: I am not questioning that.

Dr Ngubane: You said "rationale", and that's what I am trying to give you.

Adv Vanara: Did you write to the Minister having now as the Board made the determination as a Board that you want to keep your man? In writing to the Minister did you want to get her approval or inform her you had appointed your man?

Dr Ngubane: The Minister had to approve this because it was a deviation from usual practice.

Adv Vanara: But before you received the Minister's approval, on 9 November you presented to Mr Molefe a permanent contract of employment where you say at that stage you had not received the Minister's response because you say "For some or other reason the Minister's letter dated 4 November sent to me and addressed to Ms Daniels did not come to my attention or the attention of the Board". The question is why did you offer Mr Molefe a permanent contract of employment when you did not receive the approval you sought from the Minister?

Dr Ngubane: The sequence is wrong. The Minister approved the employment of Mr Molefe. Remember Ms Ruthnam in the Minister's office sent us the guidelines for the appointment, and this was responded to through a second legal advice, and the Minister approved.

Adv Vanara: Let's go to the construction of the pension. You say on 25 November 2015 "Mr Minnaar assisted me in drafting a letter to the Minister recommending that a retirement arrangement be reached with Mr Molefe in order to allay his pension concerns". This is after you became aware that you had to offer Mr Molefe a five year fixed term contract as opposed to a permanent contract. Is that correct? And you had given reasons why you had to accommodate Mr Molefe's pension concerns. You wrote a letter to the Minister motivating why the pension proposals needed to be amended, correct?

Dr Ngubane: That's correct.

Adv Vanara: At the time you wrote the letter to the Minister were you aware that Mr Molefe had been previously employed at National Treasury for seven years?

Dr Ngubane: Yes, I know he moved from Treasury to Public Investment Corporation (PIC); from PIC to Transnet.

Adv Vanara: Were you aware that he had moved from Treasury where he had spent seven years?

Dr Ngubane: No. I wasn't aware of the time.

Adv Vanara: So you did not look at his CV when you employed him?

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Dr Ngubane: Yes, definitely we did. I knew he was from Treasury but I wasn't cognizant of the number of years he had spent there.

Adv Vanara: But you ought to have known if you looked at his CV.

Dr Ngubane: I am sure at some stage I had looked at it.

Adv Vanara: You would have known that he moved from Treasury to become PIC CEO for another seven years?

Dr Ngubane: That's correct.

Adv Vanara: Further that you would have known he moved to Transnet for an additional four years from where you recruited him.

Dr Ngubane: That's correct.

Adv Vanara: Was it your view then that he would not have amassed a pension in those respective roles?

Dr Ngubane: That was the issue he raised. We consulted Mr Minnaar, and he confirmed that he would lose out if he didn't work the full period to reach pensionable age.

Adv Vanara: Forget about what Minnaar said to you. I am saying what the information ought to have been in your minds when you wrote the letter.

Dr Ngubane: That's correct but you need to verify information when you write such letters.

Adv Vanara: Did you know what his salary was at Transnet?

Dr Ngubane: Not off hand.

Adv Vanara: But you would have known at the time?

Dr Ngubane: It was not far from what he was earning at Eskom.

Adv Vanara: You are giving this man a five year fixed term contract at a remuneration package of R5.56 million per annum is that correct?

Dr Ngubane: That's correct.

Adv Vanara: So he was the highest paid at Eskom?

Dr Ngubane: Not at all. Other Eskom CEOs received much higher than that range as permanent employees.

Adv Vanara: No. I am saying when he was an Eskom employee at the time he would have been the highest paid.

Dr Ngubane: I can't agree to that because I would need to see the figures again.

Adv Vanara: When you took a decision to buy 10 years additional service to increase a pension of somebody who earned R7 600 000 per annum as a total package, who in his previous job would have earned around R6 million. Did you for once think about those officials at Eskom who earn a very low salary? Did it ever cross your mind that perhaps you had employees earning far less than what this man was earning?

Dr Ngubane: Eskom is both a market company and a state company. So the benchmarks have always been to accommodate that aspect. Molefe's salary was no different in terms of basic package than all the previous CEOs at Eskom. The fact that there is a pay differential in this country between top CEOs and the lowest worker in a company may be a basis of serious inequality but this is the system in which we operate.

Adv Vanara: All I am asking is that at the time you were considering Mr Molefe's pension, did you take a minute to think about the other 40 odd employees in relation to the same issue of pension?

Dr Ngubane: Advocate, that is a very unfair and loaded question. I can't come to Eskom and change the processes there. I don't set the levels of payment at Eskom or in any other SOC. The Chairman of the Board does not set the level. He gets that from the system.

Adv Vanara: You are aware the court recently ruled on this matter?

Dr Ngubane: Certainly.

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Adv Vanara: Let me remind you what the court said in relation to your Board that took the decision. Three judges ruled "The decision of Eskom to waive penalties and buy Mr Molefe an extra 13 years of service totalling R30.1 million stretches incredulity and is unlawful for want of compliance of the rules of the pension fund".

Dr Ngubane: Well, I wonder...

Adv Vanara: I am not asking you a question sir. I am just reading. What is most disturbing which you perhaps need to take note of is the total lack of dignity and shame by people in leadership positions who abuse public funds with naked greed for their own benefit without a moment's consideration of the circumstances of fellow citizens". What do you want to say to that indictment?

Dr Ngubane: That indictment can apply to Steinhoff and many multinationals in this country. I agree there is a lot of greed at the expense of an ordinary person. But that is the nature of the state in which we are in. Our clause said if the contract reaches the end of the five year term then we would buy Mr Molefe an extra number of years to sustain his benefits. It was clearly stated in the resolution.

Adv Vanara: Let's move to the meeting of 9 February 2016 para 2.5.7 where you resolved to reconstruct this pension regime for Mr Molefe. Mr Molefe was at the meeting correct?

Dr Ngubane: No.

Adv Vanara: He was.

Dr Ngubane: Well, if he was he would have recused himself. I don't have the minutes of that meeting. We never discussed prescribed officers' salaries with them in the meeting. We always went in committee.

Adv Vanara: Are you disputing that he was at the meeting where you were discussing his pension benefit?

Dr Ngubane: I would say he could have been in the general meeting, but when it comes to discussing prescribed officers' salaries and remuneration, they always recuse themselves. It happens all the time.

Adv Vanara: That happens when corporate governance reigns supreme in an organisation. But where it has collapsed, those things don't happen. What is your comment?

Dr Ngubane: Well, I am telling you that this is what we always do.

Adv Vanara: Let's hear what the court says about that aspect, para 9.7. [Adv Vanara read the paragraph]. That is a collapse of corporate governance, would you agree?

Dr Ngubane: Well, I wish to see the minutes of that meeting because I can't believe that happened because every time we discuss salary issues they are asked to leave.

Adv Vanara: I am saying there is a court judgement where three judges have said what I have just said, and based on what they say, I am putting it to you that this suggests a collapse of corporate governance.

Dr Ngubane: Well, I am denying that. Let me see the minutes.

Chairperson: I am sorry to interrupt. I want Dr Ngubane to put it on record that he denies what the court judgement is saying or he denies the fact that Mr Molefe was part of the meeting according to what he understands in the governance of Eskom. Is that proper?

Dr Ngubane: I am not disputing what the judge is saying. They will say based on the information they have. What I know is that every time we come to discuss the remuneration of prescribed officers, whether short term, long term, they leave the meeting. That is what they do. It is the practice.

Chairperson: Thank you very much. You can continue, Advocate.

Adv Vanara: You are aware that your decision to give Mr Molefe early retirement was inconsistent with Eskom Pension and Provident Fund rules?

Dr Ngubane: Well, the guideline say people can take early retirement when they reach age 50. Those are the guidelines we got from the administration and Mr Minnaar. We did not say when Molefe applied for his early retirement that the clause of five year service was eliminated or discarded. Based on the rule that they can take early retirement is what we agreed to.

Adv Vanara: But why then did you sign that Mr Molefe was retiring on early retirement in terms of the resolution of 9 February 2016 when you knew that the purpose of that resolution was wrong as it was reserved for him after he had served five years?

Dr Ngubane: People can retire any time once they have reached a certain age. He was 50, but it did not mean he would get the benefits he

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would have got if he had served five years.

Adv Vanara: So is it your contention here today that when you signed a letter to Mr Molefe that it was not your intention or your Board's that he would be entitled to the Eskom Pension Fund?

Dr Ngubane: He was contributing to the pension fund every month. If he reaches 50 which was allowed by Eskom rules, then he will receive whatever his contribution has been.

Adv Vanara: Just help me and the Committee in terms of your decision making process. When faced with the matter you had just received a briefing on and based on the briefing you say yes or no, or did you interrogate issues that were brought to you by the managers, and apply yourself to those issues?

Dr Ngubane: The issue of his retirement had been dealt with ad nauseum in P&G and in letters to the Minister. This wasn't a new matter. P&G met, they took a resolution. Mr Minnaar came to me with a letter that was coming from that meeting. The company secretary was present at that meeting. I had no reason to doubt the correctness of it.

Adv Vanara: But why did that P&G committee agree to a pension dispensation on the same issues you had raised to the Minister and the Minister had not provided a response to it?

Dr Ngubane: I say in some of the documents the letter setting out the arrangements for Molefe's benefits were stated in the letter sent to the Minister. The acknowledgement came from the Minister's PA, it came from the Registrar in the Minister's department. There was no reason to question whether the Minister had accepted it.

Adv Vanara: So you assumed the Minister had given her go ahead?

Dr Ngubane: Well, that was the conclusion.

Adv Vanara: You testified earlier that the two of you would interact at any time on issues that related to Eskom. Before that meeting, did you pick up the phone and say "Minister, we have written a letter to you, you have not responded, we are about to make a decision?"

Dr Ngubane: No, I didn't.

Adv Vanara: And that to you it amounts to a Ministerial approval?

Dr Ngubane: No, it doesn't. It amounts to the fact that the Minister is aware of what we are doing.

Adv Vanara: My last parting shot relates to this early retirement. If you were thorough and applied yourself to submissions that were brought to you as a Board or subcommittee of the Board, and relying on the Eskom Pension Fund rules as you did in your letter to Mr Molefe, how did you miss that he was a temporary employee who did not qualify to be a member of the Pension Fund?

Dr Ngubane: He was on the Pension Fund. He was contributing to the Pension Fund

Adv Vanara: You took time and you earlier said you have dealt with this thing almost routinely, this issue of constructing the pension fund. And in your mind you had an idea that he must benefit from the Eskom Pension Fund. You had the Rules in front of you, you went to Rule 28 that you quoted. I am saying, how did you miss the finishing section of the Rules, the portion that talks to eligibility in the Rules?

Dr Ngubane: We were considering the end of his tenure after five years. That five year contract could be extended in which case he would fit in with everybody else at Eskom. Or if it is not extended, he would not lose out. Therefore we made the provision.

Adv Vanara: The last question. You say on page 25 you had approved a prepayment which was later converted into a guarantee and you learned that from the press. What did your Board do upon learning about what had transpired?

Dr Ngubane: I was no longer at Eskom.

Adv Vanara: Thank you very much.

Questions asked by Members

Ms L Mnganga-Gcabashe (ANC): Reading from the minutes and resolutions of the Board committee that you have provided as annexure one, page 37 talks about what transpired in the P&G committee where Mr Minnaar was presenting and discussing the matter of Mr Molefe's appointment and pension. My interaction will be comments and some questions. I'll repeat what I said to Mr Minnaar when he appeared before the Committee. Mr Minnaar started to mislead that board subcommittee because it says in paragraph 7.5 "Mr Minnaar noted that a fixed term five year contract at his level was a first for Eskom and was also not aligned with best practice". That statement alone is misleading - the part that it is not aligned with best practice. Metros as I have come across personally have fixed five year contracts in our country. Mr Minnaar should have sought clarity from the Director General of Public Enterprises to get clarity for the DG to unpack if Eskom did not understand what is entailed in a five year fixed contract. He decided to mislead the subcommittee and by

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extension that Board. He went on and on motivating why this cannot be practical and totally disregarded the instruction of the Minister based on the resolution of Cabinet. The Board can seek clarity from the Minister, but none of that happened. Cabinet had taken a resolution that CEOs and DGs would from now on be employed on five year contracts. We have a serious problem with the total disregard of a cabinet decision. If this had been unpacked they would have learned that on a fixed five year contract you do not qualify for pension. You are given a package which is benchmarked on the market and other spheres of government and arrive at a particular package. To me, you were misled and officials were thinking of themselves.

Dr Ngubane: I take your point. However, the five year provision hinged on whether his contract is extended in which it becomes a normal pensionable contract.

Mr R Tseli (ANC): While you were responding to Adv Vanara earlier, you said when you agreed to the early retirement of Mr Molefe it was on the basis that he would be paid only what is due to him as per the age. But the resolution talks about the waiving of the penalties which would be at the cost of the company. Is that not a contradiction?

Dr Ngubane: Advice to us was that other senior executives had Eskom pay the penalty when they took early retirement. That was the point of departure. In our case it was only to be applicable after five years' service, not just immediately without that service. I presume we could have unpacked this even more, but that was the assumption.

Mr Tseli: The court judgment Adv Vanara read we all agree to be a true reflection of what transpired. If found to be correct, will you admit that you lied under oath about Mr Molefe's presence in the meeting, where you discussed his benefits?

Dr Ngubane: I would like to see the minutes of that because I didn't attend all P&G meetings.

Mr Tseli: I agree. I am saying in the light of you still verifying this and it is found to be correct, would it be right to say you lied under oath that he was not there when the matter was discussed in the committee?

Dr Ngubane: Can we please accept the fact that to lie is a deliberate act. Here I am quoting practice at Eskom that when we discuss prescribed officers' salaries and benefits, they are asked to recuse themselves.

Mr Tseli: Let's go to the whistleblower document you did not bring along. Would you agree with me that it is one of the very important documents you should have brought along?

Dr Ngubane: Unfortunately at the end of the meeting the Company Secretary should have those documents. I searched for that document but I did not find it.

Mr Tseli: But you agree it is one of the very important documents you should have brought?

Dr Ngubane: Absolutely.

Mr Tseli: Have you ever shared the identity of the author of the document with any other person?

Dr Ngubane: I did not know the author of the document. It was undated, it was unsigned. But now that Mr Masango claims he wrote it, I know who wrote it.

Mr Tseli: Mr Masango says he had a one to one session with you and you advised him to write all those issues he had in one document, and I think that is the document he wrote.

Dr Ngubane: I differ. The only issue we talked about was his being sent to Harvard. He was violently against that. If he had given me a document it would have amounted to a letter of grievance against Mr Koko. There was no such letter.

Mr Tseli: How would you describe your relationship with Salim Essa?

Dr Ngubane: I came to know him around 2013 for oil business in West Africa. I was sitting at JBs with some people involved in West Africa – Mali, and Salim came to me and introduced himself, and then I introduced him to the people I was with. He knew we were talking about oil business and said he also has an oil company and wanted to be part of my company which was Gade Oil and Gas. He was going to arrange the trip to Central African Republic (CAR) to go for oil blocks there. It was a business relationship.

Mr Tseli: So he ended up being part of that company?

Dr Ngubane: He ended up being part of the company. But because of the violence in CAR we ended up cancelling the whole project and that is when he resigned from this company.

Mr Tseli: Have you ever declared your interest in relation to Salim since joining Eskom?

Dr Ngubane: No. I declared Gade Holdings. Under Gade Holdings was Gade Oil and Gas. That company became dysfunctional. It did not

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trade. It was an oversight of me when I declared Gade Holdings, I should have also declared Gade Oil and Gas.

Mr Tseli: What role did you play in the R1.8 billion prepayment?

Dr Ngubane: The Company Secretary requested an urgent meeting. But because people were in different places we agreed on a round robin discussion. It had first to go through the Investment and Finance Committee (IFC). IFC had its own round robin. They approved the emergency payment in order to secure coal supply. It was a proposal that came from management. Since IFC said it made sense, the Board agreed on the round robin and it was approved.

Mr Tseli: Do you think there is anything wrong with this R1.8 billion prepayment to Tegeta?

Dr Ngubane: Let's go back to the situation. The situation was horrible in South Africa. We were in danger of a national black out.

Mr Tseli: In essence, to be direct, there is nothing wrong?

Dr Ngubane: Well, at the time we could see nothing wrong because of urgency.

Mr Tseli: That extension of T-Systems was procured while the procurement process had already started. Why the motivation when the procurement process had started?

Dr Ngubane: I think this issue of replacing the IT supply had been going on before 2014. I came in 2014 around Christmas. The Chairman then, Mr Tsotsi, asked me to Chair the Board Tender Committee (BTC).

Mr Tseli: My apologies Doc. My interest is why motivate the extension of a contract in the middle of a procurement process?

Dr Ngubane: That happens all the time at Eskom. Many calls for tenders are cancelled, modified, and re-issued. It wasn't anything new. Exco switches the Exco procurement subcommittee. They recommended that because of lack of capacity in IT, this contract must be cancelled.

Mr Tseli: You spoke about Mr Laher who was accused of flouting procurement processes, but the very same Salim Essa is now paid a settlement amount. Why was there that kind of suggestion?

Dr Ngubane: This happened before my time.

Mr Tseli: There is SekelaXabiso which was appointed to undertake a sensitivity analysis. What exactly were these people expected to do?

Dr Ngubane: I was not part of those processes. It is what I elicited when I enquired what happened with Dongfang. Consultations with lawyers and audit firms took place, and they came to the conclusion that Dongfang was the right company to appoint. I have just brought that in as a document which I have elicited on preparing for this meeting.

Mr Tseli: I am sure by now you have heard about a meeting that is said to have taken place in Durban that was attended by Mr Tsotsi and Dudu Myeni?

Dr Ngubane: Well, that is what Mr Tsotsi said.

Mr Tseli: What did he say?

Dr Ngubane: He said he was instructed to suspend certain officials and so on. That is what we were discussing at our first meeting, and we even called for the Minister to come in because we did not believe that story. Ultimately we decided to appoint Dentons to carry out a forensic fact finding inquiry.

Mr Tseli: And what was the outcome of the inquiry?

Dr Ngubane: It came with a lot of recommendations.

Mr Tseli: If you can just share with the Committee.

Dr Ngubane: The inquiry looked at the poor performance of our coal fleet which was causing the load shedding. It inquired about the delay in the New Build programme which was characterised by billions of penalties and claims, and questioning the ability to handle contracts at Eskom. It looked at the financial challenges of Eskom, the fact that NERSA had cut down on the tariff, and how the financial gap would be covered in terms of revenues that would be low. It looked at the security at Eskom as a key national point. It looked at the integrity of the procurement process and how it complied with the rules. Dentons gave us a big report and we handed it over to A&R. A&R came up through Mr Molefe Nkabu who is the Head of Internal Audit and Forensic and Assurance. He gave each division of Eskom issues that had to be corrected. By the time I left, I think about 18 of the issues had been corrected and implemented.

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Mr Tseli: To your knowledge Dr Ngubane, what work has been undertaken by Regiments and or Trillian with regards to the Duvha 3 boiler insurance claim? Specifically, what did they do?

Dr Ngubane: I was not really part of that process. What I received did not mention Trillian or Regiments. It just talked about the process which is before court at the moment. Murray & Roberts took the matter to court on an interdict. The interdict was granted but the review of that tender is still before the court and has not been settled.

Mr Tseli: Was there any other work conducted by Trillian while you were at Eskom?

Dr Ngubane: The trouble at Eskom is that appointment of consultants is a managerial function. They don't come to us to ask to appoint companies. What comes to the BTC is anything above R750 million. Anything below that is dealt with by management.

Ms N Mazzone (DA): I have it on record that Andy Macaulay was the CEO of Gade Oil and Gas; Iqbal Sharma was a Director; and Salim Essa was a Director. Can you tell me if any Gupta brothers or any children of the Guptas were involved in this company of yours?

Dr Ngubane: Long before I came to Eskom, I was the owner of the company. I was the Director, and Salim became a Director because he was going to arrange for our prospective exploration in CAR. Just two people.

Ms Mazzone: So at no stage did you know of any involvement of the Guptas through Salim Essa?

Dr Ngubane: No.

Ms Mazzone: Your wife is Sheila Ngubane, and together you own Huntrex 305 which owns Zululand Quarries, Natal Sands, and Hanis Investments. It has been reported that R50 million was borrowed from the state owned enterprise, Ithala Development Finance Corporation. Has that money in fact been paid back?

Dr Ngubane: Chairperson, with due apologies this matter is before the court. It has nothing to do with Eskom or my role in Eskom. It happened in 2011 so I will not discuss that issue.

Ms Mazzone: Former Minister of Mineral Resources, Mr Ramatlhodi, has very openly accused you and Mr Molefe of trying to strong arm him to withdraw the Glencore mining licences. Can you please explain the situation between the three of you?

Dr Ngubane: Minister Ramatlhodi suspended Glencore mining licences. Glencore was supplying Hendrina, Komati, and Arnot power stations. He suspended them because they did not do retrenchment in the way it was supposed to be done. We appealed to him not to do that because it was going to cause massive load shedding. That is what we discussed.

Ms Mazzone: Did you know of any meetings that took place in Switzerland with Minister Zwane and any coal mine executives?

Dr Ngubane: No. In fact I hardly ever get involved in that type of work. It is managerial. If there is a decision to be made it goes to BTC.

Ms Mazzone: During Mr Qoma's testimony, he discussed with us your almost protective nature over Mr Molefe. In actual fact he testified that on the day that Mr Molefe was dismissed you requested him and Suzanne Daniels to accompany you give moral support to Mr Molefe. Is this in fact true?

Dr Ngubane: The only time I met Mr Molefe after he left Eskom was after the meeting with the Minister where the Minister said the R30 million pension was untenable and needed to be changed. Either Molefe was to resign or agree to a lower payment. Qoma was not there. It was Suzanne, Venete and myself dealing with those issues. There was no time where Qoma accompanied me to see Molefe.

Ms Mazzone: Chair, just for the record there is a disparity in the testimony there. On 2 March, it was in fact testimony of Ms Daniels that you convened that meeting and that a unanimous decision was taken to suspend Mr Koko. And there is a recording to that extent. Do you deny that there was a unanimous decision taken to suspend Mr Koko?

Dr Ngubane: We agreed on that. It was simply the modality of dealing with the issue that became the question.

Ms Mazzone: Mr Qoma further testified that you personally told him that Minister Brown had phoned you and told you that the suspension had to be lifted. Why would he come to this Committee and lie?

Dr Ngubane: I don't know. To me Mr Qoma said Mr Khoza told him that at a party at Mr Khoza's house he had phoned the Guptas to ask the Minister to insert me. I phoned Khoza to ask him about Mr Qoma and he denied this. The issue of the Minister talking to me came from Mr Qoma saying that is what Mr Khoza told him. I don't know why he is doing that.

Ms Mazzone: Suzanne Daniels testified that she had mocked up the offer of employment following a letter sent to Mr Anton Minnaar by DPE. It was clear from the inception this was going to be a fixed term contract. Why was this even brought into question, because we have seen the original contract and it stated it was a fixed term contract?

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Dr Ngubane: That was a later contract after we had concluded a permanent contract. All these movements we were trying to deal with, that initial situation of permanent contract subsequently going to a fixed term contract.

Ms Mazzone: I find this extremely disturbing that there are contracts after contracts; before contracts; subcontracts; maybe contracts. Was this the normal goings on at an entity such as Eskom?

Dr Ngubane: Initially all we knew was the Minister had given us authority that Molefe was going to be the Group Chief Executive, and that he was on permanent employment. There was no mention of any fixed term contract and that is why he got registered on the Eskom Pension and Provident Fund (EPPF), and that is why money was deducted for the EPPF every month. This came later and complicated issues.

Ms Mazzone: I am afraid I don't buy that. And I put it to you in fact that this pension initiative mark-up was a scheme enacted as a get rich quick programme. I would like your opinion on that.

Dr Ngubane: Then you must assume that all of us at Eskom are crooks, are terrible people to think of such things. Why should we want to enrich Brian Molefe? The only thing we were trying to deal with was his disgruntlement with the new situation where he had assumed permanent employment and then we told him he was on fixed term. He was very unhappy about that. In fact he could have left. We wanted to keep him in and try to work a scheme that would be sustainable after five years.

Ms Mazzone: Why the obsession with keeping Brian Molefe in his position?

Dr Ngubane: You are making assumptions. At that time we were on the cusp of a national blackout. At that time Molefe had brought a lot of joy to us when people's food was not rotting in their refrigerators, and people could have normal lives. There was no one who could have turned Eskom around in such a short period of time; reduce the expenditure on diesel which was a billion rand a month; fast track the commissioning of Ingula; fast track the commissioning of the first unit of Medupi; and fast track the whole build programme. It was a fantastic change from the billions of rands that were flowing out of Eskom from poor leadership.

Ms Mazzone: Eskom has gone through remarkable downgrades, they are in a state of complete and utter financial ruin; the board has been forcibly removed and replaced with a new board and suspended people that were a part of that board. This isn't my assumption. I also look at the fact that FEDUSA requested that you and Mr Molefe face a Commission of Inquiry. NUM said "The entire Board of Eskom is a disgrace to the power utility and government". How can you say that such a fantastic job was done when there has been downgrade after downgrade, and we almost face an economic crash in this country thanks to Eskom?

Dr Ngubane: When we came in the problems were already there. The Minister complained, and at one stage Chairman Tsotsi together with Matjila who was the Acting CEO actually phoned her while she was having lunch and said "We will not be able to pay salaries at the end of January". It was almost a disaster and here comes Molefe. The international funders buying Eskom bonds resumed buying Eskom bonds; we accumulated enough money and made an EBITA of R30 billion first time. By the time I left the finances were shooting up because we were having a buy-in by all the bond holders. I will put it to you that the devastation that would come with Molefe going away was a disaster for Eskom and the people of this country because we were on a trajectory to change the whole situation. Then came the people in acting positions, and senior Eskom people and engineers started fighting, instability started going. General Rakau was reporting to the Minister that people were almost killing each other at the power stations and I and Suzanne were at that meeting. I knew that removing good leadership would be calling for trouble, and that's why I made an emotional statement to say this was not only a blow to Eskom, but also to the people of this country.

Ms Mazzone: We are going to have to agree to disagree on this because I am of the opinion with millions of South Africans that don't think that the leadership at Eskom was in any way the leadership that we as a country deserved. I think you need to take ownership of what happened at Eskom. I think you need to accept that state capture is a real thing that this Committee has proved time and time again, and piece by piece utilities were sold to the highest bidder at the expense of South Africans. You were Chairperson at SABC, it collapsed; you were Chairperson at Land Bank, it collapsed; you were Chairperson at Eskom and it collapsed. I would put it to you that you are a delinquent board member and if I were you I would certainly hang your head in shame and not make excuses for what has happened at Eskom. No further questions.

Dr Ngubane: It is a real denigration of my service to this country. Ask Phakamani [Hadebe] who is now the CEO at Eskom, he was the CEO at the Land Bank. We worked together, we recovered the Land Bank. No one was refusing to roll over their bonds. It shot to the sky. SABC you mentioned was broke from 2007. We raised money, and got advertisers to come back. When I left we had paid off Nedbank a R2 billion loan supported by a government guarantee. I don't know where you get this thing. The press may write whatever they write. I have never been a favourite of the press or anyone. To now come and paint such a picture is ridiculous. Load shedding was stopped under our command. It changed the whole situation. The fact that NERSA reduced the tariff and caused a serious revenue gap in Eskom is an issue that even this present Board will have to deal with. The municipal debt running into billions is an issue that this present Board will have to deal with. The pass through to independent power producers (IPPs) which are billions of rands is an issue which this new Board will have to deal with. Unless they find another methodology, a new model, these issues will continue. They are not just with us.

Mr M Dlamini (EFF): In your statement you say Eskom was supposed to get R238.9 million savings. Did Eskom get that saving?

Dr Ngubane: I am not sure about that. It is the finance department that would know. But that is what we were told, that if we continue with

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the cost plus mine type of purchase, the money we spend in the short term and medium term contracts would be reduced, and that was the amount we were referred to.

Mr Dlamini: So as Board Chairperson you are saying the finance department comes to you and says they are going to make a prepayment of R1.8 billion and that you are going to have a saving of R238 million, and you don't follow up to check if that happened or not?

Dr Ngubane: Internal Audit certified that the coal was delivered.

Mr Dlamini: Did you read that audit that you are talking about now?

Dr Ngubane: They gave a catalyst report from month to month.

Mr Dlamini: But I am asking you, did you read that audit because I don't want to go through this process and then you come back and say you didn't read it?

Dr Ngubane: If the rationale is that we get cheaper coal compared to short term and medium term coal supply, and I am told through the catalyst report that the coal has been delivered, then obviously that has been achieved.

Mr Dlamini: That is why I am asking a simple question, did you read the report?

Dr Ngubane: I read the report.

Mr Dlamini: In your statement you are saying BTC approved a prepayment to Tegeta of R659 million. That was in April. How much was actually paid from Eskom to the Tegeta account in April so that we can get clarity on this?

Dr Ngubane: It is the amount on the statement that was approved.

Mr Dlamini: When you are saying this amount was approved, are you saying that is the amount paid from Eskom to Tegeta?

Dr Ngubane: Yes.

Mr Dlamini: What was it for?

Dr Ngubane: It was to supply Arnot. There had been strikes at the mines that normally supply Arnot.

Mr Dlamini: That was a prepayment to supply Arnot. Was it executed in full, payment done and coal supplied in full?

Dr Ngubane: Absolutely.

Mr Dlamini: Was there an audit report, and who gave the report to say that on the R659 million spent the actual work had been done and there was proof of return.

Dr Ngubane: Absolutely. And proof of that was that we survived that winter with sufficient coal stocks. Had we not, we would have had load shedding.

Mr Dlamini: Was the prepayment for six months, five months, or 12 months?

Dr Ngubane: I think it was five months.

Mr Dlamini: I need you to give me clear answers.

Dr Ngubane: I will have to check that.

Mr Dlamini: Okay, check.

Dr Ngubane: I think it was five months.

Mr Dlamini: Okay, five months. And how much was the tonnage required for Arnot per month?

Dr Ngubane: I wouldn't know off hand.

Mr Dlamini: 485 000 was the tonnage required per month. How much was the tonnage, because Koko came here and said the tonnage required was 485 000. Are you disputing that?

Dr Ngubane: I am not. It is not my area of work. It is reports that I get so I can't remember all the details.

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Mr Dlamini: But the report was given to you and you said you read it to make sure the work was done. These are the key major items for the R659 million – to say we are giving you R659 million on a five month contract and here is the tonnage. That can't be difficult?

Dr Ngubane: But surely if our audit system certifies that the coal was delivered, that is enough for me.

Mr Dlamini: So you have no idea how much coal was delivered? Did you read the report?

Dr Ngubane: I read the report.

Mr Dlamini: What did the report say about how many tons were delivered per month?

Dr Ngubane: Tons equivalent to the amount of money paid.

Mr Dlamini: No.

Dr Ngubane: No, chairman in this country...

Mr Dlamini: But I am not talking about other chairmen in this country, I am talking about you. I am saying to you the coal that was requested there per month is 485 000, and Koko confirmed that. Are those figures making sense to you? You were the Chairman, at least you know what you are dealing with.

Dr Ngubane: Yes. I read these reports. I can't carry it in my head all the time. I would need to actually see these reports in front of me. What I am reporting here is what was reported.

Mr Dlamini: What was reported?

Dr Ngubane: What I have in this document.

Mr Dlamini: Koko came here and said that the output of Arnot, Hendrina and Komati combined was 485 000 tons per month. Koko is an operator and he confirmed that. Are we in agreement?

Dr Ngubane: Yes, that's his job.

Mr Dlamini: There was an issue with the rate in terms of the negotiation – that the rate you agreed to was R150 per ton. Do you know how much the rate per ton paid to Tegeta was in this agreement?

Dr Ngubane: First of all, the R150 per ton as far as I know applied to Optimum. Arnot uses a higher grade of coal. It cannot be R150 per ton.

Mr Dlamini: On the prepayment how much was the rate per ton?

Dr Ngubane: But I think, Chairperson, I am being asked operational matters. I am not an operational chairman. I deal with reports that come to the Board through the normal channels. Koko is the operator, they do the negotiations. All I know from where I sit is that the price of coal to Arnot is much higher than R150 per ton because they use almost export quality coal, and not the rubbish that comes from the washing.

Mr Dlamini: I am not asking you operational matters. I am asking you on matters in the report that you said you read which you were satisfied with as Board Chairperson.

Dr Ngubane: I read the report from Internal Audit, not the BTC report.

Mr Dlamini: So Internal Audit did not show you in the report how much per ton was paid. I am going to tell you how much per ton was paid on that contract. It was R155 per ton for Arnot, Hendrina, and Komati. Those were the three power stations supplied under Optimum.

Dr Ngubane: Well, you have that information. I do not have it. As far as I know Arnot was supplied by seven companies.

Mr Dlamini: But how do you dispute the information? I am saying to you this is what happened and you are saying it is not correct. So what is the correct version?

Dr Ngubane: I am not saying it is not correct. I am saying that is what you have. I don't have all that information. All I know is that the tonnages that were paid for were received.

Mr Dlamini: And you don't know what you paid per ton. As a Chairperson you do a prepayment for five months but you don't check on what was presented and compare with the closing up report that the rates match each other?

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Dr Ngubane: You are asking an unfair question.

Mr Dlamini: It is not unfair. What other contracts am I talking about?

Dr Ngubane: You want to say I must know in detail all the sale ...

Mr Dlamini: If you don't know, you must tell us.

Dr Ngubane: But I told you. I said I read the catalyst report from Internal Audit which said these things were delivered.

Mr Dlamini: It doesn't look like you know what happened. Let me tell you, that contract proposal was R150 per ton but when you calculate the numbers the money paid to the Guptas was about R372 million for the coal. When you take the number of tons multiply by the R150 that was agreed on for five months. But you paid the Guptas R659 million. Those are the facts in the report that you should have read. What is your understanding of the fixed term contract pertaining to Brian Molefe?

Dr Ngubane: It means you are a contracted worker. You do not get pension rights. Your medical aid, car allowance, and other items are lumped into your salary. It becomes much higher than a permanent employee who has pension because it is concentrated in a five year period.

Mr Dlamini: Why was there extra consideration for pension incentives for Brian?

Dr Ngubane: He thought he was employed on a permanent contract, and he was a contributing member of the Eskom Pension Fund.

Mr Dlamini: Chairman Tsotsi wanted to suspend those four executives. Initially you did not agree with that thinking. Is that correct, or did you agree with it?

Dr Ngubane: Initially we didn't agree. That's why we had a meeting with the Minister.

Mr Dlamini: But eventually you voted in favour of the suspension.

Dr Ngubane: Because there was no other way. We thought of special leave but it was denied by Legal.

Mr Dlamini: Do you know the Guptas, have you met any of them?

Dr Ngubane: Yes, of course I have.

Mr Dlamini: Which one?

Dr Ngubane: Almost all of them.

Mr Dlamini: Where, have you been to their house during your tenure at Eskom?

Dr Ngubane: Of course I have been to social events, to their weddings, to the South African of the Year awards.

Mr Dlamini: No. I am talking specifically during your tenure at Eskom.

Dr Ngubane: Yes I have.

Mr Dlamini: Is there any day where you took any of your board members to the Gupta house?

Dr Ngubane: No, I didn't.

Mr Dlamini: You just went alone?

Dr Ngubane: I was invited for special occasions and I went.

Mr Dlamini: What is your take on the Guptas with everything that has come out through the email leaks, Estina farm, and everything else?

Dr Ngubane: I am waiting for the Commission of Inquiry to happen and then I will know the facts.

Ms G Nobanda (ANC): What are the criteria for being in the Eskom Pension Fund?

Dr Ngubane: If you are a permanent employee of Eskom you get registered for pension, pay your subscriptions, and when you retire you get paid out.

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Ms Nobanda: So only when you are a permanent employee and not a fixed term contract employee?

Dr Ngubane: That's correct.

Ms Nobanda: So what was Mr Molefe exactly, permanent, fixed, half permanent?

Dr Ngubane: Mr Molefe started as a permanent employee registered on the EPPF. Later on that was changed to five years, and then the adjustment was made that after five years if his contract is not extended he would be compensated in terms of the resolution.

Ms Nobanda: Can you give me the date of his employment when he started as a permanent member?

Dr Ngubane: 1 October 2015.

Ms Nobanda: So he was effectively a member of the pension fund on 1 October?

Dr Ngubane: Yes.

Ms Nobanda: According to the Pension Fund Board when they were here, what they had received from Eskom was that Mr Molefe was joined the fund on 14 September 2015. On the exit form, 25 September 2015 is cited as the employment date. According to them he was employed on 25 September. According to you he was employed on 1 October 2015.

Dr Ngubane: I will have to check those dates.

Chairperson: Could you please the mic closer to your mouth when you speak.

Dr Ngubane: He was acting until he was appointed. So I am not sure how he could have become a member of the pension fund.

Ms Nobanda: It's okay. It is on record that he was formerly employed from 25 September and you know him from the 1 October. Is 1 October 2015 the first contract or second contract of Mr Molefe? Remember in para 2.5.0 it states that "Mr Molefe signed a second contract of employment". If he is employed on 1 October would this be the first contract or second contract?

Dr Ngubane: On 10 September 2015 the Board resolved that the P&G committee should submit a recommendation to the Minister about the employment of Mr Molefe as GCE.

Ms Nobanda: Chair, page 21, paragraph 2.1.16 [read out].

Dr Ngubane: I don't see the contradiction in that because he was first employed on a permanent basis. Subsequent to that the terms of employment are changed and that's when he signed the second contract.

Ms Nobanda: So in 2015 he was appointed for the second time.

Dr Ngubane: In?

Ms Nobanda: In 2015, according to this.

Dr Ngubane: Yes. That's when he signed the fixed term contract.

Ms Nobanda: From 2.4.16 to 2.4.18 [read out]. All these paragraphs show me that there was no clear date of employment for Mr Molefe. If every now and then you change your contract of employment you would sign something and give it to the Minister, and the Minister would sign and bring it to you. But you were not aware that he was actually not permanent, it was supposed to be fixed. And the Minister is not agreeing with permanent. And then the following year on 7 March there is another contract where he is now fixed. According to the pension fund, they know him from 14 September 2015. Would you say if it was not you but an ordinary South African looking into this, there was something brewing here with all these dates?

Dr Ngubane: As a person who has no access to information I would certainly say that.

Ms Nobanda: There was a Committee meeting on 23 May 2017 at Townhouse Hotel where you and Ms Daniels were part of the meeting. The Committee enquired about the R30 million given to Mr Molefe, and in that meeting none of you mentioned the fact that Mr Molefe was not a permanent employee, he was on fixed contract. All your explanations were on the fact that he was a permanent employee and part of the pension fund, and you had followed all the requirements in paying out all that money. Do you still agree with that?

Dr Ngubane: Honourable Chair, I have explained in detail...

Ms Nobanda: Chair can you ask Dr Ngubane to answer the question. Does he still believe that everything they said on 23 May 2017, and

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what has been happening, and what he has said today, does he still believe that every process they were supposed to follow was followed in calculating and paying out Mr Molefe the R30 million?

Dr Ngubane: All the actions we took were with legal consultants, administrative staff, and it was informed by extensive consultation. That's all I can say.

Chairperson: Do you believe that you did the correct thing as the Eskom Board to agree to a resolution to pay Mr Molefe R30 million?

Dr Ngubane: The R30 million was not calculated by us.

Ms Nobanda: Chair, does he agree that the processes they followed were correct?

Dr Ngubane: I do.

Ms Nobanda: Thank you. Having worked with Ms Daniels, how would you characterise her?

Dr Ngubane: Ms Daniels is a very gifted young woman. She is very astute at law but also very astute at company management as a company secretary.

Ms Nobanda: Do you believe she provided credible advice on the reinstatement of Mr Molefe?

Dr Ngubane: Well, she didn't only provide advice. She went out to Senior Counsel and Legal Counsel, and I believed what she advised.

Ms Nobanda: Looking back on all these issues, especially the Brian Molefe issue, do you believe that from his appointment to stepping down/resignation/retirement/sabbatical leave or whatever happened, and the conclusion of the pension fund up to the point where Mr Molefe decided to resign and he then becomes a Member of Parliament, and then he comes back and you reinstated him. Do you believe you could have done anything differently?

Dr Ngubane: Well, we did what we did on best advice. If we had advice to the contrary, that is what we could have followed.

Ms Nobanda: Dr Ngubane, with all the advice that you were given, you are now sitting here looking back. Do you think you could have done anything differently?

Dr Ngubane: No, I don't think so, facing those circumstances.

Ms Nobanda: Thank you. Do you believe you were a good Chairman, efficient, honest, and all that?

Dr Ngubane: We did a Board evaluation as is required by the PFMA and Company Law, and we scored good marks as evaluated by external auditors.

Ms Nobanda: Do you believe, given the opportunity of being Chairperson at Eskom, that you were a good and honest chairperson?

Dr Ngubane: I was a good and honest chairperson who did his best.

Mr S Swart (ACDP): You quoted from the Public Protector and you indicated that you had taken legal advice not to take it on review. One of the findings of the Public Protector Report is that she says "It appears the conduct of the Eskom Board was to solely benefit Tegeta in awarding contracts to them and that it appears to be inconsistent with the PFMA". The short question is would you not agree that the evidence in the Inquiry and in the media is overwhelming to the effect that the conduct referred to in this Public Protector report was to the benefit of Tegeta in awarding coal contracts to them?

Dr Ngubane: That's why I look forward to this Commission because the books will be examined and the truth will come out. What has been printed in the media is what people believe. We worked with documentation that satisfied me that proper processes and steps were followed.

Mr Swart: A lot of evidence has been tendered before this inquiry as well, and of course there is also investigations taking place, and we know the Asset Forfeiture Unit (AFU) has already acted in terms of the Trillian – McKinsey contract. We don't have to wait for a Commission. Whilst I appreciate there will be further evidence, there is already now evidence that indicates state capture of various SOEs and Eskom. Would you still say you would rather wait for a Commission of Inquiry?

Dr Ngubane: I would prefer a situation where people don't just come and say what they believe or want to say. If there was a situation here where someone came and said something the evidence leader cross examines them, my lawyer cross examines them that would be the fair process. Remember we never had a chance to go and present ourselves to the Public Protector.

Mr Swart: I appreciate that but you also indicated that you decided as a Board not to take the Public Protector on review. But there was input from the executives. Mr Molefe and Mr Koko made substantial input to the Public Protector. Let's look at the run up to November –

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December 2015. We haven't done an inquiry into the turnabout of Eskom at that stage when it came to the power and blackouts. Would you say that situation continued towards the end of November – December 2015?

Dr Ngubane: At that stage we were having a number of improvements in the construction of new power stations. That alleviated the risk of poor electricity reserves. We were always hovering around the 1500. Not the 4000-5000 that had been there before which necessitated load shedding. The situation had improved.

Mr Swart: And when one considers the round robin meeting that took place in December for the R1.8 billion guarantee, what was so urgent then if it was a situation of a turnaround?

Dr Ngubane: Optimum Coal Mine (OCM) had decided not to supply Hendrina. And Hendrina produces 2000MW of power, and it was clear that we were going to run into trouble. On top of that they had run into business rescue. There were a number of factors that were creating a crisis. When management came to us saying there would be a crisis, we had to act.

Mr Swart: Was the situation not that Optimum had asked for an imposition of the hardship clause, and that had been negotiated, and you might not be aware of that, prior to Mr Molefe's arrival which would have resolved that problem. But when he arrived, he refused to accept the increased price that Optimum had offered before being placed under business rescue and which had gone through certain board committees, but when it got to Mr Molefe he refused to continue with that contract.

Dr Ngubane: I am not aware of the details. But what Mr Molefe told me was that Mr Glasenberg, the head of Optimum Holdings, had wanted export parity prices and wanted to change from R150 to something over R300, and that is what he rejected.

Mr Swart: I understand. But if you see the totality of the picture that we are now sitting with, and you can say it has not been subject to proper cross examination, but you have got a company that provides to Hendrina and they are under a hardship clause and are entitled to increase that price in negotiations. Those negotiations according to evidence was accepted by Eskom. It was referred to the CEO. Mr Molefe then at the last straw for his sign off, rejected the clause. Then we start to see the pressure put on Optimum to sell to Tegeta. Are you aware of the meeting of 24 November that took place with Mr Matshela Koko and the business rescue practitioner where certain conditions were imposed on Optimum for the sale, and where they were saying they were prepared to sell but it had to be the whole of Optimum Holdings including the terminal, Koornfontein, and those types of conditions. Are you aware of that?

Dr Ngubane: No. I am actually surprised you say Mr Koko was part of that.

Mr Swart: His evidence before us was that he sat in a meeting with the business rescue practitioner. It is on record, and maybe you haven't seen it. There was an involvement of Eskom in this whole process.

Dr Ngubane: Eskom's involvement was in terms of securing its interests in coal. Not in the sale.

Mr Swart: I understand your version. At the same time a R2 billion penalty was imposed on Optimum. Do you not agree that it adds pressure to sell?

Dr Ngubane: Again this is what I heard from as early as 2012 Optimum was washing its coal for export - the ERB1 quality grade - for export and giving the middlings (what remains out of the washing) to Eskom.

Mr Swart: I understand. Forgive me for interrupting. I do understand that process and background but we know that that was reduced to a fine of R500 million after the Tegeta sale was concluded. I am just illustrating additional pressure to sell. We also know that Minister Zwane was in Switzerland putting pressure on Optimum to sell. Are you aware of that at all?

Dr Ngubane: From the reports, yes.

Mr Swart: And then you have got a meeting in December where there is R1.8 billion guarantee. Have you ever as a Board Chairman of SOEs experienced a guarantee by a SOE for a company to buy another company?

Dr Ngubane: That issue never came to the Board about a guarantee. What came to the Board was the amount that was required to secure coal.

Mr Swart: I do understand, but it was in excess of the Board's mandate as well. It should have gone to the Minister. Do you agree?

Dr Ngubane: No. Let's put it this way, if the budget in the corporate plan is accepted by the Minister, the IFC can authorise spending to the amount of the budget. That does not require fresh authorisation. The purchase of coal is part of the corporate plan.

Mr Swart: I understand. But the Minister indicated that she had to give that approval for that specific guarantee but it wasn't obtained. Can I just ask you because it is very clear, and I put it to the former acting Eskom Board Chair, Mr Khoza, and he also said that Eskom played no role in the purchase, and after a few questions, he conceded that Eskom played a significant role and in fact the finding of the Public Protector that the Eskom Board acted in benefit of Tegeta was in fact true. Do you still hold that it is not so?

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Dr Ngubane: In terms of what came to us at that round robin resolution it was expressly to pay for coal.

Mr Swart: I understand. In hindsight?

Dr Ngubane: In hindsight the things I have read in the press and heard in some of the evidence convinces me that it is urgent that the Commission sits, goes through all the documentation you are alleging to, and finds out exactly what happened.

Mr Swart: I understand. The Public Protector came out with serious allegations in November 2016, and billions of rands have left the country. We cannot wait for another Commission of Inquiry. We are in a serious situation. Eskom is in a serious situation.

Dr Ngubane: I agree. I am saying we wanted to raise the review exclusively to cover those issues.

Mr Swart: Weren't you concerned about the funds leaving the country. The meeting on 12 April where the R659 million prepayment was agreed to, was it not coincidental that it was the same day that Tegeta needed R600 million to buy Optimum?

Dr Ngubane: I can assure you that never came to the Board's attention.

Mr Swart: But the Public Protector said it should have. And people of your knowledge should have been aware of that. Can I just read to you, on 22 November Eskom Board member, Mr Mark Pamensky, writes an email found in the Gupta Leaks; "In terms of the Investment Committee I am available to start right away" He writes it to Atul Gupta. "I am at the tail end of securing Optimum Coal". That is a Board member saying they are involved in the acquisition of Optimum Coal. Now you obviously were not aware of that, I would presume?

Dr Ngubane: It came out of the Gupta Leaks. It never came out of him or anyone on the Board.

Mr Swart: We will establish the veracity of that, but it seems to fit into the narrative because again he writes another startling email on 10 December to Atul Gupta which fits to the state capture allegations "Congratulations on a brilliant and well thought planned strategy acquisition of Optimum group of companies. Well done. I am proud of you. This is the beginning. I am sure you and the team will make a huge success. Let me know when you and the team are ready to discuss the operational implementation". He is speaking as an Eskom Board member. Don't you think that is outrageous if it is proved to be true?

Dr Ngubane: It is.

Mr Swart: Are you aware that Mr Molefe refused to meet with one of the most black empowered companies, Exxaro, but he was continually in contact with the Gupta companies. Don't you think if that came to your attention as Eskom Board Chairman, it would be outrageous?

Dr Ngubane: Certainly. But what I know is that the Exxaro contract expired in 2015.

Mr Swart: But they requested to extend the contract. They wrote letters to the Minster. The Minister refused to speak to them and that resulted in the closure of the Arnot colliery in which 1500 people were kicked out of their jobs. But the Minister intervened to ensure that the Gupta related companies got this deal. Don't you think that this is outrageous?

Dr Ngubane: Well, that is outrageous. However, Exxaro was getting R51 per gigajoule, and all the other people were getting around R18 or R19.

Mr Swart: The Mafube contract was supplying coal at R132 per ton. Yes, it might not have been the best quality but it was a million tons per year on a conveyer belt and that was stopped. No, reason was given. We have got the evidence. And then what happened is that the OCM coal that was supposed to go to Hendrina was sent to Arnot at R450 per ton as opposed to the R150 that Hendrina was getting. But then Hendrina's output was reduced. If you look into that I am sure you would share our concern as that information is there.

Dr Ngubane: I certainly do.

Mr Swart: Thank you.

Mr E Marais (DA): Being the Board Chairperson you worked closely with the CEO and Minister Lynne Brown. How would you describe your relationship with Minister Lynne Brown?

Dr Ngubane: It was a good working relationship. We tried to steer the ship as close as possible.

Mr Marais: Would you say you had an open communication with each other?

Dr Ngubane: I would say so.

Mr Marais: How would you describe the governance overall of the executive of Eskom after taking over as Board Chairperson?

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Dr Ngubane: I would say it was good. Right from the time we were inducted Exco gave us good information. The trouble of course happened that the information was not believed by the War room. The Minister was under pressure because they wanted to be sure that what information Eskom was giving was correct. As far as I am concerned, particularly under Brian Molefe the whole mood changed and there was real synergy in terms of how the Eskom Board and how Exco worked.

Mr Marais: It would appear that when Brian was transferred from Transnet to Eskom it seems that is when the trouble started as far as clarity on whether his appointment was fixed term or permanent. Mr Minnaar filled in a form that went to the pension fund where he indicated on a code he filled in that Mr Molefe was a permanent employee when it should not have been. On page 20 para 2.5.7 [read out]. This situation seems it could have happened previously with other public entities as well, except with Transnet because there was a transfer of pension funds of R4.2 million or so to the Eskom pension fund. I just want to make the point that when there is a salary of R7.65 million on an annual basis, then you actually make up with that type of salary when there is no pension fund involved. How do you see it?

Dr Ngubane: As I said, the Eskom Group Chief Executives were benchmarked on market surveys, and this is what Mr Minnaar was quoting, and this to him was a fair level of payment.

Mr Marais: You have stated that you have an open line of communication with the Minister, and it seems there was no clarity on the five year fixed term contract or permanent basis. As Chairperson, and I ask you in all honesty, did you bother to pick up the phone and seek clarity from the Minister whether it was a permanent or fixed term five year contract because you have an open communication line to the Minister?

Dr Ngubane: We wrote a letter which is contained in the submission. The people around the Minister said she had been given the letter. It later turned out that she had not been. We were not really asking for her permission. We were informing her that we have made these arrangements to suit the concerns raised by Mr Molefe, and based on the advice that we had received. The Memorandum of Incorporation (MOI) at Eskom at that time gave the Board a lot of discretion in terms of appointment, so we were asking for support, and not necessarily that we were asking her to approve it.

Mr Marais: I just want to make a point that the CEO is the number one employee in any company, and Minister Lynne Brown represented the main shareholder that is the state so there should be follow up either by you or someone from the executive to get clarity about this appointment, on which status it should be done.

Dr Ngubane: I agree. We should have done that. However we relied very much on the expertise of Mr Minnaar.

Mr Marais: Page 21, para 2.5.10 where there is now clarity about the signing of the second contract on 7 March 2016 for a fixed term of five years effective from 1 October 2015. Who initiated that short term and long incentives should be reviewed?

Dr Ngubane: It was not just specific to him. Across the board, short term and long term incentives were being reviewed.

Mr Marias: But part of governance would be that if I sign a contract and as a contract worker I have agreed this would be my payment on a monthly basis for a period of five years. For governance purposes why would this then be reviewed because it was done and dusted?

Dr Ngubane: Because his salary package was never reviewed in terms of the fixed term contract. It remained one for a permanent employee and that's what went to the pension fund to which he was contributing.

Mr Marais: This was initiated after he signed the second contract of employment that was a fixed one. Let's put it on record as 2.5.10 that it was agreed.

Dr Ngubane: You are quite right. That's a mistake we made. We should have insisted that one go and calculate the whole package on a fixed term package. That never happened.

Mr Marais: Thank you for that. Just a matter of interest, you resigned as Board Chairman on 12 June 2017. Was there any specific reason why you resigned from Eskom?

Dr Ngubane: It was just personal.

Mr Marais: How would you regard the state of Eskom after you left?

Dr Ngubane: Problems started when Molefe left. I think that is when the dissonance started to appear.

Mr Marais: Wouldn't you say the problem started when Brian Dames left?

Dr Ngubane: I take Brian as a friend of mine. He did an excellent job at Eskom, but he also made some mistakes. When he took away procurement from the power stations and centralised it at Megawatt Park I think that is when the trouble started. The station manager would want an outage to be able to maintain the turbines and boilers, but all that would have to first come to Megawatt Park. That disempowered the station managers, and I would say the problem of load shedding worsened from changing that model. But obviously he

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meant well. The keeping the lights on strategy that he advocated especially for 2010 so that there was no disruption all contributed to the lowered levels of maintenance of our coal fleet. He was a brilliant man, but there were mistakes.

Mr Marais: With the appointment of the current CEO and the new Board, what is your view of them, will they pull through?

Dr Ngubane: I have a lot of confidence in Phakamani. I worked with him at Land Bank. It was in huge debt. We initiated some arrests. We brought confidence back to the farmers to take up our bonds and loans. Phakamani is a good operator. He created what was called fit for purpose. Fit for the future of the Land Bank. I think he is doing very well. I have no doubt that he will do very well at Eskom. However you cannot have financial sustainability when your tariff part is continually going down.

Mr Marais: What is your view of the previous CFO, Mr Singh?

Dr Ngubane: Mr Singh was very good with figures. However, what has come out about the Trillian payments and all those things is worrying. However I don't think he can be judged as guilty or not guilty until the facts are on the table.

Dr Z Luyenge (ANC): Did you have any connections, or did you ever greet Tata Mandela, the struggle icon, yourself?

Dr Ngubane: Yes.

Dr Luyenge: What do you think Madiba would say if today you are sitting here talking about people who are very clearly hell bent to loot state resources and therefore kill the gains of 1994? I am asking that Dr Ngubane because you are a doctor, and as a doctor you had a responsibility to correct things that went wrong. I don't expect a doctor to say "I only came across this patient today. I cannot say anything about his or her past illnesses". That is irresponsible. Why do we as intellectuals in South Africa after 24 years not accept and take responsibility and say "I erred". An error is created in the human being. No one is perfect. But it is ethically and morally correct for a human being to accept a mistake. The expertise and experience that we have in young intellectuals like your Kokos and Brian Molefes, but because of greed and that people want billions, they are used to billions, we are in this quagmire. Since you came to Eskom it is said you had a meeting with Brian Molefe where you actually motivated to then Minister Ramatlhodi to suspend all Glencore mining licences.

I go further to identify that on 13 April in a meeting of the Eskom Board late in the night, that solely sat to approve the prepayment of R659 million to Tegeta in order for Tegeta to finalise the Optimum purchase. The following day on 14 April, Tegeta pays Glencore R2.1 billion, and Optimum, Koornfontein, and Richards Bay allocation are transferred to Tegeta. Optimum was given a further contract for Arnot. With this additional contract Eskom pays Tegeta R500 million between 29 January and 13 April. I wonder where the masses of South Africans are when people are doing this overnight. Eskom in February sold Brakfontein to another Gupta company – Shiva coal – which this Shiva is not 51% black owned. It means this Gupta related company did not qualify to be a service provider because it does not have the points required in terms of transformation. In November Eskom Board discusses mothballing Komati, meaning that Eskom might have to settle the R7 billion Koornfontein contract. What is this thing about Eskom playing around with money? There is nothing here talking about electrification, just billions going to individuals, and these individuals are mesmerised by the Guptas. Dr Ngubane, with due respect, can you breathe on this? Where is the ethical conduct? How do you justify actions of this nature?

Dr Ngubane: Well, it is difficult to respond to such condemnatory language and statements. Let us wait for the Commission. I keep saying that. All documents will be on the table and we will know who did exactly what. If I get the motivation from management, and it is well structured and follows all the policies and processes of procurement, how do I then go and say you are wrong unless I have the information and proof of that. BTC sits, takes a decision, and then I must go and say they are wrong? As far as I know, the negotiation for the sale of Optimum involved other companies. It was a commercial issue. The creditors of Optimum I am told agreed to the sale, and the banks were involved in that. The Competition Commission agreed to the sale. Where does Eskom come in on that? If we buy coal for a certain amount, and the person from whom we purchased used the money for other things, how can we be blamed to say we gave him the coal to do x, y, and z.

Dr Luyenge: I think it is so pathetic that you are still hell bent to stand on one leg and say what is being done. The questions you are asking are time-wasting. What actually prompted Parliament to say there is a need for the Commission of Inquiry, and what actually made Thuli Madonsela to say there be such an investigation when there is actually nothing wrong? Can you put South Africans into the right context, 'Mkhuluwa'?

Dr Ngubane: Adv Madonsela mentioned a lot of observations depending on the information she had. She said these things must be investigated further and there must be an appointment of a Judicial Commission. I cannot sit here and condemn people without evidence. I know there is public opinion, but that public opinion depends on what comes out on social media, formal media. I agree things sound terrible but I can't sit here and say x, y, z put out the fake tender and gave procurement in a fake way unless I have evidence.

Dr Luyenge: What is good about Anoj Singh when he is a 'skelm' in looting state resources? Is that fair, you may not say that to us, you may not say that to the Chairperson, you may not say that to anyone in front of you, but the poor see and hear what you are saying.

Dr Ngubane: I have worked many years with the poor, my friend. I used to treat people who had no money, so don't tell me about the poor. I am from there.

Dr Luyenge: Listen, you must answer me.

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Chairperson: Members, and Dr Ngubane, do not forget that I am chairing the meeting. You should be giving each other time to listen to each other. Don't get inside each other's mouths. There are people out there sending smses saying "They are watching the proceedings and they want to hear what Dr Ngubane is saying, and they want to hear your questions". So please give each other time. Don't panic. We have time.

Dr Ngubane: I am saying...

Dr Luyenge: What are you saying, Dr Ngubane. I am the one who must ask questions. I am not going to respond to you. I was never Eskom Chairperson. You are the one who was Chairperson. I want you to respond.

Dr Ngubane: But I am responding.

Dr Luyenge: No, you are not responding.

Dr Ngubane: You want me to say that Anoj Singh was a crook, and that is for the courts to prove that. How do I become judgmental about people when there are processes that will examine what was paid to McKinsey, what was paid to Trillian. I don't have evidence to say x, y, z ...

Dr Luyenge: The Asset Forfeiture Unit (AFU) is not right to do their work and make sure that they put together all those who are claiming to be a champion of the poor when people are hungry out there and the resources have degenerated at Eskom?

Dr Ngubane: Chairperson I am not sitting here to take this type of rubbish.

The Committee was outraged at the statement made by Dr Ngubane.

Chairperson: Dr Ngubane, you cannot use that type of language in a Committee meeting. I have just recently asked you to be patient and listen to "that rubbish" that is been said by Honourable Luyenge and respond to it because he is also responding to what you are saying. I am not taking sides here. Don't say Luyenge is talking rubbish and that you are not going to sit here and listen to the rubbish that he is saying. We are a Committee of Parliament. It is not for the first time you are saying that. In fact in the media you said this Committee was asking you questions which were nonsensical. So you are repeating your statement made in June 2017. We cannot accept that!

We cannot allow you to insult us. You are not insulted by Honourable Luyenge. Honourable Luyenge is asking you about activities that happened at Eskom. Mr Singh was here, and according to information we have received, Mr Singh lied to us. You cannot come here and say we are talking rubbish. That is not acceptable. We are a Committee of Parliament and we need to get to the bottom of the truth of what is happening. Whoever has done wrong must be interrogated by the court of law or whoever has the power to do so.

Mr Dlamini: Chairperson, before that man responds we cannot sit here and be insulted by that man. We are not your friends.

Chairperson: No, Honourable Dlamini. I cannot say to Dr Ngubane "Your language is wrong" and then accept yours when yours is wrong.

Mr Dlamini: He can't come here and insult a Member of Parliament. Who is he?

Chairperson: I have dealt with that. Please let us respect each other.

Mr Dlamini: That man must not come here and insult us. That we will never accept. That thing of saying when a Member is asking questions about the work he was doing at Eskom, that he is talking rubbish. He must withdraw it now. We are not his friends or his kids.

Mr Tseli: I agree with Honourable Dlamini, Chairperson. We cannot proceed with this process until he has apologised to this Committee. If he is not ready to apologise, let him say so. There is nothing wrong in you leaving here now. We will relieve you and conclude on the value of what was presented so far. You owe us an apology. Do it now or else we will relieve you.

Dr Ngubane: Chairperson, I withdraw that. However, Parliamentarians have got an equal responsibility to respect the citizens of this country. I came here to an Inquiry that is factual, that is seeking information. To insinuate that I am a crook and all sorts of things is unfair. It is totally unfair.

Chairperson: Honourable Luyenge, have you said that Dr Ngubane is a crook?

Dr Luyenge: How can I say that? I am not new in this Parliament. I may not have your billions that you think I am a rubbish. I don't need his billions. I am fine with my two hundreds. And it is enough for me and my integrity.

Chairperson: Can you continue.

Dr Luyenge: The AFU has obtained a preservation order against Trillian and McKinsey. McKinsey was here and it is McKinsey who said we are paying back the money that got into our coffers illegally. Was that wrong on the part of McKinsey to say that?

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Dr Ngubane: First of all, Chairperson, I do not have billion. You are making South Africans believe that by saying it in Parliament. I do not. You can check my bank account, you can go anywhere. However the AFU used law, and they were sanctioned by law. That is absolutely fine. It is part of the legal system of this country. But to sit and say I am colluding with x, y, z – insinuations – that is just denigrating. And I can't accept that. I was a Member of Parliament for many years and we never did such things. If it is a question of Inquiry let it be factual, let it be proper facts.

Dr Luyenge: Chairperson, I am not going to allow a situation where we are lectured by Dr Ngubane here. That is wrong. I cannot accept that. I am a Member of Parliament. I am elected by the poor masses. But I think let me not continue with this.

Chairperson: I just want to put it on record that we have all the documents with us. I am not sure when you say you are waiting for the Commission of Inquiry because you have all the documents. Are you going to give the Commission of Inquiry different documents from the ones that we have? We are guided by the evidence we got by people we invited in this inquiry. Those people were carrying documents, and Eskom sent us documents from meetings and all the activities happening at Eskom.

Dr Ngubane: I was not aware that you have all the documents at Eskom.

Chairperson: When you were Eskom Chairperson and you were been chartered around Africa on Gade Oil business, were you paying for these chartered services out of your own pocket or from Eskom?

Dr Ngubane: Gade Holdings ceased to exist in 2013/14. I am not sure of the precise date but the company did not function. It failed to get the oil resources from West Africa.

Chairperson: Can you explain why Eskom and the Department of Mineral Resources (DMR) suddenly changed their attitude to coal suppliers when Tegeta entered in the picture in late 2015?

Dr Ngubane: Well, I am not aware that DMR changed its policy. We always had coal policy which rested on cost plus mines which Eskom funded. We had short and medium term coal supply contracts. I am not aware there was a change.

Chairperson: So all the prepayments that were done by Eskom was something that Eskom has done before with other companies?

Dr Ngubane: Exactly.

Chairperson: In your response to Honourable Dlamini you said you read only the Internal Audit report, and that you had not read the BTC report. I thought with my little knowledge of how you work at Eskom, in the BTC, the Board, especially the Board Chairperson was part of BTC, so the report made is developed by BTC. The Chairperson is the person that the report has to go to, and you say you don't know of any report that came from BTC, specifically what Honourable Dlamini asked.

Dr Ngubane: No, Chairperson. I think that is miscommunication. All the Eskom boards have a delegation of authority to take final decisions on business that comes to them, and then quarterly they send a report to the Board which report is then included in the report to the shareholder. No, Chairperson or CEO can be part of BTC. That is by rule.

Chairperson: Okay. Another contradictory statement to the information we received last week. What would be your response to allegations that your family – your wife – had a project working at either Kusile or Medupi, those are power stations that I think are under Eskom, and you were Eskom Board Chairperson?

Dr Ngubane: My wife became a shareholder in Southey, which is an engineering company in 1998. She later resigned as a Director. Her participation in that company remains as a shareholder, not as a Director. She has never been part of any decision or application by Southey to do Eskom business.

Chairperson: You are saying to us you are not party to the work of the executive especially when it comes to giving work to certain companies – like the Trillian matter – the implementation of the Trillian–McKinsey contract. But do you get reports from the executive in their implementation of work or dealings with the companies on contract with Eskom? When you get that report, do you interact with that report as a board, or do you interact with the report with the Eskom legal team?

Dr Ngubane: Depending on the delegation of the level of authority, certain things end up with management. But when it comes to R500 million it escalates to Exco. When it exceeds R750 million it comes to the BTC. That is the nature of the delegation of authority. Quarterly, all the committees have to send reports to the Board which are then included in the shareholder report. In my case, Ms Daniels was a constant adviser in terms of what was coming to the Board.

Chairperson: "Mr Molefe brought joy in Eskom". Those are your direct words. There was a CEO before Mr Molefe that was working on the load shedding. Can you put it on record by saying the Eskom CEO before Brian Molefe was unable to manage load shedding? The CEO before Molefe was the one that would have taken the country to a total blackout if Mr Molefe had not come?

Dr Ngubane: I had very little exposure to Matona. Remember when we came to Eskom, there was this suspension of executives. Mr

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Matona opted not to come back, but to take a settlement and go. So my interaction with him was very limited. Probably not more than three months and then he left. The problems of course were there. The person I worked with was Molefe and we saw the difference. I cannot comment on the abilities of Mr Matona.

Chairperson: I have never worked at Eskom, but I am putting it to you now that Mr Brian Molefe has taken a reward that was not for him because the work had already started in fighting load shedding. I am not going to talk about the attitudes of people who were not going to the boilers, who had their cliques in Eskom. But he took the reward of other people, and Mr Matona was not given a chance to prove to the country that he was able to deal with load shedding.

The Chairperson thanked Dr Ngubane for honoring his invitation to appear before the Committee.

Meeting adjourned.

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,

BALDWIN SIPHO NGUBANE

do hereby state under oath that:

1. **Introduction**

1.1. I am an adult male South African citizen currently retired and self - employed.

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

2. **Qualifications**

2.1. My qualifications include a Bachelor of Medicine and Bachelor of

Baldwin Ngubane

Surgery (MBChB) (Natal); MPRAX Med (Master of Family Medicine) (Natal); DTM&H & DPH (Diploma in Tropical Medicine & Hygiene and Diploma in Public Health) (Wits) Dip. Economic Principles (London).

2.2. I have been approached by investigators associated with the Commission of Inquiry into Allegations of State Capture, Fraud and Corruption in the Public Sector and certain Organs of State ("**the Commission**") and have been requested to provide a statement which details matters relating to my tenure as member and chairman of the board of directors ("**the Board**") of Eskom Holdings SOC Limited ("**Eskom**").

2.3. I have agreed to provide this statement as well as evidence to the Commission freely and voluntarily.

3. **Appointment to the Eskom Board**

3.1. I was appointed to the Board of Eskom during December 2014 following a nomination process initiated by the Minister of Public Enterprises ("**the Minister**"). Ms Lynne Brown ("**Ms Brown**") was the Minister at that time.

3.2. I had not known Minister Brown prior to my appointment to the Board

of Eskom. I was notified of my appointment by letter from Minister Brown.

3.3. I was initially an ordinary member of the Board but following the resignation of Mr Zola Tsotsi ("**Mr Tsotsi**") as Chairman, I was appointed acting Chairman from 30 March 2015 until October 2015 when I was appointed Chairman. I have previously stated in my statement to Parliament that I was appointed acting Chairman with effect from 15 March 2015. That was incorrect.

3.4. I acted as Chairman of the Board Tender Committee ("**BTC**") meeting held on 28 February 2015. This was an *ad hoc* appointment. I was asked by Mr Tsotsi to chair that meeting.

3.5. I served as Chairman of the Board until June 2017, when I resigned of my own volition.

3.6. I do not have copies of the letters appointing me as acting Chairman and later as Chairman nor my resignation letter from the Board.

4. **The suspension of the four Eskom executives**

4.1. I was not Chairman of the Board at the time of suspension of the four

executives, namely, the Group Chief Executive Officer, Mr Tsediso Matona **("Mr Matona")**, Group Executive, Commercial and Technology, Mr Matshela Koko **("Mr Koko")**, Group Executive Group Capital, Mr Dan Marokane **("Mr Marokane")** and the Finance Director, Ms Tsholofelo Molefe **("Ms Molefe")**.

4.2. I shall henceforth refer to Mr Matona, Mr Koko, Mr Marokane and Ms Molefe collectively as "**the four executives**".

4.3. The suspension of the four executives came up for discussion at a board meeting which took place on or about 9 March 2015. This meeting was preceded by another, where the Board discussed, amongst others, the Minister's strategic statement of intent and other matters. I believe this may have been the board induction meeting. I do not recall the date of this meeting nor the Minister's role in it, but I recall it was the very first board meeting since our appointment.

4.4. Mr Tsotsi, convened a special board meeting on or about 9 March 2015 Minutes of this meeting are annexed hereto marked "**BSN1**". Mr Tsotsi apologised for failing to give the Board the usual notice of meeting of at least seven days before the meeting. The reason, as his resolution states, was that "*there are exceptional circumstances demanding the necessity for an urgent meeting of the Board of Directors*". This

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meeting focused entirely on the proposed suspension of the four executives and the establishment of an inquiry into Eskom's affairs. Mr Tsotsi was asking the Board to resolve that an external independent inquiry be set up to investigate and determine the facts relating to the then current technical, commercial and structural status and any acts and/or omissions that have contributed to the deficiency of generating and distribution capacity of Eskom.

4.5. During this meeting, Mr Tsotsi reported that he had met with President Jacob Zuma at his house in Durban, who had instructed him to procure from the Board a resolution approving the establishment of an internal independent inquiry into Eskom's affairs and the suspension of the four executives. I was not part of the meeting with President Zuma and do not know who else attended the meeting.

4.6. In terms of Mr Tsotsi's proposal, the Board was to set up a subcommittee comprising Mr Tsotsi, Ms Chwayita Mabude, Chairperson of the Eskom Audit and Risk Committee (the "**ARC**") and Mr Zethembe Khoza ("**Mr Khoza**"), Chairman of the Eskom People and Governance Committee ("**P&G Committee**"), mandated with delegated authority of the Board to determine the terms of reference of the inquiry. The subcommittee would have the Board's delegated authority to take all such steps and measures to ensure the unfettered

fulfilment of this mandate. Also, that the Board authorised the Chairman, in consultation with the Minister and the Minister of Finance to approve expenditure sufficient to fund the inquiry. And that this inquiry shall be required to present its final report to the Board, the Minister and the Presidency by no later than the 30th June 2015. That the subcommittee would have the authority to deviate from the requirements of Eskom's Procurement Policies and Procedures as is necessary, given the urgency to complete the investigation within three months and to appoint such persons or entities to conduct the inquiry that are independent of Eskom and free of any influence or suspicion of influence of any party that might have an effect on the inquiry, save that the subcommittee shall if required provide reasons to the Ministry of Finance for any such deviations.

4.7. A Board member stated that he was not comfortable with making major decisions based only on a two-page document and there had been no opportunity to discuss the issue in an in-committee session. He was also against approving a resolution allowing for deviation from Eskom's Procurement Policies and Procedures.

4.8. The Chairman reported that an independent resource had been identified already by the Presidency. He reported further that the Presidency had done all the legal and governance work to facilitate the

resolution on deviation from procurement policies and procedures.

4.9. I recall a Board member expressed the view that the Board was being asked to approve the implementation of a subcommittee with wide-ranging powers and he felt that he could not agree with the request.

4.10. When Mr Tsotsi said the four executives had to be suspended, the Board differed with him because he did not give the Board cogent reasons as to why they ought to be suspended. The Board intimated to him that the reasons he was giving for their suspension were defamatory, and unsubstantiated. The Board did not support the proposed suspensions.

4.11. Mr Tsotsi reported that the Presidency had expressed a concern that the impact of Eskom on power shortages in the country had been understated and therefore required the Board to ensure that it received accurate information from management about those matters. He reported that the Presidency required that the inquiry be unfettered by management, the Board and other policy stakeholders and that it must be seen to be credible and objective and have a mandate that would be penetrating and unhindered.

4.12. The Board suggested that the four executives take special leave while

the concerns Mr Tsotsi had raised were being investigated. Nonetheless, Mr Neo Tsolanku ("**Mr Tsolanku**") from Legal Department at Eskom, whom Mr Tsotsi had brought with to the meeting, advised that special leave only applied in special cases, not for investigation purposes.

4.13. At this time, all of us, except for Mr Tsotsi and Ms Mabude, were newly appointed to the Board. We were therefore taken by surprise that we had to deal with an issue of such magnitude so early in our tenure.

4.14. The meeting was uneasy and tense. Members suggested that the Minister be invited to meet with the Board to explain the decisions that were required by government and the basis thereof, before the Board could consider the proposed resolutions further.

4.15. The Board specifically needed to obtain clarity from the Minister regarding the following –

4.15.1. the reasons for the establishment of the inquiry, its terms of reference and the basis of the suspension of the four executives whilst the enquiry was underway;

4.15.2. the proposal of the appointment of Mr Nick Linnell ("**Mr**

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Linnell") to conduct the inquiry. Mr Tsotsi indicated that President Zuma required Mr Linnell to undertake the inquiry;

4.15.3. the role of the Board whilst the inquiry was underway, specifically whether the Board would be expected to continue with its normal duties during this time; and

4.15.4. the role that the Board would play in relation to the activities of the war room that had been set up to manage the power supply challenges that were facing Eskom. The Board was appraised of the War Room and its activities by the Minister when she came to speak to the Board on 11 March 2015. During this time, the Board was not involved in the activities of the War Room. The Eskom executives were responsible for the management of the affairs of the War Room. This was a matter of concern to the Board.

4.16. The meeting adjourned to allow the Minister to address the Board on these matters. The Minister came to address the Board on 11 March 2015. Minutes of this meeting are annexed hereto marked "**BSN2**".

4.17. Although the Minister did not direct the Board to suspend the four executives, she raised concerns of her own against them. The concerns related to the War Room, which she suggested complained it was not receiving consistent information from management and therefore it could not develop strategies to turn around Eskom and stop load shedding. The Minister felt that the presence of the four executives might hinder the investigation.

4.18. After meeting with the Minister, it was clear to the Board that government, as shareholder of Eskom, required the inquiry to proceed and that the four executives had to "*step aside*" whilst the enquiry was underway.

4.19. The board meeting proceeded after the Minister's address. During the meeting, the Chairman provided names of persons whom he suggested the Minister had approved would act in the positions of the four executives once they are suspended. These were Mr Khoza, a member of the Board, who was suggested as acting Group Chief Executive Officer ("**GCEO**") and three others whom I cannot recall. The acrimony and mistrust that prevailed at the meeting between Mr Tsotsi and the Board was so much that because I was the eldest on the Board, I was mandated to call the Minister to inquire on the veracity of the Chairman's representations regarding the Minister's approval for the

appointment of those persons to act in the positions that would be vacated by the four executives whilst the investigation proceeds. Minister Brown stated that she had not given any instructions as to who should fill the positions vacated by the four executives. She indicated that she would only need to be consulted by the Board in relation to the filling of the acting GCEO position, and only be informed of the Board's decision regarding the other positions.

4.20. Overall, most members of the Board were of the view that everything was happening too sudden upon the commencement of our tenure and were uncomfortable with the suspension of the four executives because there was no apparent case of wrongdoing against them. Nonetheless, appreciating that that was what the government required, the Board ultimately approved the establishment of the inquiry and the suspension of the four executives in order to address government's concerns regarding the presence of the four executives at Eskom whilst the inquiry was underway.

4.21. The Board decided that the suspension of the four executives would endure only for three months, by which time it was envisaged the inquiry would have been completed.

4.22. The Chairman proposed that Mr Linnell be appointed to conduct the

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inquiry. The Board was uncomfortable with the manner in which the recommendation of Mr Linnell's appointment came about. He was proposed by the Chairman without any process nor involvement of the Board. The Board decided that instead of Mr Linnell, the inquiry would be conducted by someone appointed independently by the Board. The ARC was entrusted with the process to appoint an independent service provider to undertake the investigation. As result, following a procurement process conducted by the supply chain division, during April 2015 Eskom appointed Dentons, an international law firm based in Sandton, to conduct the inquiry. I do not have copies of the procurement documents nor the appointment letter issued to Dentons.

4.23. Apart from the name of President Jacob Zuma, which was mentioned by the Chairman when he introduced the need for the establishment of the inquiry, I do not recall any mention of, or interaction of the Board with, Ms Dudu Myeni.

4.24. The ARC formulated the terms of reference of the inquiry conducted by Dentons and the Board approved them. A copy of the terms of reference is annexed hereto marked "**BSN3**".

4.25. The inquiry looked at, amongst others, the following key issues –

4.25.1. the poor performance of our coal fleet which was causing the load shedding;

4.25.2. the delay in the New Build programme which was characterised by billions of penalties and claims, and questioning the ability to handle contracts at Eskom;

4.25.3. the financial challenges of Eskom, the fact that NERSA had cut down on the tariff, and how the financial gap would be covered in terms of revenues that would be low;

4.25.4. the security at Eskom as a key national point; and

4.25.5. the integrity of the Eskom procurement process and how it complied with the rules.

4.26. Dentons presented the Board with a big report, which we passed on to the ARC to process and implement. The ARC was led by Ms Mabude. The ARC gave each division of Eskom issues that had to be corrected in their sphere of responsibility. By the time I left, I think about 18 of the issues had been corrected and implemented. I do not have a copy of the Dentons report.

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4.27. The scope of the inquiry did not include an investigation into any misconduct on the part of the four executives. Upon the conclusion of the inquiry, Dentons did not find nor attribute any wrongdoing to the four executives. Nonetheless, except for Mr Koko who was keen to return to Eskom, the others were not.

4.28. Whilst the inquiry was pending, Mr Matona had filed a labour dispute with the CCMA against Eskom. Following the conclusion of the inquiry, Mr Matona negotiated and settled the dispute out of court and left Eskom. This process was handled by the P&G Committee. I was not involved with it.

4.29. Prior to that, I had been tasked by the Board to attend the CCMA proceedings which Mr Matona had instituted against Eskom. During one of my interactions with Mr Matona at the CCMA I suggested to him, at my own initiative, that he should consider returning to his position. However, Mr Matona was too upset with the whole saga and made it clear to me that he would not return to Eskom.

4.30. Mr Marokane and Ms Molefe also left the employ of Eskom following settlements that were reached with each of them by Eskom. This too was handled by the P&G Committee. I am not privy to the details of the settlements. I do not recall whether they too were offered the

opportunity to return to Eskom. I was not involved in any such discussions with them.

5. **The removal and/or resignation of Mr Zola Tsotsi**

5.1. As I have indicated previously, the relationship between Mr Tsotsi and the rest of the Board did not start off well. It was characterized by acrimony and mistrust from the onset.

5.2. This emanated from his handling of –

5.2.1. the proposal for the appointment of Mr Linnell to conduct the inquiry which had been proposed by government into Eskom's affairs without following any procurement process nor prior consultation with the Board. The board felt that he was involving himself in matters which encroached into the terrain of executive management, which he could not do as a non-executive chairman. Moreover, such appointment had financial implications, which unless implemented in compliance with the Eskom procurement policy would result in irregular expenditure;

5.2.2. the proposed suspension of the four executives without

any apparent allegations of wrongdoing having been levelled against them. Inasmuch as the suggestion was that the four executives were required to "*step aside*" to allow the inquiry to continue unhindered by their presence at Eskom, the Board considered that it was a high handed approach, which was not in the interests of Eskom and the four executives; and

5.2.3. the unilateral manner which the Chairman went about nominating the people who would act in the positions that were to be vacated by the four executives whilst the inquiry was underway. The Chairman went ahead to recommend such persons to the Minister without regard to the Board.

5.3. It was because of these decisions, which he sought the Board to "*rubberstamp*" that the Board lost faith in his leadership. This conduct culminated in the decision by the Board to initiate a motion of no confidence against Mr Tsotsi, with the view to remove him as Chairman.

5.4. To my knowledge the motion of no confidence against Mr Tsotsi was a Board driven process, without any external influence from anyone. The

charges were formulated by the Audit and Risk Committee ("**the ARC**") and subsequently approved by the Board at its meeting of 14 March 2015. I agreed with the position of the Board that Mr Tsotsi had conducted himself improperly. Mr Tsotsi was asked to recuse himself when the item on his alleged misconduct came up for discussion by the Board and I was requested by the Board to chair the meeting. A copy of the minutes of meeting of 14 March 2015 is annexed hereto marked "**BSN4**".

5.5. Shortly after the decision of the Board to pass a motion of no confidence against Mr Tsotsi, I was mandated by the Board to meet with him to explore whether he would be amenable to stepping down without having to endure the specter of a drawn-out disciplinary hearing. I met with him, but he was not persuaded to follow that route. He felt the charges were without merit and that he wanted to clear his name in a formal meeting.

5.6. On 30 March 2015, the Board convened a meeting to consider, amongst others, the motion of no confidence and the removal of Mr Tsotsi as a director and Chairman of Eskom. Mr Tsotsi attended the meeting with his legal representative. Mr Mark Pamensky ("**Mr Pamensky**") was appointed to chair the meeting. At this time I was yet to be appointed the acting Chairman of the Board. The allegations of

misconduct were put to Mr Tsotsi and he placed all the allegations in dispute. Subsequently, the meeting adjourned and a discussion ensued between me, Mr Pamensky and Mr Tsotsi, during which we sought to persuade Mr Tsotsi to step down voluntarily without the Board having to vote on the matter. These discussions culminated in Mr Tsotsi's resignation as director and Chairman, on the basis that the Board would abandon its motion of no confidence against him. A copy of the minutes of meeting of 30 March 2015 is annexed hereto marked "**BSN5**".

5.7. The Minister accepted Mr Tsotsi's resignation and during the Annual General Meeting ("**AGM**") held on 31 March 2015, the Minister announced Mr Tsotsi' resignation and my appointment as acting Chairman. I do not have copies of the correspondence exchanged between Mr Tsotsi and the Minister regarding his resignation. A copy of the minutes of the AGM is annexed hereto marked "**BSN6**".

5.8. I do not recall at what stage the Minister was notified of the Board's decision to bring a motion of no confidence against Mr Tsotsi. I am however aware that the Minister was not opposed to the decision. I remember that during one of our meetings with the Minister, she too had been critical of Mr Tsotsi for various conduct, including his alleged interference with executive management in the performance of their

duties, for instance the award of contracts for the supply of oil and diesel, where she accused him of attempting to influence who should be awarded the contracts.

5.9. On 31 March 2015, I issued a press statement on my appointment as acting Chairman. In it, I also thanked Mr Tsotsi for his service to Eskom. I did not personally prepare the statement. It was provided to me by the Company Secretariat. Mr Phukubje Malesela was the Company Secretary of Eskom at the time.

5.10. I hasten to add that as a matter of practice, I did not prepare my own speeches or press statements at Eskom. They would be provided to me by the Company Secretariat or Corporate Affairs division.

5.11. I did not have a meeting or conversation with Mr Salim Essa ("**Mr Essa**") regarding Mr Tsotsi's resignation from Eskom. Nor did I have any correspondence with Mr Essa regarding any appointments and resignations and movement of any employees within Eskom.

6. The appointment and early retirement of Mr Brian Molefe

6.1. After the suspension of the four executives, including Mr Matona, who was the GCEO, there was serious vacuum in the leadership of Eskom.

6.2. The Board petitioned the Minister to approve the appointment of Mr Khoza as interim GCEO, whilst the P&G Committee worked with the Minister to find someone capable of turning around institutions and whose leadership had been tested to assume the position.

6.3. Whilst the search for a new GCEO was underway, the Minister suggested that we consider Mr Brian Molefe ("**Mr Molefe**"). The Board was amenable to the Minister's suggestion because we knew of Mr Molefe's track record, based on his work at the Public Investment Commissioners ("**PIC**") and Transnet SOC Limited ("**Transnet**"). The Board felt that Eskom was in dire straits and needed someone with Mr Molefe's skills and experience.

6.4. The Minister suggested that the Board approaches Transnet to request for Mr Molefe's release to Eskom. I wrote to the chairperson of Transnet, Ms Linda Mabaso ("**Ms Mabaso**") to convey our request and the board of Transnet agreed to release Mr Molefe on a secondment to Eskom. I do not have copies of the letters exchanged between the boards of Eskom and Transnet regarding Mr Molefe's appointment nor the secondment agreement.

6.5. Mr Molefe was therefore seconded to Eskom as the acting GCEO on 17 April 2015, for a period of 3 months. I do not recall how the 3 months

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period came about.

6.6. On 23 June 2015, I addressed a letter to the Minister requesting her support for the extension of Mr Molefe's secondment as acting GCEO for a further period of 3 months. A copy of this letter is annexed hereto marked "**BSN7**". In the same letter, I informed the Minister that the P&G Committee had resolved to seek the full-time appointment of Mr Molefe to the position of GCEO and Ms Venete Klein (**"Ms. Klein"**), who chaired the P&G Committee had been tasked to procure a legal opinion on the most optimal approach to follow to give effect to the appointment of Mr Molefe. The Board did not wish to go through a public recruitment process because it had found its candidate in Mr Molefe.

6.7. The legal opinion was obtained from Bowman Gilfillan ("**Bowmans**") on 18 June 2015. A copy of the legal opinion is annexed hereto marked "**BSN8**". Bowmans advised that Eskom could appoint a GCEO without having to conduct a public recruitment process and that the Board could provide the Minister with a shortlist of one candidate only, whom the Minister could elect whether to appoint or not.

6.8. On 27 June 2015, the Minister responded to my letter agreeing to the request for the extension of Mr Molefe's secondment and also requested the Board to deal expeditiously with the appointment of a

new GCEO in accordance with Eskom's Memorandum of Incorporation, Labour Relations Act and Eskom's employment policies and procedures. The Minister also requested to be provided with a copy of the complete legal opinion obtained from Bowmans on the matter. A copy of the Minister's letter dated 27 June 2015 is annexed hereto marked "**BSN9**".

6.9. On 13 September 2015, Ms Suzanne Daniels (**"Ms Daniels"**) transmitted the legal opinion to Orcillia Ruthnam (**"Ms Ruthnam"**), who was at the time the Chief Director: Governance of the Legal and Governance Department at the DPE.

6.10. On 14 September 2015, Ms Ruthnam responded to Ms Daniels and enquired whether Bowmans had considered the *"Guidelines for the appointment of a Chief Executive Officer for a State - Owned Enterprise"*(**"the Guidelines"**). Ms Ruthnam also enclosed a copy of the Guidelines in her communication to Ms Daniels.

6.11. Copies of the emails exchanged between Ms Daniels and Ms Ruthnam on 13 and 14 September 2015 are annexed hereto marked "**BSN10**"and **"BSN11"**, respectively.

6.12. On the same day, the Guidelines were sent to Bowmans, requesting

them to prepare a supplementary opinion having regard to the Guidelines, specifically on whether the proposed appointment of Mr Molefe on a permanent basis as GCEO was competent. A copy of the Guidelines is annexed hereto marked "**BSN12**"

6.13. On 15 September 2015, Bowmans delivered the supplementary opinion, advising Eskom that the Board was actually required to make recommendations to the Minister on the top 3 candidates in the order of priority and that any proposed deviation from that requirement required the Board to notify the Minister of such deviation in writing, together with reasons therefor. A copy of the supplementary opinion is annexed hereto marked "**BSN13**".

6.14. On 16 September 2015, the supplementary opinion was emailed to Ms. Ruthnam at the DPE. A copy of the email is annexed hereto marked "**BSN14**".

6.15. Ms Klein subsequently submitted a notification of Eskom's departure from the application of the Guidelines by way of a letter to the Minister. I understand the letter was sent to the Minister's office by Ms Daniels on 16 September 2015 with a signed version following thereafter, on 23 September 2015. The Minister did not object to the deviation.

6.16. Copies of the correspondence transmitted by Ms Daniels to the Minister on 16 and 23 September 2015 are annexed hereto marked "**BSN15**"and "**BSN16**", respectively.

6.17. In the meanwhile, on 10 September 2015, the Board resolved that the P&G Committee should submit a recommendation to the Minister for the appointment of Mr Molefe as GCEO. A copy of the minutes of this meeting are annexed hereto marked "**BSN17**". On 11 September 2015, and pursuant to the aforesaid resolution, I addressed a letter to the Minister advising her of the Board's decision to propose the permanent employment of Mr Molefe as GCEO. A draft employment contract was annexed to the letter for the Minister's consideration and approval. I attach hereto a copy of the said letter dated 11 September 2015 and the draft employment contract marked **"BSN18"** and **"BSN19"**, respectively.

6.18. On 2 October 2015, the Minister approved the appointment of Mr Molefe as GCEO. In this regard, the Minister addressed a letter to me, copying Ms Klein and enclosing letters addressed to Mr Molefe and Mr Anoj Singh (**"Mr Singh"**), confirming their appointments as GCEO and Chief Financial Officer (**"CFO"**), respectively, with effect from 1 October 2015. The letters to each of Mr Molefe and Mr Singh did not specify the duration of their respective appointments. Copies of the said

letters are attached marked **"BSN20"** and **"BSN21"**, respectively.

6.19. I do not recall how the process of appointment of Mr Singh came about. The P&G Committee managed that process. Nor do I recall whether the impact of Transnet losing both its GCEO and CFO at roughly the same time was considered or discussed with the Minister. Nonetheless, I am aware that the Board of Eskom was not opposed to Singh's appointment at Eskom. I did not know Mr Singh prior to his appointment at Eskom.

6.20. On 7 October 2015, a permanent contract of employment was prepared for Mr Molefe. A copy of the contract is annexed hereto marked **"BSN22"**. The Minister's letter dated 2 October 2015 and addressed to Mr Molefe made no mention of a fixed term employment contract. The Board was advised by Mr Anton Minnaar ("**Mr Minnaar**"), Executive Remuneration Officer at Eskom, that none of the previous GCEOs of Eskom was appointed on a fixed term contract, hence the proposal to appoint Mr Molefe on a permanent contract.

6.21. On 8 October 2015, Ms Klein received an email from Ms Daniels, drawing her attention to the exchange of email communication between Ms Daniels and Ms Ruthnam regarding the term of appointment of Mr Molefe. A copy of this email is annexed hereto marked "**BSN23**". Ms

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Ruthnam advised that the Minister had approved a five-year term for Mr Molefe. Ms Daniels had requested that Ms Ruthnam verify this as Mr Molefe's appointment letter had not stipulated a five-year term and that all previous GCEOs at Eskom were appointed on a permanent basis. Ms Ruthnam advised that the five-year term was a cabinet requirement. Nonetheless, Ms Ruthnam undertook to revert on whether the Minister would need to address the Board on the issue. According to Ms. Klein, she received no further correspondence on the issue and, under the circumstances, assumed the issue was resolved.

6.22. On 16 October 2015, I addressed a letter to the Minister on the proposed terms of Mr. Molefe's appointment and remuneration. A copy of this letter is annexed hereto marked **"BSN24"**. The contents of the letter were informed by various inputs which the P&G Committee had obtained from Mercer, PE Corporate and Deloitte on chief executive remuneration packages. I do not have copies of these reports. None of these inputs considered any compensation for the loss of pensionable earnings that would result from Mr Molefe's appointment on a fixed term contract. The Board's understanding was that Mr Molefe's employment would be on a permanent basis.

6.23. On 1 November 2015, the Minister responded to my letter of 16 October 2015, in which she approved the proposed remuneration package to

Mr Molefe, a copy of the Minister's approval is attached hereto as **"BSN25".** The Minister further recorded that the term of Mr Molefe's appointment was for a period of 5 years, subject to annual performance reviews. I do not recall corresponding with the Minister regarding Mr Singh's appointment.

6.24. The Minister's letter of 1 November 2015 was addressed to me as the Chairperson of the Board and was received by Ms Daniels on 4 November 2015.

6.25. On 9 November 2015, I presented Mr Molefe with a permanent contract of employment. At this time, the Minister's letter to me dated 1 November 2015 had not come to my attention or that of the Board. I do not know how the letter was transmitted to Ms Daniels.

6.26. On 12 November 2015, Ms Klein received an email from Ms Daniels enclosing a draft offer of employment letter dated 13 October 2015 which specified that Mr. Molefe would enter into a fixed term employment contract with Eskom but the term was not specified. A copy of this email is annexed hereto marked "**BSN26**". At this time I was still not aware of the Minister's letter dated 1 November 2015.

6.27. The Minister approved Mr Molefe's proposed remuneration but

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indicated that the term of employment would be for a fixed term of 5 years. The Minister directed the Board to change Mr Molefe's signed contract from a permanent one to a five-year fixed term.

6.28. On or about 16 November 2015, I advised Mr Molefe of the Minister's decision. Mr Molefe was amenable to the variation of his contract of employment to a fixed term contract of 5 years. Mr Molefe however had concerns regarding the adverse impact that the variation would have on his retirement and pension benefits.

6.29. Around that time, I was advised by the head of the P&G Committee that Mr Molefe had threatened to leave Eskom if the matter was not resolved to his satisfaction.

6.30. I advised the Board of the outcome of my discussions with Mr Molefe and his discontentment with the effect of the variation of the term of the contract of his employment on his retirement and pension benefits. The Board did not wish to lose Mr Molefe. As result, myself and Ms Klein were tasked to engage with Mr Minnaar to come up with a solution. I do not recall when this discussion with the Board took place or if there are minutes of such discussion. It is unlikely that it was discussed in a formal board meeting.

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6.31. Mr. Minnaar was involved in the appointment of 7 previous GCEOs at Eskom in the six-year period prior to Mr Molefe's appointment. Mr. Minnaar advised that all Eskom's previous GCEOs were employed on a permanent contract basis and that based on the fixed five-year term contract, Mr. Molefe would not be able to accumulate an equivalent pension benefit during his service at Eskom. At this time, neither the Board nor Mr Molefe was aware that Mr Molefe could not be a member of the Eskom Pension and Provident Fund ("**EPPF**") unless he was a permanent employee of Eskom.

6.32. The Board then agreed that an arrangement should be put in place to ensure that Mr Molefe was not adversely affected in respect of his pension benefits. On 25 November 2015, Mr Minnaar assisted me in drafting a letter to the Minister, recommending that a retirement arrangement be reached with Mr Molefe in order to allay his pension concerns. A copy of the said letter is attached as **"BSN27 "**.

6.33. The arrangement proposed by the P&G Committee with the guidance of Mr Minnaar was that:

6.33.1. regardless of Mr. Molefe's age after the expiry of his five-year contract, he would be allowed to retire from Eskom's on the basis that he was aged 63;

6.33.2. the penalties prescribed by the EPPF for retirement prior to the age of 63 would be waived and not payable by Mr Molefe. Eskom would then carry the costs of such penalties, which would be paid over to EPPF;

6.33.3. if Mr Molefe's employment contract was not extended beyond the five-year period, he would not be allowed to subscribe to any other state-owned companies or government pension fund; and

6.33.4. should the employment contract be extended, the costs of any subsequent penalties would decrease proportionately.

6.34. The effect of the abovementioned arrangement was such that Mr Molefe would be placed in the same position that he would have been had he retired from Eskom at the age of 63. The Board was in support of the arrangement.

6.35. On 25 November 2015, the terms of the arrangement were communicated in writing by Ms Daniels to the Minister's office. The Minister's office acknowledged receipt of the letter and undertook to bring its contents to the Minister's attention. Copies of this

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correspondence are annexed hereto marked "**BSN28**"and "**BSN29**", respectively.

6.36. As at 9 February 2016, however, a formal response to the letter addressed to the Minister had still not been received and at that time, there was no formal contract of employment with Mr. Molefe.

6.37. On 9 February 2016, the P&G Committee met to deliberate on the conclusion of a contract of employment with Mr. Molefe, including the issue relating to his pension benefits. In order to better understand the distinction between appointing Mr Molefe on a fixed term, as opposed to a permanent contract, basis and the options available to the Board for addressing Mr Molefe's concerns, the Board sought guidance from Mr. Minnaar.

6.38. Mr. Minnaar explained to the Board that due to Mr. Molefe's short term contracts with numerous public entities in which he served at executive level, he was deprived of the opportunity to grow a pension fund in a single fund.

6.39. The P&G Committee then resolved at its meeting of 9 February 2016 that:

"7.5.1 the current EPPF rule that Employees may proceed on retirement from the age of 50 with 10 years' service remains applicable;

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

i. bridge the gap to make up for the 10 years;

ii. waive the penalties applicable to early retirement; and

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

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

6.40. A copy of this resolution is attached hereto marked **"BSN30".**

6.41. It was the intention of the P&G Committee that the arrangement had to be structured in such a way that the benefit would only accrue to Mr Molefe upon completion of his five-year term and that Mr Molefe would not be able to participate in any other government pension fund after qualifying for retirement at Eskom as per the resolution. Such intention was communicated to the Minister in my letter to her dated 25 November 2015. The practice was that the Board would take a decision on such matters and thereafter refer the same to the Minister for concurrence.

6.42. On 7 March 2016, Mr Molefe signed a second contract of employment for a fixed term of 5 years with effect from 1 October 2015 and terminating on 30 September 2020. A copy of the contract is attached hereto marked **"BSN31".**

6.43. On 19 April 2016, the Board approved the resolution of the P&G Committee meeting of 9 February 2016. A copy of the board resolution is attached hereto marked **"BSN32".**

6.44. On 6 September 2016, it was decided to increase the long-term incentive award for Mr. Molefe to two times the annual pensionable earnings on the basis that the amount was relatively low based on the benchmark against similar long - term incentive awards to the chief

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executives at his level. A copy of the resolution is attached hereto marked **"BSN33".**

6.45. On 24 October 2016, the P&G Committee approved the additional award in the form of an increase to Mr Molefe's long-term incentive to two times the annual pensionable earnings. A copy of the resolution is attached hereto marked **"BSN34".**

7. **The eventual payment of pension benefits to Mr Brian Molefe**

7.1. On 11 November 2016, Mr Molefe formally submitted his request for early retirement in terms of the EPPF rules read together with the board resolution of 9 February 2016. In the same letter, he also indicated that his last day of service would be on 31 December 2016. A copy of the said letter is attached marked **"BSN35"**.

7.2. On 15 November 2016, EPPF provided Eskom with the calculation of Mr Molefe's early retirement benefits on the basis that he would exit the service on 31 December 2016. It came to an amount of R25, 80 204.19.

7.3. On 21 November 2016, Mr Molefe's request for early retirement was discussed at a special meeting of the P&G Committee and the meeting agreed to support Mr Molefe's request and payment to him of the

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retirement benefits as calculated by EPPF. I was not at this meeting. I subsequently learned from Mr Minnaar that the meeting was not quorate.

7.4. On 24 November 2016, I wrote to Mr Molefe informing him of the approval of his request for early retirement in terms of Rule 28 and Rule 21.4 of the EPPF rules. I also confirmed that all penalties would be waived and further that his early retirement will be on the basis that Mr Molefe be deemed to have achieved the age of 63. The advice to the Board was that other senior executives had Eskom pay the penalty when they took early retirement. That was the point of departure. A copy of my approval letter is attached hereto marked **"BSN36"**.

7.5. At this time I was not aware that the Minister had not responded to my letter dated 25 November 2015 regarding Mr Molefe's retirement. Mr Molefe's retirement was managed by the P&G Committee, with the assistance of Mr Minnaar. Board committees were entitled to take decisions on matters they were seized with and report to the Board on a quarterly basis in respect of resolutions they have taken. Thus, I had assumed that all was above board.

7.6. As at 23 March 2017, and pursuant to his early retirement, Mr. Molefe was paid the following amounts –

7.6.1. R575, 679.91 in respect of his salary up to December 2016;

7.6.2. R226, 278.84 in respect of leave due to him; and

7.6.3. R2, 110, 185.00 in respect of a short-term incentive bonus to the end of December 2016.

7.7. The total amount paid to Mr Molefe was the sum of R2, 912, 143.75.

7.8. I do not recall that the Board was consulted for approval of the above-mentioned amounts.

7.9. On 19 April 2017, the Minister called a meeting with me to discuss Mr Molefe's pension pay-out. It became evident at this meeting, that the Minister did not approve of Mr Molefe's early retirement arrangements as set out in my letter dated 25 November 2015. I do not have a copy of the minutes of this meeting.

7.10. The Minister maintained that the amount of R30, 103, 915.62 which was paid by Eskom to EPPF in respect of Mr Molefe's early was not permissible and should be repaid. I wish to point out that the Board had not been consulted for approval of these amounts. The P&G

Committee had taken this decision.

7.11. Following the meeting with the Minister, Ms Klein and Ms Daniels had a meeting later that evening with Mr Molefe to inform him of the Minister's position regarding his retirement arrangements.

7.12. According to Mr Molefe, he had received R7, 700, 000.00 from the EPPF on being admitted to the EPPF and of this sum, R4, 300, 000.00 had been transferred from the Transnet Pension Fund to the EPPF. I have not been able to verify these payments.

7.13. On 17 May 2017, the Board rescinded its acceptance of Mr Molefe's early retirement upon becoming aware that the Minister did not support it. A copy of the minutes of the Board meeting held on 17 May 2017 is annexed hereto marked **"BSN37"**.

8. **Relationship with Mr Salim Essa and/or the Gupta's**

8.1. I knew Mr Salim Essa and Mr Nazeem Howa from past interactions with each of them before I was appointed to the Eskom Board.

8.2. I came to know Mr Howa when attending The New Age breakfast meetings during my time as Chairman of the South African

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Broadcasting Corporation ("**SABC**").

8.3. I also knew Mr Essa prior to my appointment at Eskom. I had met him for the first time during 2011 or so when I was at the SABC. Mr Essa was on the Board of Broadband Infraco SOC Limited ("**BBI**"). I used to attend meetings with various state-owned entities, including BBI, as part of the SABC delegation, where we were discussing digital migration for the country. These were some of the occasions during which I interacted with Mr Essa.

8.4. Sometime during 2013, when I was sitting at JB's, Melrose with some people involved in the oil business in West Africa, especially Mali. Mr Essa came over to greet me. I introduced him to the people I was with. Once he knew we were talking about the oil business, he expressed an interest to participate as he too was in the oil business. He indicated that he had interests in oil blocks in other African countries. Following several interactions with me he suggested we form a new entity for oil exploration in African countries with potential oil blocks. This is how Gade Oil and Gas (Pty) Ltd ("**Gade**") came about.

8.5. Gade was a newly established entity and we each owned a 50% (fifty percent) interest. Both Mr Essa and I were directors of Gade. Mr Essa was to provide the financial capital required and arrange for our

prospective exploration in Central African Republic ("**CAR**"). I was to leverage my networks from my days in the Diplomatic Corps as Ambassador to procure contracts, particularly for supply of oil to African countries in which there was need.

8.6. The venture collapsed around the time of the civil unrest in CAR during 2013 and Mr Essa resigned as director of Gade. In the end, Gade never traded.

8.7. I knew members of the Gupta family. When I was Chairman of the SABC I often met members of the Gupta family together with officials of The New Age newspaper at the business breakfasts which were arranged by The New Age and broadcast on the Morning Live programme of the SABC. My relationship with them was social, but not business related. I used to receive invitations for social events at their home in Saxonwold and attended some.

8.8. I was invited to and attended the much talked about wedding at Sun City. At that time, I was a member and Chairman of the SABC board.

8.9. I have travelled through Dubai three or four times, but never at the expense of the Guptas or at their instance. These were personal journeys to overseas countries. I did not keep a record of these travels.

9. Business Man email account

9.1. I was copied on the email addressed to Ms Daniels regarding the draft statement by chairman on 11 June 2016 from "*businessman*" on the email address: Inforportal1@zoho.com. There were comments made to the media statement I was going to issue. A copy of the email is annexed hereto marked "**BSN38**".

9.2. I understood from Ms Daniels that the "*businessman*" email address belonged to Mr Richard Seleke ("**Mr Seleke**"), who at the time was the Director General ("**DG**") at DPE.

9.3. The Director General of any Government Department has a lot of influence as he/she speaks and advises the Minister directly. The DG in this instance took a keen interest in the business of Eskom, especially on how Eskom was reflected in the media. He was also very concerned that he and the Minister often saw statements issued by Eskom for the first time, in the media. I had a meeting with him at his DPE office at some point, where he expressed this concern. I cannot recall when this meeting was.

9.4. I did not share Eskom confidential or proprietary information with Mr Essa or anyone outside Eskom and the DPE.

10. **T-Systems**

10.1. I was appointed to the Eskom Board during December 2014. Soon after my appointment Mr Tsotsi asked me to chair the BTC, to which I agreed.

10.2. To the best of my knowledge, Eskom had commenced the procurement process which was aimed at replacing T-Systems before I was appointed to the Eskom Board.

10.3. During February 2015, the Executive Committee Procurement Sub-Committee **("EXCOPS")** decided to cancel the procurement process aimed at replacing T-Systems in relation to the provision of IT services to Eskom.

10.4. EXCOPS' made a presentation to the BTC motivating for the cancellation of the procurement process to the BTC meeting held on 28 February 2015 I chaired the BTC meeting.

10.5. In my statement to Parliament I suggested the BTC meeting took place on 24 February 2015. I have now established that date was incorrect. 24 February 2015, was the meeting of the Executive Committee Procurement sub-Committee which decided on the recommendations

that were to be presented to BTC at the 28 February meeting.

10.6. EXCOPS' motivation for the cancellation of the procurement process was presented to the BTC as follows:

10.6.1. Around December 2014, more than 50% of senior Eskom employees who were critical to the management of the Eskom IT Division accepted voluntary severance packages which had been offered by Eskom to employees in general, and left Eskom;

10.6.2. The departure of the said employees resulted in depletion of skilled resources and thus a lack of requisite capacity within the IT Division, as the affected positions were quite senior. This negatively affected Eskom's Generation Division;

10.6.3. By virtue of the crisis in Eskom's Generation Division, as manifested in persistent load shedding at the time, the view was then formed that bringing in a new IT service provider, which would be unfamiliar with the Eskom Generation business, would likely exacerbate the electricity supply problem which was already prevalent

during that entire period;

10.6.4. T-Systems' continued involvement, as the incumbent IT service provider, which was already familiar with the power station system in Eskom would be in the best interests of both Eskom and the country; and

10.6.5. That under the circumstances, it made commercial sense for Eskom to extend T-Systems' contract, and to cancel the procurement process which was then aimed at replacing them.

10.7. On the strength of the abovementioned motivation by EXCOPS, the BTC approved the recommendation for cancellation of the procurement process to replace T-Systems. The procurement process was then cancelled by Eskom.

10.8. I do not have the documents pertaining to the EXCOPS decision and the procurement process under consideration.

10.9. My understanding was and still is that in terms of the Eskom SCM Procedure, Eskom was entitled to cancel any procurement processes. Paragraph 3.4.5.7 of the SCM Procedure states, *inter alia*, that

cancellation/re-issuing of tenders may occur any time after the tender has been issued to the market and before contract award.

10.10. I recall an oral opinion was expressed by Mr Neo Tsolanku, a legal adviser at Eskom, that Eskom could not cancel the procurement process because it did not meet the criteria for cancellation of tenders as stipulated in the procurement regulations. However, following extensive deliberations on the matter, the BTC decided to cancel.

10.11. I note that the minutes of the meeting of 28 February 2015 refer to change of business strategy as but one of the motivations that were presented to the BTC in support of cancellation of the procurement process. I do not recall the discussion of the BTC on that aspect nor that it was considered at all.

10.12. I did not discuss the cancellation of the procurement process or extension of the T-Systems contract with Mr Essa.

11. **Meeting with Minister Ngoako Ramathlodi**

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

11.2. As Chairman of Eskom I had consistently sought to protect Eskom's generating capacity as this was critical to ensuring load shedding ends. Central to this effort was ensuring adequate supplies of the volumes of coal required, but at affordable prices.

11.3. I recall from the documents I have gleaned at the time that Glencore were insisting on substantial increases in the price of coal while the quality of the coal they supplied was declining. Glencore had been washing their coal to RB1 export grade and giving Eskom the middlings coming out of the wash. I learned that this had been happening from 2012 onward.

11.4. At some point the Energy Availability Factor ("**EAF**") across various Eskom power stations deteriorated by 10% from 85% to 75% due to breakdowns associated mostly with the burning of low quality coal.

11.5. The boiler explosion at Duvha was due to inadequately combusted coal as far as reports to me indicated. 10% of coal plants were not available at any one time.

11.6. At the meeting held between the Minister and the Board on 20 March 2015, the Minister insisted that she be informed of coal supplies that were in place throughout the country because the supply of coal to

Eskom could not be compromised. The meeting was to discuss "*the state of the system*" as I recall. These meetings were also attended by members of executive management. I do not have minutes of this meeting.

11.7. The Minister also wanted to be provided with the timeline generating units that were coming out of maintenance. She went on to say government's efforts at transforming the lives of especially poor South Africans could not be frustrated. 6,000,000 households were already connected to the electricity grid and load shedding was denying them a better quality of life. I do not recall if there were minutes of this meeting. These would be briefings before the open meetings with the press.

11.8. To meet its goals Eskom was to implement cost containment measures and find a solution on pricing of coal supplies. The high cost of coal would drive up the cost of electricity.

11.9. There were six coal mines where Eskom had to provide capital expenditure (the cost plus mines), and this resulted in cost increases in relation to the coal price itself, as Eskom was required to make continuous investments to bring out the coal.

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11.10. Despite the capital investments coal from cost plus mines was marginally cheaper than of fixed price collieries, e.g. Kusile coal (a cost plus mine) was R300/ton compared to R400 from an untied colliery.

11.11. On 21 August 2015the GCEO, Mr Molefe, reported to the Board that there was a danger that the Eskom grid could lose 2000MW from the Hendrina power station which was supplied by Glencore's Optimum Colliery. Mr Molefe reported that he had had an acrimonious meeting with Glencore who wanted the price per ton increased from the contractual value of R150 per ton to R500 per ton, which he had refused. I cannot recall whether Mr Molefe's report was in writing. I am not aware there are minutes of this meeting.

11.12. Mr Molefe advised me that Glencore had indicated they would stop supplies to Hendrina. If executed this would result in the loss of 2000MW, which was going to reverse all the gains management had achieved in the race to stop load shedding and stop the use of very expensive diesel for the Open Cycle Gas Turbine generators, which was the last desperate effort to keep the lights on.

11.13. Mr Molefe further advised me that every R10 increase in the price of coal would increase the tariff by 4%. To make matters worse, Hendrina required coal which has a CV of 23 GJ while other collieries produce of

a CV of 21 GJ, therefore this higher quality CV was difficult to obtain. Hendrina was one of three best performing power stations in terms of EAF.

11.14. The fact that Optimum Colliery was being placed under business rescue also presented a risk that there would be no further coal supplies from Optimum Colliery.

11.15. In the face of all these concerns about the sustainability of coal supplies for Hendrina power station, Minister Ramatlodi had suspended the mining licence for Optimum Coal Holdings on 03 August 2015. He suspended the licences because Glencore had apparently undertaken retrenchments in a non-compliant manner.

11.16. Optimum Coal Holdings had open cast mines and a complex of Underground Mines. Among These are:

11.16.1. Kwagga Colliery;

11.16.2. Pullenshope Colliery;

11.16.3. Eckeboom Colliery;

11.16.4. Boschmanspoort Colliery; and

11.16.5. Koornfontein Colliery.

11.17. Loss of coal from all these collieries would seriously jeopardise Eskom electricity generation.

11.18. These were the concerns that drove Mr Molefe and I to request a meeting with Minister Ramatlhodi, who then was the Minister of Mineral Resources, to appraise him of the consequences of suspension of the coal mining licence. The meeting took place at Minister Ramatlhodi's offices in Pretoria. The meeting was arranged by Mr Molefe. I cannot remember the date of the meeting. Luckily Minister Ramatlhodi reinstated the mining licence on 11 November 2015

11.19. I deny Minister Ramatlhodi's account of the version of events regarding the purpose and content of my discussion with him during the meeting which was held between him, Mr Molefe and I. That was the only meeting which Mr Molefe and I attended with Minister Ramatlhodi. I do not recall there was anyone else accompanying Minister Ramathlodi to the meeting.

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

12.1. The guarantee fell within the primary coal energy issues, which I was not involved with.

12.2. The R1.68 billion guarantee was approved by the Board during December 2015. I do not have copies of the report that served before the Board nor the minutes of this meeting.

12.3. The Company Secretary, Ms Daniels, requested an urgent meeting on the basis of the letter Mr Matshela Koko ("**Mr Koko**") had written to the DG of the Department of Mineral Resources("**DMR**") on 6 December 2015, and the undated response of the DG of DMR. Copies of this correspondence are attached hereto marked "**BSN39**"and "**BSN40**", respectively. The Company Secretary presented a memorandum dated 8 December 2015 dealing with the urgency of the matter, a copy of which is attached hereto marked "**BSN41**". But because people were in different places we agreed on a round robin resolution. It had first to go through the Investment and Finance Committee ("**IFC**"). The IFC had its own round robin. They approved the emergency payment in order to secure coal supply. Since the IFC had recommended it, the Board approved the proposed round robin resolution and approved the issuing of the guarantee. A copy of the approved resolution is annexed hereto marked "**BSN42**".

13. **Conclusion**

13.1. I believe the statement gives a fair account, to the best of my knowledge or recollection, of the events that happened during my tenure at Eskom.

DEPONENT

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at 04 August on the _____ day of Umhlali Post office 2020, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

Samatra Bolwen

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COMMISSION OF INQUIRY INTO STATE CAPTURE

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DENTONS

REPORT

in respect of the investigation into the status of the business and challenges experienced by Eskom, instituted by the board of Eskom Holdings (SOC) Ltd in terms of a resolution passed on 11 March 2015

2 July 2015

(reflecting the state of the investigation as at 18 June 2015)

CONFIDENTIAL

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COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-0646

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INTRODUCTION

1 Background

1.1 This document constitutes the report ("Report") of Dentons South Africa in respect of the investigation ("Investigation") commissioned by Eskom Holdings SOC Limited ("Eskom") pursuant to a request for proposals ("RFP") issued on 8 April 2015 under number CORP3254R, in terms of a resolution adopted by the board ("Board") of directors of Eskom on 11 March 2015.

1.2 The Investigation commenced on 20 April 2015. A draft report was required to have been provided on 20 July 2015, with the final report to follow on 31 July 2015. Progress reports have been provided to Eskom at approximately two-weekly intervals in the form of activity reports and presentations.

1.3 On 11 June 2015, we were requested to prepare a detailed presentation to the Board, in addition to a draft report dealing with the state of the Investigation to date. We understand that this was due to the need to meet the deadlines for various other commitments that had been made by the Board in respect of the time frames of the Investigation. A detailed presentation to the Board was delivered on 25-26 June 2015, which was followed by our draft preliminary report. For these purposes, investigatory activities ceased shortly after 11 June 2015 and resources were redirected from the normal course of the Investigation to the development of preliminary findings, preparation of the above mentioned presentation, and preparation of a draft preliminary report.

1.4 Subsequent to our presentation to the Board, we were advised that (i) the Board was satisfied with the Investigation and the degree of detail covered in a very short period of time, (ii) the Investigation had provided the Board with the information it needed to take decisions as to how best to manage the affairs of Eskom, and (iii) no further investigatory activities were required.

1.5 A draft preliminary report was submitted to the Board on 3 July 2015. This was followed by an executive summary on 6 July 2015. A presentation was made to the Minister of Public Enterprises on 9 July 2015. We were then requested to prepare this Report as our last submission.

1.6 This Report represents a snapshot of the Investigation at the midpoint of the investigation period (about 18 June 2015) and is provided to Eskom on the specific request of Eskom. The findings, views, conclusions and recommendations set out in this Report are accordingly (i) subject to verification and testing, (ii) provided to Eskom as a record of the Investigation as at the midpoint of the investigation period, and (iii) do not constitute definitive findings, views, conclusions and recommendations.

2 Form of Contract

2.1 The form of contract between Dentons South Africa and Eskom relating to the Investigation is the Professional Services Contract ("PSC") forming part of the New Engineering Contract 3 ("NEC") suite of contracts, which is published by Thomas Telford Publishing on behalf of the Institution of Civil Engineers, United Kingdom.

2.2 As indicated by its name, the NEC suite of contracts is designed for engineering and construction projects. It was a condition of the RFP that bidders contract on the basis of the NEC suite.

2.3 NEC provides for various contract options. In the present case, the PSC was subject to option G, which is a task order based option. In effect, Dentons South Africa was only required to perform work in respect of the Investigation in accordance with task orders issued by Eskom.

2.4 In the circumstances, a letter of acceptance ("Letter of Acceptance") was executed by both parties on 17 April 2014. The PSC was executed by Dentons on 7 May 2015, and thereafter by Eskom on or about 25 May 2015.

2.5 A task order ("Task Order 1") was issued by Eskom to Dentons South Africa on 29 May 2015. A version countersigned by Dentons South Africa was provided to Eskom on 1 June 2015. It is important to note that Task Order 1 repeated the scope of work specified in the TOR and did not in any manner limit this scope of work or provide any degree of specificity in relation to the scope of work.

3 The Investigation

3.1 The RFP describes the Investigation as a "Forensic Fact Finding Enquiry ... into the status of the business and challenges experienced by Eskom". The RFP states further that on completion of the Investigation, the Board of Eskom is to be provided "with an independent view of reasons for the following:

3.1.1 The poor performance of Eskom's generation plant

3.1.2 Delays in bringing the new generation plant on-stream

3.1.3 High costs of primary energy

3.1.4 Eskom's financial challenges

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

3.1.6 Contract management, in particular cost escalations, frequent modifications, penalty costs and Eskom's capacity to manage contracts in general. *[sic]*

3.1.7 Security failures and accountability at Eskom as a Key National Point *[sic]*."

3.2 In addition to the RFP, we were provided (after execution of a confidentiality agreement) with certain terms of reference ("TOR"). A copy of the TOR is attached as Schedule 1.

3.3 The description of the Investigation in paragraph 3.1 is repeated in the TOR.

3.4 The TOR provides further that:

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

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

The Board has indicated that it is important for the information to be tested by an independent party without EXCO's involvement ("particularly those members of EXCO, whose areas would be directly impacted by the enquiry") so as to lend credence to the reports that the independent party would produce."

3.5 The items set out in paragraphs 3.1.1 to 3.1.7 are elaborated in greater detail in the TOR and also in Task Order 1. See in this regard paragraph 4 of the TOR (attached to this Report as Schedule 1), and paragraph 2 of Task Order 1 (attached to this Report as Schedule 2).

3.6 Similarly, the matters dealt with in paragraph 3.4 are also traversed in paragraph 2 of Task Order 1.

3.7 We note that the scope of work set out in the TOR and Task Order 1 is extremely broad. We were assured in the course of the pre-contract negotiations that the actual investigative work required would be as set out in the task orders to be issued post contract. Nonetheless, after our appointment it was apparent that the Investigation would be required to cover the entire scope of work, which was definitively conveyed to us when Task Order 1 was subsequently issued.

4 Purpose of the Investigation

4.1 The institution of the Investigation took place shortly after the highly publicised suspension of four of Eskom's executives ("Suspended Executives").

4.2 The TOR refers to the above mentioned suspensions only obliquely, stating in respect of the Investigation "that it is important for the information to be tested by an independent party without EXCO's involvement ("particularly those members of EXCO, whose areas would be directly impacted by the enquiry" *[sic]*) so as to lend credence to the reports that the independent party would produce".

4.3 The written material setting out the scope of the Investigation never contemplated the Investigation as being one that was directed specifically at the conduct of the Suspended Executives.

4.4 The timing of the Investigation led to speculation in certain circles that it was the conduct of the Suspended Executives that was being investigated.

4.5 In our meetings with the Board and Audit & Risk Committee ("ARC") of the Board, it was confirmed that the Investigation was not directed at the Suspended Executives and that the

Board was dealing with the Suspended Executives in accordance with a separate methodology.

4.6 The TOR and Task Order 1 state expressly that the purpose of the Investigation was to obtain an independent view on the credibility and correctness of the reports of Eskom's executive committee ("EXCO") to the Board. This was further qualified with reference to the matters set out in the scope of work sections of the TOR and Task Order 1.

4.7 The minutes of the meeting of the Board on 31 March 2015 authorising the Investigation records as follows:

> "The Terms of Reference were based on the audit. ... Members were generally comfortable with the Terms of Reference in that they adequately addressed all the issues the Board wanted to be dealt with."

4.8 The purpose of the Investigation is accordingly to develop information that would serve to determine the credibility of EXCO's reporting to the Board with reference to the matters specified in paragraph 4 of the TOR and paragraph 2 of Task Order 1.

4.9 The TOR do not require investigation of misconduct of any specific individuals. Accordingly, no recommendations are made in respect of action to be taken to deal with misconduct by any specific individuals.

5 Methodology

5.1 Task Order 1 prescribes the methodology to be applied by the Investigation in the following terms:

> "Eskom's Terms of Reference prescribed the following methodology for the Enquiry:
>
> 3.1 conducting interviews with employees and any other party/ies or person/s who may have information regarding the Enquiry; and
>
> 3.2 obtaining and analysing, inter alia, minutes, letters, written reports, e-mails, and also determine the bona fides of the allegations and questions and evidence raised by employees or any other persons interviewed in accordance with the above.
>
> Shortly following commencement of the Enquiry, the Dentons team will engage with the Audit and Risk Committee ("ARC") to discuss the details of the Scope of Work and methodology and to discuss the logistical arrangements for collection of data, review of documents, points of interface with Eskom, engagement with Eskom staff, reporting, etc. Dentons will thereafter prepare a preliminary list of documents and other data/information as well as a list of meetings/interviews that that are required for the Enquiry. It is expected that the data required will comprise, inter alia, minutes of Board and EXCO meetings including supporting information, reports, letters, emails. Interviews will be conducted with Eskom staff and, where deemed necessary for the purposes of the Enquiry, non-Eskom staff.
>
> The investigation will be conducted in two phases:
>
> **Phase 1: Review of available information**

In this phase, the Dentons team will conduct reviews of the available documentary information and interviews to obtain an understanding of the information that has been provided to the Board on the key issues identified under the Scope of Work. This phase will entail review of a large volume of information, a key intent would be to distil and extract from these documents those aspects that are most pertinent to addressing the Scope of Work and will be used for the more detailed assessment to be conducted in Phase 2.

Phase 2: Detailed Assessment

In this phase, the Dentons team will conduct assessment of the credibility and completeness of the information that has been provided to the Board on the key issues identified under the Scope of Work. This may require review of additional information such as more detailed reports as well as further interviews to fully address the issues identified under the Scope of Work.

The review of available information and the detailed assessment will be at a level which can be reasonably expected to be conducted within the time frame of Task Order 1. Although, specialist studies will not be conducted under Task Order 1, the verification of certain matters may require additional studies of a specialist nature that may fall outside the methodology set out in Eskom's Terms of Reference. Any such studies will be discussed and agreed between Eskom and Dentons as part of new task orders."

5.2 In effect, the methodology of the Investigation was limited to (i) interviewing employees of Eskom and also other persons, and (ii) review of documents.

5.3 The prescribed methodology excluded specialist and technical investigations and certain types of investigations that would ordinarily be included in the scope of forensics work.

5.4 The limitations of the above mentioned methodology was recognised by the Board, and this led ultimately to an extension of the methodology to include site inspections. This extension was authorised by way of a resolution of the Board adopted at the time of our presentation to the Board on 27 May 2015. Any additional investigations would require authorisation by way of a new task order.

6 Team Structure

6.1 It is clear from the scope of work set out in paragraph 2 of Task Order 1 that the investigative team would be required to include specialists in engineering and finance. More specifically, paragraphs 2.1 to 2.3 involve a strong engineering component, whilst paragraph 2.4 is financial and accounting in nature.

6.2 The investigative team accordingly comprised of specialist engineering, finance and legal sub teams, co-chaired by the managing director of Dentons South Africa, Noor Kapdi, and Adv Dumisa Ntsebeza SC.

6.3 The investigative team was further divided into a core team, three primary working teams, and four further sub teams.

6.4 The three primary working teams were allocated the following tasks:

6.4.1 engineering team – investigation of the matters set out in paragraphs 2.1, 2.2 and 2.3 of Task Order 1;

6.4.2 finance team – investigation of the matters set out in paragraph 2.4 of Task Order 1;

6.4.3 legal team – investigation of the matters set out in paragraphs 2.5 to 2.7 of Task Order 1.

6.5 In addition, the following four sub teams were appointed:

6.5.1 coal team – investigation of coal supply and related contracts;

6.5.2 diesel team – investigation of diesel supply contracts;

6.5.3 business intelligence – gathering of business intelligence; and

6.5.4 document review team – review of (i) selected reports received by EXCO from the various Eskom divisions and business units, (ii) selected reports made by EXCO to the Board, and (iii) minutes of EXCO and Board meetings.

7 Period of the Investigation

7.1 The RFP provides that the Investigation is required to be concluded in a period of three months commencing no later than two days "after the signing of these terms of reference". The Letter of Acceptance was signed by both parties on 17 April 2015.

7.2 As indicated above the form of contract used by Eskom for the appointment of Dentons South Africa to conduct the Investigation is task order based. Work is required to be performed only in terms of a task order. Nonetheless, the Investigation formally commenced on 20 April 2015.

7.3 At the meeting of the Board on 31 March 2015, it was noted that the period of the Investigation could take up to 12 months.

7.4 The contractual three-month period for the Investigation was possible only (i) on the assumption of full cooperation by Eskom for the purposes of the Investigation, and (ii) on the basis of the specified purpose and prescribed methodology of the Investigation (see in this regard paragraphs 4 and 5).

7.5 In the circumstances, we were requested to prepare this Report reflecting the state of the Investigation as at the mid point of the investigation period on the basis that the Investigation had at that stage revealed sufficient information for the purposes of the Board.

8 Conduct of the Investigation

8.1 Eskom specifically requested that work on the Investigation commence on 20 April 2015 and that work proceed thereafter without delay.

8.2 The Investigation accordingly commenced formally on 20 April 2015 with a meeting between the Dentons core teams (being engineering, finance and legal) and ARC at Eskom's premises in Megawatt Park, Johannesburg. Certain preliminary steps were undertaken both on, and in the days before, 20 April 2015 to assemble the various teams and to develop a definitive understanding of the TOR.

8.3 Further meetings with ARC were held in Cape Town on 21 April 2015 (to discuss the scope of work in greater detail) and on 22 April 2015 (to discuss points of clarification in respect of the scope of work in the TOR).

8.4 An informal introductory meeting with the Board took place in Cape Town on 22 April 2015.

8.5 The above mentioned meetings were followed by initial scoping interviews on 24 April 2015 for the purposes of scoping the Eskom environment and understanding its divisional structure and reporting lines. These interviews were with key Eskom personnel from the following organisational areas:

8.5.1 Group Capital Division;

8.5.2 Primary Energy Division;

8.5.3 Human Resources;

8.5.4 Treasury;

8.5.5 Information Technology; and

8.5.6 Procurement.

8.6 An initial document request was made on 22 April 2015. This was followed by several other document requests as the Investigation progressed.

8.7 Interviews have been conducted with persons regarded by the investigative team as being sources of information relevant to the Investigation.

9 Limitations

9.1 Access to Documents

9.1.1 Certain documents were available only at Eskom's premises. For a period of several weeks, these documents were available only until 17h00 during business days.

9.1.2 Arrangements were put in place some weeks later to grant the document review team better access to these documents.

9.2 Access to Emails

9.2.1 Although the prescribed methodology requires review of emails, we were not provided with access to any emails.

9.2.2 The prescribed internal form for access to emails is titled "Eskom Forensic & Anti-Corruption Information Management (Employee E-Mail Records) Request". A duly completed and signed copy of this form in respect of specified data subjects was delivered by hand to Eskom on 28 May 2015. A copy is attached as Schedule 4.

9.3 Interviews with Suspended Employees

9.3.1 Interviews were requested with certain employees who were under suspension.

9.3.2 We were advised that these interviews could not be arranged due to the suspension of the employees in question. We were required to make direct contact with these employees for these purposes.

9.4 Interviews with Senior Management and Employees who have left the employ of Eskom

9.4.1 Interviews were conducted with several members of Eskom's senior management, including certain members of the EXCO and the Board. We had planned to interview all persons who had been members of EXCO or the Board over the last two years, but were unable to do so in the limited time leading up to the presentation of this Report.

9.4.2 Furthermore, we identified certain ex-employees as potentially being in possession of information relevant to the Investigation.

9.4.3 These ex-employees advised us that they had entered into confidentiality agreements with Eskom and would only discuss the affairs of Eskom with us if Eskom were to provide written consent to them doing so. We directed correspondence to Eskom on 23 June 2015 requesting that Eskom provide such written consent.

9.5 Conflict of Interests

9.5.1 Dentons South Africa represents Areva in respect of review and related appeal proceedings currently pending before the courts, in connection with the Koeberg steam generator upgrade.

9.5.2 We were accordingly precluded from investigating matters related to the above.

9.6 Methodology Limitations

9.6.1 The prescribed methodology for Task Order 1 limits the information sources for the Investigation to review of documents and interviews.

9.6.2 This limited the methods available to us to obtain, test and verify information.

10 Reporting

10.1 The following reports have previously been provided to Eskom:

10.1.1 activity report delivered on 8 May 2015;

10.1.2 activity report delivered on 27 May 2015; and

10.1.3 activity report delivered on 8 June 2015.

10.2 In addition three presentations have been made, as follows:

10.2.1 presentation to ARC on 14 May 2015;

10.2.2 presentation to the Board on 27 May 2015; and

10.2.3 presentation to the Board on 25-26 June 2015.

10.3 In view of the Board's request for a detailed presentation on 25 June 2015 followed by a preliminary report and then this Report, no activity reports were prepared for the period subsequent to 8 June 2015.

11 Structure of this Report

11.1 This Report comprises of seven chapters, dealing with the items contained in the scope of work set out in paragraph 2 of Task Order 1.

11.2 Additional material is provided in the schedules.

11.3 The assumptions and qualifications on which this Report is based are set out in Schedule 4.

11.4 A glossary is provided in Schedule 5.

COMMISSION OF INQUIRY INTO STATE CAPTURE

EXECUTIVE SUMMARY

An executive summary is provided as a separate document.

COMMISSION OF INQUIRY INTO STATE CAPTURE

CHAPTER 1: POOR PERFORMANCE OF THE GENERATION PLANT

1 Background

1.1 This Chapter deals with item 2.1 of the Scope of Work set out in Task Order 1.

1.2 Item 2.1 of Task Order 1 relates to the poor performance of Eskom's generation plant. Under this heading the following specific items are provided for:

1.2.1 "2.1.1 the state of the generation plant and the manner in which the fleet has been managed with reference to and in relation to best practice;

1.2.2 2.1.2 whether the underlying causes for the state of the fleet are known (in particular, the increase in the Unplanned Capability Loss Factor ("UCLF") and the actions taken by Eskom in response;

1.2.3 2.1.3 the application and impact of the strategies, tactics and plans to address the decline in the capacity of the fleet to ensure the security of supply over past twelve months;

1.2.4 2.1.4 the underlying reasons for load shedding by Eskom over the past two years;

1.2.5 2.1.5 the maintenance philosophy and regime implemented by Eskom over the past six months in its attempts to achieve the required UCLF;

1.2.6 2.1.6 whether the most recent reports on the state of the generation fleet have been prepared on a consistent basis with other reports in the last six months, and that the reports were credible in terms of validity, accuracy, completeness and timeliness of information;

1.2.7 2.1.7 the pricing of maintenance contracts commissioned by Eskom and the monitoring of performance of these contracts by Eskom."

1.3 In view of the limited timeframes in which this Report was required to be prepared, the contents of this Chapter require further corroboration and verification.

2 Brief historical overview

2.1 Eskom is South Africa's major electricity supplier and is wholly owned by the South African government. Eskom generates about 95% of electricity used in South Africa and about 40% of electricity consumed on the African continent. Eskom transmits and distributes electricity to its industrial, mining, commercial, agricultural and residential customers. Eskom also supplies electricity to municipalities who in turn distribute the electricity to end-users within their designated areas.

2.2 Eskom owns and operates 27 power stations in South Africa with a total nominal capacity of approximately 41 995 MW. Eskom's generating capacity comprises around 35 726 MW from coal-fired power stations, 1 860 MW from nuclear power, 2 409 MW from gas-fired power stations fuelled by diesel, 2 000 MW from hydro and pumped storage stations as well as 3 MW from a wind farm at Klipheuwel. Eskom's generation fleet is currently divided into 5 operational units, viz. Coal 1, Coal 2, Coal 3, Nuclear and Peaking each comprising the following power stations:

(a) Coal 1: Kendal, Kusile, Majuba, Matimba and Medupi power stations;

(b) Coal 2: Comprises Duvha, Kriel, Lethabo, Matla and Tutuka power stations;

(c) Coal 3: Arnot, Camden, Grootvlei, Hendrina and Komati power stations;

(d) Nuclear: Koeberg power station;and

(e) Peaking: Ankerlig, Gourikwa, Drakensberg, Palmiet, Van Der Kloof, Gariep, Port Rex and Acacia power stations.

2.3 Eskom purchases electricity from IPPs as well as from electricity generating facilities beyond the country's borders. The company also maintains more than 360 000 km of power lines and substations with a cumulative capacity of over 230 000 MVA.

2.4 In 2013/14 Eskom sold 217 903 GWh of electricity to approximately 800 municipalities, 3 000 industrial customers, 1 000 mining customers, 50 000 commercial customers, 84 000 agricultural customers and more than 5.1 million residential customers (Integrated Report 2013/14).

2.5 Eskom has embarked on a capital expansion programme and is currently constructing new power stations and major power lines to meet South Africa's growing energy demand.

3 State of the generation plant

3.1 In understanding the state of the generation plant, it is necessary to review the information that has been provided in the various Board and EXCO's submissions. The following documents were reviewed to determine the state of Eskom's generation fleet viz.:

3.1.1 "Generation Maintenance Philosophy and Winter Maintenance Schedule" presentation to EXCO, 20 May 2015;

3.1.2 "Generation Plant Status Update", presentation made to EXCO by Generation GE, 27 January 2015;

3.1.3 "Eskom - A Strategic Overview", PowerPoint presentation to Eskom Board, 31 March 2015, M. Rossouw;

3.1.4 "Generation Sustainability Strategy – History, Current Practices and Way Ahead", presentation to EXCO, 29 August 2014, M Rossouw;

3.1.5 "Generation UCLF Deep Dive", presentation made to EXCO Indaba, March 2014; and

3.1.6 "Sustaining the Integrity of the Generation Asset Base", presentation to Board Indaba, 30 October 2013.

3.2 These documents have also been supplemented with information gathered during interviews with Eskom executives. The available documentation reported the following, inter alia, with regard to the state of Eskom's generation fleet viz.:

3.2.1 The generation assets are aged;

3.2.2 The generation assets are being run exceptionally hard;

3.2.3 The generation assets are under-maintained; and

3.2.4 There is under-investment in the generation fleet.

3.3 An analysis of each of the above factors is covered in the paragraphs below.

3.4 Fleet age

3.4.1 The Generation Sustainability Strategy document from August 2014 cited the following information with respect to the age of Eskom's generation assets viz.:

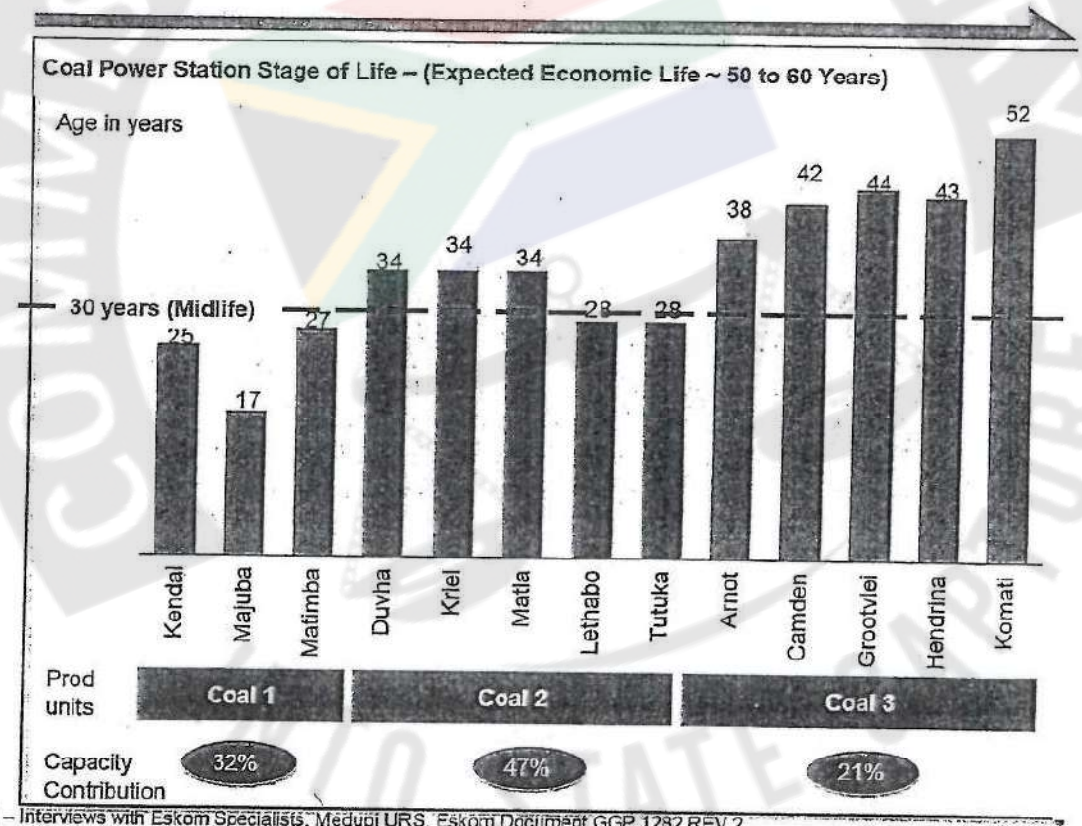
(a) 60% of Eskom's power stations are older than the mid-life of 30 years (Figure 1);

(b) 70% (9 out of 13) of Eskom power stations have exceeded their boiler design life (Figure 2); and

(c) 60% (8 out of 13) of Eskom's power stations have exceeded their turbine design life (Figure 3).

3.4.2 The Board submission in 2015 also indicated that 80% of the coal fleet capacity is in urgent need of major equipment restoration and replacement in order to achieve a technical life of 60 years.

Figure 1: Eskom Coal Fleet Age1



1 – Interviews with Eskom Specialists, Medupi URS, Eskom Document GGP 1282 REV.2
SOURCE: GPSS, Team analysis

Figure 2: Eskom Fleet Boiler Life

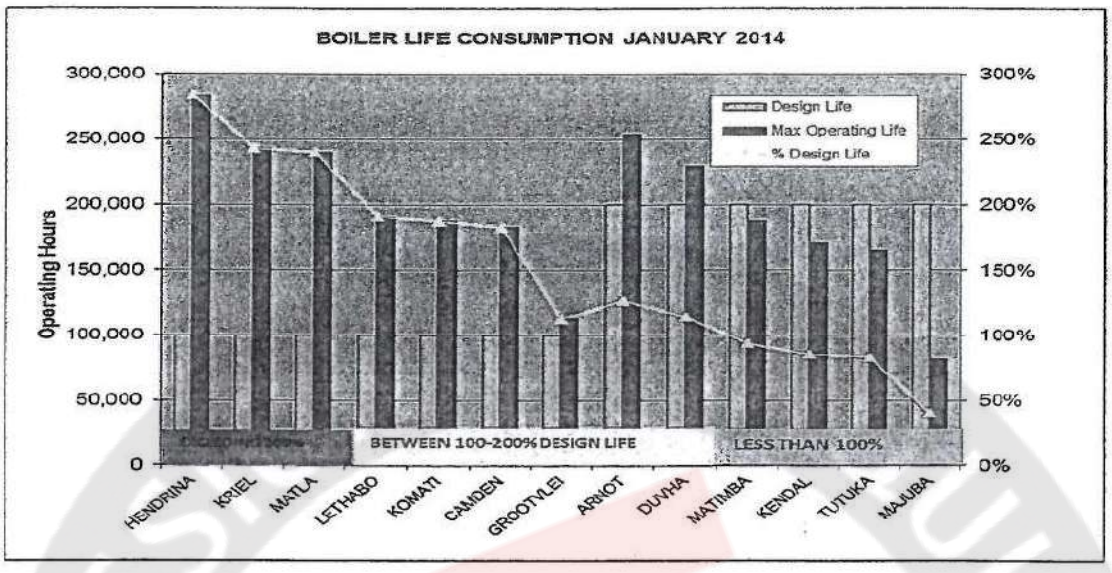
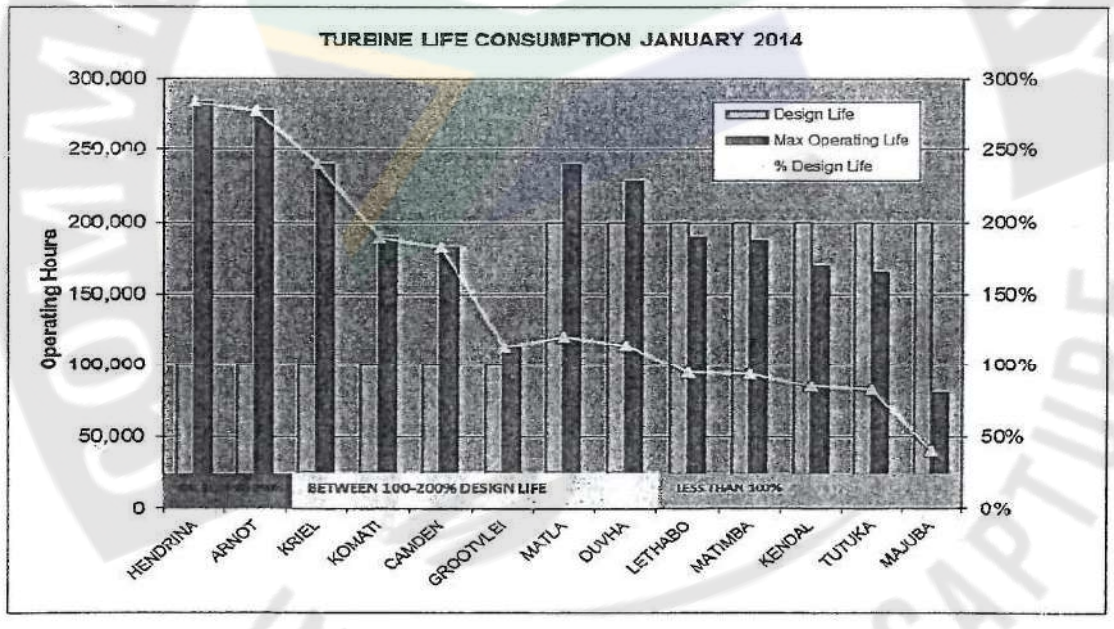


Figure 3: Eskom Fleet Turbine Life



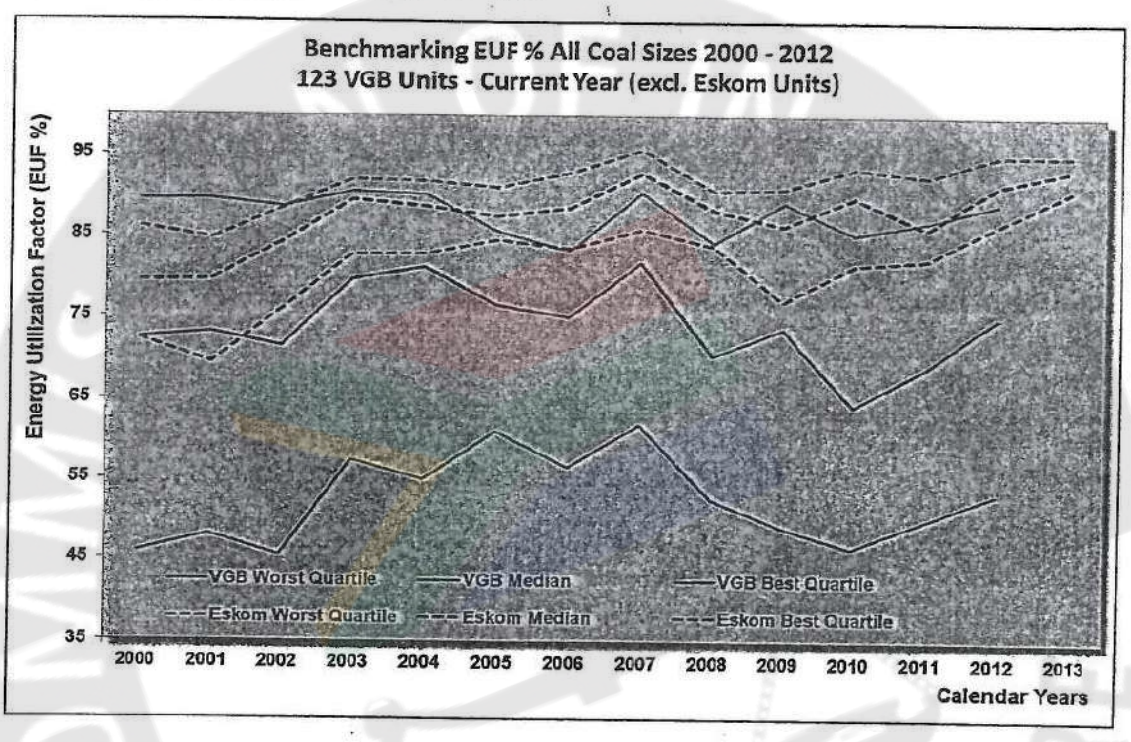
3.4.3 The age distribution of Eskom's coal fleet is not dissimilar to that of international utilities as 70% of generation plant in Europe has been in operation for more than 30 years. The average age of the coal fleet in the USA is greater than 40 years with a significant proportion of the total generation capacity in the USA being in excess of 50 years old. ("Outage Movement – Independent Assessment by VGB PowerTech - Summary Report" Dr F Bauer, Dr H Urban & A Boser, 12 July 2012). Thus, the age of Eskom's coal fleet does not on its own explain the state of the fleet and the challenges faced by Eskom to attain acceptable levels of plant performance.

3.5 Plant capacity factors

3.5.1 The Generation Sustainability Strategy document from August 2014 cited information indicating that Eskom's generation plant is being operated exceptionally hard when benchmarked against international utilities. This is shown graphically in Figure 4 below.

3.5.2 The above mentioned document also indicates that the increase in the frequency of Emergency Level 1 (EL1) incidents has resulted in units being operated with boiler tube leaks and chemistry excursions in an attempt to ensure that the demand/supply balance is achieved and load shedding is minimised.

Figure 4: Eskom Generation Plant Utilisation/Load Factors



3.5.3 Prior to 1997, Eskom plant operated at relatively low energy utilisation factors (EUF). However, from the onset of Eskom's 90:7:3 operational strategy in the mid-90s, the Eskom plant operated at higher EUFs. After 2012, the plant operated at very high EUFs with the median being in excess of 90%.

3.6 Plant maintenance

3.6.1 The Generation Sustainability Strategy document cited information indicating that Eskom has reduced planned maintenance (reflected in the Planned Capability Loss Factor (PCLF)) in order to maintain "Keeping the Lights On (KLO)" strategy. It should be noted that the historical 90:7:3 strategy applied by Eskom should also be factored in the assessment of the fleet performance as international practice typically targets values in the order of 85:10:5.

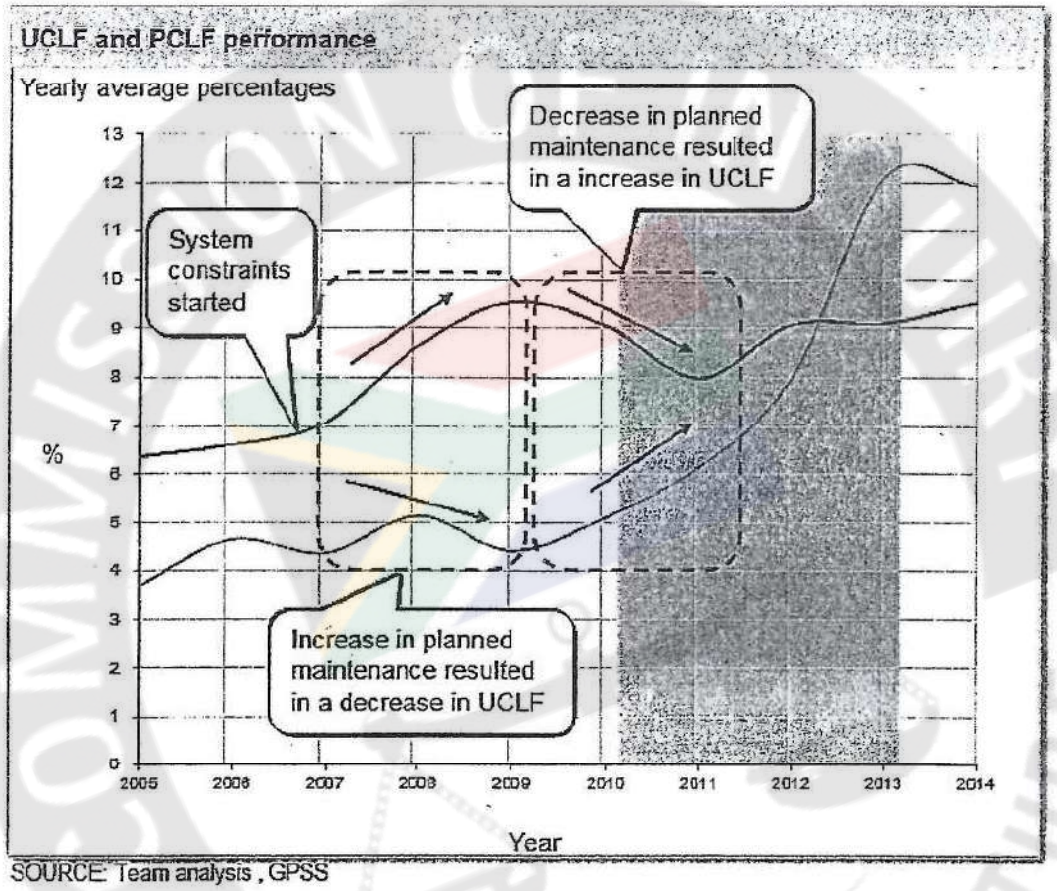
3.6.2 The historically low PCLF coupled with the KLO strategy and factors such as coal quality and high utilisation factors have led to a sharp increase in Unplanned Capability Loss Factor (UCLF) from 2009. This is shown graphically in Figure 5 below. The reduction of proactive maintenance due to the deferral of outages has led to more corrective maintenance being

required. This has led to a situation where a substantial outage backlog (44% average across the fleet) has been accumulated.

3.6.3 The available documentation also states that online maintenance has been compromised and this has been attributed to the increased frequency of EL1 notifications.

3.6.4 The lack of maintenance is a significant contributory factor to the current poor plant performance.

Figure 5: UCLF & PCLF Performance 2005 – 2014



SOURCE: Team analysis , GPSS

3.7 Plant under-investment

3.7.1 The Generation Sustainability Strategy document indicates that the Eskom generation fleet has experienced 15 years of under-investment in capital expenditure (capex) which is largely the result of cost cutting due to financial and capacity constraints.

3.7.2 These past decisions de-prioritised (in respect of both time and capital) allowances for maintenance.

3.7.3 The VGB PowerTech analysis regarding the Eskom capex investment in relation to the required investment as per international best practice is shown graphically in Figure 6 below.

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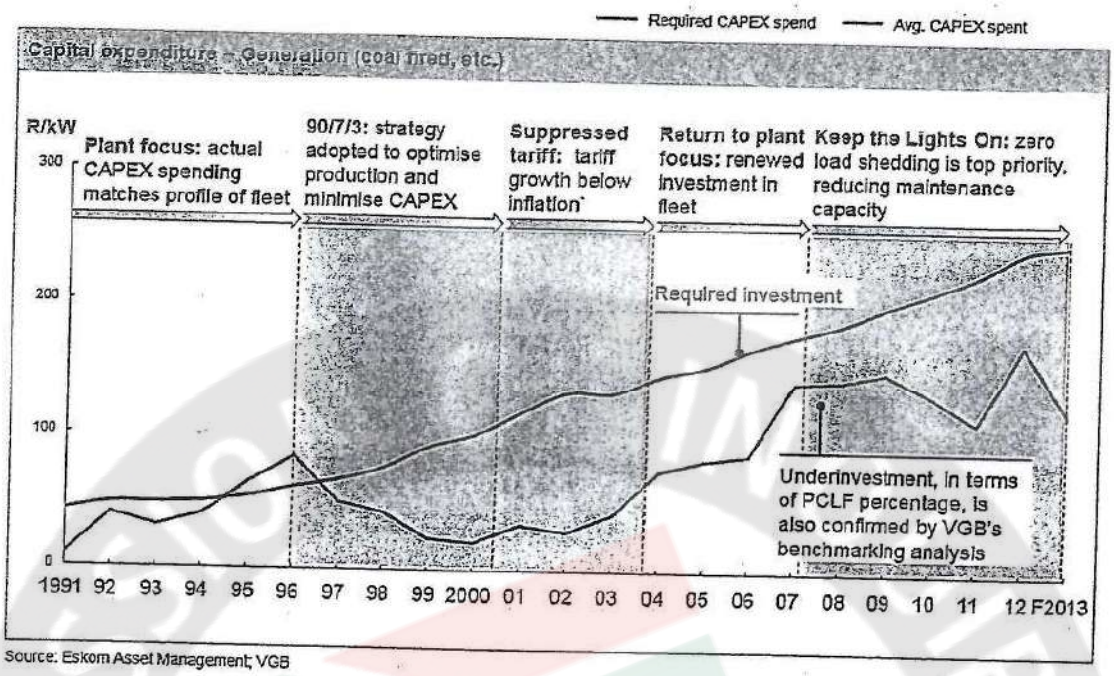
Figure 6: Eskom Capex Analysis 1991 – 2013



Source: Eskom Asset Management; VGB

3.7.4 The analysis of this information indicates that there was significant under-investment in refurbishment capex versus best practice for an extended period of time (from the mid 1990's). The under-investment at plant mid-life age is also critical and significantly contributes to the current poor plant performance.

3.8 Impact of the four factors

3.8.1 The combined impact of the four factors covered in paragraphs 3.4 to 3.7 has contributed significantly to the marked deterioration in the UCLF of the fleet from the years 2009 to 2013. This is shown graphically in Figure 7, which indicates an increasing trend in UCLF from 2009 to 2013.

3.8.2 Figure 8 shows the UCLF percentages and corresponding EAF percentages for the period 2010 to 2014. As planned maintenance has remained fairly constant, the increase in UCLF has had a significant impact on the EAF.

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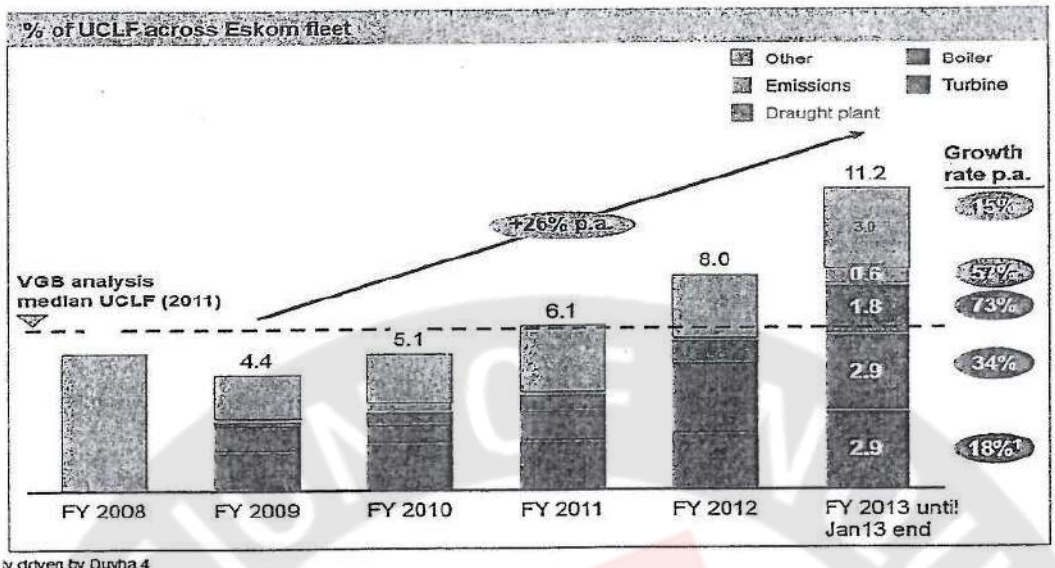


y driven by Duvha 4
E: GPSS (Event Data); VGB benchmarking; PSM interviews

Figure 7: UCLF Percentages - Eskom Fleet 2009 – 2013

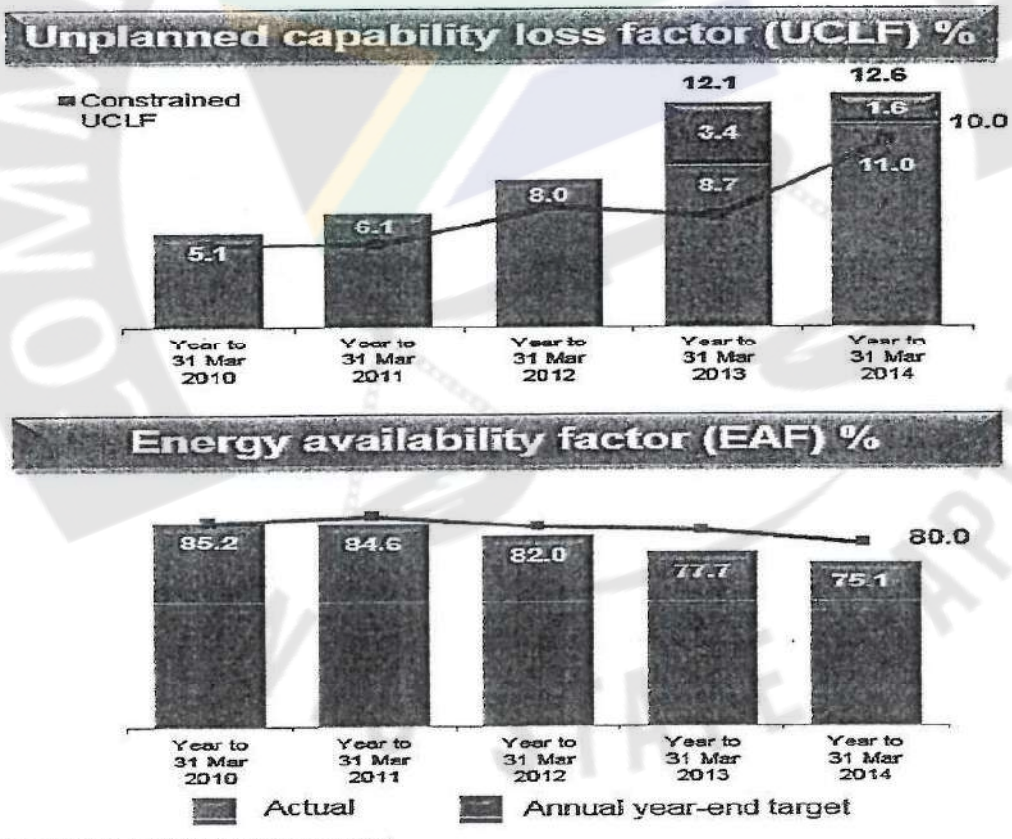
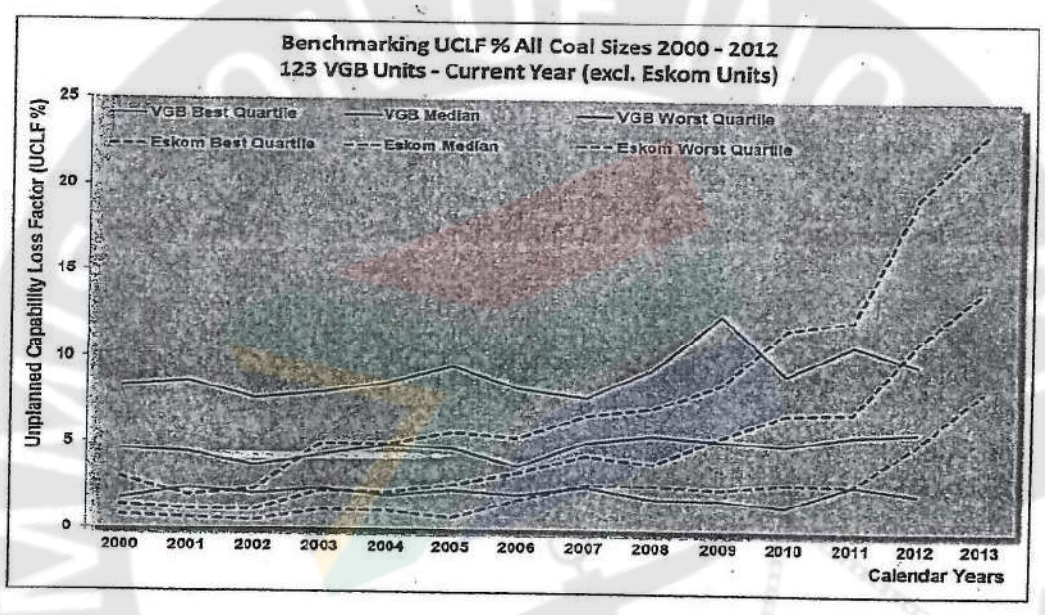


Figure 8: Eskom Plant UCLF & EAF - 2010-2014

3.8.3 Figure 9 below sets out a comparison between the Eskom UCLF figures and international recorded UCLF figures for the period 2000 to 2013. It can be seen that the Eskom UCLF for all quartiles shows a generally increasing trend from 2005. However, from 2011 onwards the Eskom UCLF increased sharply with the worst quartile UCLF exceeding 20% and the median exceeding 11% from 2012 onwards. The international UCLF median remained below 5% over the period 2000-2013, despite the plant ages being similar to those of the Eskom coal fleet.

3.8.4 The analysis indicates that the Eskom plant performance (as indicated by the recorded UCLF), has deteriorated materially since 2005 and there has been a rapid deterioration since 2011.

Figure 9: UCLF Benchmarking



4 Underlying causes of the state of the generation fleet

4.1 The poor performance of Eskom's coal generation fleet from 2009 until the present is evident in the increase in UCLF and the corresponding decrease in EAF figures. Eskom has investigated these issues and several reports and presentations have been made at the EXCO and Board levels in respect of these issues.

4.2 In these reports and presentations to EXCO and the Board, the underlying causes of the increase in the UCLF figures have been attributed primarily to the following factors viz.:

4.2.1 increase in plant age;

4.2.2 higher plant EAF figures (plant being run harder);

4.2.3 plant deterioration due to maintenance being deferred; and

4.2.4 planning and execution of the outage programme.

4.3 Eskom's aged assets

4.3.1 The ageing coal generation fleet has resulted in the following impacts:

(a) increase in unplanned failures;

(b) increase in mechanical failures;

(c) increased duration of outages (due to increased scope of work during the outages) increases pressure on the rest of the grid to maintain security of supply;

(d) increased costs due to increased scope of outage work; and

(e) specialist engineering being required to complete the required scope of work during outages.

4.3.2 As indicated in paragraph 3.4.3 and paragraph 3.8, the age of the Eskom fleet is not dissimilar to that of utilities in Europe and the USA, but the performance of the Eskom fleet has been poor compared to these utilities. While the age of the Eskom coal fleet is expected to contribute to the deterioration of plant performance, it cannot be said to be the major factor for poor plant performance. Instead, the manner in which the plant has been operated, maintained and refurbished has played a great role in the current poor plant performance.

4.4 Higher plant utilisation

4.4.1 Eskom's plant has been operated harder than other international benchmark utilities (see Figure 4) mainly due operational strategies implemented by Eskom to cut costs (e.g. the 90:70:3 strategy and two-shifting operations for some plants) and to reduce the amount of load shedding.

4.4.2 The frequency of Emergency Level 1 (EL1) incidents has increased sharply with UCLF performance deterioration. This is related to the short term decisions being made (e.g. KLO strategy) to ensure that demand is met.

4.5 Maintenance deferral

4.5.1 With the onset of low reserve margins and system constraints in 2007, the reduced level of planned maintenance resulted in an increase in UCLF. Eskom further reduced PCLF in order to 'keep the lights on'. These and other factors (coal quality, high utilisation/load factors) resulted in a sharp increase in UCLF. Over the MYPD2 period the UCLF doubled while PCLF was reduced. The reduction in proactive maintenance due to outage deferment and rollover has led to Eskom having to implement higher levels of corrective maintenance.

4.5.2 The deterioration of the coal fleet (as evident in the high UCLF figures in Figure 9) can largely be attributed to the lack of maintenance, the deferral of maintenance outages and the quality of the maintenance being performed. This has been further exacerbated by the deferral of philosophy based outages and a decrease in on-line maintenance.

4.5.3 The following information regarding the maintenance and outage regime has been documented in the information submitted to the Board in 2014 viz.:

(a) 44% of philosophy based outages across the fleet were deferred to March 2014;

(b) 40 out of 90 outages are overdue (based on the philosophy maintenance requirements) resulting in a backlog of 39%;

(c) It will take a period of 3-6 years to clear the current backlog of outages, provided that the philosophy based maintenance requirements are adhered to;

(d) Deferral of maintenance outages compounds the negative impact on performance as more failures occur due to the deferral of the outages, resulting in greater levels of corrective maintenance being required with increased cost and longer periods required for such maintenance;

(e) Coal 3 plants (Arnot, Camden, Grootvlei, Hendrina, Komati) have the highest backlog of outages primarily due to Coal 1 and 2 stations being given priority for maintenance; and

(f) Online maintenance was also compromised largely due to EL1 notifications.

4.6 Outage planning and execution

4.6.1 Achieving effective maintenance outage execution remains a very significant challenge for Eskom. In the FY 2015, only three out of seven maintenance outages were executed on time – this translates to only 43% of maintenance outages returning on time.

4.6.2 Eskom has identified the following primary reasons for maintenance outages not returning on time, viz.

(a) lack of experienced skills and resources;

(b) insufficient pre-project planning;

(c) insufficient scope management;

(d) sub-optimal spares management; and

(e) productivity management.

4.6.3 The above issues have also resulted in additional costs for maintenance due to the following factors:

(a) overtime – doing work after evening peak;

(b) standing time – outage postponement;

(c) emergency orders – for unplanned plant failures;

(d) high tolerance for defects – defects arising on the plant are tolerated for longer periods to ensure that plant is available in the week;

(e) weekend maintenance – overtime rates; and

(f) high incidence of wet coal during the rainy season – additional oil burner costs.

4.6.4 Outage planning, scoping and execution are further hampered by the structure of the operating groups within Eskom. Prior to the re-organisation of Eskom (2011 - 2012), the Outage Management and Generation Engineering divisions were housed within the Generation group. The business operating model implemented since 2011 created many interfaces within Eskom on the group level for outage planning execution and management.

For the execution of a successful unit outage, alignment is required between the various Technology and Commercial divisions (Outage Management, Engineering and Procurement) and the end-customer at the specific power plants within the Generation Group. There are strong indications that this structure is not effective as the plant owner, who is accountable for the performance of the power plant, does not have total ownership in relation to the overall outage process. Interviews with Eskom Generation Group executives indicate that the management of outage process requires a complex delegation of authority which hampers the outage planning and execution. It is important to note that the significant increase in the UCLF figures coincides with the change in the Eskom business model (specifically in relation to the outage management process) during the 2011-2012 period. This correlation strongly suggests that the restructuring that was implemented by Eskom during the 2011/2012 period may have had a significant negative impact on the effective management of maintenance outages resulting in the recent sharp increase in the UCLF.

4.7 Historical impacts of plant operation

4.7.1 To uphold the KLO strategy, short term decisions were made by Eskom that negatively impacted on the long-term sustainability of the generation plant. Historically, this would include the impacts of maximising plant availability during the critical period in 2010 prior to and including the FIFA 2010 World Cup. The knock-on effects of deferring maintenance may not be immediately materialised and often manifest themselves later in the generation planning/production cycle. As an example, the available documentation indicates that in January 2013, five previous maintenance outages were not executed as scheduled as sufficient generation capacity was not available on the grid. The lack of generation reserves has also resulted in units operating outside limits of good practice. As an example, in June 2014, 46 out of 79 coal units were operating outside of good practice.

4.7.2 In order to address the surplus capacity issues in the late 1980s to early 1990s, certain Eskom plants were operated in a two-shifting mode. These included the Majuba and Tutuka stations, which were designed to operate as base load stations and not as two-shifting stations. During maintenance outages of these plants, excessive deterioration and additional defects are being identified beyond what would be expected for plants at their current ages. It now appears that the thermal stresses experienced during the two-shifting operation (implemented by Eskom more than 25-30 years ago) may have led to accelerated deterioration of these plants, which is manifesting itself in these plants today.

5 Strategies, tactics and plans to address fleet performance decline

5.1 Eskom has initiated various plans to address the deterioration in fleet performance. The following strategies have been put in place to address the fleet performance issues.

5.2 Eskom Emergency Recovery Team

5.2.1 The EXCO Emergency Recovery team was formed in 2013 in order to develop a recovery plan for achieving a sustainable generation business. The recovery plan focussed on the following six streams in order to achieve their objectives:

(a) Communication and stakeholder engagement;

(b) Sustainable generation practices (fixing plant, building processes and developing skills in generation; building outage execution capability; and resource mobilisation);

(c) KLO levers;

(d) System Operating Regime and Response;

(e) Medium Term Outlook; and

(f) Funding Requirements.

5.2.2 The recovery team has made positive progress in terms of attempting to balance the maintenance scheduling versus the system demand issues.

5.3 Technical Governance Committee Oversight

5.3.1 The Technical Governance Committee was formed to ensure that generation outage plans are incorporated and balanced with regard to the system demand and generation outlook. The oversight from this committee ensures that outages are firstly approved from a technical basis to ensure plant health is prioritised.

5.3.2 The technical oversight has been successful in prioritising philosophy based outages to ensure that the future plant health is maintained.

5.4 Eskom 80:10:10 Plan (Generation Sustainability Strategy)

5.4.1 The Generation Sustainability Strategy was developed in 2013 to operate and maintain the generation fleet with the aim of achieving sustainability of the generation business through the execution of the Generation 80:10:10 strategy.

5.4.2 The focus was to stabilise the fleet performance with regard to EAF, UCLF and PCLF figures over 18 months and to achieve a sustainable business over 72 months. The strategy looked at people, plant, processes and systems in order to address the fleet performance.

5.5 Impacts of the strategies to improve fleet performance

5.5.1 In 2013, Eskom conducted an analysis to forecast the future UCLF figures based on the implementation of various planned maintenance strategies. The results of the analysis are shown in Figure 10.

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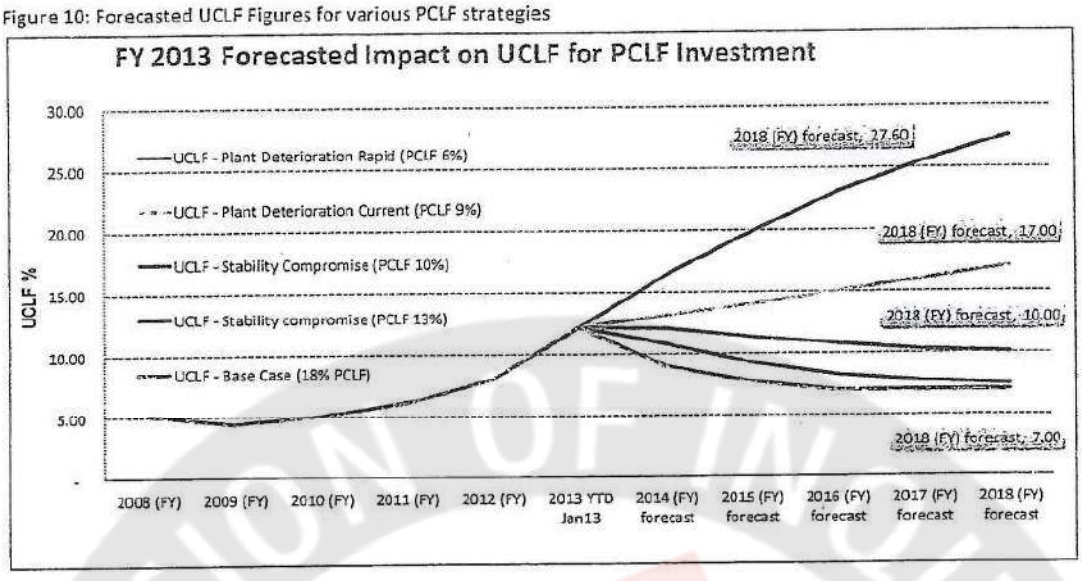
Figure 10: Forecasted UCLF Figures for various PCLF strategies

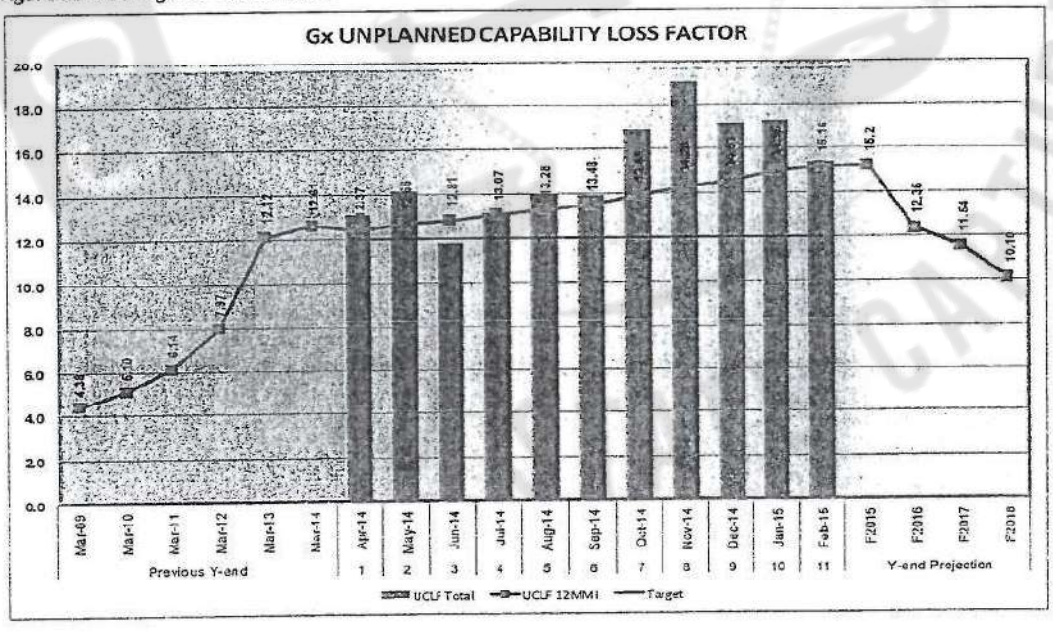


5.5.2 The above forecast indicates that if the maintenance levels based on PCLF of 6% was followed, this would result in a sharp increase in the UCLF with UCLF levels exceeding 15% in 2014 and 20% in 2015.

5.5.3 Eskom made a decision to implement the 80:10:10 maintenance strategy in 2014 and to prioritise philosophy based maintenance. This decision aligns with the stability compromise approach with a PCLF level of 10%.

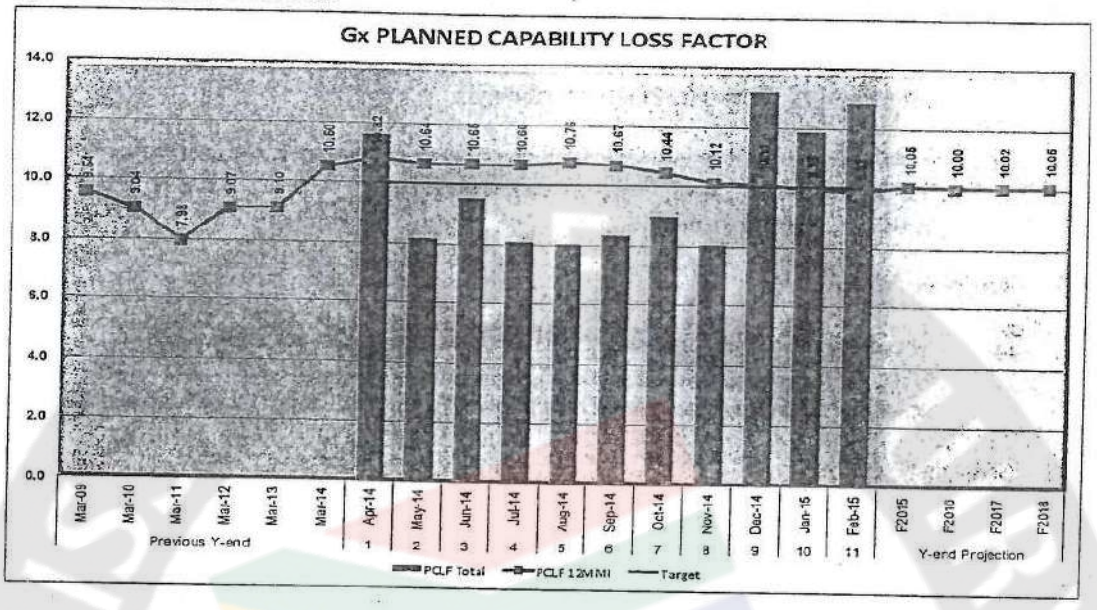
5.5.4 The current UCLF performance of the fleet is shown in Figure 11. It can be seen that the adoption of a 10% planned maintenance strategy and a focus on philosophy based maintenance strategy had a positive impact on the UCLF rates. The sharp increase appears to have been subsided, but the UCLF levels are still above the 10% target.

Figure 11: UCLF Figures - March 2015



5.5.5 Figure 12 below presents the actual PCLF levels for the Eskom fleet up to March 2015. The results indicate that Eskom did not achieve the target PCLF of 10% during certain periods of the 2014 financial year. This may be due to system capacity constraints which do not allow the "space" for the planned maintenance works.

Figure 12: PCLF Figures - March 2015



5.5.6 Underlying reasons for load shedding

5.6 Load shedding is the reduction of demand to achieve a balance between available generation and demand. If demand significantly exceeds available generation and reduction in demand is not achieved, the system will frequency drop, which may ultimately result in a system black-out.

5.7 It is clear that there was a long lead up to the generation shortages which has led to load shedding in 2014 and 2015.

5.8 The problem Eskom faces is a steady decline in the performance and availability of its coal fleet. This further leads to a lack of 'space' to execute the maintenance required to restore the condition of the coal-fired power stations so as to achieve acceptable operating performance. This has been compounded by the delays in bringing on new capacity such as Medupi, Kusile and Ingula.

5.9 The following issues are the primary underlying causes of load shedding:

5.9.1 KLO and WC2010

(a) Maintenance was deferred to keep plants running which negatively impacted UCLF levels; and

(b) The high UCLF levels has contributed to a supply/demand imbalance.

5.9.2 Reserve Margin

(a) A heathy reserve margin should be maintained to achieve system security.

(b) As a result of poor generation performance and delays in establishing new generation capacity, Eskom's reserve margin has been unacceptably low. With such low levels of reserve margin, unplanned failures of generating units and significant maintenance outages has necessitated load shedding.

5.9.3 Maintenance Backlog

(a) The 80:10:10 approach has been adopted in order to provide a framework for adherence to philosophy based maintenance.

(b) Poor execution of planned maintenance outages will negatively impact the system generation availability and supply/demand balance when the system is "stressed" and under high UCLF conditions.

5.9.4 New Build Plant delays

(a) The delays in bringing new plant online has contributed significantly to the shortcomings in forecasting available generation and has resulted in increased levels of load shedding and/or greater reliance on the OCGTs for mitigating load shedding.

5.9.5 Coal Quality Impact

(a) Reduced coal quality results in partial load losses which will further impact the system generation and load balance.

5.9.6 UCLF Impact

(a) High UCLF figures primarily impacts the EAF levels. This means that the system generation and load imbalance is negatively affected.

(b) Load shedding is the last resort once all the demand side initiatives are exhausted.

6 Maintenance philosophies and regimes implemented

6.1 Eskom's maintenance philosophies are covered in the Generation Sustainability document developed in 2013-2104. It has been further refined in the Generation Maintenance Philosophy document presented to EXCO in January 2015.

6.2 The following issues must be considered when looking at the approach for Eskom's generation fleet:

6.2.1 Proactive maintenance;

6.2.2 Quality of maintenance (Internal/External);

6.2.3 Creating space for maintenance;

6.2.4 Capacity relating to workshop space as well as specialty skills;

6.2.5 Capital (Midlife refurbishment; outage spend and breakdowns);

6.2.6 Operating and maintenance skills (Training, coaching and mentoring); and

6.2.7 Performance based contracting (Internal/External).

7 Consistency of reporting on the state of the fleet

7.1 The consistency of reporting on the state of fleet has to be tracked from the sub-committees reporting to EXCO, reporting within EXCO itself and reporting to the Board sub-committees and the Board itself.

7.2 The following paragraphs cover the consistency of the reporting with regard to the state of the fleet.

7.3 State of the plant with respect to UCLF

7.3.1 The following provide a timeline of key reporting done with respect to the UCLF statistics within Eskom. The items below have been tracked from the submissions to EXCO and selected submissions to the Board. The validity, accuracy, completeness and timeliness of this information will be assessed once the full documentation review is completed.

(a) September 2012 – VGB report on Eskom Outage movement is issued;

(b) ARC 27 November 2012 – ARC Committee Report to Board notes the VGB Report where "further postponement of outages will negatively affect plant availability" is stated;

(c) MANCOM Meeting15 January 2013 – Under the Generation Plant Status agenda item, the UCLF figures for Dec and Jan were reported and it was stated that no significant future improvements were foreseen. The "Sustainability of Generation Assets Management" was also presented in the meeting. This document develops the strategy based on additional work done on the VGB report. The MANCOM meeting also state that the plant availability issues affecting system security should be escalated to Board;

(d) EXCO 22 April 2013 – MANCOM minutes acknowledged in EXCO meeting with respect Generation Sustainability;

(e) Board April 2013 – The strategy and document "Towards a Sustainable Generation Business" and the implications for balancing supply and demand is approved by the Board including the 80:10:10 strategy;

(f) Board October 2013 – Board resolution of Generation Sustainability Strategy gives continued support and resolves "Generation will need to be prioritised from a funding and resource perspective";

(g) EXCO December 2013 – EETT reports UCLF figures of 4 500 MW to 6 500 MW to EXCO;

(h) EXCO March 2014 – UCLF Deep Dive investigation reported to EXCO;

(i) EXCO March 2014 - UCLF figures and impacts from KLO reported to EXCO;

(j) EXCO 6 May 2014 – Generation Recovery and maintenance plan reported to EXCO in accordance with Generation Sustainability Strategy;

(k) EXCO 26 May 2014 – Eskom Emergency Recovery Task Team reports to EXCO on UCLF impacts;

(l) EXCO July 2014 – Generation Sustainability Strategy update deferred to next EXCO meeting;

(m) EXCO 29 August 2014 - Generation Sustainability Strategy update presented; and

(n) Board 31 March 2015 - Generation Sustainability Strategy update presented.

7.3.2 The review of the information flow from EXCO and lower committees to the Board and its subcommittees indicate that generally the flow of information has been consistent.

7.3.3 While the underlying data has generally been consistently reported within the business, the analysis of the reasons for the poor performance of the Eskom coal fleet has tended to be slanted towards factors seemingly outside the control of the incumbent management (such as age of the plant, historical factors, funding constraints, government policies and directive) and not sufficiently on those factors which should be well within management control.

7.3.4 The information presented to the Board and its subcommittees is often very detailed and technical. This does not empower the Board in the decision making process. We would have expected to see suitable summaries and recommendations accompanying the detailed technical information.

7.3.5 There may be questions about the timeliness of the information provided to the Board and its subcommittees to allow pro-active decisions to be made. This is further complicated by the large volume of information contained in the Board packs which has led to decisions being deferred to later meetings due to time issues.

7.4 Appraisal of Maintenance Contract Pricing

7.4.1 Task Order 1 refers to the appraisal of the pricing of the maintenance contracts commissioned by Eskom and the monitoring of the performance of these contracts.

7.4.2 Eskom currently has several contracts for the provision of maintenance services for the power stations. The services are provided by the following companies viz.:

(a) Howden Africa – Technical support and maintenance services on air heaters and draught plant fans and manufacture, supply and delivery of air heater and draught fan spares. The contracts have a value of R1.86bn & R718m for the year 2015;

(b) Alstom Power Services – technical support, minor maintenance repairs, enhancement and complimentary services for generators and auxiliaries at Lethabo and Matla power stations. The contract has a value of R 164m for the years 2013 to 2015;

(c) Rotek Industries – Maintenance services on turbines and associated plant at Eskom generation power stations (Arnot, Duvha Camden, Grootvlei, Hendrina, Kendal, Koeberg, Komati, Kriel, Lethabo, Majuba, Matimba, Matla, Tutuka, Peaking). The contract has a value of R25bn for the years 2015-2019;

(d) Steinmuller Africa – Maintenance, repair and complimentary services for boiler plant and high pressure pipework at 13 Eskom power stations;

(e) John Thompson (a division of Actom) – Maintenance, repair and complimentary services for boiler plant and high pressure pipework at 13 Eskom power stations;

(f) Babcock Ntuthuko Engineering – Maintenance, repair and complimentary services for boiler plant and high pressure pipework at 13 Eskom power stations;

(g) Sulzer pumps – Maintenance, refurbishment, monitoring services and supply of OEM spares on Generation's boiler feed pumps and condensate extraction pumps. The contract has a value of R645m over a five year period; and

(h) Siemens – Spares, tooling, component repair, unit overhaul and technical training for Ankerlig and Gourikwa OCGTs. The contract has a value of R3bn up till the year 2018.

7.4.3 Eskom Group Technology and Commercial has also submitted a Rotek capacitation strategy. The capacitation of Rotek would take place via a licence agreement with a proposed 12 year term with Alstom. Alstom would, during that period, provide to Rotek and Eskom access to technology, procedures, documentation and training related to the maintenance and repair of Alstom steam turbines and generators operated by Eskom. The intention is that this would enable Eskom and Rotek to become self-sufficient with regard to future maintenance requirements for the coal generation fleet. This strategy should be reviewed as this will make resources and skills for outages reliant on one supplier in future years.

7.5 Pricing of maintenance contracts

7.5.1 The pricing of the maintenance contracts and the scope of work completed for the works has not been reviewed in view of the limited time available. In interviews with the former Group Executive for Generation, it was stated that costs of contracts for OEMs for Eskom in South Africa were higher than those in other utilities in Europe for a similar scope of work.

7.5.2 It is also noted that maintenance contracts have suffered persistent cost overruns. This is primarily due to the fact that variation orders are generally produced under the contracts due to ill-defined scope, redefinition of the scope, and additional work and inconsistency in works procedures. This is further complicated by poor contract management and poor execution for the outages.

7.6 Monitoring of the performance of the maintenance contracts

7.6.1 The monitoring of the performance of the maintenance contracts has not yet been reviewed. Information obtained from interviews suggest that the maintenance contracts are not performance based.

7.6.2 Eskom is experiencing challenges with maintenance outage 'time-slippages' and post-outage defects are commonly detected which impact the plants' timely return to service.

8 Recommendations

8.1 Eskom should review outage management process with regard to management, planning, procurement and ownership to ensure enhanced delivery.

8.2 The funding for maintenance should be prioritized and strictly ring-fenced.

8.3 The 80:10:10 strategy surrounding Generation sustainability should be reviewed on an ongoing basis.

8.4 The UCLF statistics due to outage delays should be separately reported and monitored.

8.5 The technical information that is presented to the Board should be distilled and summarised so that the essence of the information can be made available to the Board for decision making.

8.6 The maintenance contracts should be performance based and enforced through more focused contract management.

8.7 The works procedures should be standardized to the extent practical.

8.8 The Rotek capacitation initiatives should be reviewed and tailored as it exposes Eskom to risk of relying on single 'embedded' supplier.

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CHAPTER 2: DELAYS IN BRINGING THE NEW GENERATION PLANT ON-STREAM, INCLUDING COST OVERRUNS

1 Background

1.1 This Chapter deals with item 2.2 of the Scope of Work set out in Task Order 1.

1.2 Item 2.2 of Task Order 1 relates to the delays in bringing Eskom's new generation plant on-stream, including cost overruns. Under this heading the following specific items are provided for:

1.2.1 "2.2.1 the current status of the new generation plant and the project management practices designed to bring the generation plant into commissioning stage on time and within budget;

1.2.2 2.2.2 the project and contract management philosophies and practices implemented by Eskom in relation to best practices;

1.2.3 2.2.3 whether the lessons learnt from previous delays and cost overruns have been documented, communicated to relevant stakeholders and institutionalized to prevent recurrence;

1.2.4 2.2.4 whether the underlying causes for cost overruns and delays in completing the new generation plants are known and have been disclosed, and whether the actions taken in response are likely to enhance the likelihood that the projects would be delivered on time and within budget;

1.2.5 2.2.5 the measures that have been taken to ensure that the organization is likely to deliver these projects within the current targeted timelines and financial budgets, and whether any significant constraints beyond the control of management have been identified which require special intervention; and

1.2.6 2.2.6 whether the reports from EXCO with regard to the status of the new build are consistent with underlying reporting."

1.3 In view of the limited timeframes in which this Report was required to be prepared, the contents of this Chapter require further corroboration and verification..

2 Brief Historical Overview

2.1 During the late 1960s, South Africa experienced annual economic growth rates of around 6% accompanied by very high growth in electricity demand. Eskom embarked on a programme of constructing large coal-fired stations each having six units with high levels of standardised designs across the new fleet. The scale of the construction and standardisation resulted in competitive pricing from contractors and vendors for most of these power plant projects. This, coupled with the relatively low price of coal resulted in South Africa boasting amongst the lowest electricity prices in the world for several decades.

2.2 However, the high economic growth of the 1960s did not continue for long as had been assumed during the generation capacity planning stages. During the late 1970s and 1980s the economic growth rate reduced significantly with a resulting reduction in the electricity growth rate. By the mid-1980s, South Africa had significant surplus generating capacity and Eskom entered an era of trying to operate a power system cost-effectively as opposed to

expanding its generation capacity. Several power plants (Camden, Grootvlei, Arnot and Komati) were mothballed to reduce the operating costs and the completion of Majuba power station was deferred. For the next two decades, the era of surplus generation capacity became entrenched in South Africa with a strong focus on reducing operating costs. In the late 1980s certain plants (e.g. Majuba and Tutuka) were operated in two-shifting mode and in the mid-1990s Eskom implemented its 90:7:3 strategy for power plant operation and maintenance.

2.3 During the period from the late 1990s to early 2000s, Government set out its plans to restructure the electricity supply industry. It was intended that Eskom would be restructured and that new generation capacity would be developed by independent power producers and not by Eskom. At the time, the integrated resource plans (developed jointly then by Eskom and NERSA) indicated that new large base load power plant capacity would only be required by around 2012. However, by 2005, it became clear that new capacity would be required much earlier than had been projected by Eskom and Eskom was given the mandate to develop the open cycle gas turbine power plants at Gourikwa and Ankerlig shortly followed by the mandate to develop Ingula pumped storage..

3 Eskom's New Build Program

3.1 The current new build generation programme construction phase commenced in 2007.

3.2 The 3 projects being undertaken (Ingula, Medupi and Kusile) all have characteristics which pose special challenges for Eskom including:

3.2.1 The two coal fired plants (Medupi and Kusile) are the largest power plant projects ever undertaken in South Africa and amongst the largest in the world;

3.2.2 The boiler technology used for both Medupi and Kusile is based on supercritical technology i.e. they operate at much higher temperatures and pressures compared with conventional pulverised fuel technology in use in Eskom's current fleet of generation. The supercritical technology improves the efficiency significantly compared to conventional boilers;

3.2.3 State-of-the-art flue-gas desulphurisation (FGD) will be installed at Kusile (and retrofitted to Medupi), which will be the first time that this is done for large coal power plants in South Africa; and

3.2.4 The Ingula pumped storage station will be the largest pumped-storage station in South Africa once completed. However, it posed environmental challenges not previously experienced.

3.3 Medupi coal fired plant

3.3.1 Medupi is a greenfield coal-fired power plant project and is located west of Lephalale near the current Matimba power station, Limpopo Province, South Africa. Medupi is the fourth dry-cooled, baseload station built in 20 years by Eskom after Kendal, Majuba and Matimba power stations.

3.3.2 The power station will be the fourth (fifth after completion of Kusile) largest coal plant in the southern hemisphere, and will be the biggest (second after Kusile is completed) dry-cooled power station in the world. The boiler and turbine contracts for Medupi are the largest contracts that Eskom has ever signed in its 90-year history.

3.3.3 The new power station will comprise six units with a gross nominal capacity of over 840 MW each, resulting in a total capacity of over 5 000 MW. Construction activities commenced in

May 2007, with the first of the six units of the power plant now planned for commercial operation by the 3rd quarter of 2015.

3.3.4 To achieve high efficiency, supercritical boilers and turbines are being installed. These operate at higher temperatures and pressures than Eskom's other stations. This baseload station will also use direct dry-cooling due to the water scarcity in the area.

3.4 Kusile coal fired plant

3.4.1 The Kusile power station project, which is located near the existing Kendal power station, in the Nkangala district of Mpumalanga, will comprise of six units, each rated at over 850 MW installed capacity for a total capacity of 5 100 MW. Once completed, Kusile will be the fourth-largest coal-fired power station in the world.

3.4.2 The power station will be the first in South Africa to contain flue-gas desulphurisation (FGD) – a state-of-the-art technology used to remove oxides of sulphur, such as sulphur dioxide, from exhaust flue gases in power plants that burn coal or oil. This technology is fitted as an atmospheric emission abatement technology, in line with current international practice, to ensure compliance with air-quality standards, especially since the power station is located in a priority air shed area. The FGD plant is a totally integrated chemical plant using limestone as feedstock and producing gypsum as a by-product.

3.4.3 The plant will use an air-cooling system to help conserve water. The bulk of the coal will be sourced from mine mouths in the local area, with further exploration continuing.

3.4.4 Eskom indicated that the first synchronisation of Kusile Unit 1 is now scheduled for the first half of 2017, with the unit expected to enter commercial operations in the second half of 2017.

3.5 Ingula pumped storage plant

3.5.1 Ingula is situated 55 km from Ladysmith, (20 km northeast of Van Reenen) within the Drakensberg range, on the border between the Free State and KwaZulu-Natal provinces. Upon completion it will be Eskom's third pumped storage scheme with an output of 1 332 MW, mostly used during peak-demand periods. The station is expected to be fully operational at the end of 2016. The Ingula pumped-storage scheme comprises an upper dam (Bedford) and a lower dam (Braamhoek).

3.5.2 The principle of a pumped storage scheme is that water is stored in the upper reservoir and released during periods of high electricity demand for power generation into the lower reservoir. Very little if any natural water replenishment takes place into the upper reservoir and during periods of low electricity demand (night time and week-ends) water is pumped back into the upper reservoir to be used for generation during subsequent peak periods.

3.5.3 The distance between the upper and lower reservoirs is 4.6 km, with an elevation difference of about 470 m. The reservoirs are connected through underground waterways to an underground powerhouse complex, which will house four 333 MW pump turbines with a total capacity of 1 332 MW and four generator transformers, and associated tunnels and shafts.

4 Causes of cost overruns and delays

4.1 Some of the causes of cost overruns and delays are discussed below.

4.2 Delays in new build decisions

4.2.1 The decision for Eskom to develop the new build plants was made late and Eskom was left with tight timeframes to avoid a shortfall in generation capacity. The delay by Government in granting Eskom the mandate to develop the new generation capacity was preceded by a period of policy uncertainty during the early to mid-2000's when independent power producers (IPPs) were earmarked for the development of new generation capacity. The delay in decision-making was compounded by Eskom indicating to Government that new baseload generation capacity was not required until 2012, when in fact new baseload was required by around 2008.

4.2.2 When the mandate for new generation capacity was finally granted to Eskom, the system was already starting to show signs of being supply-constrained and (contrary to Eskom's previous optimistic forecast of supply surpluses), it was realised that new generation capacity would need to be brought on line urgently to avoid supply-shortages.

4.2.3 As a result, Eskom set unrealistically aggressive timelines for the development of the new baseload projects in an attempt to meet the new revised forecast of supply-shortfalls. Original timelines for commissioning of the 1st Unit of Medupi was late 2012-early 2013.

4.2.4 A number of project preparation processes were fast-tracked or simply not done (as discussed in paragraph 4.5)

4.3 Skills to execute new build projects

4.3.1 When the decision to proceed with the new build projects was made, Eskom had limited skills to conduct such a project. Eskom had not developed coal power plants for decades. Experienced power plant staff (mostly operational staff) were moved to the new build programme which left substantial skills gaps at the operating power stations.

4.3.2 The new build projects posed special challenges for Eskom which contributed to delays and costs over-runs. The two coal fired plants (Medupi and Kusile) are the largest power plant projects ever undertaken in South Africa and amongst the largest in the world. The boiler technology used for both Medupi and Kusile is based on supercritical technology. Further, state-of-the-art flue-gas desulphurisation (FGD) will be installed at Kusile (and retrofitted to Medupi) which is the first time that this is to be done in South Africa. Although Eskom constructed two pumped storage power plants, the Ingula pumped storage station posed environmental challenges not previously experienced by Eskom.

4.4 Contract strategy new build projects

4.4.1 A decision was made by Eskom to execute the Medupi/Kusile projects on a multi contract basis rather than structuring the projects on the basis of a minimum number of large contracts. This meant that the responsibility and risk of integrating and managing the overall project implementation was with Eskom. This decision coupled with the shortage of the appropriate skills in Eskom to manage such a large complex project contributed greatly to the new build projects being over-budget and behind schedule.

4.5 Pre-construction development work

4.5.1 Due to the pressure to start construction caused by the urgent requirement for new capacity, a number of pre-construction activities were not done or were inappropriately executed.

4.5.2 No proper feasibility study was conducted to ensure that all technical, commercial and environmental hurdles were identified and mitigated. Some of the issues arising during the

construction phase should have been identified during the feasibility stage and dealt with prior to construction.

4.5.3 The engineering design prior to the tender phase was not adequately done, which led to an under estimation of the project costs and inappropriate designs being utilised. This necessitated significant design changes during the construction phase resulting in contract variations and cost increases. An example is the geotechnical investigation which was not carried out appropriately. This led to changes in the foundations, which caused significant cost increases and substantial delays of the order of 12-18 months.

4.6 Contract and integration management

4.6.1 A productivity analysis conducted on the new build projects by an independent consultant revealed that delays and cost increases were primarily as a result of:

(a) Poor upfront planning;

(b) Poor project integration management; and

(c) Inadequate quality control, which led to inferior components (i.e. boiler tubes at Medupi).

4.7 Contractor failures

4.7.1 There were failures on the supply of some contracts and contractors were replaced during the execution phase, which contributed to delays and cost increases. An example is the boiler C&I contract by Alstom which was terminated and replaced with Siemens.

4.8 Re-work

4.8.1 There were a number of completed work packages that had to be repeated for various reasons which caused delays and cost increase. The reasons for re-works are not always apparent and specific investigation would be required to confirm reasons for particular instances. An example of this is the manufacturing of high-pressure equipment according to incorrect weld procedures, which led to the work having to be re-done. Other work packages related to this failure had to be re-done as well. Had the welding not been rectified, the ability of Eskom to obtain certification to operate the boiler would have been jeopardised.

4.8.2 Post-weld heat treatment was also undertaken incorrectly by a subcontractor and had to be repaired. The reasons for this could well be the lack of the necessary skills and inappropriate quality verification procedures.

4.9 Labour strikes

4.9.1 One of the causes of delays and cost overruns were labour strikes. One of the reasons for labour strikes was that labour is pre-dominantly contracted by the contractors. The contractors have different employment conditions and labour appeared to use this as a bargaining chip during labour disputes. Inexperience with labour issues appeared to have also affected delays.

4.9.2 In the industrial labour market currently there are two major unions, AMCU and NUMSA, which are in competition for members. Projects such as the new build are used as a platform to compete for membership.

4.10 Project funding

4.10.1 For the new build projects all sources of funding were not secured ahead of commencement of construction.

4.10.2 Eskom's rating has been downgraded several times over the last few years.

4.11 In a few instances, construction was delayed as a result of the lack of funds and only went ahead when new funding was secured.

5 Contract management

5.1 Due to the tight time frames for submission of this Report, there was insufficient time to assess Eskom's contract management philosophies in detail but we can state the following based on the review work that we have performed.

5.2 There appears to be inconsistent treatment of contractors for example the Alstom contract for the boiler control system was cancelled due to the system failure, but the services of Hitachi was retained in spite of the non-performance of Hitachi in respect of the boiler tube welding.

5.3 While Eskom's contract management framework has been in place for at least six (6) years, the establishment of a central coordinating structure for contract management was only established in September 2014, within the Group Capital Division to oversee the implementation of Eskom's contract management practices.

5.4 Prior to Sep 2014 contract management framework varied across projects and even between contracts on the same project.

5.5 At Medupi, the contract management framework and the principles of the FIDIC Delegation of Authority ("DoA") and the SCM Procedure 32-1034 were not complied with between 2009 and 2013. The Execution Partner (PB) did not align any of its processes and systems with Eskom's contract management framework.

5.6 The Engineer (under the FIDIC Contract) mainly focused on the administration of the contracts, to the exclusion of the other responsibilities set out in the FIDIC DoA framework and the SCM Procedure 32-1034. Consequently there was non-compliance with aspects of the PFMA and related public sector good corporate governance requirements. For instance payments beyond the thresholds stipulated in the DCF were usually certified without following the prescribed process set out in the SCM Procedure 32-1032.

5.7 Resulting from the various challenges that Medupi has experienced, the project team composition has since 2013 undergone various changes. Consequently, aspects of the FIDIC DoA framework and SCM Procedure 32-1034 are currently being implemented with the Contract Management Office playing an oversight role.

5.8 It is apparent that there has been non-compliance with the applicable contract management framework, specifically with regard to the implementation of the Medupi project.

5.9 FIDIC contracts for Medupi are in the process of being modified. Notwithstanding the modification, from an implementation perspective, the modification, approval and monitoring processes are susceptible to override.

5.10 Eskom must tighten its oversight responsibilities in respect of the implementation of the modification, approval and monitoring processes and the implementation of SCM Procedure 32-1034 in general in order to derive the overall objectives of good corporate governance.

6 Lessons learnt from delays

6.1 Some of the lessons learnt at Medupi that were carried forward to the Kusile project:

6.1.1 The contract integration planning at Kusile was done on a much more rigorous basis then at Medupi;

6.1.2 The quality verification issues experienced at Medupi was avoided at Kusile by implementing appropriate managed quality verification procedures; and

6.1.3 A consistent philosophy to labour issues was Implemented at Kusile and as such delays as result of labour stoppages were not experienced at Kusile to the extent it was experienced at Medupi.

7 Measures for project delivery

7.1 This paragraph deals with item 2.2 of the Scope of Work set out in Task Order 1.

7.2 Item 2.2.5 of Task Order 1 relates to the measures that have been taken to ensure that the organization is likely to deliver these projects within the current targeted timelines and financial budgets, and whether any significant constraints beyond the control of management have been identified which require special intervention.

7.3 One of the measures taken by Eskom to bolster knowledge and experience was to recruit experienced resources internationally to increase the skills base. Eskom recently announced revised timelines for the Medupi and Kusile indicating that these projects will be further delayed and are now only planned for completion by 2020 for Medupi and 2022 for Kusile. These appear to be more realistic time frames given the current status, but there remains general scepticism as to whether Eskom will be able to achieve this given its past track record on contract management for these projects.

8 Consistency of Reporting

8.1 The consistency of reporting with regard to the synchronisation and commercial operating dates for the first unit at Medupi was also tracked based on the evaluation of the reports received at the Board and EXCO levels for a two year period starting from April 2013.

8.2 In the Board meeting on 3-5 April 2013, the following resolution was taken viz "*the Board and Exco are still committed to deliver first power from Medupi Unit 6 by 31 December 2013 and will take all steps and actions necessary to ensure that this happens*".

8.3 In the same Board meeting, the following resolution was taken viz "*a date for the delivery of first power from Medupi Unit 6 will be confirmed after the independent assessment by VGB and this report will be submitted to the Minister of Public Enterprises by end of April 2013*". This would indicate the existence of some knowledge within Eskom at this point that possible delays would be experienced in bringing the first unit at Medupi on-stream.

8.4 In the Board meeting on the 30th May 2013, the Financial Director gave a verbal report on progress at Medupi. The following was stated viz "*Independent reviews of the build*

programme had been conducted by VGB, Balfour Beatty and Bowman Gilfillan/PwC/Hill, all of which indicated that it was unlikely that Unit 6 would be on line by December 2013, but more likely by April 2014 to mid-2014 ".

8.5 The following discussion also took place in the Board meeting and was recorded in the minutes viz "*In response to a query as to when the Minister of PE would be advised that the December deadline was unlikely, it was reported that the Minister of PE had been advised during the meeting held on 16 May 2013 that there were risks to meeting this deadline. It was discussed that the Board had never recorded a formal decision that the December 2013 deadline would not be met. The CE recommended that this be addressed under the specific agenda item later*".

8.6 The following resolution was also taken in the 30th May 2013 Board meeting based on the information obtained from IFC on the Revised Business Case for Project Medupi viz. "*it was resolved that* the *revised CO dates of June 2014 for Unit 6 and six months phasing for all the Units with the last unit CO date of December 2016 are noted.*" It should be noted that the "CO date" is mentioned and not the date of first synchronisation (which can be assumed to be 6 months earlier). This would translate to a first synchronisation date of December 2013 or January 2014.

8.7 In the Board Meeting of the 2nd July 2013, a discussion on the Build Programme was held. The following is noted in the Board minutes viz. "*It was reported that the Minister of PE had requested more details on the status of the build programme as he was concerned about the revised June 2014 completion date because he had not been advised thereof formally and expected a separate formal letter in this regard. It was recommended that Medupi should be dealt with as a separate item with the media* "

8.8 In the MANCOM meeting of the 20th August 2013, the Medium Term Outlook (MTO) was presented. The MTO is an adequacy assessment of the South African electricity supply industry on an hourly basis from the FY2014 to FY2019. On slide 9 of the presentation, the assumptions on the CO dates were detailed. This is shown below in Figure 13.

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Figure 13: MTO 2013 Assumptions - CO Dates

MTO July 2013 - Assumptions$_1$

Eskom

New Build Official Dates for Commercial Operation

Summary	1st unit Commercial Operation Dates		
	Gx Sustainability Adequacy Assessment	MTO July 2013 (Official Dates)	MTO July 2013 (Delay on Official Dates)
Medupi	1 February 2014	31 December 2014	1 July 2015 (6 months delay)
Kusile	1 January 2015	1 January 2016	1 July 2016 (6 months delay)
Ingula	1 August 2014	1 July 2014	1 October 2014 (3 months delay)
Sere	1 May 2014	1 Dec 2014	No delay tested

Medupi & Kusile: Assume 9 months between units

To see adjustments from previous MTO's: Go To

2013/08/07

9

8.9 In the Board meeting of the 28 August 2013, a Build Programme review was presented. The Board noted the following with respect to the schedule for Medupi viz.:

8.9.1 The integrated schedule of Engineering and Construction Management for Project Medupi Unit 6 indicates a first-unit synchronisation date of end-May 2014.

8.9.2 The key risks to the schedule include:

(a) The welding quality issues relating to both the progress of defect rectification of the previously reported fraudulent post-weld heat treatment (PWHT) and the acceptability of the PWHT to rectify unsuccessful welding procedure qualification record (WPQR);

(b) The unsuccessful control & instrumentation (C&I) factory acceptance tests (FAT) for FAT H for the Balance of Plant (BOP) and the FAT for the Boiler Protection System (BPS);

(c) The slow rate of completing the loop checks on the control system in order to allow for timely commissioning activities; and

(d) The possible re-work of the Re-heater to eliminate the touching of tubes that will lead to early failure of boiler tubes in service.

8.10 In the Board meeting of the 28 November 2013, a Build Programme Review was submitted. The Board noted that a first synchronisation date of 15 August 2014 was planned. The New

Build report did indicate numerous risks which may delay the first synchronisation beyond the planned August 2014 date.

8.11 In the EXCO meeting held on June 2014, feedback was given on the Medupi project. The following was minuted viz "*First Synchronization (1st synchronisation) of Medupi Unit 6 remains on track for Dec-14 and Commercial Operation (CO) planned is for May-15*".

8.12 In the EXCO meeting held on 29 August 2014, an update on the Build Programme was given. The following was minuted viz. "It was reported that first synchronisation for Medupi Unit 6 was still for December 2014. To date the chemical clean had been completed and the site integration had begun. First fire was expected in late September to early October 2014 and the only risk to this milestone was that insulation work would not be completed".

8.13 In the Board meeting held on 28th November 2014, an update was given to the Board on the progress at Medupi. It was stated in the minutes that synchronisation of Unit 6 was planned for 24 December 2014.

8.14 The summary of our findings on the reporting on the new build projects is as follows:

8.14.1 The reporting on target commercial operation dates (CODs) for new build has been unrealistic.

8.14.2 Despite major issues on project execution it appears this was ignored (welding, Control & Instrumentation, re-heater, etc.) and reported target COD did not adequately reflect the impact of these issues on the timeframes – highly optimistic timeframes were persistently reported.

8.14.3 There was inconsistency of timelines for Medupi across the business – the Board reporting gives optimistic timeframes despite extensions being requested from other parts of the business at the same time;

8.14.4 The Board was informed of progress and target dates but the impact of risks on the timeframes were not adequately addressed in the reporting. A 'head in the sand' approach seems to have been followed by not considering pending risks.

8.14.5 The use of different terminology blurring the distinction between "synchronisation" and "COD" created confusion and inconsistent reporting about Medupi target dates.

8.15 The optimistic timeframes had a major impact on Eskom's decisions and planning processes across the business. These optimistic dates were used and this led to KLO, maintenance deferral, diesel forecasts, generation sustainability, MYPD submissions, etc. When the optimistic timeframes were not met it led to further pressure on these issues.

9 Recommendations

9.1 Project planning processes to be implemented according to best practices followed internationally and appropriate project management training to be given to staff to increase skills base;

9.2 Eskom to review contracting strategy for its large and complex projects to match with skills base within the business;

9.3 Accountability for project target dates to be clearly defined and project staff not to be under any illusion as to what their responsibility is with delivering on targets. Regular independent reviews of project target deliveries should be conducted;

9.4 Risks of projects should be identified prior to and during the construction phase, and fully integrated into the project planning and decision-making process from project kick-off; and

9.5 Contract management processes to be reviewed and strengthened with a view to avoid ambiguity in the treatment of contractors on non-performance.

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CHAPTER 3: HIGH COST OF PRIMARY ENERGY

1 Background

1.1 This Chapter deals with item 2.3 of the Scope of Work set out in Task Order 1.

1.2 Item 2.3 of Task Order 1 relates to the high cost of primary energy (nuclear, coal, diesel, liquid oils and water). Under this heading the following specific items are provided for:

1.2.1 "2.3.1 the primary energy costs currently incurred by Eskom and whether they are commercially supportable;

1.2.2 2.3.2 whether the underlying causes for increase in primary energy costs are known and reported;

1.2.3 2.3.3 whether the strategies and tactics adopted by Eskom to procure primary energy (Nuclear, Coal, Diesel, Liquid Oils and Water) are commercially supportable, in particular the use of ad hoc Diesel suppliers; and

1.2.4 2.3.4 the forecasting model for the use of diesel."

1.3 In view of the limited timeframes in which this Report was required to be prepared, the contents of this Chapter require further corroboration and verification..

2 Brief Historical Overview

2.1 Historically, Eskom was de facto the only market for low grade bituminous steam coal in South Africa and as such it had the market power to effectively set prices for this type of coal. The coal prices contracted by Eskom in its long term contracts were comparatively low which contributed in a large part to the historically low electricity prices enjoyed by South Africa during the 1980s and 1990s. As the demand for electricity grew and generating plants increased their outputs to meet the demand, the coal consumption increased to the point where, over the past decade, the coal requirements for power generation have increasingly exceeded the coal volumes contracted by Eskom in its long term contracts. As a result, Eskom has been purchasing increasing quantities of coal on the basis of medium term contracts to supplement the supplies from the long term contract.

2.2 Diesel costs incurred by Eskom have increased significantly over the past few years due to the higher than expected levels of operation of the open cycle gas turbines. The gas turbines, being the plants with the highest variable cost of operation, are operated only when no more generation is available from other plants, as mitigation against load shedding. Since the level of load shedding to be implemented at any point in time is due to a combination of planned and unplanned events, the amount of diesel to be used has been difficult to predict and actual cost of diesel has far exceeded the cost of diesel projected in the MYPD.

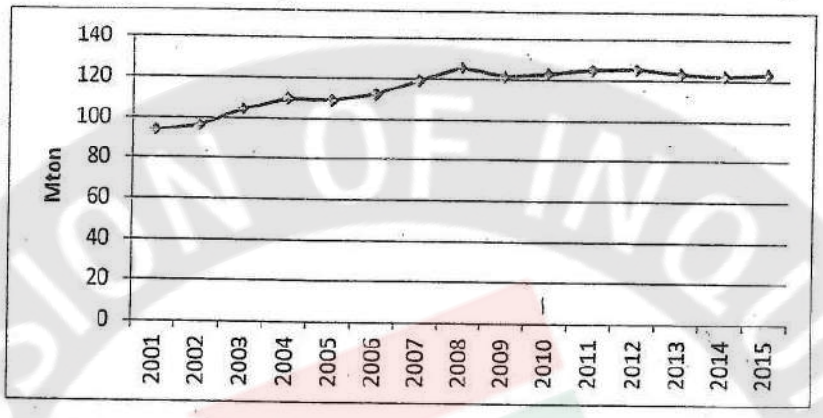
2.3 Overall, Eskom has, over past few years, seen a significant increase in its primary energy costs and a key question is whether these increased costs are due to the prevailing market forces, contractual arrangements and whether or not these costs are commercially supportable.

2.4 In the paragraph below, we present our demand side, supply side and pricing analysis for the coal and diesel.

3 Demand for coal for power generation

3.1 Figure 14 below provides a graphical illustration of the variation in coal consumed by Eskom for power generation for the period 2001 to 2015. Eskom's consumption of coal increased significantly from around 95 MTon in 2001 to 120 MTon by 2008 i.e. at a rate of 3.4% per annum. From 2009-2015, the coal consumption remained within a fairly narrow band of 120 – 125 MTon per annum.

Figure 14: Coal consumed by Eskom for power generation (2001-2015)



3.2 The increase in the consumption of coal by Eskom has been mainly due to the following factors:

3.2.1 Growth in electricity demand

(a) Figure 15 shows the increase in electricity demand (in GWh) during the period 2001-2008. During the period 2001 to 2008, the electricity energy demand increased on average by around 3.4% per annum which strongly correlates with the growth in the coal consumption. During the period 2008-2015, there was no average annual increase in electricity. Electricity demand effectively peaked in 2008 before the financial crisis. In 2009, electricity demand reduced, then grew marginally in 2010 and 2011 to the same level as 2008. In 2012 demand grew marginally above 2008 consumption but fell away from 2013 to 2015 (similar to 2010 levels) again. During this period, the coal consumption reflected growth in the electricity and remained within a band of 120-125 MTon per annum (2008 consumption 125 MTon).

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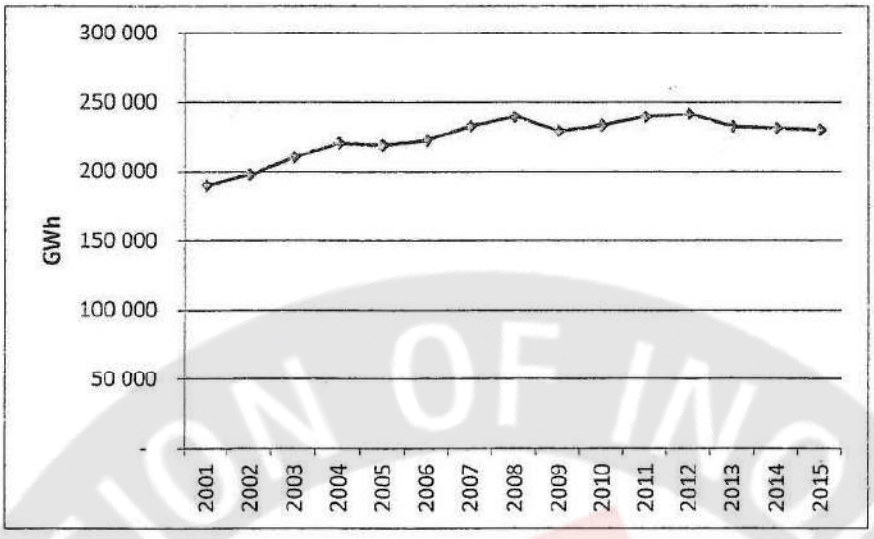
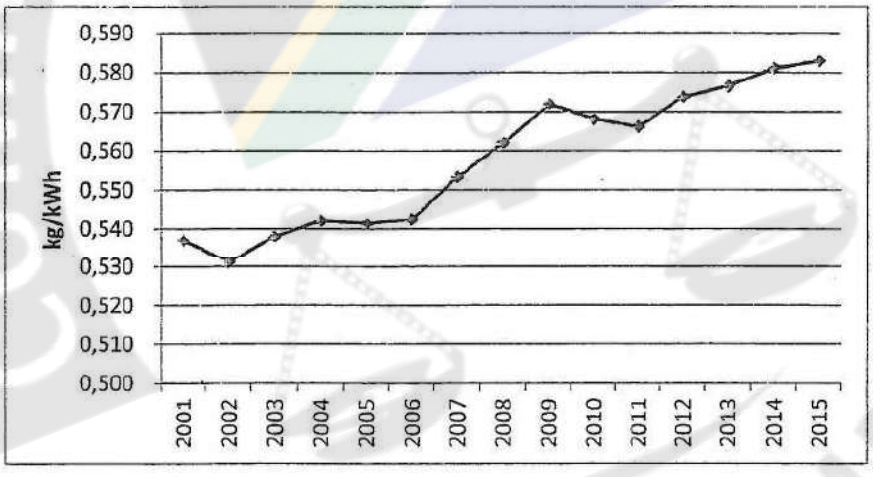
Figure 15: Demand for electricity (2001 – 2015)



3.2.2 Increase in the coal burn rate

(a) Figure 16 below provides a graphical illustration of the variation in the volume of coal consumed per unit of electricity produced (burn rate) for the period 2001-2015. The average annual increase in the burn rate over this period was around 0.6%.

Figure 16: Coal burn rate (2001 – 2015)



(b) The increase is caused by:

(i) Plant efficiencies:

(A) The deterioration in efficiencies (partially caused by insufficient maintenance) of aging plant and the return to service (RTS) of old power plants (Camden, Grootvlei and Komati have lower efficiencies) that were placed in storage in the early 1990s.

(B) The increase in coal consumption per unit of electricity since 2001 is evident.

(ii) Calorific value of coal

(A) Reportedly coal heat contents (calorific value – CV) have deteriorated over the time. Although it does not appear that coal CVs have deteriorated to the extent that regular rejection of coal batches has occurred, the tendency in the CVs of coal received has been closer to the lower end of the range of the CVs contracted.

(B) When a mining operation commences on a newly developed mine, the operation would be focussed on the better quality coal and as time progresses the quality of coal would deteriorate. Furthermore the multiple contracts entered into by Eskom to fulfil the coal requirements has increased the complexity of managing the coal supplies and more batches of inferior (not to contractual limits) coal was accepted without appropriate verification.

(iii) Off-shore demand

(A) Historically, Eskom was de facto the only market for low grade bituminous steam coal in South Africa and as such it had the market power to effectively set volumes and prices for this type of coal. Accelerated global economic growth, particularly in China and India, has increased the demand for coal globally. Consequently, this has contributed to the increasing prices of coal, with some coal suppliers opting for more lucrative offshore contracts.

(B) Furthermore, the increased global demand led to comparatively lower grades of coal being exported i.e. even CVs as low as 25 GJ/Ton. This had the effect that coal supplies to Eskom now are faced with global market competition leading to pressure on price and quality of coal delivered to Eskom.

why is impact of coal burn value?

4 Supply of coal for power generation

4.1 Eskom currently is supplied with coal under three main categories of contracts:

4.1.1 Long Term Cost Plus Contracts;

4.1.2 Long Term Fixed Price Contracts; and

4.1.3 Medium Term and Short Term Fixed Price Contracts.

4.2 Long Term Cost Plus Contract supply

4.2.1 The oldest of these agreements are Cost Plus Contracts entered into in the 1970s and 1980s.

4.2.2 The collieries supplying coal under the Cost Plus Contracts were developed as joint ventures between Eskom and the mining company, with both parties investing capital. Under these contracts, Eskom would pay a price for the coal based on a fixed return to the mining company on the capital invested by the mining company. The mining company is responsible

for operating the colliery but Eskom is responsible for paying the operating cost and for making the ongoing capital investments required to achieve production.

4.2.3 These mines are situated next to the Eskom's power stations that they supply, with all coal production dedicated to Eskom. The power stations are supplied using a conveyor system, which means that transport costs are not significant – the exceptions being Majuba and Tutuka power stations. The original colliery developed and earmarked for supply to Majuba turned out to be in a geologically faulted area and costs turned out to be extremely high during the initial operation. The mine was accordingly closed down. Similarly the colliery supplying Tutuka was never developed to its intended production level due to geological difficulties. Other sources of supply were secured which meant that coal has been trucked to Majuba (new contracts fixed price) and Tutuka power stations since around 1996. The coal price is based on mining costs plus an agreed profit consisting of management fees and a return on capital invested by the mining company.

4.2.4 Advantages:

(a) Historically these were the lowest cost mines in Rand/Ton;

(b) Eskom had transparency regarding mining operations and had the ability to influence decisions; and

(c) The long term contracts simplified and facilitated financing of the mine development and operations.

4.2.5 Disadvantages:

(a) Eskom carries significant risk as operational costs are passed through to Eskom;

(b) There is limited incentive for the mining company to optimise operations and improve efficiency; and

(c) The financial liability lies with Eskom in providing initial and ongoing capital expenditure.

4.2.6 There are currently six of these contracts in place. These are:

(a) New Vaal colliery supplying Lethabo power station;

(b) Khutala colliery supplying Kendal power station;

(c) Matla colliery supplying Matla power station;

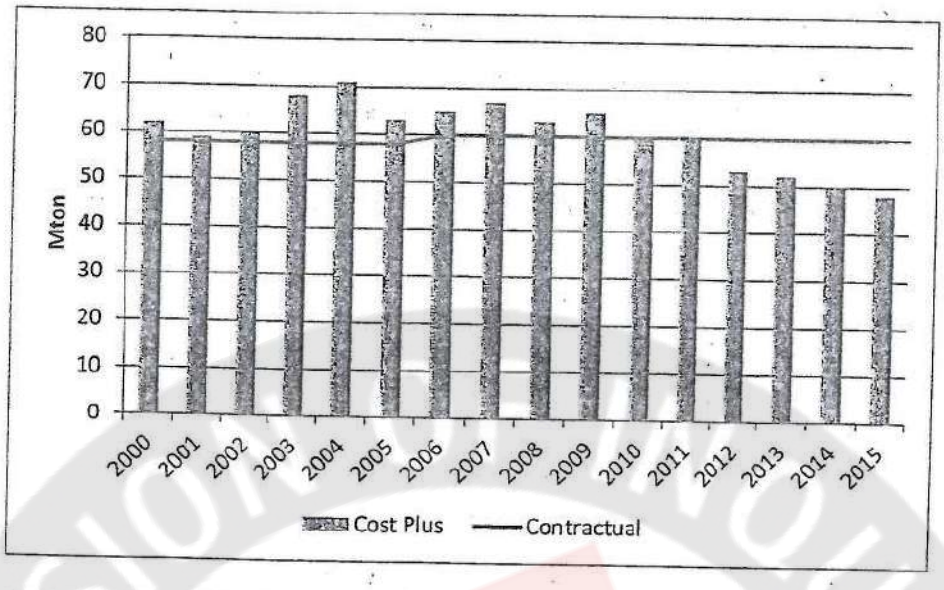
(d) Kriel colliery supplying Kriel power station;

(e) New Denmark colliery supplying Tutuka power station; and

(f) Arnot colliery supplying Arnot power station.

4.2.7 Figure 17 presents the coal supplied by the Cost Plus Contracts. From 2012 the supply from these contracts could not maintain the contractual requirement (60 MTon per annum) anymore. The main reason for this is that Eskom has not invested in these collieries to the extent required to maintain the production levels.

Figure 17: Cost plus mine coal purchases 2000 - 2015



4.3 Long Term Fixed Price Contract supply

4.3.1 The next tranche of coal supply contracts entered into by Eskom was the Long Term Fixed Price Contracts. Under these contracts, the mining companies supply coal to Eskom at a fixed price annually escalated according to an agreed composite escalation index. The mines supplying coal under these contracts supply coal not only to Eskom, but also produce and supply products for the export market and other local markets.

4.3.2 Advantages:

(a) Predictable prices;

(b) Less price and quality variation risk exposure than Cost Plus; and

(c) No ongoing capital investment required from Eskom.

4.3.3 Disadvantages:

(a) Negotiated prices can be high if Eskom has limited alternative options at the time and forecasted market conditions favour suppliers; and

(b) Dependent on global market demand, price and export volumes.

4.3.4 The contracts in place are:

(a) Grootegeluk colliery supplying Matimba power station;

(b) Middelburg mining services supplying Duvha power station;

(c) Optimum colliery supplying Hendrina power station;

(d) Mafube colliery supplying Arnot power station; and

(e) Goedgevonden colliery supplying Majuba power station.

4.3.5 Figure 18 presents the supplies from Long Term Fixed Price contracts. Supplies from these contracts have remained fairly steady at 28 – 31 MTon per annum.

Figure 18: Long Term Fixed price coal supplied

4.4 Medium and Short Term Fixed Price Contract supply

4.4.1 As the demand for coal for power generation grew and the Long Term agreements could no longer supply the required increases, Eskom supplemented coal supply from the long term coal suppliers with Medium Term and Short Term Fixed Price contracts.

4.4.2 Advantages:

(a) Fast and easy to negotiate;

(b) Predictable prices; and

(c) Flexibility through short contract durations and road and rail deliveries.

4.4.3 Disadvantages:

(a) Substantial price premium for mining marginal deposits and for the miner's higher risk exposure;

(b) The mines are not located next to the power stations and therefore transport costs are considerable; and

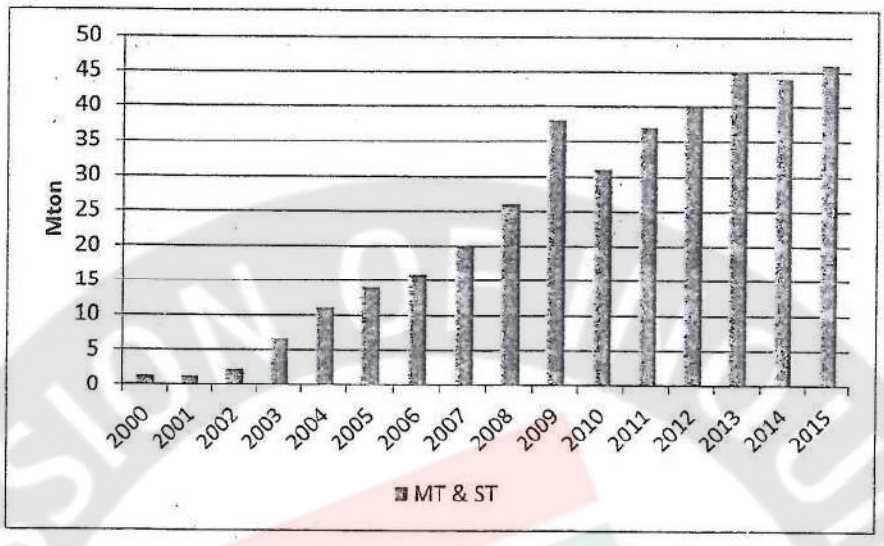
(c) Considerable contract management resources required as a result of the multiple contracts linked to a power station.

4.4.4 The supplies from these contracts are transported by road and rail to most of the power stations to supplement coal requirements. The exceptions are Matimba and Lethabo power stations, where the requirements are also transported but under Long Term Contracts.

4.4.5 Figure 19 below provides the coal supply levels under the Medium Term and Short Term Fixed Price Contracts for the period 2000-2015. The supply under these contracts has

increased from less than 2 MTon per annum in 2000 to more than 40 MTon per annum in 2015.

Figure 19: Medium Term & Medium Term Fixed price coal purchases



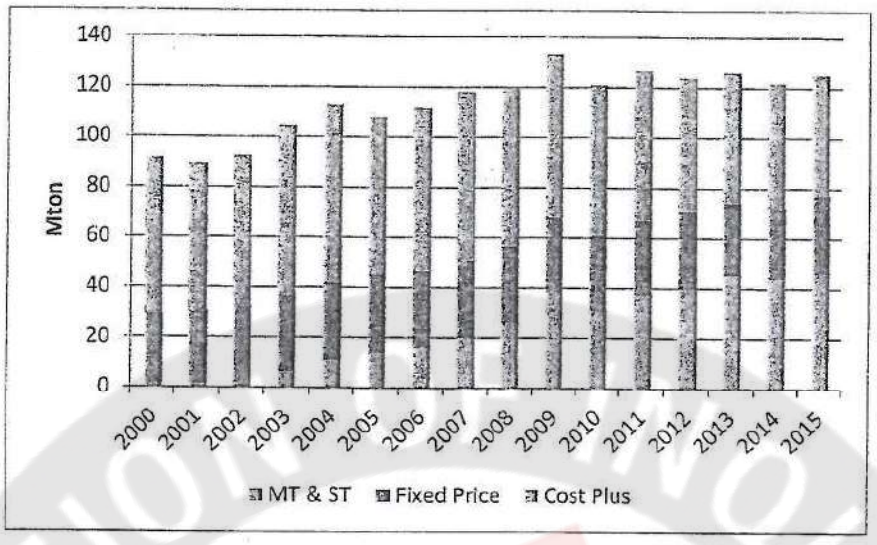
4.5 Eskom's mix of coal supply contracts

4.5.1 Historically Eskom relied on the Long Term Cost plus and Fixed Price Contracts to supply its coal needs. Typical quality of coal supplied by Eskom power stations vary from 18-24 GJ/Ton. Coal plant boilers are designed based on specific coal quality. Export quality coal typically has high calorific values (CV) >27 GJ/Ton. If the coal delivered are not according to specification it means the plant cannot operate at design efficiencies. The Long Term Contracts had quality and quantity measures that were enforced. When the contracts were signed between Eskom and the mining houses for the supply of coal to the existing power stations, the mining houses were required to have a 50 percent contingency proven reserve of coal. However the contractual limitations on the Long Term Contracts did not provide for increased requirements.

4.5.2 The Long Term Contracts could contractually supply a maximum of 95 MTon per annum. The requirement for coal started to exceed the contractual maximum supply from Long Term contracts by 2003. From 2003 up to 2011 the Medium Term and Short Term Fixed Price Contracts provided for the growth in coal requirements and from 2012 the reduction in Cost Plus Contracts below contracted levels meant that these Medium Term and Short Term Fixed Price Contracts also made up the short fall.

4.5.3 Figure 20 presents the mix of coal supplies for the three contract categories over the last 15 years. Currently 38%, 25% and 37% of the requirement is supplied by Cost Plus, Fixed price and Medium Term & Short Term Contracts respectively. The combination of coal supply contracts to Eskom has thus changed significantly over the past 10 – 15 years. This has substantially increased the complexity of managing coal deliveries.

Figure 20: Coal purchased by Eskom from three types of contracts



5 Coal pricing

5.1 Table 1 below provides the current coal prices for each of the coal supply contracts (Cost Plus, Fixed Price and Medium Term Contracts) and the power stations to which the coal was supplied. The prices under Long Term (Fixed Price and Cost Plus) Contracts vary from R135 to R686/Ton. The average price of coal from the Long Term Cost Plus Contracts is R285/Ton including transport costs (all Cost Plus agreements deliveries are by conveyor). The average price of coal from the Long Term Fixed Price Contracts is R250/Ton including transport costs (only Majuba power station incurs transport costs). The average price across all Long Term Contracts is R270/Ton.

5.2 The Medium Term Contracts vary between R180 and R380/Ton of coal. The average price of coal from the medium term contracts (excluding transport prices) is R280/Ton which is not significantly different from the average long term contract prices (about 3% higher) i.e. the Medium Term Contract prices are essentially the same as the Long Term prices. These price levels are also substantially lower than the R664/Ton for export coal, noting that the coal supplied to Eskom are lower quality coals compared to export coal. Adding an average transport cost of R140/Ton to the Medium Term Contracts prices, gives an average delivered cost of coal of R420/Ton for the Medium Term Contracts. Thus, he transport costs of the Medium Term contracted coal is a significant driver in the increased coal costs experienced over the last number of years.

5.3 The average price across the Long Term and Medium Term Contracts including transport costs are R315/Ton which is about 50% of the export price of higher quality coal before transporting it to Richards Bay Coal Terminal (RBCT).

5.4 Eskom has indicated that there have been changes in coal specification which has led to price increases. In order to determine whether the coal quality specifications have changed over time, the originally designed coal quality specification were compared to those of the acceptable coal quality specifications determined recently by Eskom. In order to establish a baseline of the qualities suitable for a specific power station, Eskom engineering together with RT&D derived acceptable and rejection coal qualities for each power station utilising a coal quality effect model tool. This model uses plant design and STEP performance data as

provided by the power stations to determine the acceptable and the rejection coal quality (absolute minimum) that the boiler plant can tolerate.

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Table 1: Current coal prices April 2015 (R/Tonne)

Contract Type	Supplier	Power Station	CSA start date	CSA end date	Contractual Volumes (Mt)	CV (AR)	R/ton
Cost Plus	Anglo Coal SA (Pty) Ltd - New Vaal	Lethabo	1989/06/01	2029/06/30	17.80	14.17	135.08
Fixed Price	Exxaro Coal (Pty) Ltd - Grootegeluk	Matimba	1993/06/01	2038/06/30	15.30	19.58	280.81
Cost Plus	South 32 - Khutala	Kendal	1993/12/01	2033/12/31	13.30	17.95	327.38
Cost Plus	Exxaro Coal (Pty) Ltd - Matla	Matla	1983/07/01	2023/07/31	10.10	16.99	257.43
Fixed Price	South 32 - Middelburg Mine Services	Duvha	1994/01/01	2034/12/31	10.00	21.07	230.41
Cost Plus	Anglo American Inyosi Coal SA (Pty) Ltd - Kriel	Kriel	1979/12/01	2019/12/31	8.50	21.92	279.29
Fixed Price	Optimum Coal Holdings - Optimum	Hendrina	1993/01/01	2018/12/31	5.50	21.78	161.37
Cost Plus	Anglo Coal SA (Pty) Ltd - New Denmark	Tutuka	1989/09/01	2029/08/31	5.10	21.30	426.36
Cost Plus	Exxaro Coal (Pty) Ltd - Arnot	Arnot	1976/01/01	2023/12/31	4.10	22.19	686.07
Fixed Price	Xstrata / African Rainbow Minerals JV - Goedgevonden	Majuba	2009/12/01	2026/12/31	2.80	21.18	381.38
Fixed Price	Anglo / Exxaro JV - Mafube	Arnot	2004/08/01	2023/12/31	1.18	18.60	132.70
Medium Term	Umcebo Mining (Pty) Ltd - Middelkraal	Kendal/Majuba	2010/04/01	2015/06/30	5.40	21.83	283.72
Medium Term	Exxaro Coal (Pty) Ltd - NBC	Arnot/Komati/Tutuka	2010/04/01	2018/03/31	4.00	22.34	245.78
Medium Term	Shanduka Coal (Pty) Ltd - Graspan	Majuba	2010/04/01	2018/03/31	3.60	20.69	262.52
Medium Term	Liketh Investments (Pty) Ltd - KK Pit 5	Hendrina	2009/01/01	2018/03/31	2.40	21.19	322.86
Medium Term	Keaton Mining (Pty) Ltd - Vanggatfontein	Tutuka	2011/05/01	2022/04/30	2.10	21.25	328.87
Medium Term	Exxaro Coal (Pty) Ltd - Leeuwpan	Majuba	2010/01/01	2015/06/30	2.10	20.63	273.32
Medium Term	Universal Coal Development (Pty) Ltd - Wolvenfontein	Kusile/Kendal	2014/04/01	2023/03/31	2.00	20.40	353.41
Medium Term	HCI Khusela Coal (Pty) Ltd - Palesa	Grootvlei	2010/04/01	2018/03/31	1.90	20.7	179.32
Medium Term	Sudor Coal (Pty) Ltd - Halfgewonnen	Camden	2010/07/01	2015/09/30	1.90	21.14	224.63
Medium Term	Just Coal CC - Bankfontein	Tutuka/Arnot	2014/04/01	2024/03/31	1.80	21.6	279.21
Medium Term	Kuyasa Mining (Pty) Ltd - Delmas	Majuba	2011/05/01	2019/04/30	1.60	22.07	229.64
Medium Term	Hlagisa Mining (Pty) Ltd - Wildfontein	Arnot	2013/07/01	2017/06/30	1.60	22.15	338.19
Medium Term	Vunene - Usutu	Camden	2013/03/01	2015/12/31	1.50	23.35	346.76
Medium Term	Stuart Coal (Pty) Ltd - East Block	Tutuka	2010/04/01	2018/03/31	1.40	21.11	232.98
Medium Term	Liketh Investments (Pty) Ltd - Tavistock/Tweefontein	Duvha/Komati	2011/03/15	2018/03/31	1.20	22.6	246.41
Medium Term	Perisat Investments (Pty) Ltd - Rirhandzu	Majuba/Kusile	2013/09/01	2018/03/31	1.20	22.3	256.50
Medium Term	African Exploration Mining and Finance Company - Vlakf	Kendal	2011/06/01	2020/03/31	0.78	20.33	276.59
Medium Term	Optimum Coal Holdings - Koornfontein	Komati	2012/04/01	2016/01/31	1.62	21.2	376.91

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5.5 It was found that, in most instances, the acceptable coal volatilities (combustion properties) range was lower than the original contractual specification. This would have no effect on price since the acceptable range is of a lower requirement than the original specification.

5.6 In many instances, the original ash content specification was lower than the acceptable range. If coal was delivered to specification it meant that less ash was generated, so less strain was placed on the boilers and ash handling system.

5.7 From this brief analysis, it appears that coal specifications over the expended life of the power stations have not changed to the extent that it required major adjustments to the processing of the coal mined.

5.8 It must be noted that the actual delivered coal qualities have not been verified.

6 Current primary energy costs

6.1 Export and Eskom prices of coal

6.1.1 Figure 21 presents export prices of coal at Richards Bay Coal terminal (RBCT) in US$ terms since start of 2000. Up to the end of 2003 prices traded from around $20 to $40/Ton. Subsequently prices started to increase. There are large variations (from $ 40 to $160/Ton) across this period, but generally there is an increasing trend of coal prices. However, for the last four years (from April 2011) prices have decreased by about 50%, from the above US$120 to current prices of US$60/Ton.

6.1.2 Despite the export prices having decreased from more than $120/Ton to around $60/Ton in 2015, the R/$ exchange rate still makes it more profitable for coal suppliers to export coal rather than sell it locally. This alternative market is a significant driver of the local price of coal.

6.1.3 Given the downward trend since June 2011, it may be asked why Eskom has not benefited from lower international prices, especially with regard to their Medium Term and Medium Term contracts. Given Eskom's buying power in the industry, the alleged competitiveness of the coal market and declining international prices, it would be reasonable to expect Eskom's marginal coal prices to have decreased during this period. The current weakness of the Rand may have had an effect.

6.1.4 To compare with Eskom prices (Eskom buys coal in ZAR), export prices are required to be converted to ZAR. Figure 22 presents the RBCT export prices in ZAR. In the last four years, in nominal ZAR terms the coal price has been trading between R880 and R720/Ton. The export price of coal in ZAR nominal terms has thus not decreased to the extent of US$ based prices – the reason being that the ZAR has decreased in value from R7 to R12 per US$ over the same period. In nominal ZAR terms, coal prices have remained the same for the past 4 years. More recently (since Nov 2013), prices have declined from R855 to R720. This may create the opportunity for Eskom to negotiate lower prices for new Short Term Contracts.

Figure 21: Export prices at RBCT since January 2000 (US$/Ton)

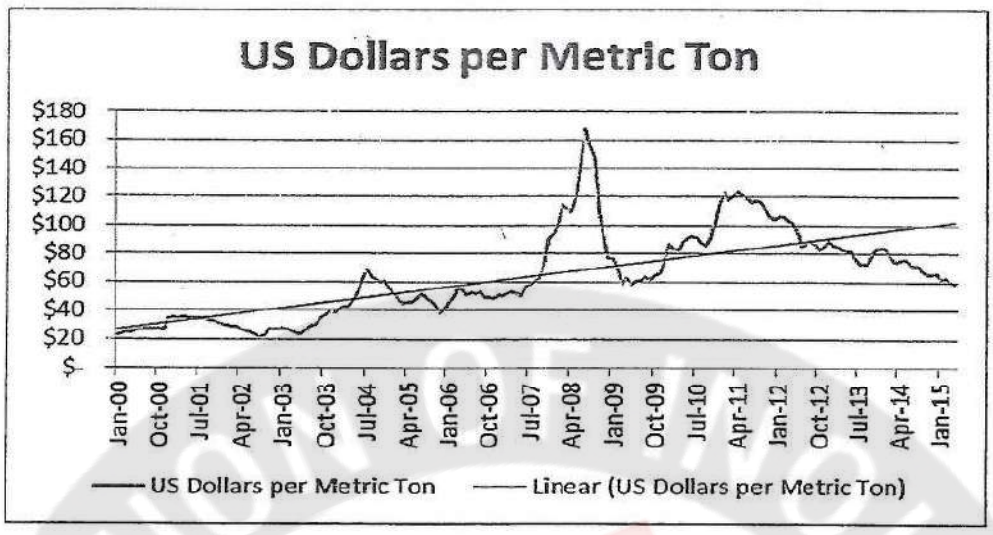
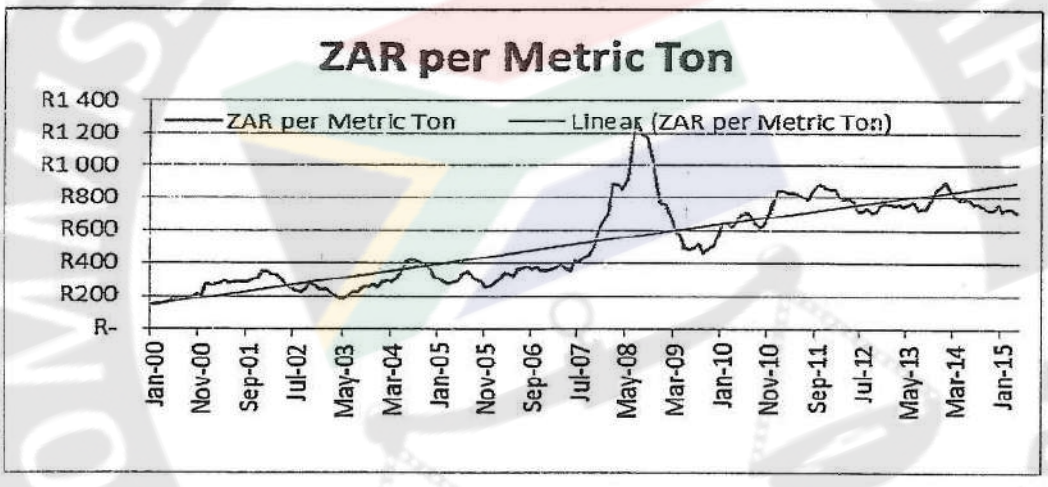


Figure 22: Export prices at RBCT since January 2000 (ZAR/Ton)



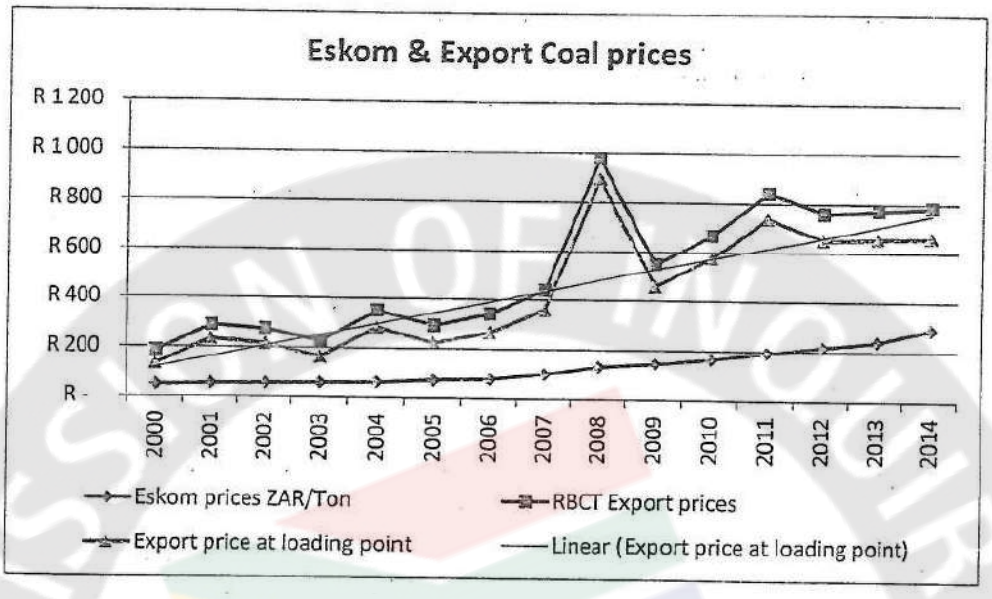
6.1.5 Figure 23 below presents a comparison of RBCT export prices and Eskom average coal prices since 2000 on an annual basis. RBCT export prices are presented excluding an estimate of the average transport prices i.e. the export prices at the loading points before being transported. This is effectively the price at which export coal can be purchased at the collieries.

6.1.6 It is clear that Eskom's average price of coal has been increasing over time. Starting in 2007 the average coal prices paid by Eskom has been increasing more rapidly. Average annual prices paid by Eskom increased on average by 18% per annum from 2006 – 2014 and from 2000 - 2006 increased on average by 9% per annum. For the same periods the export prices have been increasing by 12% and 12.4% respectively on a per annum basis. The Eskom price has therefore been increasing over the last number of years more rapidly than the export prices.

6.1.7 The average price paid by Eskom for the coal purchased in 2014 is R288/Ton compared to R77/Ton in 2006 which appears to be a high increase in the price of coal. However, the

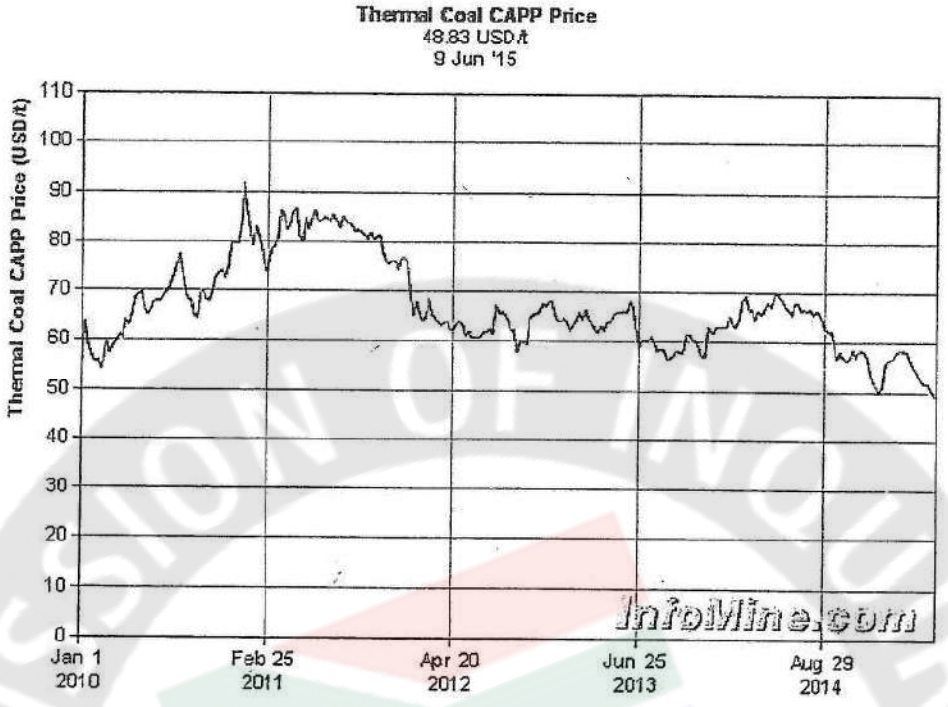
estimated average price of export coal (excluding transport to RBCT) for 2014 is R664/Ton. The Eskom prices are therefore still significantly less than export prices. However as stated above it must be noted that Eskom power stations do not consume the high quality coal that is exported.

Figure 23: Export prices at RBCT and Eskom coal prices since 2000 (ZAR/Ton)



6.1.8 Figure 24 below presents the international trading price of thermal coal. Since September 2014, coal on the international market has been trading from $50 to $60 (R600 – R720)/Ton. These costs do not include any transport costs which will add at least another R300/Ton. Importing coal from international sources would increase the price of coal that Eskom is paying by a large margin.

Figure 24: International price of coal (US$/Ton)



6.1.9 Compared to international electricity prices, prices in South Africa still compare favourably towards the lower end but are not the lowest anymore. Furthermore, South African electricity price increases over the last 4-5 years have been at a higher rate than international prices and may well continue to be so for the next few years. South Africa cannot isolate itself from international prices and competition. Similarly, Eskom is faced with international prices for coal. The costs for establishing new mining developments have increased significantly over the last number of years.

6.1.10 On average, therefore the prices being paid by Eskom compared to international prices are commercial prices for coal. However, individual coal contracts will need to be investigated to establish whether the prices are commercially supportable given the specifics of the mine and contractual arrangements.

6.2 Diesel costs

6.2.1 Historically, the requirement for liquid fuels for power generation was very low. Up to 2007 Eskom only had Acacia (171 MW) and Port Rex (171 MW) open cycle gas turbine (OCGT) stations which were only used during emergency situations and occasionally supplying peak demand. As part of the new capacity requirements and the imbalance between base load and peaking capacity, Ankerlig (1 338 MW) and Gourikwa (746 MW) OCGT plants were constructed and commissioned in two phases. First phase construction started in 2006 and was completed in 2007. The second phase construction started in 2008 and was completed in 2009. These plants were intended to serve as peaking plants i.e. operating infrequently for short periods at a time, typically between 400 to 500 hours per year. These plants have much lower capital costs than base load coal fired plants but much higher operating costs. Over a 20 year period, the total lifetime costs of these plants to serve peak demands are lower than coal fired plants. However if these plants are utilised for more than around 1000-2000 hours per year, then the lifetime costs become more expensive than say a coal fired plant.

6.2.2 The bulk fuel supply contract to Gourikwa was signed with PetroSA refinery in Mosselbay. The storage facilities at the two OCGT plants were designed to store sufficient fuel for a week's operation at maximum of 8 hours of operation per day. The storage was not designed for semi-continuous use of the plants for extended periods. Ankerlig has various intermediate suppliers all acquiring diesel from Chevron refinery in Cape Town, but does not have a direct supply contract with Chevron.

6.2.3 The South African liquid fuels supply industry (fuels derived from crude oil) has been under strain from about 2010/11. The demand for diesel has been increasing sharply over a number of years as a result of the requirement for generation and the sharp increase of diesel powered vehicles on the road. The refinery capacity in South Africa cannot cope with the demand and refined fuels (including diesel) have been imported for a number of years to supplement the refinery supply.

6.2.4 The price of liquid fuels derived from crude oil is affected by the international crude oil prices. Figure 25 presents the price of Brent crude oil since 2010. From about the start of 2011 up to the 3rd quarter of 2014, crude oil was trading at above US$100/BBL. Since the prices have fallen to around US$60/BBL. Similar to international coal prices the price of crude oil in ZAR terms has not decreased to the same extent as US$ based prices. However, it has still decreased significantly. Figure 26 presents Brent crude oil prices in ZAR. Resulting from the decrease in oil prices one would expect Eskom would start to pay lower prices for diesel as the effect of lower crude oil prices starts to filter through.

Figure 25: US$ price of Brent crude oil

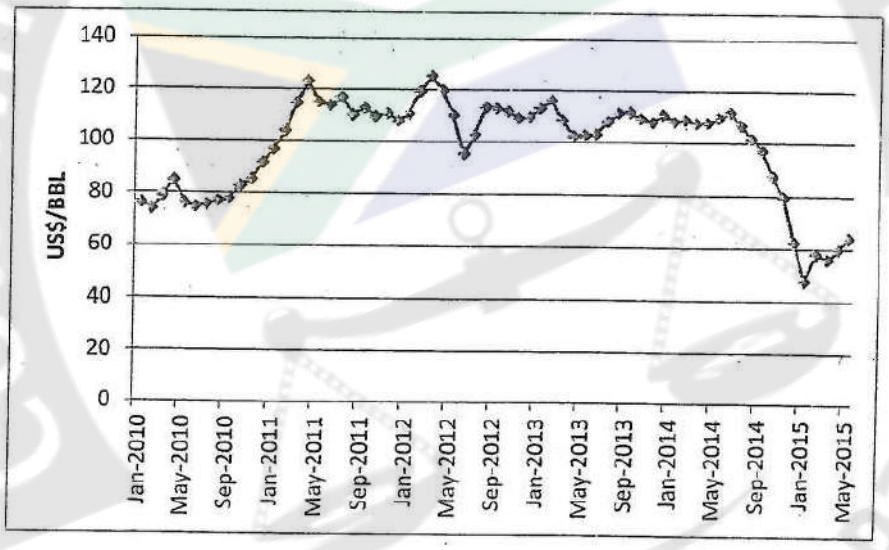


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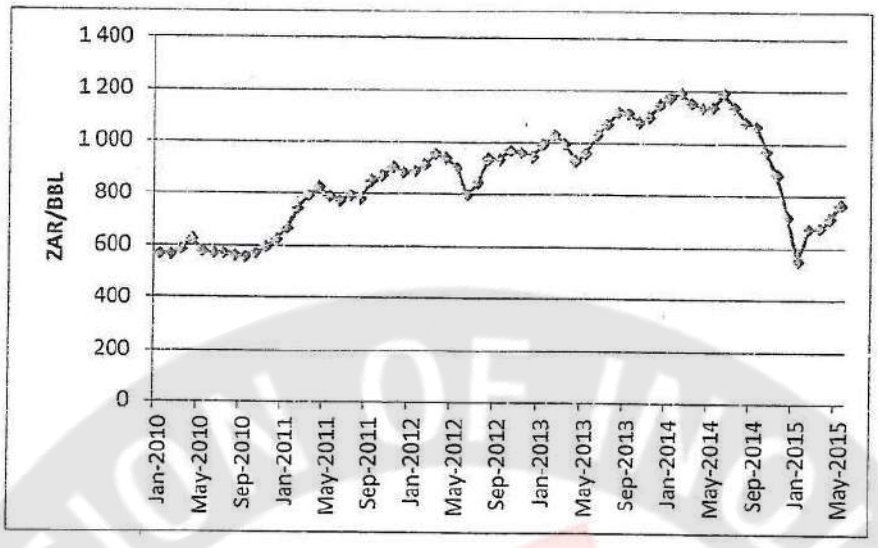
Figure 26: ZAR price of Brent crude oil



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enough analysis

6.2.5 Average diesel prices paid by Eskom over the last 3 financial years are provided in Table 2 below. The prices paid by Eskom have not varied much. The average price has come down in the last financial year which follows the drop in the price of crude oil.

Table 2: Current diesel consumption and Eskom prices paid

		Capacity	Efficiency	Heat Rate			
		MW		kj/kWh	2012/13	2013/14	2014/15
Gourikwa		746	33%	10 909			
Ankerlig		1 338	33%	10 909			
Total		2 084	33%	10 909			
Fuel consumed	Mega Litre				494	1 105	1 007
Price paid	ZAR/Litre				R 11.09	R 11.95	R 10.72
Price paid	ZAR/Tonne				R 13 366	R 14 394	R 12 915
Fuel CV	GJ/Tonne				43.8	43.8	43.8
Energy produced	GWh				1 648	3 682	3 356

what is av Rprice wholesale?

6.2.6 With regard to liquid fuels Eskom is faced with the same realities as any purchaser of fuels derived from crude oil subjected to international oil price variations. Securing a gas supply for the OCGT peaking plant could alleviate this situation.

7 Causes for increase in primary energy costs

7.1 Coal costs

7.1.1 In this and the following paragraphs we attempt to establish why Eskom primary energy prices have risen so sharply over the last few years. In paragraph 6 of this chapter the increase in Eskom and international prices was presented. The prices of coal paid by Eskom to suppliers have increased for the reasons discussed below.

7.1.2 Increase in the demand for coal

(a) Paragraph 3.1 presented the increase in coal requirements.

(b) In terms of energy produced from coal it has remained effectively the same from 2007 – 2014 varying between 120 to 125 MTon per annum. As presented in paragraph 6.1.7 the price of coal paid by Eskom increased from R98 to R288/Ton for this same period.

(c) The increase in demand for coal internally corresponded with an increase in demand for coal internationally and increased competition for the coal sources which put upward pressure on prices.

7.1.3 Change in the mix of coal supplies (drop in supplies from long term contracts)

(a) The change in the mix of coal supplied to Eskom has also exerted pressure on prices as result of competition for coal from international purchasers.

(b) Eskom has not invested in the Long Term Cost-Plus Contracts and the supply of coal from the collieries in question has decreased across the last few years.

7.1.4 Additional coal transported by rail and road

(a) The Medium Term contracted suppliers are located some distance (20 – 280 km) from the power stations that they supply. The coal has to be transported by road or rail from the colliery to the power station.

(b) A key contributor to the delivered price of coal from the Medium Term contracts is the transport costs, which makes up about 35% of the delivered price of coal of the Medium Term Contracts.

7.1.5 Increased coal requirements from more expensive coal resources

(a) Technical issues at the lower cost category stations have reduced their availabilities together with the increasing demand, increased the production requirement from the more expensive stations (more expensive coal) such as Tutuka, Majuba, Arnot and the return to service stations.

(b) From 2004 the contribution to energy production increased from these stations resulting in increased coal consumption from 20 to 35 MTon per annum. Large quantities of coal are transported to Majuba, Tutuka and the RTS stations. This has contributed to the increased average price of coal.

7.1.6 Overall increase in quantity of coal transported by rail and road

(a) As a result, the increase in Medium Term Contract supplies and the more expensive power stations producing more electricity, the coal transported by road and rail increased from 10 MTon per annum in 2005 to 64 MTon per annum in 2014 which put significant upward cost pressures on the coal supply prices.

7.1.7 Increased costs at the long term supply collieries

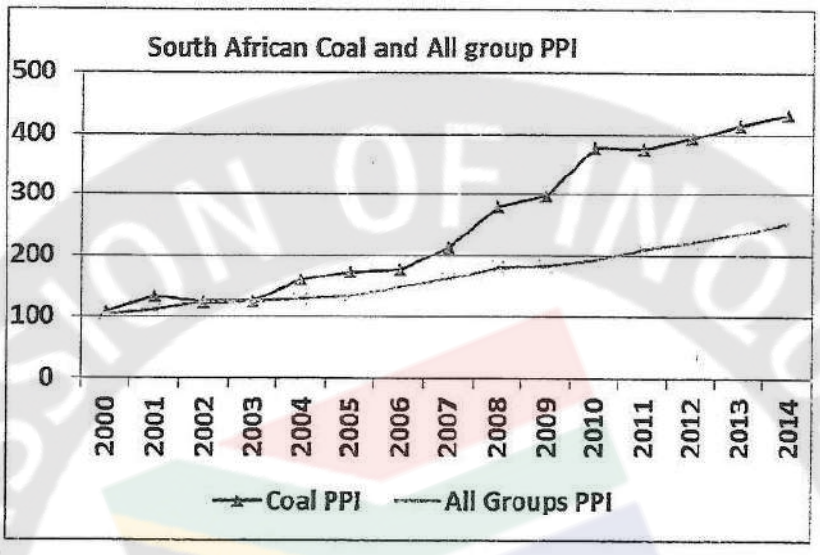
(a) Existing linked mines have also experienced significant input cost increases because of global increases in the prices of mining equipment and other costs.

(b) This does not only result in increased cost per Ton on the Cost-Plus Contracts, but also increases costs on the Fixed Price Contracts due to the indexation formulas within these contracts.

(c) Figure 27 presents the Production Price Index (PPI) for coal mining and the PPI across all economic categories in South Africa. Production costs in the coal mining industry have increased much more rapidly since 2007 than average production costs across all economic sectors, which is a contributing reason for sharp increases in Eskom supplied coal prices.

Figure 27: PPI – Coal and All Groups

(d)



7.2 Diesel costs

7.2.1 Table 3 presents the utilisation of Gourikwa and Ankerlig OCGT plants over the last 3 financial years. The utilisation of these plants has sharply increased since 2010 as part of the effort to keep the lights on (KLO) to avoid load shedding. Eskom thus had to purchase significantly larger quantities of diesel than what these plants were anticipated to consume. At this increased level of utilisation the cost of fuel for these plants is very high.

7.2.2 The increased utilisation of these plants is primarily as a result of the following three reasons:

(a) The new build programme (discussed in Chapter 2 of this report) is significantly behind schedule which means that the reserve margin is at critical levels. If these projects were on time, it is expected that they would have reduced the operation of the OCGT significantly;

(b) The performance of Eskom's existing fleet of coal fired generation has deteriorated (discussed in Chapter 1 of this report). Over the last number of years, the existing coal fleet has failed to perform some of the duties for which the OCGT plant are currently being used; and

(c) The OCGT plants are also being operated to create the necessary room for coal plant maintenance.

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Analysis of Prices

Table 3: Energy produced by Ankerlig & Gourikwa

		Capacity	Efficiency	Heat Rate			
		MW		kj/kWh	2012/13	2013/14	2014/15
Gourikwa		746	33%	10 909			
Ankerlig		1 338	33%	10 909			
Total		2 084	33%	10 909			
Fuel consumed	Mega Litre				494	1 105	1 007
Fuel CV	GJ/Tonne				43.8	43.8	43.8
Energy produced	GWh				1 648	3 682	3 356

8 Procurement strategy

8.1 Coal procurement

8.1.1 The strategy followed by Eskom in respect of coal procurement was to approach the coal market and to set down the principles upon which Eskom was to procure its additional coal requirements. Eskom intended to increase supply from emerging miners and set down the requirements for BEE participation in the coal supply.

8.1.2 It appears Eskom did not follow competitive tendering for the purpose of securing the supplies from the Medium Term and Short Term Fixed price contracts. Whilst the deviations from competitive tendering appears to have been justified under emergency procurement (expected to be short-term in duration), the non-competitive procurement has continued for an extended period of time.

8.1.3 It also appears that Eskom did not follow competitive tendering in securing the logistics for coal supply. The logistics cost appears to be substantially higher than the market prices for transporting coal.

8.1.4 Capital investment in the Cost Plus Contracts is required to sustain the supply from the mines in question at the contracted levels. However, the suppliers under four of these contracts do not have the required BEE rating and Eskom appears to be constrained with regard to capital expenditure.

8.1.5 Eskom could have approached the international coal market to invite competition into the local market. This however would create obstacles in terms of BEE rating, and securing required qualities of coal, and the costs are likely to be higher.

8.1.6 The strategy for securing coal supplies need to be revisited in the following areas:

(a) Investigate how the Long Term Cost Plus agreements can be restructured to improve BEE rating and investing in these mines to increase production to contracted levels or even higher which will reduce the transport costs significantly; and

(b) Changing the approach on securing Medium Term and Short Term Fixed price Contracts to competitive tender basis.

(c) Change the approach to coal logistics procurement – to be done on a competitive tender basis.

(d) Renegotiate the coal logistics contracts to obtain competitive market prices.

8.2 Diesel procurement

8.2.1 The strategy followed in procurement of additional diesel requirements remains unclear at this stage of the investigations. A bulk supply agreement was secured with PetroSA for the supply of diesel to Gourikwa OCGT (plant is located next to PetroSA refinery). However, for the supply to Ankerlig OCGT plant there is no direct agreement in place with the Chevron refinery located in Cape Town. It is unclear why this is the case, although it is believed that it may be due to Chevron's strict payment terms and Eskom's BEE requirements.

8.2.2 It appears that some of the suppliers are not established players in the liquid fuels market and it is not clear how these suppliers have come to supply diesel to Eskom. Eskom has been under severe pressure to secure additional diesel supplies, the extent of which was totally underestimated during the budgeting period. However during the execution phase, in order to keep the lights on, additional supplies had to be secured. As such, it appears that the diesel supplies had to be secured under short notice without following standard procurement practises, which created room for such suppliers.

8.2.3 Direct purchases from the Chevron refinery in Cape Town should be revisited. Ways to secure a more reliable and long term supply should be found.

8.2.4 Forecasting model for diesel use

(a) At the time of writing this Report, we were not provided with the diesel forecasting model despite our requests to obtain the model. We have performed our assessment of the diesel forecasts based on other information provided to us.

(b) The production forecasts for Eskom power plants done for the 2012/13 to 2017/18 period submitted for MYPD 3 tariff application to NERSA is presented in Table 4. The production levels for the OCGT (listed as gas) plants are significantly less (2013/14 1 284 compared to actual 3 682 GWh and 2014/15 1 076 compared to actual 3 356 GWh) than the actual utilisation of the OCGT's presented in Table 3. What is evident is that the forecasting for diesel consumption was under estimated by a large margin.

(c) The main reasons for the under estimation are:

(i) The assumption for the commissioning of first operational units at Medupi and Kusile were for 2013 and 2014 at the time which did not materialise. This led to much higher utilisation of the OCGT plants; and

(ii) The availability assumptions for the existing fleet of coal fired plant were around 80% compared to the actual availabilities of below 77% experienced.

(iii) There is no clear policy or guidelines to what extent OCGT plants should be used to prevent or reduce load shedding.

Table 4: Production forecast done in 2010

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	MYPD3 Total
Coal	218 953	220 520	226 250	234 919	237 921	243 915	1 163 524
Nuclear	12 719	14 239	13 751	12 959	14 197	14 577	69 722
Gas	1 104	1 284	1 076	540	533	538	3 971
Hydro	667	671	670	672	671	671	3 355
Pumped storage	2 970	3 114	5 261	5 955	5 902	5 943	25 175
Wind	0	69	220	221	221	228	958
Virtual station/polluter	0	0	-3 569	-5 725	-6 514	-6 590	- 22 418
Total Eskom generation	236 415	239 896	243 639	249 542	252 930	259 281	1245 287

9 Primary energy reports to the board

9.1 We consider below whether appropriate reporting to the board was done by Eskom management on the key issues relating to primary energy.

9.2 From the board papers that have been reviewed with regard to primary energy costs, it appears that key issues on primary energy have been reported to the board. This requires further verification and testing. However, based on interviews and discussions with executives in Eskom, primary energy is a 'black-box' costs and 'complex' and there is a view that there is a lack of transparency of information from Primary Energy.

9.3 The following are board meeting references:

9.3.1 At a Board breakaway held from 3-5 April 2013 the CE reported that Eskom had a long term coal strategy, however Eskom should motivate for South Africa not to have an unregulated coal industry pricing structure while Eskom pricing was regulated. He had engaged with senior executives from the coal industry on this issue. It was suggested that coal prices had to be delinked from international prices and regulations initiated either on price or volume for exports. It was requested that the work done by Primary Energy in this regard be summarised and distributed to Board for information to allow for discussion on various assumptions.

9.3.2 At a Board Investment and Finance committee (IFC) meeting held on the 16th April 2013 an extensive presentation was given on the capital expenditure requirement in order to sustain coal supply levels at the cost plus collieries supplying Eskom power stations. The presentation contains the status at each of the cost plus agreements and the capital investment required for each of the cost plus mines. These capital requirements were included in MYPD3 application to NERSA.

9.3.3 At a Board Investment and Finance committee (IFC) meeting held on the 16th April 2013 the committee notes the implementation of initiatives recommended by the EXCO Investment and Capital Sub-Committee (ICAS), Additional fuel usage at OCGT Power Stations: R2 009 M and Procurement of export quality coal for Arnot Power Station: R200 M.

9.3.4 At a Board meeting held from 30 May 2013 the Chairman noted that in his capacity as Eskom's Chairman, he had received many complaints regarding the lack of support from Eskom for emerging miners while they were becoming established. It was requested that a strategy be developed to provide emerging miners with more support in this regard.

9.3.5 At a Board Investment and Finance committee (IFC) meeting held on the 8th August 2013, the discussion on savings in primary energy costs and ongoing work on this is minuted.

9.3.6 At a Board breakaway held from 29th Oct to 1st Nov 2013, it was noted that primary energy costs would grow by 10.6% p.a. over the next 5 years, primarily due to IPP power purchases. The primary energy strategies presentation submitted to the Board for information purposes was not discussed due to time constraints. The Board noted that additional funding for OCGTs is required but has not been made available by government to date, despite engagement with NT and DPE as requested by the Board. The Board approved the additional spend for OCGTs subject to the funding being obtained from NT/DPE or from within the current approved budget taking into account recovery in terms of the RCA.

9.3.7 At a Board breakaway held from 29th Oct – 1st Nov 2013. Despite the lower growth forecasts, the OCGTs will need to be run intensively to meet the system demand. The 2014 financial year budget amount for OCGT usage was R3.6bn based on a planned EAF of 81.5%. In August 2013 the budget was exhausted and additional funds were approved by the Board amounting to R1.6bn until the end of October 2013. In support of the Generation sustainability strategy (80:10:10), the total funding requirement during the 2013/14 financial year for OCGTs is projected to be R9bn. The Board approves the required total funding of R9bn for OCGT usage in the 2013/14 financial year which is an additional R3.9bn over and above the current budget of R5.1bn.

9.3.8 At a Board breakaway held from 29th Oct – 1st Nov 2013. The objective of the Long-Term Coal Strategy is to secure up to 2 100 Mt of coal and transform the coal supply market by purchasing 64% of coal volumes from Black Owned Miners (50% +1 share) by 2018. Progress on the strategy implementation is on the following key areas:

(a) Progress on the Coal Supply Strategy

(b) Progress on the Emerging Miner Strategy "pillars"

(c) High level Status on the Eskom – Led Emerging Miner Fund

(d) Cost Plus Mines Life Extensions - High Level Commercial Strategy

(e) Progress on Coal Purchases from Black Emerging Miners

9.3.9 In this context:

(a) The Board notes the progress with regards to the implementation of the Long-term Coal Strategy.

(b) The Board notes that the long term coal requirements may be adversely impacted, due to the current and potential lower sales growth forecasts, which could have some effect on the implementation of the Coal Supply Strategy.

(c) It was requested that the Emerging Miner Strategy be referred to the Board for consideration at an appropriate time.

9.3.10 At a Board meeting held on the 28 November 2013 a Coal Strategy Implementation was presented to the Board for approval.

9.3.11 At a Board meeting held from 17 Feb 2014. In respect of the OCGTs a question was posed as to whether there was sufficient funding for the mitigating factors or whether additional

funding would still be required. The CE noted that this was an aspect which the Board needed to carefully consider in view of the annual increase in primary energy cost. He pointed out that the business might have to take a risk to find cheaper alternatives as it could not afford the additional R11bn for primary energy and that this represented a big step change. The DE: OCE agreed that this was a big step change but noted that, based on past experience, additional funding would in any event still be required. The FD pointed out that the additional R9bn had been approved by the Board on the assumption that funding would be obtained from Government which had not materialised. The Procurement of additional diesel for Open Cycle Gas Turbine (OCGT) usage and increased primary energy (PE) costs for the financial year ended March 2014 was tabled for approval, details of which were included in the meeting pack. The Acting Chairman suggested a way forward, as well as the proposed communication with the Minister, including the fact that the Board approving the additional spend on the OCGTs could potentially be regarded as reckless trading as the funds were not available. A specific instruction in writing in this regard was thus required from the Shareholder. The meeting confirmed that a directive from the Shareholder would be acceptable for purposes of approving the additional spend. The Acting Chairman adjourned the meeting for purposes of a telephonic discussion with the Minister. Following the adjournment, the Board met in an in-committee session and the Acting Chairman reported that the Shareholder Minister was looking into the matter and would revert within 3 working days. The procurement of additional diesel for Open Cycle Gas Turbine ("OCGT") usage and increased primary energy (PE) costs as detailed below for the financial year ended March 2014 was approved subject to confirmation from the Shareholder of the funding thereof.

9.3.12 At a Board meeting held from 27 Feb 2014. In respect of the use of the OCGTs, a written response had been received from the Minister of PE with support for the proposal to continue the use of the OCGTs till the end of March 2014. The Chairman provided feedback on his conversation with the Minister on this matter and noted that some related issues would be discussed as part of the CE's report. The Chairman pointed out that the Minister had undertaken in the letter to engage with Department of Energy and National Treasury re the recovery of the OCGT funding. At the same time, Eskom would have to confirm operational efficiency and provide comfort to the Minister in this respect. The meeting commented on the increased challenges being experienced with maintenance resulting in additional unplanned outages and the increased usage of the OCGTs not being sustainable. Questions were also raised regarding possible alternatives to reduce the reliance on OCGTs. The need for a comprehensive plan was highlighted to enable the Board to make informed decisions. This would also be required to engage with the Shareholder at the end of March 2014 when the OCGT funds had been depleted. Presentation of such a plan in March 2014 would be too late as the OCGT funds would be depleted by then. It was suggested that management focus urgently on this plan and circulate to Board members for consideration and the calling of a special Board meeting if necessary.

9.3.13 At a Board Investment and Finance committee (IFC) meeting held on the 16th May 2014 Primary Energy division's approach to ensure that a sustainable Black Emerging Miners Development Fund ("Fund") is established and implemented as strategic enabler to unfold Eskom's Black Owned Emerging Miner ("BEM") Strategy, and the approval of the Fund Design and Eskom's monetary contribution of R100 M to the Fund was tabled for approval.

9.3.14 At a Board meeting held on the 28 November 2014 issues pertaining to the excessive use of diesel and the cost thereof were discussed. The excessive expenditure above budget on diesel was reported at various board meetings and had to be approved by the Board.

9.3.15 At a Board meeting held on the 31 March 2015 a War Room presentation was provided to the Board. This presentation extensively discussed the key issues around the mix of coal sources and the reasons why coal prices had increased so sharply over the last number of years.

10 Recommendations

10.1 It is recommended that the following issues be revisited to secure better prices for coal:

10.1.1 Conduct the necessary feasibility assessment to determine if the Long Term Cost Plus collieries can be refurbished or expanded to increase production to contracted levels or even higher;

10 1.2 Develop a transparent and structured framework for credible BEE participation in primary energy supplies;

10.1.3 Investigate how the Long Term Cost Plus agreements can be restructured to improve BEE rating where it is required and investing in these mines (if feasible) to increase production which will have large impact on reducing the transport costs significantly;

10.1.4 Changing the approach on securing Medium Term and Short Term Contracts to a competitive tender basis or conduct a pre-qualification process to qualify suppliers; and

10.1.5 Conduct competitive tenders for the coal logistics, especially for the coal transported by road.

10.2 It is recommended that the following issues need to be revisited to secure better prices for diesel procurement:

10.2.1 For future supplies a more rigorous supplier due diligence procedure should be put in place;

10.2.2 Direct purchases from the Chevron refinery in Cape Town should be revisited and way to secure a more reliable and long term supply should be found; and

10.2.3 Competitive tenders for the diesel logistics should be conducted, especially for the diesel transported by road.

COMMISSION OF INQUIRY INTO STATE CAPTURE

CHAPTER 4: FINANCIAL CHALLENGES

1 Background

1.1 This Chapter deals with item 2.4 of the Scope of Work set out in Task Order 1.

1.2 Item 2.4 of Task Order 1 relates to Eskom's financial challenges. Under this heading the following specific items are provided for:

1.2.1 "2.4.1 the current cash flow position of Eskom and the methodology and models used for cash flow management;

1.2.2 2.4.2 whether the cash flow status of Eskom has been reported consistently with available contemporaneous information;

1.2.3 2.4.3 the recent costs incurred as a result of the financial instruments that form the nucleus of the borrowing programme, the process that led to their adoption, the existence of other viable and cost effective financial instruments that could have been pursued as alternatives; and

1.2.4 2.4.4 establish whether the interest rates attached to the financial instruments that form the nucleus of the borrowing programme are commercially supportable under the circumstances."

1.3 This Chapter provides our findings in relation to the reasons for Eskom's financial challenges, and the credibility and correctness of information that Eskom's EXCO provides in their reports.

2 Executive Summary

2.1 The Financial Challenges

2.1.1 Eskom's financial challenges are considerable. When you unpick the optimistic assumptions in the forecast to the end of this financial year, Eskom appears to be heading for a considerable trading loss, and in cash terms it is set to be below its desired R20bn liquidity buffer despite the R20bn bail-out equity injection.[1] This position also assumes this year's borrowings per the funding programme can all be obtained.[2] There is a significant risk that some of these funds will be subsumed by ongoing operations, rather than the capital build programme they are meant for. This is not a sustainable financial model.

2.1.2 Eskom needs a parent guarantee undertaking to be recognised as a going concern, and beyond March 2016 it requires a paradigm shift in its financial levers. Judging by the recent past, however, there is inelasticity in those levers, which creates considerable uncertainty in the medium term outlook:

(a) Amidst recent public statements Eskom are targeting 25% annual tariff increases, the informal feedback from NERSA in relation to the selective reopener, which contemplates an effective 15.5% increase for the remainder of FY2016, is not

[1] Key assumptions: That diesel spend will cease rather than continue at approximately R1bn a month; that NERSA will grant an extra R4bn tariff this year; that arrears will come down as municipality elections approach; that R13bn cost savings will be made.

[2] Approximately R26bn are required from new facilities i.e. and not draw downs on existing facilities.

positive[3]. This suggests tariffs won't increase sufficiently. Rightly or wrongly, the current appetite for tariff increases does not support Eskom's needs;

(b) Eskom's cost base seems to be increasing on an on-going basis, whilst sales volumes and collections falter. Historically there appears to have been an institutional resistance to making tough decisions to arrest this trend;

(c) Reversing the decline in plant efficiency and productivity in the short term is unlikely. The challenges in the generation fleet, described in Chapter 1, may take over 5 years to achieve acceptable performance levels;

(d) Borrowing is already stretched, and getting increasingly expensive. Last year, securing the borrowing programme required expensive international bonds to correct the low liquidity position and increasingly lenders seek assurances and action from the State before committing. With each credit rating slide another 100 basis points can be added to the finance costs; and

(e) The equity injection of R20bn was some way below the independently valued R51bn to R150bn required.[4]

2.1.3 Financially, Eskom is in a perilous position and it is expected to get worse. If history is repeated, and we assume it takes five years to turn the tables on the demand/supply balance (see Chapters 1 and 2), Eskom faces the real possibility of a slide into repeated loss making, poorer credit rating, and reduced borrowing options. When funds are secured, the capex programme will lose out to current needs. The new builds will increasingly look too expensive to fund, and the auditors may dispute the going concern assumption. In this way, Eskom can readily slip into a spiral of decline from which it will be ever harder and take longer to reverse.

2.1.4 This scenario has no long term benefits – for Eskom or the country. Sub-optimal decisions are already being made, such as: the decision not to invest in cost-plus mines, and capex outside the new build programme perennially suffer. Ultimately, Eskom will be out of financial levers to pull, the diesel purchases will cease and load shedding will deepen. Inevitably, that will reduce the public's tolerance for tariff increases even further.

2.2 The Causes of the Financial Crisis

2.2.1 Eskom is a cyclical business, and during capital intensive periods it stands to reason that without a "war chest", the tariff will be stretched and the borrowing capacity tested. It is a fact that the combination of delays in the new build together with the ailing fleet, Eskom has reached a tipping point that can only be resolved by expensive diesel purchases. A tipping point that has been exacerbated by NERSA's MYPD3 decision to award 8% tariff increases – which after IPP contractual requirements effectively cover inflation in the cost base, whilst allowing little for the replacement of assets, generation of profits or, in fact, adverse shocks against budget. It is not hard to see why Eskom bemoans the MYPD3 decision amidst this current financial crisis.

2.2.2 This is not the whole story, however: "Only when the tide goes out do you discover who's been swimming naked".[5] Based on our review, it would appear that too little has been done in the past two years to get Eskom's own house in order. We have identified many examples

[3] As at the date of submission of this Report, NERSA has rejected Eskom's application.
[4] JP Morgan Report of 2014
[5] Warren Buffet

where the business has not applied sufficient pressure to the one financial lever over which it has greatest control – the cost base:

(a) Coal usage at R45bn last year is the biggest cost centre in the business, and over 80% of Primary Energy costs excluding the levy, IPPs and diesel. The overwhelming majority of coal usage expenditure is given to suppliers. In the medium to long term timeframe there is undoubtedly inflationary cost pressure on coal, but it is startling how little attention and scrutiny this spend has received in the past two years:

(i) The savings made in coal usage from the Business Productivity Program ("BPP") have not been made in meaningful areas: reducing coal stocks and suspending capex rather than negotiating lower contract rates.

(ii) The cost is rising but the reasons trumpeted do not necessarily hold true for the past two years: the general shift from cost plus to MT/ST contracts is fact but in the last 2 years this mix has remained constant. Despite this, the rates negotiated continue to rise above Eskom's own MYPD3 expectations.

(iii) Budget is not achieved (excluding the Medupi coal penalty impact) only through buying (and burning) less coal. Stock levels in six power stations have holdings below the expected level set by Eskom.

(iv) There is a peculiarity that whilst on the whole Eskom has bought less coal, in FY2014/15 three power stations bought eight million tons more than planned – and these were through ST/MT contracts and at prices well above the average price paid in the year.

(v) In Chapter 3 we have reported on concerns that the rates Eskom pays for road transport are greater than expected.

(vi) Despite this, we appear to be the first team, internal or external to Eskom, to attempt to match actual spend to the underlying contracts – the accounting system cannot provide this readily. The finance team needs this information if they are to offer a first line of defence against excessive spend.

(vii) There appears to be a lack of challenge to the coal sourcing team. Internal Audit, and senior executives, describe Primary Energy and coal sourcing as a "Black Box" where they struggle to get information. There have been only limited and minor enquiries into the operations that comprise the main cost in the business.

(b) Various officers commented more generally on their belief that there was "fat" in the cost base, of divisions operating in silos fighting for their "pot" and still preferring a "Rolls Royce" approach to maintenance and activities more generally. This Investigation has not been long enough to identify the quantum of unnecessary spend, but the examples provided to us have been numerous:

(i) BPP's headcount reductions, which were the result of a lengthy and costly design phase, targeted R17bn of much-needed cost savings over the five year period. Despite much rhetoric for six months, we understand this initiative has been abandoned;

(ii) Arrears in tariffs due have not been effectively countered for two years – the recent success in bringing the municipalities to the negotiating table from direct action shows what was possible;

(iii) There is a significant list of examples of questionable procurements, and poor contract management, even including areas that should be in the spotlight such as ad hoc arrangements with suppliers of diesel not subject to discounts despite the purchasing power Eskom have; and

(iv) Of over 300 investigations conducted in the past two years by Assurance & Forensics, the department responsible for investigating allegations of financial misconduct, 63 have had sanctions recommended that have not been finalised. 79% of these have been outstanding for more than three months.

(c) Moreover, various officers have provided to us verbally examples of senior executives seeking opportunities ostensibly for the benefit of themselves at the expense of Eskom: denying Eskom a path to vertical integration of key suppliers, making deals with suppliers outside of the formal procurement process, and/or turning a blind eye to expensive contract breaches. If management's energies are centred on leveraging Eskom's considerable buying power for self-interest, rather than to drive efficiencies, the notion that the tariff is not cost-reflective loses all credibility. This Investigation was not long enough to allow us the time to investigate these allegations.

2.2.3 There would appear to be *prima facie* indicators based on the above that Eskom has breached Treasury Regulations pursuant to The Public Finance Management Act, 1999, and therefore contributed to its own financial challenges.

2.2.4 Described by Eskom as differing "levels of discretion" the void between the Regulator and Eskom when it comes to a definition of a cost-reflective tariff is substantial – approximately R30bn to R40bn annually. The adversarial relationship between these organisations may be partially responsible for the financial challenges Eskom is now facing.

2.3 The Credibility and Correctness of Information that Eskom's EXCO Provides in Their Reports Relating to Eskom's Financial Challenges

2.3.1 Based on our review to date, the information reported to EXCO from Group Finance and the Treasury department in relation to performance against budget, cash status, funding requirements and risk items, as well as the gravity of the financial challenges was accurate, sufficient and timely. EXCO were fully informed.

2.3.2 The Board received regular financial information in the form of the Quarterly Shareholder Report, and a regular Report from the Chief Executive summarising the business position.

2.3.3 We have found no fundamental issues with the credibility and the correctness of information that EXCO has provided in these reports. In particular:

(a) We found no instances that EXCO altered information when reporting to the Board; and

(b) We have not identified any significant information that was omitted.

2.3.4 On occasions there appeared to be indifference in the way that EXCO presented some financial information to the Board, but in equal measure the Board rarely appeared to raise challenges to financial issues. Access to further information may shed light on this.

2.3.5 If there was a weakness in the financial information reported, it was the accuracy of the budgets and timetable in relation to Medupi, and the requirement for diesel. The Finance team were reliant on the business for these details. From our review, there was seeming confusion at EXCO and the Board in relation to the extent of these issues, together with an absence of consideration of the wider financial implications.

2.3.6 Two of the most damaging financial challenges that threatened Eskom in the past two years, rising arrears and diesel costs, were discussed by EXCO members and tabled with the Board. However, the resolution on both occasions was to seek help from the State rather than looking inwards to resolve the issue. In neither case was it to good effect.

2.3.7 Moreover, in spite of the financial implications of the MYPD3 decision being firmly entrenched in the business, neither EXCO nor the Board took it upon themselves to drive meaningful cost savings in the business. Updates on the worsening situation were regular, however limited combative action was taken:

(a) There appears to have been insufficient drive applied by EXCO to create worthwhile savings through BPP;

(b) Coal usage remained within budget and as a result escaped debate. However, as the single largest stand-alone cost lever it is remarkable no independent scrutiny was applied to this area;

(c) Staff cost increases needed to remain within 6%, to ensure no overspend against the MYPD3 tariff allowance and yet an average increase in salaries of 7.6% was sanctioned. In addition, headcount reductions, a cornerstone of BPP, were reportedly rejected by the business; and

(d) Senior committees consistently approved additional budgets without knowing where the funding to support them would come from.

2.3.8 There are structural deficiencies that may have prevented necessary and constructive challenge to senior management:

(a) The common membership between EXCO and its sub-committees may have led to insufficient challenge of the decisions when brought to EXCO. Many decisions made by sub committees were simply noted, and not discussed at EXCO. By devolving decision making it may have made it easier for divisions to railroad their own agenda at the expense of the business as a whole.

(b) The Internal Audit function and the Assurance & Forensics department only look where they are led or instructed to look. They have little influence over disciplinary sanctions too, which are relinquished to the business, thus limiting their role as the primary independent challenge.

2.3.9 The information passed through EXCO in relation to financial challenges, therefore, would appear to have been credible and correct. It has been the collective response from senior executives to these challenges, however, that has been lacking.

2.3.10 There are indications of three underlying causes that may be behind this unresponsiveness at the senior executive level:

(a) a mentality that it is the State's responsibility to find Eskom a solution – whether driven by a sense Eskom is "too big to fail", or an under appreciation of the precarious financial status of Eskom;

(b) a reluctance at the divisional level to apply appropriate pressure to their own cost base because other divisions were not perceived as doing the same; and

(c) An unwillingness to seek to leverage Eskom's spending power to drive down costs with suppliers as a result of corrupt relationships and personal enrichment.

2.3.11 Further enquiries are required to discern the veracity of these underlying reasons. Only with diagnosis will it be possible to address the apparent intransigence in the management of the cost lever and damaging stewardship of Eskom.

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3 Eskom's Financial Challenges

3.1 Eskom's Financial Levers

3.1.1 Like all organisations, Eskom has various financial levers which it must use to maintain financial sustainability. As a parastatal and a utility, however, these levers are somewhat unique.

3.1.2 Tariff

(a) As South Africa's primary electricity supplier, approximately 95% of Eskom's revenue is generated from tariff based sales.[6] For historical reasons, electricity has been charged at below cost-reflective prices. Eskom is entitled to recover from customers via the tariff its costs including a return on assets, and is therefore seeking to transition to a fully cost-reflective price in order to support a sustainable electricity industry.

(b) From 2006, this has manifested itself in Multi-Year Price Determination (MYPD) through a process of application to and decision by the regulator NERSA. It is essentially a negotiated settlement of the annual increase in tariffs the consumer will be charged, albeit NERSA have the final say and must engage with additional stakeholders.

(c) The revenue Eskom generates is therefore predominantly a result of the price it obtains from NERSA. A detailed budgeting process and engagement with the regulator impacts on this lever.

(d) In addition the revenue results will be influenced by collections, and sales volumes. The former is a combination of collections from industrial, mining, commercial, agricultural and residential customers – directly to 40% and 60% via municipalities. The latter depends on new connections, which we understand have been relatively static recently[7], and demand created by industrial growth.

3.1.3 Ongoing Cost Base

(a) Costs from ongoing activities are an essential lever in every business. The intention is to spend as little as possible in generating sustainable revenues. Eskom has considerable purchasing power, and now spends approximately R140bn a year. Last year approximately R83bn was expensed on Primary Energy and R26bn on its wage bill to over 45,000 staff.

(b) As financial levers there are inevitably varying degrees of resistance in the cost base.

(c) Coal costs

(i) Last year R83bn Primary Energy Expenditure was in large part due to coal where costs ran to R52bn. 88% of this is coal usage costs, and is largely paid to coal suppliers.[8] This is the single biggest cost lever in Eskom's business.

(d) Diesel, IPP and Environment Levy

conclusions here seem to contradict last section, which implied there was more room to control costs

[6] Eskom's MYPD3 application
[7] Eskom Integrated Reports FY2014 and FY2015
[8] Eskom Operational Report March 2015

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is this true? did they buy at wholesale prices?

(i) OCGT costs of diesel contributed R9.5bn to Primary Energy last year. The prices paid in the wholesale market are regulated restricting Eskom's opportunity for discounts. Eskom has contracted with IPPs procured by the Department of Energy through the REIPPP programme and passes through these costs. They were R9.5bn in FY2015. Eskom must also pay an Environment Levy which was R8.4bn last year. Non-coal Primary Energy levers are not therefore particularly malleable.

(e) Other costs

(i) With interest including that which is capitalised above R20bn and Staff costs of R26bn, there are limited other places in the cost base to target for savings.

3.1.4 Plant efficiency

(a) One way businesses seek to improve their financial performance is to get more from less, in other words to create efficiencies. With a capital intensive company like Eskom, improvements to the performance of the large productive assets are a long term lever to be managed.

3.1.5 Capex and borrowing

(a) Ten years ago Eskom had no funding requirements and so borrowing levels were approximately R5bn. In 2005, Eskom embarked on an R337bn capacity expansion programme, described in detail in Section 2 of this report. Owing to years without charging a cost-reflective tariff, it made sense to finance the programme with debt. By September 2012 R180bn in debt had been raised.

(b) Borrowing in the short term, whether from domestic or international capital markets, can be a lever to manage short term liquidity. However, in the long term, given the cost of borrowing in interest payments, and the need to repay facilities (or switch/replace) on maturity, it is important that they are used for investment purposes which will generate a positive return and future income flows.

(c) Eskom's long term goal is to be financially sustainable as a standalone entity. Currently however, Eskom's credit rating is linked closely to the Sovereign and much of its borrowing requires government guarantees.

3.1.6 Equity

(a) The peculiarity of Eskom is that nearly all its levers return to the State. What Eskom can't fund from the tariff or from borrowing, both reliant to a certain extent on the State, it can only hope to obtain from its parent directly. However, equity injections must be sourced from somewhere, and ultimately that source is taxes from the people of South Africa. This may not be seen as equitable when compared to the tariff as the tax system will not be reflective of electricity consumption.

3.2 Financial Responsibilities of Eskom's EXCO

3.2.1 Studies show that EXCO members that work well are those that operate like a cabinet, in that when a decision is made all members get behind it; and they understand their division is secondary to the overall business. [9]

3.2.2 The Board of Directors have statutory requirements to fulfil including safeguarding the company's assets and driving financial sustainability. In EXCO they entrust stewardship and the distillation of credible and correct information to support them in these obligations.

3.2.3 Further obligations are placed on the senior executive at Eskom because it is subject to Treasury Regulations for departments, constitutional institutions and public entities, issued in terms of the Public Finance Management Act, 1999 (PFMA).

3.2.4 Of particular relevance from the PFMA:

(a) An official of an institution may not spend or commit public money except with the approval (either in writing or by duly authorised electronic means) of the accounting officer or a properly delegated or authorised officer.

(b) The accounting officer of a department must exercise all reasonable care to prevent and detect unauthorised, irregular, fruitless and wasteful expenditure, and must for this purpose implement effective, efficient and transparent processes of financial and risk management.

(c) The accounting officer must ensure that processes (whether manual or electronic) and procedures are in place for the effective, efficient, economical and transparent use of the institution's assets.

(d) The procurement procedure must include:

(i) an open and transparent pre-qualification process;

(ii) a competitive bidding process in which only pre-qualified organisations may participate; and

(iii) criteria for the evaluation of bids to identify the bid that represents the best value for money.

(e) The accounting authority of a public entity must establish procedures for quarterly reporting to the executive authority in order to facilitate effective performance monitoring, evaluation and corrective action.

(f) The accounting authority of a public entity is responsible for establishing systems, procedures, processes and training and awareness programmes to ensure efficient and effective banking and cash management.

(g) If an employee is alleged to have committed financial misconduct, the accounting authority of the public entity must ensure that disciplinary proceedings are carried out in accordance with the relevant prescripts. The accounting authority must ensure that the investigation is conducted within 30 days.

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[9] http://www.campbellmacpherson.co.uk/2013/05/what-does-a-good-exco-look-like/

(h) The accounting authority must, on an annual basis, submit to the executive authority, the relevant treasury and Auditor-General a schedule of:

(i) the outcome of any disciplinary hearings and/or criminal charges;

(ii) the names and ranks of employees involved; and

(iii) the sanctions and any further actions taken against these employees.

COMMISSION OF INQUIRY INTO STATE CAPTURE

3.3 A Chronology of Key Financial Events Over the Past 3 Years

3.3.1 Background to MYPD3 application

(a) It has been well documented that Eskom has a cyclical financial story. Historically, as power stations were completed Eskom become cash-positive until it had to build new ones again. A capital intensive phase took place in the 1980s, when the country had experienced a crisis similar to the current one, with a maintenance backlog and extensive load shedding. Eskom had then returned to financial health in the 1990s, until about 2006, when it began another financial decline as it required money for maintenance and its new build programme.

(b) For years Eskom subsidised the consumer: 1994 to 2002 were poor return years for the company, and the foundation of abundant funds is cumulative. In 2008 "Project Elephant" led to a request for R150bn equity injection for purposes of Capital Expenditure and a one-off 106% price increase. In 2009 R60bn was guaranteed by the government. [10]

(c) The first Multi-Year Price Determination was for the year to 31 March 2007 and was for 3 years. These years were not cost reflective tariffs; even after the "retrofitted" approach to revise decisions based on actual spend. The plan was that over five years the country would move to "cost reflective" tariffs.[11]

(d) Over the MYPD2 period, years to March 2011, 2012 and 2013 Eskom applied for a 35% average tariff increase and were granted 25%.[12] There was also a five year commitment to grant another 25% for the ensuing 2 years (i.e. the last two financial years experienced).

(e) In March 2012 the Department Energy requested consideration of a reduction in the final year of MYPD2 following concerns over the world financial crisis and the negative market performance of South Africa. It appears that at the time, Eskom's Treasury did not support the tariff application being reduced from 25% to 16% but the decision was made and the 25.9% tariff increase was reduced to 16%.[13]

(f) Many employees in Eskom have told us they considered this to be a mistake. It appears also that the regulator may have initially supported Eskom's request and demonstrated support for the increases alongside lenders.

(g) The detrimental impact of the decision taken in 2012 to cut the tariff will have purportedly incurred Eskom approximately R55bn in revenue losses over the following 5 year period. By reducing sales in 2012/13 by R7/kwh it cut the base against which future tariff increases were applied.[14]

(h) This is the uncertain context into which Eskom entered into the MYPD3 application in October 2012.

3.3.2 The financial position at 30 September 2012 – Date of MYPD3 Application

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[10] Caroline Henry, Senior Manager Treasury, 10 June 2015
[11] Caroline Henry, Senior Manager Treasury, 10 June 2015
[12] Eskom Holdings Limited: Revenue Application – Multi Year Price Determination 2013/14 to 2017/18 The Decision
[13] Caroline Henry, Senior Manager Treasury, 10 June 2015
[14] Martin Buys, Group Finance, 22 May 2015

(a) At the date of the application to NERSA, Eskom's financial outlook was relatively positive. Sales volumes were slightly down but this was offset by a 17.3% increase in revenue per kWh, resulting in an overall increase of 15% on the same point last year. Costs of production were beginning to rise but were still below target levels, leaving a solid profit of R12.6bn, down 1.3%.[15]

(b) Treasury had liquid reserves of R46bn[16] which was comfortably above the R20bn buffer and the average liquidity days of 186[17] were well above the target of 120 days. Funding was readily available to them to meet their R300bn funding plan, of which 79.5% had been secured at September 2012.

(c) The Medupi schedule, although delayed, was aiming for the first synchronisation of Unit 6 by November 2013 and full commercial operation by April 2014.

(d) It was around this time that the EAF was below that required to meet supply without running the OCGTs harder, and hence the first ad hoc diesel purchases were made.

(e) Against this financial context, Eskom targeted a 16% tariff increase in its MYPD3 Application. See Appendix 1 for the application on a line item basis.

3.3.3 The NERSA decision – February 2013

(a) On 28 February 2013, NERSA published its decision on MYPD3, which approved an 8% year-on-year tariff increase instead of the 16% applied for. In summary:[18]

Totals for the 5 year period	APPLIED FOR Rbn	DECISION Rbn	Shortfall Rbn
Return	186.9	137.7	49.2
Primary Energy Costs	354.9	293.5	61.4
Independent Power Producers (IPPs)	77.7	64.9	12.8
Depreciation	185.4	139.9	45.5
Integrated Demand Management	13.1	5.2	7.9
Operating Costs	269.6	265.3	4.3
TOTAL REVENUES	1,087.6	906.6	181.0

(b) Just over a week later, the MYPD3 approved revenue figures from NERSA were officially reduced from R907bn per the original determination to R862bn.[19] NERSA had not used the correct volume / tariff figures for the three tariff categories which make up the determination. This lower value when compared to the application gives the R225bn "revenue shortfall" often referred to.

(c) There is no doubt that this decision amounted to a considerable challenge on the assumptions underlying Eskom's budget. Eskom buys from IPPs on the pass through principle and the IPPs get the full 6% they ask for to cover costs from Eskom,

[15] Presentation of Eskom Interim Financial Results as at September 2013
[16] Cash, cash equivalents and liquid investments in securities at September 2012
[17] Treasury Dashboard September 2012
[18] Nersa MYPD3 decision notice, February 2013
[19] NERSA confirmation letter of revised revenue levels to R824bn dated 8 March 2013

and the remaining 2% of the total 8% the consumer pays. Thus this effectively squeezes what Eskom has to utilise even further.[20]

(d) It is noteworthy that half of the shortfall related to longer term costs i.e. the building up a return on the assets and covering depreciation. Fundamental disagreement in the valuation of assets had a double impact. NERSA valued the assets at R200bn less than Eskom. The Eskom valuation had included a nominal return and inflation, so NERSA had removed the inflation element, revalued the asset value downwards by R200bn, and not given the full ROA which was phased in at 2-3% per annum.[21]

(e) In the shorter term, there would not be enough funds to cover the existing budget. Although not necessarily insurmountable, in the first two years of MYPD3 the shortfall created a significant challenge to Eskom's cost base.

(f) If one considers coal usage, for example; in real terms the application had targeted an annual increase of R4.47bn; however the award priced an R3.75bn increase. Not an onerous challenge, and in fact the discrepancy was down to a differing of opinion on the deterioration of the average burn rate, a feature that can be recovered retrospectively through the Revenue Clearing Account. However, NERSA's starting point was the 2012/13 allowed budget (R31.2bn) which was a value which dated back to 2009 and the MYPD2 application, and not Eskom's forecast spend for FY13 (R35.4bn), and so in fact Eskom would have to reduce coal usage spend in FY14 by 12.5% after inflation, based on the decision (R32.7bn).

3.3.4 The financial position at 31 March 2013 – FY13 year end

(a) At March 2013, the end of the FY13, notwithstanding the recent lower tariff decision, Eskom's financial position was beginning to falter. Debt levels were relatively stable, rising 11% to R203bn[22] and there was a healthy debt: equity ratio of 1.95 below the annual target debt ratio of 2.23[23]. However Eskom would soon be requiring further lending to fund its capital expansion programme, putting pressure on this ratio. It was missing other financial KPIs such as curbing rising costs of production and its ability to cover interest payments on its debt.[24]

(b) The 2012/13 16% tariff increase resulted in a 16.4% average increase in electricity revenue per kilowatt-hour. However, sales volumes were lower than expected due to lower usage from industrial and mining customers, offset by increased volume to international customers (Botswana and Namibia). This resulted in revenue of R128.9bn, which was slightly down on budget but largely on target.[25]

(c) Earnings before interest, depreciation and amortisation ("EBITDA") however were over 50% lower than the previous year at R13.9bn, mainly due to the rising primary energy costs. Primary energy saw an increase of 31% on prior year, with only an equivalent 3.7% increase in sales. The Medupi coal contract penalty of R3.7bn, and increased coal handling costs due to strikes resulted in coal usage costs going up, while OCGT usage increased by 302% in order to "Keep the Lights On".

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[20] Calib Cassim, Group Finance, 26 May 2015
[21] Calib Cassim, Group Finance, 26 May 2015
[22] Eskom Financial Statements 31 March 2013 – Total Borrowings and Debt Securities
[23] Eskom Financial Statements 31 March 2013
[24] Eskom Holdings Integrated Report 31 March 2013
[25] Business Results Briefing 31 March 2013

(d) Electricity debtors (before impairments) increased from R14.6bn to R16.7bn at 31 March 2013 of which R1bn was impaired as potentially uncollectable. 36% of this impairment relates to Soweto and municipalities and this was the first year that a provision had been raised against the municipal debt. Soweto debt continued to grow in the year and payment levels were only 24.4%, a collections shortfall of R0.7bn for the year.

(e) Although the financial statements show a small retained profit of R5.2bn, this includes the effect of one-off gains[26] and capitalization of employee costs, which when removed reveals Eskom to be making a loss before tax of R9.4bn from ongoing activities. This together with a policy to capitalise certain interest costs (i.e. add to the size of the asset under construction rather than expense through the income statement) potentially masked the fragile break-even nature of Eskom's business.

(f) Liquidity levels were also in decline, with net cash generated by operating activities falling by 28% to R27.7bn.[27]

(g) Medupi was experiencing various delays, including on technical building equipment and labour protests resulting in the site being closed. Eskom had committed to the Shareholder[28] (and in MYPD3 application to NERSA) that Medupi would be ready for Unit 6 first synch by 31 December 2013, but by April 2013 doubts were arising formally as to whether this deadline would be met. At May 2013, Medupi build costs were overrunning by R8.6bn, above the original R91bn budget.

3.3.5 The response plan - April 2013 to November 2013

(a) Following the MYPD3 decision, Eskom prepared a "Response Budget" in an attempt to close the R225bn gap. This budget was still in excess of what had been approved by the Regulator but was later reduced further several times, i.e. it remained flexible through Board decision. Initiatives to close the gap included cutting costs (later enshrined in the Business Productivity Process "BPP"), increased borrowing and reducing capital expenditure.[29]

(b) The RCA component was also seen as critical - Eskom believed that the volumes and cost base as calculated by NERSA were wrong and this is borne out by the most recent Regulatory Clearing Account ("RCA") application for year 1 of MYPD3. It has also been seen that SPA customers are paying less in actuality than predicted in the determination. [30]

(c) Eskom's response appears to have had the measure of the gravity of the situation. We understand that everyone was aware Eskom needed to make some big changes and pursue a number of strategies to manage the risks this decision presented to Eskom's financial sustainability.[31]

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[26] Gain from re-measurement of shareholder loan of R17bn and loss on embedded derivative of R6bn
[27] Eskom Financial Statements 31 March 2013
[28] Board minutes 3 April 2013
[29] Martin Buys, Group Finance, 22 May 2015; Securing financial sustainability (in response to lower tariff decision) May 2013
[30] Calib Cassim, Group Finance, 26 May 2015
[31] Caroline Henry, Acting CFO at the time

(d) Because of years of non-cost reflective tariffs, there was no slush fund. The changes that were identified by Treasury and Group finance in the following three months to July 2013 were adopted, but successful implementation was not guaranteed[32]:

(e) Re budget and re-prioritise;

(i) A revised budget was forced upon the business as they were resistant to cuts;[33]

(ii) The business believed the cost cutting was harsh and as a consequence didn't take ownership of the new budgets, however. Moreover, some areas of the business just continued to expect the same approach which was a "Rolls Royce" approach. Transmission was cited as an offender.[34]

(iii) In addition, the capex re-prioritisation was not joined up exposing the silo'd nature of the business. The employee put in charge of this had an IT background and was potentially railroaded by the business divisions – each reportedly fought for their full budget rather than working together and planning spend efficiently. In essence there was limited accountability.[35]

(f) Monthly report on budget, Quarterly cash projections and risk assessments to be conducted, and the underwriting of risks

(i) Although budget to actual was reported on a monthly basis, Caroline Henry indicated that her predecessor Paul O'Flaherty only reported on a quarterly basis to the board.

(ii) We have not seen any evidence that monthly budgets were discussed at EXCO. Martin Buys, Group Finance does not recall that monthly reporting of progress against budget to EXCO happened at this time.

(g) MANCOM Quarterly Review to provide robust challenges to financial position

(i) These are discussed in more detail below.

(h) BPP as a necessity

(i) BPP was on top of the R30bn saving which had been built into MYPD3 application and was initially about cost savings through HR and savings in Primary Energy.

(i) By November 2013, the messages had been repeated and were continually reinforced, and a new initiative emerged which was to manage financial sustainability[36]:

> *"The financial sustainability risk combines what was previously defined as the Revenue Shortfall Risk in Group Financial Controller and the Liquidity and Portfolio Risk in Treasury"*

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[32] Q1 2013/14 Report to Exco by C Henry
[33] Senior officer within Treasury
[34] ibid
[35] ibid
[36] 10.2.5 Eskom's Financial Sustainability Risks MYPD - Submission Documents

(j) This initiative had the stated belief that: "*Whilst the risk is substantially contained in the first two years of the five year window; significant challenges remain in the latter part of the determination period. In this regard it is important that with the support of Exco/Board, advance work at risk should commence to proactively collate, coordinate and draft a submission for the NERSA determination targeting years 3, 4 and 5 with a view to be ready for submission in July 2014. This is subject to Exco and Board approval*"

3.3.6 Treasury alert - January 2014

(a) In January 2014, Treasury issued an alert that Eskom would run out of money in the summer of the financial year 2014/15; essentially a 6 month warning.[37]

(b) Group Finance began to first comprehend the gravity of the financial decline towards the end of the financial year to 2013/14. This concern was relayed to the FD at the time and discussions were purportedly initiated with the Government to escalate the issue. It was generally considered that the company would not be able to survive if the levels of diesel usage continued.[38]

(c) The actual response to the January alert was the "Back to Boundaries" philosophy and in a sense to rely on Shareholder meetings for palatable solutions.[39]

3.3.7 The financial position at March 2014 – FY14 year end

(a) With a significant gap in the spending budget, Medupi and Kusile still not contributing to supply, and the costs of OCGT fuel to plug the supply gap continually rising, Eskom's financial position fast deteriorated in FY14.[40]

(b) There were serious concerns about a possible credit downgrade from the ratings agencies given the highly leveraged position of the company, the need for further funds to fill the R255bn revenue gap and the business' reliance on the sovereign credit rating.

(c) Eskom's liquidity position had improved through funding raised in the year, but this had a negative impact on debt to equity ratio which had risen to 2.06 and the company had diminishing ability to service that debt. The cash position of the group was R30.6bn at 31 March 2014 compared to R28bn in the prior year as a result of gross debt increasing by R51.9bn during the year[41]. The cash outlook was not good, however with a slide below the liquidity buffer anticipated after December.

(d) Sales volume had been stagnant with only a 0.6% increase on the prior year (against a budgeted increase of 16%). Part of the reason was the power buy backs programme where Eskom intentionally reduced volume from large customers, but this was coupled with an overall decline from sales to industrial customers. Revenue therefore only increased by R10.7bn to R139.5bn, on the basis of the tariff increase of 8%.[42]

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[37] Caroline Henry, Senior Manager Treasury, 10 June 2015
[38] Martin Buys, Group Finance, 22 May 2015
[39] Caroline Henry, Senior Manager Treasury, 10 June 2015
[40] Operational Review March 2014
[41] Debt and Commercial Paper
[42] Eskom Holdings Integrated Report 31 March 2014

(e) Bad debt arrears were 1.10% of external revenue for the year, compared with 0,82% in the prior year. The Soweto and municipality debt continued to grow and despite Eskom's interactions with National Treasury to assist with dealing with the problem, it was not improving.

(f) Eskom's retained profit for the year was R7.1bn, an increase on prior year. However, removing the effect of the one-off gain on financial instruments[43] and capitalised staff costs of R5.1bn, the business made a slight profit before tax of R1.3bn. Primary energy costs increased again this year by 15% to R69.8bn, despite static production volumes. In the main this was attributable to the reliance on OCGT and the cost of diesel. Significant reliance was being placed on the OCGT fleet and spending had increased by R5.6bn since March 2013 with an unfavourable budget variance of R6.97bn.[44]

(g) Savings from the BPP programme were sorely needed but none of the 86 savings opportunities identified in the year had yet to hit the financials.[45]

(h) The MYPD3 response plan cut the capital programme budget to R251bn (against the original application amount of R337bn) which put Medupi expenditure plans under a new budget. Medupi was R389m over this revised budget, mainly due to increased project manpower required on the project.[46]

3.3.8 "Rescue package" to fix the "cash crunch" - September 2014

(a) In September 2014, the government approved a support package for Eskom to resolve its short and medium term liquidity constraints. This rescue package included an equity injection of R23bn and Sovereign support to a R50bn debt package. Although the equity would ease liquidity pressures in the short term, it would not address the long term sustainability and the additional debt would put even greater pressure on finance costs. The level of debt at September 2014 was R263bn.

(b) Eskom's cash position had fallen significantly below its R20bn buffer and forecasts at this time showed a consistent decline of liquidity and in fact into overdraft in 2016/17 financial year[47]. The liquidity position was temporarily at least above the buffer at R22.6bn and cash reserves covered its cash requirements for approximately 90 days, reduced from 120 days at 31 March 2014.

(c) The ratings agencies were seriously concerned with Eskom's financial health and it faced the threat of a downgrade to "junk bond" status, which the business recognised would seriously impede Eskom's ability to raise external funding and increase the cost to borrow.

(d) The business had a net profit after tax of R9.3bn but was forecasting a year end loss of R2.5bn. As per the trend at the FY14 year end, this was as a result of continued reduction in sales volume, increasing primary energy costs (including the Medupi coal penalty of R2.5bn), rising OCGT costs and the continuing impairments of the

[43] Gain on adjustment to fair value of embedded derivatives of R2bn
[44] Business Results Briefing 31 March 2014
[45] CE Report to the Board 27 February 2014
[46] Business Results Briefing 31 March 2014
[47] Q2 Shareholder Report 30 September 2014

escalating municipality debt. [48]

(e) The cost of running the OCGTs during the six months amounted to R3.6bn against a budget of R2.7bn and this variance was forecasted to get worse, with R10bn spend predicted by March 2015 against the R6.4bn budget.[49] The initial FY15 OCGT budget of R10.43bn had been revised down to R6.02bn, as the intention had been to purchase cheaper IPP supply options. However, the lower OCGT utilisation did not materialise and additional funding of R4.3bn was approved. [50]

(f) Again, the total municipal arrear debt kept on rising, from R3.3bn at 30 June 2014 to R4.0bn at 30 September 2014 and the debt was expected to keep rising. The Soweto payment level was 15% for the period ended this time, down from 16% at the end of the first quarter.

(g) Eskom's recovery plan relied on government intervention but also looked internally for BPP cost savings. R9.8bn of savings were initially identified for the following FY15 and allocated to divisions who were tasked to operate their business within the reduced budget. However, R5.56bn of the initially identified savings had fallen away due to the projected overspend on diesel and the inability to recover municipality debt.[51]

(h) Construction progress at Medupi had been hindered in critical areas due to industrial action in July 2014. The workforce returned to site by September and, through risk mitigation plans and reassignment of available resources, the target for first synchronisation of Unit 6 remained December 2014.

(i) As it happened, and given the "rescue package" had no impact in August 2014 (i.e. it is only now being ratified), it was perhaps surprising that Eskom didn't run out of funds as predicted. According to a senior finance officer, in some ways this was a bad thing because the financial precarious nature of Eskom remains intangible to many. In a sense, Treasury lost credibility by not running out of funds.

(j) This was more luck than judgement, however: For example delays in Medupi meant that by default the business had enough funds and as time wore on different funding options presented themselves.

(k) These shareholder engagements during the "Back to Boundaries" initiative were ultimately ineffectual however: The R50-R150bn equity injection, as determined by JP Morgan, was not sanctioned, and instead only R23bn crystallised.[52]

3.3.9 The financial position at 31 March 2015 – FY15 year end

(a) This financial year saw the start of regular planned load shedding, as the cost of 'keeping the lights on' through OCGTs and delaying essential maintenance became too much. The possibility of running out of cash and/or insolvent trading became a real fear, as net cash from operations fell below the level of debt repayments and

[48] Q2 Shareholder Report 30 September 2014
[49] Q2 Shareholder Report 30 September 2014
[50] Q2 Shareholder Report 30 September 2014
[51] CE Report to the Board 15 September 2014
[52] According to senior finance officer

interest due[53]. Coupled with falling KPI ratios, Eskom's was showing an inability to cover their financing costs for the first time.

(b) New debt of R49.5bn was taken on in the year to fund the continued capex programme. However, Eskom was downgraded to sub-investment grade status by both Moody's and S&P and thus the funding was provided at much higher finance costs.[54] Liquidity concerns were heightened as the net cash flow from operating activities of R21.3bn was not sufficient to cover the total of debt due for repayment of R17.1bn as well as the net financing interest payable of R15.3bn resulting in a shortfall of R11bn.[55] [56] [57] In essence borrowings were starting to be used for ongoing operations.

(c) Cash and cash equivalent decreased by R11.1bn to R8.0bn [58] during the year due to the increase in debt repayment and net interest payments. Eskom were still significantly below their R20bn liquidity buffer and the outlook at the time indicated that they would remain below for the next 12 months, even when considering the anticipated R20bn Government support package to be received in two tranches in June 2015 and December 2015 and the R7.8bn revenue adjustment agreed with NERSA in relation to MYPD2.

(d) Free Funds from Operations ("FFO") is an alternative measure of cash generated from operations and FFO as a percentage of gross debt measures the business' ability to pay for its level of gearing and is one of Eskom KPIs.

(e) At March 2015, Eskom's FFO as a percentage of total debt was 2.45%, which was both below the annual target level of 7.63% and a significant drop from prior year of 9.21%. The decrease was driven by an increase in gross debt of R4bn and a decrease in free funds from operations of R284 million mainly due to a decrease in cash flow from operations. It is also still far below the long term target of 20%, representing a major risk as the rating agencies consider this information in their determination of Eskom's standalone investment potential.[59]

(f) Medupi and Kusile were further delayed – Medupi was not expected to come fully online until 2019 and Kusile until 2021. As they reach completion, a looming hit to annual reported earnings is expected as interest costs that were capitalised during the construction would be posted to the profit and loss account.[60]

(g) Eskom's retained profit for the year was R3.6bn, a decrease of 50% on prior year. The earnings included an R2.7bn insurance claim pay-out, which when removed from the financial results as it is a one off gain, leaves a profit before tax of only R1.2bn.

(h) Sales during the year declined by 0.7% compared to prior year mainly due to load shedding. The increase in electricity revenue from R139.5bn to R147bn was aligned to the mandated growth from the 8% NERSA determination.

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[53] Business Results Briefing 31 March 2015
[54] According to Treasury officers, the downgrade added 100 basis points to the debt price
[55] Business Results Briefing for year ended 31 March 2015 (Draft)
[56] Eskom Holdings Integrated Report 31 March 2015 (Draft)
[57] CE Report to the Board 26 Feb 2015
[58] GFC Presentation April 2015
[59] Business Results Briefing for year ended 31 March 2015 (Draft)
[60] Integrated Report (Draft) 31 March 2015

(i) Residential debt continued to escalate, standing at R5bn, as the provision for bad municipal debts increased by R2.3bn. A decision was made to amend the revenue recognition policy such that sales are only recognised if deemed collectable at the date of sale. External revenue to the value of R6bn was thus not recognised at 31 March 2015. On 6 March, Treasury took action on behalf of Eskom and withheld payment of 'equitable shares' from 60 late paying municipalities.

(j) Primary energy costs continued to rise as more generating load moves away from coal stations to the more expensive IPPs and OCGTs. The expenditure on the OCGT was R9.5bn and exceeded the original budget by R3.5bn. Overspend on OCGTs is as a result of continued operation of OCGTs at higher than formally expected levels in order to ease the strain on electricity supply.

(k) During the year, the BPP begun to make savings, however the impact on the income statement was not significant.

(l) According to a senior finance officer, Eskom had made an R2.5bn profit over the year due to "all of the wrong reasons", i.e. accounting income items. These included: settlement received from the Dhuva insurance claim as a release of a provision and the effect of embedded derivatives as a result of the Rand/Dollar exchange rate.

(m) Other than OCGT diesel costs, the largest single adverse shock to budget was the Medupi coal penalty, which pushed coal usage costs above budget. In September 2014, Eskom recognised a penalty of R3bn, and a further R5bn before the year end.

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3.4 The Outlook

3.4.1 The external auditors have put Eskom on notice that they are monitoring the going concern basis assumption. [61] Preparing financial statements on a going concern basis is necessary to provide assurances to stakeholders a business will continue to trade for the next 12 months.

3.4.2 Eskom's reliance on renegotiating with NERSA is almost absolute. There is in aggregate an additional R140bn required from the tariff in the MYPD3 period either submitted or work-in-progress. This is not including a "full reopener" to address, among other things, the cost of OCGT diesel for the remaining 3 years.

3.4.3 This is in addition to the request to convert R60bn of debt to equity and receive a cash injection of R23bn. These decisions are subject to ratification at the time of writing.

3.4.4 The various applications to NERSA are summarised in the table below.[62]

Application	Comment
RCA for MYPD2 (all years)	-Requested R18.4bn; -Awarded on 17 March 2014 R7.8bn; -Came in effect 2015/16 as one off; -Equivalent of an additional 4.7% tariff increase.
MYPD3 Selective Reopener for years 3, 4 and 5	-In relation to IPPs and OCGT costs under-budgeted; -Requested approx. R50bn over the three years; -Decision due 29 June 2015
RCA for MYPD3 Year 2013/14	-February submission 2015; -Coal burn – R2bn; -OCGT – R8bn; -IPP – R2bn; -Opex (manpower/maintenance) wrong base – R11bn; -Depreciation and RoA - R4bn; -Lower revenue (net of offset by ancillary costs) – R11bn; -TOTAL R38bn
RCA for MYPD3 Year 2014/15	-WIP similar to Year 2013/14
"Full Reopener" for MYPD3 years 4 and 5	-WIP – will be submitted in July 2015, with a potential decision in February 2016. It would appear from public statements Eskom is targeting 25% tariff increases.

3.4.5 Notwithstanding these applications, at the time of writing the year-end cash position looking forward to end March 2016 is prima facie tolerable. Whilst there is predicted to be a cash squeeze for the summer months, the greater tariffs in winter can reverse that. It is forecast that there will be R33bn in the bank at year end and that in effect Eskom could therefore sustain R1bn a month on diesel.[63] Whilst that might be true, Eskom acknowledge using funds for diesel will significantly deepen the extent of this year's forecast loss and this will impair the financial ratios of Eskom so critical in capital markets. [64]

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[61] We understand the auditors will be including an 'Emphasis of Matter' paragraph in relation to Eskom's tentative going concern status in their report on the FY15 financial statements. This type of paragraph is included when a matter is appropriately disclosed in the financial statements but, in the auditor's judgment, is of such importance that it is fundamental to users' understanding of the financial statements.

[62] Information from Group Finance

[63] Senior Finance officer, 10 June 2015

[64] Ibid

3.4.6 Furthermore, the assumptions that underpin this forecast are fraught with risk:

(a) 2016 is a municipality election year; which will place arrears under more pressure. The budget assumes these will be tamed;

(b) New builds – A R4bn spend in Group Capital has been moved out (it is claim related) which helps the short term cash position. However there is still considerable risk in the new build programme, and any further delays will cause penalties and a bigger bill in the end.

(c) Eskom is still waiting for first tranche of the equity funds that formed part of the "Rescue Package", but effectively R20bn of the liquidity position is to be generated from these injections.

(d) Diesel has reached this year's budget, but if we assume the EAF remains at 73%, this could reduce the cash float by over R8bn.[65]

(e) There is an interim price increase to 12.69% and the soon to be ruled on RCA could add an additional 3% approximately (total 15.51%) which will generate R4bn extra revenue. The year-end picture assumes the RCA decision on the 29 June will be positive, however informal feedback does not indicate this will be forthcoming. The window for a longer term solution is closing and there is no guarantee the appetite for tariff increases will be any better in 12 to 18 months.

(f) The year-end position is also predicated on the assumption BPP savings will be made.

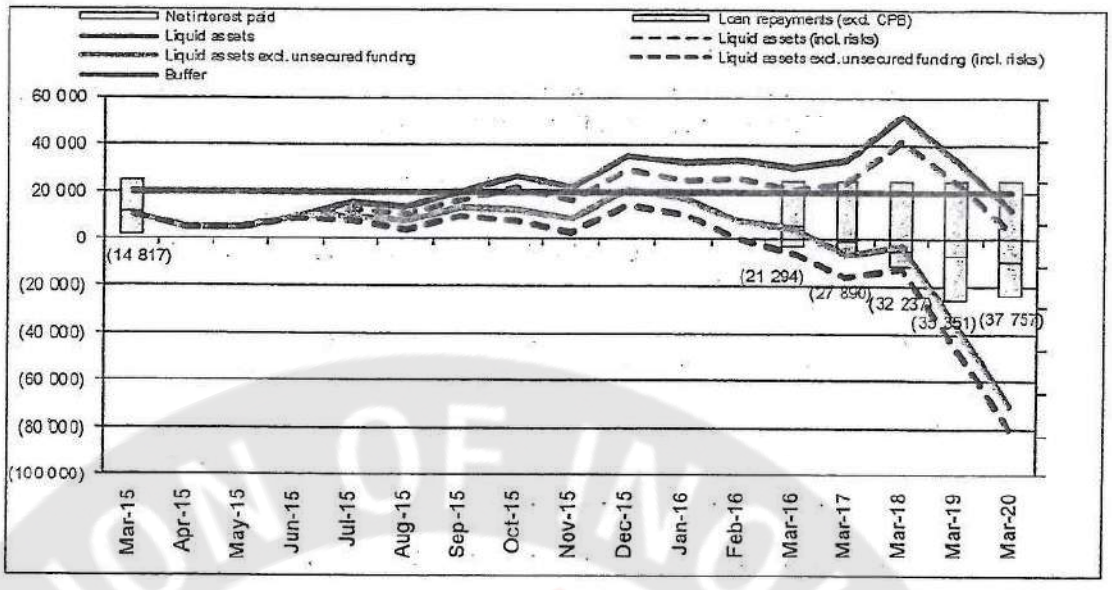
3.4.7 Eskom Treasury recently highlighted the key risks that Eskom faces to execute the borrowing programme, and in turn therefore complete the new builds: Realisation of BPP cost savings; cost overruns on Medupi and Kusile; RCA cost recovery in MYPD3 future years; Declining future ratios; threat of further credit rating downgrades; Inadequate liquidity buffer; Lack of market appetite for Eskom debt; and Inability to execute borrowing programme. In FY2015, all of these risks materialised.[66]

3.4.8 Furthermore, events in the first two months of FY16 have not been good news for ongoing operations, with various line items going adverse to budget, including sales which were down R1.1bn.[67] The following table is taken from "Eskom company monthly review April 2015":

[65] According to risks acknowledged by Finance in this cash forecast

[66] Eskom Treasury "Eskom Borrowing Programme and National Treasury Regulations" 12 February 2015

[67] May 2015 budget v actual report YTD



3.4.9 The green "Liquid assets" line reflects that the organisation will move above the R20bn buffer from September 2015 and reach the March 2016 R33bn mark.

3.4.10 The grey "Liquid assets excluding unsecured funding" line reflects how the same position changes under the worst case scenario, assuming Eskom is unable to obtain any of its currently unsecured funding amounting to R26bn.

3.4.11 The blue and black dotted lines take into account the risk associated with additional OCGT spend of R8 07 million and R1bn for the re-capitalisation of ESCAP in 2016

3.4.12 If you total up the impact of the various assumptions falling over, even with the R20bn capital injection Eskom may be teetering above an overdraft by year end.

3.4.13 Recent history does not place these risks in a good light. Eskom is currently sacrificing its future to survive. If sales and arrears continue to plague Eskom, there is a shortfall in lending; a failure to meet meaningful cost savings, and a continued EAF below 80% prevail (in other words a continuation of the trend of the past 2 years), Eskom's bail-out funds will evaporate.

3.4.14 In the absence of a change of heart at NERSA, or any meaningful cost savings by Eskom, further credit rating downgrades can be expected. If the Sovereign suffers a downgrade, or the auditors consider the cost of the new builds unsustainable and challenge going concern further, the implications for Eskom will be dire.

4 The Causes of Eskom's Financial Challenges

4.1 Our investigation has identified the following reasons for the financial challenges that Eskom has faced in the past two years, and continues to face:

4.1.1 The failure in plant efficiency and resultant diesel spend;

4.1.2 The MYPD3 tariff decision, coupled with an indifferent approach to the response budget;

4.1.3 The sluggish and ultimately low impact BPP;

4.1.4 The failure to lobby the State successfully in line with the Response Plan;

4.1.5 The financial impact of the borrowing program;

4.1.6 Internal Audit operating with an incomplete mandate; and

4.1.7 The new build cost escalation threatening affordability.

4.2 Failure in plant efficiency

4.2.1 At the onset of the MYPD3 period the prevailing assumption was that Medupi and Kusile would be online, producing 4000MW during the MYPD3 period.[68] Medupi was to start producing by December 2013. Latest public pronouncements assume a start date for Medupi of August 2015, albeit the output and consistency cannot be guaranteed.[69] In addition, the energy availability factor was assumed to be 80-82% but in reality it had been nearer 73%.[70]

4.2.2 Eskom's leading financial employees attributed the financial difficulties currently faced by Eskom to three primary causes: delays and overruns on key infrastructure projects (Medupi and Kusile); non-performance of the Generation Fleet; and, the additional expenses incurred by the "Keeping the Lights On" initiative. The same employees do not consider the drop in sales to be material enough to have affected the company's performance to this extent.[71]

4.2.3 The shortfall in capacity has been plugged by running Open Cycle Gas Turbines, which require diesel. These diesel costs were never planned, and despite being expensed on an almost consistent basis since September 2012, the budget has never been fully adjusted for them.[72]

4.2.4 The low OCGT budgets were initially based on the Capacity Plan, i.e. what is coming online etc. These are then compared to the "Energy Wheel", i.e. a bottom up informed approach of customer requirements. Eskom then consider what generating capacity they have to meet these demands across the Generation Fleet. Some outages can be assumed, along with key supply factor KPIs (EAF UCF PCF factors etc.) to result in an approach of how they will supply capacity and where there will be shortfalls. These shortfalls create the budget for OCGT, referred to as the "reserve margin".

4.2.5 Purportedly, the planning for diesel vs. actual diesel usage is always far apart as Eskom are unable to predict the extent to which the fleet will fall over during the period, and it is not

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[68] Eskom's MYPD3 Application
[69] Snehal Nagar, Primary Energy Accounting, 25 May 2015
[70] Martin Buys, Group Finance, 22 May 2015
[71] Martin Buys, Calib Cassim, Maya Bhana, Snehal Nagar
[72] Extract from accounting system showing diesel fuel purchase orders

viable to purchase diesel and not use it as it is expensive and Eskom don't have the capacity to store it.[73]

4.2.6 Based on EXCO meeting minutes, it would appear that Matshela Koko first raised the possibility of a longer term solution in May 2014, when he became acting head of T&C Division – indicating Group Capital consider options. This may have included greater storage capacity, or even better links to gas suppliers, however the minutes do not expand on this.[74]

4.2.7 Last year the OCGT diesel budget moved around a lot – up from below R3bn to R10bn, then R9bn, then R6bn before actually costing R10bn (the IPPs, which are also expensive, couldn't make up the shortfall). And yet this year the budget is R2.9bn which has already been spent and it has been suggested that as much as R14bn will be required from June onwards.[75]

4.2.8 The tables below summarises the cost by vendor type over past the three years (NB all prices are gross of the diesel rebate Eskom receives which is approx. R3/l on prices of approx. R10/l):[76]

FY13				
	no. suppliers	Volumes /l	Paid /R	Discount
Contracted Supply	3	426,598,189	4,646,203,082	122,774,474
Out of contract	6	67,785,493	802,030,221	762,547
Total	9	494,383,682	5,448,233,303	123,537,021
Contracted Supply %		86.3%	85.3%	99.4%

FY14				
	no. suppliers	Volumes /l	Paid /R	Discount
Contracted Supply	3	895,857,607	10,752,941,466	273,632,171
Out of contract	17	209,062,951	2,417,511,349	5,159,882
Total	20	1,104,920,558	13,170,452,815	278,792,053
Contracted Supply %		81.1%	81.6%	98.1%

FY15				
	no. suppliers	Volumes /l	Paid /R	Discount
Contracted Supply	3	739,108,873	7,929,882,936	234,664,716
Out of contract	23	267,993,200	2,865,821,316	0
Total	26	1,007,102,073	10,795,704,252	234,664,716
Contracted Supply %		73.4%	73.5%	100.0%

[73] Snehal Nagar, Primary Energy Accounting, 25 May 2015
[74] Exco meeting minutes 6 May 2014
[75] Senior Finance Officer
[76] Based on analysis performed by M Richardson, Finance

4.2.9 These values are before rebates, and the values in FY15 are an understatement because they were taken to 11 March 2015, and it was noted on the analysis that there was a considerable delay in processing (and therefore recognising) deliveries in the accounting system.[77]

4.2.10 This high level analysis helps to highlight the following:

(a) The majority of the purchases are made pursuant to contract agreements with three vendors: Petro SA, Masana and Afric Oil. These are legacy contracts agreed in 2008/2009 and do not appear to have been renegotiated despite the increase in volumes.

(b) The remainder are termed "supplementary suppliers". It is clear from the table that the number of supplementary vendors have increased as has their share of the total spend. Other than Chevron, none of these supplementary or "ad hoc" suppliers applied a discount to the Gazette list price for wholesale diesel. In contrast, discounts of between 20c and 42c per litre (on a price of approx. R10/l) were given under the contracted supply arrangements.

4.2.11 We consider there are a number of concerning elements in relation to the supply of diesel:

(a) A cursory review of the web for some of these suppliers conducted by an officer of Eskom contemporaneously suggested they were not well established entities. We were informed that some of the suppliers had rudimentary invoices (for example, prepared in Microsoft Word rather than generated from an accounting system). We are also aware of the news article that indicated Kekoil and Kamosa were fronted by a dentist and a beautician.

(b) We have been told there are anecdotal references to employees establishing companies using their family members, and then removing themselves from the board before probity checks.

(c) We have also been told that one supplier boasted they bought their diesel from a Congo business man, who bought it from source in South Africa. The use of such intermediaries would appear inefficient and potentially illicit.

(d) Furthermore, allegedly certain transactions have been performed outside of DoA powers. [78]

(e) A review of the "incidents management database", Eskom's log of whistleblower allegations, did not identify a record of a concern we understand to have been raised by a finance employee as to the bona fides of some of these ad hoc diesel suppliers.

4.2.12 We have conducted a limited review of invoices in relation to these ad hoc suppliers.[79]

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[77] Extract from accounting system regarding OCGT diesel costs

[78] Anonymous source

[79] Suppliers selected for small sample testing: KeKoil (Pty) Ltd "Kekoil"); Finesse Energy (Pty) Ltd ("Finesse"); InfinitEnergy Commodity Trading Enterprise ("Infinite"); Jakes Africa Energy (Pty) Ltd ("Jakes"); Kamoso Fuel and Gas (Pty) Ltd ("Kamoso"); and, Yem Yem Petroleum (Pty) Ltd ("Yem Yem").

(a) We can confirm the invoices from the earlier periods for a sample of vendors tested are rudimentary in design, and in fact the invoices for three suppliers, Yem Yem, Finesse and Infinit show many commonalities.

(b) The invoices provided for Jakes contained no contact information with the exception of an address. Jakes was also the only provider of those selected that does not now appear to have a website.

(c) The Purchase Order for Kekoil provided, ref 4502044199 was for value of R472k. The two invoices also provided for Kekoil both reference this number as the Contract reference. However, the combined sum of these two invoices are in excess of the purchase order value by over R350k;

(d) Inconsistencies are identified on the invoices provided for Infinit. The first invoice dated in December 2012 contains the company registration number "2005/107303123" and provides a bank account with ABSA Bank for payment. Public research suggests that this is the genuine registration number for Infinit. The second invoice dated 11 July 2013 contains the company registration number 2013/024729/07 and a bank account with Standard Bank. The third invoice dated 27 November 2013 returns to the former company registration number but retains the latter bank account information.

(e) The first invoice provided for Kamoso has the invoice number "ESK/02". This invoice is dated 30 June 2014. This appears unusual when the first transaction identified with Eskom was in April 2014 and various transactions were conducted through to the end of June 2014. It is possible therefore that Eskom was conducting business with Kamoso before it had established an invoicing system, which may indicate that it was set up with this specific purpose.

(f) Inconsistencies were identified with the invoices for Yem Yem. The bank account provided was different on all three occasions. The second two invoices are also observed to be in a different format.

(g) The domain for Kamoso was observed to have been registered by "Trevor Bhebhe" who provides the contact email address nkatazotrevbhebhe@yahoo.co.uk and telephone number +27 716437336. Public research identified an individual called "nkatazo Trevor Bhebhe" on LinkedIn. The profile of this individual states that he has held the position of "Credit Risk Manager/Assistant Manager Finance-Credit Risk" at Sasol Oil (Pty) Ltd since April 2004. This is an unusual relationship and may represent a conflict of interest.

4.2.13 These represent significant "red flags" over the use and bona fides of the ad hoc suppliers.

4.2.14 Furthermore, we understand that Matshela Koko replaced the General Manager in charge of diesel procurement in an effort to engender a more transparent approach to diesel procurement.[80]

4.2.15 The potential "wastage" due to not arranging discounts with ad hoc suppliers may be in the order of R200m in the past two years (i.e. 37c/R10 is approx. 4% of R5.3bn spent without discount).[81] This is not material in terms of contributing to Eskom's financial challenges, but it

[80] Matshela Koko, Exco member, 18 June 2015

[81] Taken from extract from accounting system of diesel PO's placed with ad hoc suppliers

is material in relation to reported "fruitless spend and wastage". Furthermore, it becomes highly material if there are any conflicts of interest.

4.2.16 Additionally, there would appear to be a need to understand and critically challenge why it has taken 30 months to only come up with a shortlist of 6 providers who might be asked to provide discounts of between 10 cpl and 37 cpl. It is also not clear how a tender process that restricts itself to a bidding war to choose five out of six potential suppliers rather than scores of potential suppliers is likely to drive the best discount. (See Chapter 5 for more details).

4.2.17 The high level chronology is as follows:

(a) Sep 2012 – Requirement for supplementary suppliers emerges;

(b) Sep 2013 – RFP CORP 2720 to establish term contracts for a panel of supplementary suppliers closes. 63 responsive tenders are subsequently failed based on the tender criteria;

(c) Apr 2014 – Application to Board of Directors Tender Committee to cancel the application and conduct a revised tender, now seemingly only changed in that the term will be two years not one year. EXCOP see submission in May 2014 and the Board approves in June 2014;

(d) Jul 2014 – RFP CORP 3017 opened with 88 respondents;

(e) Nov 2014 – Internal Audit report notes that some submissions contained pricing information as they were passed to the "functionality" evaluation stage. In addition, some evaluators were found to have their phones on them. These are both breaches of the policy. No sanctions appear to have been recommended, albeit the Board later resolved that the transgressions must be dealt with. However, we have not identified this matter in the Internal Audit catalyst reports.

(f) Jan 2015 – Technology and Commercial requested a mandate to negotiate with just 6 suppliers – Cape Point Maritime Services CC & C Olie Verspreiders JV (not one of the 31 supplementary suppliers used before), Gulfstream Energy (not used before), Finessé Energy (web presence indicates its employment goal is to keep 2 people employed); Kamosa (the beautician), KSN Oils, and Makwande Energy Trading. The Board approved subject to discounts being achieved of between 10c and 37c.

4.2.18 Koko, the newly appointed GE: T&C indicated he was satisfied that the names on the shortlist were not names he had seen before. However, four have in fact been used before. Also, Kamosa uses a phrase on its website that Yem Yem uses. As mentioned above, Finesse Energy and Yem Yem use similar invoice templates. This procurement approach does not appear to be entirely optimal. It is remarkable that closer scrutiny has not been placed over this cost item given the financial challenges it has presented.

4.2.19 Concluding comments

(a) The diesel costs have been a result of Eskom having to mitigate load shedding. It does not make commercial sense, however, to not seek to renegotiate the legacy contracts. It is also concerning that 30 months can pass without a meaningful approach to drive down the cost of ad hoc diesel supplies.

(b) Taken together with a proliferation of "red flags" over the bona fides of the diesel procurement process, Eskom's management of this expenditure requires closer scrutiny.

4.3 Tariff impact and Eskom's response

4.3.1 Eskom considers that the current tariff is not cost reflective, and that certainly holds true as a long term view. In the short term with costs under control it wouldn't in insolation lead to a liquidity scare and an elimination of profits, however.

4.3.2 According to Eskom Treasury, the awareness of the financial challenges presented by MYPD3 decision was acknowledged at the EXCO level and was reaffirmed by Finance and Treasury from July to November 2013 in MANCOM Quarterly Review meetings. However, as corroborated by Calib Cassim and Caroline Henry, the risks in the first two years were seen to be:

> *"...largely contained with the processes for embedding of the response budget and implementation of BPP. Disciplined monitoring and execution of the budget remains an ongoing treatment plan".*[82]

4.3.3 There should be no doubt that, in addition to the MYPD2 RCA application, and addressing concerns of funding liquidity and credit ratings, the business had to apply strenuous pressure to the cost base financial lever.

4.3.4 Although not in isolation a catalyst for the financial challenges that followed, that NERSA did not reduce Eskom's predicted sales volumes and they were in reality much lower due to the economic situation has also contributed to a sense the tariff is not sufficient.

4.3.5 Given the 2012 tariff reduction and the small annual increase in the MYPD3 decision, even in the short term it is a fact that there was no buffer against which adverse shocks could be absorbed.

4.3.6 In addition, the two year claw back time lag during the RCA process exacerbates the problem of adverse shocks: If, for example, the budgeted burn cost was R200/ton and in actuality, it is R220/ton, the difference of R20/ton can be shared with the customer, according to the regulations. The exact split is only confirmed by the regulator retrospectively, however. In the short term Eskom carries the exposure and the uncertainty.[83]

Response budget and coal

4.3.7 Coal Costs and Nersa

4.3.8 The budget for coal usage was reduced as part of the Response Budget, but not as far as the MYPD3 decision which required a real reduction in expenditure.

4.3.9 According to Snehal Nagar, Finance lead for Primary Energy, it had been explained to him by the coal sourcing team that the mines "don't get out of bed for anything less than a real return of 10-15% per year". Calib Cassim confirmed that he had never seen single digit inflation in coal usage costs. Based on this premise, however, the mines and not the power utility were making all the profits in the energy sector in SA.

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[82] 10.2.5 Eskom's Financial Sustainability Risks MYPD - Submission Documents
[83] Calib Cassim, Group Finance, 26 May 2015

2/100

(a) There were a number of assumptions underlying the 10% cost increase Eskom planned for as part of its MYPD3 application, covering burn rate, volumes and mix of sales. These assumptions were underpinned by a bottom up detailed production plan at an individual power station level.[84]

(b) NERSA indicated to Eskom that they think Eskom are able to improve the quality and technical efficiency of the coal burn.[85] This has not been the case, however, based on the statistics reported, and therefore an element of the RCA relates to this difference of opinion.

(c) NERSA did accept the price increase component.

(d) However, critically both the Head of Internal Audit and a member of EXCO, and recently the acting T&C Division Head, stated that to them Primary Energy was a "Black Box".[86] Reportedly, it has been difficult to get information from the coal sourcing team, and it is a highly technical area.

(e) We understand that Brian Dames had taken a keen interest in coal sourcing before his departure, and up to June 2013 Dan Marokane, head of T&C, controlled operations. After Marokane was moved to Group Capital, he reportedly continued to exercise interest in Primary Energy together with the Head of Primary Energy, Kiren Maharaj.[87]

4.3.10 Inflationary Pressure on Coal Costs

4.3.11 Increases in coal costs, which are described in more detail in Chapter 3 of this report, can be summarised by the following variables/circumstances:[88]

(a) Cost plus contract replacement: The shortfall in Cost Plus supply is being replaced with fixed Short/Medium Term contracts. This increases the costs of both coal and transport for Eskom. For example, in the FY 2010 – 26% of Eskom's coal was from Short /Medium Term contracts. However, more recently this was 40% of the costs;

(b) Decreasing volumes of Cost Plus supply: Under production increases the unit costs for Cost Plus mines, due to the fixed price element in the contracts;

(c) Decreasing coal quality from Cost Plus: The mining houses are supplying coal at quality levels specified in historical contracts agreed in the 70/80s (i.e. just above rejection rate). This was when the mines were running at 70% capacity and hence could afford slippage. Now they are running at 90% and can't hence higher quality of coal is required;

(d) Production requirements and decreased burn rate: power stations are burning more coal to generate the same electricity, and using more expensive power stations to generate electricity due to the diminishing availability of their fleet. The Generation

[84] 20140228 Final Corporate Plan submitted to DPE and NT
[85] Calib Cassim, Group Finance, 26 May 2015
[86] Molefi Ndabhu, Head of Internal Audit and Matshela Koko, Head of T&C Division for 3 months before suspension
[87] Matshela Koko, Head of T&C Division for 3 months before suspension
[88] 20141120 Coal Costs History Executive Summary; and 20150331_Coal Supply War Room Presentation_IMCv7_With notes

fleet has changed substantially over time with electricity output growing only by 2% whilst coal usage is up from 92mt in 2000 to 119mt in 2015 (29%);

(e) Transport costs from Short/Medium Term contracts: These contracts are used to plug the shortfall in coal supply vs. demand. Transport costs associated with these contracts are high, particularly in light of the unpredictable fleet performance which can mean coal has to be transported or diverted a number of times to different power stations;

(f) No new investment: No significant investments in the industry have been made in the recent past and hence no new opportunities. The last large investment projects are the Zibulo export mine (Anglo), and the GGY mine (now Glencore). There is typically a 10 year lead time to open up a brand new mine, confirming that it is not an option for Eskom.

4.3.12 Eskom did purportedly consider other ways they could impact/change the market. However, now they do not have available funds to invest in Cost Plus mines, which are cheapest option for them, they need to meet their supply needs elsewhere. [89]

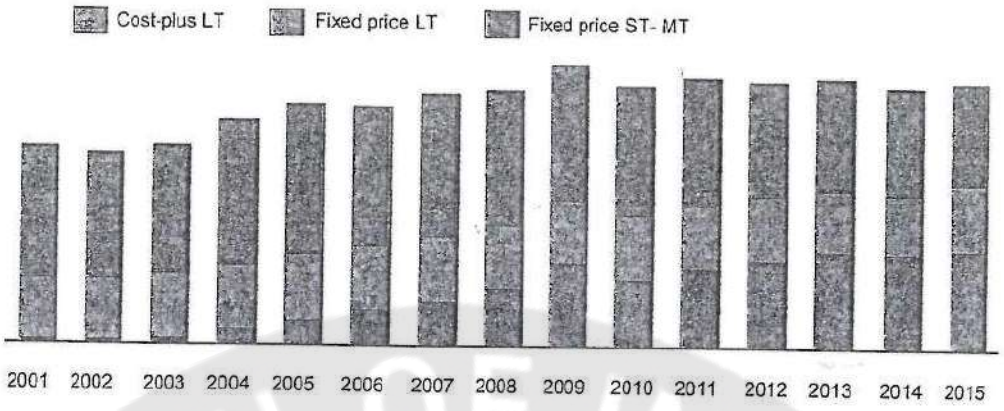
4.3.13 Coal costs (R/ton) have increased at a rate of 20% p.a. since FY08. Given these underlying inflationary pressures, Eskom's coal sourcing team predict the coal prices will increase for the foreseeable future; until the supply and demand curve is resolved, coal costs will continue to increase at above inflation prices. The team also talk of a coal shortage – coal required that has yet to be contracted, that must be rectified.

4.3.14 The commercial officers in coal sourcing have explained to the finance team that as long as Eskom is short on coal, they have little negotiation leverage amongst the bigger players. Glencore, for example, has deep pockets and hence, apparently, little incentive to invest in the development of a mine in South Africa, taking the risks when they could just wait until the prices increase. If Eskom do contract with the bigger players, the hurdle rate for coming into investment is purportedly to provide the mines with a 16% real return, a rate that Eskom cannot support.

4.3.15 The approach for Eskom is therefore to go towards emerging mines who want to work with Eskom and use the contract to get financing. Financing will only be granted when there is a viable mine, a contract with Eskom and a feasibility study conducted. In addition, these mines tend to have a lack of infrastructure, and knowledge.

4.3.16 We have no compelling reason to doubt this narrative. However this is a medium term view: the trend is a 15 year one. The story of the last two years does not necessarily hold true:

[89] Snehal Nagar, Primary Energy Accountant, 25 May 2015



4.3.17 In the financial years FY13, FY14 and FY15 the mix is essentially unchanged:[90]

Values in MT	FY13	FY14	FY15
Cost-plus	52	50	48
Fixed Price LT	29	28	31
ST/MT	45	44	46
Total	126	122	124

4.3.18 Therefore, should the price per ton truly be escalating greater than Eskom's own predictions when they prepared the MYPD3 application, as follows (i.e. given the budgeted cost increase is also predicated on burn rate declining, so volumes required increase and form part of a 10% increase overall):[91]. – then what?

	FY13	FY14	FY15
R/T average Eskom	253.28	285.01	313.12
% increase	N/a	12.5%	9.9%

Values are purchases by Eskom excluding Medupi and Kusile divided by delivered tons

4.4 What has happened at the macro level

4.4.1 Coal usage is one of the primary costs at Eskom, with reported spend steadily increasing over the past three to four years. Coal costs were therefore one of the first areas to be considered under the revised budget post MYPD 3 decision. Despite this, financial data does not evidence any significant reduction in costs.

4.4.2 Coal usage expenditure was within budget for the FY2014 and FY2015, excluding the Medupi Coal Penalty.[92]

4.4.3 Figures reported in FY2014 and FY2015 indicate that, excluding coal penalties incurred on the Medupi and Kusile contracts, coal purchases expenditure was however above budget by 3% and less than budget by just 1% respectively[93].

[90] Coal presentation "20150331_Coal Supply War Room Presentation_IMC v7_With notes"
[91] Replan 2013, 2014 and 2015
[92] Operational review 3/2014 and 3/2015

4.4.4 This is despite the average rate of coal purchases by Eskom having increased at a consistent rate of 11% in FY2014 and FY2015[94]. The increase has been 9% and 17% for cost-plus and LT-fixed in FY2014 and FY2015 respectively, and 13% and 4% (average for two years 9%) for MT/ST contracts.

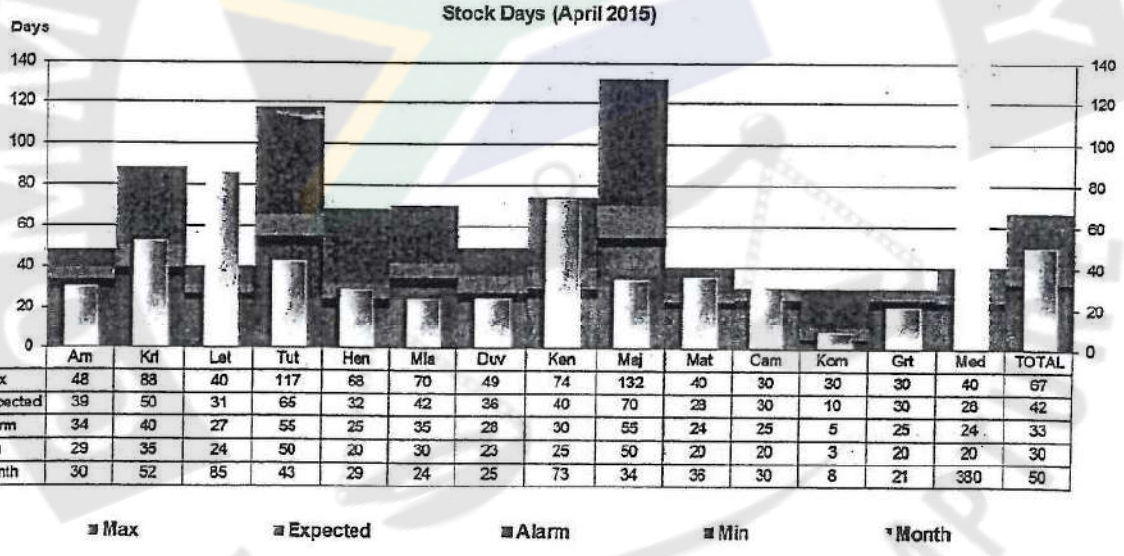
4.4.5 Interrogation of the underlying data suggests that despite rises in rates, coal purchase costs managed to stay close to budget in FY2014 and FY2015 as a result of Eskom having both purchased and burnt less coal than planned.

4.4.6 Whilst this could be justified by increased outages or power station failures, an alternative explanation is that Eskom depleted their stock piles in order to meet budget as opposed to negotiating better rates with suppliers.

(a) *Stock levels*

(b) Amalgamating the stock levels across all power stations, excluding Medupi and Kusile, shows that at the start of FY2013, stock levels were 3.4m tons behind budget. During the year they increased by 22% but remained 3% behind budget at year end[95]. FY2014 and FY2015 show annual decreases in stock levels of 2% and 1%, resulting in them being behind budget by 18% in FY2014 and 1% (as a result of lower budget expectations) at yearend FY2015.

(c) The following graph presented in the Group Finance monthly review in April 2015 represents the stock levels at year end per power station[96]:



	Am	Krl	Let	Tut	Hen	Mla	Duv	Ken	Maj	Mat	Cam	Kom	Grt	Med	TOTAL
Max	48	88	40	117	68	70	49	74	132	40	30	30	30	40	67
Expected	39	50	31	65	32	42	36	40	70	28	30	10	30	28	42
Alarm	34	40	27	55	25	35	28	30	55	24	25	5	25	24	33
Min	29	35	24	50	20	30	23	25	50	20	20	3	20	20	30
Month	30	52	85	43	29	24	25	73	34	36	30	8	21	380	50

(d) This evidences that six of the power stations are in fact below the expected stock levels at year end. Whilst the depletion of stock piles allowed less coal to be purchased, this is not a sustainable solution, nor does it represent meaningful savings

[93] Dentons Work Paper – Coal Costs – Actual vs Budget: "Coal Purchases"
[94] Dentons Work Paper – Coal Costs – Actual vs Budget: "Coal Purchases"
[95] Dentons Work Paper – Coal Costs – Actual vs Budget: "Summary"
[96] GRC Presentation – April 2015

given the continued increase in rates during the period and gradual transfer from Cost Plus and Fixed contracts to Short/Medium Term contracts.

(e) Whilst on paper this appears to be an effective strategy for keeping costs within budget, it is not a sustainable solution given the finite coal resources available at Eskom. It is delaying the issue of increasing costs, allowing the negotiations on rate to become secondary or not even considered necessary for the division.

(f) *Costs if Eskom had met budgeted volumes*

(g) Analysis of coal purchased by power station, excluding Medupi and Kusile, indicates that in total Eskom bought 1% less coal (in tons) than budgeted for in FY2013 and 3% less than budgeted for in FY2014. Coal volumes purchased in FY2015 was in fact 1% above budget due to an increase in Short/Medium Term purchases discussed later[97].

(h) These purchases below or close to budget led to savings against budget, i.e. decreased spend of R3.514bn across the three year period, but most of this in 2013FY.

(i) Had the budgeted tonnage been purchased, with actual rates negotiated, coal costs would have increased by R2.5bn in FY2014 and would have been R1.2bn less in FY2015. This therefore amounts to an R1.3bn saving across 2014 and 2015[98].

(j) In addition, the tonnage burnt was less than planned in FY2014 and FY2015 (3.6m tons and 1.5m tons respectively). Had the budgeted tonnage been burnt at actual rates, this would have resulted in a further R1bn in FY2014 and R0.5bn in FY2015 of actual cost to the business[99].

(k) *Contract Type*

(l) Notwithstanding performance against budget, actual volumes purchased declined year on year: by 4.3m tons in FY2014 and a further 2.8m tons in FY2015 (excluding Medupi and Kusile)

(m) Coal costs are exacerbated by the transfer from Cost Plus and Fixed Price contracts to more expensive Short/Medium Term contracts.

(n) Excluding Medupi and Kusile, the reduction in volumes purchased against prior year for FY2014 is 76% attributed to a reduction in Cost Plus/Fixed Price contracts and a 24% reduction in Short/Medium Term. Similarly in FY2015, 83% of the decrease in coal purchased against prior year can be attributed to a reduction in Cost Plus/Fixed Term contracts and a 17% in reduction in Short/Medium Price[100].

(o) It appears coal sourcing is cutting back on coal procured from cost-plus and LT-fixed more aggressively than from MT/ST contracts.

(p) The shift is echoed further in the comparison to budget which shows annual shortfalls of actuals vs budget of 2%, 5% and 2% in Cost Plus/Fixed Price contracts vs annual

[97] Dentons Work Paper – Coal Costs – Actual vs Budget: "Coal Purchases"
[98] Dentons Work Paper – Coal Costs – Actual vs Budget: "Coal Purchases"
[99] Dentons Work Paper – Coal Costs – Actual vs Budget: "Summary"
[100] Dentons Work Paper – Coal Costs – Actual vs Budget: "Summary"

surpluses of 1%, 2% and 6% in Short/Medium Term contracts for FY2013, FY2014 and FY2015 respectively[101].

(q) This has had an impact on stock levels as the surplus in Short/Medium Term procurement was not sufficient to replace those shortfalls from Cost Plus and Fixed Price contracts.

(r) Analysis of the cost implications of this move away from Cost Plus/Fixed Price contracts becomes apparent in FY2014 when the percentage increase in costs of Cost Plus/Fixed Price contracts was 5%, versus an increase in 12% for Short/Medium Term contracts.

(s) Furthermore, where increases in Short/Medium Term purchases were identified, these were observed to be at the higher priced power stations. For example, of the 13 power stations (excluding Medupi and Kusile), Tutuka, Hendrina and Grootvlei were observed to increase tonnage vs. that budgeted by a material amount, i.e. greater than 1m tons. Analysis of actual rate vs. tonnage purchased at these power stations identifies a weighted average rate of R465/Ton. This is in comparison to a weighted average of R397/Ton identified for the nine power stations which experienced either increased tonnage less than 1m or less than budgeted. Duvha power station has been excluded from this analysis as it experienced a decrease in Short/Medium Term tonnage during the year.

(t) In addition, road and transportation costs associated with the purchases would also have increased, further placing the achievement of budget at risk.

(u) *Macro level concluding comments*

(v) Eskom has been forced to buy and burn less coal than planned in order to meet budget and accommodate the general rise in contracted rates. The plan itself forced a reduction in volumes purchased year on year as well as coal burned.

(w) As rates have increased by an average of 11% during 2014 and 2015, it is a reduction in stock levels that is keeping coal usage costs in check.

(x) The MT/ST contracts are more expensive than LT and Cost-plus. The reductions in volumes purchased come more from LT and cost plus mines.

(y) It has been argued by Coal Sourcing that the switch from Cost Plus and Fixed Price to Short/Medium Term is due to failure to deliver by the former or resulting from the restrictions placed on capex investments. is this a credible reason

(z) However, it has not been possible to determine at the time of writing whether this is a genuine commercial reason in the short term, i.e. that Eskom's hand has been forced, or whether the coal sourcing team has had a strategy to continue using favoured suppliers in the ST/MT market at the expense of its cheaper alternatives. Further investigations would seek to provide assurance over this.

(aa) Secondly, it is not clear whether the 9% annual increase in MT/ST contract rates is appropriate, flows from the contracts, or even whether the base rate is a "best price". This is something further investigations would seek to clarify.

[101] Dentons Work Paper – Coal Costs – Actual vs Budget: "Coal Purchases"

(bb) As far as we have learnt, no independent team has challenged Coal Sourcing on this during the past two years.

4.4.7 Assessing Coal Spend at the Contract Level

4.4.8 In order to interrogate the substance behind the coal costs, downloads from SAP were provided from the Primary Energy accounts team. These provided evidence of the following:

(a) A schedule of coal and transport transactions by supplier;

(b) A schedule of internal orders in which the coal and transport payments are entered into by cost element and assigned to the relevant power station; and

(c) A schedule of purchase orders associated with the coal and transport payments by vendor and allocating the cost to a coal contract.

4.4.9 The first schedule provides a map of spend on coal by supplier. However, there is no capability in SAP to reconcile these payments to the specific coal contract. Various manual procedures can be performed which can assign the relevant contract in approximately 97% of the transactions. This involves a reconciliation of invoice to payments and may be subject to additional error as they are dependent on an optional field being completed by the individual responsible for data input.

4.4.10 The second schedule provides the breakdown of each payment as per the associated invoice. Whilst the Coal Penalty Adjustment ("CPA") amount is allocated within this schedule to the supplier, the remaining costs appear with references of purchase order and transaction number which do not reconcile or have any corresponding fields to the total invoice or payment amounts.

4.4.11 The contract number and supplier identified from the payment schedule, in addition to the purchase order and transaction numbers from the Internal Order schedule can be reconciled to the third schedule containing a corresponding breakdown of non-CPA related costs. Unfortunately, as shown by the example below, without knowledge of the amounts in advance, it is not possible to reconcile them to the payments. It is also not possible to confirm what the payment relates to, other than what is included in the optional narrative text field.

4.4.12 There is therefore no comprehensive manner in which the total costs per supplier can be linked to a contract. Furthermore, there is no discernible manner in which the system can be used to understand the elements that comprise these costs. Whilst each invoice and associated payment can be traced through and allocated based on a manual reconciliation of, for example, total amounts and/or dates, it does not appear to be possible to do this in the SAP system.

4.4.13 This assessment has been confirmed by members of Eskom's accounting team[102].

4.4.14 A payment selected at random for the supplier Stuart Coal provides a practical example of this. A completed supplier payment control form with the following breakdown in costs[103]:

[102] Anonymous sources

[103] Dentons Work Paper – Scan of Stuart Coal – Payment Control Form and Supporting Evidence

Invoice	Amount (Excl. VAT)	VAT Amount	Total Payment (Incl. VAT)
12293B (Coal Basic)	4,160,379.30	582,453.10	4,742,832.40
Transport	2,584,876.36	361,882.69	2,946,759.05
Total Invoice	6,745,255.66	944,335.79	7,689,591.45
CPA	5,012,617.83	701,766.5	5,714,384.33
Total Payment	11,757,873.49	1,646,102.29	13,403,975.78

4.4.15 The following steps must then be taken to identify, trace and allocate this payment in the underlying financial data:

(a) Stuart Coal has the Vendor No. 11062321. Searching on this in the Vendor field of the transaction schedule in addition to the total amount of the invoice in the Amount field will identify the invoice entry. This in turn will provide details of:

(i) The unique invoice number shown in the "Document No" field;

(ii) The associated payment number shown in the "Clearing No" field; and

(iii) The associated contract number if entered correctly into the "Assignment No" field;

(b) In this example the invoice number appears to be 5180051565 with a corresponding payment number of 2600036016. The contract number appears to be entered correctly as 4660024786[104].

(c) Searching on the payment number in the transaction schedule then identifies the corresponding payment in which the invoice was included. In this example, this corresponds to a payment posted on 30 April 2015 of value R49,083,997.92 which we can assume is also therefore related to contract 4660024786.[105]

(d) The amount of the invoice excluding VAT can then manually be calculated by removing 14%.

(e) Searching for the invoice number on the "RefDocNo" field in the Internal Orders schedule can then be used to determine the partial CPA element of this payment, i.e. that relating to this invoice, R5,012,617.83[106]. It is noted that this step appears to be successful for 62% of payments identified. There is either no reference to invoice number or CPA amount for the remaining 38%.

(f) Without knowing the individual amounts of the coal basic and transport costs, it is not possible to allocate the remaining payment further. In this example, we can filter the purchase order schedule by contract number which provides us with 22 entries for

[104] Dentons Work Paper - Coal Costs - Stuart Coal Example: Coal Payments 2015
[105] Dentons Work Paper - Coal Costs - Stuart Coal Example: Coal Payments 2015
[106] Dentons Work Paper - Coal Costs - Stuart Coal Example: Internal Orders 2015

2015. It is only by knowing the amounts that we can identify which relate to this payment[107].

(g) In this example, it is apparent which entry is transport and which is coal basic, but this is not the case for every supplier.

(h) The same approach can be taken in the Internal Orders schedule to search on the amount. However, the number of entries in this schedule increases the risk of their being duplicate amounts for different and unrelated contracts. Instead, it is possible to use a combination of the amount, "Purch.Doc" (i.e. the Purchase Order Number) and the "Item" number to find the corresponding entry in the Internal Orders[108].

(i) In doing this, one can identify the power station to which these entries have been allocated. In this example it would appear that the coal basic costs have been allocated to "Tutuka Coal Purchases". The transport element appears to have been initially allocated to "Kendal Coal Purchases" but possibly reversed two days later and allocated to "Tutuka Coal Purchases". This is a reflection of cost centre as opposed to actual activity given that in this example the coal was delivered to Majuba.

4.4.16 This provides a practical example of how it is not possible to allocate costs in a comprehensive manner for coal contracts on SAP. Whilst contract allocations can be determined in the majority of payment examples, no further supportable breakdown can be identified without a significant amount of manual input and prior knowledge of amounts.

4.4.17 Given there is no way to prepare a holistic view of the independent elements of coal costs, it is not surprising that this is an area that has received little to no attention in Eskom's history. It begs the question of whether the cost of basic coal can be controlled if it can't even be understood.

Concluding comments – Assessing Coal Spend

4.4.18 The level of complexity we faced in order to obtain details of 97% of the coal usage spend by contract by month emphasises that no management or peer financial review could have been performed by Eskom to date over this critical cost centre. Without the ability to readily assess spend by contract, and with no possibility to analyse contracts by component part (e.g. base value, transport and CPA) from the accounting system it is not possible to assess whether for example:

(a) Spend is consistent with the contract;

(b) Spend is consistent with prevailing Delegations of Authority;

(c) Source supply and truck routes make sense commercially;

(d) Expenditure is exhibiting red flags; and/or

(e) Cost escalations are reasonable and commercially justifiable.

4.4.19 Any reasonable audit of contract management in coal would require this source of information to be able to scientifically select specific invoices and transactions to test the accuracy and correctness of payments.

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[107] Dentons Work Paper - Coal Costs - Stuart Coal Example: Purchase Orders 2015
[108] Dentons Work Paper - Coal Costs - Stuart Coal Example: Internal Orders 2015

4.4.20 It would appear, therefore, that in addition to there not being any independent challenge to the contracts negotiated by Eskom in this critical cost centre (see Chapter 5) the business has not sought to conduct a meaningful assessment of the transactions that flow from those contracts. Taken together, Eskom has not taken the opportunity in the past two years to assess a fundamental assumption underpinning their cost base – that the annual increase in costs for coal usage represent best price. Given the financial pressure senior management knew Eskom to be under, this may be considered a dereliction of duty.

4.4.21 Short-Termism in Coal Spend

4.4.22 It is not appropriate to assume coal contracts are being entered into at a best price, given the findings surrounding the procurement conduct in this space, together with the sense it is a "black box", and the weaknesses in the financial accounting system to readily appraise contract management. The need to get comfort and control over the rates negotiated for coal contracts is paramount given the long term implications of neglecting the cost-plus mines.

4.4.23 A senior finance team officer told us her primary concern in relation to coal at Eskom was over the current impact of the short term trade-off decision taken in YE 2013/14 not to invest in cost plus mines.

4.4.24 In addition to reducing stock levels whilst prices rise, coal sourcing is staying within budget by not contemplating further investment in their Cost-Plus mines, despite contractual obligations. Eskom has not invested over the past two years.[109]

4.4.25 Before the MYPD3 application, coal sourcing wanted R38bn for capex expansion. In the submission this was reduced to R24bn (following efficiencies). Eskom subsequently hit the funding constraints and as a result, Primary Energy capex was removed bar R3bn approved in the Response Plan. Latest approvals indicated Primary Energy has been allocated R5bn to invest. However, there has been a Cabinet letter issued, instructing that Eskom will not invest in any new future coal mines. There is uncertainty as to how Eskom should interpret this and whether this applies to new mines only or also includes the six current Cost-Plus mines Eskom are in business with. [110]

General expenditure – instances of wastage

4.4.26 More broadly than coal usage spend, a consensus view emerged from the various finance employees interviewed that in relation to large vendor spend, that there was a disconnect at Eskom between commercial decisions and the company's procurement services. Whilst many discussions take place in the commercial space between the Finance Partner and Technical representatives, Finance had no inability to substantially influence anything.

4.4.27 Furthermore, in terms of budget, the finance team did not do a line by line "general ledger" review of their commercial partners cost centre. GM's would largely need to hit budget with +5% room to manoeuvre. There was no analysis to see whether costs and budgets on a line by line had been met.

4.4.28 Without this level of review, there is no "first line of defence" against the performance of commercial operators either in terms of the substance of performing to budget, or in managing contracts effectively.

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[109] Shehal Nagar, Primary Energy Accounting
[110] Snehal Nagar, Primary Energy Accounting, 25 May 2015

4.4.29 Various interviewees expressed a belief that, in the absence of such a review, the tariff was not entirely to blame for Eskom's financial position. The views expressed were subjective, but one employee attributed Eskom's problems as 40% on cost and 60% on pricing of electricity. Another wouldn't place a value on it but was sure the current "gap" in getting a cost-reflective tariff was a combination of the tariff decision and inefficiencies.

4.4.30 In Chapter 5 of this report, we highlight serious concerns in relation to the procurement processes at Eskom.

4.4.31 In Chapter 6 we describe examples of where contract management appears to be weak and costly to Eskom.

4.4.32 Despite the annual spending power of R140bn, Eskom does not appear to have shown an ability to leverage this for cost savings. Furthermore, several officers have indicated that senior executives have followed an agenda which ostensibly serves to favour suppliers at the expense of Eskom. Such behaviour would be the antithesis to what Eskom needs: optimal procurement decisions which drive efficiencies and cost savings.

4.4.33 These example are not necessarily limited to the past two years[111]:

(a) A forensic report concludes that a supplier was selected for work on Medupi when an alternative supplier had clearly won the tender. Apparently the selected supplier would accept they had never done anything like this project before. In parallel with a three year delay which we understand a PWC report indicated another supplier was responsible for (see below), this procurement decision also caused a three year delay – the inference drawn is that the supplier was a friend of senior officers and so no contract remedies were sought. [112]

(b) An investigation into reasons for a three year delay in Medupi purportedly indicates that a supplier had major quality issues and was failing to perform, but no action was taken against them. The inference drawn is that senior management were protecting the interests of the suppliers they had chosen rather than looking after Eskom's interests. [113]

(c) A German company contracted with Eskom in 2004. 60% of its revenue comes from Eskom. Siemens bought the entity, and more recently sought to divest the business. An EXCO member reportedly offered R1 to buy the business when Siemens put them up for sale to be part of Eskom's group. In the end they asked for €5m. The EXCO member threatened to cancel the contract, but he states he wasn't supported by the board. They continue to provide services to Eskom.

(d) Another supplier, a niche provider, obtained 80% of their revenue from Eskom. An EXCO member wanted to give them a long term contract, and then leverage this buying power by taking 30% equity together with a clause insulating Eskom from losses. Reportedly, the EXCO member at the time said no. The niche provider was still keen, but as he returned to the Board, someone had out manoeuvred him – a company he believes are linked to an Executive had taken the 30% equity and the relationship with Eskom continued. The inference drawn is that someone in senior management saw an opportunity to enrich themselves, denying Eskom the upside.

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[111] Concerns raised by Exco member
[112] Medupi CI Request Final Audit Report update 11 June (1)
[113] Confidential Eskom Medupi Final Report_17April 2013

(e) A similar story allegedly happened with a strategies maintenance contract. This company had 100% reliance on Eskom. A similar deal (40% equity) was presented to the Board, but again the board were reportedly not interested.

4.4.34 In a separate allegation, officers of Eskom have witnessed examples of when suppliers have had bilateral discussions with Board members about securing contracts, outside of any formal procurement process. The inference drawn is that pressure is applied to general managers to accept the terms and choice of suppliers.[114]

4.5 BPP – a fresh approach to the cost lever

4.5.1 Following the MYPD3 decision, in April 2013 it was reported to the Board that even with R30bn of savings already identified, there was an urgent requirement to find additional cost savings[115]. The initiative was called the Business Productivity Programme ("BPP") and confirmed to be up and running, by the end of May 2013[116]. The programme was led by members of EXCO and scheduled as a standing agenda item at ICAS and IFC[117].

4.5.2 As described in a presentation submitted to the IFC in August 2013, the goal of the BPP was to: "Deliver sustained productivity improvements that: Re-establish a high-functioning Eskom organisation; Close the funding gap for the MYPD3 period as far as possible, without compromising Eskom's sustainability; Establish a sustainable, long term cost position beyond the next 5 years"[118].

4.5.3 There were seven streams where value would purportedly be saved under the BPP[119]:

(a) Reducing the cost of PE: optimising coal contracts and burn mix;

(b) Improve efficiency of capital programme: scrub capex portfolio to reduce number and scope of portfolio; and, improve execution efficiency to reduce cost and time overruns;

(c) Reducing direct and indirect employee benefit costs: Benchmark and streamline business support functions and processes; and, develop, design and implement other voluntary separation packages for staff – taking into consideration risk and operational impact;

(d) Reduce external spend through efficient procurement practices, price reduction: optimising sourcing strategy by volume, specification and price levers; introduce demand management on indirect costs; reduce the TCO of key item spend; and continuous improvement, i.e. external spend with contractors (with Primary Energy targeted);

(e) Reduce revenue losses through improved debt management and find additional revenue sources and further improve debt recovery;

(f) Optimise maintenance costs and processes: implement further lean maintenance approach including policies and KPIs; and, improve supplier collaboration; and,

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[114] An Exco member
[115] Board meeting minutes 3 to 5 April 2013
[116] CE Report to the Board 30 May 2013
[117] ICAS meeting minutes 22 August 2013
[118] BPP IFC Feedback Presentation 13 August 2013
[119] Described in interview and supplemented from BPP updates presented to IFC during the period

(g) Optimising the balance sheet and alternative funding options: optimise financing costs by managing investment grade and key metrics; and, optimise balance sheet and review asset base, e.g. property portfolio.

4.5.4 Implementation of the BPP was rolled out in three phases[120]:

(a) Design phase: Finalise and approve value packages at ICAS and confirm financial impact;

(b) Transition phase: Handover of value packages to the business and mobilise the implementation of cost saving initiatives; and

(c) Continued Business Productivity: Monitor implementation progress, track realisation of financial benefits and continuously monitor the business for cost saving opportunities.

4.5.5 Targets

(a) The initial BPP focus was to achieve R8bn in savings. During FY2014 this was increased to between R66bn, primarily due to a R47bn negative impact on the shortfall on account of a reduction in sales projection and a reduction of the RCA by R14bn following re-phasing[121]. The imperative of achieving these targets was widely recognised by both EXCO and the Board, with the BPP being viewed as the core treatment plan to ensure financial stability at Eskom[122].

(b) The following table outlines the approximate targets by year[123]:

R2.7bn	R9.8bn	R13bn	R16.5bn	R18bn	R60bn
Year 1 was first year of MYPD3	Income statement = R4.6bn; Capex = R2.3bn; working capital R2bn; etc.				

4.5.6 Reported results of the BPP

(a) In FY14, BPP had a shortfall of R2.3bn in reaching their R2.7bn target[124].

(b) In FY15, BPP reportedly realised R9.3bn in savings, resulting in a R0.5bn shortfall[125]. This shortfall is the net remainder of an actual shortfall of R5.5bn which was offset by additional savings made through stretched and new value packages and an underinvestment of R1.5bn in other areas of the business.

(c) The projections for FY16 are already highlighting a shortfall of R3.4bn against the cash savings target. However, various recommendations and changes to the methodology and focus areas are purportedly being considered to mitigate this.

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[120] BPP Presentation – February 2015
[121] BPP Presentation – February 2015
[122] Various Board and Exco meeting minutes, for example Exco meeting minutes 6 November 2013
[123] BPP Presentation – February 2015
[124] BPP Presentation February 2015
[125] BPP Presentation May 2015

slow to implement

2/113

4.5.7 Issues identified in the implementation of the BPP and explanation of the shortfalls:

(a) *Responsiveness*

(b) Despite the financial imperatives of realising cost savings noted in early FY14, it was not until April 2014 that the Design Phase was complete, taking over a year from its inception to design and agree the targets[126]. It is not clear why the design phase was so time consuming.

(c) It is possible that decisions were delayed at ICAS. In October 2013, this matter was raised at ICAS, with the Chairman indicating a need for the committee to meet on a more frequent basis and that more time should be devoted to BPP taking into account that they were the gateway for any decisions[127]. The Committee therefore agreed to find time slots every two weeks and schedule meetings going forward to be aligned with BPP. From the evidence provided during the course of the investigation it has not been possible to confirm whether this resolution was implemented.

(d) It may also be due to a lack of accountability for the initiative in the early stages. It was not until September 2013 that a team of experts was constituted to progress the initiative. These were described as the "best brains" in the business with a mandate to approach the challenge afresh[128].

(e) In addition, external consultants were used during this time to analyse the business which may have caused delays, and increase costs with concern raised by the IFC in April 2014 that R32m had already been spent on consultants in support of BPP[129]. Whilst the consultants were allegedly working at risk of 50% (30% for McKinsey) with the balance dependant on achieving targets, when one of the goals had been to cut external expenditure, it is surprising that it continued to be utilised here.

(f) At FY14 year end when the design phase was complete, Eskom's income statement and ability to maintain a positive cash flow were noted at the Board to be dependent on the savings from BPP in addition to RCA revenues[130]. Without these elements, it was reported that cash flow would be negative in three months and funds for capex would run out in five months. Whilst the financial imperative was recognised here again, the BPP had still not been implemented within the business, perhaps indicating a concerning lack of response or consideration of the severity of the issue[131].

(g) Despite this, it then took a further three months to handover the implementation of these targets to the relevant business divisions hence delaying the response even further until July 2014[132].

(h) It is noted that the initial plan sought to achieve meaningful savings from FY16 onwards. The BPP was designed to focus in its first two years on the highest priority value packages[133]. Priority ranking was determined by:

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[126] BPP Presentation February 2015
[127] ICAS meeting minutes 24 October 2013
[128] Interview with senior finance representative
[129] IFC meeting minutes 1 April 2014
[130] Board meeting minutes 17 and 27 February 2014
[131] BPP Presentation February 2015
[132] BPP Presentation February 2015
[133] BPP Presentation June 2014

2/114

(i) Net present value: a quantitative metric based on value per year inputs; and,

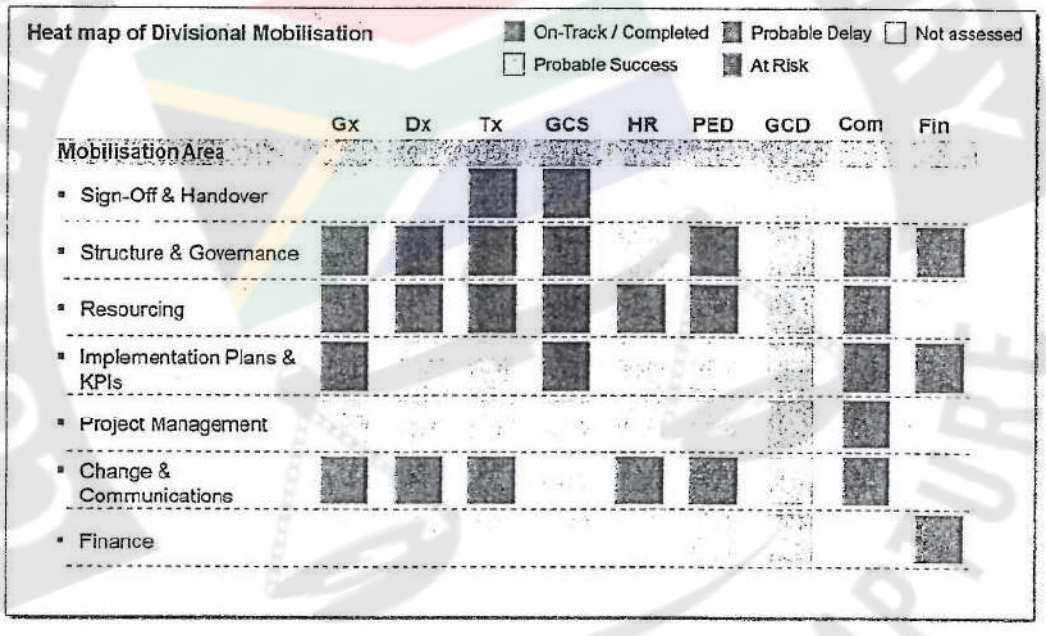
(ii) Potential challenge to input: a qualitative metric ranked from 1 to 5 in increasing level of difficulty.

(i) The highest priority areas were considered to be those scoring the highest in value and most difficult to implement (priority 1) and those scoring the highest in value and easiest to implement (priority 2). This approach was re-issued as a recommendation in helping to achieve FY16 indicating that perhaps this had not been done as intended in the prior years[134].

Business buy-in

(k) This phase involved the identification of GMs to act as "sponsors" from the business to drive the cost savings. A central BPP team would oversee the sponsors with a mandate to make sure the initiative was implemented, reporting directly into EXCO and IFC[135].

(l) A progress update in May 2014 already began to flag divisions of concern, mostly those that had been allocated higher volumes of savings[136]. The following heat map taken from the update provides an overview of these issues by division:



(m) It is noted that Generation, Group HR and Group Commercial are three of the areas with highest implementation responsibilities. It could be argued that these should therefore have been the priority and focus of this phase of the BPP, with issues resolved in a timely manner so as not to impact future savings.

(n) During FY15 there appear to have been various attempts to encourage participation and involvement from the business to implement BPP.

[134] BPP Presentation May 2015
[135] Interview with senior finance representative
[136] BPP Presentation May 2014

(o) In May 2014, EXCO were informed that no short term bonus would be paid to F Bands due to the objective of R6bn in operating costs and capital savings had not been achieved[137]. The Chief Executive stated that EXCO as a collective had to take the financial constraints that the company faced seriously and that the forfeiture of the bonus would send a signal across the organisation that BPP is not just an issue for the finance division but that it was an organisational wide imperative.

(p) Furthermore, a review of the programme status in June 2014 concluded that 80% of the initiatives scheduled to deliver savings in FY2015 were not on track[138]. This was reported to IFC, noting that Eskom leadership support was paramount to achieving delivery of the BPP savings.

(q) In Q2 FY15, a review was scheduled by Internal Audit in relation to the "Financial Planning, Budgeting and Control Process. The review was a management self-assessment, designed to "afford management an opportunity to identify areas of improvement relating to the adequacy and effectiveness of internal controls for Financial Planning, Budgeting and Control Process, formulate design process improvement with firm timelines and self-report thereon"[139].

(r) The role of the audit team was to review the completeness and validity of identified improvements opportunities including the robustness of the identified process improvements.

(s) This review identified that adequate communication is not done throughout the business to ensure the correct understanding of the ad-hoc budget and BPP cuts. The BPP had been in operation for several months by the time this review was conducted and hence this finding is cause for concern. If management were not aware if or how they were supposed to be achieving cost savings by the end of Q2 FY15, it is not surprising that the goals were not met by the financial year end.

(t) Furthermore, the generic management response provided in the Catalyst report where this finding was noted stated that "[t]he majority of the improvements will be addressed in the budget cycle 2016 to 2020", indicating that the severity of this issue and potential impact on the business was not recognised or appreciated at this stage.

(u) Interestingly, the shortfall in FY15 was reported as R3.92bn in February 2015, indicating that 36% of the savings had been realised in the last two months of the financial year[140]. This apparent concerted effort towards the end of the financial year may be explained given that KPIs were in part based on achievement of the plan.

(v) *Aggressive targets*

(w) The targets were described by the Chief Executive as being a stretch[141]. In addition, some elements were noted as being outside of Eskom's control which may risk delivery. Even though these concerns were noted, reliance on the delivery of R60bn in savings continued, with the Board confirming that the likelihood of this was high in April 2014.

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[137] Exco meeting minutes 26 May 2014
[138] BPP Presentation June 2014
[139] Integrated Assurance Catalyst Report – Q2 FY15
[140] BPP Presentation February 2015
[141] Board meeting minutes 2 to 4 April 2014

(x) Already at this stage, the FY14 target had not been achieved by a shortfall of R2.3bn[142]. This is unsurprising given the project had not been fully agreed or implemented by the business.

(y) Despite the attempted incentivisation of the business and early warnings of delays and issues during FY15, the target for that year was also not achieved with a shortfall of R0.5bn[143], having been reduced from a shortfall of R3.92bn reported in February 2015[144].

(z) *Misrepresentation of the quality of short term savings*

(aa) The FY15 shortfall is attributed to OCGT usage, fuel oil, municipal debt, road transport rate, manpower, procurement and various miscellaneous areas such as Majuba rail, SPU debt, Food & Beverage recoveries and Communications[145].

(bb) The shortfall was R5.5bn which was offset by R5bn by "New Value packages / Stretch performance". Of this, a number of items would appear to be misrepresentative or only seek to reflect short term gain:

(i) R737m is due to the re-phasing of expenditure to later periods, thereby delaying expenditure into later periods with more stringent saving targets;

(ii) R768m was in relation to "Various over performances" for which it is difficult to appraise whether they should be legitimately recorded as savings;

(iii) R309m was attributed to a reduced utilisation of contract spend on "Boiler Serve". There is no further detail provided but the title might suggest maintenance in which any savings may be detrimental in future; and,

(iv) R1.459bn was in relation to underinvestment in voluntary separation packages which would have attributed to the fact that the targets in manpower reduction were not met.

(cc) Our review of the BPP reporting materials gave the impression that hard, and therefore meaningful, cost savings are not being achieved, but that the divisions find proxy savings to plug the failure against targets. In other words, the division finds in isolation an example of where they didn't spend as much as anticipated and it becomes a "new value package" or a "stretch performance" in a soft area, but in aggregate and in substance savings are not being ingrained.

(dd) With respect to the areas of shortfall, a number of requests for support were issued in May 2015 to reduce the risks of FY16 and beyond savings[146]. This included the requirement of external support for OCGT and municipal debt, areas which had contributed to R2bn of the leakage in FY15. This seems counterintuitive given that a key area of success in the BPP to date had been reduction in external spend and a strong focus on more effective utilisation of Eskom resources.

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[142] BPP Presentation February 2014
[143] BPP Presentation May 2015
[144] BPP Presentation February 2015
[145] BPP Presentation May 2015
[146] BPP Presentation May 2015

(ee) One employee stated that whilst Eskom got close to their target in the last year, "we don't know whether it was just through cost deferrals rather than savings".

(ff) Another senior officer stated: "the response from the business has also been underwhelming – still too much push back and not "coming to the party"... It is fair to say that BPP was too idle and is too little. It is more opportunistic and efficiencies rather than having a big impact. For example, despite this "drive" someone still goes ahead and spends R160m on hire purchase of cars"

(gg) The general perception appears to be that the efficiencies recorded under BPP have not had a significant positive impact on the financial position of Eskom. It is possible this is due to a lack of clarity or understanding in where the savings are coming from given that all of the BPP presentations to the IFC do not provide detail of savings, only commentary on leakage and where the gaps are plugged. However, we suspect this reporting style has been selected to conceal failures.

~~(hh)~~ *Manipulation of savings*

(ii) A review of the "BPP 2013/14 actual savings" was specifically requested and conducted by the Internal Audit ("IA") team in Q2 of FY15[147]. The audit was given the highest priority risk rating with no rating provided for management in relation to the findings.

(jj) The review identified that at the time the BPP savings were compiled (June 2014), there were no documented guidelines on how the savings would be calculated to ensure the divisions have the same basis and are consistent. Furthermore, there were no supporting documents in terms of calculations, financial records or management information to substantiate how the figures were calculated.

(kk) Of the savings reviewed of R979.66m, Internal Audit were only able to verify R256.79m. Due to lack of supporting documentation and inconsistencies in the application of the baseline, the following committed line items could not be verified:

(i) External spend: Transformers; and, Cables and Conductors;

(ii) Finance: the Debt Portfolio;

(iii) Revenue Management: Energy Protection and Revenue Losses; Improve Municipal Debt Collection; Improve SPU Debt Collection; and Improve LPU Debt Collection.

(ll) In addition, the audit team noted that different methods had been used when compiling BPP savings in that:

(i) Different baselines were used on the reconciliation calculation, for example, with the full year budget vs actual used in some cases whilst on others the third quarter projections vs actuals were used; and,

(ii) Only favourable variances were used to calculate the savings, unfavourable variances were not taken into account.

[147] Audit Memo Review of the Savings Declared Through Business Productivity Programme – FY14

(mm) If the process by which savings are calculated is not only inconsistent but also favourable, whether intentional or otherwise this calls into question the integrity of any final figures reported.

(nn) The report provides various recommendations, concluding that they "recommend management treat the highlighted shortcomings as a lesson learnt, and implement the suggested recommendations as possible solutions going forward". There are no management responses included and no reference to a follow up or equivalent audit being conducted since this review.

(oo) It is interesting to note that despite these concerning findings, no detail was included in the quarterly catalyst report produced by Internal Audit and submitted to EXCO, the Audit & Risk Committee and various other Governance bodies. It aims to provide management with a summary of significant or important issues identified during the period from their scheduled audits. The audit was referenced but noted as "Not Rated" as opposed to assigned a risk rating to indicate any issues[148].

(pp) *Failure to realise planned and meaningful cost savings*

(qq) Manpower:

(i) The initial response to the MYPD3 decision was to limit the number of employees within Eskom to 43,450, including full time contractors[149].

(ii) A review of the recruitment process conducted by Internal Audit in Q1 of FY14 noted that in fact Eskom had already exceeded the 43,450 number by approximately 954 on a gross basis and 294 on a net basis at the end of June 2013.

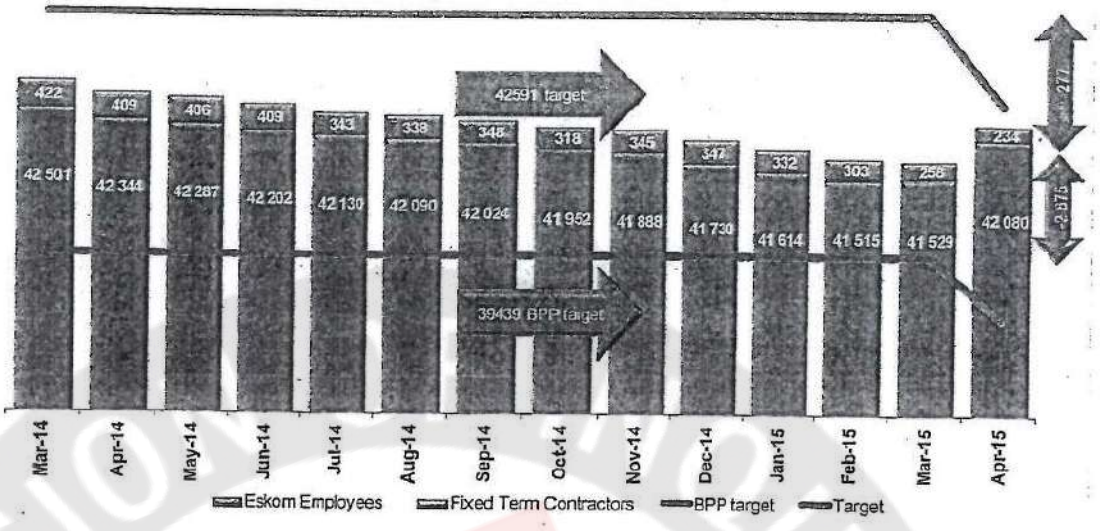
(iii) The findings of the review note that *"[t]he strategies currently may not be executable and even if they were, the probability of being within the 43,450 in terms of headcount in the foreseeable future is remote"*. They continue, noting that "*[c]ommunication to the organisation about Eskom's position on recruitment has been muted or at best inconsistent and as a result the business units are unclear about the way forward*".

(iv) Despite this, under the BPP, the HR function targeted approximately R17bn in total, taking the headcount down even across different divisions by end of MYPD3 period. Despite the manpower package being well designed with a focus on structure, removing duplicative roles, and assigning separate packages to different parts of the business, ultimately there was push back and non-adherence by the business. According to a senior officer responsible for monitoring BPP, in part due to lack of courage and in part based on statement that redundancy would cost as much, it didn't deliver and the whole process has now purportedly been stopped[150].

(v) The following graph was presented in April 2015[151]:

[148] Integrated Assurance Catalyst Report – Q2 FY15
[149] Integrated Assurance Catalyst Report – Q1 FY14
[150] Senior Executive leading monitoring of BPP, 13 May 2015
[151] GFC Presentation April 2015

2/119



(vi) This shows that progress does appear to have been made during FY2015 but Eskom remained significantly behind target, failing to stick to the programme mantra in April 2015 when they increased Distribution and Generation permanent employees by 551.

(vii) The leakage in FY2015 in this area was reported as R911m and attributed to the delayed implementation of voluntary separations due to the lack of confirmation of separation package criteria[152].

(viii) A source from Finance noted that manpower was their biggest cost and that interference from Government had meant there was no appetite for retrenchments.[153] The Government's mandate is to create jobs and that Eskom's management had not been strong enough in curtaining this, citing salary overpayment as an example.

(ix) Other areas that could have been targeted were the high volumes of overtime hours charged to the business. A review conducted by Internal Audit of the period January 2013 to April 2013 inclusive raised the issue of excessive overtime being charged by the business and the risk of this inflating Eskom's manpower costs[154].

35hrs per 4months

(x) This review identified that on average 721,906 overtime hours were being charged by an average of 20,288 employees, just less than half of Eskom's employee base during the 4 month period. No management response could be identified in this report and no reference to a follow up investigation or audit could be identified in the source material provided.

(xi) The failure to curb headcount, together with an average 7.6% pay rise, means that Eskom have and will spend more on staff costs not less. That

[152] GFC Presentation April 2015
[153] Interview with finance representative
[154] Integrated Assurance Catalyst Report – Q1 FY14

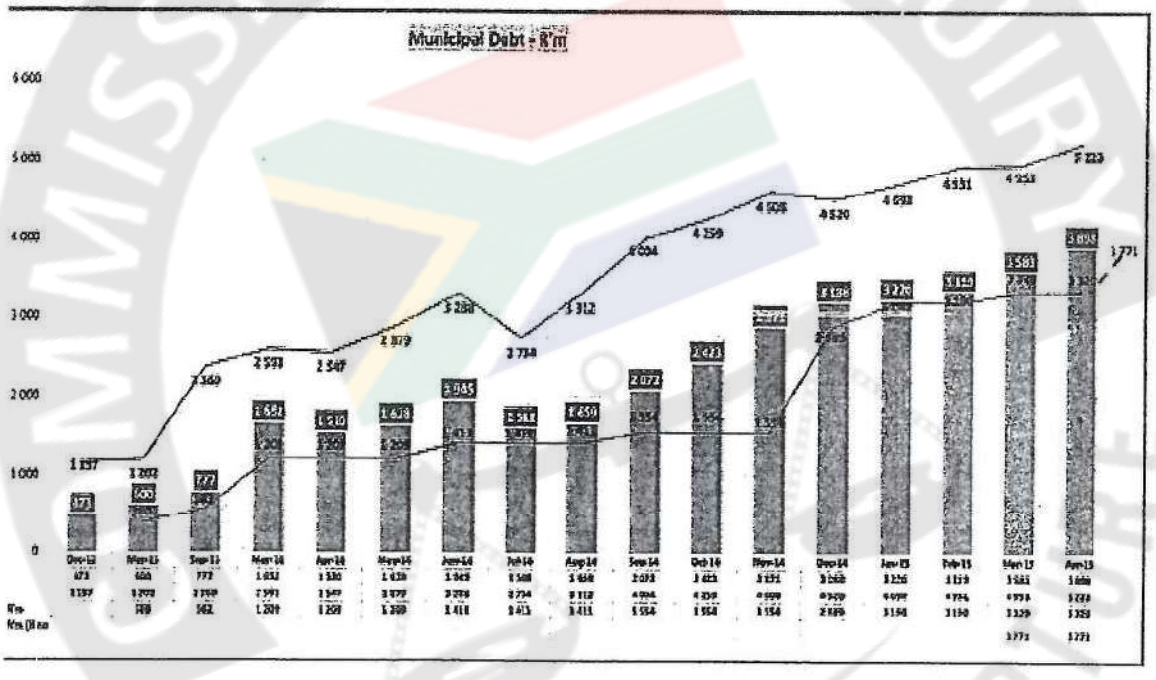
BPP is only claiming a small leakage belies the substance of failure to make meaningful savings in this area.

(rr) Arrears

(i) The original objective was aimed to reduce Municipal debt from R2.2bn to R1.2bn[155].

(ii) Despite this, a leakage of R1bn was assigned to Municipal Debt in FY15. This was explained by challenges in applying contractual mechanisms to recover debt. In addition, disconnections deferred due to interventions by DPE, CoGTA Ministers and court interdicts present further risk of budget overruns for the immediate future.

(iii) The debt levels were reported here at R4.0bn and were projected to increase to R5bn by year end. This is reflected in the following graph which shows the total overdue Municipal debt at the end of April 2015 as amounting to R5.2bn[156]:



(iv) It is explained that the National Treasury withheld the March 2015 transfer tranche of the equitable share to numerous municipalities contributed to this. However, it remains a material increase in such a short period.

(v) Action lately shows how to address the problem of municipalities not paying Eskom, and treating it like an extension of the State. A harder line recently has had positive results, with over 50% of the municipalities coming to the table because Eskom switched off the lights[157]. Despite this, figures as at

[155] GFC Presentation May 2015
[156] GFC Presentation April 2015
[157] Interview with senior finance representative

April 2015 show that payment plans are in place for only R1.4bn of the R4.0bn owed by the top 20 defaulting municipalities[158].

(vi) A source from Finance highlighted the example of Soweto when discussing debt collection issues from customers[159]. The source explained that the people there did not want to pay for electricity when they had become used to having it for free. The rising debt has therefore become a problem for Eskom that the Government do not appear willing to assist with due to the large population and hence voting support based there (approximately 5 million out of 45 million in the Country).

(vii) In a prior role, the source had been responsible for reporting and remembers being instructed to write off a significant amount of Soweto debt, with the general message coming down from management that it didn't matter. This appears to have then set a precedent amongst the Municipalities in which they simply refuse to pay and wait and see what happens. By the time debt collection later became a concern, it was too late to change public opinion.

(viii) It would appear that a proposal to write-off bad debt of R142m for electricity customers was prepared by Customer Services in Q3 FY2015[160]. Prior to submission to ICAS and IFC, Internal Audit conducted a review of the proposal in order to provide reasonable assurance as to whether Eskom's policies and procedures to write-off bad debts were followed by management. The audit found instances of non-compliances with the debts management and collection process with examples where the severance proves had not been activated and not handed over for debt collection. It also identified customer accounts without payment plans and instances of where interest amounts hadn't been charged.

(ix) The issues were explained to be due to a "lack of automated controls (the debt collection process was largely manually managed, which increased the possibility of errors occurring), lack of discipline, lack of supervision and failure to exercise due care".

(x) Whilst the quantum of write-offs being considered in the scope of this review may have been small, the concerns noted over bad debt management and write off policies provides sufficient cause for concern over the remaining debt portfolio and may help to explain why Eskom failed to reach its recovery objectives.

(ss) Coal

(i) A main focus area for BPP was Primary Energy where the costs had been marching up for 3-4 years. The packages comprised a considered approach to the savings that could be made. Kiren Maharaj, Head of Primary Energy, came under a lot of pressure from BPP because she been the original designer and architect of the initiative – she was pushed to deliver once she became responsible for implementation.

[158] GFC Presentation April 2015
[159] Interview with finance representative
[160] Integrated Assurance Catalyst Report Q3 FY15

(ii) Recollections of Maharaj's attempts to take on road transport costs vary. On the one hand, Maharaj was seeking to gain a discount from a road transport (trucking) supplier, only to be out manoeuvred by an EXCO member. According to Koko, a discount of 13% was negotiated by Maharaj following an independent report that suggested 23% could be achieved. The company then sought to reduce this amount by pointing out it had not enforced the contract which built in cost escalations each year. They argued that the discount had effectively been given in this way. Apparently Maharaj was unmoved by this, but the reaction of the truckers at a troublesome time for the CEO was to signal their intention for industrial action and form blockades at Megawatt Park and other sites. The decision taken was to negotiate a 5% reduction in costs. Maharaj ultimately refused to ratify this contract, and was later suspended and negotiated a settlement. We understand an alternative view is that this industrial action was much earlier and not linked to the 13% which had already been agreed. We have not had the opportunity to interview Maharaj as yet.

(iii) Interestingly coal cost was not an area escalated, of concern or subject to leakage in the February and May 2015 BBP update presentations. This would suggest that the division realised its savings effectively. However, a deeper dive into the coal usage costs and supporting financial or source data provide evidence to indicate the following challenges[161]:

(A) Rates targets – Coal purchase rates continued to rise throughout the period and appear to remain unchecked by management or responsible parties;

(B) Failure to renegotiate contracts – Contracts continued to favour supplier needs with limited to no negotiation identified in the period (see Chapter 5);

(C) Stock piles levels – Whilst stock piles were reduced to avoid short term purchasing costs, this only succeeded in keeping coal usage within budget, keeping the increased rates and hard contract renegotiation off the agenda;

(D) Burn rate – The burned coal was below budget, again reducing the amount of coal that needed to be purchased during the period.

(iv) It would appear therefore that the coal costs were not meaningfully cut at any point from March 2013. A representative from Group Finance noted that there should be opportunities to make further cuts on coal, but questioned whether the right people were in place to implement these.

(v) Furthermore, one area in which leakage in FY15 was identified was in relation to Road Transport Rate of value R729m[162]. This was explained to be due to the temporary suspension of the negotiated rates agreement. These road transportation costs have been analysed further in Chapter 3.

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[161] Refer to Dentons team working papers – Coal Cost Analysis – for supporting evidence and references

[162] BPP Presentation May 2015

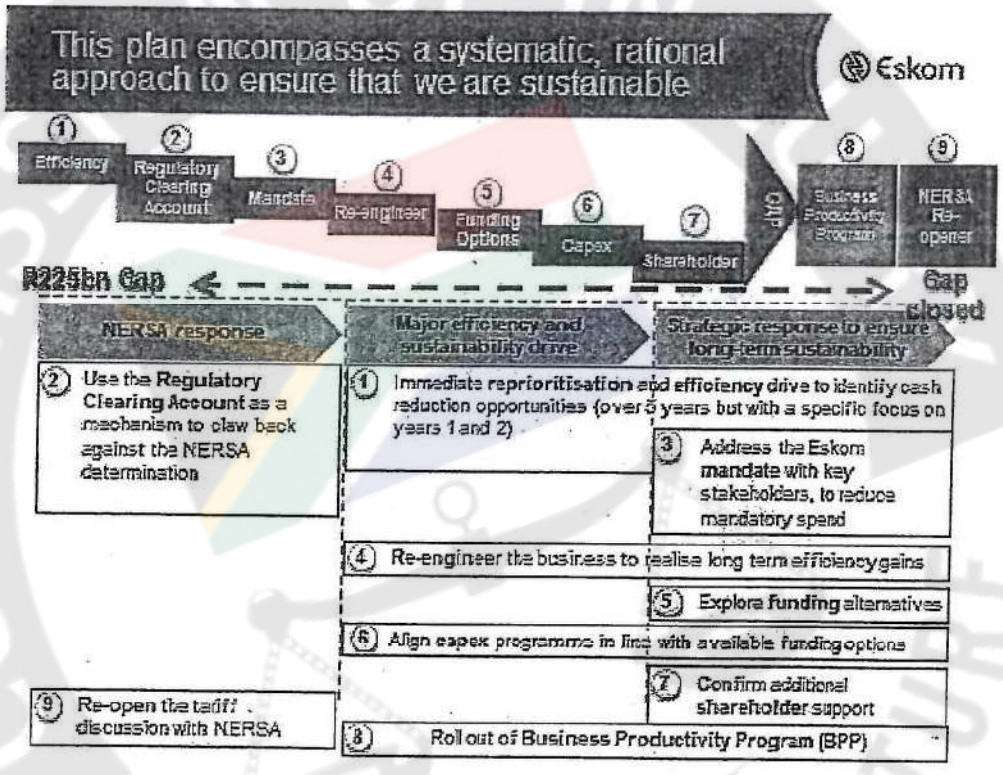
(tt) Diesel

(i) Despite wiping out all other BPP "savings", Diesel was only described as having leakage against plan of R1bn.

(ii) It is possible this is based on an assumption the RCA will deliver reimbursement.

4.6 Other material failures to address financial levers as defined by the response plan

4.6.1 In addition to BPP there were various elements enshrined in the "Response Plan" which had a greater reliance on external stakeholders, namely: RCAs; re-engineering of the business; Capex re-prioritisation; equity injection; additional borrowing; and assessing the mandate – was Eskom trying to keep the lights on at all costs, or was is seeking to be financially sustainable:[163]



(a) RCA for MYPD2 delivered juts R7.8bn versus R18.4bn, and in any event wouldn't be in place until the current financial year, 2015/16.

(b) It has been suggested by a senior officer of Eskom that the Capital re-prioritization was not an efficient process due to silos in the business arguing for respective pot of funds.

(c) The equity proffered was less than requested and seemingly required.

(d) Borrowing was accepted in the sense of guarantees.

[163] "Securing financial sustainability (in response to lower tariff decision)"

(e) No structural re-engineering of the business has taken place.

(f) No clarity on mandate of financial sustainability versus "keep the lights on" has been established. That debate may well be coming to a head.

4.6.2 It is noted that the various initiatives were handled by different teams but as to whether the projection was indicating delivery or not on a case by case basis or as a whole, it is difficult to determine from the records. The reality is that in the two years since the MYPD3 decision Eskom financial woes have only deepened.

4.6.3 Relationship with the State and Regulator

(a) Recent history informs us that there are fundamental difference of opinions between Eskom and NERSA.

(b) Eskom purportedly looked at appealing the MYPD3 decision but the Board decided not to and instead focus on the Response Plan (mentioned above).[164] In part Eskom was playing for time: The intention was to reassess in two years' time when the major shortfalls started to hit (only approx. R34bn of the R225bn shortfall was allocated to the first two years of the MYPD3 period).

(c) Despite this, the failure to secure sufficient funding through MYPD3 is a fault of both NERSA and Eskom. Whether the balance lies with the former for being harsh on cost base approaches and the latter for being optimistic in key assumptions, the reality of is a remarkable gap: with Eskom requiring R35bn to R40bn in addition to the R150bn revenue funding decision (MYPD3). This cause of this gap might be explained as due to R10bn in sales, R10bn in OCGT, and increases in IPP rates and employee costs. Just how many costs should be reduced, and the tariff increased is hard to deduce given the lack of attention to the cost base..

(d) Eskom describe the feedback from NERSA as a vacuum or greyness which has contributed to what is known as differing "levels of discretion" between the Regulator and Eskom.

(e) Given the significance of Eskom's relationship with the State as it relates to financial sustainability, there is clearly a need for greater lobbying and/or engagement. That may lead to greater alignment of expectations and more certainty over which to drive financial planning.

4.7 Funding difficulties as a consequence of the financial pressures

4.7.1 Background of the Borrowing Programme

(a) The "Borrowing Programme" is a legal requirement for Eskom to prepare on an annual basis and intersects with the Corporate Plan process. The Financial plan includes a budget, i.e. the company needs X per year, which Treasury then are asked to deliver a borrowing plan to match. It is essentially a support function to what is going on in the business and if the financial plan doesn't recognise certain risks, such as the Medupi start date or diesel spend, then, this wold impact on urgency for borrowing and sub-optimal decisions may be made.

[164] Senior officer in Group Finance

(b) The five year Borrowing Programme which fed into the revised Corporate Plan following the MYPD decision resulted in a revised borrowing budget for Treasury to meet. There are no defined time frames in the plan so Treasury just have the responsibility to borrow as fast as possible.[165]

4.7.2 Current approved Borrowing Programme to FY19/20

(a) The Borrowing Programme is made up of five different instruments from a variety of domestic and international lenders. The Borrowing Programme for FY14/15 – FY19/20 shows a funding shortfall of R50bn.

Borrowing Programme 2016-2020	2015/16	2016/17	2017/18	2018/19	2019/20	Total
Bonds domestic	8 000	9 000	10 000	12 000	12 000	51 000
Bonds/ loans International	16 500	11 500	11 500	12 000	12 000	63 500
CPB's	10 000	10 000	12 000	15 000	15 000	62 000
DFI financing	12 269	14 122	8 922	3 233	2 157	40 703
ECA financing	8 551	2 909	3 992	3 325	1 095	19 872
Borrowing Programme	55 320	47 531	46 414	45 558	42 252	**237 075**
Funding shortfall	10 000	10 000		10 000	20 000	50 000
Total Requirement (Borrowing Programme)	65 320	57 531	46 414	55 558	62 252	**287 075**

(b) Treasury will not commit to a borrowing programme that they do not feel comfortable to deliver on. Therefore, they only committed to a Borrowing Programme of R237bn which they know can be achieved and will attempt to go to the market for the remaining R50bn. This is hampered by, amongst other factors, the credit downgrade which occurred since the Borrowing Programme was agreed. [166]

(c) Treasury are working to the approved funding budget of R55bn for the 2015/16 financial year and over half of the facilities are in place to meet this target.

4.7.3 Sustainability of using borrowing to fund financing costs

(a) Last year to March 2015 there was a shortfall of R11bn between cash generated from operations and the amount to cover financing costs and debt repayments. This has led to a situation where this shortfall is being covered by borrowings. This is not a sustainable long term strategy [167]

(b) Debt repayments are forecasted to be R124bn to FY20 while the interest and finance charges total R152bn. This means that cash from operations must generate at least R276bn to cover this, otherwise debt repayment and finance costs will continue to be supported by new borrowing.

Per Budget Income Statement	2015/16	2016/17	2017/18	2018/19	2019/20	
Debt Repaid	-21 175	-16 971	-19 032	-33 895	-32 788	
Interest and Finance Charges	-22 931	-27 193	-30 935	-33 938	-36 921	
	-44 106	-44 164	-49 967	-67 833	-69 709	
Borrowing Programme (Total A)	55 320	47 531	46 414	45 558	42 252	237 075
	11 214	3 367	-3 553	-22 275	-27 457	

[165] Marius Holmwood and Garth Greuber, Treasury, 13 May 2015
[166] Marius Homewood and Andre Pillay Treasury, 19 June 2015
[167] Marius Homewood and Andre Pillay Treasury, 19 June 2015

(c) Eskom's recent financial performance indicates that approximately R90bn of these borrowings will be required to quench the thirst of existing loan repayments and interest, leaving just R145bn for the capex programme – effectively half of what is considered required excluding risk items in the new build.[168]

4.7.4 Current Portfolio

(a) The portfolio at March 2015 was made up of nine instruments:

Instrument	Carrying Value	Comment
Eskom bonds	112,102,558,308	Regularly issued at varying coupon rates based on the market. Auction timetable is agreed with government. Treasury aim to fund between 8 -12bn a year. Go to auction regularly throughout the 12 months.
Promissory notes	40,128,168	4 notes issued at interest rate of ~15%
Commercial paper	7,027,019,562	Issued for 12 month period and typically rolled forward from the prior year. Main external paper for R5.8bn at 6.41%.
Eurorand zero coupon bonds	3,942,207,186	These are legacy bonds from the late 90s
Foreign bonds	48,669,511,216	Require a recently audited balance sheet so can only go to market twice a year. Limited flexibility on implementation. 2 USD bonds issued in the last 2 years: $1bn at 6.75% and $1.25bn at 7.13%.
Development financing institutions	62,446,483,850	Drawdowns are linked to the milestones on capital projects. Includes loans from: -African Development Bank totalling R23bn -World Bank totalling R24.6bn Most recently, loan from Agence Francaise Development of €3m.
Export credit facilities	28,487,724,925	Seven facilities, the largest being R9bn from KFW and R10.5bn from BNP.
Subordinated loan from shareholder	26,621,342,810	Government loan converted to equity. This is the calculated debt value.
Rand loans	8,792,235,778	Loans from external banks including Deutsche and JPM
Total	**298,129,211,803**	

(i) A detailed list of the Debt, Securities and Borrowings position at March 2015 including the attached interest rate of each is attached at Appendix 2.

(ii) In addition, Eskom's embedded derivatives portfolio is also managed by Treasury. An embedded derivative is a financial reporting term which represents Eskom's contracts to sell electricity to aluminium smelters where the price linked to the price of aluminium, and are valued based on commodity price and forex predictions.

(b) Borrowing taken out in FY15

(i) The borrowing target for FY15 was R62.2bn which was nearly achieved

[168] Assumes the average cash from operating activities of the past three years continues to be obtained

through the following re-financing and new borrowings[169]:

Instrument	Amount	Comment
Export Credit and DFI Drawdowns	15.5	Milestone payments from capital projects
Domestic Bonds	17.2	Pot of funds used to repay maturing debt
Commercial Papers	6.8	
Other funding	7.2	Cross currency swaps
Foreign Bonds	13.8	USD bonds
	60.5	

4.7.5 Overview of borrowing strategy

(a) Ten years ago Eskom had excess liquidity and the only debt was domestic, standing at around R5bn (compared to R300bn today). The borrowing wasn't necessary, but Eskom wanted to have a presence in the capital markets.

(b) The strategy was always buy long, cheap and in Rand as that is the currency of operations. If this couldn't be achieved Eskom would move towards short term more expensive instruments. General balance sheet funding was preferred over project finance because it is cheaper and Eskom has a strong balance sheet with long term assets whereas project financing would likely require a revenue stream to attach the financing to.[170] Domestic debt is also preferred because it is less expensive and doesn't require currency hedging.

(c) Liquidity management has not been a historic issue. The three month spend liquidity buffer of R20bn has been deemed sufficient to absorb shocks and the international capital markets are happy with the level.[171]

but its R120bn
20/3 = R6bn
4R = R80.

(d) The Borrowing Programme is not a static, legacy portfolio but is constantly being considered. The Treasury team will do fortnightly auctions to gauge the appetite in the markets and in June will canvass the insurance and pensions market.[172]

4.7.6 Current market position

(a) The key problem in the market for Eskom Treasury recently has been demonstrating a positive trajectory for the business. Treasury receive the necessary support from the National Treasury and the Department of Energy when Eskom target investors but when they effectively renege through tariff decisions, or when the business gives out bad news, such as the Medupi timetable delays, the market starts to back off. In FY15 this has been exacerbated by the income statement ratios which have been affected by the adverse costs to budget. Private fund managers in particular are very negative about Eskom's creditworthiness.

(b) Eskom also have to compete with others in the domestic market now. The government selling debt in the same domestic market squeezes available cash and

[169] Marius Homewood and Andre Pillay Treasury, 19 June 2015
[170] Caroline Henry, Senior Manager Treasury, 10 June 2015
[171] Caroline Henry, Senior Manager Treasury, 10 June 2015
[172] Caroline Henry, Senior Manager Treasury, 10 June 2015

the IPPs are also receiving domestic funding in preference to Eskom because they have a more certain revenue stream (propped up by Eskom itself).[173]

(c) The credit rating downgrades have had a significant impact on Treasury's ability to raise funds in the market. Following the Moody's downgrade in November 2014, domestically they saw a significant impact on market sentiment towards Eskom debt. Their cost of debt in the market moved from 120basis points (which was approximately only 1.3% higher than a government bond) to 200 basis points.[174]

(d) Due to the declining ratios, some investors that didn't require guarantees before now require a government guarantee. Between June 2014 and March 15, Treasury also faced difficulty getting commitment from investors before the government support package was approved and paid.[175]

4.7.7 Details on particular borrowings

4.7.8 There are no particular financial instruments within the borrowing programme that would be described as the "nucleus" as every part contributes to the total required funding. However, we identified some of the key elements of the Programme as follows:

(a) *Foreign bond placed in January 2015*

(b) In 2015, a US dollar bond at a 7.13% interest rate was arranged by Treasury. The bond amount was US$1.25bn which was equivalent to approximately R15bn, being nearly 25% of the annual required borrowing.

(c) The process for selling Eskom bonds internationally is inflexible and the process is led by three professional banks on Eskom's behalf, so Treasury have very limited authority or ability to influence the issuance process.

(d) Due to requiring recent audited financial statements, the available windows to issue the bond were June/July 2014 and January/February 2015. Eskom and adviser banks decided not to utilise the June/July 14 window for fear of triggering a downgrade[176] and lack of a defined government rescue package at that time. By January 2015, Eskom's weak financial position had considerable press coverage, there was weak investor confidence given the management changes and Moody's downgrade to sub-investment grade in November 2014 such that they had no other option than to accept the deal presented.

(e) The price of 7.13% was higher than the bond issued 18 months earlier at 6.75% and caused speculation internally over the high price. In addition, as the face value price of the Bond was in USD, Eskom has a policy to hedge 100% of foreign debt which added a further 7% to the cost of the bond. The bond is hedged through fixed currency swaps, which are based on the Inter-bank swap curve formula and cannot be influenced by participants.

(f) When Treasury had initially gone to the market in October 2014, the price was 6.83 for a 10 year bond. However, with the additional downgrade and the start of load

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[173] Caroline Henry, Senior Manager Treasury, 10 June 2015
[174] Marius Homewood and Andre Pillay, Treasury, 19 June 2015
[175] Marius Homewood and Andre Pillay, Treasury, 19 June 2015
[176] When on "negative credit watch", any borrowing triggers a downgrade unless you have positive news within 90 days.

shedding in November 2015, coupled with a fall in the performance of overall South African debt, Eskom were only able to get 7.125% from the market in January 2015.[177]

(g) The overall price would have had to build in the risks for investors not only of the negative business news, but also the investment in emerging markets and the need to hedge the rand. The R14bn funding out of a total R60bn planned funding is a significant portion and to secure such a volume of funding from elsewhere was not feasible or sensible given Eskom's financial position. Domestic private fund managers would not support lending of R10-20bn at one time and the only other option domestically would be from government related entities such as the State Pension fund. This forced Eskom to look internationally. A failure to secure the funding would have led to a liquidity collapse (or no money in the bank) by March. [178]

(h) *Eskom domestic bonds issued in 2014/15*

(i) There are a number of options to take when an existing bond is maturing. They can be allowed to mature and Eskom will then re-issue a new bond in its place or the bond can be exchanged for another bond with longer maturity. The price of the bond will vary based on the current market conditions and the term length. This has ranged from around 2% to 10%.

(j) *World Bank Loan*

(k) Eskom currently have two USD and one Rand World Bank loans in their portfolio of US$68m (R835m), US$29m (R352m) and R23bn. The Rand loan from the World Bank attracted adverse commentary because they falsely assumed the World Bank had "forced" R22bn in spend on "FGD" at Medupi. The work was required irrespective of the World Bank facility.

(l) *Chinese Debt offer*

(m) Five years ago, the South African government signed a Memorandum of Understanding with the China Development Bank to provide project finance funding but the facility was never utilised. In December 2014 this was reignited and Eskom were introduced by the National Treasury to the Chinese delegation. At this time. there was no term sheet specifying volume or amount but they were 'putting the money on the table'.

(n) Treasury went away to identify suitable capital projects and went to the Board for a special resolution to allow them to negotiate the R50bn facility. Although the size of the facility is unusual in its scale, the indications are that the price will not be better than elsewhere in the market, such as international bonds. The negotiations are ongoing.[179]

(o) Certain commentators thought that the price may be too high because Transnet had done a similar deal at a better price, but Transnet is not at junk bond status.[180]

(p) *OPIC and MIGA debt opportunities*

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[177] Marius Homewood and Andre Pillay, Treasury, 19 June 2015
[178] Marius Homewood and Garth Greuber, Treasury, 13 May 2015
[179] Marius Homewood and Andre Pillay, Treasury, 19 June 2015
[180] Caroline Henry, Senior Manager Treasury, 10 June 2015

(q) Eskom currently has two opportunities from development financing institutions (DFI): the Overseas Private Investment Corporate (OPIC), the US government's development finance institution and the Multi-Lateral Insurance Guarantee Association (MIGA), a member of the World Bank group. They are worth US$1bn in total.

(r) Conversations with these DFIs have been taking place since mid-2013 and the negotiations typically have a long gestation period. Treasury's initial plan was to secure the funding by October 2014 as the funding would have helped during the FY15. However, the delay was from the DFI side as they wanted to ensure that the government injection package was agreed and secure before they went to their internal credit committee.[181] In addition, the DFIs had not been through the lending process to an entity that was on negative ratings watch before and so there were delays internally. Treasury are still in negotiations with both MIGA and OPIC and hope to have the loans completed by October 2015.[182]

4.7.9 Concluding comments – Were there any alternatives and is cost of borrowing on these instruments commercially supportable?

(a) Given the financial position of Eskom, the Treasury function is operating with very few borrowing options. Externally the credit downgrades, Medupi delays, reliance on the government and changes in management have all contributed to a poor public image with domestic investors. Internally, MYPD3 response plan requirement for borrowing, the cash flow issues, and an already heavily invested position in the large capex programme that needs to be completed places additional pressure on ensuring the Borrowing Plan is met.

(b) The prices Treasury are concluding for new instruments such as the US dollar bond and loans from DFIs may appear to be higher than past financing costs, but are a reflection of the market they are operating in and the implications of negative trajectory in financial indicators.

(c) Treasury are acutely aware that Eskom needs a positive story financially, and that without meaningful changes to the tariff and cost savings, the build programme will require increased borrowings at a higher cost of funding that will only harm Eskom in the long run, or further more radical funding options.[183]

4.8 Other significant factors that may have contributed to the financial challenges

4.8.1 Internal Audit ("IA") and Assurance & Forensics ("A&F"), along with external functions comprise Eskom's second line of defence. They are collectively responsible for regulating and controlling Eskom's policies, procedures and controls and the business adherence to them.

4.8.2 Discussions were held with the appropriate representatives from the business and a review conducted of source data made available which included investigation reports and

[181] Marius Homewood and Andre Pillay, Treasury, 19 June 2015
[182] Marius Homewood and Andre Pillay, Treasury, 19 June 2015
[183] Eskom Treasury – Eskom Borrowing Programme And National Treasury Regulations – 12 February 2015

management information reports[184]. This provided a comprehensive narrative of the mandate, activities and effectiveness of these functions, as described in the sections below.

4.8.3 Internal Audit

(a) *Mandate*

(b) Under the direction of Molefi Nkhabu, Senior General Manager: Assurance & Forensics, the IA function at Eskom is responsible for conducting internal audits throughout the financial year. These audits can be both planned or at the request of a business division or management directive and can cover the review of a specific division, process or business initiative, for example an Audit over Contracts Management at Eskom.

(c) Audits are also scheduled in response to major incidents experienced at Eskom, for example a Technical Incident Investigation over the Duvha Unit 5 RFWT Incident in December 2013.

(d) Due to constrained resources, aside from a handful of specifically requested Internal Audit reports, the Internal Audit reports were not available during the course of this Investigation. However, quarterly Integrated Assurance Catalyst Reports were provided that are prepared by Mr. Nkhabu's team in order to summarise audits conducted and any major technical incidents occurring during the period.

(e) The intention of these reports is to provide management with high level statistics pertaining to the audits and major investigations conducted throughout the period. They are primarily based on the individual planned and requested audits conducted by the IA team. Details of significant matters are discussed in full, with several useful sources of information providing a high level view including:

(i) A dashboard of planned and requested audits conducted in the period, categorised by business function and graded based on results and priority risk;

(ii) Details of major incidents reported through the period, i.e. fire or trips, with a summary of factors and impact to the business. including financial impact on limited occasions;

(iii) A heat map and supporting narrative covering the salient points of finalised audit reports, including major investigations and providing an overall audit rating for each area; and,

(iv) Statistics of internal and external audit findings by division and incident/audit type which is of limited use as a standalone section as contains no detail.

(f) *Issues and restrictions identified*

(g) The quarterly Catalyst reports from FY14 and FY15 suggest that were over 200 audits and reviews conducted. Review of the audit topics and findings of these audits, where included, indicated that on the face of it:

[184] All findings reported in this section unless otherwise stated have been obtained from a combination of interviews conducted with members of the IA and A&F teams, the quarterly catalyst reports provided for FY2014 and FY2015 for IA and A&F and the whistle-blowing and investigations log.

(i) The audits were diverse and appeared to be representative of the business divisions, processes and initiatives at Eskom. However, there is limited review of large procurement and contract matters, specifically in relation to the purchase and management of coal;

(ii) The audits were process and control focused – the correct paperwork was in place, no further work was considered necessary;

(iii) There was limited to no consideration of financial impact of key findings such as control failures in procurement processes; and

(iv) Findings from the audits are reported to the business at which point IA appear to be no longer responsible or involved in the sanction or remedy, with exception of being able to escalate non-remediation to the Board and management committees in subsequent reports.

(h) An interview with an appropriate representative from IA confirmed that these audits were designed to review procedures and controls only. IA is responsible for the reconciliation of paperwork to procedure and if no issues are identified, they are not mandated to look any further.

(i) A number of instances have been identified where external third parties have been engaged to conduct investigations on behalf of IA. An example of this was an audit conducted by Pegasus Risk Financing in December 2014 into the tender for an ad hoc panel for the supply and delivery of diesel to Ankerlig power station[185]. The audit identified a number of significant procurement issues including: Permitting evaluators to enter the facility with prohibited electronic devices; and, Non-removal of pricing information on supplier submission files prior to handing over to the functionality teams for evaluation. As a result a number of sanctions and recommendations were made to the business.

(j) IA do not appear to be responsible for logging or following up on such external reviews. It is possible that any recommendations and sanctions are the responsibility of the business. However, it has not been possible to confirm this or determine whether sanctions, such as those from the above audit were implemented during in the time available for this Investigation.

4.8.4 Assurance & Forensics

(a) *Mandate*

(b) Under the management of Thembeka Ndaba, A&F respond to whistle-blowing reports and referrals from within the business. There are a number of mechanisms for receiving these reports as follows:

(i) Toll free line: Used regularly by both external suppliers and internal employees wishing to remain anonymous. Also commonly used by leavers (as opposed to via exit interview);

(ii) Web based reporting: Anonymous online access;

[185] Pro-active Assurance Report – Ad Hoc Panel for the Supply and Delivery of 500ppm sulphur Diesel to Ankerlig for 2 years CORP – December 2014

(iii) Email: Anonymous email set up for employees to use;

(iv) One on One: Stand by representative available from the A&F team on a daily basis for face to face reports;

(v) Management Reporting: Incidents or allegations that they are informed of by management;

(vi) Referrals: From the ethics team or HR on matters they are unable to satisfy; and,

(vii) Dead Letter Drop: Anonymous letters received by the A&F office.

(viii) Historically, the Chief Executive has also been a key source of reports. Prior to his departure, Brian Dames was heavily involved and encouraging of anti-corruption and assurance activity and would receive various whistle-blowing reports on "Brian's Blog" which he would forward to the A&F team. This has not been the case more recently due to the quick turnover in those holding the position and limited time in which such mechanisms or trust from the employees can be established.

(c) Each report is purportedly logged on an Excel spreadsheet until such time that the team can migrate to the SAP system. The reports are then assessed and either accepted by Forensics or referred to the relevant part of the business. For example, allegations involving theft are passed directly to the relevant business unit. Referral statistics are typically higher than what is left for Forensics to investigate.

(d) In interview, it was confirmed that A&F respond to reports and allegations received through the mechanisms listed above. A&F do not get persuaded to disregard or ignore particular areas/allegations.

(e) Of the reports received, A&F have the specific mandate of investigating allegations related to white collar crime, i.e. Fraud and Corruption. There were a limited number of these relatively and as such, the team also followed up instances of irregularities, i.e. policy or process failures which could in theory lead to instances of white collar crime. Such investigations form the majority of their workload.

(f) They may also be requested to investigate matters relating to white collar crime that have been identified during the course of an audit, i.e. if controls had been identified to be dangerously weak then the A&F team could be called in to follow up with an investigation.

(g) Forensic Catalyst Reports (independent of the Integrated Assurance Catalyst reports) are prepared by A&F on a quarterly basis and provide management with a holistic view of forensic investigations conducted during the period. They are based on the individual forensic reports completed for each investigation conducted.

(h) It provides high level statistics on the investigations conducted by the team in the quarter, categorised in various ways and analysed for trends and themes. No details of investigations or findings are included.

(i) The reports are submitted to EXCO, the Audit & Risk Committee and various other Governance bodies.

(j) *Issues and restrictions identified*

(k) Interviews with appropriate representatives and review of a sample of investigation reports and the summary Catalyst reports identified the following apparent issues and restrictions placed on Eskom's A&F team.

(l) Manual management of whistle-blowing and investigation reports

(i) The Excel log maintained by A&F to log and summarise whistle-blowing and investigation reports was provided for the FY2013 to FY2015.

(ii) A total of 860 entries were observed in the log. Within the log, the first items considered are the origin, related parties and descriptions of allegations are summarised. Details of the initial assessment are then completed with a decision recorded on whether an investigation will be conducted. If so, later fields are also completed with investigation findings, recommendations, sanctions and management responses.

(iii) Each of the fields are free text. Whilst attempts have been made to categorise types of allegation and decision selected, these fields are not always completed and are subject to variation and manual error. Whilst possibly manageable for small volumes of cases, this makes understanding the data and assessing the holistic view challenging and prone to error.

(iv) Furthermore, managing whistle-blowing and investigation reports in Excel is not considered secure and does not provide a supportable, reliable audit trail of activity.

(m) Lack of control over investigations conducted

(i) As identified in the catalyst reports, the volumes of referrals are high. Of the 860 reported entries in the whistle-blowing log, 286 were labelled as having been referred to the business. In many cases the notes state that the matter had been discussed and the relative manager of the division or area had agreed to take on responsibility for the investigation.

(ii) This may be due to lack of resources of A&F. However, once "Referred", they no longer have any involvement or knowledge of what actually took place, if anything. This leaves the process and control open to manipulation by the business.

(A) A&F have never been prevented from conducting an investigation. However, they do not have a mandate to review unless something has been reported to them. It was reported in interview that they also require a degree of evidence prior to conducting a review and hence do not respond to hearsay or allegations identified in the press. However, a high level review of the log indicates that this is not applied on a consistent basis.

(B) A&F are rarely brought in on IA matters and investigations, with no instances being recalled in relation to coal, OCGT, procurement, tender or contract management matters.

(iii) Furthermore, A&F do not appear to be responsible for investigations involving senior employees, i.e. those in Board or Committee level positions unless specifically requested by the Board. The Board conduct investigations at the senior level, using A&F on an ad hoc basis or not at all.[186]

(iv) For example, A&F were allocated a discrete task by the Board to conduct digital forensics on the laptops of two members of senior management in order to determine who originated the letter referred to in the Sumitomo tender allegations. The rest of the investigation was handled by the Board with A&F having no further involvement or knowledge.

(v) Aside from this example, other investigations that A&F could recall in interview or have had limited involvement with involving F-Band level of seniority include:

(A) Investigation into the former CIO: A&F were informed by his manager of allegations in relation to a trip to the US and conflict of interest relationship as the Chairperson of an IT company. A&F did not identify any findings against him in this matter. The employee was later suspended, they understand in relation to another matter in which they had no involvement;

(B) Investigation into former EXCO member: Allegations understood to be in relation to insubordination and hence not in the remit of A&F.

(vi) No other instances of investigations into EXCO or equivalent F-Band level members could be recalled. However, it is possible that the Board may have received such allegations directly.

(vii) It is noted that even where A&F are able to control their scope, there is evidence to suggest that the financial impact is not considered and that each investigation is given the same degree of time and resource no matter what the impact of the allegation or issue may be.

(viii) Review of the investigation log identified that of the 306 investigations conducted by A&F during the two year period, the PFMA implications and/or financial impact had been completed in only 12 cases. The quantum of these 12 cases was estimated at just under R4m. As above, this may in part be due to the log not having been updated correctly. However, a sample review of the individual investigation reports supports a general lack of consideration over financial impact. The effectiveness of A&F in having effectively protected Eskom's financial position and prevent wastage and fraud is therefore unclear.

(n) Lack of control over sanctions and remedies

(i) A&F are not involved in the handling or remedy of their investigations. They are also not able to dispute or override decisions subsequently made by the business.

(ii) A&F provide recommendations as a result of their investigations which predominantly relate to either: disciplinary proceedings; or, control

[186] According to A&F officer

enhancements. These are detailed in the individual investigation reports which are presented to the Client, i.e. the Manager responsible for the investigation and/or employee(s) being investigated.

(iii) The relevant business unit is then responsible for carrying out the recommended actions.

(iv) Should the recommendation be disciplinary action, Incident Response ("IR") are engaged and an independent tribunal held over the matter. These are chaired by an independent adjudicator from the business and the facts of the case reviewed. Neither A&F nor the Client has influence or involvement in this process.

(v) The implicated employee is the only individual or body that can appeal the final decision. However, instances where the outcome differs from the opinion and recommendations of A&F are noted and escalated in the Catalyst Reports if appropriate.

(vi) Should the investigation confirm instances of crime, the A&F investigation and subsequent internal action will continue but the matter is also reported to the SAPS (SA Police).

(o) Lack of control over sanction or remedy implementation:

(i) Similarly to IA, the only remedy available to them for pursuing management action and feedback is to report non-adherence in the A&F quarterly Catalyst reports.

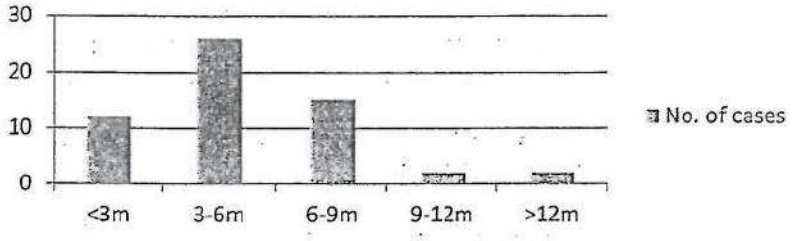
(ii) In order to encourage timely finalisation, management responsiveness is tracked following investigation completion. When this occurs, the status of the investigation for A&F is transferred to "Completed". It then remains at this status until management feedback or action is confirmed, at which time it can be transferred to "Finalised".

(iii) Should actions remain outstanding; the matter is escalated to the relevant Group Executive and raised to senior management in the quarterly Catalyst reports.

(iv) Of the 860 whistle-blowing reports received during the period, 306 were selected for further investigation by the A&F team. Of the 306 investigations, 63 had been labelled as "Completed" but not yet finalised.

(v) Date analysis was not possible for six of these entries as no completion date had been manually entered.

(vi) The following graph depicts the length of time recommendations and sanctions from the remaining 57 cases have been outstanding:



(vii) This suggests that 79% of cases in which sanctions have been recommended to management have been outstanding for over three months. When some of the sanctions involve dismissal due to fraudulent conduct or equivalent this figure is astonishing.

(viii) It is noted that the numbers provided above are indicative only. Due to manual errors in the underlying data and lack of requirement categorise in a consistent manner, only a manual review of the text fields for recommendations and sanctions would determine whether any were actually recommended. This has not been possible under the time constraints of this review.

(ix) This lack of responsiveness from the business was escalated by A&F on a number of occasions in the more recent quarterly catalyst reports. However, improvements have yet to materialise.

(p) Ineffective Declaration of Interest database:

(i) The ethics department is responsible for a database containing conflict of interest declarations. Employees and management are required to declare their interests in a form, submitted via Eskom's intranet. The declarations are stored indefinitely and a full audit trail retained for any changes volunteered by employees during the year.

(ii) Whilst the forms are purportedly mandatory, there are limited comprehensive checks to ensure that all interests, particularly those of senior management are complete. In addition, many examples of non-compliance or issues have been identified by IA and A&F during the course of their investigations. For example, an audit conducted in Q2 2013 into the Residential Mass Rollout programme identified that of the 44 employees involved in the tender process, 27% had not completed the declarations for FY2013 and 41% for FY2012[187].

(iii) It was explained during interview that a Special Investigations Unit recently conducted an exercise to map conflict of interest declarations to payments, suppliers and employees. This holistic review completed in December 2014 and identified approximately 20 low level employees who had non-declared interests. No findings were identified against individuals from middle management and above. This is surprising given various issues and problems with declarations of interest identified by IA and A&F as described above.

[187] Quarterly Integrated Assurance Catalyst Report – July to September 2013

(iv) It was explained procedures had previously been in place during the tenure of Brian Dames who purportedly enforced the regular checking of EXCO members, asking A&F to review the declarations of interest provided and reconcile it against CIPC (local database of companies) in order to identify any discrepancies. This procedure is no longer in operation.

(v) Such checks should be reinstated to ensure the ongoing prevention of fraud and abuse. In addition, attempts should be made to use the system to its maximum effect. For example, queries could be run on the back end of the database to enable searches by vendor name. This would be particularly relevant or helpful for when new suppliers or employees are on-boarded for checking potential issues. Further considerations on probity checks can be found in Chapter 5.

4.9 The conundrum of Eskom's going concern

4.9.1 The recent focus on costs has resulted in the adoption of a "Capital Projects Schedule". This is prepared on a quarterly basis by a dedicated team responsible for its management and submitted to ICAS for approval. The primary focus is achievement of the current year allowance. However, the five year outlook is also considered to ensure the total budget allocated is ultimately adhered to, i.e. most recently set at R260bn over five years. This figure is noted to include owners development costs (i.e. manpower), but excludes interest.

4.9.2 Whilst included in budgets, capitalised interest is never included in reported figures of capex spend due to its uncontrollable nature. Notwithstanding this, the results have been close to predicted over the past couple of years.[188] Rules on what you can and can't capitalise will be upheld by the external auditors.[189] The benefit of this accounting policy for Eskom is that there is no impact to the income statement. With R13.3bn capitalised in FY2014 and R17.4bn in FY2015, had these finance costs been expensed Eskom would have recorded significant losses.

4.9.3 In general, Eskom need to show that there is no impairment of assets to the auditors. (NB. To ensure the asset value on the books is not higher than the income it will generate in the long run). The impairment tests consider anticipated revenue assumptions and calculate expected net cash values which is then reconciled to the book value to calculate any impairment. Because Eskom has long term assets the consideration of whether these assets are impaired is interconnected with the question of whether it is a going concern. In essence the question is whether on the tariff trajectory, future cost predictions and access to capital markets, Eskom can afford its build programme.

4.9.4 If Eskom is to remain sustainable, it must generate a positive cash flow. Under the regulatory methodology, Eskom receive a rate of return on their assets, even when under construction. Once in operation, they would then get depreciation and a return on the assets. For that reason, a forward pricing curve is used to assess impairment.

4.9.5 On the basis that the tariff should provide a profit taking into account both depreciation and a return on assets, impairments are not anticipated. In the consciousness of Eskom, because of this regulatory truism and because it is "too big to fail" it is hard for Eskom to make

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[188] Martin Buys, Group Finance

[189] By definition a fixed asset is treated as such because it will generate positive future income flows (on a discounted cash flow basis) – depreciation of the asset you create is effectively matched against the income generating period so that even though you spend the cash in year one, the hit or expense in the income statement is spread out over the life of the asset

assumptions on the tariff that doesn't cover its requirements in the medium term. If you based the forecasts on historical performance however, Eskom will fail which sets up a conundrum as to the going concern basis.

4.9.6 The latest going concern review assumed inter alia:[190]

(a) Eskom is awarded an extra R4bn from the RCA selective reopener from July 2015;

(b) Additional revenue amounting to R16.7bn was included for 2016/17 and R29bn for 2017/18. This is an estimate of a partially successful RCA adjustment for years 1 and 2 of MYPD3.

(c) OCGTs limited to 5.6% peaking factor; and

(d) All BPP and other cost savings are made.

4.9.7 The following table, which is based on these assumptions, shows a positive cash balance, which is why, primarily, no impairment is indicated from the analysis:

Income Statement Summary Rm	2016	2017	2018	2019	2020
Revenue	171 643	195 383	224 366	245 546	268 884
Primary Energy	88 899	97 444	104 183	114 749	125 694
Operating Expenditure	68 781	70 319	72 910	80 501	88 774
Operating Profit /(Loss) Before Net Fair Value and Net Finance Cost	13 963	27 620	47 274	50 295	54 416
Other Income	1 166	1 334	1 468	1 543	1 623
Net Fair Value Gain/(Loss) Financial Instruments, Excluding Embedded Derivatives	(3 724)	(3 299)	(3 546)	(3 123)	(2 669)
Net Fair Value Gain/(Loss) on Embedded derivatives	919	1 425	1 336	1 444	1 536
Operating Profit /(Loss) Before Net Finance Cost	12 323	27 081	46 532	50 160	54 905
Net Finance Income/(Cost)	(11 017)	(15 006)	(21 647)	(32 799)	(42 791)
Share of Profit of Equity - Accounted investees	-	-	-	-	-
Profit/(Loss) Before Tax	1 306	12 075	24 885	17 361	12 114
Income Tax Expense	366	3 381	6 968	4 861	3 392
Profit/(Loss) for the year	941	8 694	17 917	12 500	8 722

Summarised cash flow	2016	2017	2018	2019	2020
Cash from operations	37 397	48 146	72 975	83 144	89 236
Cash required to repay loans and interest	(47 982)	(46 139)	(52 642)	(71 845)	(75 282)
Cash available for investment	(10 585)	2 007	20 333	11 299	13 954
Investment activities	(61 652)	(48 507)	(45 981)	(75 907)	(80 607)
Cash required to fund investment activities	(72 237)	(46 500)	(25 648)	(64 609)	(66 653)
Net borrowings	76 368	51 371	46 700	47 564	46 555
Movement in cash and cash equivalents	4 131	4 871	21 051	(17 045)	(20 098)
Closing balance cash and cash equivalents	15 725	20596	41 648	24 603	4 504

[190] Position paper – going concern final approval

4.9.8 The going concern test commentary provides the following conclusion:

"For the next 12-15 month period there is a high level of certainty regarding the cash flow projections and ability for Eskom to continue as a going concern. This is supported by the fact that the all risk scenario is cash positive over this period. The scenarios do not take into account Eskom's ability to access undrawn facilities with local banks which will assist with short-term cash requirements.

During the subsequent period, although a reduced cash flow is anticipated, management is confident that there are options to manage this situation. Based on this, the directors can conclude that Eskom will be a going concern in the immediate future."

4.9.9 The main problem with this conclusion is that it does not contemplate a world in which diesel costs are required for some time, and NERSA's approach is not to force additional tariffs on the country. It also assumes build costs won't increase on top of their existing projected budget (see Section 2) and that Eskom has the mettle to make meaningful cost savings. Whilst borrowing would paper over these cracks, there is a limit. Treasury officers have stated that they will struggle to borrow R260bn and that they feel that around R237bn is roughly what they can achieve, based on the current market appetite. If there is another six months of the downward trajectory in financial indicators Eskom is on, the auditors may not be so confident about Eskom's going concern status.

4.9.10 The following table compares the existing cash flow model with one flexed purely to show the average of the last three years' cash from operating performance holds constant for the five year period. The funding shortfall is highlighted by the closing cash balance in 2020:

	Latest Going Concern Model					
	FY2016	FY2017	FY2018	FY2019	FY2020	Total
Cash from operations	37,397	48,146	72,975	83,144	89,236	330,898
Cash required to repay loans and interest	(47,982)	(46,139)	(52,642)	(71,845)	(75,282)	(293,890)
Investment activities	(61,652)	(48,507)	(45,981)	(75,907)	(80,607)	(312,654)
Cash required to fund investment activities	(72,237)	(46,500)	(25,648)	(64,608)	(66,653)	(275,646)
Net borrowings	76,368	51,371	46,700	47,564	46,555	268,558
Movement in cash and cash equivalents	4,131	4,871	21,052	(17,044)	(20,098)	(7,088)
Closing balance cash and cash equivalents	15,725	20,596	41,648	24,603	**4,504**	

	Assumes past three years' performance continue					
	FY2016	FY2017	FY2018	FY2019	FY2020	Total
Cash from operations	29,000	29,000	29,000	29,000	29,000	145,000
Cash required to repay loans and interest	(47,982)	(46,139)	(52,642)	(71,845)	(75,282)	(293,890)
Investment activities	(61,652)	(48,507)	(45,981)	(75,907)	(80,607)	(312,654)
Cash required to fund investment activities	(80,634)	(65,646)	(69,623)	(118,752)	(126,889)	(461,544)
Net borrowings	76,368	51,371	46,700	47,564	46,555	268,558
Movement in cash and cash equivalents	(4,266)	(14,275)	(22,923)	(71,188)	(80,334)	(192,986)
Closing balance cash and cash equivalents	7,328	(6,947)	(29,870)	(101,058)	**(181,392)**	

5 How Financial Information was reported

5.1 The Flow of Financial Information Through EXCO

5.1.1 The Group Finance, Regulation and Legal Division has eight operating units (OUs) of which there are three which feed financial information to Eskom Management:

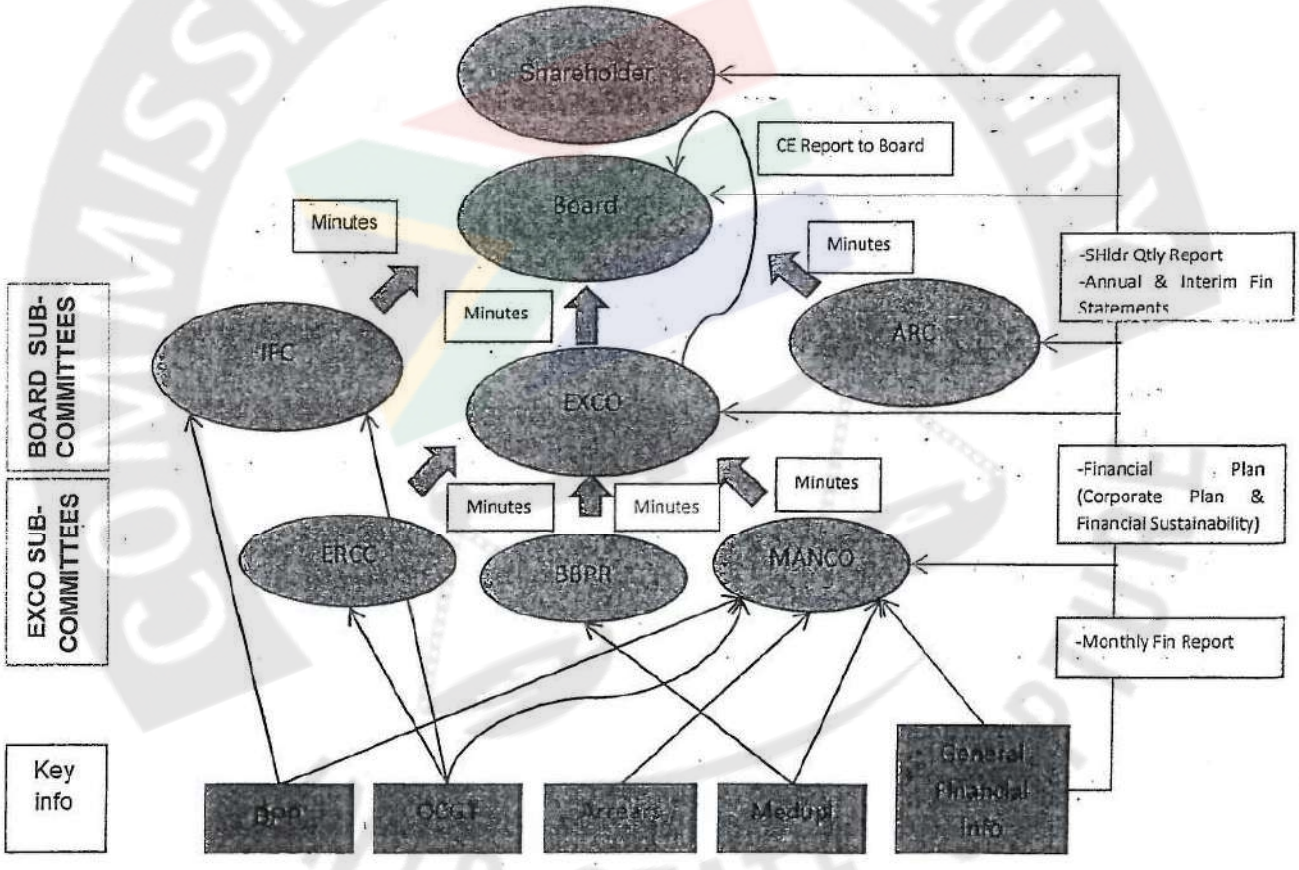
(a) Treasury (Caroline Henry)

(b) Financial Planning & Economic Regulation (Calib Cassim)

(c) Financial & Management Reporting (Martin Buys)

5.1.2 Information is communicated via regular written reports, special issue written reports and verbal presentations at committee meetings.

5.1.3 The following diagram[191] sets out the flow of financial information to Eskom management and is explained further below.



5.2 Financial reporting to EXCO

5.2.1 Eskom is managed through a number of sub-committees, each with a specific focus. The EXCO itself is made up of the General Executives from each Operating Unit, as well as the

[191] Compiled from information provided in interviews and review of meeting minutes

Finance Director and the Chief Executive. Sitting below EXCO are eight sub-committees as follows:

(a) Procurement

(b) Management Committee Review (MANCOM Quarterly)

(c) Management Committee Operations (ManCo Ops)

(d) Nuclear Management Committee (NMC)

(e) Investment and Capital Assurance (ICAS)

(f) Technical Governance

(g) Emergency Response Command Centre (ERCC)

(h) EXCO Build Process Review (BBPR)

5.2.2 Each sub-committee is chaired by a member of EXCO, and the majority of EXCO members sit on multiple sub-committees. For example, at April 2015, N Veleti, the acting Finance Director was a member of EXCO, chaired the ICAS sub-committee and was a member of Procurement, ManCo Ops and MANCOM Quarterly sub-committees[192].

5.2.3 EXCO receive financial information from various sources. The most frequent of these is the Monthly Finance Report which is sent directly to the EXCO directors via email. However, there is no monthly discussion forum for EXCO.[193] This detailed discussion takes place quarterly at the ManCo Review sub-committee meetings. The ManCo Review committee receive quarterly reports from Treasury and Group Finance on their performance for the last three months. This information is summarised in the ManCo Review meeting minutes which are provided to EXCO for review.[194]

5.2.4 The quarterly Shareholder Report is the formal source of the full financial performance of the business. These are prepared quarterly by Group Finance and bring together various inputs from the different operating divisions, as well as a second review by the Finance Director.[195]

5.2.5 The reports are typically passed through EXCO, however, this is seen as more for their reference than comment or action. No challenge on the content of the report is typically forthcoming from EXCO[196] as the main review process is from the Audit and Risk Committee ("ARC"). ARC approves the reports subject to acceptance by the Board, however, in practice the Board will generally agree provided the report has ARC approval. The time frame to prepare and provide these to the Shareholder is tight and would not be achieved if the Board reviewed in advance.

5.2.6 A key part of the Shareholder Report is made up of Group Finance's Monthly Financial Reports provided to EXCO. These are prepared monthly by Financial & Management

[192] Overview of sub-committee members – attached to Exco meeting minutes 1 April 2015
[193] Martin Buys, Group Finance, 19 June 2015
[194] Our review of MANCOM Review minutes was limited to meetings on 4 February 2013, 29 April 2013, 24 July 2013 only.
[195] Martin Buys, Group Finance, 19 June 2015
[196] Group Finance, 19 June 2015

Reporting and supported by the Finance representative from each Division who assist to provide narrative on the operational activity and associated financial impact.[197]

5.2.7 The Corporate Plan was presented to EXCO and approved for onward submission to the Board in February 2014. The Corporate Plan sets out the strategy, financial plan and borrowing programme for FY15/16 to FY20/21 and contains detailed analysis and forecasting based on Eskom's current financial position. It is reviewed annually. The Financial Sustainability Plan is a subset of the Corporate Plan and is something that has been reviewed more frequently in the past two years due to the focus on profitability and liquidity of the business.

5.2.8 The Integrated Report and Annual Financial Statements, as well as the Interim Financial Statements, are also provided to EXCO for their review once a year before submission to the Board.

5.2.9 The BPP team report directly to EXCO on their progress.

5.2.10 A detailed summary of the regular reports provided to EXCO and ManCo Review are set out below:

Presentation type	Prepared by	Frequency	Intended recipient	Other Reviewers	Notes
Integrated Report / Financial Statements & Interim Financial Statements	Group Finance	Bi-annually	Public	EXCO, Board, Shareholder	-
Shareholder reports	Group Finance	Quarterly	Shareholder	ARC for review, accepted by Board (no challenge), EXCO for reference (no challenge)	Includes input from various Divisions; collated by Group Finance such as Investment Monitoring Report
Financial Plan as part of Corporate Plan; Financial Sustainability Plan	Group Finance	Annually – with updates on Financial Sustainability	Board EXCO	EXCO	Produced for the next 6 years. Sustainability Plan focuses on profitability and liquidity.
Monthly Financial Reports	Group Finance/Martin Buys	Monthly	EXCO[198]	-	Sent via email to EXCO directors. Form basis of SH Report
Business Results Briefing	Group Finance	Annual	EXCO	-	Annual commentary on the financial position at year end.
Treasury Quarterly Performance (incl dashboard and Performance Dialogue Template)	SGM: Treasury	Quarterly	ManCo Q EXCO	Board Shareholder	Feeds into Shareholder Report
Finance Business Performance results (including Dashboard and Performance Dialogue Template)	GM: Group Financial Controller	Quarterly	ManCo Q EXCO	-	-
Shareholder Compact and Incentive Scheme	FD	Quarterly	ManCo Q EXCO	Board Shareholder	-

[197] Martin Buys, Group Finance, 19 June 2015
[198] Martin Buys, Group Finance, 22 May 2015

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5.3 Treasury and Cash flow information to EXCO

5.3.1 Cash flow within Eskom is managed and monitored by the Treasury division. The division sits as part of Group Finance and has a main reporting line to EXCO. Treasury also reports to various Board sub-committees including ARC, IFC and the EXCO sub-committee Manco Review. There is no direct interaction between Treasury and the Board and all reports are filtered through EXCO or, in the case of the Shareholder Report, ARC.[199]

5.3.2 They are adequately staffed with a 60 person team and are well-qualified with a range of skill sets. Over the last two years of this review, there has been some leavers and the team admit they struggle to find the relevant skills in house to replace those leavers.[200]

5.3.3 Monthly Cash Flow forecast

(a) Treasury use a Cash Management Software tool separate to Eskom's SAP Financial System. Each month, all divisions are required to provide a template of their cash flow forecast, which is input into their cash prediction model to produce the overall Monthly Cash Flow forecast. A variance analysis compared with last month is performed and this forecast then forms the basis of the Cash Lab report (see below).[201]

(b) Business Partners know their divisions and risks best and therefore are required to update the risks to their budget which will then feed to Treasury.

(c) The Monthly Cash Flow forecast is presented to all Finance Business Partners from each Division who can raise issues or inaccuracies if necessary.

5.3.4 Cash Lab Report

(a) A monthly "Cash Lab" meeting is held between heads of finance from the businesses, formerly under the chairmanship of the Finance Director but now moved to the Financial Controller. The purpose of this meeting is to discuss liquidity requirements of the business in practical terms and control and monitor the risks. The report analyses positions for the next five year period as well as liquidity on a daily basis for the next two months.[202]

(b) The report is derived from the Monthly Cash Flow Forecast, and a view is taken on the base assumptions in the Monthly Cash Flow. A cost is not considered certain until the relevant committee has approved the budget amount for that item. Where forecasted costs cannot be accurately captured or assessed, it is described as a risk item, and the risks items are flexed based on the likelihood of the cost materialising.

(c) For example, in the case of the BPP or the Medupi delays, Treasury will run several scenarios based on advice from the business, on assumptions that 75% of the savings will be materialised, or 80% of the cost will occur in FY15.

(d) The Cash Lab committee has no decision making authority. The Cash Lab Reports from the Cash Lab meetings are issued to the Finance Director, IFC and EXCO and

[199] Marius Homewood and Garth Greuber, Treasury, 13 May 2015
[200] Marius Homewood and Andre Pillay, Treasury, 19 June 2015
[201] Marius Homewood and Andre Pillay, Treasury, 19 June 2015
[202] Marius Homewood and Garth Greuber, Treasury, 13 May 2015

are available in Monthly Finance Reports which we understand are submitted to ManCo Review.

(e) The tracking of the variance between budgeted and actual cash levels sits with the Financial & Management reporting team.

5.3.5 Treasury Quarterly Reports

(a) A Treasury Quarterly report, signed off by the Finance Director, is provided to ManCo Review and various Board Sub-Committees such as ARC and IFC.

(b) An extract of the figures are then included in the quarterly Shareholder Reports.[203]

5.4 Budgeting and forecasting process

5.4.1 The business' financial budget is aligned with the 5-year MYPD submission to the regulator and follows a well-documented process. As the MYPD submission is formally submitted to NERSA, it means that the agreed five year budget is not subject to flex and will only change under extreme circumstances. The OCGT budget was set in the regulatory submission and so even though higher usage has been subsequently forecasted, the budget cannot be adjusted. An adjustment can be made to the formal MYPD budget in the case of differing sales volumes to those predicted.[204]

5.4.2 The Quarterly forecasts are used to adjust the budget and used as 'the new reality to measure against'.[205] The Quarterly Forecasts, updated in June, September and December, capture significant movements in the cost base, which are then included in monthly reports provided to EXCO. Each of the General Executives within EXCO should already be aware of forecasted changes as they will be involved in producing their division's Forecast.[206]

5.4.3 Upon changes in the cost base, the finance business partner will work with the divisions to understand the cost implications but each operational division would be responsible for bringing it to the attention of the necessary people on a monthly basis. The Cash Lab sessions will assess the cash impact of the change, and should a fundamental shift in the funding plan be forecasted, the Cash Lab would identify this.

5.5 Financial reporting to the board

5.5.1 All financial information and reporting to the Board will be via EXCO in the first instance, with no direct written or verbal submissions from Group Finance. The Chief Executive will typically verbally summarise or include in the "CE Report to the Board", an overview of the business' financial status.[207] This is drafted by finance and reviewed by the Financial Director.

5.5.2 The Chief Executive's report to the Board was the main forum in which messages regarding the financial status of the business were passed to the Board. The CE reported to the Board on a regular basis between April 2013 and March 2015, at least at the quarterly Board meetings, and during 2014 more frequently. The Chief Executive changed three times in the period - B Dames was Chief Executive until March 2014, and was replaced by an interim CE, C Matjila, who took over for six months until October 2014 when T Matona was placed in the

[203] Marius Homewood and Garth Greuber, Treasury, 13 May 2015
[204] Maya Bhana, Finance Business Partner, 13 May 2015
[205] Maya Bhana, Finance Business Partner, 13 May 2015
[206] Maya Bhana, Finance Business Partner, 13 May 2015
[207] Martin Buys, Group Finance, 22 May 2015

position.

5.5.3 The other regular reports received by the Board were the Audited Financial Statements annually and the Shareholder's Quarterly report for review prior to submission to the Shareholder. This is prepared by Group Finance and will include detailed financial information based on the Monthly Financial Reports. [208] Group Finance also produces a monthly report comparing actual performance to budget which was provided to the Board.[209]

5.5.4 A detailed table of the regular financial reports received by the Board is set out below:

Presentation type	Prepared by	Frequency	Intended recipient	Other Reviewers	Notes
SH report	Group Finance	Quarterly	Shareholder	ARC for review, accepted by Board (no challenge), EXCO for reference (no challenge)	Includes financial information from operational reports
CE Report to Board	CE	Quarterly	Board	-	Summary of Finance operation report – input from the FD.
Financial Plan as part of Corporate Plan; Financial Sustainability Plan	Group Finance	Annually – with updates on Financial Sustainability	Board EXCO	-	Produced for the next 6 years. Sustainability Plan focuses on profitability and liquidity.
Monthly report on budget	C Henry	Monthly	Board	EXCO	Previously provided on a Quarterly basis to the board by O'Flaherty

5.5.5 In the period of review, the Board also received a number of ad-hoc presentations from Group Finance[210] which included:

(a) MYPD3 Update, referred by IFC (Mar 13)

(b) Overview of the Sustainability Gap and Response Dimensions (Apr 13)

(c) Borrowing programme as input to the Eskom corporate plan 2014/15-2017/18. (Feb 14)

(d) Key issues from the audited financial statements (June 14)

(e) Financial Sustainability Report (Sept 14)

(f) Eskom's current liquidity position –presented by the FD (Mar 15).

5.5.6 The ERCC Special Committee of the Board also regularly discussed the lack of money for diesel from around late 2013. This committee would report to the Board Chairman.[211]

[208] Martin Buys, Group Finance, 22 May 2015
[209] Caroline Henry, Senior Manager Treasury, 10 June 2015
[210] Board meeting minutes
[211] Caroline Henry, Senior Manager Treasury, 10 June 2015

5.6 The IFC and Financial Reporting

5.6.1 The Investment and Finance Committee (IFC) is a sub-committee to the Board, which is made up of Board members and the Finance Director alongside invited General Executive from EXCO. Its mandate is to deal with investment decisions and has delegated authority by the Board to approve certain budgets, which include OCGT costs and the BPP. For example, in the case of OCGT costs, in FY14/15, the approval of the contingency budget for these costs was delegated to IFC. EXCO do not approve the OCGT budgets and budget increases.

5.6.2 The IFC does not receive monthly financial reports from Group Finance, nor does it approve the Shareholder Report which is reviewed by ARC, a separate Board sub-committee. The IFC will review the annual Financial Plan and its members will have access to the Quarterly Shareholder Report through the Board.[212]

5.6.3 The IFC also received regular updates on the progress of the BPP, capex projects including Medupi and OCGT costs from the relevant General Executive.

5.7 Treasury Reporting to the Board

5.7.1 The main line of communication between Treasury and the Board is during the approval of the Borrowing Programme, produced and presented to the Board as part of the Corporate Plan. Any feedback from the Board on the Borrowing Programme will be delivered immediately to Treasury for attention.[213]

5.7.2 Other borrowing and cash flow related issues will be presented in other sub-committees and Treasury are not made aware if they are discussed at Board level.[214] Again, the Treasury Quarterly report will be included in the Shareholder's Quarterly report which is submitted to the Board.

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[212] Martin Buys, Group Finance, 22 May 2015
[213] Marius Homewood and Andre Pillay, Treasury
[214] Marius Homewood and Garth Greuber, Treasury, 13 May 2015

6 The Credibility and Correctness of Information Relating to Eskom's Financial Challenges

6.1 Assessment of financial reporting to EXCO, IFC and the Board

6.1.1 Structure of financial reporting

(a) The reporting structure of Eskom is made up of a number of sub-committees to the Board and EXCO. This structure relies on the production of meeting minutes documenting the discussions and issues raised at each committee, which are then provided to the superior committee in the form of a truncated report showing what was resolved. The style and content of these reports may lead to some key financial messages not feeding through to the EXCO or the Board.

(b) ManCo Review Quarterly is where the majority of the detailed and robust discussion on the financial position of the business is generated and where any red flags or concerns are raised at a granular level.[215] However, the structure of the information flow means that the minutes of the ManCo Review meeting will only be provided to EXCO for discussion but not the Board. No monthly financial reports are discussed at EXCO level and the Board are only provided with the EXCO meeting reports which do not include any financial discussion that took place. The Board must therefore rely on EXCO to inform them on a timely basis of key issues and financial red flags.

(c) The most comprehensive report received by both EXCO and the Board on the financial status of the business is the Quarterly Shareholder Report. However, we understand that there have been no instances where either the Board or EXCO have discussed this report in detail, or challenged the content and how risks were being managed, choosing to rely on the ARC approval.[216]

(d) We noted that the EXCO members made up the majority of individuals sitting on the EXCO sub-committees, just in various different combinations. For example, at April 2015, EXCO member T Govender was Chairman of Manco Operations, and a member of Manco Review, MMC, Technical Governance, ERCC and EXCO Build Review Steering Committee. Another example, also at April 2015, the Chairman of EXCO Z Khoza (Interim CE) is also Chairman of Mancom Review, and Chairman of EXCO Build Review Steering committee.[217]

(e) We noted very little discussion or challenge of the sub-committees resolutions in the EXCO meeting minutes and this could be because the structure curtails any robust discussion of issues presented to EXCO by the sub-committees. Many of the members have already discussed and approved the resolutions at the sub-committee meeting and it is the same individuals making the decisions at the sub-committee that are ratifying those decisions at EXCO, perhaps lacking independence in the process, or at least making robust challenge from other members of EXCO difficult.

(f) The IFC do not appear to get direct updates on the financial status of the business. Given that a key part of their role is the approval of material budgets, as delegated from the Board, it would appear sensible to ensure that the IFC have a full financial

[215] Our review was limited to only three MANCOM Quarterly meeting minutes.
[216] Group Finance, 22 May 2015
[217] Appendix 3 - Table of committee members in Exco minutes 1 April 2015

picture in order to make those decisions. We understand more recently, however, that the CE and FD do have responsibility to report to IFC directly.

6.1.2 Accuracy of financial reporting

(a) We found no evidence that the financial information provided to EXCO or the Board was inaccurate or deliberately manipulated.

(b) However, there were occasions identified where the accuracy or completeness of information provided to the Board was called into question. In April 2013, regarding discussion on the newly initiated BPP, "a member was concerned that the Board was being requested to make decisions without all the information"[218]. In August 2014, the interim Chief Executive Matjila told EXCO that all statements made to Board Committees should be factual so as to ensure that the Board did not make decisions on incorrect information. There is an implication in that statement that incorrect or subjective information had been given to the Board Committees in the past.[219]

6.1.3 Culture of approving budgets without funds

(a) There was evidence in the minutes that various committees, from the IFC up to the Board, would grant approval for an increase in budget without knowing whether funding was available for the project or transaction. The main example of this was diesel supply for OCGT, for which the Board approved additional budget of R9bn until March 2014 but there was no mention in the minutes of where the funds will be sourced given there was already an overspend compared to the budget.[220] In February 2014, the Board approved further OCGT diesel spend of R1.6bn and it was noted in the meeting that the Minister would be informed of the additional fuel purchases and be requested to confirm if funding will be made available.[221] In May 2014, the IFC approved an additional cost of R194m for IPPs, but the committee acknowledged at the same meeting that did not know how they would fund it and discussed how the funding will be found.[222]

(b) These instances reveal the fact that senior committees are not thinking about funding in the correct way. The mentality of approving initiatives "subject to funding" rather than "subject to budget"[223] shows a lack of awareness of the financial difficulties the company is in. The lack of sensitivity to budgets by the business may indicate a 'too big to fail' attitude and reliance on state bail-out.

6.1.4 Culture of poor financial budgeting

(a) Eskom's financial budgeting process could be called into question. The first example was the continual over-spend against OCGT diesel budget. Throughout early 2014, the budget was continually over-reached and further extensions were approved by the Board. EXCO discussed the fact that it was "a real risk that both of the projections referred to above are not realistic in light of the current usage of the OCGT fleet." Yet

[218] Board breakaway session 3 to 4 April 2013
[219] Exco meeting minutes 29 August 2014
[220] Exco meeting minutes 14 January 2014
[221] Board meeting minutes 17 February 2014
[222] IFC meeting minutes 16 May 2014
[223] Senior Officer, Treasury, 10 June 2015

no action seems to have been taken to remedy these poor projections.[224]

(b) Secondly, the presentation of the Corporate Plan FY14/15 – FY17/18 and supporting financial plan to the Board in February 2014: The financial plan is necessarily highly subjective given the uncertainty of incoming revenue of the business. Both the cash flow and income statement projections in the financial plan, therefore, were dependent on the business achieving additional funding through RCA claims as well as R60bn of cost savings from the BPP[225]. However, attaining a full RCA grant of R31bn, as admitted by the CFO[226], would be of low likelihood while the BPP had yet to realise any cost savings at this date. As the CFO said, the financial plan is underpinned by "serious game-changing assumptions":[227] We would expect that a long term plan of this nature to follow an element of prudency[228], combined with accepting some conditional probabilities into the projected figures. The method of planning and budgeting appears to have been more aspirational than sensitive to probabilities attached to the inflows and outflows. Risk items are logged and monitored, however.

6.1.5 Assessment of Treasury reporting

(a) How complete and accurate are the cash flow reports feeding to EXCO?

(i) Both the Treasury Quarterly Report and the Cash Lab report provide EXCO, as well as the relevant sub-committees, with sufficient and in-depth information regarding the cash flow position of the business. The Treasury Quarterly reports are very detailed in laying out progress and status of borrowings and cash flow, while the Cash Lab distils the information into a shorter and more candid account which assesses probability of certain costs occurring.

(ii) In March 2014, PWC were appointed to perform an audit on the internal financial controls relating to the Formulate Borrowing Programme and Funding Plan Process – in other words, to assess whether Eskom had optimised its funding sources at the required time and at acceptable risk levels. The audit gave Eskom Treasury a clean bill of health.[229]

(iii) Treasury uses a robust cash flow model to derive predicted cash flow numbers that feed into the Monthly Cash Flow Forecast and the Cash Lab reports.[230] These predictions rely on the input from the Finance Business Partners at each division to provide Treasury with accurate and timely budget forecasts, which appears to be the biggest risk to the accuracy and timeliness of the forecasts.

(iv) Treasury deals with these risks by applying conditional probability of the risk materialising and will not input a full cost into the model until it is officially

[224] Exco minutes 14 January 2014 referring to OCGT over-spend of R1.9bn against R1.6bn budget.
[225] Board meeting minutes 17 February 2014
[226] Board meeting minutes 2 April 2014
[227] Board meeting minutes 2 April 2014
[228] A fundamental concept under International Accounting Standards, the prudence concept states that a transaction or an asset should only be recorded once it is certain, while an expense transaction or liability should be recorded only when it is probable.
[229] Key Internal financial Controls – Formulate Borrowing Programme and Funding Plan Process
[230] Marius Homewood and Andre Pillay, Treasury, 19 June 2015

approved by management. Uncertainty around the Capital Build projects produce the biggest swing in the cash forecasting model, but most other changes to the projections are much smaller.

(v) We found no deficiencies in the completeness and accuracy of cash flow reporting, or the methodologies used in the reporting process.

(b) How timely are the cash flow reports provided to EXCO?

(i) In January 2014, Treasury reported to EXCO on the serious effect that diesel spend was having on the liquidity of the business. The 'Funds Availability at January 2014' report presented to the Chief Executive stated "the ongoing utilisation of liquid funds, generated mainly from additional borrowing activity, to fund operational requirements is concerning and not sustainable as Eskom still need to roll out a large portion of the proposed R251 billion capital programme. If decisions are not made taking into consideration the existing circumstances both in terms of profitability and cash then Eskom's going concern and longer term outlook will continue to be negatively impacted."[231] Although presented, the minutes do not show any discussion on this report by EXCO. EXCO subsequently passed this message to the Board at the next Board meeting in February 2014.

(ii) It does not appear from the Treasury Quarterly Report at September 2013 that there was a dramatic downturn in the liquidity position and no cause for immediate alarm. Liquidity days were outside of target (180 days against target of 120 days) but had been for some time, and cash itself was above the R20bn buffer and higher than it had been in March 13 (R38bn vs R23bn in March 13). The Treasury submission at the MANCOM Q meeting in September 13 shows no discussion of liquidity and in fact, the focus was on unpaid invoices.

(iii) The cash lab forecast had shown declining liquidity forecasts throughout the year[232] and although it was viewed within treasury regularly, this information may not have been sufficiently considered by EXCO or its sub-committees. The EXCO committee did not discuss the cash flow forecasts itself, however discussions did take place at the ManCo Quarterly review, where EXCO members were largely represented.

(iv) In November 2013 Treasury submitted a presentation to the Manco Ops meeting in which it described its view of Eskom's Financial Sustainability risks as a result of the MYPD3 Revenue shortfall, and the impact on liquidity and portfolio risks. It was noted that the response budget and the BPP implementation was the focus of the current and next year and that liquidity was being monitored. It also pushed for greater buy-in from EXCO and the Board to address a reopener for the years 3, 4 and 5.

(v) When Treasury told EXCO in January 2014 that cash would run out by May 2014, it was on the basis of the current state of limited funding options, high OCGT spend and Medupi build continuing on schedule. The announcement in January effectively gave the business six months warning of negative

[231] Funds Availability at January 2014' attached to Exco meeting minutes 15 January 2014
[232] According to a Treasury officer

liquidity. As it happened, delays in Medupi meant a lower spend against budget and the government support package gave some comfort to potential lenders resulting in a situation where they did have enough funds. [233]

(vi) It would appear that the escalation of the liquidity scare, and the requirement to cut costs were communicated on a timely basis to EXCO in the sense that members also attended Manco Review meetings.

6.2 Assessment of how well the Board/EXCO communicated and dealt with specific financial challenges

6.2.1 This assessment is based on review of meeting minutes and other documentation. We have not interviewed any members of the Board on these specific financial challenges.

6.2.2 Was the Board/EXCO aware of the declining financial situation, specifically rising OCGT costs and the consequent liquidity crisis? Did they question the prices being paid for diesel?

(a) It appears that it was not until the February 2014 board meeting that the Board came to appreciate the significant and serious liquidity situation the Eskom business was in. Dames' CE report in February 14 conveys how the OCGT costs are extremely high and not sustainable. He told the Board that there were limited operating reserves available to Eskom and no means to fund the diesel spend, with government injection not forthcoming.

(b) At that Board meeting, the Corporate and Financial Plan was submitted for 14/15-17/18 financial years. Amongst other problems, it was conveyed that continued use of OCGT for next three months was projected to cost R10.2bn, the regulator hadn't confirmed if it would cover these costs and as a consequence, it was predicted that liquid reserves would run out in three months.[234]

(c) Based on the questions and discussions by the Board in the minutes, they appear surprised by the state of the businesses, in particular the liquidity position. The acting Chairman enquired over the time left before cash resources were depleted and stated that the Board needed to urgently make a decision on funding of the unfunded levers in the best interest of the company. He supported the suggestion of a crisis committee being established.

(d) The Board held a robust discussion at the meeting saying that a plan was needed to engage with the Shareholder on funding and requested management to focus urgently on the plan and report back to the Board, calling a special Board meeting if necessary. The Chairman also asked whether there were any other viable option to the OCGT costs other than load shedding, but as stated in the Corporate Plan, the best alternatives would still require R8bn (vs R10bn for OCGT).

(e) Why was the February cash flow report a surprise?

(i) Throughout 2013, the CE reports to the Board highlighted the growing OCGT burden and the fact that it was not sustainable. In October 2013 the Board approved an additional R9bn budget for OCGT usage, subject to the funding being obtained from National Treasury and/or the Department of Energy and the Board were told the next month in November 2013 that the budget

[233] Caroline Henry, Senior Manager Treasury, 10 June 2015
[234] Board meeting minutes 17 February 2014

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[233] Caroline Henry, Senior Manager Treasury, 10 June 2015
[234] Board meeting minutes 17 February 2014

approved in the prior month would be used by March 2014 if there was no improvement in the situation. They therefore would have been aware of the growing costs.

(ii) This November meeting was the last Board meeting before February 2014. Dames submitted a detailed CE report but it did not highlight the red flags or urgent cash implications associated with the OCGT spend. Towards the end of the report, the key risks to the business are set out, of which the third of these risks (after New Build and Security of Supply) was diesel spend.

(iii) Dames' report showed no sense of urgency regarding this issue or recognition that liquidity was a serious problem. His report does not comment on liquidity, nor does it not set out the short/medium term impact of the diesel spend risk. The only response to the risk was that "BPP forms the core of the treatment plan". The Board, having approved a significant extra budget in October 2013 for OCGT costs, were aware of the rise in spending above plan but the impact on the rest of the business; in particular liquidity was not made clear.

(f) Were the business and Chief Executive aware of the position prior to February?

(i) EXCO, as with the Board, were aware of the OCGT costs spiralling because of the budget overruns that had to be requested from the Board. However, EXCO were only told in the strongest terms at the January EXCO meeting by Group Finance that the liquidity situation was in serious decline.

(ii) It would appear that the sense of reporting was that in the short term Eskom could survive and that the long term solution was paramount. To underline this, we understand that a JP Morgan report on the potential for spiralling funding problems was presented in a Board Breakaway in October 2013.[235]

(iii) Further enquiries should be made to assess the state of the cash lab during this period, whether the diesel forecast was accurately reflected, and how the consultations with the National Treasury and Department of Energy, if any, impacted the forecasts.

(iv) The sense of surprise to the cash crisis may well stem from the fact the Medupi start date was not formally acknowledged before the end of 2013, and/or that it was felt the State would support Eskom in the resulting diesel expenditure: the bad news on both counts, when fed into the liquidity outlook, only crystallising in January 2014 as the corporate plan was compiled.

(g) What was the response once the Board were aware?

(i) In April 2014, the IFC approved additional allocation of R750m for OCGT to be added to the R10.85bn already allocated and a letter had been sent to the DPE to request financial assistance[236]. In June 2014, the CE commissioned an Emergency Task Team in relation to the company's financial position and it presented a detailed overview of the crisis financial situation to the Board in June 2014.

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[235] Marius Homewood and Garth Greuber, Treasury, 13 May 2015
[236] IFC meeting minutes 1 April 2014

(ii) In August 2014, the IFC also escalated that the Board needed to answer whether or not to continue with the use of the OCGT plant. In September 2014, the message to the Board was that, at current usage rates, the current diesel budget will be used up by November 2014. The Chairman suggested Eskom approach the Strategic Fuel Panel to request the supply of cheaper bulk diesel fuel.

(iii) In November 2014 at the IFC, management tabled a presentation on the OCGT contingency but the committee were hesitant and only approved R1bn. The IFC asked management to go away to consider the options and strategy around load shedding.[237] Increasing diesel usage was raised again in November 2014 and January 2015 to the Board but no resolutions were made. At March 2015, the FD presented on the severe liquidity position due to high diesel expenditure and delays in funding. She explained that an MOU with Transnet was being drafted for the supply of diesel.

(iv) By November 2014, OCGT overruns seem to have been accepted as the norm, as comments from Finance such relating to "the negative impact on finances of an increase of R8Bn in OCGT costs for the 2014/15 financial year" are merely noted in the EXCO meeting[238]. Once again between December 2014 and February 2015, EXCO were aware of OCGT spend increasing outside budget and in April 2015, EXCO reported the Board had approved an extra R2.8bn budget.

(h) Was getting a better price for diesel ever raised?

(i) The issue of getting better diesel prices was discussed by EXCO in May 14, raised by the Acting GE: T&C M Koko, who "questioned as to how the diesel consumption could be used to get better prices." The CE Matjila stated "this should be part of an overall business discussion (not just EXCO) to take the purchase of diesel out of the operating space and looking at Eskom as a whole in order to ensure that management crafts more sustainable strategies going forward."

(ii) The IFC minutes ratified a resolution made by ICAS to negotiate an increased discount of 6-8c/litre on diesel for OCGT as part of the BPP[239].

(iii) As mentioned above, at March 2015 the FD told the Board that an MOU with Transnet was being drafted for the supply of diesel.

(iv) Although there were some passing remarks regarding getting a better price for diesel, this does not appear to ever be fully discussed or debated by either EXCO, IFC or the Board. The focus throughout the period and still today appears to be to seek outside stakeholders to remedy the problem.

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[237] The IFC asked Exco to consider research to determine the extent of load shedding that could be tolerated; hold discussions to assess the impact that load-shedding would have stakeholders; and should begin to consider the best possible ways and strategies of how the Shareholder could be notified about the true state of affairs around load shedding.

[238] Exco meeting minutes 17 November 2014

[239] IFC meeting minutes 1 April 2014

(i) Responses from the CE to the financial situation

(i) The CE Report from Matjila in September 2014 conveyed to the Board in what appear to be *prima facie* much stronger terms than his predecessor, the ramifications of the situation. Matjila states "Eskom's Balance sheet is significantly compromised; cash flow analysis states will be negative cash by May 2015". He goes on to say that 'Drastic measures must be taken to ensure Eskom's financial viability."[240]

(ii) However, when Matona presents his first CE Report to the Board in November 2014, he does not appear to believe the business is in a dire situation. He talks of an 'unfortunate coincidence of an economy under performing and Eskom being central to the economy' and that 'we are not yet in crisis.....but....cannot allow current financial constraints curb our ambition and ... will work towards the future rather than one anchored by our current constraints."[241]

(iii) Without more context, such as interviewing Matona, it is difficult to conclude with any certainty, but there is a hint of the "too big to fail" mentality in this statement.

6.2.3 Medupi – the communication of Unit 6 synchronization delays to the Board

(a) The DPE had reiterated at the Board Breakaway in April 2013 that the deadline for the Unit 6 completion must be December 2013. In the same meeting, EXCO appears to disregard a consultancy report tabled at the meeting which stated that the first synchronization was likely to be late and instead informed the Board they are still committed to deliver by 31 December 2013 and will take all steps and actions necessary.[242]

(b) It was clear the Board was frustrated with the lack of a 'single clear view on commencement date' from EXCO in April 2013. The Board felt that it was important to get transparent and full disclosure to ensure it could consider the matter appropriately.[243] There was even a suggestion in February 2013 from the Minister that at the time of the MYPD3 application, the fact that Medupi would be delayed was known to the business. The FD refuted that these delays were only reported in December 2012, after the application submission[244].

(c) In August 2013, the Chief Executive reports to the Board that Medupi is still on schedule[245] but this message changes by November, when he states in his Report to the Board that the possibility of a delay is high[246]. Although a Board meeting was held between August and 28 November, no reference was made at this interim meeting to the pushback in completion.

(d) There is much uncertainty around the synchronisation date of Unit 6 and this is revealed in the messages being conveyed by EXCO to the Board. It is possible that

[240] CE Report to the Board 15 September 2014 (Matjila)
[241] CE report to the Board 28 Nov 2014 (Matona)
[242] Board breakaway session 3 to 4 April 2013
[243] Board breakaway session 3 to 4 April 2013
[244] Board breakaway session 3 to 4 April 2013
[245] CE Report to Board 28 August 2013
[246] CE Report to Board 28 November 2013

the liquidity crisis announced in January was only possible once the business had accepted Medupi would not come on line at the end of December 2013, and the drains up energy availability plan had been crafted with obvious ongoing requirements for diesel. In a sense, the collective business acceptance of this would have finally impacted the cash lab modelling.

6.2.4 Medupi – did the Board and EXCO appreciate the financial impact of delays?

(a) In May 2013, the Medupi cost to completion estimate increased by R13.7bn and a revised budget approval was submitted to the IFC. In September 2013, labour strike delays at Medupi are discussed by EXCO, in which they estimate that the strikes cost R2bn and recognised that it will continue to escalate if the situation is not resolved.[247] In February 2014, the new commissioning date was confirmed as December 2014 and the Chief Executive told the Board that the delay costs so far have been absorbed into contingencies provisions. A year later, the Board were told by the CE that the revised December 2014 deadline had not been met and an anticipated R30bn increase in executing the project plus provisional funding of R10bn was required.[248]

(b) Although there was regular discussion around the delays in the Medupi first synchronization date and the budget revision at both IFC and Board level, there did not appear to be discussion at either the EXCO or Board about the overall financial effect of the Medupi delays on the business, in particular the link between the cash shortage, diesel spend and Medupi.

6.2.5 BPP – were the Board and EXCO fully aware of the slow progress made by BPP and what was their response?

(a) In September 2013, approximately five months after the programme was launched, it was acknowledged by the EXCO that the BPP was not working as quickly as management would like. This was due to resource constraints and a task team was set up to accelerate implementation. A deadline of March 2014 was targeted for approving R50bn of savings.[249]

(b) Between September 2013 and March 2014 no real discussion took place at EXCO or IFC level regarding the BPP. However the CE did report to the Board on the BPP methodology in November 2013 and February 2014, saying that the initial phase to define savings would be complete in March 2014 but there was still a gap of R5bn to be identified.

(c) In March, the BPP team were still only "preparing the organisation to ensure productivity improvements could be sustained" rather than materialising any savings. In April 2014, the Board were told that identified savings stood at R57.1bn but with only R1bn realized. The CE communicated that although the savings were essential, not all BPP savings would materialise as some were outside of Eskom's control and the new savings target of R60bn was a stretch target.[250]

(d) In May 2014, there was a push from the CE that BPP needed to be the business imperative across Eskom and be taken seriously, not just by Finance. The loss of

[247] Exco meeting minutes 16 September 2013
[248] Board meeting minutes 16 February 2015
[249] Exco meeting minutes September 2014
[250] CE Report to the Board 2 April 2014

bonuses linked to BPP savings also helped deliver the message.[251] In June 14, the Emergency Task Force presented to the Board that they were looking to identify cash unlocking opportunities in the Balance Sheet.[252], going 'further than BPP'.

(e) In August 2014, the CE questioned all Divisions as to why items identified as not critical should not be removed from their budgets and called for an independent investigation over one particular GE's budget cutting.[253]

(f) EXCO did not discuss BPP again for three months until November 2014 when the FD reported that "the success of BPP would not be apparent until the last year of the MYPD3", perhaps providing an excuse for the slow progress.

(g) Dames appears to appreciate the slow initial progress in the BPP in September 2013 when he applies more resources to the project. In May 2014, the new CE Matjila appears to see that the programme is not being taken seriously by the business and drives the message that BPP is something the whole business must engage in. He commissions an Emergency Task Force, withholds bonuses and scrutinises those GEs who were not producing the required savings. However, under the new CE, Matona, this drive from Matjila appears to be lost and negative progress ensues, including the fact that originally identified savings of R5.9bn are no longer available[254].

(h) The progress on BPP appears to have been consistently communicated to the Board throughout the life of the BPP, however, we have not seen any challenge from the Board on this progress. Given they were aware of the necessity and urgency for the BPP to deliver savings, one would expect greater challenge from the Board.

6.2.6 Arrears - was there sufficient discussion by EXCO/Board about serious, growing financial impact of arrears?

(a) The issue of municipality arrears was not discussed often at Board or EXCO level, as the main forum would be MANCOM Quarterly. As early as April 2013, it was reported at MANCOM Quarterly that it was the first year that the provision for municipalities was for more than 90 days.[255] This message of the growing provision was not passed on to the Board at that time.

(b) It was first mentioned by EXCO in August 2013, in which they wanted to work with National Treasury to collect the debt and the Board discussed the arrears in September 2013 in relation to management's response to perceptions that Eskom would simply write off the debt if a customer did not pay.[256]

(c) The provision has grown significantly by January 2014 and EXCO do note the direct impact this has on cash flow at their meeting. The topic was reported again in May 2014, when the FD reported to EXCO that she had begun discussions with National Treasury to consider ring fencing the payment of government grants to

[251] Exco meeting minutes 6 May 2014
[252] Board meeting minutes June 2014
[253] CIO claimed additional savings of R1Bn, but had included R320m of savings that had already been banked from IT insourcing. Board minutes 29 August 2014
[254] Board meeting minutes February 2015
[255] MANCOM Q meeting minutes29 April 2013
[256] Exco's response was that the strategy was move to prepaid meters and then a write off might be considered.

municipalities.[257] In September 2014, the interim CE reiterated to the Board that the municipal debt was likely to continue to increase.[258] The CE reported to the Board in February 2015 how the municipal debt was eroding the BPP savings.

(d) EXCO commissioned a position paper in January 2015 to engage the government stakeholders on the issue and in Mar 2015, a detailed analysis of defaulting municipalities would be provided to National Treasury for consideration around withholding grant payments.

(e) There was awareness of the growing debt levels amongst management and the CE's report to the Board kept them abreast of the debt levels at regular intervals.[259]

(f) However, this appears to be another area where Eskom are relying on government support to bail them out. The idea of working with National Treasury to collect the debt was first raised in August 2013 at EXCO, but it appears that it was not until May 2014, nine months later, that any progress was made on that front.

6.2.7 Fundamental failure to reduce the cost base

(a) In addition to assessment of the correctness and credibility of the financial information that flowed through EXCO, we have identified areas where, given their import and the obvious financial challenges Eskom faced, it would have been reasonable to assume a level of challenge and debate would have been conducted at EXCO on them, namely:

(i) Coal usage costs;

(ii) Manpower headcount and salary pay rise; and

(iii) Diesel ad hoc expenditure and other areas of procurement that were subject to red flags including potential influence of senior executives.

(b) Our review has not identified commensurate challenge in these areas. It is possible, due to limitations placed on the Investigation to date that these matters were in fact tabled.

(c) If no meaningful acts were taken to reduce or challenge the cost implications of these areas, this would appear to be a failing on the part of EXCO. Further enquiries should target these areas, therefore.

(d) It is noted with some concern that in reaction to the MYPD3 decision the FD actually tabled a discussion around whether managing the 8% tariff increase would be a bad thing for Eskom in terms of credibility with NERSA: "How should Eskom manage the reputation risk associated with "If Eskom can make this work, then they were gaming the process at 16%"[260]

6.2.8 Concluding comments

6.2.9 We found the following in our assessment of the financial and treasury budgeting, reporting

[257] Exco meeting minutes 6 May 2014
[258] CE Report to the Board September 2014
[259] CE Report to the Board 6 February 2015
[260] Board meeting minutes 14 March 2013

and information flow within Eskom:

(a) The Board receives regular financial information in the form of the Quarterly Shareholder Report, but relies on the CE Report to the Board as the main summary of the business position.

(b) The CE Report has not always conveyed the seriousness of some financial messages.

(c) The accuracy and timeliness of both financial and treasury reporting to EXCO and ManCo Review cannot be faulted. If there was an instance in which the Board appeared surprised at bad news, the liquidity crisis alert in January 2014, this is most likely to have been a consequence of a collective denial to accept Medupi would be late, and diesel would still be required throughout that year, rather than a weakness in the financial reporting. In fact, given the financial warnings levied at EXCO and the Board between July 2013 and November 2013, bad news might reasonably have been suspected.

(d) There is a lack of independence between EXCO members and its sub-committees which may mean less challenge of the issues at EXCO level. This lack of independence inhibits the concept that when sitting on the Executive Committee, EXCO divisional heads should put their division's agenda second to the overall business, as most sub-committee roles appear to be allocated based on the skill set of the divisional head.

(e) IFC perform a budget approval role on behalf of the Board, but did not seemingly receive regular financial status reports.

(f) There is a culture of setting unrealistic and inaccurate budgets, which are consistently not met.

(g) Senior committees are happy to consistently approve additional budgets without knowing where the funding to support them will come from.

6.2.10 We found the following in our assessment of the communications on specific business issues and how the Board and EXCO dealt with those issues in the last two years:

(a) Options and strategies to improve the price of diesel have not been adequately discussed at EXCO or Board level. Whether more substantive discussions were held elsewhere, those minutes would not have filtered upwards to the Board. What solutions were tabled appeared to seek outside State support, rather than reassess existing procurement.

(b) There was confusion at Board level as to the message from EXCO surrounding the completion of Medupi, and neither EXCO nor the Board appear to have made a direct link between the delays and the wider financial impact on the business (outside of the Medupi capex budget).

(c) The Board were aware of the necessity of the BPP savings but there was insufficient challenge from the Board around the slow progress of the BPP. Despite some focus from interim CE Matjila, there appears to have been insufficient drive applied by EXCO to what was meant to be the cornerstone of Eskom's response to the MYPD3 decision in years 1 and 2.

(d) The Board were updated on the arrears position by the CE. EXCO do not appear to respond promptly to dealing with the issue, relying on government intervention to solve the issue.

(e) Unless a line item was going adverse to budget it does not appear to be considered a financial problem. Because coal usage remained within budget it does not appear to have attracted much debate as a stand-alone cost lever at either EXCO or Board. Furthermore, despite being fully aware staff cost increases needed to remain within 6%, headcount reductions were resisted during the period and an average of 7.6% increase sanctioned.

6.2.11 Based on the information made available to us and reviewed to date we have found no fundamental issues with the credibility and the correctness of information that EXCO has provided in their reports relating to Eskom's financial challenges. In particular:

(a) We found no instances that EXCO altered information when reporting to the Board

(b) We did not identify any significant information that was omitted.

(c) On occasions there appeared to be indifference in the way that EXCO presented some financial information to the Board, but an equal indifference was shown by the Board itself to discuss or address financial issues.

6.2.12 Further enquiries may confirm a disconnect between the business and EXCO in relation to the Medupi start date, energy availability predictions and the likelihood of further expensive diesel purchases as early as September 2012 (see Chapter 2 for more details). The financial consequences of this should be deemed material, as knowledge of this would have assisted the borrowing programme to be better planned, and opportunities to find alternative options or obtain cheaper contracts for diesel supply could have started much earlier.

6.2.13 What is apparent, however, is that despite the financial implications of the MYPD3 decision being firmly entrenched in the reporting and activities of the past two years, not enough has been done to remedy the financial repercussions. This lacklustre approach is even in spite of the impact of the diesel costs, falling sales volumes and poor debt collections.

6.2.14 There are indications that three underlying causes may be behind this unresponsiveness at senior executive levels:

(a) a systemic mentality that it is the State's responsibility to find Eskom a solution – whether driven by a sense Eskom is "too big to fail", or an under appreciation of the precarious financial status of Eskom;

(b) a reluctance to apply appropriate pressure to the cost lever because the business is too silo'd and such savings represent what economists call a "public good"[261] – in other words, making savings in your division doesn't necessarily benefit the organisation as a whole, so it is suboptimal for individuals to make those savings when they have no guarantee others will "dig into their own pockets"; and

(c) an unwillingness to seek to leverage Eskom's spending power to drive down costs with third parties. This may again be due to the systemic mentality that funds will be

[261] The defining characteristic of a public good is that consumption of it by one individual does not actually or potentially reduce the amount available to be consumed by another individual

found, or there may be a more sinister motivation based on personal enrichment and corrupt relationships.

6.2.15 The information passed through EXCO in relation to financial challenges would appear to have been largely credible and correct. It has been the collective response from senior executives that has been lacking.

COMMISSION OF INQUIRY INTO STATE CAPTURE

7 Recommendations

7.1 A critical analysis should be conducted at Board level of the cash status over the next 12 to 18 month period. Sensitivity analysis should be applied to the risk assumptions in the model, together with key members of the finance community. Contingency plans should be put in place to manage worst case scenarios. This modelling should be less from a Treasury perspective and more from a management perspective. The following should be noted in this regard:

7.1.1 Currently the emphasis is on the need to arrange new facilities in the borrowing programme, whereas sensitives should be applied to the borrowing programme just like other variables;

7.1.2 Arrears should be contemplated again based on historical empirical evidence. At the moment these are not modelled due to the difficulty in predicting the actions of external stakeholders;

7.1.3 Less aspirational assumptions should be applied to BPP savings, diesel expenditure and costs, more generally;

7.1.4 Less aspirational assumptions should be applied to tariff increases and sales volumes;

7.1.5 Consideration should be given to weaker financial ratios, negative trajectory story and credit rating impacts; and

7.1.6 The model should be free of constraints dictated by the approved budget and plan, and all "at risk" items should be critically appraised.

7.2 Over the medium term planning timeframe, the corporate plan should be remodelled based on historical performance and the desired capex programme. Assumptions for all variables, including the new build costs and timetables, should be more prudently appraised. This analysis would be for management eyes only to assess the shortfall in the new build and other capex plans against the existing borrowing program. IFC (most likely) should be tasked with considering all funding options to meet the shortfall.

7.3 A thorough investigation should be conducted into the "red flag" areas of the historic cost lever. The investigation should include unfettered access to all information sources, including emails. In particular, the commercial *bona fides* of the following should be determined:

7.3.1 Coal usage expenditure; and

7.3.2 Ad hoc suppliers of diesel.

7.4 BPP cost savings should be critically challenged. An assessment of performance against design should be conducted to determine the underlying reasons for the *prima facie* limited results of efforts to reduce the cost base.

7.5 The Board should enforce reporting lines between Internal Audit and ARC. Special consideration should be given to empower Internal Audit, and Assurance & Forensics, in order to enable them investigate proactively and control the enforcement of sanctions that flow from the findings of their work.

TABLE OF APPENDICES TO CHAPTER 4

Appendix number	Appendix name	Paragraph reference
1	MYPD3 Application – detailed line item basis	[3.3.2 - pg 11]
2	List of the Debt, Securities and Borrowings position at March 2015	[4.6.4 – pg 55]
3	Overview of EXCO sub-committee members at April 2015:Appendix to EXCO meeting minutes 1 April 2015	[5.2.2 – pg 71]

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APPENDIX 1

MYPD3 Application – detailed line item basis

Table 55	Projects 2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	MYPD 3
Generation primary energy							
Coal burn costs (Rm)	35 376	37 010	41 966	47 282	52 351	57 703	236 312
Coal handling	1 041	1 087	1 163	1 246	1 356	1 510	6 362
Water	1 532	2 082	2 414	2 615	2 750	2 955	12 816
Open cycle gas turbines (OCGT)	2 642	3 592	3 258	1 788	1 898	2 056	12 592
Nuclear	368	471	471	678	767	856	3 242
Other primary energy costs	2 543	2 348	2 070	1 932	1 901	2 197	10 449
Environmental levy (Rm)	8 105	8 842	9 037	9 324	9 490	9 746	46 439
Total Generation primary energy (Rm)	**51 607**	**55 433**	**60 380**	**64 865**	**70 512**	**77 022**	**328 212**
Independent power producers							
Department of Energy - renewable IPPs (Rm)		1 428	8 987	13 879	16 249	17 353	57 895
Department of Energy - peaking IPPs (Rm)		1 001	2 841	3 147	3 160	3 191	13 340
Short term IPPs, MTPPP (Rm)	4 784	2 760	1 473	1 017	735	498	6 483
Total IPPs (Rm)	**4 784**	**5 189**	**13 302**	**18 043**	**20 143**	**21 042**	**77 719**
IPPs (GWh)	2 795	4 152	6 214	8 233	9 015	9 071	36 686
Average cost for IPPs (c/kWh)	171	125	214	219	223	232	212
Other primary energy purchases							
Distribution IPPs	8	8	9	9	10		36
Demand market participation Rm)	4 552	3 275	1 973	1 972	1 835	2 001	11 056
Imports purchases (Rm)	2 970	3 611	3 006	2 810	2 973	3 243	15 644
Other primary energy purchases (Rm)	**7 531**	**6 894**	**4 988**	**4 792**	**4 818**	**5 244**	**26 737**
Total Eskom primary energy (Rm)	**63 921**	**67 517**	**78 669**	**87 699**	**95 474**	**103 308**	**432 667**
Operating costs							
Human capital net after capitalisation (Rm)	21 166	22 540	24 740	26 765	29 313	31 364	134 721
Maintenance	10 342	12 020	13 288	15 839	18 120	16 855	76 122
Cost of cover	961	2 158	1 828	1 678	1 025	485	7 174
Arrear debt	763	927	1 051	1 215	1 388	1 511	6 092
Other	11 948	13 212	14 045	15 438	15 500	17 263	75 458
Operating costs before efficiencies target (Rm)	**45 180**	**50 857**	**54 952**	**60 934**	**65 346**	**67 478**	**299 568**
Efficiency targets	- 3 000	- 6 000	- 6 000	- 6 000	- 6 000	- 6 000	- 30 000
Net operating costs excl IDM (Rm)	**42 180**	**44 857**	**48 952**	**54 934**	**59 346**	**61 478**	**269 568**
Integrated demand management	7 748	2 941	2 709	1 862	1 966	3 612	13 090
Net operating costs incl IDM (Rm)	**49 930**	**47 798**	**51 661**	**56 796**	**61 312**	**65 090**	**282 658**

Human capital gross (Rm)	26 858	28 045	29 946	32 215	34 995	37 442	162 643
Human capital staff complement	43 450	44 281	44 834	45 188	45 600	45 600	
Assets and depreciation							
Regulatory replacement asset base (Rm)	709 145	779 203	852 266	919 665	981 854	1 043 100	
Replacement depreciation (Rm)	25 884	30 792	34 631	37 076	39 669	43 218	185 385
Return on assets (Rm)		7 271	14 643	31 187	51 878	81 885	186 864
Return on assets - real (%)		0.9%	1.5%	3.2%	5.2%	7.8%	
Equity returns (Rm)		- 13 927	- 11 860	964	20 054	51 265	46 497
Returns sacrifice (Rm) @ 8,16% WACC		- 58 208	- 58 628	- 48 243	- 31 256	- 6 299	- 202 633
Returns sacrifice (Rm) @ 8,9% WACC		- 59 374	- 59 914	- 49 416	- 32 739	- 7 875	- 209 319
Capital expenditure (excl IDC) (Rm)	64 861	72 107	68 016	64 934	67 098	65 000	337 155
Revenue and price increases							
Total revenue (Rm)	128 895	153 378	179 604	212 758	248 332	293 501	1 087 574
Standard tariff revenues (Rm)	122 489	146 188	171 497	204 264	241 350	286 205	1 049 503
Exports and special pricing agreements (Rm)	6 407	7 191	8 107	8 494	6 982	7 297	38 071
MYPD 3 price increase % (nominal) - Eskom's application	16%	16%	16%	16%	16%	16%	
Nominal price level for standard customers (c/kWh)	60.66	71c/kWh	82c/kWh	95c/kWh	110c/kWh	128c/kWh	
Real price level for standard customers (c/kWh)		67c/kWh	73c/kWh	80c/kWh	88c/kWh	96c/kWh	
Sales (GWh)	222 028	227 404	229 513	235 638	239 113	244 026	1 175 694
Eskom production (GWh)	236 414	239 896	243 639	249 542	252 930	259 281	1 245 289
Funding							
Interest costs (Rm)	15 767	21 198	26 503	30 223	31 824	30 619	140 366
Debt levels (Rm)	232 242	287 951	330 617	355 982	366 914	333 011	
Economic parameters							
Growth domestic product (GDP) %	3.8%	4.0%	4.0%	4.0%	4.0%	4.0%	
Consumer price index (CPI) %	5.2%	5.5%	6.0%	6.0%	6.0%	6.0%	
Producer price index (PPI) %	6.0%	6.2%	6.0%	6.0%	6.0%	6.0%	
Sales growth (%)	-1.4%	2.4%	0.9%	2.7%	1.5%	2.1%	

CHAPTER 5: INTEGRITY OF PROCUREMENT PROCESSES AND COMPLIANCE WITH LEGISLATION AS WELL AS ESKOM'S PROCUREMENT POLICIES

1 Background

1.1 This Chapter deals with item 2.5 of the Scope of Work set out in Task Order 1.

1.2 Item 2.5 of Task Order 1 relates to the integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies. Under this heading the following specific items are provided for:

1.2.1 "2.5.1 the procurement policy, processes and procedures designed by Eskom in relation to the Constitution of the Country, other relevant key legislation and key governance protocols, including best industry practice;

1.2.2 2.5.2 whether the procurement policy and related Eskom policies including but not limited to conflict of interest and the processes to deal with non-compliance, are consistently adhered to. Also, establish whether in instances where transgressions are identified, appropriate sanctions are applied;

1.2.3 2.5.3 whether the procurement processes are effective to ensure that Eskom obtains the best quality products and services at the best price".

1.3 The following pieces of legislation and documents were reviewed for the purposes of this section of this Report:

1.3.1 The Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996);

1.3.2. The Public Finance Management Act, 1999 (Act No. 1 of 1999) ("PFMA");

1.3.3 The Treasury Regulations issued in terms of the PFMA;

1.3.4 SCM- A Guide for Accounting Officers/Authorities – National Treasury February 2004 ("Treasury Guidelines");

1.3.5 The Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) ("PPPFA");

1.3.6 PPPFA Regulations;

1.3.7 The Companies Act, 2008 (Act n0.71 of 2008);

1.3.8 The Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

1.3.9 Eskom's Procurement Supply Chain Management Policy – 32 – 1033 ("SCM Policy");

1.3.10 Eskom's Procurement and SCM Procedure - 32 - 1034;

1.3.11 The Eskom Delegation of Authority Policy 240- 62072907 ("DOA");

1.3.12 Tender Committees Terms of Reference;

1.3.13 Memorandum – Proactive review of the evaluation phase for the tender of manufacturing, supply and delivery of grinding element and media to various generation power stations - 19 December 2014;

1.3.14 Final Audit Report: Procurement Process Provision of maintenance on milling plant at Camden Power Station -19 March 2015;

1.3.15 Proactive Assurance - Contract strategy and invitation to tender - Enquiry Gen: 3251-R-Inspection Authority Services - for various power stations including Koeberg Nuclear Power Station - 14 September 2014;

1.3.16 Assurance and Forensic Manual;

1.3.17 the following audit reports:

(a) 2013 SRP Final Report Camden 18 September 2013;

(b) Klevebank Substation Final Report 14 August 2013;

(c) SRP DX ECOU Albany Draft Report 19 August 2013;

(d) SRP DX ECOU Dreunberg Draft Report 19 August 2013;

(e) SRP DX ECOU Dumasi Draft Report 19 August 2013 (2);

(f) SRP DX ECOU Melkspruit Draft Report 19 August 2013 (2);

(g) SRP DX ECOU Chatty Draft Report 19 August 2013;

(h) SRP DX ECOU Komani Draft Report 19 August 2013;

(i) SRP DX ECOU Melkhout Draft Report 19 August 2013;

(j) SRP DX ECOU Zimbane Draft Report 19 August 2013 (2);

(k) SRP DX MPI Clewer Final Report 30 August 2013;

(l) SRP Stikland Final Report;

(m) 2013 Final audit report Arnot SRP 08 May 2013;

(n) 2013 Final Report SRP Tutuka 23 August 2013;

(o) Revised SRP Gourikwa Final Report 29 August 2013;

(p) SRP Ankerlig Final Report 30 August 2013;

(q) 2013 Final Report SRP Simmerpan 02 September 2013;

(r) 2013 SRP Real Estate MWP Final Report;

(s) SRP EAL signed report (2);

(t) 2013 SRP TX NW Grid Pluto Final Report;

(u) 2013 SRP TX Perseus Final report;

(v) SRP TX Grassridge Final Report 20 September 2013;

(w) SRP Tx Final Report Buffalo 20 September 2013;

(x) SRP Tx Final Report Pembroke 20 September 2013; and

(y) SRP Tx Hydra Final Report 20 September 2013;

1.3.18 Catalyst reports for:

(a) 2014 April – June;

(b) 2014 July – September;

(c) 2014 October – December; and

(d) 2015 January – March;

1.3.19 Chairman's approval - RR Coal Road Haulage Contracts 1 April 2014 to March 2018;

1.3.20 Round Robin Resolution - Coal Haulage Rates Model (signed off pack);

1.3.21 Final PwC Rates Model Investigation Report;

1.3.22 Eskom Coal Supply Strategy 2012 Presentation;

1.3.23 Eskom Coal Supply Strategy 2012 Board Presentation – Summary;

1.3.24 Eskom Coal Supply Strategy 2012 Main Document; and

1.3.25 Eskom Coal Supply Strategy 2012 Executive Summary.

1.4 In addition, several Eskom personnel were interviewed.

1.5 The annexures referred to in this Chapter are included in Schedule 6.

2 Item 2.5.1 of Task Order 1

2.1 As indicated above, item 2.5.1 of Task Order 1 states as follows: "the procurement policy, processes and procedures designed by Eskom in relation to the Constitution of the Country, other relevant key legislation and key governance protocols, including best industry practice".

2.2 This part of the report deals with the following:

2.2.1 Supply Chain Management ("SCM") policy's alignment with the regulatory framework; and

2.2.2 SCM policy's alignment with the industry practice.

2.3 Alignment of Eskom's Procurement Policy with the Regulatory Framework

2.3.1 Overview of the Regulatory Framework

(a) Section 217 of the Constitution provides that "When an organ of state ... contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective."

(b) This constitutional prerogative is echoed in s51(1)(a)(iii) of the PFMA, which requires accounting authorities to ensure that their entities have and maintain "an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective". The PFMA further provides for National Treasury to issue regulations and instructions for "the determination of a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective".

(c) The National Treasury Guidelines prescribe five fundamental aspects that must be dealt with in a compliant SCM policy:

(i) demand management;

(ii) acquisition management;

(iii) logistics management;

(iv) disposal management; and

(v) supply chain performance.

(d) Demand Management:

(i) The SCM policy must at the minimum prescribe processes and procedures for:

(A) conducting a needs assessment to ensure that goods and services are acquired in order to deliver the agreed service;

(B) determining the specifications of the goods and services to be procured;

(C) ensuring that requirements are linked to the budget; and

(D) ensuring that the supplying industry has been analysed.

(ii) Ultimately good demand management ensures that value for money is achieved.

(e) Acquisition Management:

(i) The SCM policy considerations relevant to acquisition management, are:

(A) how to decide on the manner in which the market will be approached;

(B) how to establish the total cost of ownership of a particular type of asset;

(C) how to ensure that bid documentation is complete, including evaluation criteria;

(D) how to evaluate bids in accordance with published criteria; and

(E) how to ensure that proper contract documents are signed.

(f) Logistics Management:

(i) With regard to logistics management, the SCM policy must at the minimum address:

(A) the setting of inventory levels;

(B) receiving and distribution of material;

(C) stores, warehouse and transport management; and

(D) the review of vendor performance.

(g) Disposal Management:

(i) With regard to disposal management, the SCM policy must at the minimum address:

(A) obsolescence planning;

(B) maintaining a data base of redundant material;

(C) inspecting material for potential re-use;

(D) determining a disposal strategy; and

(E) executing the physical disposal process to generate payments.

(h) Supply Chain Performance:

(i) The SCM policy must set out a monitoring process undertaking a retrospective analysis to determine whether the proper processes have been followed and whether the desired objectives were achieved.

(ii) Some of the issues that arise in this context are:

(A) compliance with norms and standards;

(B) cost efficiency of the SCM process (i.e. the cost of the process itself); and

(C) whether supply chain practices are consistent with Government's broader policy focus.

2.4 Overview of the Eskom SCM Policy and Procedures:

2.4.1 In this section we provide a high level overview of whether Eskom's SCM policy and procedures address the five fundamental aspects required by the National Treasury Guidelines to be addressed in a compliant SCM policy. The table below presents the overview.

NATIONAL TREASURY GUIDELINES	APPLICABLE PROVISION IN ESKOM'S SCM POLICY & PROCEDURES
Demand Management	The policy sets out the following aspects as a precursor for the commencement of a procurement process: a) Forecasting and estimating requirements facilitated by the end user b) Front End Planning process which will include: • Demand analysis • Commodity analysis • Industry sector analysis • Development of a supplier preference model c) Establishment and specifying a Need/procurement/Scope by • taking into account the budget, scope of work and business need; and • developing a technical specification document to show the scope/specifications d) Developing a commercial strategy which must at the minimum address the following considerations: • Technical/functionality • Project strategies • Financial; and • Commercial
Acquisition Management	In so far as acquisition management is concerned, the SCM policy provides for: a) Application of a hierarchy of supplier preference:

	• Existing Framework Agreement - used mainly for strategic procurement categories or national contracts - also known as commodity sourcing. Displays economies of scale through bulk buying • Internal suppliers - based on existing agreements for day to day needs • Other state owned companies • External suppliers or market at large - where internal suppliers or SOEs are unable to supply the requirements then the market can be tested b) Range of procurement processes: • Non-competitive enquiries (Expression of Interest ("EOI") and Requests for Information ("RFIs")). • Pre-qualification enquiries - used when it is costly to process large volumes of tenders; for complex contracts; and established panels with similarly skilled suppliers • Competitive tenders (Request for quotations ("RFQs") and Requests for Proposals ("RFPs")) - where an innovative solution is sought or end user needs cannot be adequately described or specified • Delegation of Authority Framework with varying degrees or levels of delegation depending on the transaction value (Group Executives, Procurement Practitioners, E-Band Managers, Tender Committee, etc.) c) Dual and triple adjudication d) Compiling bid documents e) Bid evaluation - criteria, role of the cross function teams and Tender Committers f) Urgent and emergency procurement - used where

	delivery is of critical importance and where immediate action is required to avert a risk g) Sole source procurement - where only one supplier exists in the market or is an established supplier h) Negotiations without prior tendering - used for sole procurement or where services and/or goods obtained from the Original Equipment Manufacturers ("OEM") i) Competitive negotiations - two supplier no prior tendering - used where market research shows that there are only two capable and independent suppliers j) Unsolicited bids k) Deviation from the SCM procedure and condonation of same
Logistics management	The SCM policy provides processes for attending to the following aspects: a) Managing delivery b) Management of task orders c) Materials management d) Optimisation e) Data management f) Inventory classifications g) Inventory categorisation h) Materials requirement planning i) Warehousing and haulage j) Storage facilities
Disposal management	The SCM Procedure provides for the following: a) Disposal strategy b) Concluding disposal agreements c) Disposal mechanisms:

	• Emergency disposal - same as acquisition • Transfers - between Business Units • Auctions • Negotiations • Cash and carry • Tender d) Compliance with environmental legislation and other relevant framework
Supply chain performance	The SCM procedure provides for a proactive auditing of commercial transactions to provide assurance regarding the manner of executing procurement or disposal processes. However, the SCM policy and procedures are silent on reviews of achievement of desired objectives at the end of the contract period.

2.4.2 The details in each of the processes highlighted above reveal that sufficient focus, detail and attention has been placed on designing procedures to achieve the requirements of the Treasury Guidelines. In almost all the 5 aspects highlighted above, sufficient detail has been provided on how Eskom should align its procurement strategies and processes to the realisation of, amongst others, Supplier Development and Localisation ("SD&L") objectives and principles.

2.4.3 There remain, however, certain deficiencies which must be addressed and which are dealt with elsewhere in this chapter.

2.4.4 Preferential Procurement Policy and Framework Act 5 of 2000 ("PPPFA")

(a) Eskom's exemption from the PPPFA expired on 8 September 2012 and Eskom has been required to comply with the PPPFA since that date. In addition, Eskom is obliged to comply with the PFMA and the Competition Act 89 of 1998 ("Competition Act") in regard to procurement processes.

(b) The PPPFA provides the conditions for preferential allocation and evaluation of tenders as provided in section 217 of the Constitution of the Republic of South Africa Act 108 of 1996 ("Constitution"). It aims to ensure that procurement remains transparent and cost effective while allowing for a degree of preferential allocation.

(c) Eskom's strategy in regard to compliance with the PPPFA requirements was highlighted in a document called "Review of Eskom's Business Risks". This document was submitted to the Eskom Management Committee ("MANCOM") meeting held on 17 October 2013. In this document, it was acknowledged that:

(i) as a state owned entity, Eskom is required to comply with section 217 of the Constitution which establishes that procurement systems/practices are to be fair, equitable, transparent, competitive and cost effective;

(ii) the Competition Act endorses the abovementioned procurement systems/practices through a requirement to promote and maintain competition in South Africa;

(iii) Eskom is obliged to avoid the following anti-competitive practices in its supply chain operations: abuse of dominance, demarcation of markets, price discrimination, and merger control;

(iv) a possible bid rotation based on prequalified suppliers on a panel who haven't been reviewed over-time is problematic;

(v) the following key treatment actions are to be put in place in order to treat the risk exposure:

(vi) Eskom should arrange training sessions with Competition Commission to create awareness anti-competitive practices;

(vii) Eskom must advance a directive for open vs closed tendering of current prequalified Panels to determine relevancy and market competitiveness related to products;

(viii) Eskom should update the New Engineering Contract to include clauses dealing with anti-competitive practices;

(ix) Eskom is to update RFP documentation requiring suppliers to declare their non-participation in anti-competitive practices as prohibited by the Competition Act;

(x) the procurement practitioners are to be encouraged to go out into the open market and request information on products/services suppliers whose capabilities they are unfamiliar with. This will enable them to properly scope the product/services suppliers and estimate prices in accordance with the End-User requirements and budgetary constraints of Eskom; and

(xi) all RFIs and RFQs are to be channelled via email facilities to a dedicated Tender Office for transparency purposes.

(d) At an EXCO meeting held on 4 February 2014, EXCO noted and approved the summary of decisions taken by MANCOM at its meeting held on 17 October 2013. The Board, in turn, on 27 February 2014 and 29 May 2014, noted and approved the summary of decisions taken by EXCO at the EXCO meeting held on 4 February 2014. However, the meeting pack for the Board meeting held on 27 February 2014 does not appear to include the EXCO report for the EXCO meeting held on 4 February 2014. The document called "Review of Eskom's Business Risks" also does not appear in the Board pack.

(e) There have been discussions at all levels of Eskom in regard to the need to comply with the PPPFA:

(i) the minutes of the meeting held on 13 March 2013 of the Executive Committee Procurement Sub-committee ("EXCOPS") indicates that EXCOPS regarded it as "irresponsible for it not to comply with legislation of the country" and accordingly resolved that all items of the agenda for the tabling and approval of strategies be postponed to a future meeting after the commercial division has applied its mind on how to comply with the PPPFA;

(ii) in submissions made to the Board Tender Committee ("BTC") on 8 May 2013 and EXCOPS on 26 April 2013, it was stated that a phased approach to reach compliance with the PPPFA by 30 April 2013 was to be adopted, subsequent to the Board resolution of 27 February 2013 requiring Eskom to be in compliance with the PPPFA;

(iii) the issues of compliance with the PPPFA and the expiration of the relevant exemption were raised at the Quarterly MANCOM Meeting held on 29 April 2013. Specifically, according to the April 2013 Quarterly MANCOM Meeting Minutes, Group Commercial expressed concern with regards to PPPFA, since the exemption had expired on 7 December 2012. It was recommended that Group Commercial should provide the organization with clear guidelines on compliance with PPPFA. It was suggested that commercial strategies should be submitted to the relevant Committees for them to decide and provide guidance. (April 2013 Quarterly MANCOM Meeting Minutes, page 19) [Note: the MANCOM report for the meeting held on 29 April 2013 was not tabled at any EXCO meeting.];

(iv) a submission document entitled "Approval of a Revised Procedure for the Reconsideration of Supplier Registration Statuses" (submitted to EXCOPS for its meeting held on 16 July 2013) sets out a timeline for the events in respect of this procedure. This timeline indicates that in April 2013 "Eskom becomes compliant to the [PPPFA] as instructed by the Eskom Board. The PPPFA creates legislative remedies for Eskom to deal with abuse to the procurement system. The PPPFA Regulations are addressed in the revised reconsideration of supplier registration status framework" [Note: The EXCOPS report for the meeting held on 16 July 2013 was tabled and noted for approval by EXCO at the EXCO meeting held on 6 May 2014. The Board approved the EXCO report for the EXCO meeting held on 6 May 2014 at the Board meeting held on 29 May 2014];

(v) during their meeting on 16 July 2013, EXCOPS delegated the authority to approve a revised "Procedure for the reconsideration of Supplier Registration Statuses" to the Group Executive ("GE") for Technology and Commercial. This procedure was revised due to increased litigation from suppliers for undue and unfair supplier suspensions. The revised procedure was prepared by Eskom Risk and Governance ("R&G") and Legal with the assistance of Tando Ngeno Attorneys and Advocate Marius Oosthuizen (SC). We have not yet had the opportunity to verify whether the new procedure has been approved by the GE: Technology and Commercial. [Note: The EXCOPS report for the meeting held on 16 July 2013 was tabled and noted for approval by EXCO at the EXCO meeting held on 6 May 2014. The Board approved the EXCO report for the EXCO meeting held on 6 May 2014 at the Board meeting held on 29 May 2014.];

(vi) the issue of PPPFA compliance further arose at the next MANCOM Quarterly Meeting held on 27-28 July 2013. Specifically, the July 2013 Quarterly MANCOM Meeting Minutes provide that the issue of the PPPFA arose and Mr. Laher asked for clarity from commercial in terms of application of PPPFA/SD&L. In response it was stated that end-user training on the PPPFA will be undertaken in the near future. It was resolved inter alia that a clear communication be sent out from commercial regarding the Eskom status pertaining to PPPFA. (July 2013 Quarterly MANCOM Meeting Minutes, p. 15) [Note: the MANCOM report for the meeting held on 27-28 July 2013 was not tabled at any EXCO meeting.];

(vii) at a Board meeting held on 27 February 2014, management sent a briefing note to the Board cautioning against adhering to the Minister of Public Enterprise's extension of the PPPFA exemption, stating that this did not amount to an exemption in terms of the PPPFA and that Eskom is non-compliant and acting in contravention of the PPPFA; and

(viii) at a BTC meeting held on 16 April 2014, Notification of the Revision of the Eskom Procurement & Supply Chain Management Policy 32-1033 and the Eskom Supply Chain Management Procedure 32-1034 was tabled for noting. The updated procedure and policy had been approved by EXCO and was submitted to the BTC for noting. These documents are subject to an annual review cycle and practice notes are issued in between as and when deemed necessary.

(f) At an EXCO meeting held on 7 May 2015, it was noted that Eskom's exemption from the PPPFA expired on 8 September 2012 and during the 2013/14 reporting period, Eskom paid R317 million on contracts entered into in contravention of the PPPFA. Further contraventions were identified in the current financial year. It was reported that in many cases, the PPPFA contravention related to administrative breaches, such as contracting with suppliers prior to receipt of original tax clearance certificates.

(g) It appears that there has been a commitment towards ensuring the continued development of Eskom's procurement policy, processes and procedures. Based on the documents reviewed thus far, this appears to have been communicated to all levels of the organisation. In addition, it appears that there is ongoing training provided in regard to PPPFA compliance. However, despite this, there still appears to be contraventions of the procurement processes.

(h) The underlying reasons for these contraventions are not apparent and would require further investigation and interviews with members of the BTC and EXCOPS.

2.4.5 Governance

(a) The DOA was approved by the Board with effect from 1 April 2013.

(b) Eskom had reviewed the manner in which decisions need to be taken within the organisation. There was a concern that there was a lack of empowerment and a clear delegation of authority was needed.

(c) The DOA addresses the delegation from the Board to executives. It will be supported with further delegations by the executives to other employees in the organisation.

(d) The DOA was developed by a team consisting of representatives from key areas of the business. The draft DOA was circulated to all MANCOM members and also discussed at the MANCOM meeting. The DOA was also submitted to and approved by the Investment and Finance Committee ("IFC") and BTC.

(e) The revised DOA seeks to achieve the following:

(i) a one-stop shop with key policies summarised in the delegation framework;

(ii) simplified decision matrix (approval and recommendation); and

(iii) accessibility and user friendliness and this will be supported by: standardised group/divisional delegations, a database of frequently asked questions and index of key issues; and training.

(f) A Governance Review was tabled for EXCO approval at an EXCO meeting held on 16-18 September 2013. The difficulties and confusion in regard to the establishment of the Board committees, the EXCO sub-committees, the associated reporting lines and overlaps of responsibility were reported. The EXCO report for this EXCO meeting held on 16-18 September 2013 was tabled and noted by the Board at its meeting held on 28 November 2013. A summary of the Governance Review was provided in the Board meeting pack for the meeting held on 28 November 2013.

(g) Yet, despite the existence of this governance framework, it was also reported at an EXCO meeting held on 19 August 2014 that there were instances where executives had colluded with Board members to bypass governance processes. This had created a toxic work environment and "a possibility of governance collapse". A deterioration was noticed in regard to adherence to governance principles, such as: failure or refusal to implement Board decisions, abuse of confidentiality of documents, leaking of documents by executives to the media and Board members. [Note: the EXCO report for the meeting held on 19 August 2014 does not appear to have been tabled for noting and approval to the Board. Only reference to approval of the EXCO report for the meeting held on 29 August 2014 has been found.]

(h) At an EXCOPS meeting held on 19 September 2014, the GM: Assurance and Forensics tabled a response document, the purpose of which was to realign the committee on the rules and responsibilities of each stakeholder in the commercial value chain. There were concerns relating to the apparent overlap of roles and responsibilities in practice between different role players which could cause confusion and expectation gaps. [Note: We have not found reference to this meeting report being tabled at any EXCO meeting.]

(i) We were informed that board members were not always adequately prepared for board meetings, did not always read the board pack and sometimes lacked the capacity to understand the technical information included in board packs.

2.5 Industry Practice

2.5.1 Task Order 1 requires us to investigate whether Eskom's procurement policy and procedure is aligned to industry practice.

2.5.2 For purposes of this Report, we consider "industry practice" to entail the procurement practice in general of companies or entities of a size similar to Eskom, in the South African market.

For the avoidance of doubt we note that we have not made comparative studies with regard to the procurement practice undertaken by international power generation and distribution companies or entities. The time limitations of this Investigation and the scope of such comparative studies have rendered the latter unachievable.

2.5.3 Notwithstanding the above qualification, we further note that within the parameters of South Africa, Eskom has the largest procurement spend and is regarded as the leading single procurer within the region. Therefore the extent to which one may compare Eskom's procurement practice with "industry practice" is limited.

2.5.4 Consequently, in assessing Eskom's procurement practices, we have considered its policies and procedures against the following industry procurement practice objectives:

(a) seeking continuous improvement in affordability and value for money, based on total cost of ownership;

(b) enhancement of healthy competition among suppliers in order to improve the quality of procurement;

(c) preserving the highest standards of honesty, integrity, impartiality and objectivity;

(d) promoting fairness and efficiency among suppliers so as to maximise value for money;

(e) providing clear specifications for requirements which would encourage innovation;

(f) enhancing transparency in the procurement process by making available the broad criteria intended for the evaluation of bids, to evaluate bids objectively and to notify the outcome promptly; and

(g) achieving the highest professional standards in the management of contracts.

2.5.5 Assessed from a high level perspective, Eskom's SCM policies and procedures would appear to be aligned with normal industry practice. We have identified certain gaps in Eskom's SCM processes and procedures that cause misalignment with normal industry practice.

2.5.6 **Misalignment with the Legislative Framework and Industry Practice**

(a) As indicated above, Eskom's SCM policy and procedure are to a significant extent aligned with the applicable regulatory framework and industry practice. However, there are certain aspects that may in practice, be misaligned with the applicable regulatory framework and industry practice. These aspects are discussed below.

(b) There is misalignment in certain respects between Eskom's organisational structure and the Eskom DOA framework. The various changes in the organisational structure over the years have to some extent not been aligned with the Eskom DOA framework. For instance the position previously held by the General Manager-Primary Energy is currently occupied by a Senior General Manager, a designation that does not carry delegated authority.

(c) The use or involvement of cross functional teams for scoping or designing commercial strategies and later evaluating bids may compromise the integrity of the procurement processes. Industry practice dictates that officials involved in the

development of the scope and specifications of bids should not be involved in the evaluation of those bids.

(d) The Evaluation Committee's terms of reference and criteria for membership are not clearly defined or standardised. Lack of clarity in this regard further exposes the procurement process to possible management override and manipulation.

(e) Over reliance on pre-qualification and sole sourcing has countered the purpose of supplier development and localisation in so far as preference is continuously given to Original Equipment Manufacturers ("OEMs") and pre-qualified suppliers. It is also worth noting that such over reliance on a small pool of suppliers could expose Eskom to collusion and/or price fixing.

(f) Although the SCM processes and procedures lay out the pre-conditions for emergency procurement, self-created emergencies may always lead to abuse of the system. In almost all cases of emergency procurement, the deviation from procedure is condoned. This is an area where often only retrospective action can be taken. It is difficult in practice to ascertain whether indeed the emergency was self-created, especially where the emergency was due to a technical aspect which is eventually fixed by the procured intervention. Furthermore, there are insufficient checks to prevent technical emergencies that are caused by negligence or a lack of the required skills or training.

(g) Regular reviews are not conducted at the end of contracts to establish whether the particular procurement served its purpose. In situations where such reviews are conducted and lessons documented, there is no evidence to suggest that the lessons learnt are adequately applied in future procurement transactions.

(h) A consistent feedback process is lacking in terms of which learnings result in modification or enhancement of SCM policies and procedures.

3 Item 2.5.2 of Task Order 1

3.1 As indicated above, item 2.5.2 of Task Order 1 states as follows: "whether the procurement policy and related Eskom policies including but not limited to conflict of interest and the processes to deal with non-compliance, are consistently adhered to. Also, establish whether in instances where transgressions are identified, appropriate sanctions are applied".

3.2 This section of this Report accordingly focuses on the implementation of Eskom's procurement policies and the failures that occur in the course of implementation. A statistical analysis of all Eskom procurements is not possible within the time frames of the Investigation. We have considered a subset of procurements in order to draw conclusions in respect of the above. In particular, we have considered coal procurements and diesel procurements, in addition to a few specific procurements that have been selected for the purposes of illustration. In addition, we have conducted various interviews with Eskom personnel to obtain information in this regard and have considered certain reports produced by Eskom's Assurance & Forensics department.

3.3 Coal Procurement

3.3.1 A review of the integrity of the procurement processes for coal procurement was undertaken. This Report details the factual findings of the review, based on the information that was made available to us.

3.3.2 Certain key personnel were interviewed for the purposes of this section on coal procurement.

3.3.3 The following table indicates the key documents reviewed.

Documentation reviewed	
Negotiation documents	Various coal supply contracts Various coal haulage agreements Offer and acceptance letters for short term contracts
Procurement guidelines	Correspondence dated 25 March 2013: Enquiries Suzanne Daniels: Compliance to the PPPFA National Treasury guidelines on Fruitless and Wasteful expenditure: May 2014 ("Treasury guidelines") PPPFA and Regulations ("the PPPFA" and "the Regs") National Treasury Implementation guide: PPPFA regulations 2011 dated 1 December 2011 Eskom's Procurement and Supply Chain Management Policy – 32- 1033 dated 16 May 2014 (the "1033 policy") Eskom's Procurement and Supply Chain management Procedure- 32 -1034. Dated 16 May 2014 (the "1034 procedure") Primary Energy Division Contracting Requirements for Coal. November 2013 Eskom standard conditions of Tender: February 2012
RFP audits	Audit report 14 March 2013: Tender evaluation process review for enquiry number GEN 3198- for the supply of coal to various Eskom Power Stations (the "3198" audit)
Board mandate submissions	Primary Energy Division reports Executive summary dated 12 August 2008 and supporting documents: Board resolution to approve the negotiation and conclusion of medium term contracts for the supply and delivery of coal (the "2008 BTC proposal")

	Executive summary dated 28 September 2010: Interim feedback on negotiations and contracts concluded with suppliers for the supply and delivery of coal (the "2010 BTC proposal") Executive summary 26 March 2014: Feedback on negotiations and contracts concluded with suppliers for the supply and delivery of coal and the relevant coal supply agreements (the "2014 BTC proposal")
Audit reports	Preliminary Report #2- Consulting review on the execution of the medium term coal procurement mandate within PED and related supporting and ancillary documents ("Preliminary Report 2") Preliminary Report #3- Consulting review on the execution of the medium term coal procurement mandate within PED and related supporting and ancillary documents ("Preliminary Report 3") Preliminary Report #4- Consulting review on the execution of the medium term coal procurement mandate within PED and related supporting and ancillary documents ("Preliminary Report 4)

3.3.4 The review covers the procurement of coal from 2013 to 2015.

3.3.5 Background to Coal Procurement by PED

(a) Eskom's Primary Energy Division ("PED") is responsible for the procurement of coal.

(b) In order to assess the procurement of the coal contracts, it is important to understand the background to coal procurement as many of the contracts concluded from 2008 to 2010 are still in existence.

(c) PED made a proposal to the EXCOPS in August 2008 for a mandate to enter into short and medium term coal contracts. This proposal is recorded in the 2008 BTC proposal documents.

(d) The rationale behind the mandate was that long term mines were under delivering, resulting in an increased need for short term contracts ("STC" or "STCs"). STC purchasing, which increased during the preceding four years, was driving the cost of coal upwards significantly. Consequently, the following representations and assumptions were made by PED in the 2008 BTC proposal in order to motivate for the MTC procurement mandate.

(i) STCs are not long enough to abate the effects of an emergency situation, and they do not go far enough to prevent an emergency situation from materialising shortly after the short term procurement. The STCs expired prior to any significant advances being in made in procuring longer term

contracts and did nothing to abate emergencies arising from a shortage of coal. The negotiation period for long term contracts was in excess of 8 years.

(ii) In order to ensure the sustainable supply of electricity, the shortfall should be addressed with medium term contracts ("MTC" or "MTCs") with a view to reducing emergencies and to ensure security of supply. Significant MTCs were required until the long term strategy came into effect.

(iii) It was stated that (i) "Eskom will only negotiate delivered price contracts", (ii) "in the event that rail capacity is available that would be the first choice of transport in an attempt to reduce road traffic", and (iii) "with the current limited rail transport options available this mandate assumes road transport will be used".

(iv) The delivered prices were subject to transport costs. An average of R85/ton was used for quantification of transport costs as sources and distances had not been identified and finalised.

(v) The supply contracts would be prepared by the contracts department within GPE and reviewed by Corporate Legal.

(vi) Coal would be supplied at the existing quality specifications for the respective power stations.

(vii) Any changes to the transport mandate would be presented to the BTC.

(viii) Eskom would not contract with traders of coal but only with owners of a source or where a valid contractual joint venture ("JV") exists between the relevant parties.

(e) In terms of the Corporate and Generation Directives "Procurement and Supply Chain Management Procedure (332-188), the medium term coal supply team ("MTCS Team") was given an MTC procurement mandate by the BTC on 11 September 2008 to enter into MTCs for the supply of coal from October 2008 until March 2018.

(f) Long term contracts were expected to materialise in the interim.

(g) The mandate approved in terms of the 2008 BTC proposal was never updated to align it with the 1034 procedure, 1033 policy, PPPFA or the Treasury Regulations. As a result, the procurement procedure being implemented by PED appears to still relate to the pre-2013 dispensation when the provisions of the PPPFA were not mandatory.

(h) We accordingly understand that coal is procured in terms of the MTC procurement mandate approved in terms of the 2008 BTC proposal and not in terms of the 1033 policy and the 1034 procedure and that most contracts are awarded in the absence of a tender process.

3.3.6 Sourcing Strategy

(a) An assessment of the PED sourcing strategy based on the information provided to us indicated that coal sourcing involved:

(i) concluding long term contracts;

(ii) negotiating medium and short term contracts; and

(iii) sourcing new coal sources with current and new suppliers.

(b) According to interviews conducted, a request for coal sourcing originates with an end user in conjunction with the team who does demand and supply planning. We were informed that the vast majority of coal supply agreements ("CSA" or "CSAs") were concluded in the absence of any tender process. Further, we understand that potential suppliers of coal would approach PED and negotiations regarding coal supply would commence. The view was expressed that if the coal "can burn", the supplier was registered on the supply database and the supplier would be assisted up to the process of becoming a vendor. Not all suppliers become vendors. It is unclear why some suppliers, who meet the applicable criteria, do not become vendors while other suppliers, who do not meet the applicable criteria, become vendors. Time is wasted when negotiations are conducted with non-compliant bidders. This time could be well spent with suppliers who fully comply with all the applicable criteria at the time when negotiations commence.

(c) By way of example, in one case a CSA was approved in 2014 and modified in 2015. According to the information provided to us, the supplier in this case did not meet the applicable BEE requirements at the relevant point in time in that it only had 29% black ownership (as opposed to the 50% plus 1 required). We were informed that a CSA was nonetheless entered into with this supplier on the basis of representations as to how the supplier would become compliant by 2016, despite the fact that there were other suppliers who met the applicable BEE requirements. This aspect requires further investigation.

(d) We were informed that there is no process in place to verify or authenticate the documents and information provided by potential suppliers. It is possible for suppliers to provide false information and fraudulent documents without detection. The verification of documents requires further investigation.

(e) We were informed that many emerging miners do not comply with all the coal supplier requirements, and that the decision to appoint a coal supplier vests in a single person who finally decides which supplier will receive a CSA and which supplier will be excluded. This presents risks, and adequate checks and balances should be introduced.

(f) It appears that negotiations are not limited to price only. In terms of the 1034 procedure (which PED does not apply), suppliers who do not meet the applicable requirements or who do not provide all the required documents are required to be excluded prior to the commencement of negotiations. We have been informed that certain suppliers are engaged with and accommodated in order to bring them into compliance. We were not provided with any explanation as to why certain suppliers were so accommodated and not others.

(g) The inconsistencies in application of the procurement policies have been attributed to decisions made by the General Manager (Primary Energy Division): Fuel Sourcing and the General Manager (Acting): Fuel Sourcing. There appears to be no consistent policy or set of protocols in place regarding how the suppliers are contacted or how communications are shared. This requires further investigation.

(h) According to Eskom's Contracting Requirements for Coal (November 2013), the potential supplier should be in possession of the following information and documents prior to its engagement with the Fuel Sourcing Team:

(i) Environmental and Legal Requirements:

(A) Valid Mining Right/Permit and Off-Take Agreements where applicable;

(B) Approved Environmental Management Program Report;

(C) Latest Detailed Closure Cost Assessment Report;

(D) Integrated Water Use License Application/Permits (IWULA); and

(E) National Environmental Management Act 98 (NEMA) authorisations;

(ii) Safety and Health Requirements:

(A) Safety Health and Environmental Policy;

(B) Letter of Good Standing with the Compensation Commission;

(C) A copy of legal appointments and related qualifications; and

(D) Baseline Safety Health and Environment (SHE) Risk Assessment.

(i) We were informed that the above mentioned requirements are not strictly complied with.

(j) On successful negotiation, an offer and acceptance letter is generated prior to drawing up the CSA agreement. We have been informed that the price, price escalation, quality, power station, coal source and transportation points are fixed at this stage and cannot be changed in the final CSA.

(k) It is unclear to what extent the CSAs are concluded timeously after execution of the offer and acceptance letter. The signed offer and acceptance letter is referred to the coal operations unit within PED, which is tasked with concluding and managing the CSA. It appears that the offer and acceptance letter gives the supplier leave to start supplying coal to Eskom. There is no follow up whether the contract is concluded on the same negotiated terms. Coal operations does not report back to PED: coal sourcing with regard to whether the suppliers comply with the agreed terms. This exchange of information is important as it could allow for defaulting suppliers to be removed from the supplier database and for more reliable suppliers to be sourced, which would improve competitiveness and cost effectiveness.

(l) We were not provided with precise information concerning the turnaround time for conclusion of the CSA after an offer and acceptance letter is signed. There are indications that there might be significant delays in the conclusion of a CSA.

(m) We were informed that the supply of coal sometimes occurs without a CSA. This placed the security of supply of coal at risk, which could affect the planning, logistics and stock days.

(n) Some of the interviewees advised that they had no knowledge of suppliers who were removed from the database because they did not comply with their contract terms, nor of any sanctions imposed against defaulting suppliers.

(o) Not every CSA is reviewed by Legal Services. This is contrary to the 2008 BTC proposal that stated that Corporate Legal will review the coal agreements. We were informed further that even when Legal Services does review a contract, it has been common practice for PED to disregard their recommendations and do as they please. PED has been described as being "on a frolic of their own", with or without Board approval and without any sanctions, even if input is given by Legal Services at Board meetings. This has been stated by several interviewees. Nonetheless, an interviewee from PED stated that Legal Services does review the CSAs and that SD&L does have an input on the BEE side.

(p) However, as a specific example, an SD&L interviewee mentioned that he reviewed a certain coal agreement. He did not recommend the agreement and recorded his disapproval in writing and referred it to PED. Notwithstanding his recommendation, the contract was then awarded. It appears, based on information reported to us, that it was represented to the BTC that no such objections had been made.

(q) We were informed that PED has its own team that attends to coal supply agreements and that in some instances the CSAs are outsourced to external law firms.

(r) One of the interviewees mentioned that everyone knows that PED acts differently and this can be seen in the way that they present things to the Board. When questioned about this he mentioned that PED "would come in and say what they want and get it". Furthermore, he mentioned that maintenance, procurement and systems control work in silos. There is no planning ahead to prevent emergencies. It was mentioned that PED amends existing contracts without seeking input from Legal Services, and that even when the BTC is informed that Legal Services had no input into the recommendations by PED, the BTC still approves PED's requests. It was reported further Legal Services did not review any of the STCs. This interviewee stated further that some junior miners are sidelined, even though they meet all the requirements.

(s) One of the interviewees mentioned that he is aware of only 2 persons in PED who have been sanctioned in the 12 years that he has been employed at Eskom.

(t) It appears that PED ignored their own policies regarding the award of contracts to suppliers with the highest ranking. Annexure C (see Schedule 6) indicates that the highest scoring supplier did not receive a CSA. No reason was provided to us for this other than the overarching "demand for coal by Eskom and the shortage of supply".

3.3.7 Coal Supply Agreements

(a) A list of the Long and Medium term agreements currently in operation was provided to us and is set out in Annexure A (see Schedule 6). Annexure B (see Schedule 6) sets out the STCs that have been reviewed by us. The documentation relating to the negotiation and award of CSAs should be reviewed to test the information set out in this section of this Report.

(b) We understand that there was a RFP process sometime during 2008-2010, and again in 2014, but that no contracts were awarded due to flaws in the RFP processes.

PED appears to be of the view that a tender process does not suit the coal procurement process.

3.3.8 Medium Term Contracts

(a) The contracting principles that were developed as guidelines for negotiations and included in the 2010 BTC proposal are contained in Annexure D (see Schedule 6). The relevant contracting principles and standards are as follows:

(i) Eskom will not contract with suppliers who do not operate legally;

(ii) Eskom wants to contract with owners of mining resources of value adding agents [*sic*];

(iii) suppliers must prove, or give warranties and undertakings that there is, compliance with relevant legislation before contracting;

(iv) suppliers must provide the prescribed documents, including a BEE certificate;

(v) the penalty principle is that the defaulting party must put the other party in the same financial position it otherwise would have been in;

(vi) under-delivery and under off-take must be dealt with in the prescribed manner;

(vii) suppliers are to have pre-certified stockpiles that meet the rejection levels in the contract taking into account that suppliers will be given a reasonable period of time to meet specs and mathematical averaging will be allowed, as an exception;

(viii) coal quality measurement should be at source; and

(ix) the contract price adjustment clauses are to be based on recognised nationally/internationally published indices.

(b) The escalation rates varied between contracts. Our assessment of the terms and conditions of various MTCs seem to indicate that the factors taken into account to determine the escalation varies as does the individual weightings for specific factors. There does not appear be any consistency in applying price escalation formulae. Policy guidelines regarding the escalation basket were not consistently applied. The rating varied between suppliers. Certain factors were taken into account for some suppliers and ignored for others.

(c) A list of weakness and improvements in negotiating contracts was included in the 2010 BTC proposal. See in this regard Annexure E (see Schedule 6). We note the following.

(i) Sourcing of suppliers took place on an ad hoc and crisis management basis. It was suggested that this could be improved by introducing a RFP process and by better planning and forecasting.

(ii) Contracts lacked standardisation, and were concluded in haste. Some contracts were never signed and transport risks and costs were not covered at times. The suggestion was to improve involvement with stakeholders,

implement fixed price contracts and to work with Corporate Finance to improve the analysis of costs of contracts.

(iii) The absence of proper handover to contract management required attention.

(d) The BTC was requested to support the results of negotiations and contracts concluded to date in the 2010 proposal.

(e) The BTC supported the contracts that had been concluded, notwithstanding the fact that the transport costs exceeded the mandate.

(f) A sourcing strategy was approved that set tighter cost targets. The tonnage was adjusted to match the new target burn plan.

(g) We were provided with the following table, which tabulates the MTCs concluded during 2008-2011, which shows the specified information as at the time that the table was provide to us. It is not clear to us whether the transport costs are included in the table below.

Supplier	Power Station	Commence	End	MT	R/Gj	CV	R/ton	BEE
Liketh Investments (Pty) Ltd - KK Pit 5	Hendrina	2009/01/01	2018/03/31	2.40	15.24	21.19	322.86	Yes
Exxaro Coal (Pty) Ltd – Leeuwpan	Majuba	2010/01/01	2015/06/30	2.10	13.25	20.63	273.32	Yes
Umcebo Mining (Pty) Ltd – Middelkraal	Kendal/Majuba	2010/04/01	2015/06/30	5.40	13.00	21.83	283.72	Yes
Exxaro Coal (Pty) Ltd – NBC	Arnot/Komati/Tutuka	2010/04/01	2018/03/31	4.00	11.00	22.34	245.78	Yes
Shanduka Coal (Pty) Ltd – Graspan	Majuba	2010/04/01	2018/03/31	3.60	12.69	20.69	262.52	Yes
HCI Khusela Coal (Pty) Ltd – Palesa	Grootvlei	2010/04/01	2018/03/31	1.90	8.7	20.7	179.32	Yes
Stuart Coal (Pty) Ltd - East Block	Tutuka	2010/04/01	2018/03/31	1.40	11.03	21.11	232.98	No
ıdor Coal (Pty) Ltd – Halfgewonnen	Camden	2010/07/01	2015/09/30	1.90	10.62	21.14	224.63	Yes
Liketh Investments (Pty) Ltd - Tavistock/Tweefontein	Duvha/Komati	2011/03/15	2018/03/31	1.20	10.91	22.6	246.41	Yes
Keaton Mining (Pty) Ltd – Vanggatfontein	Tutuka	2011/05/01	2022/04/30	2.10	15.47	21.25	328.87	No
Kuyasa Mining (Pty) Ltd – Delmas	Majuba	2011/05/01	2019/04/30	1.60	10.41	22.07	229.64	Yes

(h) In May 2010, an audit ("the independent audit") was carried out by an auditing firm to assess the procurement process of MTCs from September 2009 to March 2010. The findings of the independent audit included the following:

(i) communications by PED during the tender process deviated slightly from the procurement policy;

(ii) the evaluation results from the desktop exercise were finalised in November 2009, yet no formal communication had been released to unsuccessful

respondents by the end of April 2010;

(iii) no evaluation report had been compiled as at the end of April 2010;

(iv) there was no coal supply agreement in place prior to the commencement of coal supply by some suppliers; and

(v) "a disproportionately high number of respondent's had common individuals as shareholders and directors" – while this is not under Eskom's direct control and may even be for legitimate business reasons, there may be reason to suspect anti-competitive behaviour among some of the respondents to this tender.

(i) We note that the independent audit report that we have been provided with is in draft form.

(j) It appears as if PED refers to the base price of coal when they determine whether the cost of coal falls within the mandate. A clear policy should be adopted in this regard, which PED would be required to implement.

(k) Preliminary Report #2 is a review of the execution of the Medium term coal procurement mandate within PED conducted by Group Audit ("A&F"). This audit covered the procurement of coal in terms of the procurement mandate.

(l) A&F reviewed 7 files from the 17 suppliers. The following findings were made and recorded in the report:

(i) the documentation used for short listing suppliers was not adequate;

(ii) the documentation qualifying the suppliers as a BWO was not verified as the certificates submitted were not signed;

(iii) there were concerns about the off-take agreements in that PED was negotiating with suppliers that do not have proven agreement between the owner of the mining right and the supplier which creates a security of supply and legislative compliance risks;

(iv) financial review of certain suppliers had not yet been performed at the time of the review;

(v) certain teams in PED believed that other teams in PED operate in silos; and

(vi) the spreadsheet for consolidating the RFP process contained errors.

(m) Inadequate financial due diligence in respect of certain suppliers could result in fruitless and wasteful expenditure.

(n) It was recommended that:

(i) verification of information should be performed before the start of negotiations;

(ii) PED should develop consistent processes for negotiation purposes – gatekeepers should be agreed on and implemented;

(iii) financial analysis should be performed on suppliers to ensure financial sustainability of the suppliers; and

(iv) due diligence assessment of non-financial risk should be performed so that the full risk profile of the supplier can be identified.

(o) Preliminary Report #2 included notes from the Senior Manager Medium-Term Coal Sourcing in which management undertook:

(i) not to contract with suppliers without the requisite documents including valid take-off agreements; and

(ii) to conduct financial evaluations on all suppliers that will be contracted with.

(p) Preliminary Report #2 indicated that the findings affected four companies who still supply coal to Eskom. These are:

(i) Liketh Investments (did not have an environmental assessment report);

(ii) Stuart Coal (coal supplied in the absence of a CSA);

(iii) HCI Coal (could not supply coal at the required specification); and

(iv) Exxaro Coal (could not supply the contracted volume of coal as a result of issues with plant capacity).

(q) It appears that no penalties could be imposed against certain defaulting suppliers as they were delivering on the basis of the offer and acceptance letter and not a CSA. We were unable to determine within the available time whether any penalties were imposed against the above mentioned suppliers. These contraventions must be seen in light of the contract values referred to in Annexure F (see Schedule 6). Due to time constraints, it was not possible to verify whether the above mentioned adverse findings were brought to the attention of the BTC.

(r) Preliminary Report #3 was compiled by A&F on 26 August 2010 following another review of the MTC procurement mandate. The review was limited to the commercial process relating to offer and acceptance as mandated to the MTCS Team by the BTC. The followings findings were made:

(i) the offer and acceptance letter is a temporary document which does not contain sufficient terms to safeguard the interests of Eskom;

(ii) the offer and acceptance letter does not make provision for levying penalties for under delivery in terms of quality and quantity and does not make provision for coal rejection;

(iii) consequently PED and the power stations accepted coal at lower specifications, which could have resulted in the Eskom power plants operating at a level below average and causing more damage to the stations;

(iv) the late signing of contracts puts PED in a position where it is not able to enforce quantities and qualities, which may lead to alternative coal having to be sourced at a higher price; and

(v) Umcebo, HCI, Exxaro and Shanduka were identified as some of the suppliers who delivered coal below the agreed volumes – in the absence of enforceable agreements PED could not recover losses in the form of penalties.

(s) Management undertook to have signed CSAs by September 2010 and to include penalty clauses in the purchase orders as an interim measure.

(t) Preliminary Report #4 was compiled by A&F on 4 March 2011. This report was compiled after PED gave feedback to the EXCOPS regarding progress on the Medium Term mandate. The scope of the review was to ensure that the required terms of the mandate were adhered to. The following findings were made:

(i) ASGI-SA requirements formed part of the RFP process and the requirements were not fully implemented and detailed in PED's submission to the EXCOPS.

(ii) Feedback was given to EXCOPS on all contracts that were concluded as part of the Medium Term Mandate. The details of the STCs were not individually stated in the submission document. The names of the companies and the directors were not disclosed. It was recommended that submissions should contain all the suppliers' information in order to provide adequate information for proper decision making.

(iii) Management undertook to treat all suppliers equally in terms of Eskom's BEE procedures.

(u) Preliminary Report #4 and the independent audit indicate that PED was not vigilant regarding the detection of conflict of interests.

(v) We understand that one of the coal suppliers is currently being investigated by a Special Investigation Unit ("SIU"). Furthermore, in this case the contract was awarded to a trader, which is contrary to the policy to only enter agreements with source owners and not traders – we were not able to ascertain the available time whether a joint venture arrangement was in place.

(w) We have been informed of a supplier that was awarded a contract at a higher price than would otherwise have been agreed because the supplier had financial problems.

(x) In 2013, A&F conducted a review of the tender evaluation process for the RFP and tender process of GEN 3198 ("the 3198 review") to assess whether it was in line with the 1034 procedure. No contract emanated from the tender process due to poor quality of information received from tenderers. It was found that PED did not comply with the 1034 procedure and the evaluation process was not fair, transparent and consistent. In this report, A&F made the following findings:

(i) suppliers were inaccurately shortlisted mainly because mandatory returnable documents required for tender evaluation were not considered as criteria for elimination;

(ii) technical and SD&L evaluations were not fairly performed – a significant amount of scoring errors and inaccuracies were found;

(iii) SD&L, Health and Safety, Environmental and Logistics Evaluation Reports were not signed off or approved by management;

(iv) there was no pricing evaluation report;

(v) the logistics evaluation was unfair because the suppliers were evaluated on the mode of transport and not a specific logistical requirement;

(vi) evaluation scores were not consolidated to ensure that the most advantageous tenders were identified; and

(vii) the overall evaluation report contained various inaccuracies.

(y) Based on the findings in the 3198 review it appears that there was very little improvement since the recommendations and undertakings arising from Preliminary Reports #2, #3 and #4. The adverse findings of the various Preliminary Reports and the independent audit indicate that there is an incomplete audit paper trial of negotiations held with suppliers. This incomplete record of certain transactions affects the transparency of the commercial transactions.

(z) In 2014, PED represented to the BTC that the negotiations and contracts concluded to date were within the mandate approved and that the total value of the coal procured was still within the total value that was mandated by the BTC during 2008 (Executive Summary submitted to the BTC dated 16 April 2014, para 3.3, page 5).

(aa) At para 3.5 on page 5 of the Executive Summary, the following mitigation strategies (amongst others) are identified in respect of various environmental, legal and contractual risks:

(i) coal supply agreements should be given to suppliers at the commencement of negotiations;

(ii) thorough check of adherence to legislative requirements prior to contracting and ensuring that supplier visits are conducted and sign off obtained prior to contracting;

(iii) suppliers to be contract managed and contractual remedies enforced; and

(iv) building up the supplier base and thereby ensuring that there are alternate suppliers to contract with.

(bb) The submission checklist annexed to the Executive Summary indicates the following:

(i) the proposal was within budget;

(ii) the proposal underwent financial evaluation and the evaluation was verified by Corporate Finance;

(iii) there were no legal implications;

(iv) Corporate Legal input was obtained and the approval sought was consistent with legal input; and

(v) due consideration was given to employment equity.

(cc) Attached to the above mentioned Executive Summary is a document with the heading "Approval of negotiated outcome", dated 7 March 2014, which indicates that the purpose of the submission is to request that the Medium Term mandate awarded in 2008 remain open until 2018. The submissions included the following representations:

(i) that the total value of coal procured was still well within the total value that was mandated by the BTC in 2008;

(ii) the weighted average price of coal at R344,45 was still well within the escalated mandated price (this includes the coal and transport portions);

(iii) qualities were higher than the original mandate;

(iv) the improved coal quality delivered increased the power station thermal efficiency and mitigates against coal related load losses;

(v) three life of mine contracts were concluded with Keaton, Kuyasa and Universal Coal;

(vi) prices negotiated during 2010 to 2013 were better than the mandated prices of 2008; and

(vii) the modes of transport that were negotiated were in the order of conveyor first, rail second, and then delivered and FCA last.

(dd) Below is a list of the MTCs and STCs that were concluded after 2010, up to 2014, as provided to us.

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Conducted about 2010, up to 2014

R(m)

Supplier	Power Station	Commence	End	MT	R/Gj	CV	R/ton	BEE	
African Exploration Mining and Finance Company – Vlakfontein	Kendal	2011/06/01	2020/03/31	0.78	13.61	20.33	276.59	N/A	
Optimum Coal Holdings – Koornfontein	Komati	2012/04/01	2016/01/31	1.62	17.78	21.2	375.91	No	228
BECSA - Portion 16	Kendal	2012/12/21	2016/06/30	2.00	14.24	19.12	272.39	No	
Warene – Usuthi	Camden	2013/03/01	2015/12/31	1.50	14.85	23.35	346.76	No	111
Ntagisa Mining (Pty) Ltd – Widfontein	Arnot	2013/07/01	2017/06/30	1.60	15.27	22.15	338.19	No	121
Perisat Investments (Pty) Ltd – Rirhandzu	Majuba/Kusile	2013/09/01	2018/03/31	1.20	11.53	22.3	256.50	Yes	
Universal Coal Development (Pty) Ltd - Wolvenfontein	Kusile/Kendal	2014/04/01	2023/03/31	2.00	13.49	20.40	353.41	No	182
Just Coal CC – Bankfontein	Tutuka/Arnot	2014/04/01	2024/03/31	1.80	12.9	21.6	279.21	Yes	
Tshedza Mining Resources (Pty) Ltd – Manungu	Kendal/Kusile	2015/04/01	2030/03/31	1.62	13.66	17.9	245.06	Yes	
Tegela Exploration and Resources (Pty) Ltd – Brakfontein	Majuba	2015/04/01	2025/09/30	1.36	13.50	20.50	276.75	No	19
Just Coal CC Bankfontein	Arnot	2015/05/01	2015/10/31	0.85	18.5	22.77	421.25	Yes	135
Just Coal CC – Pembani	Matla	2015/05/01	2016/03/31	1.00	13.61	20.0	272.47	Yes	

(ee) The following observations are made concerning these contracts:

R931

(i) The majority of suppliers who are not BEE compliant were granted contracts in excess of the 2010-2014 mandate of R262/ton.

Real

(ii) Reporting of pricing information is confusing. Emphasis is placed on rand per ton pricing. Actual prices of individual contracts, escalations, and transport costs do not appear to be adequately reported and analysed.

(iii) It was conceded in some of our interviews in respect of the period from 2010-2014 that contracts in excess of the procurement mandate were concluded, despite the fact that the weighted average prices were within the mandate. The fact that individual contract prices were not clearly reported creates the potential for abuse.

20.81

(iv) The contract for Just Coal CC-Bankfontein appears to be excessively high bearing in mind the mandate that was approved in 2014.

(ff) The submission checklist referred to in paragraph 3.3.8(bb) records that financial evaluations were conducted. It was further reported that the Treasury department confirmed that there is no need to issue a report as the analysis concluded that the actual spend is still significantly below the approved quantities. However, this seems

to be inconsistent with another document issued by Finance, which is dealt with in the next paragraph.

(gg) An assessment of certain correspondence from Treasury dated 10 March 2014, and which is attached to the Executive Summary, makes various observations which are not consistent with some of the representations referred to above. The above mentioned correspondence states the following (amongst others):

(i) the total contract value reported is per calendar year as it has been escalated with reference to each contract base date and escalation date to 2013. The reported contract value is not aligned to Eskom's financial year and cannot be compared to the MTC total budget in 2013 and 2014 financial years;

(ii) the contract values are reported in 2013 real terms and do not reflect the approximate nominal commitment of the concluded contracts in terms of the agreed CPA;

(iii) it is therefore recommended that the nominal values (price and contract value) based on the agreed escalation rates and transport costs be included in the feedback to the Board (showing an approximate value of the total contract commitments). The total contract commitments could then be monitored against the PED budget and cash projections;

(iv) the escalation basket used for the MTCs was not approved by the BTC as part of the mandate as a result of different weights having been agreed with different suppliers;

(v) it is recommended that a basket with recommended weightings be submitted to BTC for approval. This would facilitate a level of control of and certainty on the actual contract commitments and spend, as the agreed weightings would be within a mandated range; and

(vi) an instance was identified where a cancellation fee of R28 million that was agreed with Exxaro which was not part of the mandate approved by BTC.

3.3.9 Short Term Contracts

(a) It appears that STCs are entered into on an emergency basis.

(b) The vast majority of STCs are concluded on an FCA basis where Eskom carries the risk during delivery to the power station. The initial procurement mandate of 2008 required transport costs to be on a delivered basis and not an FCA basis.

(c) Information gathered during interviews indicates that there is sometimes interference from senior levels in the awarding of coal supply contracts. The above mentioned information has not been tested or verified due to time limitations and lack of availability of certain information sources (such as emails).

(d) We were informed that questions could be raised concerning the awarding of transport routes as some suppliers are awarded preferential (and more lucrative) transport routes. It was stated that the transport rates are standard in terms of the coal haulage agreements. However, preferred transporters were given more lucrative routes.

3.3.10 Long Term Contracts

(a) We were informed by some interviewees that only two long term contracts were concluded since 2008.

(b) It was stated that the Medupi supply contract resulted in a significant penalty being paid by Eskom. It appears that the penalty is not included in the calculations that are conveyed to the BTC regarding the cost of coal. However, penalties such as this should be taken into account when determining compliance with coal budget.

3.4 Diesel Procurement

3.4.1 A review of diesel procurement was undertaken in order to give us an understanding of the procurement processes implemented in this aspect of Eskom's business. The focus of this section is on the diesel contracts pertaining specifically to the Open Cycle Gas Turbines ("OCGT" or "OCGTs") situated in Atlantis (Ankerlig) and Mossel Bay (Gourikwa).

3.4.2 Eskom uses the services of contracted and non-contracted suppliers for diesel.

3.4.3 Contracted Suppliers of Diesel

(a) In and around 2008 Eskom contracted with the following entities for the supply of diesel for its OCGTs, which contracts are for a period of ten (10) years respectively, ending in 2018:

(i) Masana Petroleum Solutions (Pty) Ltd;

(ii) PetroSA; and

(iii) Afric Oil (Pty) Ltd.

(b) In addition, Eskom has a fuel storage agreement with PetroSA, which commenced in 2009 for a period of 5 years, and which was subsequently extended for a further 5 years in 2014.

(c) A perusal of these contracts suggests that Eskom's interests are adequately protected. In particular, Eskom is paying what appears to be a reasonable price for diesel supplied, being discounted as follows:

(i) Afric Oil (wholesale list price minus 27 cpl);

(ii) PetroSA (wholesale list price minus 28 cpl); and

(iii) Masana (wholesale list price minus 33 cpl).

3.4.4 Non-contracted Suppliers

(a) In September 2012, electricity demand exceeded supply, resulting in an emergency being declared by the Emergency Response and Command Centre ("**ERCC**") team. As far as the OCGTs were concerned, an emergency was declared by Avi Singh, Peaking Power Station Manager at Ankerlig on 7 September 2012, in respect of the supply of diesel.

(b) Commodity Sourcing made a motivation for the procurement of additional diesel due

to constraints encountered by the contracted suppliers.

(c) A recommendation was made for the emergency procurement of diesel totalling 25 thousand tons for an approximate cost of R250 million, envisaged to end on 30 November 2012.

(d) This motivation was approved on 10 September 2012 by Matshela Koko who was acting in Dan Marokane's position as Group Executive: Technology & Commercial as per a duly executed Delegation of Authority dated 30 August 2012.

(e) Subsequently, Commodity Sourcing began contacting known fuel suppliers enquiring whether they had the capacity to supply the required fuel on an emergency basis. The relevant employees in Commodity Sourcing signed declarations of no interest.

(f) The following 8 non-contracted suppliers were used and the Board subsequently ratified the emergency diesel purchases from them:

(i) Yem Yem;

(ii) KZN Oil;

(iii) Kwande Petroleum;

(iv) Chevron;

(v) Jake Africa Energy;

(vi) Finesse Group;

(vii) Infinit Energy; and

(viii) Vuselela Spare Supply.

(g) At the same time as the ratification, Commodity Sourcing was authorised by the relevant Board committee to issue a tender for the purpose of constituting a panel of diesel suppliers on an "as and when required basis" for a 5 year period.

(h) Commodity Sourcing was furthermore authorised to negotiate fair and reasonable prices and place orders with existing non-contracted suppliers for the period not covered by the ratification i.e. from 21 February 2013 until a panel of suppliers was appointed. The results of negotiations was to be reported to EXCOPS upon finalisation.

(i) It appears that the 8 entities mentioned above supplied diesel to Eskom at the following rates:

(i) Yem Yem (wholesale list price minus 10 cpl per litre);

(ii) KZN Oil (wholesale list price);

(iii) Kwande Peroleum (wholesale list price plus 15 cpl);

(iv) Chevron (pricing not provided);

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(v) Jake Africa Energy (Ankerlig 1069 cpl and Gourikwa 1089 cpl);

(vi) Finesse (1109 cpl);

(vii) Infinit Energy (1267 cpl); and

(viii) Vuselela (1080 cpl).

(j) At this stage we are unable to state whether the above mentioned prices are fair and reasonable, save to state that these prices are far in excess of the discounted prices negotiated with the 3 contracted supplies who offered discounts between 27 cpl and 33 cpl. The variance between the prices paid to contracted suppliers and the prices paid to non-contracted suppliers is so large that a reasonable inference would be that there is scope for better prices to be negotiated.

3.4.5 Request for Proposals (RFP CORP 2720)

(a) In September 2013 the aforementioned RFP was issued with the objective of establishing a panel of supplementary suppliers of diesel. Sixty three responsive tenders were received and subsequently all failed for allegedly not meeting the tender criteria.

(b) Accordingly, this RFP was withdrawn and a new RFP was issued as set out below.

3.4.6 Request for Proposals (RFP CORP 3017)

(a) In April 2014, an application was made to the BTC to cancel RFP CORP 2720 and to issue a revised tender RFP CORP 3017. Approval was granted in June 2014 by the Board. RFP CORP 3017 differs from its predecessor only in that the terms for which the supply of diesel is needed was reduced from 5 years to 2 years.

(b) Eighty eight bids were received of which 38 were found to be eligible for the evaluation phase in July 2014.

(c) Of the 38, a shortlist of 6 suppliers was identified to be negotiated with in order to constitute a panel of 5 suppliers, to wit:-

(i) Cape Point Maritime Services CC & C & C Olie Verspreiders JV;

(ii) Finesse Energy (Pty) Ltd;

(iii) Kamoso Liquid Fuel & Gas (Pty) Ltd;

(iv) Gulfstream Energy (Pty) Ltd;

(v) KZN Oils (Pty) Ltd; and

(vi) Makwande Energy Trading (Pty) Ltd.

(d) A panel of 5 suppliers has not been appointed as at 15 June 2015.

(e) The purpose of appointing a shortlist would ordinarily be (amongst others) to ensure that there is a sufficient depth in the potential counterparties to allow meaningful

negotiations to take place. A shortlist of 6 out of which 5 panel suppliers are to be appointed would seem to leave little scope for meaningful negotiations.

(f) We are aware that a Pro-Active Assurance report dated December 2014 was compiled relating to CORP 3017 by Pegasus Risk Financing, an external auditor. It found, inter alia, that some of the evaluators had their phones on them during evaluation and, in addition, some tenders contained pricing information in them and were nevertheless passed to the 'functionality evaluation' phase. Both these instances are breaches of procurement policy and the principle of fairness. It is unclear whether Eskom acted on the aforesaid report since the list consisting of six shortlisted respondents to the tender identified during the tender evaluation meeting remains unchanged.

3.4.7 Interview with a senior manager with knowledge of diesel procurement ("Witness Diesel-A")

(a) Witness Diesel-A stated that there were actually 31 suppliers of diesel for the OCGTs for the years 1 April 2012 to 1 April 2015, and not 11 (3 contracted and 8 non-contracted) as we had initially been informed. He stated further as follows.

(i) The diesel supplied to Eskom at Ankerlig is produced at the Chevron refinery in Cape Town. Historically, Eskom purchased diesel directly from Caltex. However, Chevron tightened their payment terms and dropped their credit limits for Eskom due to various issues regarding payment. Eskom was therefore subject to stricter payment terms, which resulted in Eskom seeking to obtain supplies through third parties. Little appears to have been done to rectify this situation and to return to dealing directly with Chevron as opposed to dealing with third parties.

(ii) The quality of invoicing from smaller operators suggested a lack of accounting platform and was highly questionable, particularly in light of the amounts being paid to them. Many of the smaller operators do not have a website or contact details. He did not disagree with the notion of diesel suppliers being set up as shell companies, noting that many of them appear to have no substance or infrastructure. Jake Africa Energy was raised as an example, with him stating that he was unable to find details of this company in the public domain. However, he did not use, for example, the registration number to investigate further due to it being outside of his remit.

(iii) There is a list price issued by the refinery that includes a road levy, which can be claimed back. It is therefore possible to get a discount on the list price. The highest discount is understood to be a 43cpl discount. Of the 31 Eskom suppliers, only 5 or 6 suppliers receive and pass on this discount, the rest do not. He questioned why they would continue to purchase through suppliers that did not offer this discount versus those that do.

(iv) Bakers Transport is the only company used for the transporting of diesel. Rotram is a transport company within the Eskom group. Whilst Rotram does not currently have tankers, he noted that the cost of purchasing tankers would have been offset long ago if Eskom had utilised this subsidiary instead of Bakers.

(v) In response to the concerns listed above, Witness Diesel-A has drawn up a list of the 31 suppliers and the total amounts paid to them, along with a full

audit trail for every invoice paid. He has asked the Process Control Assurance Manager at the site to investigate the companies and prepare a file. He stated that he had provided this information to his General Manager, expressing his concerns, but that no action had been taken. The matter was also brought to the attention of Assurance & Forensics, but Witness Diesel-A is not aware of any follow up action having taken place. Furthermore, he was not aware of any challenge to or review of the commercial decisions or tenders relating to the purchase of diesel.

(vi) Despite these concerns, he was confident that there were no issues with delivery of stock or payment of suppliers. Many of the smaller operators are B-BBEE certified for which Eskom can get recognition.

(vii) He explained that there was a second route by which Eskom sometimes purchased diesel independently of Chevron, namely via "floating vessels". These are hired tanker ships that dock and load in Cape Town or Mossel Bay harbour as and when required (i.e. when an order is placed). He was not familiar with the terms of these deals but believed Eskom paid demurrage charges.

(viii) He confirmed that Eskom required regular diesel purchases due to limited storage capacity. There are some storage tanks in the fleet. However, these are designed to cover peak times only, as per the original specification of the OCGTs. The rate at which diesel is currently being used is far in excess of what the plant and tanks were designed for.

(ix) He stated that a tender was issued earlier in the year to change/confirm the suppliers, led by Procurement. His team was not involved. He understands that the tender is now closed and that there is a shortlist of suppliers that Eskom will deal with in the future. He noted that this process had not yet gone through the BTC.

(x) He raised the issue of people authorising diesel purchases without the necessary authorisation levels. He stated that the latest purchases had not been authorised according to the applicable Delegation of Authority.

(xi) He also flagged that orders being implemented without authorisation continue to breach budget. He stated this had been raised to the Financial Director, but that the deals continued without going through the applicable procedures. He was not aware of who was leading or involved in this.

3.4.8 Interview with a senior manager involved with diesel procurement ("Witness Diesel-B")

(a) Witness Diesel-B advised that diesel is sourced from the so called ad hoc suppliers on the authority of a resolution of the BTC adopted at a meeting on 7 March 2013, which provided for the following:

(i) ratification of the emergency purchase of diesel from the 8 non-contracted suppliers;

(ii) granting of authority to Commodity Sourcing to issue an open tender for the purposes of establishing a panel of service providers who would supply a

minimum of 25% of the required quantities of diesel on an 'as and when required' basis;

(iii) granting of authority to Commodity Sourcing to negotiate fair and reasonable prices and place orders with non-contracted suppliers for the period not covered by the above mentioned ratification (from February 2013 until a panel of suppliers is appointed);

(iv) requirements for non-contracted suppliers to be as follows:

(A) a valid wholesale licence;

(B) letter from a credible source from which diesel will be sourced; and

(C) a letter of financial support (presumably from a bank or other financial institution).

(b) Witness Diesel-B stated further as follows.

(i) His instruction was "to go out and find diesel" on the basis of projections which come from Generation Production Planning. These projections are firstly sent to the contracted suppliers and in the event that there is a supply shortage, the non-contracted suppliers are engaged.

(ii) The individuals who engaged the first batch of non-contracted suppliers, were his predecessors, one "Siduduso", "who lasted for 3 months" and Kolbert Mukatani, who appointed the aforementioned non-contracted suppliers based on the criteria set out in paragraph 3.4.8(a)(iv) above.

(iii) The monitoring of non-contracted suppliers was based exclusively on their performance. Their places of business were never inspected. No investigations in respect of conflicts of interest were initially conducted. Subsequently, probity checks have been conducted by Assurance & Forensics.

(iv) There were never more than 12 non-contracted suppliers at any given time as it was too difficult to manage a larger group.

(v) A discount was not originally negotiated with the non-contracted suppliers as the diesel purchases were being made in an emergency situation and there was no time to do so.

(vi) In the meanwhile, the 63 bids responding to tender CORP 2720 all failed to meet the tender criteria.

(vii) Tender CORP 2720 was withdrawn and reissued under CORP 3017. A shortlist of 6 suppliers have now been identified, but their appointment has not been confirmed as anticipated in and during the first quarter of 2015. The appointment is now envisaged to take place in the first half of 2015.

(viii) It was acceptable for the tender process to take 30 months. The process was not deliberately manipulated.

(ix) He had no problem with a dentist (Kekoil) or a beautician (Kamoso) supplying diesel to Eskom as long as the entities met the criteria set out in paragraph 3.4.8(a)(iv) above.

(x) As Eskom is purchasing diesel for the generation of electricity (as opposed to being used for transport), it receives a rebate from the South African Revenue Service (SARS). The rebate fluctuates and changes during every financial year. It is currently R3,94 per litre, which would translate into a substantial amount taking into account the volumes of diesel purchased for the generation of electricity.

(xi) The Board will sit in and, during August 2015, ratification will be sought via EXCOPS for the purchase of diesel from the remaining non-contracted suppliers.

3.4.9 Interview with an employee in Legal Services ("Witness Diesel-C")

(a) Witness Diesel-C's role is to provide legal advisory services.

(b) He stated as follows.

(i) Upon advice being sought from him, the business units do not consistently follow the advice given.

(ii) Legal Services is often side lined when it comes to the conclusion of contracts for diesel and coal, i.e. it is only some of the time that their "legal opinion" would be sought, and if sought and provided, would be used selectively.

(iii) On occasion he would be invited to attend meetings of the ERCC team, which consists only of EXCO members and effectively acts as an EXCO in and during an emergency as occurred in and during September 2012 when the emergency procurement of diesel was authorised.

(iv) Members of the ERCC would rotate intermittently.

(v) He is aware that the contracts pertaining to the contracted diesel suppliers had to be renegotiated (to provide for increased volumes), but is unaware whether this has in fact been done, as Eskom is paying too much for diesel sourced from the non-contracted suppliers.

(vi) He categorically states that Procurement, more often than not, does as it pleases and in the process the Legal Department is overridden or ignored. This is a historical problem and has been ongoing for many years.

3.4.10 Interview with an employee having knowledge of Supplier Development & Localisation ("SD&L") issues ("Witness Diesel-D")

(a) Witness Diesel-D stated as follows.

(i) SD&L conducted a review of the already mentioned 8 non-contracted suppliers of diesel on the request of the relevant sourcing unit. SD&L uses various verification agencies which they use to verify the details of suppliers. Eskom does not itself verify the veracity of any documents or information

furnished to it. The vetting was conducted based on certain criteria, such as a certificate confirming BBE status, tax clearance certification, banking details and safety requirements.

(ii) He is not aware of the non-contracted suppliers, other than the 8 mentioned in paragraph 3.4.4(f) above.

(iii) He understands that a Board decision adopted Eskom's official policy as being that black owned companies are preferred suppliers as opposed to the large companies that are not BEE compliant. This is the reason why the non-contracted suppliers of diesel were preferred as opposed to the large oil companies which are not 100% BEE compliant, even if that meant Eskom would be paying a premium price for diesel. (We understand that the understanding of Witness Diesel-D in this regard is not accurate and requires further testing.)

3.4.11 Analysis

(a) There are indications that a fair and equitable process was not followed in the appointment of non-contracted suppliers. This was initially justified on the basis of emergency. There are indications that the additional non-contracted suppliers might not have been appointed under a suitable delegation of authority.

(b) The time taken to appoint a panel of suppliers (30 months) is a matter of concern and requires further investigation.

(c) It appears that persons who are responsible for key decisions regarding diesel procurement have limited information available to them. It appears further that their authority is capable of being influenced.

(d) Witness Diesel-B like some of the other interviewees appear to have had no real authority, despite in some instances on the face of it being made to look as if they did.

(e) The portfolios of certain individuals appear to have been treated as token portfolios, since their expertise has been stated not to have been sought when it should have been, and when it was sought, their inputs were in certain instances ignored.

(f) Various interviewees seem to have conflicting views about the high price of diesel procured from non-contracted suppliers. On the one hand, it was stated that this arose from the fact that these supplies were procured in an emergency where there was no time to negotiate prices. However, it is now almost three years since an emergency was declared and there does not appear to have been any attempt to negotiated better pricing since. Another view was that black owned companies are preferred suppliers as opposed to the large companies that are not BEE compliant, even if that meant Eskom would be paying a premium price for diesel. We are not convinced by this reasoning as black owned companies can be given preference whilst at the same time negotiating reasonable prices for diesel supplied by them.

(g) The following irregularities are noted.

(i) There are indications of a failure to adequately monitor Eskom's affairs, resulting in a perceived "emergency" in September 2012. This emergency

appears to have been reasonably foreseeable. As a result, the benefits of a normal procurement process were not achieved

(ii) There are indications that not enough was done to renegotiate supply volumes with the contracted suppliers.

(iii) The delay in appointing a panel of ad hoc diesel suppliers is of concern. The delay would serve to benefit non-contracted suppliers who continue to supply on what was initially an emergency basis.

(iv) Failure to act on the independent audit report in relation to Tender CORP 3017 is of concern.

(v) In view of the above, there is a risk that the delays in appointing a panel might have been manipulated to the benefit of the non-contracted suppliers.

3.5 TSSA Contract Modification

3.5.1 From the outset, it is important to note that the T-Systems South Africa ("**TSSA**") Contract Modification appears to be one of many examples of non-compliance with or non-adherence to the SCM policy and procedure, not from a process perspective but rather due to substantive undertones of the possibility of executive override.

3.5.2 The table below is a summarised version of the key events that transpired in the process leading to the re-appointment of TSSA.

Date	Activity	Value	Period
12 August 2013	Group IT Infrastructure Services Strategic Approach by BTC. Approval granted to issue RFP to the market		
16 October 2013	Signed PR for IT outsource RFP was received	R 3.3 Billion	5 Years
6 December 2013	IT outsource RFP (Corp 2821) issued	R 3.3 Billion	5 Years
10 February 2014	IT outsource RFP closed	R 3.3 Billion	5 Years
12 February 2014	BTC ratification of Sourcing Strategy – RFP IT Infrastructure Outsourcing	Estimated Contract Value R 2 Billion – R 4 Billion	
26 March 2014	• IT outsource submissions to EXCOPS requesting mandate to negotiate and conclude	R 2.5 Billion	5 Years

	• EXCOPS granted mandate to negotiate and not conclude		
June 2014	• Partly signed PR for TSSA Mod received • This PR was later withdrawn by the CIO who recommended the shorter modification period of up to 31st December 2014, in anticipation of IT outsource approval	R 1 179 041 456	1st Sept 2014 to Dec 2015 (16 months)
17 June 2014	Fully signed PR for TSSA Mod received	R 279 533 088	1st Sep 2014 to 31st Dec 2014 (4 months)
23 July 2014	EXCOPS approved the TSSA Modification- request was for R 279 533 088, EXCOPS reduced the value by 10% to R 251 579 779	R 279 533 088	1st Sep 2014 to 31st Dec 2014 (4 months)
21 August 2014	IT outsource submission was presented to EXCOPS for the second time		
28 August 2014	IT outsourced submission was presented to EXCOPS for the third time		
22 September 2014	BTC approved the TSSA Mod	R 251 579 779	1st Sep 2014 to 31st Dec 2014(4 months)
29 September 2014	Commercial sent letter to TSSA, informing them that ESKOM will not be extending the TSSA contract		
13 October 2014	• Unsigned PR for TSSA Modification received by Commercial	R 591 611 130	1st Jan 2015 to 31st Sep 2015 (9 months)

	• (SOW) Services Fee for 6 months • This PR was withdrawn		
15 October 2014	Letter from TSSA to Commercial and Group IT CIO, referring to the letter from Eskom dated 29th September 2014. TSSA requested two months prior notice that TSSA need for the continuation of any services during disengagement.		
17 October 2014	Letter from TSSA to the Eskom CIO		
21 October 2014	Fully signed PR for TSSA Mod received by Commercial. • (SOW) Services for a minimum of three months with the ability to extend on a month to month basis to a maximum of six months with clauses for earlier exit included. • Disengagement fee for six months • This PR was later withdrawn due to the fact that the IT outsource team was granted a mandate to negotiate but not conclude on 24th October	R 431 687 929	1st Jan 2015 to 31st June 2015 (6 months)
24 October 2014	Eskom CIO sent a letter to TSSA, to advise that Eskom will require the disengagement of services from 4th January 2015 and some services during		9 Months

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	disengagement.		
18 November 2014	IT Outsource RFP CORP 2821 negotiations were concluded		
11 November 2014	• Fully signed PR for TSSA Modification received by Commercial • This PR came as a result of the fact that the IT Outsource team was granted a mandate to negotiate but not to conclude • Statement Of Work (SOW) services of four months, which can be extended by up to 7 months on a month to month basis. • Transition period of four to six months	R 483 416 227	4 to 6 Months
11 November 2014	Signed FPS or Treasury report was received by Commercial.	R 483 416 227	4 to 6 months
11 November 2014	Signed budget confirmation letter received by Commercial	R 483 416 227	4 to 6 months
20 November 2014	TSSA contract modification was presented and approved by BTC	R 483 416 227	5 months
9 December 2014	TSSA contract modification was presented and approved by BTC	R 483 416 227	5 months
31 December 2014	• Original TSSA contract expires • TSSA modification approved on 9th December 2014 kicks in from 1st January 2015	R 483 416 227	5 months

23 January 2015	Received the final report for local content verification by SABS, for the verification three shortlisted suppliers on IT Outsource RFPCORP 2821	R 1.8 Million	3 months
7 February 2015	• RFP CORP 2821 negotiation results were presented at EXCOPS • The team were sent back to package the available options and risks for the presentation to special EXCOPS	R 1.4 Billion	5 Years
8 February 2015	Feedback of negotiation with TSSA for contract modification for 5 months from January 2015 to May 2015 was presented and approved	R 351 113 349	5 months
24 February 2015	EXCOPS approved option 3: Cancellation of IT Outsource RFP (CORP2821) and TSSA contract extension for 24 months	R 1.2 Billion	24 months
1 April 2015	Cancellation letter sent to the three (3) shortlisted suppliers		

3.5.3 Upon analysing the table and the various EXCOPS and BTC minutes and submissions, the following events or facts raise reasonable suspicion about the integrity of Eskom's procurement system as implemented in this instance:

(a) EXCOPS granted a mandate to negotiate with the shortlisted bidders on 26 March 2014, but 2 (two) months later a Procurement Requisition ("PR") for TSSA of approximately R 1.7 billion covering the period between 1 Sept 2014 to 31 Dec 2015 is made despite the fact that TSSA's contract was due to expire on 31 December 2014.

(b) Subsequently the PR is withdrawn by the Chief Information Officer ("CIO") and another PR is approved for a shorter period on 23 July 2014.

(c) Three other submissions are presented to EXCOPS in August 2014 and 1 Sept 2014.

(d) On 22 September 2014, BTC approved a TSSA modification (the 1st modification).

(e) On 21 October 2014, another PR is signed for a 2nd TSSA modification - within a month subsequent to the BTC approving the first TSSA modification.

(f) 24 October 2014, approximately 6 months after EXCOPS approved the mandate to negotiate, BTC eventually grants a mandate to negotiate but not to conclude a contract with the short listed bidders.

(g) On 20 November 2014, TSSA's 2nd contract modification is presented to BTC and approved.

(h) 8 Feb 2015, negotiation results are presented to EXCOPS, but EXCOPS requests further interrogation of risks and various circumstances including further TSSA modification.

(i) 24 Feb 2015, various options were presented, EXCOPS selected the third option – cancellation of Tender and further TSSA modification for an additional 2 (two) years.

3.5.4 The above key events lead to various unanswered questions, answers to which require a much more detailed investigation. Some of the unanswered questions include the following.

(a) In view of the impending expiry of TSSA's contract, why, did the BTC not act expeditiously to approve the mandate to negotiate subsequent to EXCOPS decision in March 2014?

(b) Can the Board's non-action between March 2014 and October 2014 be construed as a deliberate attempt to create a reason/an emergency for TSSA's modification?

(c) Why did the CIO process a PR for TSSA modification for more than one year, within 2 months from EXCOPS approval of a mandate to negotiate?

(d) Was it was justifiable that the same EXCOPS that approved the mandate to negotiate in March 2014 would recant its position and opt for the cancellation of the tender on 4 Feb 2015?

(e) Were there grounds to support the decision taken by both the BTC and EXCOPS to opt for cancellation and a further TSSA modification despite the fact that the sourcing team had rated same as the third best option?

3.5.5 The TSSA modification creates some doubt about the ability of EXCOPS and BTC to substantively comply with Eskom's procurement procedure in practice.

3.6 Conflict of Interest

3.6.1 The Eskom Conflict of Interest Policy document sets out the obligations of employees and directors with regards to conflict of interests and the declaration and management of these interests. It appears that although a Conflict of Interest Policy exists, there seems to be no proper implementation and management of the policy.

3.6.2 Generally, prior to approving a contract modification or award above certain thresholds, Eskom appoints consultants to perform probity reviews for the purposes of ensuring that no

conflict of interest exists between the relevant suppliers and Eskom's authorising committee members (which includes EXCOPS members, Eskom Board members, Cross Functional Team members and their respective spouses).

3.6.3 In Annexure G (see Schedule 6), we consider how EXCOPS deals with the results of these probity reports. From our investigation, it appears that the results of the conflict checks are not always brought to the attention of EXCO and the Board.

3.7 Other Aspects of Non-Compliance

3.7.1 Besides the above categories of procurement we have also considered procurement transactions below the EXCOPS' delegated authority threshold of R300 million. In this regard we placed reliance on the Assurance & Forensics Catalyst reports for the period from January 2015 to March 2015.

3.7.2 Some of the common areas of non-compliance include:

(a) supplier preference by employees, either during the award of the contracts or when issuing work orders;

(b) misrepresentation by suppliers to either secure contracts with Eskom or to derive additional financial benefit; and

(c) employees benefiting from Eskom tenders through indirect relationships with suppliers.

3.7.3 There are indications that:

(a) tender processes are sometimes influenced by senior personnel, and in certain instances, this has the further consequence of inaction in the event of non-performance;

(b) corporate opportunities are sometimes diverted from Eskom to third parties; and

(c) senior personnel sometimes develop supply arrangements and then exert influence to procure the issuing of a contract in respect of those arrangements.

3.7.4 It has not been possible to test and verify much of the information received in respect of issues arising in connection with specific procurement exercises due, amongst others, to the shortened period of the Investigation and lack of access to certain key sources of information (such as emails) and certain potential interviewees.

3.8 Existence of Processes Aimed at Addressing Non-Compliance

3.8.1 Eskom's Assurance & Forensics Department conducts regular proactive assurance tests on all procurement transactions that are within the scope of the EXCOPS' and the BTC's delegated authority. However, the proactive assurance tests are focussed on ensuring compliance with the requisite process and procedural requirements. In other words, proactive assurance is unable to detect fraud, collusion and aspects of executive override within the process.

3.8.2 In the context of executive override, we were informed by certain interviewees of the view that some senior executives ran Eskom through certain well placed proxies. The above mentioned information has not been tested or verified. Had the Investigation continued to the

originally contemplated end date, it is likely that this information would have been capable of being tested, inter alia with reference to the email records to which we requested access.

3.8.3 In addition to the proactive assurance tests, Internal Audit also conducts audits on procurement transactions handled by EXCOPS and the BTC. However, the audits in this regard are only conducted once a matter has been referred by the audit committee. Consequently, in circumstances where there is no reference from the audit committee or requests from various business units, glaringly suspicious transactions will not be audited. Some of the transactions that have been audited in the past financial year are:

(a) manufacturing, supply and delivery of grinding elements and media to various power stations (pro-active audit of the evaluation phase);

(b) provision of maintenance on milling plant at Camden Power Station (upon request from the chairperson OPEX Tender Committee); and

(c) contract strategy and invitation to Tender Enquiry Gen: 3251-R – Inspection Authority Services for various power stations including Koeberg Nuclear Power Station.

3.8.4 In all the abovementioned cases, Internal Audit found the process undertaken to be non-compliant with Eskom's SCM processes and procedures. All the tenders were subsequently cancelled and the process restarted.

3.8.5 The Internal Audit unit also conducts probity tests on employees of Eskom involved in procurement transactions. However, these probity tests are limited to spouses, which leaves the system open to manipulation by relations other than those that are spousal in nature.

3.8.6 The other layer used by Eskom to address non-compliance with its SCM process is the Forensics Department. We highlighted above some of the findings contained in the Catalyst reports issued in the first quarter of 2015. However, it is worth noting that most of the matters referred to Forensics are those below the R300m threshold. Secondly, it is also worth noting that the Forensics Department only investigates matters referred to it and that it does not investigate matters proactively.

3.8.7 We conclude that Eskom does have processes in place to deal with non-compliance with the applicable SCM processes. However, given the size of Eskom's procurement spend, it is likely that there is insufficient capacity within Eskom's Assurance & Forensics unit to consistently ensure adherence to processes aimed at dealing with non-compliance. Furthermore, the work of the above mentioned units suffers from certain deficiencies, in that:

(a) Internal Audit and Forensics looks at matters reactively, i.e. only in referrals; and

(b) the investigations of Assurance are proactive, but are limited in scope and focused on procedure.

3.8.8 In a submission made to the BTC on 8 May 2013 (no reference to this meeting report having been tabled and noted by the Board) and to EXCOPS on 26 April 2013, the legal department of Eskom identified the risks of non-compliance with the PPPFA and PFMA. It was stated that "the risks in respect of non-compliance remain in that court applications may be brought to set aside such tenders and contracts awarded, findings of irregular expenditure and financial misconduct in terms of the PFMA may still be imposed and the resulting sanctions of criminal prosecution may following terms of the PFMA. The Auditors will raise the issue of non-compliance in the Directors report and the audit opinion is unqualified. Other legal issued

relating to the interpretation of the PPPFA provisions requires engagement with the National Treasury and other stakeholders." [Note: The EXCOPS report for this meeting was tabled for noting and approval by EXCO at its meeting held on 27 June 2013. The Board noted and approved the EXCO report for the EXCO meeting held on 27 June 2013 at the Board meeting held on 28 August 2013. However, these risks do not appear in the EXCO report to the Board in the Board meeting pack for the Board meeting held on 28 August 2013.]

3.8.9 However, it appears that, although the risks of non-compliance were made known at various levels of the organisation, Eskom's procurement processes are still not consistently adhered to. It was observed in a BTC Meeting held on 12 February 2014 that "the organisational culture was one where procurement processes were being bypassed in pursuit of and preference for sole and/or continued use of existing suppliers, without any solid rationale". The meeting report for the BTC meeting held on 12 February 2014 was tabled and noted for approval by the Board at its meeting held on 29 May 2014. This meeting report is included in the meeting pack for the Board meeting held on 29 May 2014 (and bears reference to this statement regarding procurement processes).

3.8.10 We set out in Annexure H (see Schedule 6), specific instances of non-compliance and transgressions identified thus far in our review relating to procurement processes and procedures.

3.8.11 It also appears that in some instances, transgressions of the procurement policy are identified, but no appropriate sanctions are imposed. In the Eskom Board minutes of the meeting held on 3 December 2014, a forensic review in relation to a sponsorship contract ("Sponsorship Contract") was discussed by the Board.

3.8.12 From the minutes, it appears that the Sponsorship Contract was signed at a point when the budget for 2014/15 had not been approved. The contract was meant to have been concluded in consultation with EXCO, due to the value of the contract being over the applicable threshold.

3.8.13 The Sponsorship Contract had no exit clause which appeared to be irregular and did not allow Eskom to exit from the contract.

3.8.14 At this meeting it was concluded that the signatory had exceeded his authority and that removal of the termination clause had been effected against legal advice. Strangely, the view that seems to have prevailed was that (i) it was not the Board's responsibility to take action against the employee responsible for removal of the termination clause as he did not report to the Board and was an employee of Eskom, and (ii) not much could be done regarding the signatory as he was not an employee of Eskom (he was a Board member). It was decided that the Board would make a final decision after the signatory was given an opportunity to defend himself and explain why governance procedures were not complied with.

3.8.15 At the Board meeting held on 8 December 2014, Ledwaba Mazwai Attorneys had conducted a review of the matter and concluded that the conduct complained of constituted wilful misconduct in terms of the PFMA. The Board resolved that Ledwaba Mazwai Attorneys and the Company Secretary should prepare a summary and final resolution on the discussions and decisions around the Sponsorship Contract for signing by the chairman of the Board and the chairman of the Audit & Risk Committee. It was also resolved that the Chairman should request an investigation into the matters raised.

3.9 Nature of Sanctions Adopted

3.9.1 As noted above, the sanctions recommended by Internal Audit include cancellation and reissue of tenders. In some instances Internal Audit has recommended retraining of officials involved in irregular processes.

3.9.2 On the other hand, where the Forensic Department has investigated irregularities, some of the sanctions that have been recommended include:

(a) referral to South African Police Service (SAPS) for further investigation and eventually prosecution by the National Prosecution Authority (NPA); and

(b) disciplinary action which may result in suspensions, dismissals or warnings.

3.9.3 Follow up on whether these sanctions were implemented would have been conducted in the remaining period of the Investigation.

4 Item 2.5.3 of Task Order 1

4.1 As indicated above, item 2.5.3 of Task Order 1 states as follows: "whether the procurement processes are effective to ensure that Eskom obtains the best quality products and services at the best price".

4.2 The effectiveness of the procurement policy to Eskom in enabling the sourcing of the best quality products and services at the best prices must be assessed with reference not only to a formal analysis of the content of that policy, but also on the basis of its application in practice.

4.3 Based on the evidence gathered in the course of the Investigation, it appears that Eskom's procurement policies and procedures are well developed. If properly implemented, Eskom would be well positioned to obtain quality products and services at the best prices. We note that there are certain improvements that could be introduced to address the deficiencies in Eskom's procurement policy – these are dealt with in our recommendations below.

4.4 As indicated in the previous sections of this chapter of this Report, it appears that manipulation of the system through executive or management override, in addition to the exploitation of gaps presented by the use of prequalification, emergencies and sole sourcing, remain the prime threats to obtaining the fruits of the SCM policy and procedure.

4.5 There are indications that the paper trail associated with the tender process might be abused to conceal underlying duplicity.

4.6 There are indications that the procurement processes applied in respect of coal and diesel are not effective to ensure that Eskom obtains the best quality products and services at the best price.

4.7 In Annexure I (see Schedule 6), we set out specific instances where the best quality products and services were not obtained as a result of ineffective procurement processes.

4.8 In a Final Catalyst Report dated April-June 2013, the following procurement irregularities were identified:

4.8.1 contract specifications designed to suit a specific supplier to the exclusion of others;

4.8.2 supplier preference when issuing orders;

4.8.3 employees not following procurement process when awarding, managing as well as when terminating contracts;

4.8.4 conflict of interest (no declarations); and

4.8.5 awarding contracts to suppliers who do not satisfy all prerequisites.

4.9 An analysis of available quarterly Risk and Resilience Reports evaluating various corporate and business risks of Eskom indicates that, starting from the second quarter of 2013/2014, MANCOM was informed of and recognized inter alia "the risk of excessive cost of procurement caused by poor planning, collusion and anti-competitive practices, leading to poor financial performance by Eskom." (Risk and Resilience Report for Quarter 2 of 2013/2014, page 127).

4.10 The Risk and Resilience Report for the second quarter of 2013/2014 states that the above mentioned risk is caused by the following:

4.10.1 overall poor demand planning in Eskom;

4.10.2 un-updated supplier database and the tendency to procure through the closed tender vs. open tender route leads to creation of a bar to entry by new suppliers; and

4.10.3 that the open market is not tested for competitive prices and/or innovative products.

4.11 Notably, the section of the report where respective measures to treat the risk should be proposed is left blank. This suggests that, at the time of preparation of the report, the risk was identified and reported. However, no steps aimed at mitigation of the risk were proposed.

4.12 According to the relevant July 2013 Quarterly MANCOM Meeting Minutes, a MANCOM member expressed his frustration with the procurement processes in place which was hampering the ability to order simple products, such as light bulbs and pointed out that submissions for procurements had now been pushed out to three weeks prior to ordering. In response it was stated that Group Commercial was busy compiling a procurement plan which would ultimately be tabled to MANCOM for approval. A MANCOM member suggested that Group Commercial be held accountable on contract management and suggested that the tracking of contracts should be a KPI for Group Commercial.

4.13 EXCO approved The Enterprise Risk and Resilience Report for Quarter 2 of 2013/14 as tabled at an EXCO meeting held on 6 November 2013. This report was tabled for recommendation to submit to the Audit & Risk Committee, details of which were included in the meeting pack. The EXCO report for the meeting held on 6 November 2013 was tabled and noted for approval at a Board meeting held on 27 February 2014.

4.14 The submission of quarterly Risk and Resilience Reports indicates that Eskom has a procedure in place in order to evaluate various corporate and business risks. Thus, presumably, MANCOM was informed of the various risks, including the above discussed risk of excessive cost of procurement caused by poor planning collusion and anti-competitive practices, leading to poor financial performance of Eskom.

4.15 Furthermore, the executive summary to one of the risk and resilience reports for 2013/2014, specifically outlines the risk and resilience reporting schedule for all the key stakeholders, including the Board Audit and Risk Committee, EXCO and MANCOM (quarterly and monthly). (Executive Summary to the Risk and Resilience Quarterly Report for Q1 of 2013-2014, pages 4-6). Thus, it appears that the procedure of communicating information about the risks and

decision-making mechanisms on different levels of Eskom management regarding the relevant risks are in place. The Risk and Resilience Quarterly Report for Quarter 1 of 2013-2014 was tabled for noting at the EXCO meeting held on 29 July 2013. The EXCO report for the meeting held on 29-30 July 2013 was taken as read and noted at the Board meeting held on 28 August 2013.

4.16 It should be noted that certain attempts to improve procurement process have been reported: For example, Enterprise Development, Regulation & Legal Support reported in this respect that in quarter 4 of 2013 legal support was strengthened to Group Commercial and tender committees by highlighting legal issues that may impact on Eskom procurement (Regulation and Legal Quarterly Report to MANCOM Q1 2013, page 1; Regulation and Legal Quarterly Report to MANCOM Q4 2013, page 1.)

5 Recommendations

5.1 We set out below our recommendations in respect of procurement.

5.2 The principle of substance over form must be implemented in the context of procurement. There appears to be a risk of procurement policies being approached formalistically as a "tick box exercise". The substantive approach could be achieved, inter alia, by (i) placing greater emphasis on the principles underlying the procurement process and monitoring achievement of these principles (in addition to compliance with the usual procedural requirements), and (ii) developing checks and balances to address high risk aspects where the usual procedural requirements could fail or be manipulated. The substantive approach to procurement should be reinforced by suitable training programmes, with a view to institutionalising this approach.

5.3 Learnings from failures in procurement processes should result in modification and enhancement of the SCM policy in order to institutionalise those learnings.

5.4 The manner in which different procurement processes are utilised must be reviewed. In this regard, guidelines should be developed to ensure that switching from one procurement process (such as open tender) to another (such as closed tender) is not manipulated in the context of a specific procurement exercise. In addition, such switching should be subject to enhanced scrutiny, for example by way of automatic referral to a compliance audit.

5.5 There must be better follow up of audit findings to ensure that audit findings are adequately addressed and that the learnings from audit findings are institutionalised.

5.6 Forensic investigations of allegations of misconduct involving executive interference in procurement processes should be prioritised. The mandate of such investigations must be sufficiently broad and resourced so as to be able to identify such interference and impose suitable sanctions.

5.7 Guidelines and checks and balances should be developed to prevent, mitigate and identify executive interference in procurement exercises. By way of example, the enhanced compliance function referred to in paragraph 5.11 below could be designed to form part of such a system of checks and balances.

5.8 The practice of simply withdrawing tenders and reissuing them should be carefully considered to ensure that misconduct is not ignored and/or inadequately investigated.

5.9 The feasibility of utilising independent external service providers for the purposes of evaluation and adjudication should be explored.

5.10 A more proactive and comprehensive approach to monitoring procurement processes should be developed.

5.11 The compliance function must be enhanced and reinforced. This function must be independent from the normal operational processes of Eskom. By way of example, the feasibility of having a compliance function that reports directly to the Board or Eskom's shareholder should be explored.

5.12 The legal function must be enhanced and reinforced.

5.13 Eskom's SCM policy must be reviewed to ensure that it is aligned with Eskom's organisational structure and DOA framework.

5.14 The approach used in involving cross functional teams in the evaluation of bids should be reconsidered. The SCM procedure should prescribe:

5.14.1 the process for appointing members to bid evaluation committees;

5.14.2 the duration of the appointment; and

5.14.3 the applicable terms of reference.

5.15 Periodic supply chain performance reviews should be implemented to assess whether the sourcing methodology applied is likely to give rise to the desired outcome.

5.16 The merits of extending the scope of probity tests beyond the current spousal level should be investigated.

5.17 The merits of conducting a detailed comparative study on procurement methodologies applied by international state owned and private energy generation and distribution companies should be considered.

5.18 Where appropriate, the possibility of designing bespoke procurement procedures for particular types of procurement should be explored, without derogating from the principles of section 217 of the Constitution and related legislation.

5.19 The procurement processes applicable to coal and diesel must be reviewed and subject to enhanced scrutiny.

CHAPTER 6: CONTRACT MANAGEMENT, IN PARTICULAR HIGH COSTS ESCALATION, FREQUENT MODIFICATIONS, PENALTY COSTS INCLUDING CAPACITY WITHIN ESKOM TO MANAGE CONTRACTS GENERALLY

1 Background

1.1 This Chapter deals with item 2.6 of the Scope of Work set out in Task Order 1.

1.2 Item 2.6 of Task Order 1 relates to contract management, in particular high costs escalation, frequent modifications, penalty costs including capacity within Eskom to manage contracts generally. Under this heading the following specific items are provided for:

1.2.1 "2.6.1 Contract management policy, in relation to its strategic focus, procedures and resources. Are the policies consistently applied to safeguard the organization from failures to enforce its rights and counterparty claims;

1.2.2 2.6.2 whether the design of the contracts (fit for purpose) is appropriate with regard to contract terms;

1.2.3 2.6.3 whether there is a defined modification approval and monitoring process which is adequate and effective. Further, to also establish reasons as to why contract modifications often result in increased costs and delays; and

1.2.4 2.6.4 whether there exists a contract performance monitoring system, in the maintenance of the Generation fleet".

1.2.5 We adopted a two phase approach to assess the above mentioned aspects:

(a) conducting a desktop review of the information and documents received from Eskom; and

(b) conducting interviews with Eskom personnel to either:

(i) seek clarity on matters identified in the course of the desktop review; or

(ii) confirm our preliminary observations arising from the desktop review.

1.2.6 As part of our desktop review, we analysed the following documents:

(a) Eskom's Procurement Supply Chain Management Policy – 32 – 1033 ("SCM Policy");

(b) Eskom's Procurement and SCM Procedure -32- 1034;

(c) The Eskom Delegation of Authority Policy 240- 62072907 ("DOA");

(d) Tender Committees Terms of Reference;

(e) Process Control Manual – Establish Contract Environment

(f) Process Control Manual – Manage Project Delivery

(g) Process Control Manual – Close – out Contracts

(h) Process Control Manual – Projects Contract Management

(i) Eskom Supply Contract – Howden Power

(j) Delegation of Authority & Responsibility Structure Standard – FIDIC Form Contract

(k) Delegation of Authority & Responsibility Structure Standard – The engineering and construction contract – NEC (ECC) Form of Contract

(l) Delegation of Authority & Responsibility Structure Standard – The engineering and construction contract – NEC (ECSC) Form of Contract

(m) the New Engineering Contract ("NEC");

(n) NEC Short Contract;

(o) NEC Professional Services Contract;

(p) NEC Term Services Contract;

(q) NEC Short Term Services Contract;

(r) NEC Adjudicator's Contract;

(s) FIDIC suite of contracts-

(i) FIDIC Yellow Book (Design and Construction); and

(ii) FIDIC Red Book (Construction).

(t) Variation Order overview for the New Builds - Medupi

(u) FIDIC KPI Report April and May 2015;

(v) NEC3 Term Service Contract – Howden Power (Technical support and Maintenance);

(w) Agreement – Babcock Ntuthuko Engineering (Pty) Ltd;

(x) Agreement – Alstom John Thompson (Pty) Ltd (Maintenance, Repair & Complementary Services for boiler plants); and

(y) Agreement – Steinmuller Engineering Services (Pty) Ltd (Maintenance and repair & Complementary Services for various power stations).

1.2.7 Various Eskom personnel were interviewed for the purposes of assessing the effectiveness of Eskom's contract management policies.

1.3 The annexures referred to in this Chapter are included in Schedule 6.

2 Item 2.6.1 of Task Order 1

2.1 As indicated above, item 2.6.1 of Task Order 1 states as follows: "Contract management policy, in relation to its strategic focus, procedures and resources. Are the policies consistently applied to safeguard the organization from failures to enforce its rights and counterparty claims".

2.2 Below we discuss the components of Eskom's contract management policy framework with regard to the following aspects:

2.2.1 key policy instruments;

2.2.2 key procedures; and

2.2.3 location of the function within the organisation.

2.3 From a policy framework perspective, Eskom's contract management framework comprises of:

2.3.1 Eskom's Procurement and SCM Procedures 32-1034;

2.3.2 NEC DoA Framework;

2.3.3 FIDIC DoA Framework;

2.3.4 various PCMs;

2.3.5 NEC agreements (depending on the applicable contract category); and

2.3.6 FIDIC suite of contracts (depending on the applicable contract category).

2.4 Procurement and SCM Procedure 32-1034

2.4.1 In terms of Eskom's Procurement and SCM Procedures 32-1034, Eskom appoints an agent as a contract manager for each contract concluded by Eskom. The contract manager must be trained on the PCMs for contract management, the NEC and/or FIDIC suite of contracts, amongst others. The contract manager's role is to be the first point of contact between Eskom and the Supplier during the execution and delivery phase of the project.

2.5 NEC and FIDIC DoA Framework

2.5.1 The NEC DoA framework is designed to provide assurance that the delegation of authority for contracts is carried out strictly in terms of the PFMA and to ensure that controls on contract expenditure are consolidated and enhanced.

2.5.2 The contract mandate is delegated to a project manager, who acts on behalf of Eskom, and takes accountability for the contract. The project manager is required to act for the employer and give effect to the contract, including the signing of any agreements, and issuing of consents or other necessary or related documentation.

2.5.3 The purpose of the framework is to centralise control of contract related project expenditure, and accountability for the contract, and ensure that DCF contingency remains with the project manager, supported by the Project Compensation Events Committee.

2.6 PCMs

2.6.1 The PCM's describe the processes and procedures to be followed by the Procurement Practitioners across the various operational areas when delivering the required outputs of the end users/customers with clarity, effectiveness and accountability.

2.6.2 The PCMs apply uniformly throughout Eskom, its divisions and wholly owned subsidiaries, in addition to entities in which Eskom has a controlling interest and which operate in terms of South African Law and are subject to the PFMA.

2.7 NEC Suite of Agreements

2.7.1 The standard from agreements used by Eskom have self-contained contract management mechanisms.

2.7.2 The NEC suite of agreements provides for the following contract management mechanisms (amongst others) in varying degrees:

(a) open book account – where contractor invoices for the actual costs incurred;

(b) pain/gain sharing – parties commit to sharing savings and losses from budget;

(c) amendments to the works;

(d) early warnings – contractor obliged to warn the employer of any potential risks to the project as soon as same is brought to the contractor's knowledge;

(e) compensation events;

(f) risk registers;

(g) stipulated timeframes for handling changes and compensation events;

(h) periodic risk and progress reporting;

(i) mutual understanding of the parties' obligations;

(j) appointment of an inspection authority;

(k) adherence to agreed programmes; and

(l) assessment of results of performance.

2.8 FIDIC Suite of Agreements

2.8.1 The FIDIC suite of agreements provides for the following contract management mechanisms (amongst others) in varying degrees:

(a) processes for conducting valuations and making payments to contractors;

(b) variation processes that deal with:

(i) modification of the works programme and delivery; and

(ii) adjustment of the contract price;

(c) processing claims from both employer and the contractor; and

(d) extensions of time.

2.9 Implementation of the Contract Management Framework

2.9.1 In assessing whether the above mentioned contract management framework has been consistently implemented, we have had regard to the following:

(a) the relationship between the contract management framework and Eskom's strategic focus;

(b) the resources available to implement Eskom's contract management framework; and

(c) examples of non-compliance.

2.9.2 Although Eskom's contract management framework has been in place for at least six (6) years, the establishment of a central coordinating structure for contract management was only recently implemented. We were informed that as a result of the recent restructuring process, a Project Support Office/Contract Management Office was established in September 2014, within the Group Capital Division to oversee the implementation of Eskom's contract management practices.

2.9.3 Prior to September 2014, the implementation of the contract management framework varied from one project to another. With specific regard to the New Builds Programme (specifically, Ingula and Medupi), the practice as described by the officials interviewed varied depending on the particular contract.

2.9.4 With regard to Ingula, the NEC suite is currently in use. As such, contract management is conducted in line with the principles stipulated in the relevant NEC contracts. We have been advised in this regard that the principles articulated in the NEC DoA framework and the SCM Procedure 32-1034 are generally complied with.

2.9.5 However, with regard to Medupi, we have been informed that the contract management framework and the principles of the FIDIC DoA framework and the SCM Procedure 32-1034 were not complied with between 2009 and 2013. This was attributed mainly to the appointment of an "Execution Partner" (namely, Parsons Brinckerhoff Africa) in 2006, a role that was alien to the existing contract management framework. It must however be noted from the outset that due to the tight time lines within which the Investigation has been conducted, we were unable to independently verify the exact aspects of non-compliance that are attributable to the use of the Execution Partner.

2.9.6 The Execution Partner was contracted to provide support in the 9 areas of the PMBOK, in addition to providing project planning and management services. We were informed that in the course of executing its responsibilities, the Execution Partner did not align any of its processes and systems with Eskom's contract management framework.

2.9.7 The focus was mainly on the administration of the contracts, to the exclusion of the other responsibilities set out in the FIDIC DoA framework and the SCM Procedure 32-1034. Consequently, there was non-compliance with aspects of the PFMA and related public sector good corporate governance requirements. For instance, payments beyond the thresholds stipulated in the DCF were usually certified without following the prescribed process set out in the SCM Procedure 32-1032. This meant that a party that was not officially authorised to bind

Eskom to various financial commitments was actually acting ultra vires. This situation could affect Eskom's right to repudiate certified payments or challenge their validity.

2.9.8 As a result of the various challenges that Medupi has experienced, the project team composition has undergone various changes since 2013. Consequently, aspects of the FIDIC DoA framework and SCM Procedure 32-1034 are currently being implemented with the Contract Management Office playing an oversight role.

2.9.9 The Contract Management Office is at present capacitated with 8 officials. Its current focus is oversight of the contract management processes and procedures undertaken by officials in the implementation of the New Build Programmes. Although it plays mainly an oversight role, it is our view that enhancement of its capacity will increase Eskom's ability implement the contract management processes set out in the FIDIC and NEC DoA frameworks in addition to the requirements of the SCM Procedure 32-1034. This may also enable the Contract Management Office to undertake proactive measures in order to avert aspects of non-compliance with Eskom's contract management policy and procedure.

2.9.10 In consideration of its youthful existence, the officials responsible for the administration of the Contract Management Office were unable to cite any examples of non-compliance with the contract management framework that has occurred in the 8 months since the establishment of its office. However, they did admit that previous challenges related to the slow pace at which engineers and project managers processed claims and compensation events. As a result, more focus is now being placed on the implementation of PCMs and DoA frameworks for NEC and FIDIC, upping the pace of processing claims and capacitating the engineers and project managers. It is expected that with the intervention of the Contract Management Office and alignment of the project team's methods with the contract management framework, some of the Key Performance Indicators listed below will be met.

KPI	TARGET
Employer	Support Employer with Target 25% reduction by March 2016 of the total of the Employer's Claims as at the end of March 2015
Claims processing time	Reduce number of Claims in process >120 days by 50% by end FY2015
Claims registers	All Packages Feeding into CMO Steering committee throughout FY2015
Variation Orders (VO) registers	All Packages Feeding into CMO Steering committee throughout FY2015

2.9.11 A review of quarterly reports to MANCOM evidence acknowledgment of problems with contract management. For example, Risk and Resilience Report for Quarter 3 of 2012/2013 addresses the issue of inadequate contract management specifically. As mentioned above, this report notes that that advances have been made regarding strengthening of systems, processes and competencies at project and portfolio level, and as a result this risk is

diminishing. However, continued vigilance is required as it is evident that contractors are continually seeking opportunities to gain an advantage over Eskom. (Risk and Resilience Report for Quarter 3 of 2012/2013, page 22.)

2.9.12 System and Market Operator Division reported in quarter 1 of 2013/2014 that resources and appropriate structures for IPP contract management are not in place. (System and Market Operator Quarterly Report to MANCOM Q1 2013, page 8)

2.9.13 At a Board meeting held on 13 February 2013, reference is made to possible instances of fraud involving the Weld Procedure Qualification Record, details of which were apparently provided to Board members. It was stated that a detailed investigation was underway. Hitachi had been assigned to qualify all procedures used in construction and as a result of their failure to do so, they had been instructed to stop further construction. Alstom was responsible for qualifying protection systems. These systems failed twice before and this meant that Medupi didn't have a successful design safe boiler. Although both Hitachi and Alstom undertook to rectify the failures and deliver programmes in that regard, none were received. This resulted in the Minister meeting the executives of the two companies. Eskom's FD had terminated the two companies' performance bonds.

2.9.14 At an EXCO meeting held on 2 and 3 May 2013, the GE: Technology & Commerce reported that suppliers' complaints on the manner in which Eskom was managing contracts were seldom escalated by junior management for action. In this regard, it was noted that disciplinary action took too long to be completed. The EXCO report for the meeting held on 2 and 3 May 2014 was tabled and noted by the Board at its meeting held on 30 May 2013. However, this statement relating to the management of contracts referred to above is not mentioned in the report to the Board.

2.9.15 At the EXCO meeting held on 2 November 2014, it was noted that various approvals have been obtained for diesel usage and short term IPPs, but no funding had been released. As a result, it was stated that the decision making process should be reviewed around the actual implementation of decisions. In two instances, 9 IPP contracts were extended (as discussed in a submission to the Board on 26 February 2015 re: Eskom War Room Feedback) and a contract for diesel was entered into with Chevron (as discussed and approved at the EXCOPS meeting held on 29 January 2015), regardless of the fact that there were no budget approvals available. This was authorised in terms of the emergency procurement procedure which was implemented in accordance with War Room instructions. We would need to investigate the decisions made by the Emergency Response Co-Ordination Committee which implements contracts in terms of the emergency procurement process.

2.9.16 In conclusion, it is apparent that there has been non-compliance with the applicable contract management framework, specifically with regard to the implementation of the Medupi project. Notwithstanding the challenges linked with poor pre-implementation planning, the non-alignment of the Execution Partner's role with the requirements set out in the contract management framework is likely to have exacerbated the situation.

3 Item 2.6.2 of Task Order 1

3.1 As indicated above, item 2.6.2 of Task Order 1 states as follows: "whether the design of the contracts (fit for purpose) is appropriate with regard to contract terms".

3.2 In this section, we consider whether the design of contracts is appropriate with regard to contract terms.

3.3 The type of contracts used by Eskom has been traversed in the previous section regarding the contract management framework. In brief, Eskom uses the NEC and FIDIC suites of contracts for its engineering projects.

3.4 The NEC and FIDIC contracts are well established internationally for engineering projects. It is a generally accepted view that the NEC and FIDIC contracts are well designed to ensure smooth project implementation. Notwithstanding the above, we have been advised that the project teams for Medupi and Ingula have had to undertake some modifications to the addenda of the contracts to cover the following aspects.

3.4.1 Inclusion of key dates in the NEC contract for Ingula – the NEC contract makes provision for payment based on key dates as one of the options the contracting parties may elect. However, it appears that at the time of contracting no option was chosen, an error that was subsequently discovered by Eskom and resolved by arbitration. Consequently, the contract had to be modified to select key dates as a payment option. It appears that the problem was not the contract design itself, since NEC provides for key dates as one of the options for payment. The parties should have dealt with this matter as part of the contract negotiations. It is our view that the above mentioned issue is indicative of inadequate knowledge of the workings of NEC in all of the relevant units of Eskom.

3.4.2 We have been informed that the FIDIC contracts for Medupi are in the process of being modified in order to align the addenda to the new/modified project implementation schedule and business plan. This issue, as well, is not related to contract design.

3.5 We have also been informed that the project teams on the New Build Programmes are currently implementing a knowledge base, in terms of which learnings are recorded for future use. It is expected that the learnings will be used for future programmes from a contracting and project management perspective. However, it is worth noting that each project presents unique features that cannot be transposed onto future projects. Importantly, the success of this process will rely heavily on the ability and willingness of future project teams to implement these learnings. Specific interventions should be designed to institutionalise not only these learnings, but also a project management approach that focuses on identifying learnings and institutionalising them on an ongoing basis as an institutional culture.

3.6 Both the NEC and FIDIC suites provide for the template clauses to be (i) amended, and (ii) supplemented by additional clauses. A review of the typical amendments and supplementations made by Eskom appear indicative of a checklist approach in certain respects. We understand that amendments and modifications are negotiated in the pre-contract phase. There was insufficient time for the Investigation the determine the precise drivers behind these amendments and supplementations, particularly, the extent to which learnings from previous and existing contracts inform the amendments and supplementations in new contracts and whether this process is being institutionalised.

3.7 With regard to contracts other than NEC and FIDIC, we note that these contracts are sometimes not fit for purpose in that the contractual provisions do not adequately protect the interests of Eskom.

3.8 By way of example, on 16 July 2013, EXCOPS considered the conclusion of an 8th addendum to the coal supply agreement ("CSA") with Exxaro Coal (Pty) Ltd ("Exxaro"). The mandate to negotiate document was prepared and signed off by Johann Bester on 1 July 2013 and submitted to EXCOPS and BTC. The mandate to negotiate document, on page 11 under clause 3.2, indicates the following.

3.8.1 The submission document entitled "Request for the EXCOPS to recommend the conclusion of an 8th addendum to the Medupi Coal Supply Agreement with Exxaro" (which was included in the meeting pack for the EXCOPS meeting on 16 July 2013) indicates that:

(a) Eskom believes that it would be able to argue that the force majeure event (due to labour disruptions) would justify a deferment of the commencement period for 4 months, however this would have required Eskom to commence deliveries on 1 July 2013; and

(b) during the force majeure event Eskom is required to make payments to Exxaro and that Eskom estimates that these payments are likely to be equal to or greater than the actual coal delivery payments during that period.

3.8.2 Generally, a force majeure clause is designed to give a party relief in circumstances that that party cannot control. It does not appear to be appropriate for a contract of this nature to include a force majeure that is more burdensome on Eskom in a force majeure event and therefore forcing Eskom into contract modification negotiations in the event of a force majeure.

3.9 We have noted in Chapter 5 merely on the basis of a letter of offer and acceptance, without a comprehensive coal supply agreement having been entered into. This creates substantial risks for Eskom and is not appropriate or fit for purpose.

4 Item 2.6.3 of Task Order 1

4.1 As indicated above, item 2.6.3 of Task Order 1 states as follows: "whether there is a defined modification approval and monitoring process which is adequate and effective. Further, to also establish reasons as to why contract modifications often result in increased costs and delays".

4.2 In order to address this issue, we consider:

4.2.1 the processes and procedures set out in the contract management framework that relate to modification approval and monitoring; and

4.2.2 the adequacy and effectiveness of these processes.

4.3 Processes and procedures

4.3.1 Besides the processes and procedures set out in NEC and FIDIC contract models regarding modifications, approval and monitoring, the Procurement and SCM Procedure 32-1034 provides for a modification process which entails the following.

(a) The Delegated Approval Authority originally approves a contact with a fixed contract value and duration.The contract value is used to execute the contract according to the approved scope of work or services.

(b) The approval may entail a provision for a contingency value and time based on the risk assessment of the transaction.

(c) The contingency is approved to allow the Eskom Agent to manage compensation events/variation orders as per the NEC/FIDIC contracts without requesting further approval of the Delegated Approval Authority in respect of funds/time associated with the claims.

(d) The discretion of the Eskom Agent is subject to the limit of the contingency approved by the Delegated Approval Authority.

(e) If the value of a modification exceeds the contingency amount or 20% of the original contract value, a motivation should be made as to why a new contract must not be considered based on a new commercial process.

(f) Based on the market valuation of the modification, a decision will be made to either proceed with the approval of the modification or engage in a new commercial process.

4.3.2 In terms of the Procurement and SCM Procedure 32-1034, some of the circumstances that may necessitate a modification are:

(a) increase in cost as a result of a contract being required for periods longer that what was originally agreed to;

(b) material or significant changes to conditions of contract which may result in an increase in the contract value or duration;

(c) changes to specifications, design or scope which were unforeseeable at the time of tender and contract award;

(d) increase in quantities of assets or goods or services already provided for in the scope of the contract; and

(e) changes in the country of origin/manufacturer of assets or goods, which affects the foreign currencies provided for in the contract.

4.3.3 The procedural aspects for obtaining the modification approval are similar to those applied in seeking approval for a new transaction, i.e. apply for approval of a mandate from the relevant Tender Committee depending on the Delegated Approval Authority for that commodity and the transaction value.

4.3.4 There appears to be a preference towards the modification of existing contracts rather than going back to market and issuing an open enquiry in respect of additional work that needs to be done. This could result in non-competitive pricing and the manipulation of the procurement process towards a preferred bidder.

4.3.5 In Annexure J (see Schedule 6), we set out examples of inadequate and ineffective modification approval and monitoring processes.

4.4 Assessment of Effectiveness and Adequacy

4.4.1 From a purely procedural perspective, the modification processes highlighted above are effective and adequate in ensuring that Eskom's modification, approval and monitoring processes are aligned to its SCM Procedure 32-1034. This ultimately ensures that in undertaking modifications, approvals and monitoring, Eskom complies with the requirements and principles of the PFMA and general good corporate governance standards.

4.4.2 Notwithstanding the above, one cannot rule out the fact that from an implementation perspective, the modification, approval and monitoring processes are susceptible to political override, collusion and other corrupt practices. We note that various aspects of non-

compliance with SCM Procedure 32-1034 are discussed in greater detail in clause 2.6.7 of the procedure, which deals with the integrity of the procurement processes in Eskom.

4.4.3 It is therefore incumbent upon Eskom to tighten its oversight responsibilities in respect of the implementation of the modification, approval and monitoring processes and the implementation of SCM Procedure 32-1034 in general in order to derive the overall objectives of good corporate governance.

4.5 Contract Modifications – Increased Costs and Delays

4.5.1 There are various reasons why contract modifications often result in increased costs and delays, specifically with regard to the New Build Programme.

4.5.2 In order to contextualise the relationship between modifications and increased costs and delays on the New Build Programme, the factors listed below must be considered.

(a) Legacy issues arising out of the delayed decision to implement a Capital Expansion Programme in 1998:

(i) It was predicted in 1998 that the country would face an energy crisis by 2004 if its generation capacity was not increased.

(ii) However, a decision to delay the implementation of a Capital Expansion Programmes was made. This would eventually dictate the methodology through which the New Build Programmes would be implemented from 2006 onwards.

(b) Poor project planning and incomplete feasibility studies:

(i) The energy crisis in 2006 forced Eskom to fast track the implementation of the New Build Programme while simultaneously attending to emergency planning.

(c) Poor contracting strategies:

(i) The contracting strategy adopted, specifically with regard to Medupi (the Execution Partner model as discussed above), is responsible for some of the modifications, delays and cost escalations.

(d) Project team inexperience in the management and implementation of similar projects:

(i) There was a shortage of skills and experience needed to undertake and manage the implementation of a programme of the size of the New Build Programmes.

(e) Political override:

(i) Political pressure dictated time frames, specifically between concept design and project implementation.

(ii) There was therefore insufficient time dedicated to proper planning and contracting.

4.5.3 The prevailing view seems to be that as a consequence of the above mentioned issues (amongst others), the implementation of the New Build Programmes has encountered various modifications in relation to the following:

(a) quantities;

(b) quality;

(c) design changes;

(d) omissions;

(e) additional work;

(f) schedule changes;

(g) strikes;

(h) fatalities; and

(i) frivolous claims from contractors.

4.5.4 In almost each of the above aspects, Eskom has undertaken cost related modifications as a result of claims or compensation events linked to either the actual cost of the modification or standing time.

5 Item 2.6.4 of Task Order 1

5.1 As indicated above, item 2.6.4 of Task Order 1 states as follows: "whether there exists a contract performance monitoring system, in the maintenance of the Generation fleet".

5.2 The contract management framework discussed above applies to all engineering contracts in Eskom, including contracts for the maintenance of the generation fleet. We have been informed that all generation fleet maintenance contracts are currently NEC agreements which stipulate the following as part of the contract performance monitoring system:

5.2.1 Performance will be measured by the employer against those areas which contribute to the employer's business and for which the contractor is compensated;

5.2.2 Early warnings for potential risks that would arise out of the contractor's inability to provide resources required to do the work;

5.2.3 The contractor must maintain the agreed base crew for each designated power station all year round;

5.2.4 Changes to the base crew must be negotiated with the project manager;

5.2.5 The contractor must comply with quality procedures and codes, station needs, and the scope of the relevant contract or task order;

5.2.6 The contractor must adhere to programmes submitted by the project manager;

5.2.7 Completion of each task order occurs after the tests identified in the task order have taken place, the test are accepted by the supervisor, and the contractor has completed the task

order to such an extent that allows the employer to meet the operating requirements specified in the task order;

5.2.8 The evaluation team assesses the results of the performance of the plant and the contract annually;

5.2.9 The duties of the evaluation team are to:

(a) determine adjustments of the applicable fees;

(b) review plan performance;

(c) review productivity;

(d) review technical practices/applications;

(e) review site procedures and constraints; and

(f) review cost peculiarities; and

5.2.10 The contract fee is designed to reward excellent performance:

(a) a performance fee of 4.5% applies if the relevant performance target is achieved;

(b) a slip and rework incentive fee applies in terms of which (i) a bonus is earned for shortening of an outage, and (ii) penalties are imposed for the number of days lost due to slip and rework; and

(c) incentives apply in respect of weld repair rates.

5.3 Notwithstanding the existence of the above mentioned performance monitoring system, we were informed that the biggest driver of contract modifications and cost escalations with regard to maintenance of the generation fleet is the age of the generation fleet. We were informed that the average age of the majority of the generation fleet is between 30 and 40 years. As a result, the scoped/budgeted needs vary from the actual needs once the fleet is stripped for maintenance. However, we note that age of the Eskom generation fleet compares favourably with other jurisdictions where the performance of the generation fleet is more stable.

5.4 It appears that the challenges arising from fleet age are exacerbated by poor planning in so far as it relates to Eskom's failure to conduct the relevant outage maintenance in accordance with the fleet's maintenance philosophy.

5.5 Notwithstanding the above, one cannot rule out that to some extent the escalation of costs may be attributed to:

5.5.1 the small pool of fleet generation maintenance experts whose resources are stretched to meet Eskom's demands;

5.5.2 lack of sufficient technical capacity within Eskom to project manage and/or supervise the work done by the maintenance teams;

5.5.3 negligence by the maintenance teams;

5.5.4 deliberate misstatement of the level of work required at the scoping phase in order to get the relevant contract; and

5.5.5 small pool of original equipment manufacturers which narrows the scope of the spares market and subsequently leads to price escalation.

6 Recommendations

6.1 For Eskom to manage the challenges arising out of modifications and escalation of costs, we suggest the following.

6.2 There is a need to strengthen Eskom's capacity to plan for the implementation and management of capital intensive projects. Although there is sufficient skill and expertise within the organisation, deploying Eskom engineers to work alongside contractors would fast track skills development on similar programmes for Eskom engineers. Care should be taken in developing such programmes to ensure that contractor liability is not inadvertently transferred to Eskom. Appropriate legal support should be procured for these purposes. In this regard, a contracting strategy that mitigates and sufficiently transfers project risks between the parties must be explored in consideration of the unique needs of each project/programme.

6.3 A semi-autonomous Project Site Establishment should be constituted with the capacity to expeditiously attend to procurement, legal and technical issues on a day to day basis.

6.4 The capacity of project managers and engineers must be strengthened to enable them to expeditiously attend to project management issues as and when they arise.

6.5 The contract management support and oversight function that lies within the Contract Management Office must be strengthened to enable the unit to proactively intervene prior to risks escalating into cost or time related events.

6.6 All procurement practitioners must be trained in contract management skills to enable them to contextualise the impact of properly designed sourcing strategies on the entire project implementation value chain.

6.7 Adequate legal resources should be allocated to project managers to ensure that legally sound decisions are taken.

6.8 External technical expertise should be made available to objectively and independently advise project managers on the merits and demerits of pending modification requests. However, this must be balanced with the time scale within which a decision must be made in order to avert delays that could arise from a drawn out consultative process.

CHAPTER 7: SECURITY FAILURES AND ACCOUNTABILITY AT ESKOM AS A NATIONAL KEY POINT

1 Background

1.1 This Chapter deals with item 2.7 of the Scope of Work set out in Task Order 1.

1.2 Item 2.7 of Task Order 1 relates to security failures and accountability at Eskom as a national key point. Under this heading the following specific items are provided for:

1.2.1 "2.7.1 Eskom's strategies/plans with regard to safeguarding of Key National Points; and

1.2.2 2.7.2 Whether there is any reason why the persistent information leaks are not being arrested? If they are or have been dealt with, whether there has been a sanction imposed upon the responsible people."

1.3 Various employees in Group Security were interviewed, and documents reviewed, for the purposes of this section of this Report.

2 **Item 2.7.1 of Task Order 1**

2.1 As indicated above, item 2.7.1 of Task Order 1 refers to "Eskom's strategies/plans with regard to safeguarding of Key National Points".

2.2 We consider below the adequacy and effectiveness of the strategies and plans ("strategies") in place to safeguard the Eskom National Key Points ("NKP" or "NKPs") in terms of the risks associated with security issues, the NKP legal regime and the management of security related concerns at NKPs and at management level.

2.3 Background

2.3.1 The owners of NKPs are subject to a number of duties in relation to security.

2.3.2 Several of Eskom's facilities have been declared NKPs and Eskom is therefore required to comply with the requirements of the NKP legal regime in respect of these facilities. These facilities include substations and all the power stations. A list of the NKPs is set out in Appendix 1 to this Chapter.

2.3.3 The Eskom NKP sites are managed at site level. The manager at site level reports to Group Security.

2.4 The NKP Legal Regime

2.4.1 The applicable legislation regulating National Key Points is as follows: NKPs Act No. 102 of 1980, as amended ("NKP Act"); and Regulations GNR.1731 of 1982: Regulations regarding the Appointment of Guards by Owners of NKPs and the powers of such guards ("NKP Regulations").

2.4.2 In terms of the NKP Act, a place or an area can be declared as a NKP by the Minister of Police of the Republic of South Africa (the "Minister") if, at any time, it appears to him/her that such a place or area is so important that its loss, damage, disruption or immobilisation may

prejudice the Republic of South Africa, or whenever the Minister considers it necessary or expedient for the safety of the Republic of South Africa or in the public interest.

2.4.3 Declaration of an area or a place as a NKP imposes on its owner a duty to take steps aimed at ensuring the security of the NKP to the satisfaction of the Minister. The owner is required to bear the relevant costs to such extent as the Minister may determine.

2.4.4 Failure to comply with the obligations imposed in respect to safeguarding the NKPs, as provided in the NKP Act and the NKP Regulations, is an offence.

2.4.5 Notably, the NKP Act imposes liability on any person who obstructs security of a NKP, as well as for unauthorised disclosures of any information relating to the security measures applicable at or in respect of any NKP or in respect of any incident that occurred there.

2.4.6 The Regulations set out detailed requirements related to employment of security guards at NKPs. These requirements concern, inter alia, the Minister's authority to set the number of security guards for a particular NKP, mandatory provisions to be included in the employment agreements with security guards, job application procedures, persons prohibited from being hired as security guards, provisional hiring, training and issuance of a certificate of competency by the Minister to the security guards. A prospective employee security guard is required to sign a declaration of appointment as security guard in the form provided in Annexure A to the Regulations. Section 8 of the Regulations outlines the reasons for dismissal from a position of a security guard at a NKP.

2.4.7 The Regulations provide security guards with broad powers related to safeguarding the premises of the NKP, including identification procedures, examining articles, materials, vehicles, containers and other objects, taking necessary actions in case of danger of a threat, procedure of conducting searches and seizures, and making arrests.

2.4.8 Owners of NKPs are required to supply security guards with the necessary equipment, including, inter alia, fire-arms or other necessary accessories, weapons and ammunition, etc. The owner is required to arrange for secure storage of such movable items and to ensure that they are not used by the security guards when off duty, unless permitted to do so.

2.4.9 The Regulations also require a control security guard representing the owner to be present at all times when security guards are on duty and provide for the appointment of a chief security officer.

2.4.10 The Regulations require the owner of a NKP to keep an "Occurrences Book" for the purposes of logging occurrences, incidents and acts prejudicially affecting security of the NKP, if any. Furthermore, the Regulations require owners to issue internal regulations in terms of NKP Act in the form provided in Annexure B to the Regulations, in order to track security guard appointments.

2.4.11 Failure to comply with the obligations imposed in respect to safeguarding NKPs is an offence and is subject to imposition of a fine or punishment by imprisonment.

2.4.12 The Regulations also impose liability, for, inter alia:

(a) interfering with the security guards in the performance of their duties;

(b) provision of false or incorrect information when applying for a job as a security guard at a NKP;

(c) various violations of obligations by guards and owners; and

(d) unauthorized disclosures of information such as composition or membership of security guards, their duties, methods, movements and deployment of security guards, or occurrences or acts prejudicially affecting the security of a NKP.

2.4.13 In terms of the NKP Act and the NKP Regulations, the Minister is provided with a wide range of powers related to regulating and setting security requirements for specific NKPs.

2.5 Security Issues

2.5.1 Appendix 2 to this Chapter deals with security issues relating to the NKPs.

2.6 Security Issues Discussed at MANCOM and Other Committees

2.6.1 Appendix 3 to this Chapter deals with security issues discussed at MANCOM and other committees.

2.7 Interviews with Employees

2.7.1 A synopsis of the interviews held with employees is provided in Appendix 4 to this Chapter.

2.8 Findings

2.8.1 Analysis of Eskom's NKP documents indicates that are several internal policies and procedures aimed at safeguarding NKPs from security risks. These include:

(a) the Security Recovery Plan;

(b) the Security Strategy programme;

(c) the Information Security Programme;

(d) the data leakage protection tool;

(e) the locking down and encryption of USB ports;

(f) file rights management plan; and

(g) an action plan to deal with potential cyber security attacks.

2.8.2 However, it appears that these security policies have not been successfully implemented despite the issues having been identified as far back as 2013. The A&R minutes of 9 May 2014 reports that "initiatives were being considered to provide early warning signs" for security breaches. This is one year after the Board approved a Security Strategy Programme which was supposed to bring major change and enforce certain controls.

2.8.3 Internal policies and procedures are sometimes not complied with and compliance is not monitored. There are indications that responses to security issues are knee-jerk responses once the breaches have occurred. There appears to be very little pro-active strategies in place – there appears to be inadequate planning for the prevention of security breaches.

2.8.4 Security breaches occurred at most NKP sites, such as:

(a) sabotage at power stations;

(b) theft of data equipment and the information contained on the data equipment;

(c) picketing at power stations and lack of co-operation from the SAPS;

(d) potential cyber security attacks;

(e) information leakages by email, telephone and employees;

(f) information leakages relating to tender information;

(g) the risk of bugging devices in meeting rooms; and

(h) potential hacking attempts.

2.8.5 An analysis of the evidence as reported in the documentation indicates that the threats to security of the NKPs are, inter alia:

(a) lack of security technology equipment;

(b) inadequate vetting process of employees, couriers and contractors;

(c) inadequate reporting and timeous investigation of security related incidents;

(d) security at point of entry to NKPs;

(e) investigative capacity of security guards;

(f) classification and protection of confidential information;

(g) risks relating to security technology systems;

(h) inadequate storage facilities for confidential information;

(i) inadequate penetration testing (hacking) equipment;

(j) inadequate checks on system software;

(k) inadequate asset identification;

(l) inadequate key control to sensitive areas;

(m) inadequate firearm control; and

(n) inadequate use of NDAs and confidentiality agreements.

2.8.6 The Security Strategy Programme that was approved by the Board in 2013 was intended to bring major change and enforce certain controls. Despite this the following incidents occurred as indicated in the documents that were reviewed:

(a) 2013 – there was still no information retention policy procedure in place;

(b) February 2014 – there was a reported breach of tender information;

(c) March 2014 – it was detected that there was non-compliance with the procedure for communicating with bidders;

(d) July 2014 – cyber security was a major concern - there was an incident of information leakage;

(e) October 2014 – Information was leaked to a newspaper; and

(f) November 2014 – a bugging device was found in the executives' meeting room.

2.9 Findings

2.9.1 Of concern is the "silo" mentality that exists between Group Security, the IT department and Forensics. It was stated during the interviews that Group Security only deals with the implementation of the NKPA – a sense of accountability in respect of security threats that do not fall expressly within the requirements of the NKPA seems to be lacking. Group Security ("GS") is responsible for the security at NKP sites. There is no indication that GS, Forensic and IT division work towards the same purpose in securing the NKP sites.

2.9.2 An assessment of the security risks indicate that the majority of the risks are not directly associated with the NKPA. Group Security should redesign its strategies and plans to adequately take into account non-NKP risks, as their threat to security of NKP sites cannot be discounted.

2.9.3 Interviews with Group security indicated that as an alternative to imposing sanctions in terms of the NKPA, reliance was placed on disciplinary procedures, dismissal being the last resort. It was mentioned during the interviews that Eskom has not made an example of anyone yet. This suggests that these adequate structures for the imposition of sanctions are not in place.

3 Item 2.7.2 of Task Order 1

3.1 As indicated above, item 2.7.2 of Task Order 1 refers to "[w]hether there is any reason why the persistent information leaks are not being arrested? If they are or have been dealt with, whether there has been a sanction imposed upon the responsible people".

3.2 There are indications that there have been incidents of information leaks. These relate to tender document information, board meeting discussions and bugging devices

3.3 Non-disclosure agreements are not consistently utilised.

3.4 There are indications that information leaks are not dealt with effectively at the point of impact and at EXCO level. When information leakages were brought to the attention of EXCO there appeared to be no urgency in addressing the serious risk.

3.5 It was highlighted during our interviews that "an example has not been made of anyone". There appears to be a lack of capacity to investigate the incidents. When investigations are initiated these are not conducted swiftly. Consequently the problem cannot be addressed and arrested effectively.

3.6 Although issues surrounding IT security were identified in 2013-2015, these issues do not seem to have been adequately addressed.

3.7 The persistent information leaks are not arrested because there are no strategies or checks and balances in place to prevent, intercept, monitor or punish information leaks. There seems to be inadequate training of employees on the handling of confidential information.

4 Recommendations

4.1 Attention must be given to the "business as usual" environment. Security standards and technology must be upgraded and implementation of the updated policies must be fast-tracked. The silo mentality of different divisions and units that deal with security must be addressed.

4.2 GS must foster relationships with the SAPS in order to ensure that security risks are adequately addressed.

4.3 There should be regular stakeholder meetings with contractors to address security risks and to discuss sanctions for security breaches.

4.4 Emphasis should be placed on continuous employee training relating to security risks.

4.5 IT policies relating to information security must be implemented and compliance must be strictly monitored.

4.6 The adequacy of NDAs and confidentiality undertakings required of employees and contractors should be reviewed and suitable steps taken.

4.7 A comprehensive policy relating to information security should be developed. The policy should deal with IT aspects, debugging, security risks, training and the like.

4.8 Spot audits of the security recording and reporting at NKP sites should be conducted. The occurrence books should be inspected to see if security incidents were reported.

COMMISSION OF INQUIRY INTO STATE CAPTURE

Appendix 1 to Chapter 7

National Key Points

Province	NKP Name	SAPS Station	Date Declared
Free State	Perseus Transmission Station	Dealesville	29 May 1981
Free State	Lethabo Power Station	Viljoensdrif	03 April 1985
Northern Cape	Hydra Transmission Station	De Aar NC	10 February 1982
Gauteng	Apollo Transmission Station	Lyttelton	10 February 1982
Gauteng	Minerva Transmission Station	Wierdabrug	29 May 1981
Gauteng	Eskom National Control Centre Simmerpan	Germiston	10 February 1982
Gauteng	Grootvlei Power Station	Heidelberg	30 June 2010
KwaZulu Natal	Impala Transmission Station	Empangeni	10 February 1982
KwaZulu Natal	Pegasus Transmission Station	Dundee	10 February 1982
KwaZulu Natal	Drakensberg Power Station	Bergville	10 February 1982
KwaZulu Natal	Athene Transmission Station	Empangeni	18 March 1997
Mpumalanga	Camden Power Station	Ermelo	27 March 2009
Mpumalanga	Hendrina Power Station	Hendrina	10 February 1982
Mpumalanga	Kriel Power Station	Kriel	10 February 1982
Mpumalanga	Arnot Power Station	Hendrina	10 February 1982
Mpumalanga	Sol Transmission Station	Secunda	10 February 1982
Mpumalanga	Matla Power Station	Kriel	10 April 1982
Mpumalanga	Duvha Power Station	Witbank	10 April 1982
Mpumalanga	Tutuka Power Station	Standerton	03 April 1985
Mpumalanga	Kendal Power Station	Ogies	26 September 1988
Mpumalanga	Komati Power Station	Blinkpan	30 June 2010
Mpumalanga	Majuba Power Station	Amersfoort	25 August 1997

Mpumalanga	Vyeboom Pumping Station	Badplaas	11 January 2011
Mpumalanga	Bosloop Pumping Station	Machadodorp	11 January 2011
Mpumalanga	Nooitgedact Pumping Station	Carolina	11 January 2011
Mpumalanga	Matimba Power Station	Lephalele	26 September 1988
Western Cape	Acasia Transmission Station	Cape Town	10 February 1982
Western Cape	Droëriver Transmission Station	Beaufort West	10 February 1982
Western Cape	Koeberg Nuclear Power Station	Melkbosstrand	10 February 1982
Western Cape	Gourikwa Power Station	Mosselbay	24 November 2009
Western Cape	Ankerlig Power Station	Cape Town Atlantis	24 November 2009
Western Cape	Muldersvlei Transmission Station	Klapmuts	15 June 1987
Eastern Cape	Grassridge	Swartkops	01 March 1980

COMMISSION OF INQUIRY INTO STATE CAPTURE

Overview of Security Issues

1. **Introduction**

1.1. This Appendix sets out key points regarding security issues at the NKPs.

1.2. This information has not been tested and verified at this point in the Investigation.

2. **Security Issues**

2.1. There is a Security Recovery Program underway at Eskom.

2.2. Analysis of available information shows that several incidents have occurred at various National Key Points of Eskom. These incidents have been reported in the JPC minutes and relevant security assessments. The incidents include burglaries (Minutes of the JCP Meeting held in Duvha on 11 February 2015, p. 6), concentration of job seekers outside of power stations (Minutes of the JCP Meeting held in Duvha on 11 February 2015, p. 4), and theft (JPC Meeting held in Kendal on 15 February 2015, p.3; Lethabo Security Threat Risk Assessment and Security Plan, p. 21 (document is dated May 2015 per metadata); JPC Meeting held in Matimba on 11 December 2014, p.13; Matla JPC Meeting Presentation, held on 6 March 2015, p. 7; Security appreciation Grassridge ss 2014 2015, p. 8; Security Appreciation Hydra ss 2014 2015, p. 8; JPC Meeting Presentation Jan 15, p. 3; Sol TRA and Security plan, p. 17).

2.3. The Arnot Sabotage

2.3.1. A sabotage incident is alleged to have occurred at Arnot (JPC Meeting at Arnot held on 5 March 2015, p. 2). At the JPC meeting in Arnot, the concern was raised that this sabotage incident was never reported to the NKP Secretariat.

2.3.2. The responsible person reported that the alleged sabotage was still not confirmed. He planned to discuss the matter with the involved parties and then register the case if required (JPC Meeting at Arnot held on 5 March 2015, p. 4).

2.4. Theft Of Data Equipment

2.4.1. Multiple security problems have been reported at various NKPs.

2.4.2. It was reported that cell phones, laptops and cameras were stolen from the mobile offices at Kusile (JPC Meeting held in Kendal on 15 February 2015, p. 3; JPC Meeting at Arnot help on 5 March 2015, p. 3).

2.4.3. At Matimba power station the "most reported cases were laptops that were stolen from vehicles." It was uncertain how these were taken because there was no report of damage to the vehicles involved. (JPC Meeting held in Matimba on 11 December 2014, p. 9)

2.4.4. At Camden the theft of laptops led to the loss of important and confidential information. These losses should have been reported to the State Security Agency. (Camden JPC Meeting Minutes dated 12 September 2014, pp. 2-3)

2.4.5. The status of security issues (occurrences and recommendations) for Lethabo in 2015 was reported as "unacceptable". (Lethabo Security Threat Risk Assessment and Security Plan, p. 22 (document is dated May 2015 per metadata))

2.5. Lack of Security Technology Equipment

2.5.1. In many instances access controls and cameras were still to be installed. (JPC Meeting held in Kendal on 15 February 2015, p. 4; Security Appreciation Hydra ss 2014 2015, p. 10; Minerva JPC Minutes, 2 December 2014; Sol TRA and Security plan, p. 23)

2.5.2. The lack of hardened security doors; burglar proofing or high quality security locks were reported as security risks. (Apollo TRA Assessment of Risks, p. 16)

2.6. Vetting Process

2.6.1. It was reported that not every employee and contractor at Grassridge and Hydra was subjected to vetting. (Security Appreciation Grassridge ss 2014 2015, p. 10; Security Appreciation Hydra ss 2014 2015, p. 10)

2.7. Reporting Security Incidents

2.7.1. Security breaches were not reported or not reported timeously at Hydra. (Security Appreciation Hydra ss 2014 2015, p. 9)

2.7.2. It appears that the same applied for reporting at Arnot in light of the fact that the alleged sabotage incident was not reported to the NKP Secretariat.

2.8. Security at Point of Entry

2.8.1. It was recorded that the risk of intrusions through the Grootvlei main gate was high. In addition the status of work was reported as unsatisfactory. (Security Plan 2013(1) Grootvlei (4) 2013 07 18, p. 94)

2.9. Multiple Security Risks at Apollo

2.9.1. The security risks at Apollo include the following:

2.9.1.1. the old age of security personnel at NKP's;

2.9.1.2. the low interest in security – security is not seen as a priority (Apollo TRA Assessment of Risks, p. 13); and

2.9.1.3. the limited investigations of incidents due to lack of investigation skills. (Apollo TRA Assessment of Risks, p. 14)

2.9.2. Reports also admit that even though there are systems in place, they are not always followed. An example was made of Apollo where an information classification system is in place but classified information is freely available or accessible. This is allegedly due to documents not being locked.

2.10. Vetting of Contractors

2.10.1. Despite a vetting policy, contractors were not vetted. This creates the opportunity for contractors and/ or contracting employees with criminal records to gain access to

Eskom's property (Apollo TRA Assessment of Risks, p. 17).

2.11. Classification of Confidential Information

2.11.1. It was reported that classified documents were not properly marked and handled. This could potentially lead to interception of confidential documents by couriers or any other person interested in selling the information.

2.11.2. An incident was reported at Perseus where classified documents were not properly marked and handled (Perseus TRA, p. 15).

2.12. IT Security System

2.12.1. It was reported that no encryption procedures were in place to protect information stored on the IT network (Apollo TRA Assessment of Risks, p. 15).

2.12.2. No electronic access existed at the main entrance of Apollo and Athene. It was possible to download information and sell it to other companies or individuals.

2.12.3. At Pegasus, Athene and Impala information was not categorised and classified. It was possible that information classified as "Top Secret" could be shared with any person that was not screened. Similarly, the absence of categorisation or classification of documents could lead to classified documents lying unattended in offices.

2.12.4. There were no secure facilities to store classified information. Hence, classified information, either marked or unmarked, was freely available and accessible to anyone.

2.12.5. The internal couriers that were used were not subjected to security vetting.

2.12.6. There was no encryption equipment available. (Pegasus TRA 2014, p. 14. Impala TRA 2014, p. 14. Athene TRA 2014, p. 14)

2.12.7. There were no regular internal checks on system software for configurations.

2.12.8. In the absence of penetration testing hacking was possible and viruses could infiltrate the system. (Apollo TRA Assessment of Risks, p. 18; Athene TRA 2014, p. 17)

2.13. Identification of Assets

2.13.1. It was reported that assets could easily be stolen and sold without positive identification.

2.13.2. The absence of asset audits could lead to unnecessary risks. This promotes thefts and irregularities. (Apollo TRA Assessment of Risks, p. 18; Athene TRA 2014, p. 17)

2.14. Integrity of Security Systems

2.14.1. It was reported that not all security systems were consistently operational. This could potentially jeopardise the safety and security of Eskom personnel and assets. (Pegasus TRA 2014, p. 15)

2.14.2. In the absence of certification and accreditation of ICT assets, information could be downloaded and sold to other companies or individuals and cause major problems for the organisation as a whole. Furthermore, assets could easily be stolen and sold

without positive identification.

2.14.3. Consequently the ownership of assets could not be proven in a court of law even if arrests were made. (Pegasus TRA 2014, p. 17. Athene TRA 2014, p. 17; Impala TRA 2014 p. 17)

2.14.4. In the absence of a dedicated security manager at Athene, the Engineering Assistant is responsible for monitoring and reporting ICT. This is not his core function. The absence of security monitoring can potentially increase thefts and irregularities. (Athene TRA 2014, p. 17)

2.15. Multiple Security Breaches at Perseus

2.15.1. Perseus has no electronic access control system installed at the main entrance.

2.15.2. Keys to sensitive areas are available from the Engineering section. There is no proper key control.

2.15.3. Maintenance is only carried out when the security systems are faulty.

2.15.4. In the absence of an electronic access control system it is impossible to do a trace on persons who enter the premises. Consequently unauthorised access may be gained into sensitive areas. (Perseus TRA, p. 16)

2.15.5. There are no electronic records available for record purposes. (Perseus TRA, p17)

2.15.6. There are no regular internal checks on the system software for configurations, or verification. This can lead to the loss of information or viruses infiltrating the system. (Perseus TRA, p 18)

2.16. Information Leakages at Sol, Acacia, Droeriver and Muldersvlei

2.16.1. There were reports of various risks of information leaks at Acacia, Droeriver and Muldersvlei. (Acacia, pp. 17-18, Droeriver, pp. 17-18; Muldersvlei, p. 18-19)

COMMISSION OF INQUIRY INTO STATE CAPTURE

Appendix 3 to Chapter 7

Security Issues Discussed at MANCOM and Other Committees

1. Introduction

1.1. This Appendix deals with security issues discussed at MANCOM and other committees.

1.2. This information has not been tested and verified at this point in the Investigation.

2. **Security Issues Discussed at MANCOM and Other Committees**

2.1. The minutes of the quarterly MANCOM meeting 04/2012-2013 held on 04 February 2013 provides as follows:

"(e) Executives were informed that if there was a need for security they should ask for it instead of going out and engaging contractors.

(f) It was recommended that the DE: OCE in conjunction with Mr Martin Strauss: SM Security would be responsible for all liaison and outsourcing of security requirements with security agencies within the country.

(g) An audit on firearms and ammunition control had been undertaken. It was noted that there was a need to tighten up on matters pertaining to firearms and ammunition control."

2.2. Minutes of the EXCO Management Committee Operations "Mancom Ops" (Meeting 03/2013/14). It was noted that many problems were experienced in Hendrina in the last couple of days and 300 people had blocked all the entrances to the power stations on the day of the meeting. The Police were called and they pitched up and asked what they were expected to do. It was noted that this was not the way to deal with the protection of National Key Points because the Police were supposed to make a decision and assist. It was noted that there were about 300 people walking towards the gates of the Power Station with bricks and tyres and they wanted to hand in a memorandum but they wanted the Police to leave. The crowd had been sitting outside the gate to the Hendrina Power Station. It was resolved that the feedback regarding the picketing at various ESKOM sites was noted.

2.3. At point 12.2.3 of the same minutes Business Risk: Compromised Data Confidentiality discussed Compromised Data Confidentiality. It was reported that there were large volumes of data and electronic information flowing through various applications infrastructure (e.g., laptops, iPads, etc.). This information was sometimes not classified properly. Information transfer was not controlled and there was little awareness of sensitivity of information from employees. Controls have been put in place to monitor the movement of information through electronic means. One of the controls put in place was the normal disciplinary processes available in Eskom to deter employees from sharing information. Security Awareness Programs have also been implemented as well but need improvement. An Information Security Programme has been launched and one of the initiatives was Data Leakage Protection tool that will include defined business rules. The other initiatives were locking down and encryption of the USB ports as well as the File Rights Management to enable the employees to grant rights to the files they create. It was noted that the issue to highlight was the classification of information and information transferred not controlled. The Board's resolution was merely that "the presentation on Business Risk: Compromised Data Confidentiality is noted."

2.4. At point 12.2.5 of the same minutes, Business Risk discussed Cyber Security Attacks. It was recorded that Cyber Security threats could result in electricity supply interruptions. No major action plan steps were taken.

2.5. EXCO report to the Board at the meeting held on 29 -30 July 2013. The board approved the Security Strategy Programme for Information Security. The Board was informed that the programme would bring major change to the organisation and enforce certain controls.

2.6. Minutes of the Board Tender Committee Meeting 07/2013-14 held on 16 October 2013. It appears as though an incident relating to the leakage of tender information was discussed. A member expressed concern that Security management did not have an existing information retention policy and procedure as they dealt with critical information, especially for commercial processes. Management undertook to follow up with the head of security and revert to the Committee at a future meeting. It was reported that subsequently, management had installed infrastructure to ensure that there was adequate storage for tender related information. Management was requested to be diligent in data management procedures to ensure alignment with applicable regulation of information management, especially on the retention of information. Management assured the Committee that the newly implemented processes would address the said requirements.

2.7. Minutes of the Eskom Board Meeting B12-2014/15 held on 16 January 2014. The chairman stated that security of information and leakages was of utmost importance and the Board needed to address this, taking into cognisance interaction with their offices either via electronic medium or telephonically. This matter will be dealt with further in the in-committee session.

2.8. Minutes of the EXCOPS 16/2013-14 meeting held on 25 February 2014. The Acting GE: T&C reported that it was discovered that some of the Free Carrier Agreement (FCA) transporters were in the possession of the confidential submission documents containing the results of the due diligence exercise conducted by Koikanyang Inc. on behalf of Eskom, which were to be tabled at EXCOPS on 25 February 2013. An investigation would be conducted to find out where the leak originated from. A concern was raised that Members of EXCOPS and Officials had not received their appointment letters from the Office of the Company Secretary. This should have included non-disclosure and confidentiality clauses.

2.9. Audit & Risk Committee Report to the Board regarding decisions arising from meeting held on 9 May 2014. At 4.2.1. There is a discussion on the Catalyst Report: Assurance for the period January to March 2014. It is stated that "the Chairman noted a concern re the leakage of tender information and the risk to the business in this regard. The FD confirmed that pro-active initiatives were currently being considered by management to provide early warning signs."

2.10. Minutes of the EXCOPS 17/2013-14 meeting held on 24 March 2014. 2nd Finding (of the Auditors): Contravention of Breach of C-Max protocols: Description of the risk. The requirement was that for all transactions that are presented at EXCOPS and BTC, all communication with bidders during the evaluation phase should take place through the authorised C-Max email account and landline. In the course of review, the Auditors noted instances where communication with bidders took place outside C-Max. They could therefore not attest to the completeness and content of all clarifications and communication that took place in this period (February 2013 to 31 January 2014).

2.11. Audit & Risk Committee Report to the Board regarding decisions arising from meeting held on 31 July 2014. In relation to the Operational Technology Governance, Risk, Security,

Compliance and Assurance Report 2014/15 for Quarter 1, it was stated that "cyber security as well as physical risk such as USB sticks were now a bigger concern. In relation to the Catalyst Report: Forensic as at June 2014, it was stated that "The worrying leakage of confidential information about the supplier, as well as leakage of information by employees was increasing. This matter was discussed in detail at EXCO where certain hard controls had been suggested for implementation to ensure the reduction in information leakage. This included encryption that was mentioned in the IT report which should assist in terms of tracking information in the event of loss of a laptop, tracing and tracking printed information as well as addressing the issues of soft controls such as creating awareness to employees that they need to keep Eskom's information confidential.

2.12. Minutes of the EXCO-PC 11/2014-15 meeting held on 22 October 2014. "...a general comment was raised that a certain newspaper was in possession of the majority of the information contained in the minutes. A detailed discussion ensued on this matter where issues such as possible system penetration, management of conflict of interest, signing of the non-disclosure agreement, as well as information leakage were discussed. It was recommended that the behavioural aspect of employees in relation to information leakage should be addressed, as well as verification of whether or not the systems had been penetrated. It was further recommended that, during the audit of the personnel files, it should be verified that all employees have signed the additional confidentiality agreement.

2.13. Minutes of the Eskom Board In-Committee Meeting B14-2013/14 held on 28 November 2014. "The Chairman invited ideas from the members to enhance the security of information that was urgently required, given the recent leakage of information and bugging of meeting rooms. It was recommended and agreed that cell phones not be brought into the Boardroom and only slates be allowed into the meeting room...Eskom security, in consultation with the Company Secretary, would be requested to disable some functionality and implement blocking modes or initiate the necessary steps to address any security gaps."

2.14. Action items arising from the Board in-committee meetings held up to 16 January 2015 to be tabled at the meeting to be held on 26 February 2015. An investigation should be conducted into Eskom's recording systems security...including breach of security which occurred on Ms Luthuli's slate.

2.15. At a MANCOM quarterly meeting in February 2014, it was recorded that Government Agencies (e.g., SAPS) were approached to work with Eskom around the protection of its assets, especially those under construction and to treat them as national key points. (MANCOM Review Minutes 4 February 2013, at p. 23)

2.16. Minutes of the EXCO Meeting 20/2014-15 held on 5 February 2015. It was stated that the CE should be kept up to date on any hacking attempts. In this regard the GE: SD stated that there were serious concerns around IT security and his department was working with SAPS around IT security. It was recommended that the SAPS be requested to brief the CE on this issue and the acting CIO be requested to brief the EXCO on the status of Eskom's IT security. "The IT Governance, Risk Security, Compliance and Assurance Report is noted and recommended for submission to the Audit and Risk Committee for information".

2.17. Minutes of the EXCO Meeting 06/2014-15 held on 26 March 2015. IT Risk security. It was reported that the issue of IT Risk had been mentioned to the Chairman and the previous CE (Mr Matona) but these actions had not been completed in full. The Group IT Business Plan: Information Security Programme was tabled for information, details of which were included in the meeting pack. It was requested that this be held over to the next meeting to allow the Acting GE: T&C to review the contents.

2.18. Risk and Resilience Reports

2.18.1. Section 9.3 (b) of the Risk & Resilience Eskom Quarterly Report Q1, pp. 12, 24. Quarterly Action List MANCOM April 2013, p. 3 provides that:

> *"Action plans to be available regarding the Security Recovery Project, looking at National Key Points by end of March….In addition the security response plans of NKPs are being evaluated and gaps are being addressed with the business units……. As a component of the SRP the physical security designs including user requirement specifications for critical sites have largely been developed and a business case for implementation is being drafted. In addition the medium term corrective actions will be released to the business for implementation during the next quarter. The compliance to the Firearm Act has also been audited and the process for fingerprint and psychometric assessment is 70% complete."*

2.18.2. The Risk and Resilience Quarterly report to MANCOM 2013-06-24-25 similarly mentions National Key Points. It referred to the tendency of violence associated with labour unrest/volatility that increased the risk of unruly and disruptive behaviour by the Eskom staff. ……The previous control of being an 'Essential Services' that Eskom relied on is still not resolved by the Essential Services Committee (ESC) and even so, whether an essential service or a national key point, those agreements have not proven to prevent labour unrest or wild cat strikes.

2.18.3. One of the risk and resilience snapshot reports identified the risk of compromised data confidentiality (Data leakage). It referred to the risk of Eskom's confidential data falling in the wrong hands leading to damaged Eskom image and reputation caused by inadequate document management of sensitive information. (9.3 (c) Risk and Resilience Appendix B Business Risks, p. 2)

COMMISSION OF INQUIRY INTO STATE CAPTURE

Appendix 4 to Chapter 7

Synopsis of Interviews

1. **Introduction**

1.1. This Appendix sets out key items of information gathered in the course of interviews relating to Chapter 7 of this Report.

1.2. This information has not been tested and verified at this point in the Investigation.

2. **Eskom as a NKP**

2.1. Eskom has 32 NKP sites which include all the power stations and select substations.

2.2. The area within the designated NKP site is managed by "in-house" security guards. The area outside of the designated NKP site is managed by contract security companies.

2.3. Security at NKP sites is managed in terms of a security design plan for power stations and substations. These plans were not available for inspection but can be made available.

2.4. There are no major threats to security of NKPs. There is full compliance with the NKP Act.

2.5. A breach of security report is submitted to the compliance office every quarter. The compliance department compiles a bi-annual report for submission to MANCOM.

2.6. Security breaches for the area under review include the following:-

2.6.1. damage to security fences which is reported to the South African Police service ("SAPS");

2.6.2. submission of incorrect information by applicant security guards relating to criminal background checks. This disqualifies the applicant from selection and appointment as an Eskom security guard;

2.6.3. theft of computer and related equipment which is reported to the State Security Agency ("SSA"); and

2.6.4. theft of copper which is reported to the SAPS.

2.7. A new system of incident reporting has been introduced on the SAP IT system.

3. **Information Leakages**

3.1. It can be expected that information leakages will occur within the organization.

3.2. All information leakages are dealt with by Forensics. All IT breaches are dealt with by the IT division in collaboration with Forensics.

3.3. Some interviewees indicated that information leakages and IT issues do not fall under their mandate.

4. **Assessment of Eskom's Management of Security Breaches**

4.1. It was reported that Eskom did "not make an example" of any person who committed a security breach. This only refers to incidents where Eskom was made aware of the security breach.

5. **The Vetting Process**

5.1. Every Eskom employee goes through a vetting process which is conducted by SSA. Employees in more senior positions are subjected to more rigorous vetting procedures.

5.2. A potential weakness is the fact that a position is subject to the vetting process as opposed to key individuals.

5.3. Those individuals in positions that require stricter security clearances have to sign an NDA. A vetting certificate is issued once the process has been completed.

6. **Confidentiality within the Organisation**

6.1. The interviewees were uncertain (i) whether or not employees sign a confidentiality agreement prior to commencing employment at Eskom, and (ii) whether contracts of employment deal with confidentiality.

6.2. The interviewees were uncertain whether board members sign confidentiality agreements regarding the discussions that take place during board meetings.

7. **The Appointment of Security Guards**

7.1. Security guards are appointed directly by Eskom and are deployed to all NKP sites. Security for areas outside the designated NKP sites is managed by outsourced security companies.

7.2. A security manager is stationed at each NKP site. Security at the NKP site is implemented in terms of the security plan for each site. The security plan is determined according to the risk assessment for that site.

7.3. The security manager assesses the sufficiency of manpower deployed to the site and may request more manpower should there be such a need.

7.4. It was stated that 75 security guards are ideally required for each NKP. Compliance with this target has not been reached yet. One of the obstacles to complying with this target was the embargo on appointments of security guards dating in 2013. In the event of high security threats to NKP sites, additional security guards were employed.

8. **Training of Security Guards**

8.1. Applicants to be security guards have to be South African citizens who do not have a criminal record. Successful applicants receive 12 months' training in security procedures and fire-arm training. Applicants have to be "fit and proper". Accordingly, applicants are subjected to psychological assessment prior to appointment.

8.2. Successful applicants must obtain a competency certificate from the SAPS before firearms are issued to them.

8.3. All security guards undergo at least 2 training sessions per year.

9. **Criminal Conduct by Security Guards**

9.1. The details of all security guards who are deployed to NKP sites are stored on a database.

9.2. In the event that any criminal activity is reported regarding a security guard, the guard is removed from the NKP and the incident is reported to the Regulator. The firearm licence and firearm of that security guard is immediately removed from his or her possession.

9.3. Dismissal from employment is regarded as a severe penalty. In most instances breaches in the code of conduct involves deployment to another position where a firearm is not required.

10. **The Security Inspectorate ("Inspectorate")**

10.1. The Inspectorate is responsible for the safekeeping and storage of all firearms and ammunition.

10.2. The Inspectorate comprises the National Armory division with its offices at MegaWatt Park. The Armory manager heads the Inspectorate.

10.3. All security guards receive training on handling pistols, rifles and shotguns.

10.4. At site level the firearms are stored in a safe which has a two or three key control. This means that two or three individuals are simultaneously required to unlock a safe. At any given time the keys to open a firearm safe are not kept in the possession of one person.

10.5. A firearm register and key control register exists at each site.

10.6. Each security guard is issued with a permit to handle and possess a firearm.

11. **Firearm Related Incidents**

11.1. There have been firearm related incidents where security guards were involved in shooting incidents. In such incidents the relevant security guard's firearm and permit was withdrawn immediately. This is carried out by the Security manager at site level.

11.2. The incident must be reported to the immediate line manager, National Armory and Group Security.

11.3. Group Security must report the incident to the NKP office and decide which office is required to investigate the incident. All criminal non-compliance incidents are investigated by Group Security. All internal procedural non-compliance incidents are investigated at site level.

12. **The Bugging Incident**

12.1. One of the interviewees was aware of an alleged "bugging incident".

12.2. Group Security does have in its possession equipment to detect interception devices.

12.3. Previously, this equipment was used regularly to "sweep" meeting venues as early as three days before the time and to keep the venue "sterile".

12.4. These precautions have not been implemented for a while and the equipment is outdated. There is a supplier who is able to update the equipment.

12.5. The "bugging" incident amounted to nothing more than "the paranoia of the executive at the time. A sweep was done of the executive's office and nothing was found. Forensics compiled a report regarding the incident.

COMMISSION OF INQUIRY INTO STATE CAPTURE

Schedule 1

Terms of Reference

This schedule contains the terms of reference that formed part of Eskom's RFP.

TERMS OF REFERENCE FOR A FORENSIC FACT FINDING ENQUIRY COMMISSIONED BY ESKOM HOLDINGS (SOC) LTD (hereinafter referred to as "Eskom")

TERMS OF REFERENCE

A Forensic Fact Finding Enquiry ("the enquiry") into the status of the business and challenges experienced by Eskom is hereby instituted in terms of an Eskom Holdings (SOC) Ltd Board ("the Board") resolution taken in a properly constituted meeting of 11 March 2015 held at Megawatt Park where It is envisaged that upon completion, this enquiry will provide the Board with an independent view of reasons for the following

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

1. PROBLEM STATEMENT

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

- The poor performance of generation plant
- Delays in bringing the new generation plant on-stream
- High costs of primary energy
- Eskom's financial challenges

- Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies
- Contract management, in particular cost escalations, frequent modifications, penalty costs and Eskom's capacity to manage contracts in general.

The Board has indicated that it is important for the information to be tested by an independent party without EXCO's involvement ("particularly those members of EXCO, whose areas would be directly impacted by the enquiry") so as to lend credence to the reports that the independent party would produce.

2. PREAMBLE AND CHALLENGES FACING ESKOM

The Board recognises and is alive to the fact that it is uncommon for the Board to undertake such an enquiry and at the same time, allow senior Management to go on special leave because these enquiries are normally within the purview of senior management. Be that as it may, the following issues weighed heavily in favour of the decision taken by the Board.

2.1 For the past 2 (two) years, the Office of the Chairman and the Board (both the new and the old Boards) have been inundated with complaints and concerns raised by various sources internal and external to Eskom with regard to the unreliable power supply, escalating build project costs, escalating maintenance costs, high costs of primary energy and the inordinately high costs of the borrowing programme that Eskom has participated in recently.

2.2 In addition to the above, in the last few months, countrywide load shedding has become the order of the day and thus leading to an increased outcry about the economic impact of the uncertainty brought about by load shedding. This matter has escalated to a national power challenge which has also attracted the anger and concern of ordinary citizens, (private and corporates), Cabinet, Parliament and its oversight bodies, rating agencies and investors alike. This is so particularly because Eskom continues to make commitments that it is unable to meet.

2.3 To this end, the Board resolved to institute an enquiry into all of these concerns. Having so resolved, the Board delegated the authority to institute this enquiry to the ARC, with assistance from other Board committees where necessary. ("ARC"). Included in the authority to institute this enquiry, is also the authority to:

- Appoint a Service provider/s;
- Manage the costs of executing the enquiry; and

- Ensure that the Service provider/s delivers on its mandate within the prescribed time lines and within budget.

3. PROCESS TO BE FOLLOWED FOR THE APPOINTMENT OF AN INDEPENDENT SERVICE PROVIDER/ERS

3.1. The Board has delegated the ARC full responsibility to appoint a Service provider/s that will assist Eskom with the enquiry and to manage the Service provider/s during the execution of the enquiry.

3.2 The Service provider/s will report to the ARC who will in turn report to the Board.

3.3 The procurement of the Service provider/s will follow normal Eskom procurement policies and procedures, namely a close tender process or the use of a sole source process should it be necessary, given the time constraints.

3.4 Once a Service provider/s has been appointed, and the terms and conditions of performing the enquiry are agreed upon, the information set out below will be completed

Name of the entity/ties:
Estimated costs:
Estimated time to complete the enquiry:

4. SCOPE OF THE INVESTIGATION

The Service provider/s will investigate and report on the following:

4.1 The poor performance of the generation plant in particular:-

4.1.1 confirm the true state of the generation plant and the manner in which the fleet is managed with reference to and in relation to best practice.

4.1.2 whether the underlying reasons for the state of the fleet are known and could have been avoided. In particular, the increase in the UCLF ("Unplanned Capability Loss Factor").

4.1.3 whether the strategies, tactics and plans to address the decline in the capacity of the fleet to ensure the security of supply were appropriate in terms of their design and application in practice.

4.1.4 whether any load shedding by Eskom in the recent two years was in all instances necessary and appropriate under the circumstances.

4.1.5 whether the maintenance philosophy and regime adopted and followed by Eskom in the recent past and any recent enhancements thereto are appropriate to achieve the required UCLF and justifiable under the circumstances.

4.1.6 whether the present reports on the state of the generation fleet has been faithfully reported on a consistent basis and that the reports were correct in terms validity, accuracy, completeness and timeliness of information.

4.1.7 whether maintenance contractors ("OEM")[262] are giving Eskom value for money and whether there is effective monitoring of their work by Eskom.

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

4.2.1 confirm the current status of the new generation plant and the quality of the project management practices designed to bring the generation plant into commissioning stage on time and within budget.

4.2.2 whether the project, contracts management philosophies, practices adopted and applied by Eskom compare favourably with international best practices

4.2.3 whether the lessons learnt from previous delays and costs overruns have been documented, communicated to relevant stakeholders and institutionalized to prevent recurrence.

4.2.4 whether the underlying causes for cost overruns and delays in completing new generation plans are understood, adequately disclosed and properly mitigated against to enhance the likelihood that the projects would be delivered in time and within budget.

[262] Origional Equipment Manufacturer

4.2.5 whether the organization is likely to deliver all these projects within the current targeted timelines and financial budgets or whether there are significant constraints beyond the control of management which require special intervention.

4.2.6 whether the reports from EXCO with regard to the status of the new build are correct and can be relied on.

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

4.3.1 confirm the current primary energy costs currently incurred by Eskom and whether they are necessary, unavoidable and are in line with industry practice.

4.3.2 whether the underlying causes for increase in primary energy costs are fully understood, adequately reported and that strategies, tactics and plans adopted to ensure the security of supply in the most economical and efficient manner most appropriate in the circumstances.

4.3.3 whether the strategies and tactics adopted by Eskom to procure primary energy (Nuclear, Coal, Diesel, Liquid Oils and Water) are the most appropriate to both Eskom and the country as a whole, in particular the use of *ad hoc* Diesel suppliers.

4.3.4 whether the forecasting model for the use of diesel is appropriate and in line with best industry practice.

4.3.5 whether the primary energy costs paid by Eskom are reasonable and commercially viable.

4.4 Eskom's Financial Challenges

4.4.1 confirm the current cash flow position of Eskom and whether the methodology and models used for cash flow management are in line with best practice.

4.4.2 whether the cash flow status of Eskom has been faithfully reported consistently and that the reports are correct in terms of validity, accuracy, completeness and timeliness of information.

4.4.3 Confirm the circumstances around the recent high costs incurred with the financial instruments that form the nucleus of the borrowing programme and whether the process that was followed in the circumstances was the most appropriate and efficient (in particular establish the existence of other viable and cost effective financial instruments that could have been pursued as alternatives).

4.4.4 Establish whether the interest rates offered to Eskom in the financial instruments that form the nucleus of the borrowing programme are normal under the circumstances.

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

4.5.1 Confirm that the integrity of the procurement policy, processes and procedures designed by Eskom and their compliance with the Constitution of the Country, other relevant key legislation and key governance protocols, including best industry practice.

4.5.2 whether the procurement policy and related Eskom policies including but not limited to conflict of interest, are consistently adhered to and there are adequate processes to deal with noncompliance. Also, establish whether in instances where transgressions are identified, appropriate sanctions are applied.

4.5.3 whether the procurement processes are effective to ensure that Eskom obtains the best quality products and services at the best price

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

4.6.1 Confirm that the organization has an appropriate contract management policy, strategic and procedures and resources that are consistently applied to safeguard the organization from failures to enforce its rights to avoid incidents that give raise to third party obligation.

4.6.2 whether the design of the contracts (fit for purpose); is appropriate with regard to contract terms.

4.6.3 whether there is a defined modification approval and monitoring process which is adequate and effective. Further, to also establish reasons as to why contract modifications always result in increased costs and delays.

4.6.4 whether there exists a contract performance monitoring system, particularly in the maintenance of the Generation fleet.

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

4.7.1 Whether the Eskom's strategies/plans with regard to safeguarding of Key National Points are adequate and effective.

4.7.2 Whether there is any reason why the persistent information leaks are not being arrested? If they are or have been dealt with, whether there has been a sanction imposed upon the responsible people.

6 PROCESS *[SIC]*

The Service provider/s will follow the guidelines below in conducting the enquiry

6.1 Conduct interviews with employees in its investigation.

6.2 In addition to employees, mentioned in terms of clause 6.1 above, the Service provider/s may further conduct interviews with any other party/ies or person/s who may have information regarding this enquiry.

6.3 Obtain and analyse, inter alia, minutes, letters, written reports, e-mails, and also determine the bona fides of the allegations and questions and evidence raised by an employee or any other person interviewed in accordance with 6.1 to 6.2 above.

6.4 At the end of the enquiry, present its Report to the ARC a report which report will contain the following:

6.4.1 Documents relied upon during the investigation;

6.4.2 Details of evidence submitted by the Parties and/ or employees interviewed;

6.4.3 Analysis of the evidence and documentation referred to in 6.3 above as presented by the Parties and/ or employees; and

6.4.4 Conclusions and remarks

6.5 Notwithstanding the provisions of clause 6.4 above, the Service provider/s will provide to the ARC a progress report every two weeks and/or at the finalisation of any critical milestone. The first progress report will be due two weeks from the date of the signing of these terms of reference by the Party signing last.

6.6 The Service provider/s shall ensure that it establishes a communication mechanism that will allow for effective and efficient communication between the ARC and the Service provider/s, which communication mechanisms shall be approved by ARC.

7 DURATION OF THE ENQUIRY

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

8. THE OUTCOME OF THE ENQUIRY

8.1 The conclusion/s and recommendation/s in the report will be final and will be tabled at the Board and ARC who will in turn recommend the conclusion/s and recommendation/s to the Board.

9. FEES

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

COMMISSION OF INQUIRY INTO STATE CAPTURE

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Signed at _____ on this the _____day of _____2015

For and on behalf of Eskom

Signature

_____

Name of Signatory

_____

Designation of Signatory

For and on behalf of
Service provider/s

_____

Signature

_____

Name of Signatory

_____

Designation of Signatory

COMMISSION OF INQUIRY INTO STATE CAPTURE

Schedule 2

Task Order 1

TASK ORDER 1 - 4502166423
FORENSIC FACT FINDING ENQUIRY COMMISSIONED BY ESKOM

1. Introduction

Eskom appointed Dentons to conduct a Forensic Fact Finding Enquiry (the "Enquiry") into the status of the business and challenges experienced by Eskom in the areas identified by the board (the "Board") of Eskom Holdings (SOC) Ltd. A contract for the execution of the Enquiry was entered into between Dentons and Eskom Holdings (SOC) ("Eskom") on 20 April 2015 (the "Contract"). The Contract defines the key objectives of the Enquiry and the broad areas that are to be considered in the Enquiry. Pursuant to the Contract, task orders are to be agreed between Eskom and Dentons for the execution of the areas identified in the Contract.
This task order defines the details of the scope of work and methodology to be executed by the Dentons team with the associated deliverable and time schedule under this Task Order No 1. The need for additional task orders (which may include specialist studies) may be identified during or after the execution of Task Order No 1 and will be discussed and agreed with Eskom in the form of new task orders to be executed under the broad scope of the Enquiry.

2. Scope of work

In preparing the scope of work for Task Order 1 (the "Scope of Work"), we have sought to address the Problem Statement and key areas of concern described in Eskom's Terms of Reference. The Problem Statement that the scope of work is intended to address is defined as follows:
"The Board seeks to obtain an independent and unfettered view regarding the credibility and the correctness of information that Eskom's Executive Management ("EXCO") provides in their reports relating to:

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

The Board has indicated that it is important for the information to be tested by an independent party without EXCO's involvement ("particularly those members of EXCO,

whose areas would be directly impacted by the enquiry") so as to lend credence to the reports that the independent party would produce."

Thus, the principal objective of the Enquiry is to obtain an independent view of the credibility and correctness of information provided to the Board by the EXCO. The forensic fact finding enquiry will comprise an independent review of the credibility and correctness of the information provided to the Board in relation to the following aspects:

2.1 The poor performance of the generation plant

2.1.1 the state of the generation plant and the manner in which the fleet has been managed with reference to and in relation to best practice;

2.1.2 whether the underlying causes for the state of the fleet are known (in particular, the increase in the Unplanned Capability Loss Factor ("UCLF") and the actions taken by Eskom in response;

2.1.3 the application and impact of the strategies, tactics and plans to address the decline in the capacity of the fleet to ensure the security of supply over past twelve months;

2.1.4 the underlying reasons for load shedding by Eskom over the past two years;

2.1.5 the maintenance philosophy and regime implemented by Eskom over the past six months in its attempts to achieve the required UCLF;

2.1.6 whether the most recent reports on the state of the generation fleet have been prepared on a consistent basis with other reports in the last six months, and that the reports were credible in terms of validity, accuracy, completeness and timeliness of information;

2.1.7 the pricing of maintenance contracts commissioned by Eskom and the monitoring of performance of these contracts by Eskom.

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

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

2.2.2 the project and contract management philosophies and practices implemented by Eskom in relation to best practices;

2.2.3 whether the lessons learnt from previous delays and cost overruns have been documented, communicated to relevant stakeholders and institutionalized to prevent recurrence;

2.2.4 whether the underlying causes for cost overruns and delays in completing the new generation plants are known and have been disclosed, and whether the actions taken in response are likely to enhance the likelihood that the projects would be delivered on time and within budget;

2.2.5 the measures that have been taken to ensure that the organization is likely to deliver these projects within the current targeted timelines and financial budgets, and whether any significant constraints beyond the control of management have been identified which require special intervention; and

2.2.6 whether the reports from EXCO with regard to the status of the new build are consistent with underlying reporting.

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

2.3.1 the primary energy costs currently incurred by Eskom and whether they are commercially supportable;

2.3.2 whether the underlying causes for increase in primary energy costs are known and reported;

2.3.3 whether the strategies and tactics adopted by Eskom to procure primary energy (Nuclear, Coal, Diesel, Liquid Oils and Water) are commercially supportable, in particular the use of ad hoc Diesel suppliers; and

2.3.4 the forecasting model for the use of diesel.

2.4 Eskom's Financial Challenges

2.4.1 the current cash flow position of Eskom and the methodology and models used for cash flow management;

2.4.2 whether the cash flow status of Eskom has been reported consistently with available contemporaneous information;

2.4.3 the recent costs incurred as a result of the financial instruments that form the nucleus of the borrowing programme, the process that led to their adoption, the existence of other viable and cost effective financial instruments that could have been pursued as alternatives); and

2.4.4 establish whether the interest rates attached to the financial instruments that form the nucleus of the borrowing programme are commercially supportable under the circumstances.

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

2.5.1 the procurement policy, processes and procedures designed by Eskom in relation to the Constitution of the Country, other relevant key legislation and key governance protocols. , including best industry practice;

2.5.2 whether the procurement policy and related Eskom policies including but not limited to conflict of interest and the processes to deal with non-compliance , are consistently adhered to. Also, establish whether in instances where transgressions are identified, appropriate sanctions are applied;

2.5.3 whether the procurement processes are effective to ensure that Eskom obtains the best quality products and services at the best price;

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

2.6.1 Contract management policy, in relation to its strategic focus, procedures and resources. Are the policies consistently applied to safeguard the organization from failures to enforce its rights and counterparty claims;

2.6.2 whether the design of the contracts (fit for purpose); is appropriate with regard to contract terms;

2.6.3 whether there is a defined modification approval and monitoring process which is adequate and effective. Further, to also establish reasons as to why contract modifications often result in increased costs and delays; and

2.6.4 whether there exists a contract performance monitoring system, in the maintenance of the Generation fleet.

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

2.7.1 Eskom's strategies/plans with regard to safeguarding of Key National Points; and

2.7.2 Whether there is any reason why the persistent information leaks are not being arrested? If they are or have been dealt with, whether there has been a sanction imposed upon the responsible people.

3. Methodology

Eskom's Terms of Reference prescribed the following methodology for the Enquiry:

3.1 conducting interviews with employees and any other party/ies or person/s who may have information regarding the Enquiry; and

3.2 obtaining and analysing, inter alia, minutes, letters, written reports, e-mails, and also determine the bona fides of the allegations and questions and evidence raised by employees or any other persons interviewed in accordance with the above.

Shortly following commencement of the Enquiry, the Dentons team will engage with the Audit and Risk Committee ("ARC") to discuss the details of the Scope of Work and methodology and to discuss the logistical arrangements for collection of data, review of documents, points of interface with Eskom, engagement with Eskom staff, reporting, etc. Dentons will thereafter prepare a preliminary list of documents and other data/information as well as a list of meetings/interviews that that are required for the Enquiry. It is expected that the data required will comprise, inter alia, minutes of Board and EXCO meetings including supporting information, reports, letters, emails. Interviews will be conducted with Eskom staff and, where deemed necessary for the purposes of the Enquiry, non-Eskom staff.
The investigation will be conducted in two phases:

Phase 1: Review of available information

In this phase, the Dentons team will conduct reviews of the available documentary information and interviews to obtain an understanding of the information that has been provided to the Board on the key issues identified under the Scope of Work. This phase will entail review of a large volume of information, a key intent would be to distil and extract from these documents those aspects that are most pertinent to addressing the Scope of Work and will be used for the more detailed assessment to be conducted in Phase 2.

Phase 2: Detailed Assessment

In this phase, the Dentons team will conduct assessment of the credibility and completeness of the information that has been provided to the Board on the key issues identified under the Scope of Work. This may require review of additional information such as more detailed reports as well as further interviews to fully address the issues identified under the Scope of Work.

The review of available information and the detailed assessment will be at a level which can be reasonably expected to be conducted within the time frame of Task Order 1. Although, specialist studies will not be conducted under Task Order 1, the verification of certain matters may require additional studies of a specialist nature that may fall outside the methodology set out in Eskom's Terms of Reference. Any such studies will be discussed and agreed between Eskom and Dentons as part of new task orders.

It is recorded that notwithstanding the date of signature of this Task Order, the Dentons team commenced work on 20 April 2015, pending finalisation of this Task Order No 1, and the items listed under the Scope of Work are at various stages of completion as at the signature of this Task Order No 1.

4. Deliverables

The Dentons team shall submit the following deliverables:

(1) Progress reports to be issued fortnightly. The progress reports will focus on recording the progress that has been made in the execution of the Scope of Work in respect of documents reviewed, people interviewed but will not provide details of findings;

(2) Draft Enquiry Report detailing the independent findings of the Enquiry;

(3) Final Enquiry Report detailing the independent findings after due consideration by the Dentons team of any comments provided by Eskom following Eskom's review of the Draft Enquiry Report; and

(4) Presentations to ARC and the Board as may be required.

5. Project Schedule

Commencement Date: 20 April 2015
Substantial completion of Phase 1: 15 June 2015
Substantial completion of Phase 2: 13 July 2015
Submission of Draft Enquiry Report: 20 July 2015
Receipt of comments from Eskom on Draft Enquiry Report: 24 July 2015
Submission of Final Enquiry Report: 31 July 2015

6. Remuneration

Remuneration for the execution of Task Order 1 and reimbursement of expenses and disbursements will be in accordance with the Notification of Acceptance executed by the parties on 20 April 2015, read with the Contract Data executed by Dentons on 7 May 2015 and delivered by Dentons to Eskom on 7 May 2015 and the proposal submitted by Dentons to Eskom.

COMMISSION OF INQUIRY INTO STATE CAPTURE

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Schedule 3

Email Request

CONFIDENTIAL

ESKOM FORENSIC & ANTI-CORRUPTION INFORMATION MANAGEMENT (EMPLOYEE E-MAIL RECORDS) REQUEST (Project Reference N0: 460057152)

*This document is a pre-requisite for **ALL** requests to draw employee(s) e-mail records for investigation purposes.*

DIVISION/BUSINESS AREA	Denton Investigation Team
DESCRIPTION OF REQUEST	All emails sent and received, and any attachments, from the period 1.1.2013 to current day for the following employees:

1. Zola A Tsotsi
2. Tshediso Matona
3. Tsholofelo Molefe
4. Matshela Koko
5. Dan Marokane
6. Mongezi Ntsokolo
7. Kiran Maharaj
8. Suzanne Daniels
9. Colin Matjila
10. Edwin Mabelane
11. Mark Paleński
12. Malesela Sekhasembe
13. Mandla Gobingca
14. Leo Dlamini
15. Neo Tsholanku
16. Paul O'Flaherty
17. Brian Dames
18. Caroline Henry
19. Thava Govender
20. A Noah
21. Steve Lennon

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22. Kannan Lakmeeharan
23. B Bulunga
24. E Pule
25. Erica Johnson
26. B Mbomvu
27. A van der Merwe
28. M Phukubje

BACKGROUND

Eskom appointed Dentons to conduct a Forensic Fact Finding Enquiry (the "Enquiry") into the status of the business and challenges experienced by Eskom in the areas identified by the board (the "Board") of Eskom Holdings (SOC) Ltd. A contract for the execution of the Enquiry was entered into between Dentons and Eskom Holdings (SOC) ("Eskom") on 17 April 2015 (the "Contract"). The Contract defines the key objectives of the Enquiry and the broad areas that are to be considered in the Enquiry.

Purpose of obtaining required records

Eskom's Terms of Reference prescribed a methodology for the Enquiry which included *inter alia*:

Obtaining and analysing, inter alia, minutes, letters, written reports, e-mails, and also determine the bona fides of the allegations and questions and evidence raised by employees or any other persons interviewed in accordance with the above.

TIMING (commencement date, duration and when are the results expected)

Commencement date 28 May 2005.

Duration of investigation is 2 months.

Results to be expected as soon as is practicable

Use, Confidentiality and Storage

The investigator acknowledges that the records requested could contain other unrelated confidential information, and undertakes to respect the employee's privacy, and only focus on information related to the investigation. The records drawn would be saved on an access right controlled Forensic secured drive for review by the requesting investigator. Subsequent to the review, evidence would be printed for filing and continued use to support the investigation, and the investigator would thereafter delete the entire record from the drive.

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REQUESTED BY (Forensic Investigator)

Name: Kevin Shergold

Signed:

Position: Dentons Specialist Consultant

Date: 28 May 2015

APPROVAL (Response Manager)

Request approved *(mark with x)* ☐

Request not approved *(mark with x)* ☐

Name: _____

Signed: _____

Capacity: _____

Date: _____

COMMISSION OF INQUIRY INTO STATE CAPTURE

Schedule 4

Assumptions and Qualifications

The data, documentation and information provided, supplemented by oral interviews with various Eskom employees formed the basis of the factual understanding and our findings are therefore based entirely on this information.

We were not required to evaluate and comment on the technical content of the information provided to us. Generally, time constraints made it impossible to assess the correctness of the technical information.

No attempt has been made to achieve any degree of statistical significance in the course of conducting investigations.

This Report is not intended to investigate, adjudicate, comment on, or resolve, any specific incident, complaint, or point of dispute.

This Report does not constitute a plan of action, implementation programme, or formal, legal or other advice in respect of any of the issues that are raised.

Whilst due care has been taken to ensure accuracy of the contents of this Report, it has in many instances not been possible to test and verify the information provided to us, due amongst others to the period of the Investigation and lack of access to certain information sources.

The opinions, views, findings, recommendations, observations inferences and conclusions set out in this Report are a matter of professional opinion and not a guarantee of result.

We make no representations of any nature in respect of the contents of this Report, which ultimately constitutes no more than the opinion of Dentons South Africa. Any person intending to rely on any part of this Report should take such verification and other steps, and seek such advice, as may be appropriate.

This Report was prepared for the purposes of investigating the matters set out in the TOR in accordance with the prescribed methodology, for the sole and exclusive benefit of Eskom. This Report should not be used or relied upon for any other purpose and any person or entity or body doing so, does so at its own risk. Dentons South Africa accepts no responsibility or liability to any person, entity or body, choosing to rely on any of the contents of this Report for their own purposes.

The observations in this Report are based on certain limited information accessed by Dentons South Africa in the course of the Investigation. The contents of this Report are subject to further testing, verification and corroboration. Dentons South Africa makes no comment and intends no inference, unless expressly set out in this Report.

The contents of this Report are strictly confidential and may not be disclosed, in whole or in part, to any person or entity other than Eskom, without the prior written consent of Dentons South Africa.

Schedule 5

Glossary

ABBREVIATIONS / ACRONYMS	
AMCU	Association of Mineworkers and Construction Union
AR	As received
ARC	Audit & Risk Committee
BEE	Black Economic Empowerment
BEM	Black owned Emerging Miners
BBL	Barrel of oil
Board	Eskom Board of Directors
C&I	Control and Instrumentation
Capex	Capital expenditure
CAPP	Central Appalachian
CE	Chief Executive
CSA	Coal supply agreement
CV	Calorific value
DPE	Department of Public Enterprises
EAF	Energy Availability Factor
EETT	Eskom emergency task team
EL1	Emergency Generation Level 1
EUF	Energy Utilisation Factor (see EAF)
EXCO	Eskom's Executive Committee
EXCO Indaba	Eskom's Executive Committee Indaba
FD	Financial Director
FGD	Flue – gas desulphurisation
FY	Financial year
GJ	Gigajoule
GW	Gigawatt
GWh	Gigawatt hour
ICAS	Investment and capital sub-committee
IFC	Investment and Finance Committee
IPPs	Independent Power Producers
kA	kilo ampere
kg	kilogramme
kJ	kilojoule

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ABBREVIATIONS / ACRONYMS	
KLO	Keep the Lights on
km	kilometre
kV	kilovolt
kW	kilowatt
kWh	kilowatt hour
LT	Long term
Mancom	Management committee
ms	millisecond
MT	Medium term
MTon	Million ton
MVA	Megavolt ampere
MW	Megawatt
MWh	Megawatt hour
MYPD	Multi-year price determination
NERSA	National Energy Regulator of South Africa
NT	National Treasury
NUMSA	National Union of Metalworkers of South Africa
OCGT	Open Cycle Gas Turbine
OEM	Original Equipment Manufacturer
Opex	Operational expenditure
PE	Primary energy
PCLF	Planned Capability Loss Factor
pu	Per unit
RBCT	Richards Bay coal terminal
RCA	Regulatory Clearing Account
RTS	Return to service
ST	Short term
TGC	Technical Governance Committee
UCLF	Unplanned Capability Loss Factor
VGB	VGB PowerTech is the European technical association for power and heat generation
WC	FIFA World Cup 2010
ZAR	South African Rand

Schedule 6

Annexures to Chapter 5 and Chapter 6

Annexures A to J are attached.

COMMISSION OF INQUIRY INTO STATE CAPTURE

Annexure A

Contract Type	Supplier	Power Station	CSA start date	CSA end date	Contractual Volumes (Mt)	R/GJ	CV (AR)	R/ton	BEE rating (50+1)
Cost Plus	Anglo Coal SA (Pty) Ltd - New Vaal	Lethabo	01/06/1989	30/06/2029	17,80	9,54	14,17	135,08	No
Fixed Price	Exxaro Coal (Pty) Ltd - Grootegeluk	Medupi	01/05/2012	30/04/2042	15.1 (6 for ramp up)	14,57	19,56	284,97	Yes
Fixed Price	Exxaro Coal (Pty) Ltd - Grootegeluk	Matimba	01/06/1993	30/06/2038	15,30	14,34	19,58	280,81	Yes
Cost Plus	South 32 - Khutala	Kendal	01/12/1993	31/12/2033	13,30	16,94	17,95	304,15	No
Cost Plus	Exxaro Coal (Pty) Ltd - Matla	Matla	01/07/1983	31/07/2023	10,10	33,82	16,99	574,54	Yes
Fixed Price	South 32 - Middelburg Mine Services	Duvha	01/01/1994	31/12/2034	10,00	10,94	21,07	230,41	No
Cost Plus	Anglo American Inyosi Coal SA (Pty) Ltd - Kriel	Kriel	01/12/1979	31/12/2019	8,50	12,74	21,92	279,29	No
Fixed Price	Optimum Coal Holdings - Optimum	Hendrina	01/01/1993	31/12/2018	5,50	7,41	21,78	161,37	No
Cost Plus	Anglo Coal SA (Pty) Ltd - New Denmark	Tutuka	01/09/1989	31/08/2029	5,10	53,36	21,30	1 136,46	No
Cost Plus	Exxaro Coal (Pty) Ltd - Arnot	Arnot	01/01/1976	31/12/2023	4,10	30,92	22,19	686,07	Yes
Fixed Price	Xstrata / African Rainbow Minerals JV - Goedgevonden	Majuba	01/12/2009	31/12/2026	2,80	9,16	21,18	169,38	No
Fixed Price	Anglo / Exxaro JV - Mafube	Arnot	01/08/2004	31/12/2023	1,18	7,13	18,60	132,70	No
Medium Term	Umcebo Mining (Pty) Ltd - Middelkraal	Kendal/Majuba	01/04/2010	30/06/2015	5,40	13,00	21,83	283,72	Yes
Medium Term	Exxaro Coal (Pty) Ltd - NBC	Arnot/Komati/Tutuka	01/04/2010	31/03/2018	4,00	11,00	22,34	245,78	Yes
Medium Term	Shanduka Coal (Pty) Ltd - Graspan	Majuba	01/04/2010	31/03/2018	3,60	12,69	20,69	262,52	Yes
Medium Term	Liketh Investments (Pty) Ltd - KK Pit 5	Hendrina	01/01/2009	31/03/2018	2,40	15,24	21,19	322,86	Yes
Medium Term	Keaton Mining (Pty) Ltd - Vanggatfontein	Tutuka	01/05/2011	30/04/2022	2,10	15,47	21,25	328,87	No
Medium Term	Exxaro Coal (Pty) Ltd - Leeuwpan	Majuba	01/01/2010	30/06/2015	2,10	13,25	20,63	273,32	Yes

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Medium Term	Universal Coal Development (Pty) Ltd - Wolvenfontein	Kusile/Kendal	01/04/2014	31/03/2023	2,00	13,49	20,40	353,41	No
Medium Term	HCI Khusela Coal (Pty) Ltd - Palesa	Grootvlei	01/04/2010	31/03/2018	1,90	8,7	20,7	179,32	Yes
Medium Term	Sudor Coal (Pty) Ltd - Halfgewonnen	Camden	01/07/2010	30/09/2015	1,90	10,62	21,14	224,63	Yes
Medium Term	Just Coal CC - Bankfontein	Tutuka/Arnot	01/04/2014	31/03/2024	1,80	12,9	21,6	279,21	Yes
Medium Term	Kuyasa Mining (Pty) Ltd - Delmas	Majuba	01/05/2011	30/04/2019	1,60	10,41	22,07	229,64	Yes
Medium Term	Hlagisa Mining (Pty) Ltd - Wildfontein	Arnot	01/07/2013	30/06/2017	1,60	15,27	22,15	338,19	No
Medium Term	Vunene - Usutu	Camden	01/03/2013	31/12/2015	1,50	14,85	23,35	346,76	No
Medium Term	Stuart Coal (Pty) Ltd - East Block	Tutuka	01/04/2010	31/03/2018	1,40	11,03	21,11	232,98	No
Medium Term	Liketh Investments (Pty) Ltd - Tavistock/Tweefontein	Duvha/Komati	15/03/2011	31/03/2018	1,20	10,91	22,6	246,41	Yes
Medium Term	Perisat Investments (Pty) Ltd - Rirhandzu	Majuba/Kusile	01/09/2013	31/03/2018	1,20	11,53	22,3	256,50	Yes
Medium Term	African Exploration Mining and Finance Company - Vlakfontein	Kendal	01/06/2011	31/03/2020	0,78	13,61	20,33	276,59	N/A
Medium Term	Optimum Coal Holdings - Koornfontein	Komati	01/04/2012	31/01/2016	1,62	17,78	21,2	376,91	No
Medium Term	Tshedza Mining Resources (Pty) Ltd - Manungu	Kendal/Kusile	01/04/2015	31/03/2030	1,62	13,66	17,9	245,06	Yes
Medium Term	Tegeta Exploration and Resources (Pty) Ltd - Brakfontein	Majuba	01/04/2015	30/09/2025	1,36	13,50	20,50	276,75	No
Medium Term	Just Coal CC - Bankfontein	Arnot	01/05/2015	31/10/2015	0,85	18,5	22,77	421,25	Yes
Medium Term	Just Coal CC - Pembani	Matla	01/05/2015	31/03/2016	1,00	13,61	20,0	272,47	Yes
Medium Term	BECSA - Portion 16	Kendal	21/12/2012	30/06/2016	2,00	14,24	19,12	272,39	No

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Annexure B

Contract Type	Supplier	Power Station	CSA start date	CSA end date	Contractual Volumes (Mt)	R/GJ	CV (AR)	R/ton	Transport	BEE
	2010 mandate					**R8/gj**	**20,28**	**165,5**		
	2014 mandate					**17,09**	**20,15**	**225,4**		
Short term	Lurco Coal (Pty)Ltd	Duvha	18-Aug-14	30-Nov-14	150000	R 17,50	22- 23.0.	385	Road- FCA	Suspected not
Short term	Lurco Coal (Pty)Ltd: mod	Duvha	18-Aug-14	28-Feb-15	150 000					
Short term	Lurco Coal : mod 2	Duvha-any alternate	18-Aug-14	28-Feb-15	150 000					
Short term	Eyethu : mod 3	Duvha	15-Jan-14	31-Mar-14	80000total	10,8			Road- FCA	26
Short term	Eyethu: mod 5	Duvha	01-May-14	31-Jul-14	150000p/m					
Short term	Iyanga Coal (Pty)Ltd	TBC	01-Nov-14	31-Dec-14	110 000 p/m	13,41	21.6-23	281	Delivered	Suspected not
Short term	Iyanga Coal (Pty)Ltd		15-Aug-14	14-Nov-14	100000p/m	13,41	221.6-23		Road- FCA	
Short term	HCI Khusela Coal (Pty)Ltd:mod 6		01-Apr-14	31-Mar-18	30 000 p/m	10,5	21	210	Road- FCA	55
Short term	HCI Khusela Coal (Pty)Ltd	Matla- any alternative	25-May-15	30-Aug-15	12 000	12,85	21.05-21.5	269,86	FCA/ rail	
Short term	Iyanga Mining(Pty)Ltd	Tutuka;Kriel;Majuba etc	01-May-15	30-Jun-15	100 000p/m	13,41	21.6-23	281,61	Delivered	Suspected not
					40 000 pm	13	20-21	260	Delivered	
Short term	Iyanga Mining(Pty)Ltd	Tutuka;Kriel;Majuba etc	01-May-15	30-Jun-15	100 000 p/m	13,41	21.6 - 23	281	Coal Haulage rates	Suspected not
					40 000	13			Coal Haulage rates	
Short term	Inyanga Mining (Pty)Ltd	Tutuka;Kriel;Majuba etc	05-Feb-15	30-Apr-15	110 000	13,41	21.6 -23	281	Coal Haulage rates	Suspected not
					40 000	13	20 - 21	260	Coal Haulage rates	
Short term	Inyanga Mining : mod 1		06-Feb-15	30-Apr-15					Coal Haulage rates	
Short term	Ntshovelo Mining Resources (Pty) Ltd	Majuba- any other	01-May-15	31-Aug-15	100 000 p/m				Coal Haulage rates	100
Short term	Wescoal: mod 1	Majuba- any other	01-Oct-14	30-Nov-14	60 000 p/m	12,52	20- 22	250	Road- FCA	29
Short term	Wescoal	Tutuka -any other	24-Mar-15	30-Apr-15	60 000 p/m				Coal Haulage rates	
Short term	Namane Commodities (Pty)Ltd	Tutuka	01-Apr-15	30-Apr-15	47 000 p/m	11,99	21. 44	257,06	Delivered	100
Short term	Namane Commodities (Pty)Ltd	Tutuka	01-Dec-14	31-Mar-15	47 000 p/m	11,99	21,44	257,06	Delivered	

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Short term	Namane mod 1	Tutuka	01-Dec-14	31-Mar-15	47 000 p/m					
Short term	Namane	Tutuka	01-Sep-14	30-Nov-14	47 000 p/m	11,99	21,44	257,06	Delivered	
Short term	Umzobanzi Coal and Energy (Pty)Ltd	Tutuka	01-Sep-14		20 000p/m	11,5	21.44 - 22.5	246,56	Road- FCA	100
				31-Oct-14	35 000 p/m	11,5	21.44 - 22.5	246,56	Road- FCA	
Short term	Just Coal CC	Tutuka	13-Dec-13	31-Mar-14	180 000p/m	9,8	blending		Coal Haulage rates	100
Short term	Just Coal CC	Tutuka	01-Feb-14		85 000		blending		Coal Haulage rates	100
				31-Mar-14		########	blending		Coal Haulage rates	100

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Annexure C

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The evaluation of the suppliers that responded to the RFP process yielded the following results:

	Supplier	Commercial	Technical	TOTAL	Ranking
1	Sekoko Coal	51%	34%	85%	1
2	OSHO SA Coal Resources	51%	31%	82%	2
3	Ingcambu Investment (Pty) Ltd / Thutsi Colliery	45%	35%	80%	3
4	Yam-Yam Investments (Pty) Ltd	45%	35%	80%	3
5	Silver Unicorn Trading 33 (Pty) Ltd	45%	33%	78%	5
6	Universal Coal Development (Pty) Ltd	45%	31%	76%	6
7	Yellow Beak Marketing	41%	35%	76%	6
8	African Exploration Mining & Finance Corporation	45%	30%	75%	8
9	Tutuka Transport Holding (Pty) Ltd	45%	28%	73%	9
10	Kangra Coal	35%	37%	72%	10
11	Umcebo Mining	37%	35%	72%	10
12	Emlomo Mining (Pty) Ltd	37%	35%	72%	10
13	Eyesizwe Coal Proprietory Ltd / Exxaro Coal	37%	34%	71%	13
14	Morupule Colliery Limited	35%	35%	70%	14
15	Mesa Trading Enterprise	35%	34%	69%	15
16	Samvu worldwide coal JV	37%	31%	68%	16
17	Blue Nightingale Trading 871 (Pty) Ltd	31%	34%	65%	17
18	Motswasele Group (Pty) Ltd	31%	34%	65%	17
19	HCI Khusela Coal	37%	27%	64%	19
20	Black Gold Coal Estates (Pty) Ltd	31%	33%	64%	19
21	Optimum Colliery	33%	30%	63%	21
22	Umbono Capital Partners	31%	32%	63%	21
23	Argonex (Pty) Ltd t/a Argonex Mining	27%	33%	60%	23
24	Sizisa Trading (Pty) Ltd	35%	22%	57%	24
25	South African Coal Mine Operations	35%	21%	56%	25
26	Sudor Coal (Pty) Ltd	23%	33%	56%	25
27	Muhanga Mines (Pty) Ltd	21%	33%	54%	27
28	Resource Generation Limited	31%	23%	54%	27
29	Keaton Mining (Pty) Ltd	37%	16%	53%	29
30	Herbert Agencies (Pty) Ltd	31%	22%	53%	29
31	Liketh Investments (Pty) Ltd	31%	22%	53%	29
32	MM African Technology	21%	30%	51%	32

TABLE 2: SUCCESSFUL RFP RESPONDENTS (GEN 3031)

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Annexure D

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It must be noted that some of the respondents on the RFP are also existing suppliers.

The sourcing team was organised into 6 (six) cross functional teams headed up by Lead Negotiators. Existing suppliers and short listed RFP respondents were invited to negotiations. Prior to negotiations Lead Negotiators prepared negotiation strategies that was approved by the Medium Term Coal Sourcing Team.

5. CONTRACTING PRINCIPLES

A set of contracting principles were developed that gave clear guidelines and set the standards before the negotiating teams negotiated coal supply agreements with the identified suppliers.

(1) Contract Condition
Legislative Compliance
Rationale
• Eskom is responsible corporate citizen • Eskom can attract third party liabilities • Eskom is governed by the PFMA
Contracting Principles
• Eskom will not contract with suppliers who do not operate legally. • Eskom wants to contract with the owners of mining resources of value-adding agents • Suppliers to prove or give warranties and undertakings that there is compliance to relevant legislation – before contracting • Eskom to be entitled to conduct audits to assess compliance • Eskom to receive performance reports to monitor compliance
Standards
Suppliers' to comply with, but not limited to, the following laws: • The National Water Act, 1988 • The National Environmental Management Act, 1998 • The Environment Conservation Act, 1989 • The National Environmental Air Quality Act, 2004 • The Water Services Act, 1989 • The Hazardous Substances Act, 1973 • The National Heritage Resources Act, 1999 • The World Heritage Convention Act, 1999 • The Mineral and Petroleum Resources Development Act, 2002 • Mine Health and Safety Act all as amended from time to time, all statutory instruments, provincial ordinances and statutes, municipal government by-laws relating to the environment, government notices, circulars, codes of practice, guidelines, decisions, regulations, orders,

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demands, and criteria, injunctions or judgments of any court, administrative or regulatory authorities, central government, provincial government, municipal or any other body with responsibility for the protection of the environment (including but not limited to the health of the public, employees, plants and animals).
Suppliers to furnish the following documents:

- Mining Right
- Proof of ownership
- Section 11 with regards to change of ownership (if applicable)
- Tax Clearance certificate
- B-BBEE certificate
- Three year audited Financial Statements
- Employment Equity plan

Eskom is to conduct environmental assessments during the contract term to assess environmental compliance, the engagement rules of which will be agreed with the supplier before the assessment is conducted.

The following documents are to be provided to Eskom as stipulated:

- Environmental Management Programme Performance Assessment Reports (as submitted to the DMR) every two years
- Updated environmental risk register annually
- 3rd Party Legal audits and management plans to address the findings thereof annually
- Reports indicating the status of adherence to conditions and commitments as per licences / permits every six months
- Legal Contraventions, including correspondence between mine and authorities detailing management plans to close out legal contraventions, monthly
- Public complaints and action plans to deal with complaints, monthly
- Progress on closing out of legal contraventions and audit findings, monthly
- The supplier must be in a position at all times to assure Eskom that there are processes in place to continually identify compliance with the EMPR.

(2) Contract Condition
Coal Quantities
Rationale
• Security of Supply is the first priority • Supply of coal quantities to be aligned to demand patterns • Flexibility is required because of the nature of mining processes and the dependence of mining operations on favourable weather conditions. • Eskom requires flexibility because of operational constraints.
Contracting Principles
• Supplier to give warranties that there are sufficient coal reserves to meet contractual quantities • Contract for energy content rather than coal mass • Ensure volume flexibility so that coal quantities can be increased or decreased as demand patterns change however full contractual quantities to be taken off by the end of the contractual period • Volume flexibility should come at no extra cost • Agree on rectification processes that shows new delivery plan and thereafter penalties for under supply or under take off of contracted quantities. • The penalty principle is that the defaulting party must put the other party in the same financial position it otherwise would have been in.

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Standards

- The reporting on reserves and resources must be done under the guidelines of the SAMREC Code.
- The base CV to be used to determine the energy quantity is the geologically assessed expected CV for the reserve on an As Received basis
- Allow for up to 15% variability in coal quantity to be supplied on a monthly basis
- Actual coal quantity to be supplied, within the range as described above, to be agreed at the monthly Technical Liaison Meeting, three months rolling, in advance
- Not less than 85% and not more than 115% of the monthly quantity is to be supplied and taken off during each month
- Not less than 90% and not more than 110% of the coal quantity is to be supplied and taken off on an annual basis
- Not less than 95% and not more than 105% of the coal quantity can be supplied and taken off by the end of the contract period while complying with the minimum and maximum quantities for each month, and year as stipulated above
- Once parties have agreed on the three month supply of coal quantity as agreed at the Technical Liaison Meeting, the quantity for the 1st month of this period is deemed to be fixed and firm and a Purchase Order (PO) is issued to the Supplier accordingly.

Supply Shortfalls and under delivery

- The Supplier will submit a rectification plan that shows revised delivery schedule for Eskom's consideration within 3 days if it is unable to supply at least 95% of the agreed quantity for the month as agreed at the Technical Liaison Meeting and confirmed by the PO to the Supplier
- An under delivery will occur if the supplier fails to supply a rectification plan with revised delivery schedule that stipulates how the shortfall is to be made up.
- An under delivery will occur if the rectification plan with revised delivery schedule does not meet with Eskom's approval or if it fails to implement such a rectification plan.
- The implementation of the Eskom approved rectification plan should make up the shortfall in the shortest time reasonably possible but before the end of that quarter
- Eskom shall be entitled to claim from the supplier a penalty equal in compensation for costs incurred for direct handling of stockpiles incurred by Eskom occasioned by any shortfall subsequently made up
- In the event of an under delivery Eskom shall be entitled to recover from the Supplier a financial penalty equivalent to costs incurred for replacement coal.

Under Off-Take

- Eskom will submit a rectification plan that shows revised off-take plan for the Suppliers consideration within 3 days if it is unable to take off at least 95% of the agreed quantity for the month as agreed at the Technical Liaison Meeting and confirmed by the PO to the Supplier
- An under Off take will occur if Eskom fails to supply a rectification plan that stipulates how the under off take is to be made up or
- An under off take will occur if the rectification plan does not meet with Suppliers approval or if Eskom fails to implement such a rectification plan

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- The implementation of the approved rectification plan should make up the under off take in the shortest time reasonably possible but before the end of that quarter
- The Supplier shall be entitled to claim from Eskom a penalty equal in compensation for costs incurred for direct handling of stockpiles incurred by the Supplier occasioned by any under off take subsequently made up provided that the supplier shall notify Eskom in writing before incurring any additional costs and shall seek Eskom's involvement in minimising such additional costs
- In the event of an under off-take not made up by the end of the quarter Eskom will make payment for the under off take equivalent to the full price of the coal and will be entitled to take off the coal so paid for

(3) Contract Condition

Coal Qualities

Rationale

- Eskom has to ensure the optimal performance of coal-fired power stations
- Out-of-spec coal impacts directly on the performance of power stations and increases maintenance costs.
- Eskom is committed to its targets to reduce emissions at its power stations.
- Individual power stations determine the optimal product for maximum performance and suppliers are therefore bound to ensure that coal qualities fall within the pre-determined parameters.
- The better the quality the lower the burn rate hence the more efficient the plant

Contracting Principles

- Suppliers are to have pre-certified stockpiles that meet the rejection levels in the contract taking into account that suppliers will be given a reasonable period of time to meet specs and mathematical averaging will be allowed, as an exception
- Sampling of stockpiles is paramount to ensure that only that coal which falls within the required parameters of a station is purchased.
- Eskom is entitled to sample and/or audit stockpiles prior to delivery.
- Eskom is entitled to test compliance in terms of the CQMP (Coal Quality Management Procedure)
- Eskom will receive performance reports to monitor compliance.
- When contracting for resources, where there is an opportunity for quality changes to be instituted, should station qualities change, and infrastructure at the mine can facilitate these changes, then the contract should allow for this flexibility.
- Quality requirements will be linked to the Coal Quality Effects Model and the value-in-use principles where incremental changes in coal quality is linked to economic impact to the power station
- Eskom will manage power station specs individually

Standards

- The supplier will provide geological information to PED technical service department relating to their technical information and mine plan.
- Coal qualities to comply with minimum power stations' signed off specifications.
- Any deviations from the power station minimum specs will be agreed and signed off by the power station manager
- Use the Coal Quality Effects Model to determine range of qualities that will not affect stations adversely

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- Suppliers to implement Primary Energy's Coal Quality Management Procedure (CQMP)
- PED's technical services department to audit CQMP compliance monthly
- Coal quality to be measured at the source
- Suppliers to build stockpile to pre-certified quality levels, above rejection levels as stipulated in the contract
- Stockpiles that don't meet rejection levels will not be taken-off
- The analysis of the contractual samples will be done by an Eskom-appointed independent lab at Eskom's cost (transport to the lab and analysis)
- After three consecutive samplings if the stock pile still is out of spec then any further sampling is at the total cost of the supplier.
- Supplier is not to build any unnecessary stockpiles – refer to CQMP..
- Adjustment must be made for abnormal moisture content due to rain, according to the formula determined by the technical services department.
- Make provisions to increase quality requirements or decrease quality requirements within reason and within an acceptable time frame if the supplier has the capacity to do this within reason and at no extra cost to Eskom.

(4) Contract Condition

Price

Rationale

- Coal costs are one of the highest cost drivers for Eskom
- Coal costs have a direct impact on electricity prices and hence the cost of doing business in the country.
- NERSA apply a formula to ensure that coal prices are very competitive by their assertion.
- Eskom will not be able to recover costs through the electricity tariff for excessively priced coal.

Contracting Principles

- Prices will be based on efficient costs + a risk adjusted, fair return.
- Technical mine information will be input into PEDs technical cost models to determine costs for the type of mining operation
- Prices to be based on energy content not mass
- Price choices should be made on total cost of ownership (TCO) to the station

Standards

- The supplier will provide geological information to PED technical service department relating to their coal reserves
- Technical services will benchmark costs for the type of mining operation and run through their models
- The costs from the technical service benchmark will be input into the financial model to determine a range of 'fair returns' to the supplier.
- Prices will be based on energy content with the base CV set at the geologically determined expected CV from that operation
- The cost of capital incurred by suppliers is determined and used in ROI calculations.
- One of a number of methods can be used to determine 'fair returns' is WACC + a benchmarked return
- Use the "Value in Use" model to determine trade-offs between price and CV.
- Use the "Value in Use model' to do cost benefit analysis for improving CVs
- Do not over contract for CV if the Value in Use Model shows no additional benefit to the plant for increased CVs.

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(5) Contract Condition

Contract Price Adjustments (CPA)

Rationale

- Contract Price Adjustments or Escalation clauses are meant to cater for the movement of cost components over the life of a contract; they eliminate windfall gains and losses. Agreement of appropriate indices and their weightings is critical.
- Also poor escalations could render a supplier unsustainable thus risking security of coal supply to the power stations.

Contracting Principles

- The base price must be clearly stated.
- The base date must be set before contracting
- Use a basket of indices that closely represent the cost drivers of that particular mining operation.
- CPA to be based on recognised nationally/internationally published indices
- At least 10% of the price will be fixed ie free of escalation – this is to build in efficiency gains..
- The profit component of the price will escalate, at the most, by CPI
- CPA should be analysed on an annually basis to determine whether there have been material shifts in cost components..
-

Standards

- The base date for escalations should be set at least a month before the contract start date so that indices are available for the calculations.
- Prices should be escalated annually except for diesel escalations, upwards or downwards, that are done monthly.
- The annual price adjustment each year is based on the base price and not the price determined by applying the monthly adjustment factor to the most recent price.

Escalation basket to be used – the cost component and % of total cost are to be applied as they are shown below. The remaining data is shown as examples only

Cost component	*% of total cost*	*Index & source table*	*Base date index*	*Base date*	*Adjusted*
Labour	26	SEIFSA Table C-4 SEIFSA index of actual wage rates: All hourly-paid employees	12359.9	Oct-09	Annually
Diesel	15	DME 0.05% Sulphur, Reef	703.45	Dec-09	Monthly
Electricity	4	Stats SA (P0142.1) Table 9 Item 3 Electricity	160.5	Oct-09	Annually
Mining machinery	13	Stats SA (P0142.1) Table 12 Mining Machinery	155.1	Oct-09	Annually
Overheads	10	Stats SA (P0141) Table A CPI Headline	108.9	Oct-09	Annually
Profit and capital recovery	22	Stats SA (P0141) Table A CPI Headline	108.9	Oct-09	Annually
Fixed	10	Fixed	N/A	N/A	Not applicable
Total	100				

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(6) Contract Condition
Logistics (Transportation and related issues)
Rationale
• Logistics infrastructure is a constraint for the near future. • Logistics cost contributes significantly to total cost of ownership of coal to the stations. • Sub-Optimal logistics choices have an economic and social impact on the coal delivery system.
Contracting Principles
• Ensure that conveyor is the preferred logistics solution before rail, which in turn takes preference over road. • Ensure contracts are flexible enough to move between rail and road and between delivered and FOT contracts to manage any logistics constraints being experienced. • Ensure that Logistics suppliers are aware of legislative requirements regarding transportation. • Ensure that the SLAs regarding road and rail rules are contracted with the supplier. • Before contracting for coal supply ensure that PED's Logistic's department is involved early on in the coal procurement process so that optimal transportation decisions can be taken.
Standards
• Contract should have flexibility to move fairly easily within reasonable notification periods between Rail, Road and Delivered and FOT contracts. • Suppliers to adhere to Road Transportation Management System Standards which are covered in the Road Rules service level agreement (SLA).

A Standard Coal Supply and Off-Take agreement was developed in support of the contracting principles. The agreement is supplemented by a set of annexes that:

- Describe the coal quality management procedure
- The environmental compliance required by Eskom
- The standard agenda of the Technical Liaison Meeting
- Examples of escalation formulae
- Road and Rail Transportation rules
- Moisture adjustment formulae

A number of process improvements were implemented and were described in detail in the 2nd Interim Feedback Report to the BoD-TC of the 10th March 2010. A summary of the initiatives is presented below:

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Annexure E

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Process	Weakness identified	Improvements Made
Sourcing	• Ad hoc, limited integration between LT,MT, ST and logistics • Crisis management	• Integrated portfolio optimisation process to deliver lowest overall cost plan • RFI/RFP process conducted • Better planning and forecasting across full value chain
Contracting	• Perception of black box • Lack of standardisation; • Contracts concluded in a rush • Some contracts never signed • Transport costs and risks sometimes not covered	• Substantial involvement from all stakeholders • Standard fixed price contracts • Offer and Acceptance letter signed • Formal contracts tracked rigorously • Corporate Finance assistance; better analysis of costs and options, documented
Contract Management	• No proper handover • Lack of skills	• Formal handover workshops • Coal Supply Unit managers (CSMs) involved in developing contract • Ongoing training
Supporting Systems	• Lack of skills • Poor use of systems	• Mining Consultants' assistance • Improved use of SAP and Doc man systems • Systems training

6. RESULTS OF NEGOTIATIONS TO DATE

	Supplier	Source	Total Volume (Mt)	Start	End	Delivered or FCA	Exp AR CV	R/Gj (FCA)	R/t (FCA)	Transport cost (R/t)	Station	Delivered price R/t	Nominal kT	Contract Status (O&A or CSA)	Contract Value (R M)	BEE (%)	Contribution to BEE (Rand)
1	Likoth Investments (Pty) Ltd	KK Pit 5	22.2	01-Jun-09	31-Mar-18	FCA	20.50	R 10.00	R 205.00	R 70.96	Hendrina	R 275.96	200	CSA	R 6,126,312,000	80%	R 4,901,049,600
2	Yellow Beek Minerals (Pty) Ltd	Khanyisa	3.76	01-Mar-09	28-Feb-14	FCA	20.30	R 7.50	R 150.00	R 126.55	Grootvlei	R 276.55	60	CSA	R 1,036,068,000	110%	R 1,139,674,800
3	Mashala Resources (Pty) Ltd	Penumbra	0.77151	01-Jan-10	31-Dec-12	FCA	20.00	R 4.68	R 104.81	R 22.34	Camden	R 127.15	20	CSA	R 98,097,497	0%	R 0
4	Umcabe Mining (Pty) Ltd	Middlekraal	24	01-Apr-10	31-Mar-15	DEL	19.27	R 8.09	R 175.19	R 65.55	Kendal	R 240.74	400	CSA	R 5,777,760,000	80%	R 4,622,208,000
5	Kuyasa Mining (Pty) Ltd	Delmas Coal	0.39	01-Jul-10	30-Jun-11	FCA/FOR	16.00	R 6.20	R 99.20	R 102.47	Lethabo	R 201.67	30	CSA	R 72,601,200	0%	R 0
6	HCI Khusela Coal (Pty) Ltd	Palace	15.36	01-Apr-10	31-Mar-18	FCA/DEL (60/40)	19.34	R 7.64	R 145.02	R 141.72	Grootvlei	R 287.54	160	CSA	R 4,416,869,696	110%	R 4,858,556,666
7	Eyelbu Coal Ltd	Blackwatlus/Uitsoklangte	2.4	01-Apr-10	31-Mar-14	FCA	21.80	R 8.20	R 178.76	R 68.05	Duvha	R 236.81	50	CSA	R 668,344,000	110%	R 625,178,400
		Weigelegen Farm 221 IR	3	01-Sep-10	30-Jun-13	FCA	21.80	R 8.20	R 178.76	R 97.70	Duvha	R 276.46	100	CSA	R 629,380,000	110%	R 912,318,000
8	Exxaro Coal (Pty) Ltd	Grootegeluk	1.2	01-Jan-10	31-Dec-10	DEL	20.76	R 6.67	R 138.47	Conveyor	Matimba	R 130.47	103	CSA	R 166,163,040	60%	R 99,697,824
9		Leeuwpan	20.59	01-Jan-10	31-Mar-18	FOR	21.51	R 6.26	R 134.65	R 85.15	Majuba	R 219.80	200	OLA and SRN	R 4,526,176,199	60%	R 2,715,705,064
10		North Block Complex / Delfast	2.88	01-Apr-10	31-Mar-18	FCA	20.92	R 7.95	R 166.31	R 88.44	Kendal	R 254.75	33	OLA and SRN	R 733,691,520	60%	R 440,214,912
			16.68	01-Apr-10	31-Mar-18	FCA	20.92	R 7.95	R 166.31	R 165.27	Tutuka	R 331.58	205	OLA and SRN	R 6,795,563,520	60%	R 3,169,332,352
			9.47	01-Apr-10	31-Mar-18	DEL	20.92	R 7.95	R 166.31	R 45.65	Arnot	R 211.96	100	OLA and SRN	R 2,007,299,880	60%	R 1,204,379,448
11	Ingcambu Investments (Pty) Ltd	Thutsi Colliery	4.8	01-Apr-10	31-Mar-18	DEL	22.13	R 7.64	R 169.07	R 91.47	Camden	R 260.54	50	OLA and SRN	R 962,607,360	126%	R 1,203,259,200
12	Siwan Coal (Pty) Ltd	East Block	11.52	01-Apr-10	31-Mar-18	DEL	20.49	R 7.70	R 157.77	R 87.67	Tutuka	R 245.44	120	OLA and SRN	R 2,827,603,360	60%	R 1,696,602,016
13	Shanduka Coal (Pty) Ltd	MCC & SCC	31.2	01-Apr-10	31-Mar-18	200 FOR/200 FCA	19.58	R 8.59	R 170.34	R 133.63	Majuba	R 304.57	400	OLA and SRN	R 9,602,615,200	80%	R 7,682,092,160
14	OCH (old Slyende Coal)	Koornfontein (Middlings)	0.96	01-Apr-10	31-Mar-12	DEL	19.50	R 6.66	R 127.92	R 106.79	Majuba	R 234.71	40	OLA and SRN	R 225,321,600	80%	R 180,257,280
15	Keaton Energy / Keaton Mining	Vaalgatfontein	16.5	01-Apr-11	31-Mar-16	DEL	19.40	R 7.99	R 155.01	R 85.00	Kendal/Duvha	R 240.01	200	OLA and SRN	R 3,960,099,000	110%	R 4,356,108,900
			166.06				20.28	R 8.17	R 165.77	R 97.32		R 262.78			R 40,102,261,612		R 30,716,314,641
	ST Orders and Additional Coal		6.86						R 114.78	R 104.09		R 219.87			R 1,469,726,960		
	Total Claimed on Mandate		192.72												R 60,660,987,569		

TABLE 3: MEDIUM TERM CONTRACTS CONCLUDED TO DATE

Annexure F

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Annexure G: Conflicts of Interest

1. Generally, prior to approving a contract modification or award, Eskom appoints consultants to perform probity reviews for the purposes of ensuring that no conflict of interest exists between the relevant suppliers and Eskom's authorising committee members (which includes EXCOPS members, Eskom Board members, Cross Functional Team members and their respective spouses). In the succeeding paragraphs we consider how EXCOPS deals with the results of these probity reports.

2. During their meeting on 16 July 2013, EXCOPS considered the conclusion of an 8th addendum to the Medupi Coal Supply Agreement ("CSA") with Exxaro Coal (Pty) Ltd ("Exxaro"). The probity check report dated 13 June 2013 in respect of this proposed addendum was submitted to Tshavhungwe Mamphiswana (Senior Manager: Risk and Governance) by Nikilitha Consulting and indicates that an indirect relationship was identified between an Eskom Board Member, Mr Matjila, and a director of Exxaro Resources Ltd, Mr Salukazi Dakile Hlongwane as they are both directors of "Gidani". Page 14 of this probity report indicates that Mr Matjila "has neither a personal nor a direct line management interest in the supplier, unless Mr Matjila discloses any information to the contrary" and accordingly the auditors conclude that "there exists no perceived, potential or actual conflict of interest and Mr Matjila does not have to recuse himself from voting in the transaction". This probity report was included in the EXCOPS meeting pack for the meeting on 16 July 2013. Item 9.2 of the minutes of this meeting sets out the Committee's discussions in respect of this contract. It appears that the Committee did not discuss the indirect conflicts of interest. [Note: the EXCOPS report for the meeting held on 16 July 2013 was tabled and noted for approval by EXCO at the EXCO meeting held on 6 May 2014. The Board approved the EXCO report for the EXCO meeting held on 6 May 2014 at the Board meeting held on 29 May 2014.]

3. During their meeting on 21 August 2013, EXCOPS considered the modification report for pole top boxes, ready boards, concentric cables and split meters. The probity check report dated 31 July 2013 in respect of this report was submitted to Tshavhungwe Mamphiswana (Senior Manager: Risk and Governance) by Leon Reinach, a director of Fin Five, and indicates that an indirect relationship was identified between (i) Eskom Board member, Yasmin Masithela, and the supplier Merlin Gerin (SA) (Pty) Ltd, and (ii) Eskom Board member, Mr Matjila, and the supplier CBi Electric Telecom Cables (Pty) Ltd. Page 27 of the probity report indicates that Ms Thato Matjila (an ex spouse of Mr Matjila) is linked to Mr Patrick Banda as they are both directors of Revenue Collection Services (Tswane) CC. The auditors conclude on page 25 of this probity report that Mr Matjila "has neither a personal nor a direct line management interest in the supplier, unless Mr Matjila discloses any information to the contrary" and accordingly that "there exists no perceived, potential or actual conflict of interest and Mr Matjila does not have to recuse himself from voting in the transaction". [The EXCOPS report for this meeting held on 21 August 2013 was tabled and noted for approval by EXCO at its meeting held on 3 February 2014. The EXCO report for the meeting held on (3) February 2014 was tabled and noted for approval by the Board at its meeting held on 27 February 2014. This EXCO

report does not appear to be in this Board pack.]

4. EXCOPS also considered the proposals from FNB (Wesbank), Nedbank and Standard Bank for the provision of fleet card services for a period of 5 years at their meeting on 21 August 2013. The probity check dated 1 August 2013 in respect of these proposals was submitted to Tshavhungwe Mamphiswana (Senior Manager: Risk and Governance) by Brenda Lukhele, Pegasus Risk Financing, and indicates that an indirect relationship was identified between Eskom Board member Mr Matjila and Wesbank. Page 13 of this report indicates that Mr Matjila and Gwagwa Nolulamo Nobambiswano, a director of Firstrand Bank Ltd, are both directors of On Digital Media (Pty) Ltd. The auditors conclude on page 11 of this report that Mr Matjila "has neither a personal nor a direct line management interest in the supplier, unless Mr Matjila discloses any information to the contrary" and accordingly that "there exists no perceived, potential or actual conflict of interest and Mr Matjila does not have to recuse himself from voting in the transaction".

5. The minutes of the EXCOPS meeting held on 21 August 2013 dealt with the contracts referred to in paragraph 3 and 4 above in item numbers 14.1 (page 26) and 11.6 (page 17), respectively. It appears that the indirect conflicts of interest was not discussed by EXCOPS.

6. The third modification to a contract with Aveng (Africa) Ltd ("Aveng") for the construction of a building at Medupi was dealt with by EXCOPS at their meeting on 13 March 2013. We have not been provided with the meeting pack for this date. However, the meeting minutes indicate under item number 9.4 (page 5) that a perceived conflict of interest was identified in the audit report between the spouse of an EXCOPS member and an Aveng board member. The Committee "noted the auditors highlight, but did not see it as material". The minutes do not indicate why the Committee did not regard the conflict of interest as material or which EXCOPS board member and Aveng board member is referred to in the audit report. The summaries of the decisions taken at the EXOPS meeting held on 13 March 2013 were tabled and noted for approval by EXCO on 22 April 2013. The Board approved the EXCO report for the EXCO meeting held on 22 April 2013 on 30 May 2013. However, no mention is made in the EXCO report of the conflict of interest.

INTO STATE CAPTURE

Annexure H: Non-Compliance & Transgressions

In the succeeding paragraphs we deal with instances where non-compliance with the relevant policies and procedures was identified.

1 CORP 2257 – Manufacture and Supply of Miniature Sub-Stations

1.1 A mandate was approved by EXCOPS on 20 March 2012 to negotiate and conclude contracts for the manufacture and supply of various miniature substations with Powertech Transformers (Pty) Ltd, Actom (Pty) Ltd and Electro Inductive Industries (Pty) Ltd. An Approval of Negotiated Outcome document was submitted to EXCOPS for their meeting on 16 July 2013. The EXCOPS report for the meeting held on 16 July 2013 was tabled and noted for approval by EXCO at the EXCO meeting held on 6 May 2014. The Board approved the EXCO report for the EXCO meeting held on 6 May 2014 at the Board meeting held on 29 May 2014.

1.2 The meeting pack provided to the EXCOPS members included the Proactive Assurance Report that was submitted to Tshavhungwe Mamphiswana (Senior Manager: Risk and Governance) by DK Motiram & Co. This report identified a number of issues in respect of the closed RFP issued regarding the above, including that:

1.2.1 certain companies (the names of which were cut out by the photocopier in the document we have been provided with) and Hawker Siddely Transformers (Pty) Ltd did not submit all the compulsory requirements as per the QM-58 – the Senior Advisor QSM indicated that it was clarified during the clarification meeting that certain documents required in the QM-58 do not need to be submitted, but this was not minuted; and

1.2.2 non-compliance to Eskom practice note 1 of 2011 which stipulates that any evaluation sub-criterion may not exceed 40%.

1.3 The auditors recommended (pages 9 to 13 of the Proactive Assurance Report) that, as the process is at an advanced stage, no corrective action can be implemented.

1.4 The minutes of the EXCOPS meeting on 16 July 2013 indicates, on page 12 under item number 10.2, that the Committee noted a concern "that the audit reports all seemed to have repeated errors which assumed that there were weaknesses in the evaluation teams which required immediate attention" and recommended that the team should ensure that an "audit trail was kept in place". The Committee resolved that as "the results of the negotiation are not fully within the ambit of the approved mandate, approval is required to award the contracts" and "condonation is granted for deviation from the policy [referred to in practice note 1 of 2011]".

1.5 We note that the action list which sets out action items arising from EXCOPS meetings up to

and including 16 July 2013, which was tabled at the EXCOPS meeting held on 21 August 2013, does not refer to the audit trail being "kept in place" as discussed in the minutes referred to in paragraph 1.4 above. It is not clear whether any sanctions were applied as a consequence of the abovementioned transgressions.

2 IBM and T-Systems: Online Vending System

2.1 On 30 September 2013, EXCOPS considered the ratification and condonation of payments with respect to the purchase, set up, installation, configuration and backup of the newly designated Online Vending System (OVS) hardware platform. The EXCOPS report of the meeting held on 30 September 2013 was tabled and noted for approval by EXCO at its meeting held on 6 May 2014. The Board approved the EXCO report for the EXCO meeting held on 6 May 2014 at the Board meeting held on 29 May 2014.

2.2 The condonation report was prepared by Sal Laher (CIO and Divisional Executive: Group IT) and Riaan van Wyk (Programme Manager), and submitted to EXCOPS. Page 1 of the condonation report indicates that:

2.2.1 the suppliers, T-Systems and Itron Metering Solutions, required additional hours due to the implementation date being extended various times and to complete the relevant tasks;

2.2.2 the contract could however not be modified as it was blocked by pending ratification; and

2.2.3 accordingly, due to the urgency of the work, the project was allowed to continue and resulted in an additional amount of R1.7 million (original contract value was R1.8 million) for T-Systems and R668,000 for Itron.

2.3 The submission document regarding the ratification and condonation was prepared by Riaan van Wyk (Programme Manager) and Sal Laher (CIO and Divisional Executive: Group IT). Page 1 of the submission document indicates that Erica Johnson decided to enter into an emergency procurement process to address the various issues and that, based on architectural considerations, the current vendors were engaged to provide the goods and services.

3 MEGA and MACRO Residential Mass Rollout ("RMR") Programmes

3.1 On 15 April 2013, EXCOPS considered awarding contracts to project developers for the MEGA and MACRO RMR Programmes. The meeting pack for EXCOPS included company risk profiles by Anisha Sukkhu (Acting Senior Manager: Business Intelligence and Improvement) that were prepared in respect of each project developer. The company risk profiles indicated that the following project developers had an association risk with Kgwanyape Energy Solutions ("KES"):

3.1.1 ADK Energy (RMR Macro);

3.1.2 Amahle Management Services (RMR Macro);

3.1.3 Vie de Core Energy (RMR Macro);

3.1.4 Gundo Engineering and Projects (RMR Mega); and

3.1.5 Saving my Energy (RMR Mega).

3.2 The company risk profiles indicate that KES is one of Hassiem Salie's companies and that Hassiem Salie is under investigation for commercial fraud and company hijacking and has been accused of defrauding the Department of Trade and Industry, Eskom and foreign investors of funds in excess of R700 million.

3.3 The submission checklist signed on 11 April 2013, which was also included in the EXCOPS meeting pack, regarding the Mega RMR Programme was signed my Mr Tsholofelo Molefe on page 3 with the following comment: "supported for purposes of discussion at EXCOPS, but I do not agree with the process followed for selection of MEGA Tranche!". This document was also submitted to the Board of Directors Tender Committee ("BTC").

3.4 We have not been provided with the minutes of the EXCOPS meeting on 15 April 2013.

3.5 The minutes of the EXCOPS meeting on 18 June 2013 indicates under item 9.7 on page 12 that the committee discussed the following in respect of the MEGA RMR Programme:

3.5.1 incorrect email addresses were used when the evaluation team was seeking clarification from bidders and the those bidders who did not receive the email would have been in a favourable position to be awarded the tender;

3.5.2 due to there being no money or funding, there was no correspondence sent to the bidders regarding the resolution taken by Board Tender on 17 April 2013;

3.5.3 some bidders complained about the process followed and the inordinate delay in communication of the awarding of the tenders and reasons for the delay;

3.5.4 information had leaked to the public that there was a mandate approved yet no communique had been received; and

3.5.5 it was recommended that the tender be suspended pending audit findings.

4 The Catalyst Forensic Report ("Forensic Report") for period 1 October to 31 December 2012 was presented by Ms T Ndaba to the social, ethics and sustainability board committee meeting held on the 8 February 2013.

4.1 It was pointed out at this meeting that the Forensic Report provides that 22 incidents of fraud related to external fraud perpetrated by a syndicate which targeted suppliers with fraudulent purchase orders were identified for this reporting period. Fraudulent incidents turned into projects totalled 30,

corruption totalled 2, irregularities totalled 8 and sexual harassment totalled 1.

4.2 Ms Ndaba also stated that the SIU conducted five investigations into the supply chain management processes within Eskom Holdings:

4.2.1 allegations of irregular supply chain management ("SCM") processes followed in awarding contracts to service providers during the emergency period. An initial investigation was conducted by Deloitte Forensic Services. The completion date would be December 2013;

4.2.2 helicopter contract investigation: it was alleged that an Eskom Employee involved in the procurement of helicopter services from AV8 Helicopters in the Eastern Cape had a son who received training from AV8 Helicopters during the time of procurement;

4.2.3 Hendrina Fencing Contract Investigation (R31 million) – allegations of irregular SCM processes followed when awarding the tender/s to service providers at Eskom's Hendrina Power Station by an entity called Sunfox 13 cc, trading as D & F Fencing concerning a fencing project;

4.2.4 provisional accounts at Eskom Megawatt Park – allegations of irregular finance/accounting processes implemented at Eskom in respect of monies allegedly deposited into a provisional account at Eskom. It is alleged that officials were misusing this account to pay monies to coal transporters for services that were not rendered;

4.2.5 non-disclosure (conflict of interest) investigation. In October 2010, the SIU initially identified a large number of potential conflict of interest by Eskom officials. The SIU was awaiting the updated databases as requested to continue into the investigation.

4.3 One of the investigations dealt with the emergency coal procurement process, where allegations of irregular supply chain management processes were reported following the award of contracts to the relevant service providers during this period. An initial investigation was conducted by Deloitte Forensic Services (note: this report was not provided as part of the document review pack). The investigation was to be completed by December 2013. The findings of these investigations would be of great significance to the board committee.

5 Final Catalyst Report dated April-June 2013

5.1 The following procurement irregularities were identified:

5.1.1 contract specifications designed to suit a specific supplier to the exclusion of others;

5.1.2 supplier preference when issuing orders;

5.1.3 employees not following procurement process when awarding, managing and terminating contracts;

5.1.4 conflict of interest (no declarations); and

5.1.5 awarding contracts to suppliers who do not satisfy all prerequisites.

5.2 The following fraudulent activities were identified:

5.2.1 identity fraud;

5.2.2 fraudulent change of bank account details;

5.2.3 employee routing funds due to Eskom to their personal accounts;

5.2.4 misrepresentation by suppliers; and

5.2.5 misrepresentation by employees to suppliers to defraud them.

5.3 The following corruption incidences exist:

5.3.1 employee receiving bribes from supplier; and

5.3.2 suppliers financing employee's lifestyle.

5.4 In relation to procurement and supply chain (General):

5.4.1 extend Fraud Awareness and Training to Eskom Vendors; and

5.4.2 some of the risks include general fraud and corruption risks regarding procurement processes like fronting, preferential treatment of vendors, abuse of sole supplier situations and emergency procurement procedures

COMMISSION OF INQUIRY INTO STATE CAPTURE

Annexure I: Effectiveness of Procurement Processes

1 Water Treatment Plant, Waste Water Treatment Plant and Containerised Demineralisation Plant for Kusile

1.1 EXCOPS considered the second modification to contract 4600012863 with PDNA Industrial Projects for the design and installation of the above on 23 October 2013. The EXCOPS report regarding the EXCOPS meeting held on 23 October 2013 was tabled and noted for approval to EXCO at the EXCO meeting held on 6 May 2014. The Board approved the EXCO report for the EXCO meeting held on 6 May 2014 at the Board meeting held on 29 May 2014.

1.2 The EXCOPS meeting pack included the modification report in respect of this modification. The modification report was prepared by Thandiwe Gxabuza, Senior Buyer, Project Sourcing, signed off by Abram Masango, General Manager, Kusile Power Station and Brian Naidoo, Procurement Co-ordinator, Project Sourcing and submitted to EXCOPS and BTC. The modification report, on page 4, indicates that the Kusile Executive Team ("KET") identified "miscellaneous items" as "either unnecessary or already catered for under other packages" and should therefore be removed from the contract. The "miscellaneous items" includes a mobile denim plant, which KET determined would not be necessary to support the construction of units 4, 5 and 6.

1.3 The removal of these "miscellaneous items" from this contract's scope of work reduces the contract value by R22.7 million. The modification report does not provide further details regarding why these "miscellaneous items" were initially included in the scope of work and does not provide a breakdown of the miscellaneous items.

1.4 The minutes of the EXCOPS meeting on 23 October 2013 indicates, on page 18 under item 10.10, that EXCOPS did not make any further enquiries regarding the original inclusion of these "miscellaneous items" in the scope of work and contract value.

1.5 Based on the above, it appears that it was possible under Eskom's procurement process for more than one contractor to be required to do the same work or for unnecessary items to be included in a contractor's scope of work. There is a risk that individuals can take advantage of this to inflate contract values. It is not clear why EXCOPS did not identify this issue or make further enquiries regarding this issue.

2 Materials Handling, Coal and Ash Plant Maintenance and Field Operating Services at Medupi

2.1 On 23 October 2013, EXCOPS considered the approval of a mandate to negotiate and conclude a contract with Roshcon SOC Ltd ("Roshcon") for the provision of the abovementioned services.

2.2 The EXCOPS meeting pack included a submission document in respect of the above that was prepared by M de Bruyn, Manager: Procurement: Medupi/Kusile and approved by CJ Prinsloo, Power Station Manager: Medupi/Kusile, F Mobu, General Manager: Commercial, T Govender, Group Executive: Generation and K Lakmeeharan, Group Executive: Group Commercial that was also submitted to BTC. This submission document indicates that a mandate is requested to negotiate and conclude the abovementioned contract for a value not exceeding R1.5 billion and a period of 120 months with Roshcon. Page 3 of the document identifies the high probability of the risk that Roshcon will not submit a financially viable tender. The mitigation strategy for this risk is that a "strategic and systematic approach must be followed to reach a financially acceptable agreement between the two parties".

2.3 The minutes of the EXCOPS meeting on 24 October 2013, during which EXCOPS discussed the abovementioned approval, indicates that EXCOPS did not consider the risk that Roshcon will not submit a financially viable tender.

2.4 As Roshcon is a subsidiary of Eskom, it is surprising that Eskom is concerned that Roshcon will not provide Eskom with a financially viable proposal and that the only mitigation strategy for this risk would be the manner in which the negotiations take place.

3 An analysis of the quarterly reports submitted to MANCOM by Eskom Divisions in 2013 shows that the Divisions have been informing MANCOM regarding their business performance problems caused by ineffective procurement processes. For example:

3.1 Distribution Division reported that one of the reasons of electrification delays was ineffective procurement. (Distribution Division Quarterly Report to MANCOM for Q3 of 2012/2013, p. 2-3, 5);

3.2 Operating Units of the Distribution Division reported in 2013 various problems related to procurement, for example:

3.2.1 CAPEX underspending caused inter alia by slow procurement process, delays in appointment, shortage of outsourced capacity (contractors), lack of understanding of the new procurement procedures (Western Cape Operating Unit Report to MANCOM for Q3 of 2012/2013, pp. 3-4; see also, Eastern Cape Operating Unit Report to MANCOM, pp. 1, 3, 5-6; Northern Cape Operating Unit report to MANCOM for Q3 for 2012/2013, p. 5.; KZN Operating Unit Quarterly Report to MANCOM for Q3 2012/2013, p. 6; Eastern Cape Operating Unit Quarterly Report to MANCOM April 2013 – June 2013; 11.4.4(a) Eastern Cape Operating Unit Quarterly Report to MANCOM July 2013 – September 2013, p. 5; KZN Operating Unit Quarterly Report to MANCOM Q2 2013-2014 , page 7);

3.2.2 Non-commercially viable suppliers within the operational unit boundaries resulting in delays in the execution of projects and under expenditure; expiry of contracts, long turnaround time to prepare quality reports for tender boards resulting under-expenditure and delays of projects, respectively.

(Free State Operating Unit Quarterly Report to MANCOM for Q3 for 2012/2013, page 6);

3.2.3 Roshcon, the appointed contractor, had challenges with capacity and are now in the process of appointing subcontractors. Roshcon committed to sending two teams to expedite the project and ensure Eskom comes in line with the planned Capex. (Northern Cape Operating Unit Quarterly Report to MANCOM for Q1 2013/14, page 4);

3.3 Group Commercial also mentioned in its report to MANCOM for Q2 of 2013/2014 that a task team was established to address the delays in the procurement process, steps has been launched in order to create visibility on transactional (Group Commercial Quarterly Report to MANCOM for Q2 of 2013/2014, page 7); and

3.4 Corporate Affairs also reported problems related to inefficient procurement process. Corporate Affairs Quarterly Report to MANCOM for Q2 of 2013/2014, page 7).

COMMISSION OF INQUIRY INTO STATE CAPTURE

Annexure J: Adequacy and Effectiveness of the Defined Modification Approval and Monitoring Process

1. The financial review, dated 3 October 2013, conducted in respect of a proposed modification to the contracts for comprehensive quality control, monitoring and inspection, dealt with general issues such as contract modifications. The contractors in question are TUV Rheinland Inspection Services (Pty) Ltd (contract number 4660020816), Phambill Merz (Pty) Ltd (contract no 4660020817) and Parsons Brickenhof Africa (Pty) Ltd (contract no 4660020818). This review was compiled by Sthembile Ngcobo, reviewed by Michael Ndima, both from Project Finance Services, and submitted to the Divisional Executive: Generation Division. The review was included in the meeting pack for the EXCOPS meeting on 31 October 2013.

2. The EXCOPS report regarding the EXCOPS meeting held on 31 October 2013 was tabled and noted for approval to EXCO at the EXCO meeting held on 6 May 2014. The Board approved the EXCO report for the EXCO meeting held on 6 May 2014 at the Board meeting held on 29 May 2014. This information relating to the review does not appear in the EXCO report to the Board.

3. The following extracts are from the review:

3.1 Page 3: "Just as a general concern, the extent to which the process of modifying contract is used at Eskom makes the company susceptible to potential misappropriation of funds. This is a 5th modification to this contract and the revised contract value is already more than 3 times the original contract value; increasing from R105m to R326m. We recommend that the following be taken into consideration:

3.1.1 A strict approach should be taken by the Board / Committees when approving contract modifications;

3.1.2 Instead of allowing for a series of contract modifications draining Eskom financially consider going back to the market and issue an open enquiry as this could be a more cost effective option for Eskom;

3.1.3 For additional scope, a thorough cost benefit analysis between giving additional work to the contractor already on site v issuing a new enquiry should be done to make sure that the most cost efficient offer gets awarded the contract; and

3.1.4 Regular audits, by appropriately skilled and qualified individuals, should be performed on contract modification funds while the contract is in progress / after completion to make sure that the requested funds have been appropriately used and accounted for."

3.2 Page 3: "We have no reason to believe that this request should not be approved, subject to

the following provision: we do not have the necessary expertise to comment on the reasonableness of the estimated quantities and the fairness of the extension period requested thus we are relying on the work performed by the respective power stations."

4 Though the financial review includes serious concerns regarding the fact that contracts, and particularly this contract, are frequently modified, it still concludes that they have "no reason to believe" that the request should not be approved.

5 The minutes of the EXCOPS meeting on 31 October 2013 indicate that the Committee requested that the tracking of performance should be implemented and that contractors should be approached to implement cost savings in their contracts. EXCOPS then resolved to modify the contracts but that the performance of the contractors be monitored and tabled for information. However, EXCOPS did not deal with the general issues raised in the financial review.

6. In the succeeding paragraphs we provide examples of instances where a contract modification was preferred over an open enquiry:

6.1 Quality Control and Inspection Modification

6.1.1 On 23 October 2013, EXCOPS considered a modification to the current contracts for the provision of comprehensive control monitoring and inspection services for the generation division. The mandate to negotiate document for this modification was prepared by Asanda Mzileni (Senior Advisor: Procurement), signed off by Dhiraj Bhimma (Senior Manager: Production Engineering), Jimmy Sofianos (Corporate Specialist: Commercial), Mandla Gobingca (General Manager: Supplier Development and Localisation) and Malesela Sekhasimbe (General Manager: Commodity Sourcing), and submitted to EXCOPS. (The EXCOPS report regarding the EXCOPS meeting held on 23 October 2013 was tabled and noted for approval to EXCO at the EXCO meeting held on 6 May 2014. The Board approved the EXCO report for the EXCO meeting held on 6 May 2014 at the Board meeting held on 29 May 2014. This information relating to the modification of these contracts does not appear in the EXCO report to the Board).

6.1.2 Page 4 of the mandate to negotiate document indicates that:

6.1.2.1 Group Technology, supported by Generation, submitted a retention letter to the existing suppliers on 22 July 2013 requesting that Commercial go out on a closed tender;

6.1.2.2 Commercial was of the view, due to the fact that the RFI identified that there are other suppliers that are capable of providing this service to Eskom and capable of complying with Eskom's requirements, that an open tender should be utilised;

6.1.2.3 the current contracts are expiring on 30 November 2013 and "Group Technology and Commercial are still debating the open or closed tender enquiry"; and

6.1.2.4 based on the above, it is necessary to extend the current contracts by 12 months.

6.1.3 The debate regarding whether an open or closed tender should be utilised should have been resolved in accordance with Eskom policy and not be allowed to result in the extension of the current contracts. Allowing such debates to result in the extension of existing contracts could provide the space for the manipulation of process to benefit preferred contractors.

6.1.4 As indicated in paragraph 3.3, EXCOPS approved the modification and required that the performance of the contractors be monitored and tabled.

6.2 Basil Read: Ash Dump

6.2.1 On 8 October 2013, EXCOPS considered a modification to contract no 4650012938 with Basil Read (Pty) Ltd for the construction of the Ash Dump and Dams and Miscellaneous Infrastructure at Medupi Power Station. The modification report in respect of this modification was prepared by Sanelisile Nzimande (Senior Buyer), signed off by Roman Crookes (General Manager) and Pierre Weyers (Procurement Manager) and submitted to EXCOPS and BTC. (The EXCOPS report regarding the EXCOPS meeting held on 8 October 2013 was tabled and noted for approval to EXCO at the EXCO meeting held on 6 May 2014. The Board approved the EXCO report for the EXCO meeting held on 6 May 2014 at the Board meeting held on 29 May 2014. This information relating to the modification of this contract does not appear in the EXCO report to the Board.)

6.2.2 The modification report indicates that:

6.2.2.1 the resolution required was to increase the contract value from R230 million to R1 billion due to a change in the scope of work (page 1); and

6.2.2.2 the reason for the change in scope of work is to implement design changes to the liners and drainage of the coal stockyard and to bridge the gap between the initially estimated amount for the construction of the coal stockyard and the cost submitted by the contractor for the works (page 4).

6.2.3 The minutes of the meeting on 8 October 2013 indicates that it was reported that management was confident that the new design would work "as more professional specialists had been involved in the design" and that no further modifications were expected.

6.2.4 The background to this contract indicates that the ash dump was initially built by Basil Read, but that it failed due to a design error. In such circumstances it is reasonable that Eskom would prefer to utilise the services of the same contractor for the construction of the new design. However, the modification report, and none of the other submission documents, provide reasons for preferring modification over the issue of a tender.

6.3 Rotek Engineering: Maintenance Services on Turbines and Associate Plant

6.3.1 On 23 October 2013, EXCOPS considered the modification to the existing contracts ENK 272

with Rotec Engineering, a division of Rotek Industries (Pty) Ltd, for the provision of maintenance services on turbines and associated plant at Eskom's Generation power stations. The mandate to negotiate was prepared by Mike Body (Middle Manager Commercial), signed off by Vusi Mboweni (Senior General Manager) Edwin Mabelane (Senior General Manager) and Charles Kalima (Senior Manager Commercial) and submitted to EXCOPS. The contracts affected by this modification consist of the following contract numbers: 4660024703, 4660024737, 4660024772, 4650024698, 4660024709, 4660024704, 4660024690, 4660024890, 4650011984, 4660026738, 4660024714, 4650011956, 4660024756, 4660024736, 4660024732, 4660024695, 4650011955, 4660024708, 4660024741, 4660024716, 4660024813, 4660024696, 4660024757 and 4600046506.

6.3.2 The Mandate to Negotiate indicates that:

6.3.2.1 the modification sought is to increase the contract value by R4.3 billion to R11.7 billion and change the scope of work; and

6.3.2.2 the modification is as a result of additional work on the scope of maintenance at a number of powerstations, breakdowns and overseas labour resources used by Rotek to suppliement their own resources when maintenance demands are high.

6.3.3 The financial review in respect of this modification, which was prepared by Jenny Lukhele and Michael Ndima indicates that they are "unable to comment on the reasonableness of the estimated modification values submitted as [they] were not provided with the basis thereof".

6.3.4 The minutes of the meeting on 24 October 2013 indicate on page 13 under item 10.5 that both the Acting GE: T&C and DE:T declared possible conflicts of interest in dealing with this matter. The minutes do not specify whether they recused themselves. During this meeting it was noted that the financial report lacked detail and this must be corrected. Generation was requested to include in the presentation the principles around the pricing structure and details of competitive pricing. EXCOPS recommended to BTC that approval be granted to modify the contracts.

6.4 Kusile Civil Works JV: Main Civil Works at Kusile

6.4.1 On 13 March 2013, EXCOPS considered a modification to the contract number 4600010600 with Kusile Civil Works JV comprising of Basil Stocks Civil (Pty) Ltd and WBHO Construction (Pty) Ltd. We have not been provided with the submission document, but on page 2 of the minutes the Committee noted that it was concerned that the escalation of costs was not tabled in their totality in order to give the Committee a full picture of the possible expenditure for the whole project. However, the Committee still resolved to recommend to the BTC that approval be granted for the modification.

6.4.2 On 17 April 2013 the BTC approved the modifications referred to above (item 9.1 on page 7 of the minutes).

6.5 Stefanutti Stocks Basilo Read JV: Construction at Kusile

6.5.1 On 13 March 2013 EXCOPS considered a modification to the contract with Stefanutti Stocks Basilo Read JV. We have not been provided with the relevant submission documents. Page 4 of the minutes, under item number 9.3, indicates that the modification is as a result of the omission of "necessary costs such as budgeting for material of the bill of quantities". The modification is to increase the contract value by an additional amount of R739 million. (The EXCOPS report for the EXCOPS meeting held on 13 March 2013 was tabled and noted for approval by EXCO at its meeting held on 22 April 2013. The EXCO report for the EXCO meeting held on 22 April 2013 was tabled and noted for approval by the Board at the Board meeting held on 30 May 2013. This information relating to the modification of this contract does not appear in the EXCO report to the Board).

6.5.2 In the meeting, the Committee pointed out that included in the claim were costs due to delayed engineering work and sought clarity on how and when Eskom would recover these costs. In the meeting it was recommended that the submission to BTC should include the reasons for the root cause for the additional costs and a report on the lessons learnt to be include.

6.5.3 It was resolved to recommend to the BTC to approve the modification.

6.5.4 On 17 April 2013 the BTC approved the modifications referred to above (item 9.2 on page 8 of the minutes).

6.6 Enabling Agreement for IT specific Professional Services

6.6.1 On 21 August 2013, EXCOPS considered a modification to the enabling agreement for IT specific professional services, contract no 4600044200, with 52 companies to include ERA approved projects and to extend the contract by 12 months and increase the contract value by R400 million to R1 billion. The modification report in respect of this modification was prepared by Nonhlangola Mangena (Senior Advisor: Procurement), signed off by Frans Marais (Contracts Management), Dave Gerrie (Category Manager ICT Professional Services), Verona Ramoo (Commodity Manager ICT Professional Services) and Sal Laher (Chief Information Officer: Group IT Divisional Executive), and submitted to EXCOPS and BTC. (The EXCOPS report regarding the EXCOPS meeting held on 21 August 2013 was tabled and noted for approval to EXCO at the EXCO meeting held on 6 May 2014. The Board approved the EXCO report for the EXCO meeting held on 6 May 2014 at the Board meeting held on 29 May 2014. This information relating to the modification of this contract does not appear in the EXCO report to the Board).

6.6.2 Page 1 of the modification report notes that the request for an increase to the total approved value of the contract is not guaranteed as there is no contract value per supplier. The contracts are rate based and on an as and when required basis.

6.6.3 Page 7 of the modification report indicates that the reason for the modification is that, based on current spending patterns, the current contract value will be depleted before the end of 2013 and

there is an increased need for IT resources.

6.6.4 The submission documents do not indicate the reasons for preferring a contract modification over an open enquiry.

6.6.5 The minutes of the EXCOPS meeting on 21 August 2013 (page 4) indicates that a Committee member raised a concern regarding the cost effectiveness of the moratorium on recruitment whilst continuing to use consultants. It was reported that the intention was to sustainably reduce the headcount going forward. It was noted that the request for the contract extension was not approved as this is a third party contract and must be referred to EXCO. It was resolved that the required additional funds be made available whilst the contract duration remains unchanged.

6.7 Emergency Electrical Woodpole Replacement

6.7.1 On 21 August 2013, EXCOPS considered a modification to a contract for the provision of supervision, labour, plant, equipment, material (other than free-issue material) and transport required for the Emergency Electrical, Woodpole Replacement and RSI Reliability of Supply Improvement Projects for KZN Operating Unit. The following contract numbers are included in this modification: 4600040046, 4600040047, 4600040048, 4600040049, 4600040050, and 4600040051.

6.7.2 The mandate to negotiate was prepared by Thabile Sibiya (Senior Buyer Projects), signed off by Ian McFadden (Manager Technical Support) and Nerash Singh (Regional Procurement Manager) and submitted to EXCOPS.

6.7.3 The resolution required is to increase the contract value from R143 million to R440 million. Page 2 of the mandate to negotiate indicates that the reason for the modification is that during the 2012 winter period severe snow storms were experienced and that extensive maintenance projects were required.

7. Cost Escalations

7.1 Terrace Underground Facilities at Kusile

7.1.1 On 21 August 2013 EXCOPS considered a modification to contract no 4600012895 with Esorfranki Civils (Pty) Ltd for the construction of terrace underground facilities (P26) at Kusile Power Station. The modification report in respect of this modification was prepared by Lunga Manci (Senior Advisor Buying: Project Sourcing), signed off by Koena Mogolola (Package Manager: Kusile Power Station Project), Abram Masango (General Manager: Kusile Power Station Project) and Brian Naidoo (Procurement Coordinator: Project Sourcing) and submitted to EXCOPS.

7.1.2 The modification report indicates that:

7.1.2.1 the modification requested was an increase in contract value from R181 million to R400 million and to extend the contract duration by 17 months to 59 months (page 1);

7.1.2.2 the contract's previous modification was inter alia due to delays, including Roshcon's "inability to install raw water, portable water, fire water, sanitary drain piping systems and the it conduit into the west of the power island" (page 2);

7.1.2.3 the reason for this modification is a change to the scope of work, a claim notification received from Esorfranki civils amounting to R133 million and the costs associated with the Project Labour Agreement (page 3); and

7.1.2.4 the change in scope of work is due to (i) the contractor not being able to perform at the required rate of progress due to capacity limitations, (ii) increased scopes of work, (iii) no continuity of work, (iv) changing priorities, and (iv) access limitations by KET (page 3).

7.1.3 The Finance Project Services report in respect of this modification, which was included in the EXCOPS meeting pack for 21 August 2013, was compiled by Thenjiwe Mzoneli and Nombulelo Masoeu. The report specifies that Finance Project Services "do not have the technical expertise to comment on the reasonability of the quantities used in the calculation and therefore have relied on the KET Engineering Department's estimated quantities". However, the Eskom quantity surveying / cost engineering document, which was prepared by Koena Mogolola and submitted to the BTC, indicates that the evaluation is based on the "QS estimates and quotations received from the contractor" and that the "actual costs of works will be negotiated with the contractor before the work commences". Accordingly, it does not appear that the documents submitted for the approval of a modification indicate whether the cost of the modifications is reasonable. This results in the process being susceptible to manipulation to favour a preferred supplier.

7.2 Maintenance, Repair and Complementary Services for Boiler Plant and High Pressure Pipework at Coal Fired Power Stations

7.2.1 On 23 October 2013 EXCOPS considered the modification of contracts ENK 0257 with Steinmuller Africa (Pty) Ltd, John Thompson (a division of Actom (Pty) Ltd) and Babcock Nthuthuko Engineering (Pty) Ltd for the provision of maintenance, repair and complementary services for boiler plant and high pressure pipework at the 13 Eskom Generation Coal Fired Power Stations.

7.2.2 The mandate to negotiate was prepared by R J Callow, signed off by Charles Kalima, Matshela Koko, Mandla Gobingca, Thava Govender and Malesela Sekhasimbe, and submitted to EXCOPS and BTC. The mandate to negotiate indicates that:

7.2.2.1 the modification required is to extend the contracts for 24 months and increase contract value by R6.8 billion to R21.7 billion;

7.2.2.2 the reason for the modification is to allow sufficient time for the selected process to be implemented to conclude new contracts.

7.2.3 The report from Finance Project Services dated 11 October 2013, prepared by Nombulelo

Masoeu and John van der Byl, submitted to the Divisional Executive – Generation and included in the meeting pack for the EXCOPS meeting on 23 October 2013 indicates on page 2 that they "were provided with estimates from the power stations on which modification value was determined, however, these estimates could not be substantiated as a result [they] were unable to verify them" and that "due to the limited scope, we are not in a position to comment on the reasonableness of the estimated modification value".

7.2.4 The EXCOPS minutes for 24 October 2013 indicate on page 14 under item number 10.6 that the original procurement strategy had been delayed due to changes in the Eskom Board and thereafter the advent of the PPPFA. The Committee recommended that the submission should include a full explanation for the reasons for the 24 months extension and resolved to recommend to BTC that approval for the modifications be granted. Page 9 of the mandate to negotiate document indicates that these contracts are reimbursable contracts, and that the actual costs incurred by the suppliers will be reimbursed by each power station.

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom	IN COMMITTEE MINUTES OF THE ESKOM HOLDINGS SPECIAL BOARD MEETING	Unique Identifier	221-206
		Document Type	OCSDTE
		Revision	0
		Revision Date	July 2015
		Office of the Company Secretary Department	

MINUTES OF THE SPECIAL ESKOM BOARD IN-COMMITTEE MEETING 05-2015/16 HELD ON 2 JULY 2015 AT THE HUVO NKULU BOARDROOM, MEGAWATT PARK FROM 15H30 AFTER THE BOARD MEETING

STRICTLY CONFIDENTIAL

PRESENT

Dr BS Ngubane	Acting Chairman
Ms M Cassim	Member
Ms N Carrim	Member
Mr Z W Khoza	Member
Ms V J Klein	Member
Mr R Kumalo	Member
Ms C Mabude	Member
Dr P Naidoo	Member
Ms V Naidoo	Member
Mr MV Pamensky	Member

OFFICIALS

Mr M Phukubje	Company Secretary

APOLOGIES

None

1. OPENING AND WELCOME

The Chairman welcomed all present and declared the meeting open.

2. APOLOGIES

There were no apologies.

3. QUORUM

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

4. DECLARATION OF INTERESTS

There were no declarations of interest pertaining to items on the Agenda.

5. CONFIRMATION OF THE AGENDA

The agenda was confirmed as tabled.

Eskom	IN COMMITTEE MINUTES OF THE ESKOM HOLDINGS SPECIAL BOARD MEETING	Unique Identifier	221-206
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6. ITEMS FOR INFORMATION

6.1. Report and review of the suspended executive and resolution of all relevant issues

The Chairman of the P&G reported back to the Board and attendant issues were dealt with, these being how to proceed with the remaining suspended executive. It was reported that the P&G agreed and resolved in its meeting of 02 July 2015 that the suspension be lifted. The recommendation was then tabled for discussion and deliberation by members of the Board. It was agreed that the Board should await the release of the final Report by Dentons, after which a firmer decision could be made.

Resolved that:

6.1.1 the Dentons' Report to be submitted on 11 July 2015 should be the final report; and
6.1.2 Dentons should be paid in full, in accordance with the terms of their contract with Eskom.

6.2. Executive Acting Positions

The issue of acting positions was also raised and it was agreed that it had to be dealt with as a matter of urgency. It would be discussed at the next Board meeting and P&G was required to give a detailed to the Board on the matter.

6.3. Former Finance Director Separation Package

The decision taken by the negotiating team to give the former FD a separation package equal to 18 months remuneration was ratified and condoned by the Board.

Resolved that:

6.3.1 the decision taken by the negotiating team to give the former Finance Director a separation package equal to 18 months remuneration is ratified and condoned by the Board.

7. CLOSURE

There being no further matters for discussion, the Chairman declared the meeting closed at 16h20.

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

Ngubane
CHAIRPERSON

29/04/16
DATE

U14-VK-0952

05

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-0953

Eskom Board commissions independent enquiry

2015/03/12

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

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

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

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

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

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

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

END

U14-VK-0954

More on the interim appointees

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

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

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

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U14-VK-0955

Parliament on suspension of Eskom CEO Mr Tshediso Matona and senior executives

13 Mar 2015

The Chairperson of the Portfolio Committee of Public Enterprises, Ms Dipuo Letsatsi-Duba, has expressed concern and shock over the suspensions of Eskom CEO Mr Tshediso Matona and three other senior executives by the power utility's Board.

Ms Letsatsi-Duba said: "We register our concern regarding the stability and governance of the power utility, considering the current energy challenges facing the country." She added: "The Committee needs to engage the Minister and Board to get a comprehensive briefing about the immediate suspension and the investigation that will be conducted on the executives that have been suspended."

She concluded: "As Eskom's oversight body, it's important to be briefed on the latest developments on what is happening with the power utility and not to be informed through media reports."

For media enquiries or interviews with the Chairperson, please contact:

Yoliswa Landu

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COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-0957

Statement on the Cabinet meeting of 10 December 2014

11 December 2014

From the outset, Cabinet would like to clarify the misperception that President Jacob Zuma has refused to answer questions in Parliament. Cabinet also noted efforts by Deputy President Cyril Ramaphosa to interact with political parties in the National Assembly following chaotic scenes recently.

The Constitution of the Republic of South African stipulates that the President is accountable to Parliament. The President has continuously fulfilled his role of accounting to Parliament. He has been answering written and oral questions posed to him by the members in both the National Assembly and the National Council of Provinces (NCOP).

The President went to orally answer questions in the National Assembly on 21 August 2014. Unfortunately Honourable Members disrupted him whilst answering the 3rd of 6 questions posed to him. It is the Honourable Members who, through their own disrespectful behaviour, who disrupted the President as he was answering questions. Those who prevented the President from orally answering questions in the National Assembly have no moral grounds to twist the facts and suddenly claim that it is the President who does not want to orally reply to Honourable Members' questions. The National Assembly has since censured those Honourable members who disrupted The President.

Further, Cabinet is not aware of any Order Paper in the National Assembly which had scheduled the President to answer oral questions after the disruption of his oral replies. Therefore it cannot be true that the President has refused to answer questions in the National Assembly.

Cabinet remains concerned over the disruptive effect the recent power outages are having on the daily lives of South Africans and its impact on households and businesses across the country. Cabinet adopted a five-point plan to address the electricity challenges facing the country. The lack of sufficient capacity to meet the country's energy needs remains a challenge and all attempts are being made to ensure that we overcome the tight energy situation. To meet the country's future energy requirements government is implementing an energy mix which comprises of coal, solar, wind, hydro, gas and nuclear energy. In future biomass, wind power, solar power and hydro-power will contribute 11.4 Gigawatts of renewable energy to the grid. Since 1994, five million more households were connected to the grid. In 2004 this increased to 12 million households. This happened without additional power stations being built. This increase of households was set off the existing grid. Cabinet has adopted a five point plan.

Today Eskom will sign an MoU with the Strategic Fuel Fund and Transnet Ports Authority so that the country can be assured of a regular supply of diesel. The focus will be given to improve the strategic maintenance and operational efficiency to ensure that the level of efficiency is increased from the 72% currently to the target of 80%. Eskom will present a detailed finance plan to manage its cash flow beyond 2015. This plan will be presented to the IMC by December 2014. Simultaneously government will finance the funding model.

Cogeneration options will be pursued with the sugar paper and pulp industries to harness waste energy to the extent of 1000 megawatts. There are significant opportunities for the importation of gas. A coal independent power producer programme will be launched by the end of January 2015 with generation capacity of 2 500 megawatts. We are therefore appealing to the public to help our country to reduce the demand of energy which means switching off electricity when not in use. We will have some relief from the 15th December 2014 when manufacturing and industrial processes close for the year. A technical team war room for the implementation of the five point plan is constituted with immediate effect. The five point plan addresses the strain our electricity system faces. The plan covers:
(I) the interventions that Eskom will undertake in the period over the next 30 days,
(II) harnessing the cogeneration opportunity through the extension of existing contracts with the private sector;
(III) accelerating the programme for substitution of diesel with gas to fire up the diesel power plants;
(IV) launching a coal independent power producer programme; and
(V) managing demand through specific interventions within residential dwellings, public and commercial buildings and municipalities through retrofitting energy efficient technologies.
Cabinet is concerned about the performance of some of the State-owned companies, in particular South African Airways (SAA), the South African Post Office and Eskom. These State-owned entities play a critical developmental role within the South African economy.
The President has assigned the Deputy President Cyril Ramaphosa to oversee the turnaround of three state-owned companies, namely South African Airways (SAA), Eskom and the South African Post Office. Working with the relevant Ministries, the SAA will be transferred from the Department of Public Enterprises to the National Treasury. The Presidency will closely monitor the implementation of the turnaround plans of these three critical state-owned companies that are drivers of the economy.

1. **Implementation of Key Government Programmes**

1.1. Cabinet welcomes the positive outcomes of the President's State Visit to the People's Republic of China from 4 to 5 December 2014, which is a true reflection of the deepening bilateral, trade and investment relations between South Africa and China.
South African businesses are urged to take advantage of the new economic opportunities that our relationship with China offers. Last week's adoption of the China-South Africa 5-10 Year Framework on Cooperation entrenches implementation of the agreements entered into since the conclusion of the Beijing Declaration in 2010 and expands on the Comprehensive Strategic Partnership.

1.2. Cabinet lauds the Department of Basic Education, Provincial Education Departments, principals, teachers and learners for their perseverance as we conclude another busy academic year.
The Minister of Basic Education Angie Motshekga will announce the outcome of the 2014 National Senior Certificate (NSC) examinations on 5 January 2015 with results being released to candidates on 6 January 2015.
Cabinet encourages learners who qualify for higher education studies to explore all available opportunities. Those learners who have not yet been accepted at an institution of higher learning at the time of the release of the NSC results should make use of the Central Applications Clearing House (CACH) service in January and February 2015. This service makes a register of potential candidates that meet institutions' minimum admission requirements to all Post-School Education and Training (PSET) institutions in South Africa.

The service also offers career advice and assists prospective applicants with possible alternatives. The service can be accessed through the call centre on: 0800 356 635 or through an SMS with name and identity number to 49200.

1.3. Cabinet welcomes the release of the 2014 Annual National Assessments (ANA) last week which shows an upward trend in performance of all grades except Grade 9.
The ANA remain a powerful tool to assess the health of our education system and where immediate interventions are required as identified for the Grade nine learners in mathematics.

1.4. Cabinet thanks all South Africans, civil society and the media for their participation in this year's 16 Days of Activism campaign under the theme: 'Count me in: Together moving a non-violent South Africa forward'.
The call to all South Africans to 'Count me in' seeks to ensure the longevity of established partnerships by translating our activism during this period into everyday actions throughout the year so that we can eliminate the scourge of violence against women and children.

1.5. South Africa will mark National Reconciliation Day on 16 December 2014 under the theme: 'Social Cohesion, Reconciliation and National Unity in the 20 Years of Democracy' at the Ncome Museum in the uMzinyathi District Municipality, KwaZulu-Natal.

1.6. Cabinet conveys its gratitude to all South Africans and the international community that commemorated the anniversary of the passing of the country's first democratically elected President Nelson Mandela on 5 December 2014.
We must stay true to Madiba's legacy by continuing his unwavering dedication to democracy, selflessness, reconciliation, service to humanity and striving for a better life for all. It is through these values and dedication to the service of humanity that we remain inspired to become a united and prosperous nation.

2 **Key Cabinet decisions**.

2.1. Cabinet approved that the 2013/14 performance report of the Research and Development (R&D) Tax Incentive programme be tabled in Parliament.
Government offers R&D tax incentive in terms of Section 11D of the Income Tax Act, 1962 in order to encourage private sector R&D activities. South Africa offers 150% deduction on approved operational expenditure incurred on R&D activities and is recognized to be amongst the countries that offer the more generous tax incentive for R&D.
The incentive which has been in place since November 2006 saw 810 companies participating, as at February 2014. From 2005/06 to 2012/13 companies reported an estimated R44.1 billion R&D expenditure, and National Treasury estimated that just over R3,2 billion was claimed in R&D tax deduction from SARS. 2013/14 saw 44.2% Small and Medium Enterprises (SMEs companies with an annual turnover of less than R40 million) participating in the R&D tax incentive.

2.2. Cabinet was updated on progress made with the MeerKAT project, the collateral benefits that have accrued to the local communities and South Africa, and the international negotiations underway relating to the hosting of the SKA project.
The construction of the MeerKAT telescope – the pathfinder to the eventual SKA – is progressing well, with significant opportunities for the local South African industry. A number of cutting-edge technology developments are being driven by South Africa, especially in the area of high performance computing. Local communities in the Northern

Cape have also benefitted through the many social investment partnerships.
On the international front, the hosting agreement, the funding model for the SKA and the procurement policy are being discussed and finalised. Negotiations are also continuing on the establishment of an inter-governmental treaty organisation.
Cabinet approved a joint task team between the Ministers of Science and Technology and Higher Education and Training to identify the required human resources as well as to ensure that academic and other research institutions are aligned to the development and needs of the MeerKAT, SKA and similar projects.
Cabinet also approved collaboration between the Ministers of Science and Technology and Small Business Development should opportunities arise for empowering and capacitating Small and Medium Enterprises in light of the potential economic impact.

2.3. Cabinet approved for Statistics South Africa to conduct stakeholder consultations in preparation for the amendment of the Statistics Act, Act 6 of 1999.
Consultations between the organs of state and other relevant organs are necessary to facilitate the development of the series of data collections needed for the National Development Plan.

2.4. Cabinet was briefed on the compliance of Members of the Senior Management Service (SMS) with the Financial Disclosure Framework, which is monitored by Parliament.
Of the 5 425 SMS members in national departments who were required to submit their financial disclosures forms for the 2012/13 financial year, the Public Service Commission (PSC) received 4 413 (81%) by the due date of 31 May 2013.
Cabinet highlights that a culture of zero tolerance for non-compliance should be entrenched in the day to day functioning of the State.

2.5. Cabinet was briefed on the 2013/2014 audit outcomes of the Public Finance Management Act (PFMA) compliant institutions and on the tabling status of their annual reports and financial statements.
There has been an improvement in compliance by institutions on the timeous tabling of their 2013/2014 annual reports and financial statements. For the year under review 417 PFMA compliant institutions were required to table their annual reports and financial statements by 30 September 2014, 379 institutions (91%) met the deadline which is a 7% improvement from the 353 in the previous year.
Cabinet approved that Accounting Officers and Accounting Authorities submit to their relevant Executive Authorities corrective steps that would be taken to address concerns raised in their audit reports.
Cabinet supports the need for Executive Authorities to monitor the progress made to address concerns raised in Audit Reports and to receive regular updates thereon.

2.6. Cabinet approved a range of steps to reform the Supply Chain management (SCM) system. These include: (a) supply chain management performance criteria to be included in the performance agreements of Accounting Officers as from 1 April 2015; (b) Accounting Officers to conduct a capacity review of SCM staff and to take remedial action where required; (c) Accounting Officers to brief Executive Authorities quarterly on the SCM performance in their department, municipalities or entities.
Cabinet also approved for the Office of the Chief Procurement Officer to accelerate the SCM reform by modernising the function in the public service. The Office of the Chief Procurement Officer has embarked on a strategy to simplify, standardise and automate procurement.
The National Treasury will conduct consultations with the National School of Government

with a view to develop a curriculum on training and standardisation of professional qualifications.

2.7. Cabinet approved the submission of South Africa's Periodic Report (2002-2013) on the United Nations (UN) International Convention against Torture and Other Cruel, Inhuman Degrading Treatment or Punishment to the UN Human Rights Council.
Compilation and submission of this report demonstrates governments' commitment to the global effort to protect and promote human rights. South Africa fully complies with the Convention in that it has criminalised torture, and Courts may now prosecute torture in terms of statute and not common law.
The Report provides South Africa with an opportunity to assess its compliance or lack thereof with international obligations. The fight against torture is in line with South Africa's key priority of ensuring safer communities which is in line with the National Development Plan.

2.8. Cabinet noted the draft White Paper on the Police. The 2014 White Paper on Police emanates from a review of the 1998 White paper on Safety and Security. The review reassessed how the practice and understanding of crime prevention has developed in South Africa post 1994.
The White Paper responds to the National Development Plan Vision 2030 by articulating the need and framework for a professional police service that is skilled, accountable and community-centered. In addition the police service is required to operate in an integrated manner within the Criminal Justice System in executing its constitutional mandate.

2.9. Cabinet approved that the draft Youth Policy 2014-2019 be made available for public comment. The draft policy is a progression from the first 2009-2014 Youth Policy. Youth development is at the core of South Africa's development agenda; the National Development Plan has a youth lens aimed at nurturing a demographic dividend.
The 2014-2019 policy ensures that the youth dividend is realised. Implementation of the policy will intentionally enhance the capabilities of young people to transform the economy and society by addressing their needs for holistic development, particularly those outside the social, political and economic mainstream.

2.10. Cabinet also approved publication of the draft National Disability Rights Policy in the Government Gazette for public comment. This serves to: update the White Paper on an Integrated National Disability Strategy, integrates both the obligations in the United Nations Convention on the Rights of Persons with Disabilities and the provisions of the Continental Plan of Action for the African Decade of Persons with Disabilities with South African legislation, policy frameworks and the National Development Plan 2030.

2.11. Cabinet approved the proposed vision for the Border Management Agency of South Africa as a basis for the business case and enabling legislation as work in progress.
Cabinet also approved that a pilot site be established and a proper legal framework be put in place.
A two-phased approach will be used to establish the Agency:

- Transition Phase (January 2015-December 2016) –used to start legislative drafting and its enactment and to make government initiatives in the borderline environment more visible. There will also be a continuation with current collaborative efforts at Ports of Entry under formalised multiparty agreements to strengthen the Border Control Operational Coordinating Committee's management authority.

- Agency Phase (January 2017 and beyond) – entails implementation of legislation to operationalize the Agency as a Public Entity in the Ports of Entry environment and to provide for the expansion of its mandate and functions to include the air, land (Border Guard) and maritime (Coast Guard) border environment.

The experiences of the transitional phase (including the pilot) will better inform the final proposals.
2.15 Cabinet approved the relocation of the lead agency role for the Border Control Operational Coordinating Committee from the South African Revenue Service to the Department of Home Affairs.

2.16 Cabinet was briefed on the results of a pilot audit on transformation in a sample of National Sport Federations. This provided the extent to which sport bodies in South Africa have transformed over the last two decades since the targets for transformation in sport were set. The results will be used by the Department of Sport and Recreation to provide focused support to those federations that need administrative support.
The purpose of the study was to establish a draft framework for evaluating the transformation in the different dimensions of the transformation charter; performance levels, demographics, access, skills and capabilities, governance, employment equity, and preferential procurement. Based on the lessons learnt from the first pilot study, the second phase of the audit began in March 2014. The scope of this audit covers all 16 priority sport codes.

2.17 Cabinet declared an annual National Recreation Day on the first Friday of October each year. This will provide an opportunity to all South Africans to actively be involved by participating in recreation activities that will improve their health and well-being.
A healthy and active citizenry is a key factor in realising the National Development Plan. To fully exploit the potential of recreation, the National Recreation Day needs solidarity, joint activities and cross-sectoral initiatives. To this end Cabinet also approved the establishment of a National Steering Committee.

3. **Bills**
3.1. Cabinet approved publication of the second draft of the Financial Sector Regulation Bill and its submission to Parliament as well as the release of the Draft Market Conduct Policy Framework for public comment. The draft framework will enable the public to be better informed when commenting on the Bill.

3.1.1. The Second draft Financial Sector Regulation Bill, 2014 follows comments received on the first draft which was approved by Cabinet in December 2013. The aim of the Bill is to make the financial sector safer by implementing the 'twin peaks' regulatory system, which is a comprehensive and complete system for regulating the financial sector, prioritising the customer and protecting their funds.
The 'twin peaks' approach to financial regulation underpins a comprehensive regulatory system, with two aims: (a) to strengthen the financial stability and soundness of financial institutions by creating a dedicated 'Prudential Authority' (within the South African Reserve Bank) and (b) to protect financial customers and ensure that they are treated fairly by financial institutions by creating a dedicated Financial Sector Conduct Authority, which also supervises how financial services conduct their business.
The Bill will provide the Financial Sector Conduct Authority and the Prudential Authority' jurisdiction over all financial institutions and provide them with a range of supervisory tools to fulfil their mandates.

This goes beyond two regulators as it sets up an underlying and harmonised system of licensing, supervision, enforcement, customer complaints (including ombuds), appeal mechanism (tribunal) and consumer advice and education.

3.1.2. The Draft Market Conduct Policy Framework drives fair treatment of customers in the financial sector, which is a key lesson for South Africa from the 2008 Global Financial Crisis. While South Africa's financial sector has proven to be resilient, government has recognised that the sector could be delivering better outcomes for financial customers and the economy.
There have been a number of well-known market conduct failings in South Africa's financial sector, and government has intervened to address these. However, the persistence of systematic market conduct challenges has highlighted the need for a more comprehensive and holistic approach to addressing the problem of poor conduct across the financial sector in its entirety.

3.2. Cabinet approved submission of the Plant Breeders Rights Amendment Bill to Parliament. The Bill amends the Plant Breeders' Rights Act, 15 of 1976. The Bill aims to strengthen the protection of intellectual property rights relevant to new varieties of plants. Such protection contributes to economic growth as it has a positive impact on the competitiveness of South Africa's agricultural sector.
Some of the key amendment proposals include: extending protection to all plant genera and species; addressing matters of infringement of plant breeders' rights through the appropriate fines and penalties and defining the limits and the beneficiaries in the application of farmer's privilege; and empowering the Minister to establish a Plant Breeders' Rights Advisory Committee to advise the Registrar on matters related to plant variety protection.

3.3. Cabinet approved the submission of the Plant Improvement Amendment Bill to Parliament.
Plant improvement in South Africa is regulated by the Plant Improvement Act, 1976 (Act No. 53 of 1976) which has been amended a few times, the last being in 1996. The amendments align the scope and provisions of the Act to the Constitution and other related legislation in the agricultural sector.
The Bill enhances sustainable crop production in South Africa by regulating the quality of plants and seed.
The significance and role of plant improvement legislation lies in recognising the importance of quality plant propagating material to support sustainable production as well as participation in the global market by setting quality standards for plants and seeds and the types of business dealing with plants and seed.

3.4. Cabinet approved submission of the Performing Animals Protection Amendment Bill to Parliament.
The Bill amends section 2 and 3 of the Performing Animals Protection Act 1935 (Act No. 24 of 1935) which were declared unconstitutional insofar as they relate to Magistrates deciding on and issuing licenses to persons intending to train and exhibit animals and to persons who use dogs for safeguarding.
The Bill proposes to remedy the defect identified by the Constitutional Court by transferring the functions of issuing of licenses for performing animals from the Judiciary to the Executive.
This is within the context of the Animal Protection Act, 1962 (Act No. 71 of 1962) which consolidates the laws relating to the prevention of cruelty to animals.

4. **Cabinet's Position on Current Issues**

4.1. Cabinet calls on all South Africans to join the fight against Ebola by participating in the African Union SMS resource mobilisation campaign. The African Union Commission has so far raised more than 20 million dollars in donations through its hashtag "#AfricaAgainstEbola" campaign, but more is still needed. By sending a 'Stop Ebola' SMS to 40797 South Africans will not only be donating R10.00 but will also fuel the hope and determination that Ebola can and will be stopped.

4.2. Cabinet wishes all a restful, peaceful year-end holiday and urges South Africans to put Ubuntu/Botho in practice by assisting those in our communities that are unable to support themselves and to show compassion as a nation that cares for, and respects each other. All parents to take care of their children during this period. Victims of abuse must speak out, report abuse and contact the 24 hour command centre 0800 428 428.

Cabinet calls on all South Africans to take every precaution during the upcoming festive season, stay away from the abuse of alcohol and drugs, and to enjoy the holiday period in a safe and responsible manner. All South Africans have a part to play in curbing incidents of crime, accidents and abuse, which tend to increase during this period.

Cabinet reiterates that traffic officials will have a zero tolerance approach to lawlessness on our roads during this festive season. We urge all road users to adhere to the speed limit; ensure vehicles are roadworthy; not to drive intoxicated and to wear safety belts. Pedestrians are urged to ensure that when using the roads they do not endanger their well-being or that of motorists.

Government will play its part by leading a range of campaigns such as Healthy Lifestyles and Arrive Alive in a bid to partner with communities to promote responsible and safe behaviour.

4.3. Cabinet is saddened by the tragic killing of South African teacher Pierre Korkie who was in Yemen as well as that of Werner Groenewald, and his two children, Rode and Jean-Pierre who died in an attack in Afghanistan. Cabinet conveys its condolences to their families and friends.

4.5 The work to identify the remaining 11 South Africans who died tragically in the Nigerian building collapse continues and government is intensifying efforts to ensure their remains are brought home without undue delay.

4.6 Cabinet conveys its condolences to the Gigaba family on the loss of their father, Reverend Jabulani Gigaba. He was the father to the Minister of Home Affairs, Mr Malusi Gigaba. Cabinet also conveys its condolences to the family and friends of Sisi Mabe, who was the Speaker of the Free State Legislature.

4.7 Cabinet congratulates the national soccer team Bafana Bafana and coach Ephraim "Shakes" Mashaba on qualifying for the Africa Cup of Nation 2015 in Equatorial Guinea which begins on 17 January 2015, and calls on all South Africans to support the national team as they fly our flag high.

4.8 Cabinet noted the launch of the Human Settlements Youth Brigade on 1-2 December 2014 by the Departments of Human Settlements, Small Business Development, and the National Youth Development Agency (NYDA) at the National Human Settlements Youth Summit. The Summit deliberated on the empowerment programmes of the departments targeting young people and how they can participate in the delivery of houses. At the end of the Summit all stakeholders signed the National Human Settlements Youth Accord which

serves as a statement of intent towards creating a holistic and integrated approach to human settlements delivery through youth mobilisation, development and participation in a form of National Human Settlements Youth Brigades. The intention is to mobilise young people behind the target of 1.5 million housing opportunities and aims to recruit and train about 10 000 Youth Brigades in the next five years.

5. **Upcoming events**

5.1 On 12 December 2014, the President of South Sudan, His Excellency Salva Kiir Mayardit will pay an official visit to South Africa where he will be hosted by President Jacob Zuma in Cape Town.

6. **Appointments**

Cabinet approved the following appointments subject to the verification of qualifications and the relevant clearance:

6.1. To the Council for Scientific and Industrial Research Board:

a) Dr Ramatsemela Masango (Chairperson);
b) Prof Thokozani Majozi;
c) Prof Mamokgethi Phakeng;
d) Dr Philip Hugh Goyns;
e) Dr Ayanda Noah;
f) Dr Antonio Llobell;
g) Ms Phindile Baleni;
h) Adv Ghandi Badela;
i) Mrs Mokgadi Maseko; and
j) Mr Joel Netshitenzhe.

6.2. To the Air Services Licensing Council:

a) Dr. Malindi Neluheni (Chairperson);
b) Ms. Kenosi Selane (Vice Chairperson);
c) Adv. Frans Johannes van der Westhuizen;
d) Mr. Bheki Innocent Dladla; and
e) Ms. Sibongile Rejoyce Sambo.

6.3. To the International Air Services Council:

a) Adv. Phetole Patrick Sekhule (Chairperson);
b) Dr. Xolani David Gwala (Vice-Chairperson);
c) Ms. Deshnee Govender;
d) Adv. Lufuno Tokyo Nevondwe; and
e) Ms Fulufhelo Velda Mphuti

6.4. To the Board of the Land Bank and Agricultural Development Bank.

a) Prof Abdus Salam Mohammad Karaan (re-appointment);
b) Ms Susan Ann Lund (re-appointment);
c) Mr Mabotha Arthur Moloto (Chairperson);
d) Ms Njabulo Zwane; and
e) Ms Dudu Hlatshwayo.

6.5. To the Transnet SOC Ltd Board (Non-Executive Directors):

a) Ms Linda Carol Mabaso (Chairperson);
b) Mr Stanley David Shane;
c) Mr Mogokare Richard Seleke;
d) Dr Gideon Mahlalela;
e) Ms Potso Elizabeth Bridgette Mathekga;

f) Ms Zainul Abedeen Nagdee;
g) Mr Vusi Matthew Nkonyane;
h) Mr Peter George Williams;
i) Mr Brett Gerard Stagman;
j) Ms Yasmin Forbes (reappointment); and
k) Ms Nazmeera Moola (reappointment).

6.6. To the Eskom SOC Ltd Board (Non-Executive Directors):
a) Mr Zola Andile Tsotsi (reappointment and Chairperson);
b) Ms Chwayita Mabude (reappointment);
c) Mr Norman Tinyiko Baloyi;
d) Dr Pathmanathan Naidoo;
e) Ms Venete Jarlene Klein;
f) Ms Nazia Carrim;
g) Mr Romeo Kumalo;
h) Mr Mark Vivian Pamensky;
i) Mr Zethembe Wilfred Khoza;
j) Dr Baldwin Sipho Ngubane; and
k) Ms Devapushpum Viroshini Naidoo.

6.7. Geoff Qhena has been re-appointed as the Chief Executive Officer for the Industrial Development Corporation. The rest of the IDC Board Members will be announced by the Minister Patal in the next few days.

6.8 Public Service / Other appointments:
b) Appointment of the Chief Executive Officer of the Land Bank, Mr TP Nchocho with effect from 1 January 2015 on a five year contract to 31 December 2019.
c) Appointment of the Chief Executive Officer of the Public Investment Corporation (PIC), Dr Daniel Mmushi Matjila with immediate effect, for a period of five years until 30 November 2019.
d) Reappointment of Mr Murray Michell, the Director of the Financial Intelligence Centre (FIC) for a further period of two years, from 1 January 2015 to 31 December 2016.
e) Extension of the contract of the Director-General of the Department of Home Affairs, Mr Mkuseli Apleni for a further period of five years, from 1 April 2015 to 31 March 2020.
f) Appointment of the Chief Operations Officer of the Department of Rural Development and Land Reform, Mr Marks Charles Thibela.
g) Appointment of the Chief Financial Officer of the Department of Rural Development and Land Reform, Ms Rendani Sadiki.

Conclusion
Cabinet would like to wish everyone happy holidays and let's come back energized in 2015 collectively ensure we deliver on the mandate of the government. Together, we move South Africa forward.

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COMMISSION OF INQUIRY INTO STATE CAPTURE

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SOUTH AFRICA (HTTPS://WWW.DAILYMAVERICK.CO.ZA/SECTION/SOUTH-AFRICA/)

Parliament: Somewhat unsurprisingly, former Eskom chair Ben Ngubane denies everything

By Marianne Merten • 8 March 2018

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The devastation that State Capture wreaks is illustrated by the Gupta-linked Tegeta acquisition of the Optimum coal mine. Former Eskom board chairperson Ben Ngubane claimed ignorance on Wednesday of how a coal pre-payment from the state-owned power utility's coffers was turned into a bank guarantee at the time of the mine's purchase. Upstairs from the parliamentary Eskom State Capture inquiry, the mineral resources committee was told of Optimum workers not being paid, the mine's R3-million debt to the local council, and its failure to honour social and labour plans. By MARIANNE MERTEN.

U14-VK-0969

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During Ben Ngubane's tenure as Eskom board chair, the board approved R1.86-billion and R659,558,079.38 coal pre-purchase agreements from Optimum on 8 December 2015 and in April 2016 respectively. This coincided with the Gupta-linked Tegeta's acquisition of Optimum mine from Glencore.

"It was indicated that with the funding of the pre-purchase of coal, Eskom was going to achieve a value benefit of R238.9-million. The motivation further indicated that the proceeds of the R1.86-billion prepayment of coal were to be used by OCM (Optimum Coal Mine) to extinguish existing liabilities to ensure that the business continues as a going concern," according to Ngubane's written statement to the parliamentary Eskom State Capture inquiry.

This version of events is backed up by previous testimony from board members Venete Klein and Viroshini Naidoo. Of course, former Eskom chief financial officer Anoj Singh had told (https://www.dailymaverick.co.za/article/2018-01-24-eskom-inquiry-former-cfo-anoj-singh-joins-the-growing-queue-of-the-i-dont-know-i-cant-say-it-wasnt-me/#.WqACC2aB0g4) the State Capture inquiry a somewhat different version, according to which the guarantee was not concealed, although no minutes were kept of the meeting that took that decision in April 2016.

That the Eskom coal pre-purchase agreements came at the same time as the Tegeta deal unfolded was not known, Ngubane claimed. It only emerged in media reports in mid-2017. And he told MPs he wasn't sure how the R1.89-billion pre-purchase was turned into a bank guarantee:

"The finance department changed that."

As far as Eskom was concerned the deal was "commercial transactions between two private companies" and all Eskom did "was to secure its interest in coal supply…"

There were also no answers to why that coal from Tegeta came at a higher price – R5 above the previous R150 per ton in one instance and R450 per ton, up from R132, according to questions by EFF MP Marshall Dlamini and African Christian Democratic Party (ACDP) MP Steve Swart.

A rough, back-of-the-napkin calculation shows that even an extra R5 per ton on a contract of 485,000 tons nets an additional R2.4-million for the mine.

Ngubane objected at one stage:

"I'm being asked operational matters. I deal with reports that came to the board through the normal channels."

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It wasn't in the report. It wasn't on the agenda. It wasn't part of the briefing. And apparently no one bothered to ask questions, even if the board is overall responsible for governance at the SoE.

The Tegeta-owned Optimum mine is in trouble. In February no wages were paid to the 560 workers directly employed by the mine. Some 2,5000 contractors employed by various companies operating at the mine had not been paid, or were underpaid, since September 2017.

There were protests in February 2018. The mine is under business rescue. The impact on jobs, the mining sector and otherwise was canvassed by Parliament's mineral resources committee on Tuesday.

Mineral Resources Department Director-General Thabo Mokoena told *Daily Maverick* that as the regulator it was working closely with all involved to ensure Optimum's viability. He didn't really want to elaborate further, and definitely not on the Tegeta transaction as that happened before his time.

But National Union of Mineworkers (NUM) Highveld secretary Nelson Ratshoshi said while the union wanted government to assist to keep workers in jobs and to find new owners, there were concerns as to how the matter is being handled.

"They are playing with names. They want to take the company from a Gupta company to another Gupta company," he told *Daily Maverick* in reference to VR Laser.

Roll back about two years. VR Laser, through complex cross-interests, was involved in VR Laser Asia, the troubled joint venture (https://www.dailymaverick.co.za/article/2016-05-11-venture-with-gupta-linked-company-is-above-board-denel-insists/) with Denel. VR Laser Asia is wholly owned by Salim Essa, who also has a 64.9% majority share in VR Laser South Africa, in which Rajesh Gupta and Duduzane Zuma jointly hold a 25.1% stake through other investment companies. According to amaBhungane, Essa through his investment vehicle Elgasolve also holds about 22% of Tegeta Exploration and Resources linked to the controversial Optimum coal mine deal.

The VR Laser Asia-Denel joint venture deal was embroiled in controversy over the lack of ministerial permissions for the deal. In August 2017 Denel announced it was pulling out (http://www.denel.co.za/press-article/Denel-Decision-To-Exit-The-Denel-Asia-JV/170) of the deal.

What happens now is up to Mineral Resources Minister Gwede Mantashe, who is also ANC national chairperson, who on Wednesday for the first time appeared before MPs in his new role in Cabinet. It is understood he's intending to be hands-on (https://www.fin24.com/Companies/Mining/gwede-mantashe-upbeat-on-gupta-mines-future-as-business-rescue-kicks-in-20180307).

But the consequences of the Tegeta-owned Optimum mine teetering on the brink of bankruptcy are clear. Mineral Resources committee chairman Zet Luzipho said he was told of a R3-million debt to the local council. And the promised that R400,000 for a community clinic listed in the mine's social and labour plans was not paid over. There has been some guarantee over the electricity supply, but not the water supply, he said.

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It's a starkly different situation to that when former Eskom chief executive Brian Molefe was in charge of the power utility at the time of the Tegeta deal. Following his appointment from 2 October 2015 he was paid a guaranteed salary of R7.6-million – plus the usual incentives and bonuses SoEs pay their top officials – and secured an additional 13 years of pension (https://www.dailymaverick.co.za/article/2017-10-20-parliaments-eskom-inquiry-molefe-pension-instructions-from-above-accepted-without-question-rules-or-no-rules/#.WqAXYWaB0g4) paid for by Eskom which also took on the usual fees and penalties.

That R31-million pension for effectively 15 months at Eskom sparked a public outcry. It emerged after Molefe announced he was stepping down from Eskom "in the interest of good governance" following the public protector's 2016 State of Capture report.

Controversy subsequently erupted over whether he took early retirement, as per an official letter dated 11 November 2016, or resigned before returning briefly to the power utility after a three-month stint on the ANC backbenches in Parliament.

In late January 2018 the North Gauteng High Court ruled against Molefe's bid to return to the SoE and ordered him to repay the more than R11-million already received.

The judgment found a "total lack of dignity and shame (https://www.businesslive.co.za/bd/national/2018-01-25-pay-back-the-pension-money-court-tells-brian-molefe/) by people in leadership positions who abuse public funds with naked greed for their own benefit without a moment's consideration of the circumstances of fellow citizens who live in absolute squalour throughout the country with no basic services".

On Wednesday Ngubane appeared to shrug off the controversy – he resigned in its midst in June 2017 – or even why a controversy erupted. Molefe's salary was "no different" to previous Eskom chief executives, he told MPs. And there was nothing to say on the pay gap to ordinary Eskom workers, or perhaps even the unpaid workers of Tegeta mine which supplies Eskom coal.

"The fact that there's a pay difference… (between the highest and lowest paid at Eskom), may be the business of serious inequality. But this is the system we operate in. I did not come to Eskom to change the processes. I don't set the pay levels," Ngubane replied to a question by inquiry evidence leader, Advocate Ntuthuzelo Vanara.

And Ngubane later added:

"I agree, there's a lot of greed… But that's the nature of the state we are in." **DM**

File Photo: Ben Ngubane (Sapa)

U14-VK-0972

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U14-VK-0973

ESKOM INQUIRY: 'WE WERE MISLED'

Venete Klein and Viroshini Naidoo were responsible for oversight of the state-owned enterprise when dubious contracts were approved to the benefit of the Gupta family.

A screengrab of former Eskom board member Venete Klein.

Eskom (https://ewn.co.za/topic/eskom) Guptas (https://ewn.co.za/topic/guptas) #StateCapture (https://ewn.co.za/topic/-statecapture) Tegeta (https://ewn.co.za/topic/tegeta)

Rahima Essop (//ewn.co.za/contributors/rahima-essop) | 3 years ago (1005 days ago)

CAPE TOWN - Two former Eskom board members have told Members of Parliament (MPs) they were unaware of the parastatal's decision to give a Gupta-owned mining company a R1.6 billion guarantee.

As board members, Venete Klein and Viroshini Naidoo were responsible for oversight of the state-owned enterprise when dubious contracts were approved to the benefit of the Gupta family.

But both women have told a parliamentary inquiry (http://ewn.co.za/2017/11/21/no-legal-basis-to-suspend-matona-3-other-eskom-execs-mps-told) that they were misled about what was really going on at the parastatal during their tenures.

Throughout the inquiry, MPs have been trying to get to the bottom of why Eskom helped a Gupta-owned mining company to buy Optimum Coal.

The parastatal granted Tegeta Exploration a R1.6 billion guarantee and a R659 million pre-payment for future coal supplies bolstering the Gupta-owned company's financial position.

But both Klein and Naidoo say they were not aware of the guarantee, suggesting they'd been misled.

Naidoo blames Eskom's management: "It's horrifying to think that you come and ask a board member to sign off on a pre-purchase, then you go an issue a guarantee for the same amount of money. Or you ask a board member and tell them we need this coal and if you don't do it, this is the circumstances, then you go do something totally opposite. So, you need to call these executives in."

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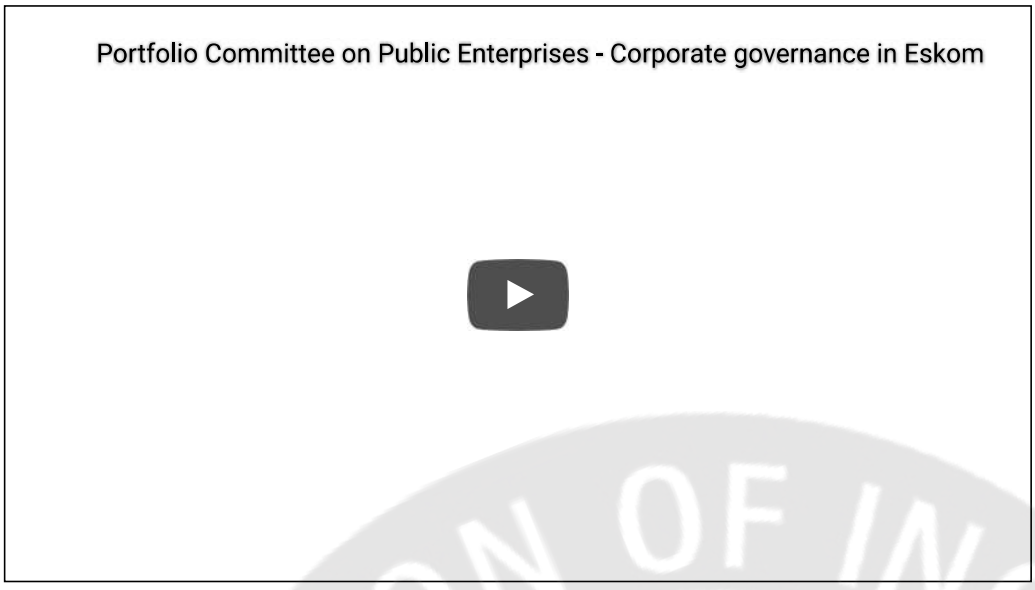
She told Parliament's Public Enterprises Portfolio Committee that she was in the dark about certain dealings that only came to light much later.

WATCH: Portfolio Committee on Public Enterprises - Corporate governance in Eskom



(Edited by Zamangwane Shange)

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U14-VK-0975

SOUTH AFRICA

Corruption Watch wants Molefe and former Eskom board members to never again be directors of an SOE

02 April 2019 - 06:00
BY ERNEST MABUZA

Corruption Watch wants Brian Molefe declared as a delinquent director.
Image: *JAMES OATWAY*

Former Eskom CEO Brian Molefe and four other former Eskom board members might never again hold directorships at a state-owned enterprise - at least if the wishes of Corruption Watch are granted.

Corruption Watch launched an application in the high court in Pretoria late last year seeking to have certain former members of the board of Eskom declared as delinquent directors.

The organisation also wants the court to declare that Molefe, Mark Pamensky, Anoj Singh, Venete Jarlene Klein, and Zethembe Wilfred Khoza acted in a manner that amounted to gross negligence with regards to the performance of their functions towards Eskom in terms of the Public Finance Management Act.

Corruption Watch also asked the court to declare that the declaration of delinquency subsists for seven years in respect of public and private companies, and for the lifetime of the person in respect of state-owned entities.

"Our case comes at a time when the full effects of the failure of Eskom leadership to maintain infrastructure, ensure good governance, and deliver on their mandate is felt all around the country – and especially by those who struggle every day just to survive," Corruption Watch executive director David Lewis said.

He said that despite the removal last year of the majority of the then board of directors of Eskom - and the removal of Lynne Brown as minister of public enterprises - a lack of oversight and poor management

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in the preceding years has left Eskom in an impoverished position and has contributed to SA's economic instability.

In his founding affidavit, Lewis said the public had an interest in the proper governance and management of Eskom.

He said the ongoing problems with governance at Eskom had impacted on the country's sovereign credit rating and Eskom itself had suffered numerous credit rating downgrades in the past 24 months.

"These downgrades have had a detrimental effect on the growth of our economy and have increased the cost of living, which directly and adversely affects all South Africans and, more dramatically, the most vulnerable and poorest of South Africans," Lewis said.

He said the importance of well-functioning and transparent state-owned entities could not be overstated.

"The facts, which are at the heart of this application, centre on the gross negligence, mismanagement and maladministration of Eskom by the respondent directors, who were directors of the company and were responsible for the management and control of the company as per the governing prescripts of law and embodied in the Memorandum of Incorporation," Lewis said.

Lewis said when the then acting Eskom CEO, Phakamani Hadebe, had announced Eskom's interim results in January last year, he had stated that the significant challenges faced by Eskom were as a result of poor leadership and a lack of corporate governance by these directors.

Lewis said although all these directors and Molefe had resigned from Eskom, it was insufficient redress that a largely new Eskom board had recently been appointed.

"It is important that these individuals who so egregiously failed to fulfil their statutory, legal and moral obligations as directors are prevented from occupying these fiduciary positions again," Lewis said.

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-0977

BUSINESS

Supension of Eskom executives was not my doing, says Ngubane

BY PENWELL DLAMINI - 07 March 2018 - 12:54

Supension of Eskom executives was not my doing, says Ngubane.
Image: Freddy Mavunda

Former Eskom board chairperson Ben Ngubane has begun detailing to parliament's inquiry how the process of appointing Brian Molefe unfolded and how the suspension of executives at the entity came about.

Ngubane told the inquiry by the public enterprise committee in parliament into the mismanagement of funds in state-owned entities that the suspension of executives at Eskom happened outside his term.

"This matter falls outside my tenure as the chairperson of the Eskom board. My understanding is that [then-Eskom chairperson Zola] Tsotsi, in his capacity then motivated to the board to urgently authorise an independent investigation to be conducted by an external service provider. It is also my understanding that Tsotsi motivated for the suspension of certain key executives while the investigations were conducted.

"Apparently, he had suspected the executives of wrongdoing. The affected positions include those of group executive Tshediso Matona, group executive commercial and technology Matshela Koko, group executive capital Dan Marokane and finance director Tsholofelo Molefe," Ngubane explained.

He added that the investigation was ultimately conducted, but on different terms than those initially proposed by Tsotsi.

"The investigation was conducted by different service providers, namely, Dentons attorneys and not Nick Linnell who had been appointed by Tsotsi. After the investigation was

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concluded, however, Matona, who had filed a labour dispute case against Eskom, negotiated and settled his dispute out of court and left Eskom.

"Marokane and Molefe also left Eskom. Only Koko returned to his position at Eskom," Ngubane said.

Ngubane told the inquiry that Brian Molefe was then seconded to Eskom as acting group executive officer on April 17 2015 for a period of three months. Before joining Eskom, Molefe was the CEO of Transnet.

"On June 23 2015, I addressed a letter to minister Lynn Brown requesting her support and endorsement for the extension of Molefe's secondment as acting group executive for a further three months," he said.

The letter sent to Brown covered two other aspects. These were: - the governance committee had resolved to seek the full-time appointment of Molefe; - former board member Venete Klein was tasked with procuring a legal opinion on the optimal approach to appoint Molefe.

The legal opinion was obtained in June and it concluded that Eskom could appoint a group chief executive without having to conduct an external search process.

On June 27, the minister responded to Ngubane's letter and agreed to the extension of Molefe's stay at Eskom and also for the board to deal "expeditiously" with the appointment.

Brown also requested to be given the full copy of the legal opinion obtained by Eskom.

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U14-VK-0979

(https://citizen.co.za)

business (https://citizen.co.za/category/business/) 1.4.2019 08:21 am

Corruption Watch goes to war against previous Eskom board

14

Ciaran Ryan, Moneyweb

(https://citizen.co.za/business/2109605/corruption-watch-goes-to-war-against-previous-eskom-board/)
Anoj Singh. Picture: Moneyweb

The High Court in Pretoria is being asked to declare them delinquent.

Civil society group Corruption Watch wants five former Eskom board members declared delinquent directors.

It has applied to the High Court in Pretoria to prevent the five former directors from ever holding a directorship in a private company again, and for seven years in a state-owned company. The case is unusual in that it relies on little-used sections of the law to hold directors accountable, and if successful will rattle the rafters of boardrooms around the country. Also unusual is that civil society is bringing the case instead of government, which is supposed to act in the interests of the public, but has shown itself gun-shy when acting against directors of state-owned companies.

The five former Eskom directors are Mark Pamensky, Anoj Singh, Brian Molefe, Venete Klein and Zethembe Khoza, all of whom have been accused of involvement in corrupt activities at the utility. Eskom and the minister of public enterprises are also cited as respondents to assist the court in coming to a decision.

Privacy

U14-VK-0980

Singh was chief financial officer until early 2018, serving alongside former chief executive Molefe. Klein was appointed to the board in 2014 and resigned in 2017. Khoza served as chairman as well as head of the Board Tender Committee.

(https://citizen.co.za)

Gupta links

Pamensky, a close associate of the Guptas and former director of Gupta-owned Oakbay Resources, joined the board in 2014 and resigned in 2016 when leaked emails highlighted his role in sharing sensitive Eskom information to assist the Guptas in acquiring Optimum Coal, which supplied coal to the power utility.

The Guptas acquired Optimum using Eskom guarantees and prepayments. Pamensky is accused of acting against Eskom's best interests in violation of his duties as a board member. Last year the Organisation Undoing Tax Abuse (Outa) laid criminal charges against Pamensky for corruption, and for violating his obligations in terms of both the Companies Act and the Public Finance Management Act (PFMA).

Khoza, Singh and Molefe are accused of contracting with Gupta-owned Tegeta for the supply of coal on terms that were uncommercial and caused harm to Eskom. They also failed to respond to Treasury and other arms of government in their effort to exercise oversight at the utility.

The Companies Act requires the courts to declare delinquent any director who abuses the position, takes personal advantage of information or opportunities, or causes harm through gross negligence while serving in that position.

Sending a message vital

David Lewis, executive director of Corruption Watch, says it is vital to send a message to those in high office that there are consequences to abusing their positions: "This case is about sending a message that a directorship in a state-owned company means more than looking for personal commercial opportunities while occupying a board position."

Lewis says the five former directors have given notice of their intention to defend the court action, though have yet to file their replying affidavits.

In his affidavit before the court, Lewis says Corruption Watch is bringing the action in the public interest, particularly in light of the numerous credit downgrades Eskom has suffered in the last 24 months. The dire state of Eskom's financial position and lack of adequate governance were cited by rating agencies S&P Global and Moody's as a key reason for downgrading SA's credit rating in 2017.

"These downgrades have had a detrimental effect on the growth of our economy and have increased the cost of living, which directly and adversely affects all South Africans and more dramatically, the most vulnerable and poorest of South Africans," says Corruption Watch's affidavit.

"The directors abused their positions in order to benefit other entities and individuals rather than the interests of Eskom and, by necessary extension, the people of South Africa."

Determined state-capture strategy

Eskom was central to the state capture project now being aired before the Zondo Commission of Inquiry. This appears to be part of a determined strategy by the former directors "to commit fraud, corruption, racketeering and engage in other financial misconduct."

The named directors should not be allowed to escape personal liability and accountability for their role in bringing Eskom to its knees in furtherance of the state capture project. The enrichment of the Gupta family and others to the detriment of Eskom and the SA public cannot be allowed to pass without consequences. Lynne Brown, the former minister of public enterprises, failed to act in the public interest and hold the directors responsible, so it has been up to civil society to do government's job for it.

Virtually all of the supporting evidence behind Corruption Watch's case is in the public domain. One of these is a report by PwC showing how the Eskom board delegated power to line managers and allowed individual employees to enter binding contracts on behalf of Eskom for large amounts of money. The directors must therefore be held accountable for the significant failures in the procurement of coal.

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U14-VK-0982

IOL

NEWS / POLITICS

File image: Matshela Koko. (IOL).

I was suspended for refusing to take unlawful instructions: Koko

By Mary Jane Mphahlele Jan 24, 2018

Parliament - Embattled Eskom executive Matshela Koko says he was suspended from the power utility due to his refusal to pay out an illegal contract.

Koko was making submissions before the Parliament's portfolio committee inquiry into corruption and state capture and used the platform to protest his innocence.

U14-VK-0983

Koko said: "I told the board the reasons they are giving me, are not what I am being suspended... I knew why I was being suspended. I was being suspended for refusing to take unlawful instructions from the chairman at the time Zola Tsotsi."

He told the committee that Eskom former chief executive Brian Molefe begged him to come back to the power utility after his suspension in March 2015, when load shedding was at its worst.

"When I came back on July 2015, on August 8 load shedding stopped. It was a momentous year. When load shedding stopped, Glencore had stopped supplying us with coal. It was that time that Molefe met with Mineral Resources Minister Ngoako Ramatlhodi to deal with the impact of Eskom not being supplied coal," said Koko.

ALSO READ: Koko - 'I won't resign, my blood is Eskom-blue'

He said at the time when the power utility was in negotiations to take over Optimum Coal mine, he was still on suspension.

Koko told the committee that he was offered R4.9 billion to walk away, or else face investigation but refused to take the package.

"Mr Zethembe Khoza and Ms Suzanne Daniels, I met them in a Hotel in Midrand and they offered me a separation package, but I refused," said Koko.

Koko is accused of facilitating the approval of a huge payout to global consultancy firm McKinsey and its local subcontractor, the Gupta-linked firm Trillian despite being advised by legal experts that the contract was not within the law.

He said Daniels, Eskom's legal head, told lies about him in her testimony before the committee.

He told the committee that Daniels was in fact instrumental to his suspension and that she was more responsible for the payment of R460 million in direct payment to Trillian.

He read a letter to the committee in which he said Daniels recommended to Eskom that it pay McKinsey and its BEE partner (Trillian) R460 million.

Koko also went for former non-executive board member Venete Klein whom he accuses of targeting him for not helping her husband secure a deal with the utility.

He further revealed to the committee that he has in possession proof of Eskom executives receiving kickbacks from suppliers. He said due to his action taken against those involved, he is being victimised.

Like his counterpart, Koko has denied allegations that the Gupta linked company Sahara computers sponsored his Dubai trip in January 2016. He said he made direct payments for all expenses during the trip, where he travelled with his family.

He denied allegations that he facilitated the approval of a huge payout to global consultancy firm McKinsey and its local subcontractor, the Gupta-linked firm Trillian despite being advised by legal experts that the contract was not within the law.

U14-VK-0984

Eskom Board commissions independent enquiry

2015/03/12

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

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

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

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

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

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

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

END

U14-VK-0985

More on the interim appointees

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

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

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

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U14-VK-0986

More Eskom dirt, but no one´s to blame

Gemma Ritchie 24 Nov 2017

Original works by 'the greatest copperplate technician'

This week, the parliamentary inquiry into state capture at Eskom heard explosive allegations covering everything from the Guptas' apparent relationship with President Jacob Zuma and Public Enterprises Minister Lynne Brown to former Eskom chief executive Brian Molefe's controversial R30-million retirement package.

The allegations have been hotly contested, testimony has been contradictory and key roleplayers have passed the proverbial buck.

On Wednesday, former Eskom chairperson Zola Tsotsi directly linked Brown to the Gupta family and Gupta associate Salim Essa — including alleging that she had hosted the Guptas and Essa at her house, which Brown denied.

Tsotsi said it appeared that every decision Brown made followed consultati
Guptas.

In previous testimony by Eskom board spokesperson Khulani Qoma, Brow
the suspension of then acting acting chief executive Matshela Koko, after se
made to inform a "G-brother", who in turn informed Brown.

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Tsotsi testified that he resigned under duress after four senior executives were suspended in 2015, when the Eskom board challenged his ability to lead, using "trumped-up" and "spurious" charges.

Tsotsi believes that, like another former Eskom chairperson, Ben Ngubane, his resignation had been decided by parties outside Eskom — and probably weeks before he eventually left.

The committee also heard how the Gupta family allegedly threatened Tsotsi, saying they had a very close relationship with "uBaba" (Zuma) after Tsotsi had refused to help them with the appointment and reshuffling of several leaders at Eskom and a tender for the supply of gas to one of the utility's plants in the Western Cape.

Tsotsi also directly linked Zuma and former SAA chair Dudu Myeni to the suspension of senior executives at the power utility. He said Myeni had asked Tsotsi to meet Zuma at the president's Durban residence, and it was during this meeting that Myeni told him to suspend group capital executive Dan Marokane and Koko, who headed up the commercial and technology division at the time.

According to Tsotsi, Zuma arrived at the meeting and asked whether Tsotsi "knew who the executives are who were to be suspended". Tsotsi later presented the names to his board and to Brown, who showed no surprise about the list and supported the suspensions.

Yet, on Tuesday, former Eskom board member Venete Klein said Tsotsi had persuasively argued to suspend the executives. Klein was asked why Koko's suspension was first blocked, even though he was later suspended, but she was unable to account for the change.

She also said she believed, in hindsight, that Koko may have been the wrong appointment and she also questioned the appointment of Molefe, despite being "awed" by him at first.

But, she said, the board had been fed insufficient and misleading information during the 2014 load-shedding crisis, which prevented it from making the best possible decisions about making purchases and employing individuals.

Klein also alleged that Eskom's suspended legal head, Suzanne Daniels, who testified two weeks ago, had misled the inquiry by not noting her own involvement in Molefe's pension saga.

Daniels was responsible for drawing up Molefe's employment contract, the status of which was used as justification for his lucrative retirement package.

Throughout the proceedings, many witnesses disassociated themselves fro ever having met them, contacting them or even possessing a cellphone num with them.

Former Eskom board member Viroshini Naidoo testified that she had neve influenced by the Guptas, but admitted that she did know Essa.

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U14-VK-0988

Adding to the controversy is the allegation that State Security Minister Bongani Bongo tried to bribe advocate Ntuthuzelo Vanara with a blank cheque to step down as head evidence leader at the inquiry. Bongo has not commented on the claim.

The parliamentary committee has called for the Gupta brothers, Essa, Zuma's son Duduzane, Trillian's Eric Wood and Myeni to answer allegations of state capture pertaining to Eskom. The inquiry continues.

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Gemma Ritchie

More on Brian Molefe Gupta Family Lynne Brown Tony Gupta Zola Tsotsi

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U14-VK-0989

NO LEGAL BASIS TO SUSPEND MATONA, 3 OTHER ESKOM EXECS, MPS TOLD

Venete Klein, who used to serve on Eskom's board, told MPs that former chairperson Zola Tsotsi pushed for the four executives to be suspended.

FILE: Former Eskom CEO Tshediso Matona at a media briefing in Johannesburg on 08 December 2014 on the state of South Africa's electricity system. Picture: EWN

Eskom (https://ewn.co.za/topic/eskom) State Capture (https://ewn.co.za/topic/state-capture) Eskom inquiry (https://ewn.co.za/topic/eskom-inquiry)

Rahima Essop (//ewn.co.za/contributors/rahima-essop) | 3 years ago (1004 days ago)

CAPE TOWN - The Eskom (http://ewn.co.za/Topic/eskom) board's surprise decision to suspend four senior executives in March 2015 has come under sharp scrutiny in Parliament, with Members of Parliament (MPs) hearing there was no lawful reason to take action against the officials.

Eskom's credit rating was downgraded shortly after the parastatal's CEO Tshediso Matona (http://ewn.co.za/2017/11/07/listen-former-eskom-ceo-tshediso-matona-appears-before-eskom-inquiry) and three other executives were asked to step aside amid a fact-finding inquiry.

The suspensions have been a recurring feature in the ongoing parliamentary inquiry into allegations of state capture (http://ewn.co.za/Topic/State-Capture) at Eskom.

Venete Klein, who used to serve on Eskom's board, told MPs on Tuesday that former chairperson Zola Tsotsi (http://ewn.co.za/2017/11/21/brian-molefe-zola-tsotsi-to-have-say-at-parly-probe-into-state-capture)pushed for the four executives to be suspended when others on the board weren't sure it was the right step.

“I must say the then chairman of the board was adamant that the four people would slow us down, and when pushed to say ‘what do you mean by that?’ he gave us examples.”

The inquiry's evidence leader Advocate Ntuthuzelo Vanara asked her if that led to the downgrade, to which she responded that it had.

“Is there any specific basis in law that you could say ‘this is why we had suspended these officials’?”

Klein responded: “No, advocate Vanara, I can’t.”

Klein insisted she supported the decision to suspend the four executives based on the information she had been given at the time.

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EWN Reporter
@ewnreporter

#EskomInquiry Adv Vanara puts Klein on the spot by asking her if she would apologize to T.Molefe if she had the chance. Klein responded that she would which prompted Vanara to basically say the stage is yours....go ahead... RE

10:47 AM · Nov 21, 2017

1 See EWN Reporter's other Tweets

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#EskomInquiry Adv Vanara quizzes Klein about the role she played (as a board member) in the suspension of four senior executives in 2015. Klein: if it was a bad decision, it was based on the information I had at the time. RE

10:45 AM · Nov 21, 2017

1 See EWN Reporter's other Tweets

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#EskomInquiry Klein tells MPs that when four senior executives were suspended, Zola Tsotsi lobbied the board to appoint Malesela Sekhasimbe to run Eskom even though Sekhasimbe was himself on suspension. RE

10:34 AM · Nov 21, 2017

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U14-VK-0991

06

COMMISSION OF INQUIRY INTO STATE CAPTURE

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COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-0994

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

(HELD IN JOHANNESBURG)

BRIAN MOLEFE'S AFFIDAVIT
RELATING TO VARIOUS ESKOM MATTERS

I, the undersigned,

BRIAN MOLEFE

do hereby make oath and say that:

1. I was the Acting Chief Executive Officer of Eskom from April 2015 to September 2015. I was the Chief Executive Officer from October 2015 to December 2016. The facts set out in this affidavit are within my personal knowledge unless otherwise stated, and are to the best of my belief true and correct.

2. This affidavit is in response to an e mail from the commission's[1] Mr Pather dated 24 December 2019. In it, Mr Pather listed a number of issues where the commission required clarification from myself.

---

[1] The Judicial Commission of Enquiry Into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State (hereafter the Commission)

U14-VK-0995

3. Subsequent to Mr Pather's request, I asked the commission to facilitate my access to a number of documents which would assist me, (and the commission), in answering most of the questions that were being asked.[2]

4. Initially, most of the documents could not be made available.[3] There are three broad reasons that were furnished by the commission, namely;

4.1 Document not with the commission;

4.2 Document requested but not yet provided at the time; and

4.3 Document irrelevant, (or relevance not apparent)

5. Of the 39 documents initially requested, 30 could not be made available, 5 were made available and the rest were considered to not exist. Four documents which were not requested were also made available.

6. Subsequently, *"on further reflection"*, the commission's legal team indicated that the documentation that I have requested will be made available.[4] More documents were made available on the 15th of April 2020.[5]

[2] Letter to Mr Pather dated 28.12.2019 (Annexure BM1)
[3] E-mail from Mr Pather dated 24.01.2020 (Annexure BM2)
[4] E-mail from Mr Pather dated 06.03.2020 (Annexure BM28)
[5] E-Mail from Mr Pather dated 15.04.2020 (Annexure BM29)

U14-VK-0996

Background

7. My highest qualification is the Master of Business Leadership degree from the University of South Africa (Unisa). This is in addition to the B. Com degree from Unisa as well as a Post Graduate Diploma in Economics from the University of London's School of Oriental and African Studies (SOAS). I have also completed several short advanced finance and management courses at Universities outside South Africa. In Addition I have completed the Nuclear Reactor for Executives course at the Massachusetts Institute of Technology (MIT).

8. I have had a career in the civil service spanning a period of over twenty one years. Notably, I have worked as a Deputy Director General in the National Treasury, Chief Executive of The Public Investment Corporation, Chief Executive of Transnet and Chief Executive of Eskom.[6]

9. I was seconded from Transnet to Eskom and later appointed as Eskom Chief Executive in 2015. At the time of my secondment, Eskom was experiencing unprecedented load-shedding and could not meet South Africa's electricity requirements. This was considered to be the single most important factor that was hampering the growth of the South African Economy.[7]

[6] Curriculum Vitae attached as Annexure BM3.
[7] Annexure BM4

10. In addition, Eskom had major liquidity problems. In 2015, Eskom's auditors were considering to qualify Eskom's financial results to the effect that Eskom was no longer a going concern.

11. By the time I left Eskom in December 2016, the following had been achieved;[8]

10.1 South Africa had not experienced load-shedding from the 8th of August of 2015. This represented in excess of 540 days without load-shedding. The absence of load-shedding continued for a further two years after I had left. Load shedding was defeated by a rigorous strategy and implementation of maintenance without load-shedding.[9]

10.2 Profit, (Ebitda), was R31.5bn for the period ending 30 September 2016.

10.3 Cash generated from operations was R31.9bn. Liquid assets were R43.8 Eskom did not have a liquidity, nor a going concern problem

10.4 Plant performance, measured by the Energy Availability Factor, was 78.49%, hovering close to the 80% benchmark. This had improved from about 68% in just over a year and was confirmation of our rigorous maintenance regime.

[8] www.eskom.co.za/IR2016/interim Annexure BM5
[9] Annexure BM6

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10.5 99 869 households were connected to the grid for the first time during the one year period ending 30 September 2016.

11. All these were achieved by implementing a turn-around plan that was supported by the board, implementing a generation maintenance strategy, improving staff morale and positively impacting on Eskom's reputation and brand, amongst others.[10]

Secondment/Appointment to Eskom

12. While I was the Group Chief Executive of Transnet in early 2015, I was asked by the Minister of Public Enterprises, Ms Lynn Brown if I would agree to being seconded to Eskom to assist with the debilitating load-shedding which South Africa was suffering at the hands of Eskom. I indicated my willingness to do so.

13. She communicated this desire by government to have me seconded to Eskom, to the boards of Transnet and Eskom.[11]

14. The board of Transnet approved my secondment,[12] and so did the board of Eskom.[13] A secondment agreement was concluded between the two State Owned Entities.[14]

15. While I was seconded to Eskom, my employment contract at Transnet was renewed for another five years.

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[10] Chairman's letter to the Minister of Public Enterprises (Annexure BM30).
[11] The Commission was unable to obtain this correspondence from either Transnet or Eskom (Annexure BM2 at 3.1).
[12] Transnet Board minutes of 20.04.2015 (Annexure BM31 at para 4.1.5)
[13] Eskom Board minutes of 23.04.2015 (Annexure BM7 at para 7.1)
[14] Secondment Agreement (Annexure BM32)

16. I deny any other alleged motive relating to my secondment. I believe that the commission has the power to obtain these documents from these entities for further clarification relating to this matter.

Pension Payment

17. In April 2015 I was seconded from Transnet to Eskom as Group Chief Executive Officer in an acting capacity.[15]

18. In or around September 2015, the Chairperson of Eskom wrote a letter to the Minister of Public Enterprises recommending that I be appointed as the Group Chief Executive Officer of Eskom as a permanent employee.[16]

19. On the 2nd of October 2015, the Minister of Public Enterprises wrote a letter to the Chairperson of the board of Eskom indicating that she had received cabinet's endorsement for my appointment as Group Chief Executive Officer and ex-officio member of the Eskom board. The letter did not have a limitation on the period of employment.[17]

20. On the 2nd of October 20015, I received a letter from the Minister of Public Enterprises appointing me as Chief Executive Officer of Eskom and ex officio

[15] Secondment Agreement (Annexure BM32)
[16] Chairman's letter to the Minister of Public Enterprises (Annexure BM30 para 3)
[17] Minister's letter to the Chairman dated 02.10.2015 (Annexure BM33)

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member of the Eskom board. The letter did not have a limitation on the period of employment.[18]

21. In October 2015 I also received a letter from the Chairman of Eskom, Dr Ben Ngubane confirming my appointment as Group Chief Executive Officer. There was no limitation on the period of employment.

22. In early October 2015 I received (and signed) the Executive Employment Contract from Eskom which specified the commencement date as 01 October 2015 (clause 1.2.7). The contract specified that employment was to continue for an indefinite period (clause 3.1).

23. In late October 2015 my membership of the Eskom Pension Fund was finalised. On the 26th of October 2015 I transferred R4 264 575.34 *(Four Million Two Hundred and Sixty Four Thousand and Five Hundred and Seventy Five Rand and Thirty Four Cents)*, being proceeds from my Transnet Pension Fund, to the Eskom Pension Fund.[19] The Eskom Pension Fund accepted my membership of the fund and loaded my membership in their system as "PPX" meaning that I was a permanent employee.

[18] Minister's letter to Mr B Molefe dated 02.10.2015 (Annexure BM34)
[19] Eskom Pension and Providend Fund Receipt (Annexure BM27)

24. Receipt of the funds was also acknowledged by a letter from Joey Sankar dated 04.11.2015 which letter quoted my unique number as 4610263.[20]

25. On the 1st of November 2015, the Minister wrote a letter to Dr Ngubane informing him of a cabinet decision to employ all Parastatal Executives on five year contracts. This meant that my contract of employment would be changed to a five year contract.

26. On the 9th of November 2015 I received a letter from Dr Ngubane advising me that I will be required to enter into a fixed term contract of employment. At that point, I was only required to acknowledge receipt of the Chairman's ***"Offer of Employment"***. [21] I duly acknowledged receipt of the offer on the 11th of November 2015.

27. I resisted this change to my employment contract. This caused the Chairperson of the board to write a letter to Minister Brown on the 25th of November 2015 requesting her approval that;

27.1. At the end of the five year contract, I be allowed to retire from service as if I am 63 years old;

[20] Letter from Joey Sankar (Annexure BM27)
[21] Chairperson's ***"offer of employment"*** dated 09.11.2015 (Annexure BM37).

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27.2. Penalties prescribed by the EPPF be waived and Eskom would carry the cost of the penalties.

28. The letter of 25 November 2015 from Dr Ngubane to the Minister was sent by the Eskom Company secretary, Ms S Daniels, to Ms K Davids (Minister's PA), O Ruthman and Z Mbilase at the Department of Public Enterprises. The letter was e mailed at 20h33 on the 25/11/2015 by Ms Daniels.

29. At 21h05 on the 25/11/2015, Ms K Davids acknowledged receipt of the letter and undertook to bring the letter to the Minister's attention.

30. On the 26/11/2015, K Mhlongo sent an e mail to Ms S Daniels confirming that the letter will be brought to the Minister's attention.

31. To the best of my knowledge, the Minister never responded to the Chairperson's letter.

32. On the 09/02/16, the People and Governance sub-Committee of the Eskom board (P&G) received a presentation from Mr A Minnaar where he;

32.1. reported that a five year contract for the Group Chief Executive of Eskom is a first for Eskom;

32.2. referred to previous precedents at Eskom where additional pensionable service was granted to executives and penalties were waived;

32.3. explained that the EPPF rule that employees may proceed on retirement from age 50 with ten years' service remains applicable;[22]

33. Furthermore, he recommended that the P&G Committee should adopt a resolution to the effect that;

33.1. Where executive directors (not specifically the GCE) on fixed term contracts take early retirement and there is a shortfall regarding the ten years, Eskom will bridge the gap, waive penalties and refund EPPF cost.

34. At this meeting, the P&G sub-committee made a resolution that;[23]

"In cases where Executive Directors (appointed on fixed term contracts) decide to take early retirement and there is a shortfall regarding the EPPF 10 years' service rule, Eskom shall;

i. Bridge the gap to make up for the 10years

[22] This was wrong and was the source of the entire "mistake". It had been inferred from the EPPF Member's guide para 3.3(c) (Annexure BM24)

[23] Annexure BM23

ii. ***Waive penalties to early retirement***

iii. ***Refund the EPPF actual costs for additional service added, plus penalties applicable to early retirement.***"[24]

35. On the basis of this resolution by the P&G Committee, I agreed to sign a five year contract on condition that the board will finalise all the administrative arrangements that would empower them to contract with me on the basis of their resolution. The contract was signed on the 7th of March 2016.[25] It specifically provided that I would *"continue"* to be a member of the EPPF.[26]

36. I note that former Eskom CEO, Mr Brian Dames testified before the parliamentary committee enquiry into state capture that there was a practise at Eskom to permit executives to take early retirement from Eskom. Mr Sibusiso Luthuli, Principal Officer of the EPPF said that Pension Fund Rule 28 permitted normal retirement from the Fund at age 50, with the permission of the employer. I further refer to the Guide to Benefits of the EPPF which refers to early retirement from the Fund being possible from the age of 50.[27] The Guide informed my understanding of the EPPF Rules and was referred to by Mr Minaar in the P & G sub-committee, referred to above.

[24] Resolution of the P & G Committee (Annexure 36)
[25] Contract of Employment (Annexure BM25)
[26] Annexure BM25 para 10.1 and 10.2
[27] Annexure BM24

37. On the 11/11/2016, I wrote a letter to Dr Ngubane requesting early retirement in terms of the rules of the EPPF and the resolution of the P&G meeting of 09/02/16.

38. On 24/11/2016, I received a letter from Dr Ngubane communicating the Eskom Board's acceptance of my early retirement.

39. On the 18/02/2017, I received a letter from the EPPF welcoming me as a pensioner and providing details of my pension.

40. I received a lump sum of some R7.7m from the EPPF on being admitted to the Fund. Of this, some R4.3m had been transferred by me from the Transnet Pension Fund to the EPPF.[28]

41. In April 2017, after I had accepted appointment as a Member of the National Assembly by the North West Province of the ANC, Members of the Eskom board and Company Secretary met with me and intimated that the acceptance of my early retirement application was a mistake. I asked them to make a proposal on a way forward that would get the Minister of Public Enterprises' approval.

[28] Annexure BM27

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42. On the 11/05/2017 I received a letter from Dr Ngubane requesting me to resume duties as Eskom Group Chief Executive. Because of the common error of implementing the early retirement, the legal position was that the situation had to be restored to *status quo ante*. I obtained legal advice from senior counsel who confirmed that that was indeed the legal position. I signed a Reinstatement Agreement which regulated my return to duties, as did Eskom. Eskom also assured me that the Minister was comfortable and had approved this arrangement. Ms Daniels, in her testimony to the parliamentary committee, indicated that such approval from the Minister had been obtained.

43. On the 15/05/2017 I resumed duties as Eskom Group Chief Executive.

44. On the 17/05/2017 the Eskom Group Company Secretary wrote a letter to the Principal Officer of the EPPF advising him of my resumption of duties at Eskom with effect from 15/05/2017 and further advising that my membership of the Pension Fund must be reinstated.

45. On 15 May 2017 the DA launched an urgent High Court application to challenge my resumption of duties. This was followed by an application by the EFF. The matter was originally set down to be heard on the 02/06/2017.

46. On the 31/5/2017 Minister Brown sent a letter to Dr Ngubane instructing the board to rescind the decision to reinstate me as Group Chief Executive.[29]

47. On 24 May 2017 Solidarity launched an urgent High Court application seeking to review various decisions concerning my resumption of duties and related relief.

48. On the 02/06/2017 after a brief Eskom board meeting I received a letter from Dr Ngubane advising me of the Minister's instruction to rescind my reinstatement.

49. On 05/06/2017 I launched a Labour Court Application to set the summary dismissal aside.

50. On 06 June 2017 the High Court application was postponed pending the outcome of my Labour Court application

51. On the 04/07/2017 the Labour court issued an order postponing hearing my application until after judgement in the High Court applications brought by the DA and the EFF.

[29] Annexure BM26

52. The High Court ruled on the matter in January 2018 and granted judgement in favour of the Democratic Alliance and Solidarity Trade Union.

53. I requested leave to appeal the judgement which was denied by the High Court, the SCA and the Constitutional Court.

54. In December 2018, the Eskom Pension and Provident Fund brought an application the Gauteng Division of the High Court for an order that would deal with matters relating to my pension. The matter is pending.

Guarantee to Tegeta

55. On the 1st of December 2015, I underwent a surgical procedure to repair my right shoulder at Morningside clinic in Sandton. During the procedure, I had respiratory failure which was caused by what the doctors believe to be pulmonary oedima. I was under an induced coma for approximately 30 hours after the operation while the doctors recovered the functioning of my lungs.

56. The result was that I was on sick leave for the whole of December 2015 and for two weeks in January 2016.

57. I was therefore not at Eskom when the guarantee was negotiated and approved and do not have first hand knowledge of what transpired. The roll call for the board resolution of the 8th of December 2015 correctly records my apology as ***"off sick"***.[30]

[30] Resolution of the board of Directors 08.12.2015 (Annexure BM35).

58. However, I have been able to gather that on the 06th of December 2015, Mr Matshela Koko wrote a letter to Mr Joel Raphela and Dr Thibedi Ramontja of the Department of Minerals and Energy which was sent by email.[31] In the letter, he expressed concern about the security of the supply of coal relating to several power stations –especially Hendrina power station. He requested for intervention from the Department of Mineral resources "*to assist in assuring resolution to the coal supply situation and certainty going forward.*"[32]

59. Dr Ramontja responded to Mr Koko's letter shortly thereafter through an undated letter.[33] In this letter Dr Ramontja advised that Eskom should consider "*some prepayment to be made for up to one (1) year of coal supply… thereby averting any national crisis that we as South Africans can ill afford.*" This letter, in my opinion, planted the seed that would result in the December 2015 guarantee as well as the prepayment April 2016.

60. On the 8th of December 2015, Mr Koko and Mr Singh signed a submission to the Eskom Board of Directors[34] and attached the letter from DMR. In the submission, they recommended a pre payment of coal, ("*advance purchase*") to the value of R1.68bn to "*secure a future supply of coal to Eskom*".[35] This was clearly in line with the advise from the DMR.

61. The draft resolution was circulated by the company secretary and it sought to authorise the "(acting) *Group Chief Executive together with the Group Executive for Generation and Chief Financial Officer, …, to negotiate and conclude*

[31] Letter from Koko to Ramontja 06.12.2015 Annexure BM8
[32] Letter from Koko to Ramontja 06.12.2015 Annexure BM8 pg 2
[33] Letter from Ramontja to Koko udated Annexure BM9
[34] Round Robin Submission to Board of Directors Annexure BM10
[35] Round Robin Submission to Board of Directors Annexure BM10 para 3.4.1

prepurchase of coal agreement with the proposed owners of OCM (coal supplier)."[36]

62. It appears that while a pre-payment was approved by the board on recommendation by DMR, what was subsequently implemented was a guarantee and not a prepayment. I am not sure as to how and why this was done, but it was better because there were no immediate cash flow implications.

63. In the end, the guarantee was never called.

Prepayment to Tegeta

64. The prepayment for coal was approved at a Board Tender Committee, (BTC), that was held by tele-conference on the 11th of April 2016.[37] This meeting was followed by a BTC meeting on the 13th of April 2016 where the securities from Tegeta Resources were discussed.[38] I was not present at, nor was I required to be part of, these meetings.

65. The prepayment for the delivery of coal by Tegeta over the winter period of 2016. The delivery of coal would be in terms of an existing agreement between tegeta and Eskom. Umsimbithi also had a similar agreement for the delivery of coal , (without prepayment), which also continued over the winter period.

66. A prepayment agreement was the second addendum to the original coal supply agreement between Eskom and Tegeta.[39]

[36] Resolution of the Board of Directors Re: Urgent request to approve the pre-purchase of coal from Optimum Coal (Pty) Ltd Annexure BM11 para 2.1.2

[37] Minutes of the special Eskom Board Tender committee Meeting of 11.04.2016 Annexure BM12.

[38] Minutes of the Eskom Board Tender committee Meeting of 13.04.2016 Annexure BM13.

[39] Second Addendum to the Coal Supply Agreement (Annexure 36).

67. The second amendment to the coal supply agreement, (prepayment agreement), was reviewed by Eskom's Assurance and Forensics Department.[40] The recovery of the advance payment was found to be in line with the contract terms both in terms of quantity and quality,[41] (in other words, the coal, in terms of quantity and quality, that was contracted for in terms of the prepayment, was delivered).

68. The email to Albert Scholz which is purported to come from me,[42] was not sent by myself. There were several emails like it which requested payment from one person or another at Eskom which were fraudulent. I believe that this was one of them.

69. The matter of these false e-mails was investigated internally by Mr Shaun Maritz and Mr Dika Modise. An outside service provider, Sithabile Technology Services was also engaged to assist with the investigation. Their conclusion was that these were fake emails and a criminal case was opened with the South African Police Services.

Glencore OECM Penalties

70. When I arrived at Eskom, I discovered that Glencore was owing Eskom an amount in excess of R2bn in penalties in terms of the coal supply agreement. Furthermore, Eskom was not taking adequate steps to recover the money. It is

[40] Advance payment review (Annexure BM39).
[41] Annexure BM39 para 4.3
[42] E-mail to Albert Scholz Annexure BM14

not clear to me why there was a reluctance from Eskom to recover this money that was legitimately due to Eskom.[43]

71. Mr Effron acknowledges in his submission to the commission that; *"... we had been discussing these penalties with Eskom for a number of years..."*[44]

72. The penalties were not a figment of my imagination, as alleged. They were a legitimate claim that Eskom had against OCM.

73. I put in place measures to recover the money. Attorneys Cliffe Dekker Hofmeyr were instructed to write a letter of demand to Optimum as well as to issue summons with a view to obtaining a judgement.[45] This caused visible irritation, (understandably), with myself on the part of Glencore.

74. The Public Finance Management Act requires accounting authorities of public entities to take effective and appropriate steps to collect all revenue due to the public entity concerned.[46]

[43] Nagar S "Affidavit and Annexures" https://sastatecapture.org.za/site/files/documents/71/U2._Snehal_Nagar_-_Affidavit_&_Annexure.pdf para 7.3 Date of use 27.02.2020.
[44] Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 41.
[45] Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 41.
[46] Public Finance Management Act 1 of 1999 s 51(b)(i).

75. I found it difficult to reconcile Eskom's inaction on this matter with our demand that the residents of Soweto should pay their debts to Eskom.

Glencore Coal Supply Negotiations

76. Eskom and Optimum Coal Mine, (OCM), Proprietary were parties to a coal supply agreement relating to Hendrina Power Station which agreement was to expire in 2018. This coal supply agreement was entered into in 1993.

77. In terms of the agreement, OCM was obligated to supply coal with a CV of 23.5MJ/.kg to the Hendrina Power station at a price of R154 per tonne.

78. In July 2013, OCM issued a hardship notice and initiated a hardship claim against Eskom in February 2013. This was despite the fact that at the time, Eskom was going through its own hardships and was experiencing load-shedding.

79. At the time of the request to increase the price at which OCM was supplying coal to Hendrina power station from R154 to R442 per tonne, the shareholders of OCM were, amongst others, Purito BV, (owned by Glencore group), with a

shareholding of 67.58%, and Lexshell 849 (Pty) Ltd (owned by Mr Cyril Ramaphosa), with a shareholding of 9.64%.[47]

80. Mr Ramaphosa was Chairman of Optimum at the time of the initiation of the hardship claim.[48]

81. The competition Commission approved the sale of Lexshell 849 (Pty) Ltd by Mr Ramaphosa's Shanduka Group (Pty) Ltd to Pembani Group (Pty) Ltd on the 19th of August 2015.[49]

82. This notice and hardship claim were preceded by another amendment to the contract in April 2011 following arbitration.

83. In his submission to the commission, Mr Ephron claims that; "*Glencore was not able to undertake a comprehensive due diligence exercise*" at the time of acquiring Optimum.[50] Furthermore, he states that "*Glencore did not, for example, know how any price-adjustment mechanisms in the CSA worked.*"

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[47] Lourens C "*Shanduka raises stake in Glencore coal project*" 15.12.2011 https://www.iol.co.za/business-report/economy/shanduka-raises-stake-in-glencore-coal-project-1199008 Date of use 20.02.2020.

[48] Imaralu D "*Glencore, Ramaphosa acquire 70% stake of optimum coal*" 25.06.2012 http://venturesafrica.com/glencore-ramaphosa-acquire-70-stake-of-optimum-coal/ Date of use 20.02.2020.

[49] *Pembani Group Proprietary v Shanduka Group Proprietary Limited* (LM041Jun15) [2015] ZACT 126 (18 September 2015) (Annexure BM17).

[50] Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 13.

Glencore discovered that they are unhappy about the price of coal after conducting a "*post acquisition review*" in July 2013.[51]

84. OCM had also taken a gamble on the export price of coal. It is when this bet went sour, when the price of coal collapsed in 2012, that the hardship was concretised.[52] It is worth noting that Eskom would not have participated in their good fortune had the export price of coal gone the other way.

85. On the 4th of May 2015, Mr Bester (of Eskom), wrote a memo[53] to his superior, Mr Mboweni, recommending that Eskom should agree to the proposed price increase from R154 to R442 per tonne.[54] In his memo, Mr Bester intimates that;

"As a result of continued low international coal prices Optimum, without the prospect of a recovery in the next two years, at the end of January 2015 Optimum made the decision to close their export operations and began a section 189 for the opencast section of the mine"

86. It is therefore apparent that their *"hardship claim"* was a result of their own negligence and failure to conduct proper due diligence at acquisition for which they now wanted Eskom to pay.[55] Furthermore, they had gambled in the

[51] Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 15.
[52] Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 21.
[53] Memo from Bester to Mboweni dated 04 May 2015 Annexure BM15.
[54] Annexure BM15 para 3.
[55] Annexure BM18 para 17.

international coal market and had failed to protect themselves by putting in place adequate measures to protect themselves against international coal price volatility. It was, in my opinion, unreasonable for Eskom to be expected to pay for these management failures, (perhaps even incompetence).

87. In exchange for the price increase, Mr Bester recommended that the contract should be extended to 2023 and that Eskom should take up 15% of shares in Optimum,[56] a company that was in financial distress.

88. I was suspicious of these recommendations from Mr Bester and the analysis that preceded them. They completely ignored Eskom's financial and operational position. Not once did Mr Bester refer to the fact that Eskom was itself going through hardship. Mr Bester's recommendation heavily favoured OCM and Glencore.[57] I felt that it was not an honest appraisal and an appropriate negotiation position with a hostile supplier.

89. Firstly, the recommendation that the supply agreement be extended to 2023 without going through a competitive process, (or at least hard bargaining on Eskom's part), was a problem to me. Secondly, Eskom's proposed 15%

[56] Annexure OBM15 para 3.

[57] This is also confirmed in Bester's submission to the Commission Annexure BM16 at para 38, 40, 44, 46

shareholding in Optimum would be meaningless as it would be a minority stake where we would have no say in the cost structure of the company.

90. I did not believe that OCM's threat to shut down the mine was credible. On the contrary, my interpretation of it was that it was designed to instil fear in us, threaten us with more load-shedding and extort a higher price and extend the contract by a further five years.

91. I am not aware that we were under obligation to agree with their position at all costs. Mr Ephron's submission to the commission seems to imply a certain "*entitlement*" to the price increase.[58]

92. My suspicions about Mr Bester's incompetence at handling such complex negotiations in the interests of an employer, such as Eskom, are confirmed in his submission to the Commission at paragraph 47 where, after referring to my negotiation tactics, he says; "*Optimum countered, offering to continue supply until the end of the contract at R300 per tonne, thus Glencore would subsidise the coal price from the Optimum Colliery to Hendrina Power Station until the end of 2018, see annexure JAB/Z16.*"

[58] Annexure BM18 para 31.

93. Even at this early stage of the negotiations, Mr Bester, by his admission, would have cost Eskom R112 per tonne for three years. Money that Eskom did not have.

94. The stalemate as a result of no agreement, (correctly) led to the Hardship Arbitration being embarked on. A hearing was scheduled for the period 16-27 May 2016.[59] I was happy with this outcome because it was in the interests of Eskom.

95. On the 21st of July 2015, the directors of OCH and OCM took a resolution to commence business rescue (BR) proceedings in respect of OCM and OCH.

96. On the 5th of August 2015, the Department of Minerals announced that Glencore's mining licences have been suspended.[60] The reason for the suspension was that Glencore had not followed due process in the proposed retrenchments of their workers.[61] The effect of the suspension of the mining licenses would be to guarantee the suspension of coal supplies by Optimum to Hendrina.

97. Dr Ngubane and I had a meeting with Minister Ramatlhodi where Dr Ngubane asked him to reconsider the decision to suspend the licenses of Glencore

[59] Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 38.
[60] BD Live *"Ramatlhodi suspends Glencore license"* 05.08.2015 http://thegremlin.co.za/business-news/wordpress/2015/08/05/ramatlhodi-suspends-glencore-licence/ Date of use 27.02.2020
[61] Wittles G *"Ramatlhodi Glencore urgently trying to resolve licence issue"* 05.08.2015 https://ewn.co.za/2015/08/05/Ramatlhodi-Glencore-urgently-trying-to-resolve-its-licence-issue Date of use 27.02.2020

because of our concern about the negative impact on the security of supply of coal to Hendrina power station and the possible impact on load shedding

98. We were relieved, when a few days later, the suspension of the licenses was withdrawn.[62]

99. I was dumbfounded when, in May 2017, former Minister Ramatlhodi claimed that the Eskom Chairman, (Dr Ngubane), and I met with him to ask him to suspend Glencore's license, and that he refused because it would result in more load shedding. He seemed to have forgotten that **he had in fact suspended the license at the time**.

100. On 20 August 2015, the business rescue practitioners, (BRP's), suspended the supply of coal by OCM to Eskom. Eskom had stopped load-shedding on the 8th of August 2015. This move by the BRP's put us at the risk of returning to load-shedding.

101. We had anticipated that this stoppage of supply from the Business Rescue process was a possibility and had put in place contingency measures to ensure that Hendrina continues to supply power to the grid. Mr Bester's fears of an inability to keep Hendrina functioning when OCM stops coal supply to Hendrina did not materialise, nor did the heavens fall from the skies.

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[62] Reuters "Ramatlhodi withdraws Glencore mine suspension" 07.08.2015. https://www.fin24.com/Companies/Mining/Ramatlhodi-withdraws-Glencore-mine-suspension-20150807 Date of use 27.02.2020.

102. We were able to keep Hendrina functioning and did not have one day of load-shedding during the period that OCM was not supplying Hendrina with coal.

103. In October 2015, at the request of Mr Phuthuma Nhleko of Pembani Group, I held a meeting with him and Mr Kennedy Bungane. At this meeting, they expressed Pembani's desire to buy OCM. They indicated that this was, however, conditional on Eskom agreeing to a higher price for the coal, an extension of the coal supply agreement and a waiver of the penalty due to Eskom. I indicated to them that we have already turned down Glencore on all of these requests and could not see how we would justify acceding to their request. I indicated that doing so would suggest that we were giving them special treatment and that we could potentially even be accused of possible corruption.

104. Mr Nhleko subsequently wrote a letter to me confirming our discussion.[63]

105. I subsequently learnt in November 2015 that the BRP's were in negotiations with Oakbay for the sale of OCM. A transaction was subsequently concluded between the parties. It was approved by OCM creditors as well as the competition commission.

[63] Letter from Mr Nhleko to B Molefe dated 16.10.2015 Annexure BM19.

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McKinsey MSA

106. A cursory look at Eskom's financials will reveal the high costs relating to consultants –especially for the new build programme.

107. In July 2015 there was a proposal for the development of an internal consulting capacity. These consulting engineers would be trained from Eskom's (young) engineers from the TOP programme by Mc Kinsey consulting.

108. McKinsey would not be paid from the consulting but would share in the cost savings that Eskom would realise from using its own internal capacity for engineering consulting. There would therefore not be any upfront cash outlay for the training, young engineers would be trained and costs would be saved.

109. In May 2015 I approved the proposal.[64]

110. In August 2016, the Group Capital Integration and Assurance wrote a memo to the board tender committee indicating that the organisation had made savings of R18.6bn through the programme. R2.84bn was payable to McKinsey as a success fee and Group Capital had negotiated this fee down to R1.8bn.[65]

[64] Strategy to develop current TOP engineers to an internal consulting unit Annexure BM20
[65] Submission to BTC 08.08.2016 (Annexure BM40)

111. On 13December 2016 another submission was made to Board Tender Committee for a mandate to negotiate to further reduce the fee payable to McKinsey to R849m.[66]

Nuclear 100 Project

112. Eskom operates two nuclear reactors at Koeberg for purposes of generating electricity. These reactors were commissioned in the 1980's. Since commissioning, these reactors have been operated safely and there have not been any major nuclear incidents in South Africa.[67] They are currently the cheapest source of electricity for Eskom.

113. Eskom is a member of the World Association of Nuclear Operators (WANO) which uses peer reviews and inspections to advise member nuclear operators of possible risks in operations as well as to recommend improvements.

114. In 2015, WANO wrote a report to me as the Chief Executive of Eskom warning about the risk that Eskom is facing because of the future unavailability of nuclear reactor operators to the utility. Eskom was losing its operators to new nuclear

[66] Submission to BTC 13.12.2016 (Annexure BM

[67] Potgieter P and Yelland C "*Discussing nuclear energy operations with Peter Pozesky CEO of WANO*" https://www.ee.co.za/article/discussing-nuclear-energy-operations-peter-prozesky-ceo-wano.html Date of use 24.02.2020

reactors that were being commissioned elsewhere in the world –especially the Middle East.

115. In addition, we did not have a full complement of nuclear operators at Koeberg, (which was a risk on its own).

116. Furthermore, the remaining nuclear operators at Koeberg were making demands for remuneration benefits which were above Eskom's policies and affordability. Failure to meet these would see us losing them to the Middle East operators. Some already had offers of employment and were threatening to leave Koeberg at short notice.

117. What was odd, however, was that Eskom is the only nuclear power station outside the United States of America whose training programme is accredited by the National Academy for Nuclear Training[68] to train nuclear operators, (both for ourselves and for other new operators).[69] Eskom had not trained operators in a very long time.

[68] Nationa Academy of Nuclear Training Accreditation Certificate (Annexure BM

[69] Njobeni S *"Esskom's new recruits to get nuclear know how"* 10.06.2016 https://www.iol.co.za/business-report/companies/eskoms-new-recruits-to-get-nuclear-know-how-2032911 Date of use 24.02.2020.

118. I authorised the recruitment and training of 100 electrical engineering artisans to be trained as nuclear operators. The programme was also authorised by the Koeberg Nuclear Power Station Manager.[70]

119. I was not involved in their recruitment. Any CV's received directly by myself relating this programme were forwarded to Eskom's HR Department. The recruitment of these artisans was not a secret and was communicated to the public. The project was launched by the Minister of Public Enterprises.[71]

Public Protector's Report Relating to Cell Phone Records

120. The Public Protector released a report titled "State of Capture Report" dated 14 October 2016. The report contained a series of "observations" and did not make any findings.

121. Paragraphs 5.96 to paragraph 5.101 deal with my phone records and makes some "notes".

122. Although the Public Protector makes the "notes", she did not ask me for my side of the story as regards the phone calls, nor did she bring the phone records in her possession to my attention before she finalised the report as is required by the Public Protector's Act[72] and natural justice.

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[70] Approval of the Artisan Nuclear Operating Pipeline 12.04.2016 (Aneexure BM

[71] Njobeni S *"Esskom's new recruits to get nuclear know how"* 10.06.2016 https://www.iol.co.za/business-report/companies/eskoms-new-recruits-to-get-nuclear-know-how-2032911 Date of use 24.02.2020

[72] Public Protector's Act 23 of 1994 s 7(9)

123. Significantly, the Public Protector's report did not make any findings as regards her "notes" relating to my phone records. She has also not indicated any wrongdoing on my part.

124. Nevertheless, paragraph 5.97 refers to contact between myself and Mr Ajay Gupta on a number of occasions. The Public protector fails to provide any other details about the phone calls. She does not provide the phone numbers, confirmation that the numbers belonged to Mr Ajay Gupta, nor the dates and times when the phone calls were made. It is therefore difficult for me to determine the veracity of her claim in paragraph 5.97 of the report.

125. Similarly in paragraph 5.98, there are no details of the phone numbers or the dates and times of the phone calls. I can therefore not confirm or deny the veracity of the claims.

126. In paragraph 5.100 the Public Protector says that I can be placed in the Saxonwold area 19 times. That is all that is said. She does not provide context or even suggest what I may have been doing there. What I understand from enquiries made to a communication expert is that any user of a cell phone within the area of coverage of a cell phone tower (e.g. Lynnwood) will be recorded as being in the "area" of, say, Lynnwood. This includes a user who is in transit through the coverage area of that tower.

127. But more importantly, paragraph 5.99, which suggests the number of instances that I was purportedly in the Saxonwold area, only shows that I was there five times and not 19 times.

127.1. **05 August** when, according to the cell phone service provider's records, I was in the area between 09h17 and 09h41 and made one phone call and received nine others.

127.2. **17 August** when, according to the cell phone service provider's records, I made two phone calls while I was in transit in the area

127.3. **18 August** when, according to the cell phone service provider's records, I made one phone call while I was in transit in the area

127.4. **23 August** when, according to the cell phone service provider's records, I listened to my voice messages while in transit in the area.

127.5. **28 August** when, according to the cell phone service provider's records, I received two calls, listened to my voice messages and received one call while in transit in the area.

128. Paragraph 5.101 says that I had contact with Mr Atul Gupta. This is not true because the phone call from Mr Atul Gupta to myself was forwarded to my message box. There is no other record in my phone records that shows that I returned Mr Atul Gupta's call or that he ever tried to contact me again.

129. This is according to my cellular phone records which I have had thoroughly examined since the release of her report. An affidavit from an expert cellular phone analyst confirms the existence of these discrepancies.[73]

130. I would have raised these and other discrepancies had Ms Madonsela afforded me an opportunity to be heard.

[73] Affidavit by Mr Nico Smith (Annexure BM22).

E mail from Sahara Loans

131. The commission has forwarded to me an email from Sahara loans dated 27 June 2017. Apparently the email was sent to my Eskom email address. I was no longer at Eskom on the 27th of June 2017. I therefore did not receive the email.

132. Until it was sent to me by the commission, I was not aware of the existence of this email.

133. I have no idea as to who Sahara Loans is.

BRIAN MOLEFE 13.05.20

I certify that the deponent knows and understands the contents of the aforegoing Affidavit which was signed and attested to at the undermentioned address on this day of **FEBRUARY 2020**.

SUID-AFRIKAANSE POLISIEDIENS
SAPS LYTTELTON
2020 -05- 13
COMMUNITY SERVICES CENTRE
SOUTH AFRICAN POLICE SERVICE

7232711 - 1
CST

COMMISSIONER OF OATHS

"BM 1"

Motswagole Kwela Brian MOLEFE

409 KELLY BRAY LANE, CORNWALL HILL ESTATE, IRENE.
P.O. BOX 18 CORNWALL HILL, 0178.
012 6671885(h), CELL: 0835552121
E mail: mbm1@mweb.co.za

28 December 2019

ATTENTION: Mr Ko Pather

The Secretary
Judicial Commission of Inquiry into Allegations of State Capture,
Corruption and Fraud in the Public Sector including Organs of State
2nd Floor Hillside House
Parktown
Johannesburg

Dear Mr Ko Pather

RE: CHAIRPERSON'S DIRECTIVE IN TERMS OF REGULATION 10(6)

1. Your email dated 24 December 2019 has reference.

2. Thank you for the email and for affording me the opportunity to submit an affidavit.

3. However, to do so comprehensively and to be able to effectively assist the commission in getting to the truth of the issues that you raise, I will need certain documents that I believe are at Transnet, Eskom and the of Department of Minerals and Energy and the Department Public Enterprises. These documents are probably already in your possession as I think that you will have figured out that you need them, alternatively the commission, I believe, has the power to request them.

Secondment / Appointment to Eskom

3.1 Correspondence from the Minister of Public Enterprises requesting my secondment.

3.2 Transnet Board resolution approving my secondment.

3.3 Secondment agreement between Transnet and Eskom.

3.4 Eskom board resolution approving my secondment.

3.5 Eskom board resolution approving my permanent appointment to Eskom.

3.6 Reinstatement agreement with Eskom.

3.7 Correspondence to the Minister of Public Enterprises recommending my appointment to Eskom.

3.8 Recommendation by the Minister of Public Enterprises to cabinet for my appointment as well as the Cabinet approval for such appointment.

3.9 The original letter of appointment

3.10 Subsequent correspondence with the Minister on the matter of my appointment.

3.11 Minister's correspondence with Transnet requesting Mr Singh's secondment.

3.12 Transnet board decision to second Mr Singh to Eskom.

3.13 Eskom board decision on Mr Singh's secondment.

3.14 Mr Singh's secondment agreement.

R1.6bn Guarantee to Tegeta

3.15 Memo to the board requesting approval for the guarantee.

3.16 Board approval.

3.17 Subsequent correspondence to cancel the guarantee.

Glencore OCM Penalties

3.18 Johan Bester's Memo

3.19 Minister Ramatlhodi's letter to OCM/Glencore cancelling their mining licence.

Prepayment

3.20 Minutes of the board subcommittee that took the decision to make the prepayment.

3.21 Prepayment agreement

3.22 Internal audit report on the prepayment and delivery of coal

3.23 External audit report on the Prepayment and delivery of coal.

Nuclear 100 Project

3.24 World Association of Nuclear Organisations (WANO) reports for 2014 to 2016 – specifically relating to the availability of nuclear operators as a risk to the safe operation of the Koeberg Nuclear reactor.

3.25 WANO accreditation certificate for the training of nuclear operators at ESKOM.

3.26 Demands of the Operators to Eskom management for increased benefits that are above the Eskom's Human resource policies. These were either in 2014 or 2015.

3.27 Memorandum approving the Nuclear 100 Project.

3.28 List of students who applied for the program.

3.29 List of students who were approved to proceed as well as a memo recommending their approval.

3.30 List of students who, (according to yourselves at our meeting), failed the aptitude test but were approved to proceed with the training.

3.31 List of students who completed the programme at ESKOM but were not accredited as operators by WANO

3.32 Latest progress report on the programme.

3.33 WANO report on improvements to the operation of Koeberg towards the end of 2016 or early 2017.

MCKINSEY MSA

3.34 The signed Master Services Agreement.

3.35 McKinsey & Co/ Trillian contracts.

3.36 Memo recommending and approving the McKinsey & Co/Trillian contracts.

3.37 Memos recommending and approving McKinsey & Co/Trillian payments.

PENSION PAYOUT

3.38 Correspondence between Eskom and the EPPF relation to my joining of the Pension Fund.

3.39 Correspondence between Eskom and the EPPF when I applied for early retirement.

Other Matters

3.40 Thank you for a copy of the email from Saharaloan. Kindly indicate as to which of my emails the letter was sent to.

4. As agreed at our meeting at the Commission's offices, kindly send to me a transcript as well as a copy of the recording of the proceedings of our meeting

5. Kindly note that as I work through the affidavit, I may request your assistance in obtaining more documents. It will not be possible for me to do justice to an affidavit of such gravitas on memory alone.

6. Finally, I do not think that I will finish this affidavit by the 18th of January 2020. I propose to finish it by the 31st of January 2020, (depending on how soon the requested documents can be made available).

7. Thanking you in anticipation of your assistance.

Sincerely

Brian MOLEFE 28.12.19.

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"BM2". 39

mbm1

From: Ko K. Pather <KoP@commissionsc.org.za>
Sent: Friday, January 24, 2020 11:38 AM
To: mbm1
Cc: Jabu J. Mahlangu; Jan Dekker; Tshego T. Mahlangu-Yiwombe; Jabu Masilela; Cobus C. De Wet Bester; Rohan R. Hiles; Denzel Potgieter
Subject: RE: State Capture Commission - Mr Molefe Affidavit
Attachments: 3.4 Board resolution aproving secondment.pdf; 3.6 Reinstatement Agreement.pdf; 3.9 Letter of appointment.PDF; 3.15 Memo to board, requesting guarantee.pdf; 3.18 Bester's memo.pdf; 3.20 BTC minutes approving prepayment.pdf; 3.29 Approved Submission Nuclear Pileline 2016.pdf; 3.36.pdf; 3.40 Sahara Loan.jpg

Dear Mr Molefe

Your letter dated 28 December 2019 bears reference.

We have taken into consideration your request for certain documents in order to assist you in drafting your affidavit.

We have, where we were in a position to do so, made documents available to you as indicated in the table below. Where a document has not been provided it is either due to the fact that the Commission is not in the possession of said document or the legal team has considered the document of a sensitive nature and thus cannot be provided at this stage.

For your convenience, we have provided a breakdown below of the status of the documents requested:

No	Description	Comment
SECONDMENT / APPOINTMENT TO ESKOM		
3.1	Correspondence from the Minister of Public Enterprises requesting your secondment	Unfortunately the document is not with the Commission
3.2	Transnet Board Resolution approving your secondment	Unfortunately the document is not with the Commission
3.3	Secondment agreement between Transnet and Eskom	We have requested this document but have not been provided with it at this point in time
3.4	Eskom board resolution approving my secondment	Attached as *"3.4 Resolution for secondment"*
3.5	Eskom Board resolution approving my permanent appointment of Eskom	We have requested this document but have not been provided with it at this point in time
3.6	Reinstatement agreement with Eskom	Attached as "3.6 Reinstatement agreement"
3.7	Correspondence to the Minister of Public Enterprises recommending your appointment to Eskom	Unfortunately the document is not with the Commission
3.8	Recommendation by the Minister of Public Enterprises for your appointment as well as Cabinet approval for such appointment	Unfortunately the document is not with the Commission
3.9	The original letter of appointment	Attached as *"3.9 Appointment letter"*
3.10	Subsequent correspondence with the Minister on the matter of your appointment	Unfortunately the document is not with the Commission
3.11	Minister's correspondence with Transnet requesting Mr Singh's secondment	Unfortunately the document is not with the Commission

3.12	Transnet board decision to second Mr Singh to Eskom	Unfortunately the document is not with the Commission
3.13	Eskom Board decision on Mr Singh's secondment	Unfortunately the document is not with the Commission
3.14	Mr Singh's secondment agreement	Unfortunately the document is not with the Commission
R1.6BN GUARANTEE TO TEGETA		
3.15	Memo to the board requesting approval for the guarantee	Attached as *"3.15 Memo"*
3.16	Board Approval	The above memo was indicated as irrelevant to your point. The board approval is accordingly not relevant for present purposes.
3.17	Subsequent correspondence to cancel the guarantee	The guarantee was not cancelled. It had lapsed.
GLENCORE OCM PENALTIES		
3.18	Johan Bester's memo	Attached as *"3.18 Bester Memo"*
3.19	Minster Ramatlodhi's letter to OCM/Glencore cancelling their mining licence	Unfortunately the document is not with the Commission
PREPAYMENT		
3.20	Minutes of the board subcommittee that took the decision to make the prepayment	Attached as *"3.20 BTC minutes"*
3.21	Prepayment agreement	The relevance of the document is in any event not readily apparent
3.22	Internal audit report on the prepayment and delivery of coal	The relevance of the document in in this event not readily apparent
3.23	External audit report on the Prepayment and delivery of coal	There was no external audit report that we are aware of. Please provide us with further details such as the author of the report
NUCLEAR 100 PROJECT		
3.24	World Association of Nuclear Organisations (WANO) reports for 2014 to 2016 – specifically relating to the availability of nuclear operators as a risk to the safe operation of the Koeberg Nuclear reactor	Unfortunately the document is not with the Commission
3.25	WANO accreditation certificate for training of nuclear operators at Eskom	Unfortunately the document is not with the Commission
3.26	Demands of the Operators to Eskom management for increased benefits that are above the Eskom's human resource policies. These were either in 2014 or 2015	Unfortunately the document is not with the Commission
3.27	Memorandum approving the Nuclear 100 Project	Unfortunately the document is not with the Commission
3.28	List of students who applied for the program	Unfortunately the document is not with the Commission
3.29	List of students who were approved to proceed as well as a memo recommending their approval	Document attached as *"3.29 Approved Submission Nuclear Pipeline 2016"*
3.30	List of students who, (according to yourselves at our meeting), failed the	The individual's names cannot be provided as it would prejudice the individuals if made

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	aptitude test but were approved to proceed the training	available; on a number per category, the individuals were categorised as: Recommended – 50 Recommended with slight reservations – 24 Recommended with strong reservations – 16 Not recommended – 6 Not assessed prior to appointment – 2 It was explained to us that the individuals with strong reservations (16 candidates), and not recommended (6 candidates), would normally not be recruited for training at Koeberg. During the testing a total number of 142 individuals were either recommended, or recommended with slight reservations, therefore there were enough suitable candidates and it was not necessary to employ those individuals not recommended or recommended with strong reservations.
3.31	List of students who completed the programme at Eskom but were not accredited as operators by WANO	To our knowledge the training duration of individuals to be registered is of such length that none of the 100 are eligible for registering yet, training contracts only conclude on 30 April 2021
3.32	Latest progress report on the programme	Unfortunately the document is not with the Commission
3.33	WANO report on improvements to the operation of Koeberg towards the end of 2016 or early 2017	Unfortunately the document is not with the Commission
MCKINSEY MSA		
3.34	The signed Master Services Agreement	In any event the relevance of the agreement for present purposes is not readily apparent
3.35	Mckinsey & Co/ Trillian contracts	In any event the relevance of the contracts for present purposes is not readily apparent
3.36	Memos recommending and approving the Mckinsey & Co/Trillian contracts	Document attached as *"3.36 Memo"*
3.37	Memos recommending and approving Mckinsey & Co/Trillian payments	In any event the relevance of the memos for present purposes is not readily apparent
PENSION PAY-OUT		
3.38	Correspondence between Eskom and the EPPF relation to my joining of the Pension Fund	Unfortunately the document is not with the Commission
3.39	Correspondence between Eskom and the EPPF when I applied for early retirement	Unfortunately the document is not with the Commission
OTHER MATTERS		
3.40	Thank you for a copy of the email from Saharaloan. Kindly indicate to which of my emails the letter was sent to	Brian.molefe@eskom.co.za Please see attached screenshot of the email indicating you were a Bcc recipient to this email

We wish to indicate that you are at liberty to provide further motivation if you so wish, why the documents which have not been provided should in fact be furnished to you.

A further request was also made for the recording of the consultation you had with us at our offices. As agreed, a copy of the recording is available for collection at our offices in Parktown. Due to the sensitivity thereof we would prefer

"BM 3"

CURRICULUM VITAE

PERSONAL DETAILS

Name	Brian
Surname	Molefe
ID Number	661228 5778 08 6
Home Address	759 Camelford Road Cornwall Hill Estate Irene, **PRETORIA**
Postal Address	P O Box 18 Cornwall Hill 0178 **SOUTH AFRICA** **EMAIL: mbm1@mweb.co.za**

QUALIFICATIONS:

- Doctor of Engineering, *(Honoris Causa),* University of Glasgow Caledonian
- Master of Business Leadership, University of South Africa.
- Post Graduate Diploma in Economics, London University, School of Oriental and African Studies.
- Bachelor of Commerce, University of South Africa. **Majors**: Accounting and Economics

OTHER TRAINING:

- Nuclear Reactor Technology, Massachusetts Institute of Technology, 2016
- Programme for Young Global Leaders, Kennedy School of Government, Harvard University, Cambridge, Mass. USA, 2009.
- Advanced Management Program, Harvard Business School, Boston, Mass USA, 2006.
- Executive program, Wharton Business School, Philadelphia, Pennsylvania, USA, 2003.
- Study Tour to Calpers, Sacramento, California, USA, 2003.

- Sovereign Debt Management, UBS Warburg, LONDON, 2000.
- Sovereign Cash Management, United States Treasury, WASHINGTON DC, 1999
- Privatisation, Regulatory Reform and Corporate Governance, Kennedy School of Government, Harvard University, Cambridge Mass, USA, 1999.
- International Experience in Privatisation, Warburg Dillion Read, LONDON, 1999.
- Intergovernmental Fiscal Relations, Australia Department of Finance, CANBERRA, 1998.
- Marketing and Selling of Treasury Products, First National Bank of South Africa, JOHANNESBURG, 1994.
- Central Banking, Bank of England, Rustenburg, 1993.
- Macroeconomics Management, World Bank in Cape Town, 1992.
- Southern African Economic Development Issues, ANC, Windhoek, NAMIBIA, 1991.

BOARD MEMBERSHIPS:

- Public Investments Corporation [Executive Director, resigned, 2010].
- Harith Fund Managers [Managers of the PAIDF, resigned, 2009]
- Pan African Infrastructure Development Fund [Initial Trustee until October 2007].
- Telkom SA [resigned 2008].
- Airports Company of South Africa [resigned, 2008].
- ADRIASA [resigned 2008].
- National Empowerment Fund [resigned December,2004].
- Commission for Public Deposits [until June, 2003].
- Export Credit Insurance Corporation [until June, 2003].
- Pareto Properties [until June, 2004].
- South African Special Risks Insurance Association (SASRIA) [until July, 2003].

- Trans Caledon Tunnel Authority (TCTA) [until July, 2003]

WORK EXPERIENCE:

APRIL 2015 TO DECEMBER 2016 — **CHIEF EXECUTIVE OFFICER ESKOM SOC**

- Eskom is a South African state owned company responsible for the generation, transmission and distribution of electricity in Southern Africa, as well as for Research and Development and Capital Projects Management.

FEBRUARY 2011 TO APRIL 2015 — **GROUP CHIEF EXECUTIVE TRANSNET SOC**

- Transnet is a South African state owned company responsible for Freight Rail, National Ports Authority, Port Terminal Operations, Multi product pipelines, Properties, Engineering, Research and Development and Capital Projects Management.

JUNE 2003 TO JULY 2010 — **CHIEF EXECUTIVE OFFICER PUBLIC INVESTMENT CORPORATION**

- Responsible for the overall management of the Public Investment Corporation which manage assets in excess of R800 billion [mainly Government Employees Pension Fund].

JANUARY 2001 TO MAY 2003 — **DEPUTY DIRECTOR GENERAL: ASSETS & LIABILITY MANAGEMENT NATIONAL TREASURY OF THE REPUBLIC SOUTH AFRICA**

MAIN RESPONSIBILITIES:

- To finance the budget deficit at the lowest possible cost of finance and acceptable levels of risk in both the domestic and foreign capital markets.
- To manage the debt portfolio as well as contingent liabilities of Government.
- To manage the cash and liquidity requirements of Government.
- To facilitate the restructuring of state owned enterprises.
- To ensure that state owned enterprises comply with the requirements of the Public Finance Management Act [PFMA].

- To manage the risks associated with the debt and liquidity management, cash management and the restructuring of state owned assets are recorded and accounted for accurately.

1998 – 2001 **CHIEF DIRECTOR: ASSET MANAGEMENT**

NATIONAL TREASURY OF THE RSA

MAIN RESPONSIBILITIES:

- Cash management, i.e, the management of Government's cash balances on a day to day basis as well as the investment of surplus funds in tax and loans accounts in conjunction with SA Reserve Bank.
- Restructuring of state owned enterprises and management of state guarantees pertaining to public enterprises.

1997 – 1998 **DIRECTOR: INTERGOVERNMENTAL**

NATIONAL TREASURY OF THE RSA

MAIN RESPONSIBILITIES:

- Responsible for the analysis of the nine Provincial Government's budgets.
- Responsible for the monitoring of the expenditure of the nine Provinces.

1995 – 1997 **CHIEF DIRECTOR: STRATEGIC PLANNING**

OFFICE OF THE PREMIER OF LIMPOPO

MAIN RESPONSIBILITIES:

- Coordination of development planning for Limpopo Province.
- The Reconstruction and Development Programme projects of the Province.
- Responsible for the Premier's Development Fund [R25 million].

- Advisor to the Premier on matters of economic development pertaining to Southern Africa as a whole.
- Oversight of the work of the gender and youth commissions in the Premier's Office.

1994 – 1995 **INSTITUTIONAL SPECIALIST DEVELOPMENT BANK OF SOUTH AFRICA**

MAIN RESPONSIBILITIES:

- The institutional appraisal of Development Bank projects in the Mpumalanga and Limpopo Provinces.

1994 **TRAINEE FOREX DEALER FIRST NATIONAL BANK OF SOUTH AFRICA**

1992 – 1993 **DIRECTOR: NORTHERN TRANSVAAL REGIONAL DEVELOPMENT FORUM**

1991 – 1992 **ADMINISTRATOR: AFRICAN NATIONAL CONGRESS: NORTHERN TRANSVAAL**

AWARDS:

2003 *Association of Black Securities and Investment Professionals* [ABSIP], **Financial Services Achiever of the year.**

2004 *Black Business Quarterly* [BBQ], **Investment Specialist of year.**

2005 *Business Map Foundation*, Business Report, **Anglo American Award for BEE leader of the year.**

World Economic Forum, invited to join the Forum of Young Global Leaders.

2006 *ABSIP*, **Newsmaker of the year.**

2007 *Wits Business School/Barloworld Empowerment Awards,*

Empowerment Leadership Award.

2008 *Africa Investor Investment Awards,*
Institutional Investor of the year.

2008-2010 *Business Unity South Africa,*
President.

2012 *Absip*
CEO of the decade award.

2012 *Africa Investor Investment Awards,*
Africa Business Leader of the year.

COMMISSION OF INQUIRY INTO STATE CAPTURE

"BM4"

Mail&Guardian

Nov 16, 2017

(https://mg.co.za/)

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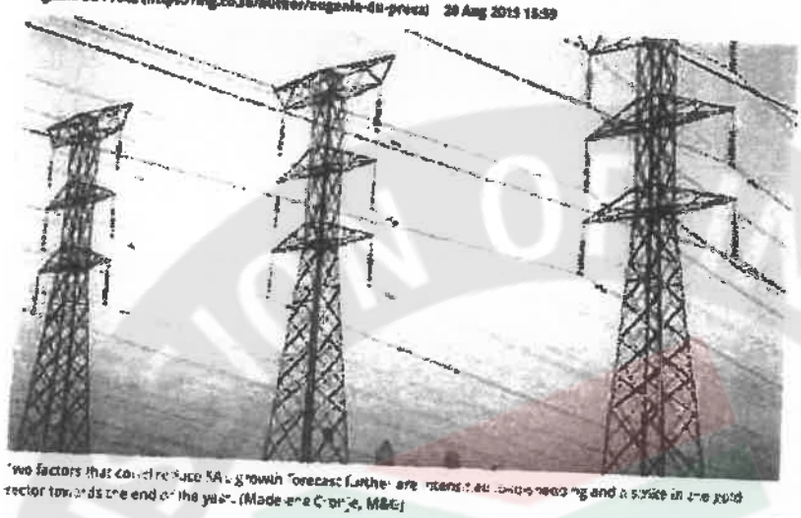
DESIGN THINKING

NATIONAL (HTTPS://MG.CO.ZA/SECTION/NEWS-NATIONAL)

Economic effects of load-shedding hit home

Eugenie du Preez (https://mg.co.za/author/eugenie-du-preez) 26 Aug 2015 15:59



Two factors that could reduce SA's growth forecast further are [illegible] and a spike in the gold sector towards the end of the year. (Madelene Cronje, M&G)

(https://mg.co.za/article/2015-08-26-economic-effects-of-load-shedding-hit-home)

[illegible]

The shock of Eskom's load shedding has finally hit home, even as the China and terms-of-trade shocks are only starting to build, said Nomura analyst and emerging markets economist Peter Attard Montalto.

While Eskom has not enforced load-shedding for the past 17 days, the 99 days of load-shedding it has implemented in 2015 so far has caused manufacturing and mining output to decrease, Stats SA figures show.

Montalto said Africa's most industrialised country, whose gross domestic product (GDP) contracted by 1.3% in the second quarter of 2015, was behaving economically "like it had lost a major industry".

"This is the impact of Eskom load-shedding," he said.

Eskom's expenditure breakdown, which will be published in September, will show the impact it had on the domestic private-sector investment, real rates and inventories and if it was felt through the whole economy, said Montalto.

Severe stress

Turning to agriculture, Montalto said the shock to the sector was particularly large because the drought in some areas of the country had spilt over from the first quarter, with the intensifying impact of a second quarter of poor harvests.

The mining industry reflected severe stress, which will eventually "filter through to conflict with the government and eventual substantial job losses from some mineral industries", said Montalto.

CLIENT MEDIA RELEASES

Press Offices

THE INNOVATION HUB (HTTP://PRESSOFFICE.MG.CO.ZA/THEINNOVATIONHUB/PRESS?STORYID=279847)
Finalists for 2017 GAP Innovation Compe
(http://pressoffice.mg.co.za/TheInnovati
StoryID=279847)

PRAGMA (HTTP://PRESSOFFICE.MG.CO.ZA/PRAGMA/PRESS?STORYID=279846)
Pragma helps with Shoprite's water-savin
(http://pressoffice.mg.co.za/PRAGMA/Pr
StoryID=279846)

SANRAL (HTTP://PRESSOFFICE.MG.CO.ZA/SANRAL/PRESS?STORYID=279710)
Road upgrade injects R30m in SME devel
(http://pressoffice.mg.co.za/SANRAL/Pr
StoryID=279710)

MTN (HTTP://PRESSOFFICE.MG.CO.ZA/MTN/PRESS?STORYID=279692)
MTN SA, Ericsson sign MOU
(http://pressoffice.mg.co.za/MTN/Press
StoryID=279692)

VAAL UNIVERSITY OF TECHNOLOGY (HTTP://PRESSOFFICE.MG.CO.ZA/VAALUNIVERSITYOFTECH/PRESS?STORYID=279689)

U14-VK-1042

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The fact that finance – and business services – remained the strongest sector was a key signal "that the low-job multiplier, highly skilled jobs sectors do fine in South Africa with an almost separate 'doing business' bubble in that area versus manual and unskilled industries not able to perform".

This, Montalto said, is fundamentally the wrong way round for solving the country's jobs crisis.

Exploring transformation, decolonisat... (http://pressoffice.mg.co.za/VaalUniversi StoryID=279689)

(http://pressoffice.mg.co.za/VaalUniversityofTechnol

WANT TO PUBLISH YOUR MEDIA RELEASE HERE. (HTTP://S.MG.CO.ZA/1GTS6AF)

He said the weaker rand, currency volatility and in turn food prices will keep the Reserve Bank ready to hike in September, although the probability has fallen slightly to 60% from 65%.

Montalto downgraded his growth forecast for the year to 1.6% from 1.9%, for 2016 to 2.1% from 2.3% and 2017 to 2.6% from 2.8%. Although he expects a recovery in the eurozone and the US to affect the domestic economy, he said South Africa would not take proper advantage of rand weakness to boost net exports.

Montalto said "wage increases over productivity and the inflating away of any competitiveness that could be gained, and sluggish foreign direct investment in recent years" will all play a part in this.

Risks likely to have a negative effect on growth in 2015 and 2016 include strike action and future global shocks to come, although these are difficult to factor in, said Montalto.

Two factors that could reduce the forecast further are intensified load-shedding and a strike in the gold sector towards the end of the year.

"South Africa is having serious growth issues in what was meant to be an 'OK' quarter. The national treasury understands this, even the ANC understands this. However, it and the government are unable or unwilling politically to take difficult measures to correct it." said Montalto. -- News24.com (//www.fin24.com/Economy/Load-shedding-hits-home-on-SA-economy-20150826)

Load-shedding (https://mg.co.za/tag/load-shedding) Economy (https://mg.co.za/tag/economy)

Eskom (https://mg.co.za/tag/eskom)

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Eskom group integrated results
for the six months ended 30 September 2016

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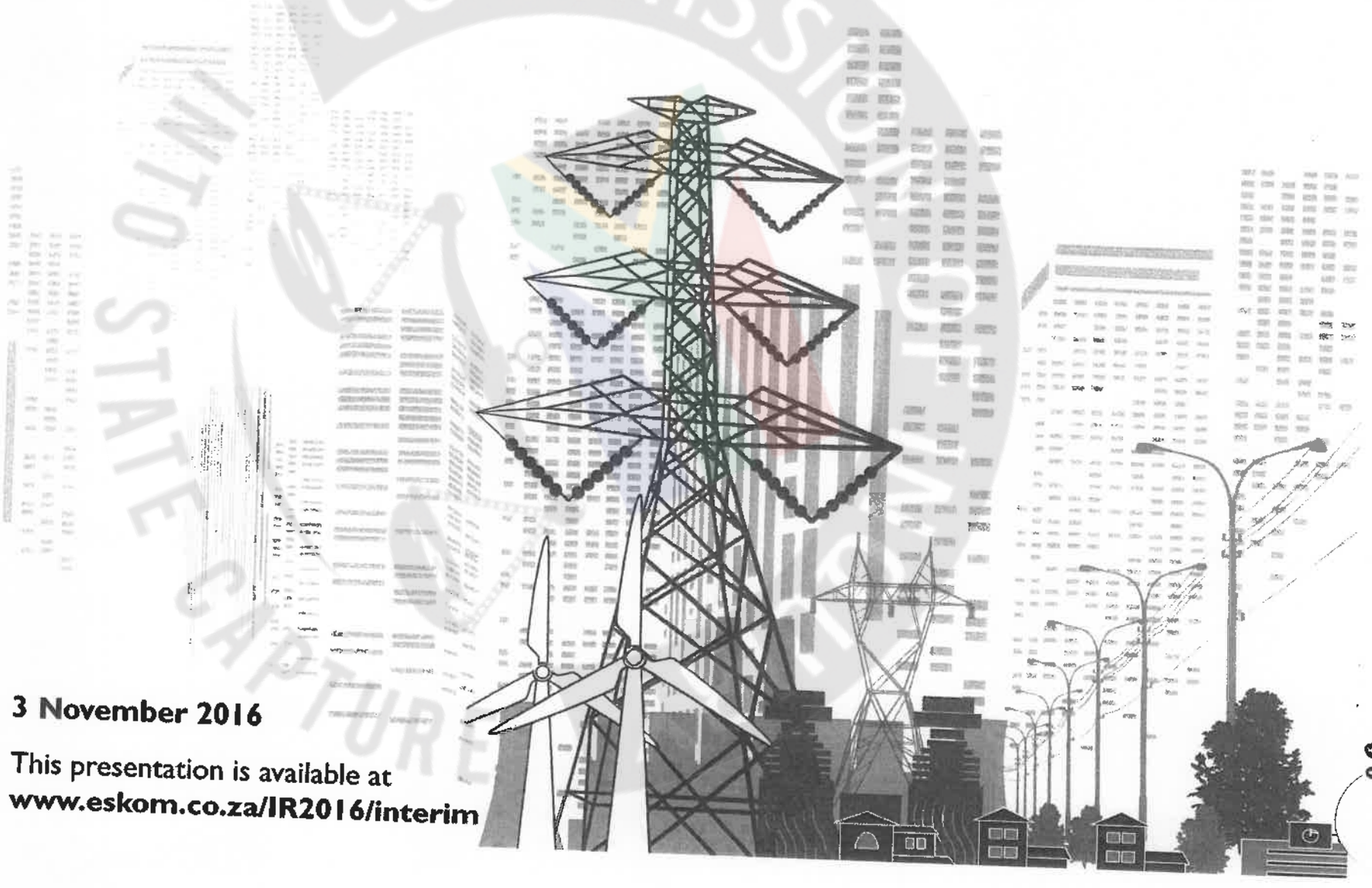

3 November 2016

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"BM5"

50

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1043

Eskom

453

days without load shedding

51

U14-VK-1044

Key highlights for the period

Eskom

Financial performance

- EBITDA of R31.5 billion, representing an increase of 23% compared to the comparative period
- Cost savings of R8 billion achieved
- Cash generated from operating activities increased by 39% to R31.9 billion compared to the comparative period
- Liquid assets of R43.8 billion at 30 September 2016
- 86% of funding for 2016/17 has been secured
- 28% of funding for 2017/18 has been secured

52

U14-VK-1045

Key highlights for the period (continued)

Eskom

Operational performance

- Generation plant performance improved with EAF of 78.49%
- Medupi Unit 5 synchronised to the grid on 8 September 2016
- Ingula Units 4, 2 and 1 in commercial operation on 10 June, 22 August and 30 August 2016, adding 999MW peaking capacity
- Ingula Unit 3 was synchronised to the grid on 29 October 2016 after repairs were completed
- 53 km of lines installed and 1 050MVA transformers commissioned for Transmission

53

U14-VK-1046

Key highlights for the period (continued)

Eskom

Socio-economic performance

- 99 869 additional households were electrified compared to 41 778 households for the comparative period, an increase of 139%
- Procurement from B-BBEE compliant suppliers was 65%
- Local content contracted more than 80%
- R75 million committed to corporate social investment, impacting 120 246 beneficiaries

54

U14-VK-1047

Contents

Eskom

Overview of the period

Financial review

Operating performance

Conclusion

Throughout this presentation, **period end** refers to the 6 months ended 30 September 2016, while **year** refers to the year ended 31 March 2016 and **comparative period or prior year** to the period ended 30 September 2015

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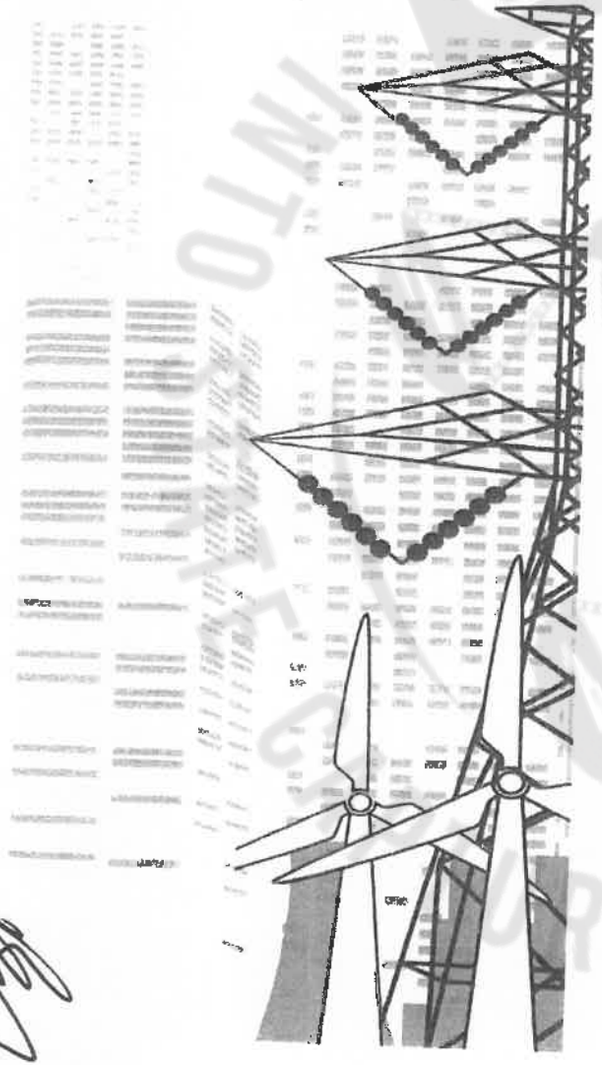
U14-VK-1048

[redacted]

Eskom



Financial review

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U14-VK-1049

Improved financial performance

Eskom

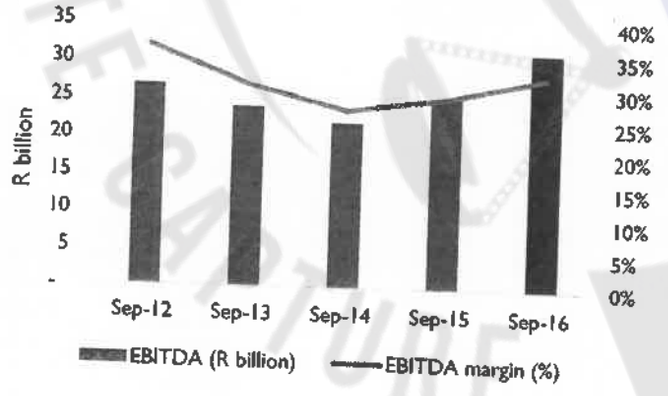
Financial performance

- ↑ Revenue **R97bn** (**10.5%**)
- ↓ Total primary energy cost reduced by **1.5%**
- ↑ EBITDA **R31.5bn** up by **23%**
- ↑ EBITDA margin **32.7%** (Sept 2015: 29.3%)

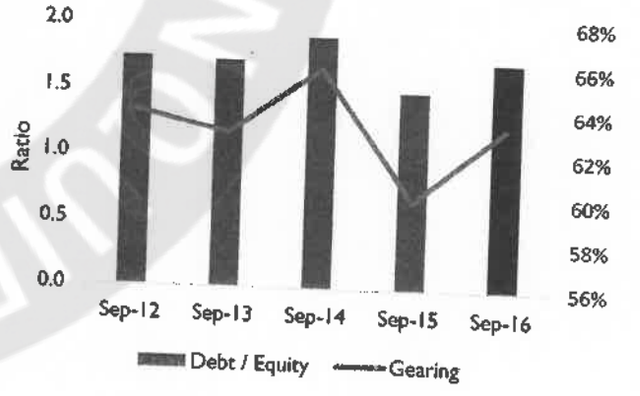
Key financial ratios

- ↑ Cash interest cover ratio **2.65** (Sept 2015: 2.43)
- ↑ Debt service cover ratio **1.90** (Sept 2015: 1.41)
- ↑ FFO as % of total debt **9.2%** (Sept 2015: 8.1%)
- ↓ Gross debt / EBITDA ratio **12.0** (Sept 2015: 12.8)

Profitability



Solvency



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U14-VK-1050

Income statement for 6 months ended 30 September 2016

Eskom

R million	Sept 2016	Sept 2015	YoY % change
Revenue	97 131	87 876	11
Other income	752	1 369	(45)
Primary energy	(40 380)	(40 999)	2
Net employee benefit expense	(15 758)	(13 806)	(14)
Net impairment loss	(615)	(122)	(404)
Other expenses	(9 635)	(8 723)	(10)
Profit before depreciation and amortisation and net fair value loss (EBITDA)	31 495	25 595	23
Depreciation and amortisation expense	(9 998)	(7 609)	(31)
Net fair value loss on financial instruments and embedded derivatives	(1 875)	3	-
Net finance cost	(6 535)	(3 498)	(87)
Share of profit of equity-accounted investees, net of tax	18	28	(36)
Profit before tax	13 105	14 519	(10)
Income tax	(3 749)	(4 172)	10
Net profit for the period	9 356	10 347	(10)

1. Figures refer to the unaudited group's results.
2. Figures for September 2015 were restated.

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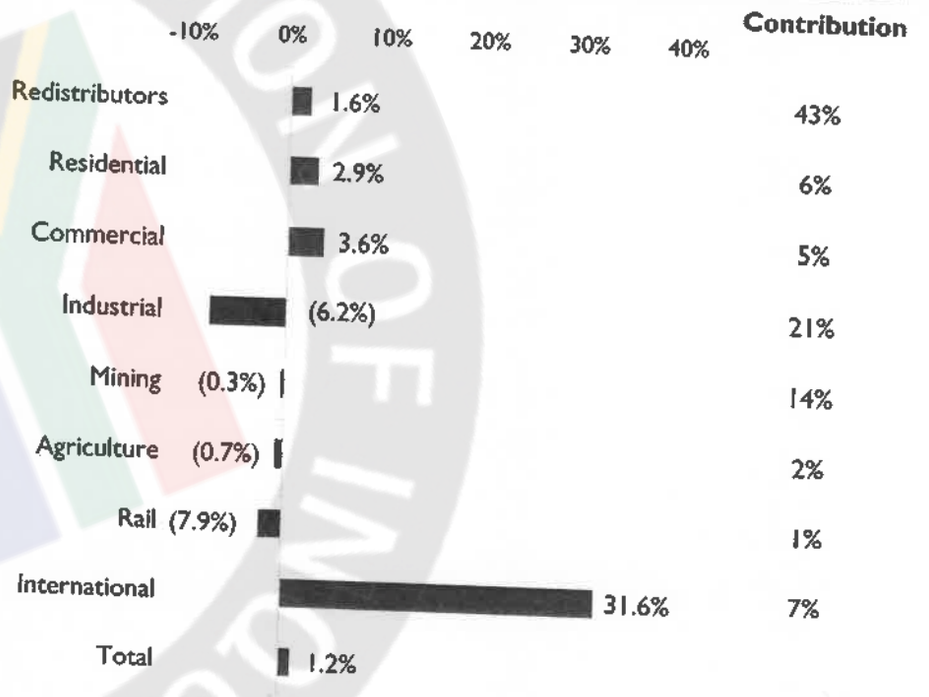
U14-VK-1051

Overall electricity sales volumes increased by 1.2%

Eskom

- International sales volume growth of 31.6% due to Eskom having surplus capacity
- Growth in in redistributors (1.6%), commercial (3.6%) and residential (2.9%)
- Decline in sales volumes: rail (7.9%), industrial (6.2%), mining (0.3%), and agriculture (0.7%)
- Overall electricity sales volumes increased by 1.2%

Electricity volumes % growth/(decline) & contribution



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U14-VK-1052

Eskom is embarking on a programme to stimulate local demand

Eskom

Eskom has sufficient reliable and affordable capacity available

- 2000MW - 5000MW of excess capacity in the medium term
- Current EAF of 78.49% versus 71.07% in 2016

Eskom is embracing customer engagement for new connections

- Engaging with key industrial customers to understand requirements
- There are 2200MW of existing projects to be connected in the pipeline that can be expedited for delivery
- Engaging with municipalities and metros to enable their growth
- Driving a country initiative together with Government to assist distressed customers

Stimulating medium term industrial growth

- Targeting growth though specific industries that can have sustainable knock-on economic effects e.g. platinum, ferrochrome etc.

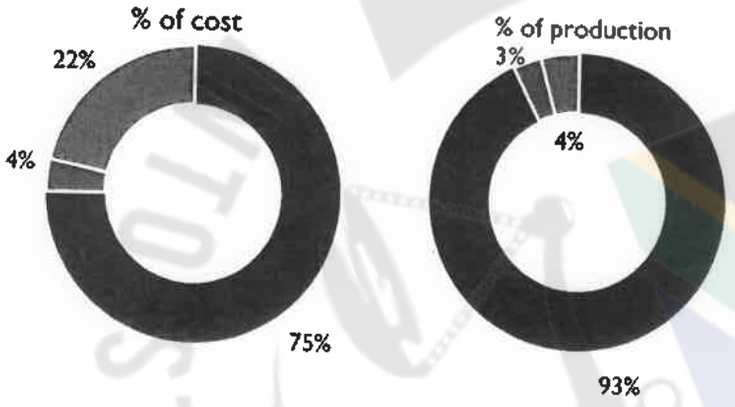
Eskom is open to business, come engage with us

U14-VK-1053

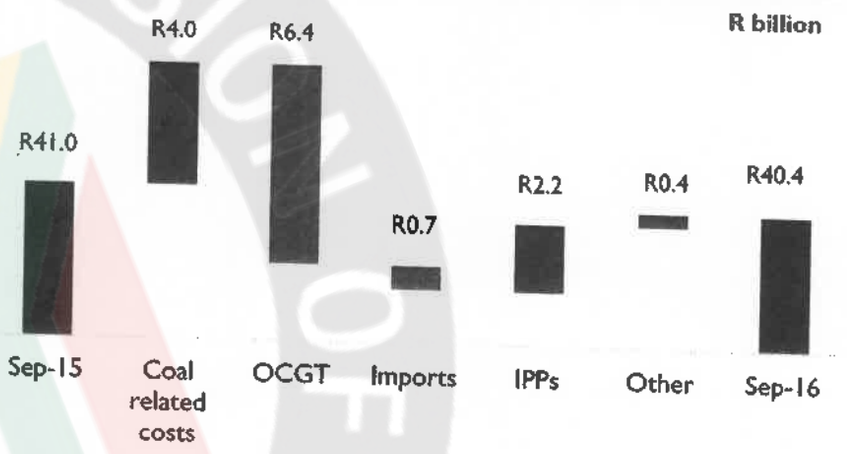
Primary energy costs decreased by 1.5%, compared to an average increase of 18% over the last 5 years

Eskom

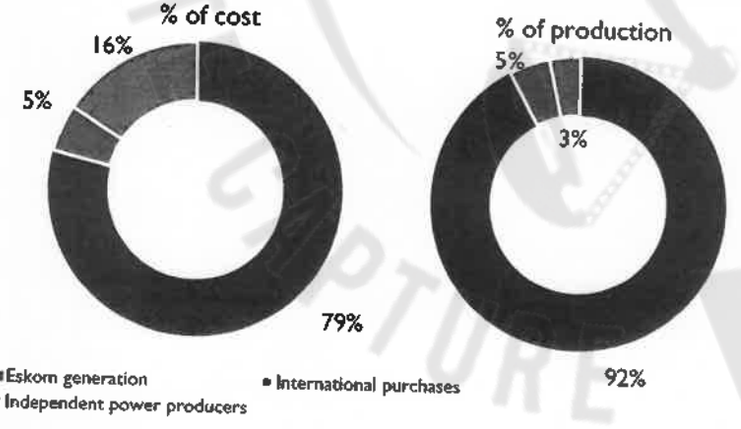
Sept 2016 Primary energy cost analysis



Primary energy cost increase analysis



Sept 2015 Primary energy cost analysis



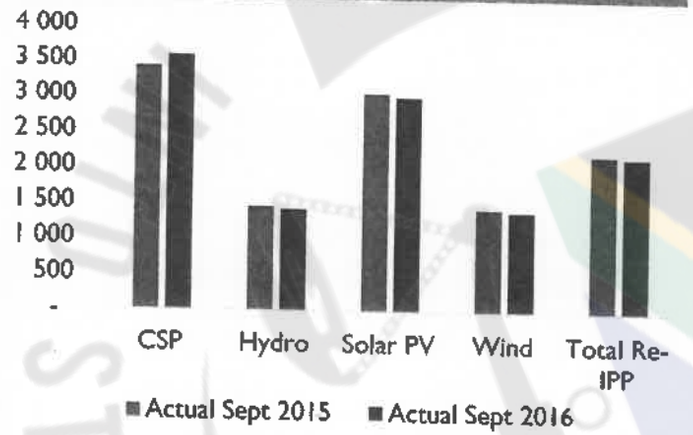
- Primary energy costs decreased by 1.5%, compared to an average increase of 18% the last 5 years
- Reduction in usage of OCGTs resulted in a cost savings of R6.4 billion
- Increase in total IPP costs of 33% with an increase in production of 23%

U14-VK-1054

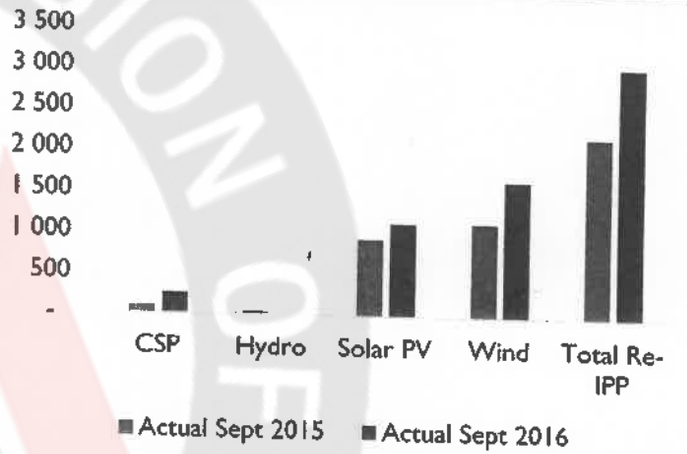
Increase in renewable IPP cost of 37% with an average cost of R2 179/MWh

Eskom

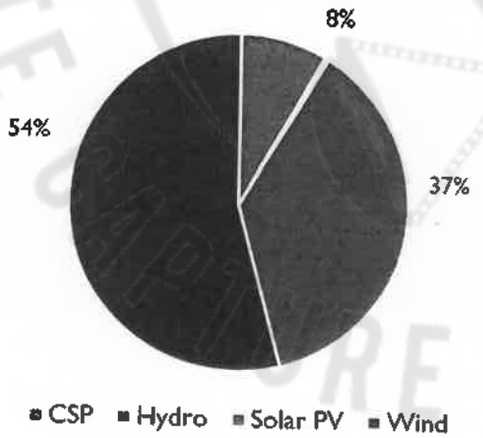
Electricity cost, R/MWh



Production volumes, GWh



Production mix



- Average year-on-year decrease in R/MWh of 1% from R2 208/MWh (September 2015) to R2 179/MWh
- Increase in production volumes of 39%
- Total increase in cost of 37%

U14-VK-1055

Financial position strengthened

Eskom

R million	30 Sept 2016	30 Sept 2015	YoY % change
PPE and intangible assets	554 555	486 730	14
Working capital	44 119	43 753	1
Liquid assets	43 766	24 104	82
Other assets	46 640	57 145	(18)
Total assets	689 080	611 732	13
Equity	186 581	171 117	9
Debt securities and borrowings	332 920	297 449	(12)
Working capital	49 647	49 330	(1)
Other liabilities	119 932	93 836	(28)
Total equity and liabilities	689 080	611 732	(13)

- Liquid assets increased by 82% to R44 billion

U14-VK-1056

Arrear debt and debtors ageing

Eskom

- Arrear debt by municipalities, excluding interest, increased from R5.9 billion (September 2015) to R9.2 billion
- Average Soweto collection level reduced from 18% (September 2015) to 14%
- 6 345 post-paid meters were converted to prepaid meters during the period in Soweto
- 12 123 smart meters were installed during the period in Midrand, Soweto and Sandton

Electricity debtors age analysis, R million	Total	Within due date	< 60 days overdue	> 60 days overdue
Large power users, excluding municipalities	7 616	6 937	252	428
Large power users, municipalities (excluding interest)	15 418	6 238	2 360	6 821
Small power users	2 834	1 628	175	1 030
Soweto SPU (excluding interest)	5 163	166	149	4 848
International customers	5	5	-	-
Total at 30 September 2016	31 036	14 974	2 936	13 127
% of total		48%	10%	42%

	Sept 2016	Sept 2015
Average debtors days (all categories)	51	47
Average debtors days (excluding Soweto SPU and municipalities)	21	21

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U14-VK-1057

86% of funding for 2016/17 secured

Eskom

R billion	2016/17	2017/18
Domestic bond private placement	10.2	–
Signed DFIs	30.4	7.4
Signed ECAs	7.1	2.2
Swap restructuring	1.8	2.5
Domestic bonds	1.2	–
Commercial paper	2.4	–
Committed facilities	6.5	6.5
Total funding secured	**59.6**	**18.6**
Funding secured, %	**86%**	**28%**

	STANDARD & POOR'S RATINGS SERVICES McGRAW HILL FINANCIAL	Moody's	FitchRatings
Foreign currency	BB+	Ba1	–
Local currency	BB+	Ba1	BBB–
Standalone	ccc+	b3	B–
Outlook	Negative	Review for downgrade	Stable

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U14-VK-1058

Credit rating concerns

Eskom

Concern	Eskom's response
Large capex programme	• Delivery of the new build programme ahead of schedule and within costs
Weak financial profile	• Eskom's financial ratios are already showing signs of significant improvement • Eskom's financial ratios are expected to improve in future and to move to investment grade within five years
Challenging regulatory environment	• Current court case ruling impacts on recovery of costs • NERSA and Eskom has applied for leave to appeal which will be heard during November 2016
Rising energy costs	• Total primary energy cost reduced by 1.5%
Funding & liquidity risks	• Liquid assets of R44 billion at 30 September 2016 • 86% of funding for 2016/17 has been secured • 28% of funding for 2017/18 has been secured

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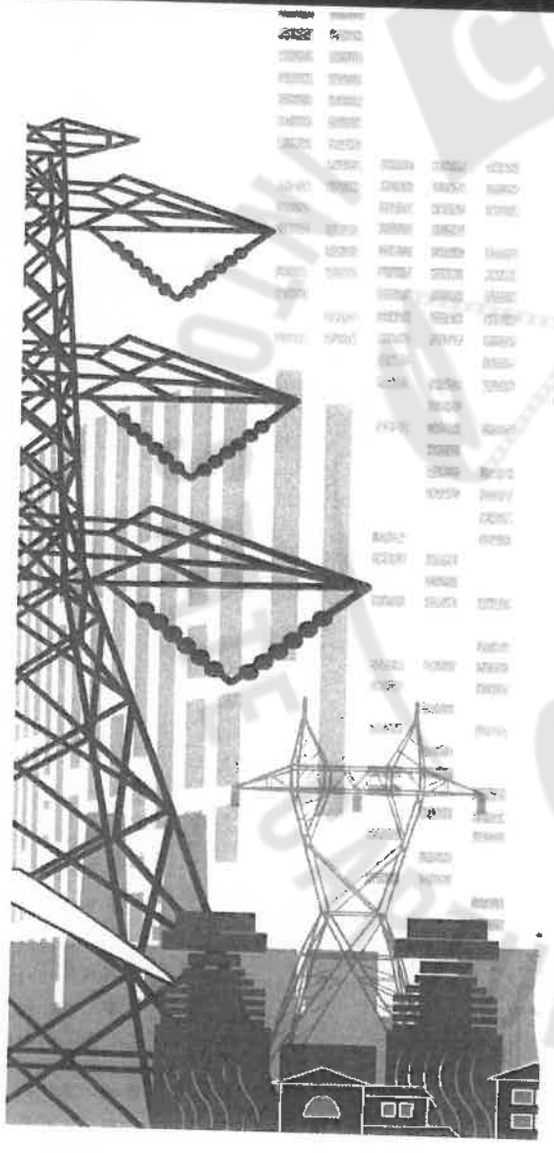
U14-VK-1059

Eskom



Operating performance

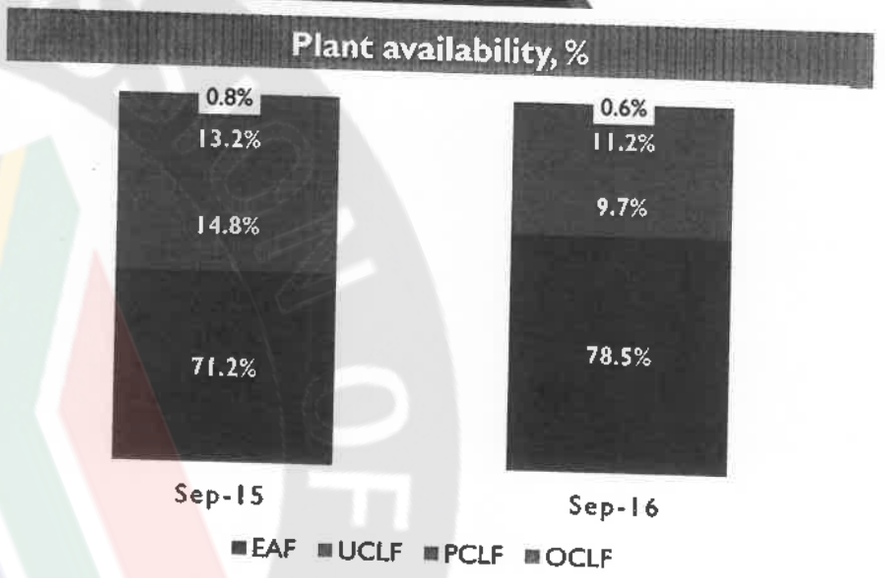
COMMISSION OF INQUIRY

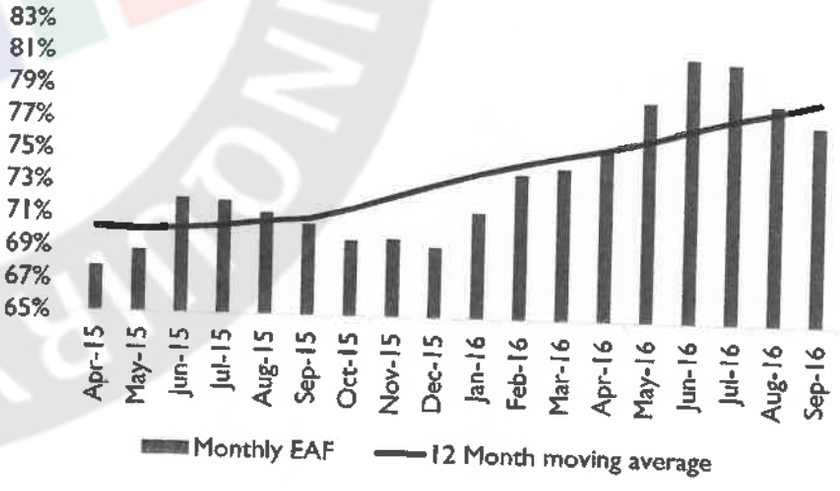
U14-VK-1060

Improved Generation operating performance

Eskom

- Significant improvement in EAF from 71.2% (September 2015) to 78.49%
- Unplanned breakdowns reduced from 14.8% (September 2015) to 9.73%
- 19GWh production from OCGTs compared to 2 961GWh (September 2015)





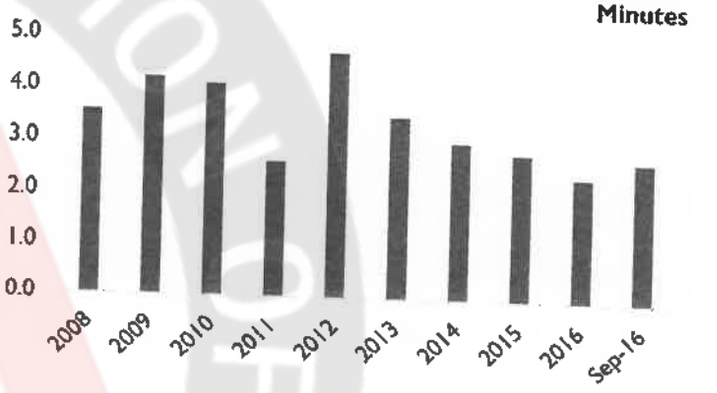
U14-VK-1061

Continued improvement in network performance

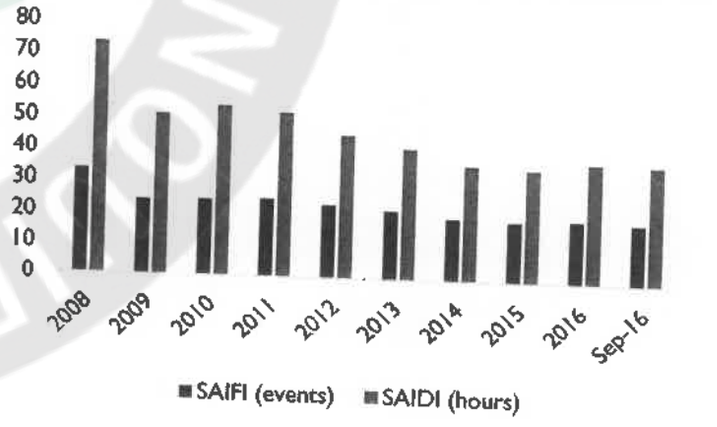
Eskom

- Transmission system minutes lost <1 of 2.74 (September 2015: 1)
- A few large incidents occurred impacting the Transmission systems minutes lost < 1
- Distribution network performance (SAIFI and SAIDI) within acceptable limits
- Energy losses are under control at 8.6% for total system losses
- Total customer base of 5.8 million with 5.7 million residential customers

System minutes lost for events < 1 minute



SAIFI / SAIDI performance



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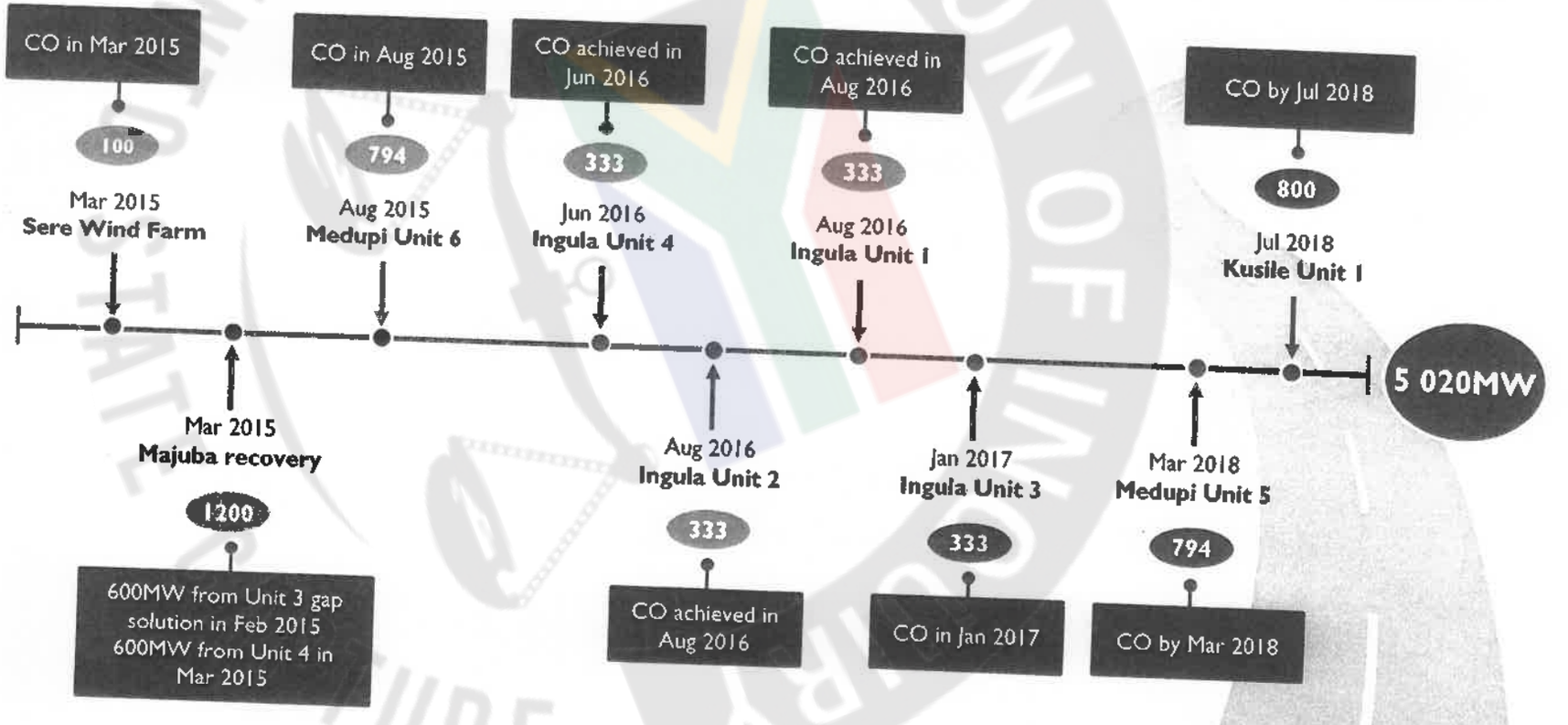
U14-VK-1062

We remain focused on bringing new capacity online

Eskom

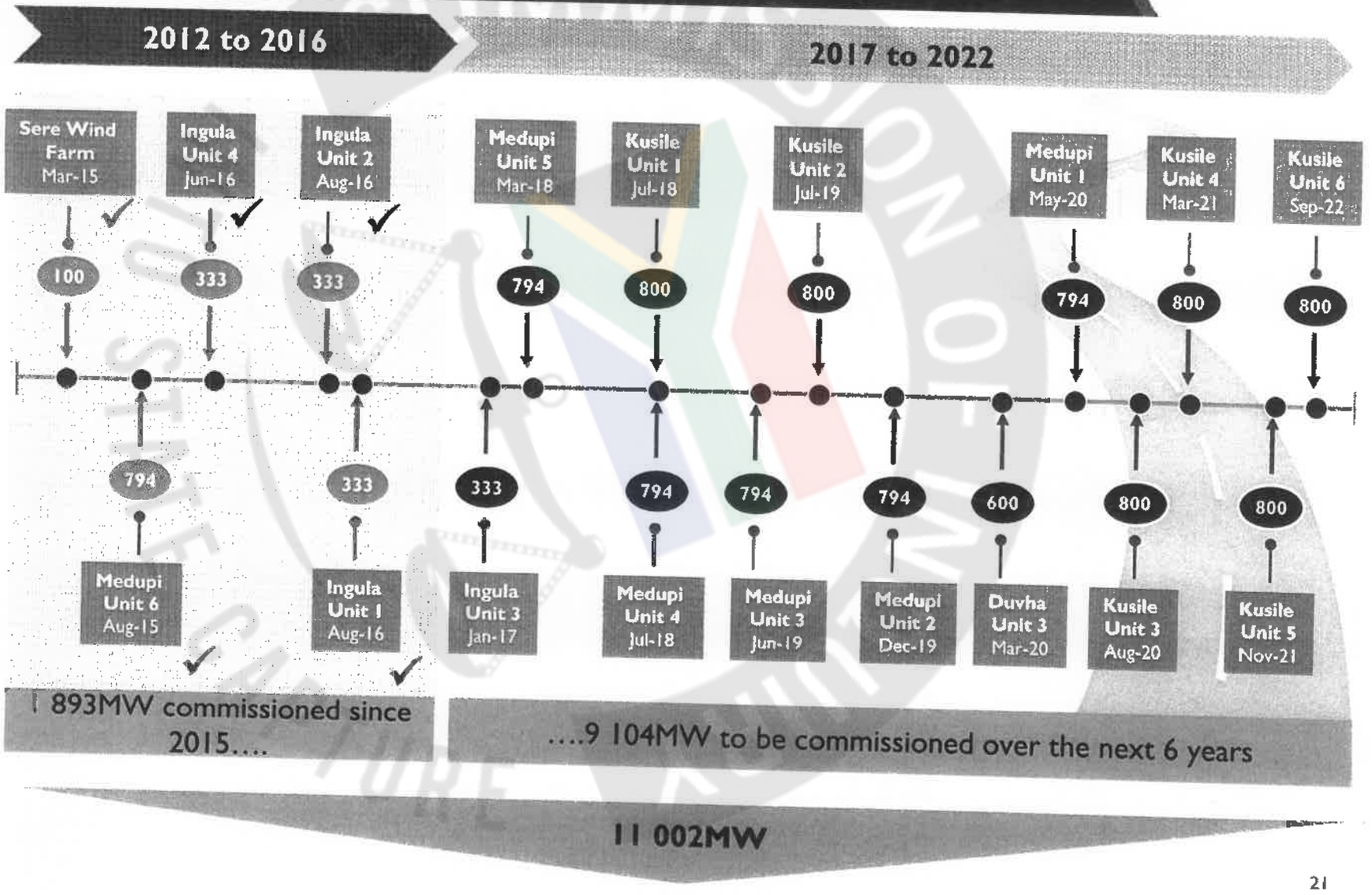
P80 dates
CO = Commercial operation



U14-VK-1063

We remain focused on bringing new capacity online

Eskom



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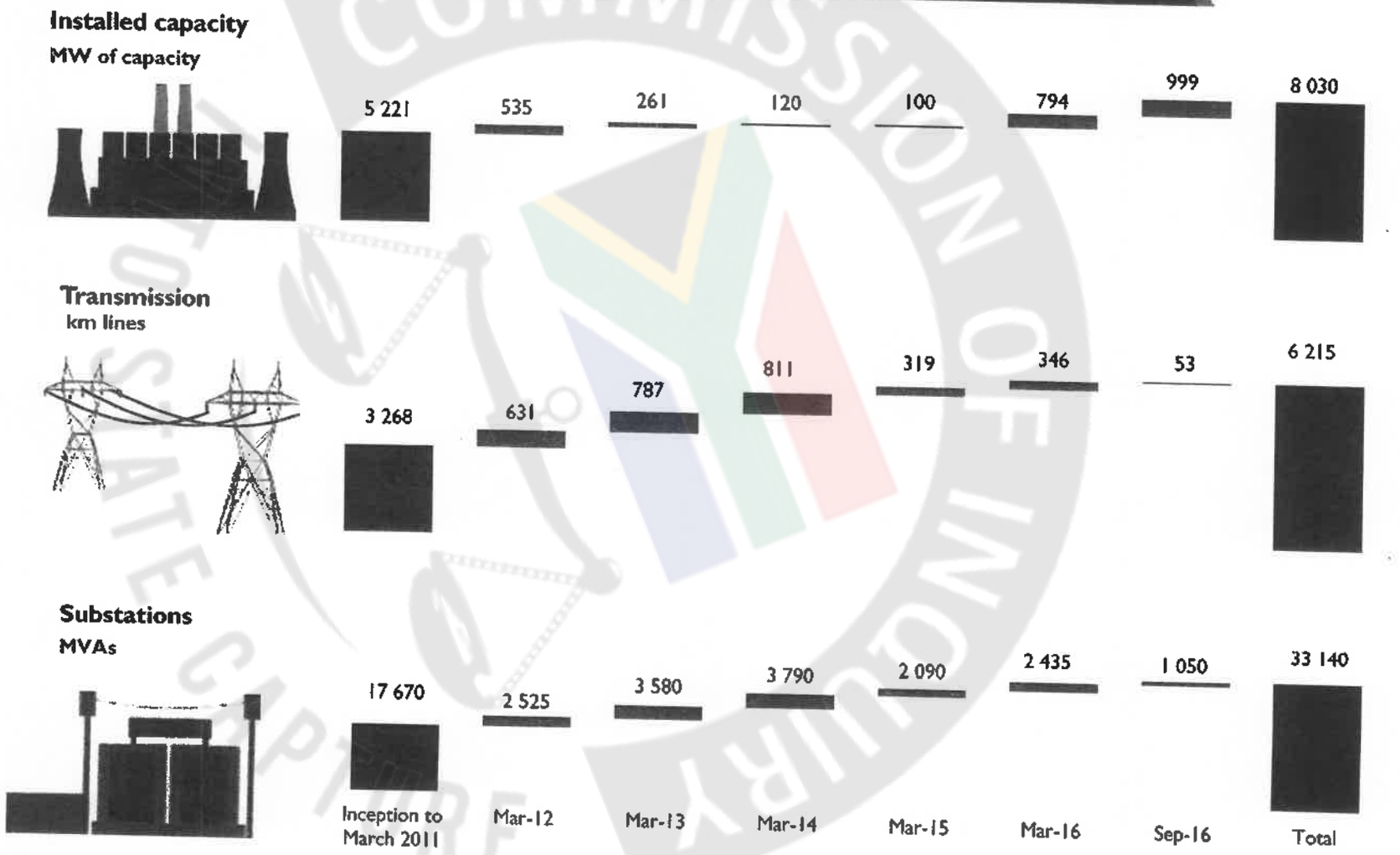
U14-VK-1064

A large amount of construction work has been completed from 2005 to date…

Eskom



COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1065

Other key operational performance

Eskom

Environment and safety

- LTIR improved from 0.36 (September 2015) to 0.30 (September 2016)
- One employee and four contractor fatalities experienced during the period
- Particulate emissions improved from 0.34kg/MWhSO (September 2015) to 0.29kg/MWhSO (September 2016)
- Water consumption at power stations worsened from 1.37ℓ/kWhSO (September 2015) to 1.43ℓ/kWhSO (September 2016)

Electricity theft

- The Operation Khanyisa campaign resulted in 50 arrests of electricity theft suspects and the opening of 26 cases on the court roll
- Eskom Security Investigations made 144 arrests, and goods to the value of R29 million were recovered during the period to September 2016

U14-VK-1066

Other key operational performance (continued)

Eskom

Socio-economic

- Committed corporate social investment spent of R75 million, benefiting 120 246 beneficiaries
- Procurement from B-BBEE compliant suppliers as a percentage of procurement was 65% (September 2015: 88%) – the reduction is due to a large number of qualifying suppliers without valid B-BBEE certificates due to changes in the Codes during the current period
- Local content contracted more than 80%
- Managed to more than double the number of households electrified from 41 778 (September 2015) to 99 869 for the 6 months to 30 September 2016 and almost 5 million since inception

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1067

Other key operational performance (continued)

Eskom

Human resource performance

- 3 569 technical, engineering and artisan learners in the pipeline
- 2.75% of employees are people with disabilities
- Racial equity in senior management of 61.7% and in professional and middle management of 72.7%
- Gender equity in senior management of 28.5% and in professional and middle management of 35.7%

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[redacted]

Eskom

Conclusion

U14-VK-1069

Conclusion

Eskom

- Eskom's turnaround continues to stabilise the organisation:
  - Improved Generation performance
  - New build programme delivering to plan
  - Financial profitability and liquidity restored
- Excess capacity currently exists and is projected to grow steadily over the next three years
- Eskom calls on customers to increase consumption and to engage with Eskom proactively to take advantage of the excess capacity situation

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U14-VK-1070

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Eskom

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Forward-looking statements are not intended to be a guarantee of future results, but instead constitute Eskom's current expectations based on reasonable assumptions. Forecasted financial information is based on certain material assumptions. These assumptions include, but are not limited to continued normal levels of operating performance and electricity demand in the Group Customer Services, Distribution and Transmission divisions and operational performance in the Generation and Primary Energy divisions consistent with historical levels, and incremental capacity additions through the Group Capital division at investment levels and rates of return consistent with prior experience, as well as achievements of planned productivity improvements throughout the business activities.

Actual results could differ materially from those projected in any forward-looking statements due to risks, uncertainties and other factors. Eskom neither intends to nor assumes any obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

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U14-VK-1071

3 November 2016

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COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1072

Eskom | Powering your world

Eskom's maintenance tool

2016/02/06

Saturday, 08 February 2016: Eskom is progressing well with the maintenance of its power generating plant whilst supplying the country's electricity needs. No load shedding is anticipated today.

The power system has been stable throughout the last quarter resulting in almost 6 months of no load shedding. This is due to the Tetris maintenance planning tool - supporting the execution of more planned maintenance without load shedding. In the game of Tetris, a player is required to fit different building blocks into a constrained space, by ensuring that the orientation of the blocks is correct to fit into identified available spaces. These building blocks come in different shapes and sizes, and they need to be arranged in such a manner that the tower does not grow bigger than the constrained space.

The same principle was used for the development of the Eskom Maintenance Tetris model. Eskom's planned maintenance takes into account many complex variables that the Tetris game analogy uses to simplify the maintenance planning methodology by associating the blocks in Tetris to planned shutdowns. If the maintenance tower grows bigger than the constrained space, Eskom will have to implement load shedding.

The critical difference between prior maintenance planning and the Tetris way of planning is that now it is more visual, user-friendly and in real-time. The system is an automated online system that can be manipulated immediately should any of the variables in the system change. This enables senior executives to make informed decisions and come up with sustainable solutions regarding the planning of maintenance. Furthermore, the tool is currently being used in the Group Capital Division as a planning tool for the delivery of the New Build Programme.

Our prognosis is that there will be no load shedding for summer, autumn and going into winter. However, we are not completely out of the woods yet and all available levers will be used to avoid load shedding, including electricity generated by independent power producers (IPPs), open cycle gas turbines (OCGTs) and Demand Response.

We will continue to provide regular updates on the state of the power system through various media platforms.

ENDS.

"BM 7"

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Eskom	MINUTES OF THE ESKOM HOLDINGS SOC LTD BOARD MEETING	Unique Identifier	021-209
		Document Type	OCSDFM
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

MINUTES OF THE ESKOM BOARD MEETING 02-2015/16 HELD ON 23 APRIL 2015 HORSESHOW BOARDROOM, ESKOM BELLVILLE OFFICES, CAPE TOWN FROM 09H00

STRICTLY CONFIDENTIAL

PRESENT

Dr BS Ngubane	Acting Chairman
Ms N Carrim	Member
Mr Z W Khoza	Member
Ms V J Klein	Member
Mr R Kumalo	Member (Tele-conference)
Ms C Mabude	Member
Dr P Naidoo	Member
Ms V Naidoo	Member
Mr MV Pamensky	Member (Tele-conference)

OFFICIALS

Mr M Phukubje	Company Secretary

IN ATTENDANCE

Mr W Venner	Committee Secretary

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom	MINUTES OF THE ESKOM HOLDINGS SOC LTD BOARD MEETING	Unique Identifier	221-2
		Document Type	OCSDFm
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

1. OPENING AND WELCOME

The Acting Chairman welcomed members to the meeting.

2. APOLOGIES

There were no apologies.

3. QUORUM

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

4. DECLARATIONS OF INTEREST

There were no other declarations of interest pertaining to items on the Agenda.

5. SAFETY AND EVACUATION PROCEDURE

The safety and evacuation process to be followed in the event of an emergency was presented and noted.

6. APPROVAL OF THE AGENDA

Mr Pamensky and Ms Klein stated that they did not approve of the Agenda as it had been distributed late. Mr Khoza apologised for the late distribution and advised that it was as a result of circumstances beyond his control. The Acting CE stated further that it was a necessity for the Board to approve the Corporate Plan for submission to the Shareholder by 30 April 2015.

It was requested that 2 additional items be added to the Agenda under the In-committee session of the meeting, vis (i) Removal of a Director and (ii) the CCMA case under discussion.

7. MATTERS FOR APPROVAL AND INFORMATION

7.1. Appointment of Mr B Molefe as Interim Chief Executive

On 20 April 2015, the Minister of Public Enterprises announced the secondment of Mr Brian Molefe from Transnet SOC Ltd as Interim Chief Executive for Eskom Holdings SOC Ltd, with effect from 20 April 2015, to replace Mr Z Khoza, who had been in that position since 11 March 2015.

Resolved that:

1. the secondment of Mr. Brian Molefe from Transnet SOC Ltd as Interim Chief Executive for Eskom Holdings SOC Ltd, is approved with effect from 20 April 2015; and
2. the Chairman of the Board is authorised to sign any and all agreements and documents to give effect to the above resolution.

7.2. Mandate to Conclude Negotiations with Optimum Coal Mine for Coal Supply to Hendrina Power Station
Reference document 7.4 (a) (b) (c)

The Referral from the Board Tender Committee for approval of the mandate to conclude negotiations with Optimum Coal Mine for Coal Supply to Hendrina Power Station was tabled, details of which had been circulated to members.

It was requested that the submission should be taken off the Agenda and submitted to the Acting CE before being tabled for approval. In response to a member's suggestion that Resolution 2.5 (around the mandate to negotiate but not to conclude with Optimum, for Eskom to take up a free carry shareholding of 10% to 15% equity and/or to engage with Optimum to facilitate the purchase of Optimum by Eskom or one of the state owned mining companies) should be revised to include a seat on the Board for Eskom as well as oversight, it was reported that this had been included in the Board Tender Committee discussion.

Resolved that:

1. the Referral from the Board Tender Committee for approval of the mandate to conclude negotiations with Optimum Coal Mine for Coal Supply to Hendrina Power Station is not approved: and
2. the mandate should be referred to the Acting Chief Executive before being tabled at Board for approval.

7.3. Approval of the 2015/16 - 2019/20Corporate Plan Approval
Reference document 7.2 (a) (b) (c) (d) (e)

The 2015/16 - 2019/20 Corporate Plan ("the Plan") was tabled for approval to submit to the Department of Public Enterprises ("DPE") and the National Treasury in terms of Section 52 of the PFMA and Section 29 of the National Treasury Regulations, details of which had been circulated to members.

It was reported that Exco had approved the Plan on 9 February 2015 for submission to Board. The 2015/16-2019/20 Corporate Plan (version 2.18) and 2015/16 Shareholder Compact were concluded and were to be tabled for approval at the Eskom Board meeting on 26 February 2015, the meeting was cancelled. Through the Chairman's office, letters were sent to the Treasury and DPE ministers requesting for an extension for the submission of both the Corporate Plan and the Shareholder Compact to 1 June 2015. DPE had granted

"BM8"

From: Matshela Koko <KokoMM@eskom.co.za>
Sent: Sunday, 06 December 2015 20:38
To: joel.raphela@dmr.gov.za; thibedi.ramontja@dmr.gov.za
Cc: Brian Molefe; Vusi Mboweni; Anoj Singh; Matshela Koko; Suzanne Daniels
Subject: 04122015 DMRDG Optimum Coal Mine (Pty) Ltd v3
Attachments: 04122015 DMRDG Optimum Coal Mine (Pty) Ltd v3.pdf

DG,

Kindly receive the attached letter. I thank you in advance for your urgent attention.

Warm regards

Matshela Koko
Group Executive

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom

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

Dear Dr Ramontja

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

As you may be aware, Eskom has been involved in a legal wrangle with the above supplier from about August this year.

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

From Eskom's perspective, it was expected that as a Glencore operation, Optimum Coal Mine ("Optimum") would enjoy far more support than the conditional funding for limited time periods that was on offer.

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

At the latest meeting of the parties, the business rescue practitioners, together with the Glencore representative, indicated that Optimum is being rescued and that it would honour the contract in its current form with no amendments. They further advised that they will follow the contract route to process the Eskom claim of R2.2 billion. They made it very clear that they are not insisting on the extension of the Koornfontein coal supply contract with Eskom. They insisted that the extension of Koornfontein coal supply contract is at the discretion of Eskom.

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

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Eskom Holdings SOC Ltd Reg No 2002/015527/30

U14-VK-1079

In parallel, you are aware that we have similar challenges at Arnot Power Station ("Arnot"). The current supply contract with Exxaro Resources expires on 31 December 2015 and we are discussing the winding down of operations with Exxaro hereon.

While Eskom has issued Request for Proposals to the open market, the tender submissions indicate that we will not have sufficient volumes to meet the requirements of Arnot. Based on previous tests, Eskom can confirm that the coal qualities at Optimum are suitable for Arnot's burn requirements and will pass the necessary combustion tests. Based on Optimum's current mine plans, there should be sufficient coal volume to service both power stations. Therefore Optimum becomes a highly sought after source for Arnot as well.

I also put it to you that Komati Power Station receives 180 000 tons per month of coal from Koornfontein mine. A subsidiary of Optimum Coal Holdings. This contract expires at the end of January 2016. As a result of the rescue proceedings this power station is also at risk post January 2016.

As at date of this letter, we have not as yet received the formal notification of the status of Optimum.

While Eskom fully appreciates the turnaround of the business, it remains concerned that such erratic display of business stability may compromise the security of supply to Hendrina Power Station in the short to medium term. Therefore Eskom would require a firm resolution on Optimum by mid December 2015.

The risk of security of supply for Hendrina Power Station, Komati Power Station and Arnot Power Station is of such key national interest that we thought it appropriate to bring it to your attention. This upcoming adversity facing Eskom will require some form of intervention on the part of the Department of Mineral Resources to assist Eskom in leveraging the necessary key authorities to assist in assuring resolution to the coal supply situation and certainty going forward.

I would request your assistance in this regard. Should you require any information, please do not hesitate to contact me.

Yours sincerely

Matshela Koko
GROUP EXECUTIVE: GENERATION
Date: 6/12/15

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1080

"BM 9"

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DMR 10

mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

Enquiries: Mr J Raphela **Tel:** (012) 444 3977
Email: Joel.Raphela@dmr.gov.za & Mantebu.Lengoabala@dmr.gov.za

Group Executive: Generation
Eskom Holdings
PO Box 1091
JOHANNESBURG
2000
Email: KokoMM@eskom.co.za

Dear Mr Koko

RE: OPTIMUM COAL MINE (PTY) LTD: POWER SUPPLY TO HENDRINA POWER STATION

Receipt of your letter addressed to the Department pertaining to the intervention required from the Department, refers.

Having regard to the above, we would like to advise as follows: In respect of Hendrina power station, the Department will prioritize and fast track approvals for transfer of the Mining Right on an urgent basis, should this be lodged. We have already requested an urgent meeting with competition commission to go and plead the case and explain the urgency with which it must be treated, as it is indeed a special case, given the consequences for our country.

Financial provision due to historical liabilities at OCH level, is estimated at R1,7 billion. The amount still has to be confirmed through a process which will involve the parties concerned. We would also request for Eskom to play an active role in providing support for the project to proceed. In return for the new owners honouring the current contract up

to 2018, and for driving transformation we would like to propose that consideration be made for some pre-payment to be made for up to one (1) year of coal supply, understanding the upfront capital injections to be made to ramp up production to meet coal supply requirements from these mines. We firmly believe that every possible angle must be considered and offered to ensure that supply is guaranteed at the contracted price for all of these critical mines, thereby averting any national crisis that we as South Africa can ill afford.

Kind regards

Dr T Ramontja
Director-General:
Department of Mineral Resources
Date:...../...../2015

COMMISSION OF INQUIRY INTO STATE CAPTURE

"BM 10" 89

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Tuesday, 08 December 2015 17:52
To: baldwin ngubane; Ben Ngubane; Venete Klein; Venete Klein; romeokumalo@gmail.com; Romeo Kumalo; Mariam Cassim; cassim.mariam@gmail.com; Chwayita Mabude; Chwayita Mabude; markp@blts.co.za; Mark Pamensky; Pat Naidoo; Pat Naidoo; viroshini naidoo (naidooviroshini@gmail.com); Viroshini Naidoo; Anoj Singh; Brian Molefe
Subject: URGENT REQUEST TO APPROVE THE PREPURCHASE OF COAL FROM OPTIMUM COAL (PTY) LTD
Attachments: 20151208 BOD Round Robin Resolution execution copy.docx; 20151208 RRR Optimum Coal Mine Pty Ltd_FINAL-signed.pdf; 04122015 DMRDG Optimum Coal Mine (Pty) Ltd v3.pdf; image2015-12-07-163741.pdf

Good evening Board Members,

The Chairman of the Board hereby requests that you consider the attached submission together with the attachments included in this e-mail for your approval/non-approval.

Kindly forward your signed resolutions by **12h00 tomorrow 9 December 2015** to the office of the Company Secretary.

Best Regards

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

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COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom	SUBMISSION DOCUMENT	Unique Identifie[illegible]-222	
		Document Type	OCSDTE
		Revision	4
		Effective Date	December 2015
		Office of the Company Secretary	

EXECUTIVE SUMMARY

ROUND ROBIN SUBMISSION TO BOARD OF DIRECTORS (BOD)

1. TITLE OF THE SUBMISSION

Prepurchase of coal from Optimum Coal Mine (Pty) Ltd ("OCM")

2. RESOLUTION REQUIRED

It is hereby resolved that:

2.1.1 The request from the Department of Mineral Resources is hereby noted.

2.1.2 The Group Chief Executive together with the Group Executive for Generation and Chief Financial Officer, are hereby authorised to negotiate and conclude a prepurchase of coal agreement with the proposed owners of OCM (coal supplier).

2.1.3 This agreement shall be subject to the necessary regulatory approvals having been obtained by Eskom and the supplier respectively as and when necessary.

2.1.4 The Chief Financial Officer is hereby authorised to take all the necessary steps to give effect to the above, including the signing of any consents, or any other documentation necessary or related thereto.

2.2 Executive summary and conclusion

2.2.1 Eskom faces a supply risk of coal to the Hendrina Power Station of 5.5Mtpa by OCM as a result of business rescue proceedings.

2.2.2 There is a potential proposal from the business rescue practitioner supported by the Department of Mineral Resources.

2.2.3 The solution relates to a prepurchase of coal to the value of R1.68 billion which mitigates supply risk. Counterparty risk is mitigated via a cession of the coal to Eskom.

2.2.4 The funding of the prepurchase will be made by an inventory working capital reduction of 54 days to approximately 40 days.

2.2.5 This proposal will result in a net present value benefit to Eskom of R238.9 million.

2.2.6 In conclusion this proposal provides much needed coal for business operations; mitigates the supply risk and provides a commercial benefit to Eskom.

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3. SUMMARY OF FACTS

3.1 Background

3.1.1 OCM was placed into business rescue around August 2015.

3.1.2 Eskom requires continuity of supply to the Hendrina Power Station of 5.5Mtpa at an average price of R150 per tonne. OCM cannot produce coal at a price of less than R450 per tonne.

3.1.3 The business rescue practitioners have maintained that the only manner in which the business could survive is that Eskom increase the price paid for coal received in terms of this contract.

3.1.4 Eskom maintained its position that it will not look at an increased coal price and that the supplier is expected to continue supplying at the contracted price.

3.1.5 On 24 November 2015, the Group Executive Generation met with the business rescue practitioners to discuss the way forward.

3.1.6 The business rescue practitioners indicated that they were looking at disposing the interest to the proposed purchaser. The Due Diligence commenced around the 10th November 2015 and is currently underway. The purpose of the meeting was to understand Eskom's concerns.

3.1.7 The proposed purchaser representatives present at the meeting confirmed that the company had commenced the Due Diligence and that it was committed to a 30 day due diligence with a definitive agreement to be in place by 15 December 2015.

3.1.8 The business rescue practitioners advised that an extension of the current arrangement was anticipated and that a formal request for the extension of the current dispensation until such time as there is a definitive agreement in place, would be sought from Eskom.

3.1.9 At the latest meeting of the parties, the business rescue practitioners, together with the Glencore representative, indicated that OCM is being taken out of business rescue proceedings and that it would honour the contract in its current form with no amendments.

3.1.10 They further advised that they will follow the contract route to process the Eskom claim of R2.2 billion.

3.1.11 As at date of this submission, Eskom has not yet received the formal notification of the status of OCM from the business rescue practitioner.

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3.1.12 Koornfontein Mine, a subsidiary of OCM, currently supplies Komati Power Station and this contract expires 31 January 2016 with supply commitments to be met by mid-January 2016.

3.1.13 While Eskom fully appreciates the turnaround of the business, it remains concerned that such erratic display of business stability has compromised the security of supply to Hendrina Power Station in the short to medium term. Therefore Eskom would require a firm resolution on OCM by mid December 2015.

3.1.14 The risk of security of supply for Hendrina Power Station and Komati Power Station is of such key national interest that Eskom thought it appropriate to bring it to the attention of the Department of Mineral Resources.

3.1.15 This upcoming adversity facing Eskom will require some form of intervention on the part of the Department of Mineral Resources to assist Eskom in leveraging the necessary key authorities to assist in assuring resolution to the coal supply situation and certainty going forward.

3.1.16 A copy of the correspondence addressed to the Director General, Department of Mineral Resources, is attached hereto.

3.1.17 The reply from the Department of Mineral Resources is attached hereto.

3.1.18 The Department of Mineral Resources has requested that Eskom consider solutions to ensure the security of supply risk is mitigated in National Interest.

3.2 Key assumptions

The submission and decision required set out herein, is based on the following key assumptions:

3.2.1 OCM is formally declared not to be in business rescue as required by the provisions of the Companies Act.

3.2.2 The transaction between OCM and the proposed purchaser is formally approved by the regulatory authorities.

3.2.3 Eskom is securing its coal supply for two Power Stations facing imminent adversity, based on the mine plan provided by OCM.

3.3 Financial implications

3.3.1 Koornfontein Mine had offered a 9% increase on the current price to R415 per tonne. The proposed buyer has advised Eskom that it will adhere to the current price of R380 per tonne for the next 12 months as compared to the R415 per tonne proposed. This will translate into a net present value benefit of R72 million over the year.

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3.3.2 The proposed buyer has also committed to providing a 5% discount to the current OCM price which amounts to R88.7 million.

3.4 Benefits of the advance purchase of coal

3.4.1 The advance purchase of R1.68 billion will secure a future supply of coal to Eskom and will be funded by a reduction of Eskom's coal stockpile from 54 days to 40 days.

3.4.2 OCM will cede the unsupplied portion of coal under the prepurchase agreement as security.

3.4.3 The net present value of the proposed transaction results in cash benefit of circa R238.9 million

Net present value of cash flows	
Cost of funding R1.68 billion for 12 months (*1)	(R135.8m)
Reduction in working capital at WACC – 14.5%	R213.4m
5% discount on pre-purchased coal from OCM	R88.7m
Discount received from Koornfontein Colliery	R72.6m
Net present value benefit to Eskom	**R238.9m**

1. Funded at 3 month JIBAR plus 140 basis points over a period of 12 months as a bullet redemption

3.5 Human Resource implications

No implications.

3.6 Risks (including Environment, Legal or Contractual risks) and other considerations

The risk identified at this stage relate to security of supply being compromised, regulatory approvals not timeously obtained and that there would be no contract in place by end December 2016. It is submitted that the strategy set out herein goes a long way to mitigating the identified risks.

3.6.1 Operational and supplier risk mitigation by pledge and cession of coal purchased..

3.6.2 Proceeds of R1.68 billion prepayment of coal are to be used by OCM to extinguish existing liabilities to ensure the business continues as a going concern.

3.6.3 Proposed purchaser will lift current empowerment ownership from 30% to 51%.

3.6.4 The shutdown of OCM could potentially result in thousands of job losses and add to the negative publicity surrounding Eskom.

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3.7 Verification by independent party (if applicable)

Regiments Capital (Proprietary) Limited

SIGNED

Anoj Singh
CHIEF FINANCIAL OFFICER
Who hereby represents that the above information is correct.

8/12/2015
DATE

Matshela Koko
GROUP EXECUTIVE: GENERATION
Who hereby represents that the above information is correct.

8/12/15
DATE

Submission prepared by: M Koko
Contact Number: +2782 859 9334

COMMISSION OF INQUIRY INTO STATE CAPTURE

"BM 11"

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Eskom	RESOLUTION OF THE BOARD OF DIRECTORS OF ESKOM HOLDINGS SOC LTD	Unique Identifier	221-209
		Document Type	CCGTE
		Revision	0
		Effective Date	October 2012
		Office of the Company Secretary	

RESOLUTION OF THE BOARD OF DIRECTORS OF ESKOM HOLDINGS SOC LTD

STRICTLY CONFIDENTIAL

URGENT REQUEST TO APPROVE THE PREPURCHASE OF COAL FROM OPTIMUM COAL (PTY) LTD

Having had due regard for the following factors:

1. Eskom faces a supply risk of coal to the Hendrina Power Station of 5.5 Mtpa by OCM as a result of business rescue proceedings.
2. There is a potential proposal from the business rescue practitioner supported by the Department of Mineral Resources.
3. The solution relates to a prepurchase of coal to the value of R1.68 billion which mitigates supply risk.
4. The funding of the prepurchase will be made by an inventory working capital reduction of 54 days to approximately 40 days.
5. The proposal will result in a net present value benefit to Eskom of R238.9 million.
6. In conclusion, this proposal provides much needed coal for business operations; mitigates the supply risk and provides commercial benefit to Eskom.

RESOLVED REQUIRED:

It is hereby resolved that:

2.1.1 The request from the Department of Mineral Resources is hereby noted.

2.1.2 The Group Chief Executive together with the Group Executive for Generation and Chief Financial Officer, are hereby authorised to negotiate and conclude a prepurchase of coal agreement with the proposed owners of OCM (coal supplier).

2.1.3 This agreement shall be subject to the necessary regulatory approvals having been obtained by Eskom and the supplier respectively as and when necessary.

2.1.4 The Chief Financial Officer is hereby authorised to take all the necessary steps to give effect to the above, including the signing of any consents, or any other documentation necessary or related thereto.

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Eskom	RESOLUTION OF THE BOARD OF DIRECTORS OF ESKOM HOLDINGS SOC LTD	Unique Iden	221-209
		Document Type	CCGTE
		Revision	0
		Effective Date	October 2012
		Office of the Company Secretary	

The resolutions above are approved / not approved:

BOARD MEMBER	APPROVED (Signature)	NOT APPROVED (Signature)	DATE
BS Ngubane			
M Pamensky			
Z Khoza			
V Klein			
R Khumalo			
P Naidoo			
V Naidoo			
N Carrim			
M Cassim			
B Molefe			
A Singh			

PLEASE FAX OR E-MAIL THE COMPLETED ROUND ROBIN REQUEST BY NO LATER THAN 12h00 ON 9 DECEMBER 2015

THE GROUP COMPANY SECRETARY
TEL: +2711 800 3091 / +2782 5807832
FAX: +2786 662 7327
EMAIL: danielsm@eskom.co.za

COMMISSION OF INQUIRY INTO STATE CAPTURE

"BM 12"

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Eskom	ESKOM HOLDINGS SOC LTD BOARD TENDER COMMITTEE	Unique Identifier	
		Document Type	
		Revision	
		Effective Date	
		Office of the Company Secretary	

MINUTES OF THE SPECIAL ESKOM BOARD TENDER COMMITTEE MEETING 1-2016/17 HELD BY TELECONFERENCE ON 11 APRIL 2016 AT 21h00

STRICTLY CONFIDENTIAL

PRESENT

Members

Mr Z Khoza	Chairman
Ms N Carrim	Member
Ms D Naidoo	Member
Ms C Mabude	Member (joined meeting at 21h17)

OFFICIALS

Ms S Daniels	Company Secretary
Mr E Mabelane	Acting Chief Procurement Officer (Acting CPO)
Ms A Nteta	Acting General Manager Fuel Sourcing (Primary Energy)

APOLOGIES

None

1. OPENING

1.1 Welcome

The Chairman opened the meeting at 21h04 and welcomed all those present. The Chairman recognised the urgency of the matter for consideration.

1.2 Apologies

No apologies were noted.

1.3 Quorum

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

1.4 Adoption of the Agenda

No formal agenda was tabled.

COMMISSION OF INQUIRY INTO STATE CAPTURE

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The meeting was convened to consider one item, namely the submission "Addendum to Short Term Coal Supply Agreements between various suppliers and Eskom for the supply of coal to Arnot Power Station".

2. MATTERS DISCUSSED

2.1 PRIMARY ENERGY

Addendum to the Short Term Coal Supply Agreement between various suppliers and Eskom Holdings SOC Limited ("Eskom") for the supply of coal to Arnot Power Station.

The above modification was tabled for consideration and approval, details of which were included in the submission distributed.

The following issues were highlighted by the Acting CPO and the Acting General Manager, Fuel Sourcing, Primary Energy:

- The approval to conclude addenda to the existing short term contracts was based on the Operation Centre review late last week that continuity of supply may be at risk over the winter months. This was due to the delay in conclusion of the medium term contracts which had not occurred at the pace originally anticipated due to the nature of the negotiations and the various technical tests which needed to be performed.
- Two contracts were identified which would cater for the shortfall created by the delay in concluding the longer term contracts.
- The suppliers were Usimbithi and Tegeta which have contracts of 3 months respectively. Usimbithi was currently underperforming due to labour unrest and Tegeta's contract was due to be completed by the end of the week due to the contracted coal supply being delivered.
- Currently the Arnot supply was being negotiated and combustions test were underway.
- The current estimate stated that 2.1 million tonnes were required for Arnot and Kriel this financial year.
- The benefits of extending the current contracts were that the suppliers provide Eskom with an export quality product.
- The requested extension was 5 months for Tegeta and 3 months for Usimbithi.

The Chairman thanked the management team for setting out the issues and opened up the meeting for discussion.

A question was raised why the submission was tabled before the BTC while the additional amount was below the BTC threshold. In response, an answer was provided that although the additional amount was below the BTC threshold, the original mandate was approved at BTC level and thus any modification would need to be brought back to the approval authority.

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Further questions tabled and responses thereto were:

1. **When is the RFP going to be ready?** The RFP will be completed around September as we are in negotiations.
2. **Is the delay not costing us money; if we compare the current prices, we will we not be in a worse off situation than as we are now? Can other people in the vicinity not supply at better prices?** If we compare the current prices, we will not be in a worse off position.
3. **Has Usimbithi already supplying us, and if so why are we not negotiating a cheaper rate, they know we going out to tender they may agree to cheaper rates?** Yes they are a current supplier in the STC which is the one which we require to extend. Much quicker to extend.
4. **Can't they give us a better price?** They are one of the people whom we are negotiating with. A member sought to clarify her understating by stating that is she correct in stating that no other supplier has this type of coal at his point plus we need to keep the contract on a short term basis while we negotiate the longer term contracts. The CPO confirmed this understanding as correct.
5. **Is Tegeta the new company that bought Optimum, was Optimum supplying us before and at a better rate?** They are one of the suppliers with whom we are negotiating. The quality of coal required is towards the high end of the quality spectrum and we want to keep the contract on a short term basis.
6. **Are they not in business rescue, by prepaying them who gets the money is it the business rescue practitioner, can we lose money by it going to the administrator?** The CPO requested that he be granted the opportunity to obtain the answer to this question from the legal counsel.
7. **If we put the money in the bank instead of prepayment and earn interest will I be getting a better deal based on the price I'm paying for the coal?** Management confirmed that the team was going to negotiate. At the time of the meeting, the 2 suppliers had been approached by Eskom to ascertain interest and it was established that both suppliers were interested in extending for the period. Usimbithi was limited by its current labour unrest and would be able to supply from July while Tegeta was willing to continue with supply but indicated that it would request upfront payment and was willing to offer a discount plus a guarantee for performance.
8. **Can we justify the price we paying for this coal to the public and DPE?** It was confirmed that Eskom is paying comparable prices for export coal. As we are extending the contracts on the same terms and conditions, we will be able to justify the price.
9. **Why is shortage discovered so late?** There is a weekly review by the Primary energy operations centre and now that the impact of the pace of the delay in concluding the longer term contracts is fully assessed, this shortfall was identified.
10. **Why were these two companies chosen over the others?** These suppliers have the high end quality coal and are able to supply on short term basis.
11. **How much is the prepayment?** It is estimated at R568M.
12. **Are we paying export price or normal price?** We're paying the contracted price – average price of coal currently paying.

100 3

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There being no other matters to be discussed, the chairman polled the members and the submission was supported with minor changes to the resolution required.

RESOLVED THAT:

2.1 Addenda to the Short Term Coal Supply Agreements between various suppliers and Eskom be concluded to extend the supply of coal from various sources to Arnot Power Station for up to a further five (5) months and/or such period as may be requested by the supplier but no later than 30 September 2016;

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

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

3. GENERAL

A comment was raised to the meeting that a report be put to board to endorse that late submissions not be accepted.

4. CLOSURE AND DATE OF NEXT MEETING

The Chairman thanked everyone for their attendance and declared the meeting closed 21h32.

Date of next meeting: 13 April 2016.

SIGNED AS A CORRECT RECORD OF THE PROCEEDINGS

CHAIRMAN

20/04/2016
DATE

COMMISSION OF INQUIRY INTO STATE CAPTURE

"BM13" 101

Annexu 1.0

Eskom	ESKOM HOLDINGS SOC LTD BOARD TENDER COMMITTEE	Unique Identifier	
		Document Type	
		Revision	
		Effective Date	
		Office of the Company Secretary	

MINUTES OF THE ESKOM BOARD TENDER COMMITTEE MEETING 08-2016/17 HELD AT THE HUVO NKULU BOARDROOM ON 13 APRIL 2016 AT 09H00

STRICTLY CONFIDENTIAL

PRESENT

Members

Mr Z Khoza	Chairman
Ms N Carrim	Member
Ms C Mabude	Member
Ms V Naidoo	Member

Officials

Ms A Noah	Chairman: Excops (GE: Customer Services)
Mr E Mabelane	Acting Chief Procurement Officer (Acting CPO)
Mr A Singh	Chief Financial Officer (CFO) (For part of the meeting)
Ms S Daniels	Company Secretary
Mr M Koko	GE: Generation

In Attendance

Mr N Tsholanku	General Manager: Legal & Regulatory (GM: L&R)
Ms M Monama	Committee Secretary

APOLOGIES

None

1. SAFETY AND EVACUATION

The safety and evacuation process, to be followed in the event of an emergency, was presented and noted.

2. OPENING

2.1 Welcome

The Chairman opened the meeting and welcomed all those present.

2.2 Apologies

Apologies as indicated above were noted.

MISSION OF INQUIRY INTO STATE CAPTURE

2.3 Quorum

Due notice having been given and a quorum being present, the Chairman declared the meeting duly constituted.

2.4 Adoption of the Agenda

2.4.1 The following item was withdrawn from the agenda:

6.9 GROUP CAPITAL
The Contracting and Procurement Strategy for the electrical and auxiliary power construction for the Kusile Power Station (P20A)
Reference Document 6.9

2.4.2 The following items were added to the agenda:

- Tegeta – Securitisation arrangements
- Disposal of EFC

The agenda was adopted subject to the above amendments.

3. DECLARATION OF INTERESTS

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

4. ADDITIONAL MATTERS FOR APPROVAL

4.1 Special BTC Meeting of 11 April 2016: Confirmation from the CFO in respect of securities from Tegeta Resources

The CFO recapped that the submission tabled before the Special BTC meeting held on 11th of April 2016 had been reviewed by him, along with a review of the security package tabled from Tegeta Resources. He apologised for having overlooked consideration of the current circumstances around Tegeta. There were various issues relating to the challenges the company was facing from its banking institutions. Eskom had taken cession over the company's revenue, a lien over the coal assets etc. which formed the security package required for the transaction under consideration. In light of current events being experienced by Tegeta, questions had arisen around Tegeta's 'going concern' status over the next 3 to 12 months. There was therefore no value to Eskom in holding the cession of the revenue because without bank accounts the company would not be in a position to operate. The above challenges were identified post the BTC's approval having been given to the tabled submission at the special committee meeting.

Tegeta had been engaged with and the security now being offered basically constituted a pledge of all Tegeta shares as security for the pre-payment. Effectively Eskom would hold the assets of the company and be the "owners" of the coal mine and all its resources.

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The CFO confirmed that Eskom would draft a document governing the offered securities. The document would ensure that Eskom was given the shares, warranted as unencumbered, as well as all of the financial statements and the NAV of Tegeta. It was noted that Eskom did not want to own the mine so Tegeta would be asked to provide a pledge agreement for the shares and be given a period of 14 days to put in place an alternative guarantee that would replace the shares. Once the alternative acceptable guarantee was in place, the share pledge agreement would fall away. If required, PFMA approval for the share agreement would be obtained but in the CFO's opinion this was not necessary as the agreement was only for a period of 14 days and Eskom had no intention of owning the coal mine.

RESOLVED THAT:

The Board Tender Committee approved:

1. The Chief Financial Officer to conclude a share pledge agreement with Tegeta Resources which will be effective for a period of fourteen (14) days as security for the upfront payment as previously approved.
2. The share pledge agreement to be replaced by an alternative, acceptable security agreement after the 14 day period.

CFO attendance at BTC meetings and adequacy of governance processes

Following the above discussion and resolution, Ms Mabude commented on the value of the CFO being in attendance at the meetings of the BTC to amongst other things provide comfort to the BTC as far as items under consideration were concerned. The CFO explained the procurement and budgeting process followed by management prior to a submission being made to the BTC which provided additional comfort that all requirements had been attended to. Ms Mabude noted that in the past items had in fact been tabled at a meeting of the BTC which had not followed due process. The Company Secretary noted that the previous board had in fact requested the CFO to attend the BTC meetings. Considering that procurement now formed part of the finance function, it was agreed that this arrangement should remain in place. It was pointed out that under certain circumstances the Group Chief Executive had the right to make a submission directly to the BTC without first going to Excops. The CFO also explained additional intricacies to the process which needed to be introduced and would provide additional comfort. The meeting agreed that a better understanding of the process was required by the BTC. In addition, it was suggested that the relevant checklist be revisited to provide more clarity on the various approvals obtained. The CFO furthermore commented on the *modus operandi* of the various management tender committees. The Chairman pointed out that these matters should be dealt with at an appropriate workshop and training session. In addition, he noted that the role of the Chief Procurement Officer also needed to be clarified as part of the discussions. The CFO pointed out that he was ultimately responsible to the BTC for procurement related matters. At the same time, a proper delegation of authority framework was concerned. In addition, robust policies, processes and procedures as well as adequate monitoring mechanisms need to be in place. The Chairman reiterated the need for a workshop for the Board to be held in this regard as soon as possible.

4.2 Disposal of EFC

"BM14"

From: Albert Scholtz <ScholtAl@eskom.co.za>
Sent: Wednesday, 13 April 2016 13:04
To: Brian Molefe
Cc: Lynette De La Rey; Riana Goosen
Subject: RE: Are you at your desk? - update 2

Hi Brian

Payment is being arranged by the Treasury Settlements and Cash manager.

Regards

Albert

-----Original Message-----
From: Albert Scholtz
Sent: 13 April 2016 13:00
To: Brian Molefe
Cc: Lynette De La Rey; Riana Goosen
Subject: FW: Are you at your desk?

Hi Brian

If it is a foreign payment it goes through Treasury Settlements, otherwise if it is a local vendor it needs to go through shared services. Also the bank accounts must have been verified and payment authorised by the appropriate parties.

The ladies below should be able to assist:

For foreign payments - Lynette De la Rey For local payments - Riana Goosen

Regards

Albert

Treasury Accounting

-----Original Message-----
From: Brian Molefe [mailto:brian.molefe@eskom.co.za]
Sent: 13 April 2016 12:40
To: Albert Scholtz
Subject: Are you at your desk?

Hi Albert,

Are you at your desk?

I am tied up in a meeting and there is something I need you to take care of now.

We have a pending payment from one of our Vendors. I have asked them to email me their Bank Account details and will appreciate it if you can handle it before the close of banking transactions today.

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Regards,

Sent from my iPhone

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"BM 15"

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		Primary Energy Division	

CLASSIFICATION	CONFIDENTIAL	DATE	4 MAY 2015
FOR ATTENTION	VUSI MBOWENI	ACTION REQUIRED	NOTING
FROM	JOHANN BESTER	CONTACT	+27 11 800 3729
SUBJECT	UPDATE ON GLENCORE DISCUSSIONS		

1. Background

The Parties, Eskom Holdings SOC Limited ("**Eskom**") and Optimum Coal Mine Proprietary Limited ("**OCM**") and Optimum Coal Holdings Limited ("**OCH**") (jointly referred to as the "**Optimum**") are party to a coal supply agreement with addenda (the "**CSA**"), which regulates the supply and delivery of coal to Eskom's Hendrina Power Station ("**Hendrina**") up until 2018 at prescribed quantities, qualities and at an agreed price.

A number of impasses and/or issues have arisen between the Parties relating to the interpretation, implementation and execution of the CSA over an extended period with the most recent claim of Hardship from OCM that has placed the current coal supply agreement as risk.

2. Considerations

Security of Supply

The proposed new coal supply agreement between Eskom and Optimum for Hendrina ensures the sustainability of the Optimum mine and hence the security of coal supply to Hendrina across the existing convey belt infrastructure. Furthermore the agreement binds Optimum to extend the coal supply agreement for the life of Hendrina, and provides Eskom the option to take the full opencast production, with at a specification determined or suite of specifications determined by Eskom's requirements, which may be varied from time to time and provides Eskom with a 15% free carry shareholding. Eskom can therefore secure between 4 and 5 million tons of high grade coal for Arnot and Kriel Underground, for which there is currently no near term alternative.

Hardship Claim

Optimum initiated a hardship claim against Eskom on the 28 February 2014 relating to the hardship notice issued on 3 July 2013. Optimum claim, in the hardship notice, that since 2006 Optimum has been supplying coal to Eskom at a price lower than the cost of production and Optimum has been losing money on every tonne supplied to Eskom.

As a result of continued low international coal prices Optimum, without the prospect of a recovery in the next two years, at the end of January 2015 Optimum made the decision to close their export operations and began a section 189 for the opencast section of the mine.

Optimum have now indicated that they will close the entire mine if no agreement is reached on the hardship claim or on a new contract that at the very least allows the mine to break even.

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In exchange for an agreement between Eskom and Optimum to at a minimum cover the cost of production, Optimum are willing to extend the coal supply agreement for the life of power station, operate the opencast section for an Eskom on product suite and provide Eskom with a 15% free carry shareholding.

As a result, the underground section of the mine, which produces 4.5Mtpa, remains operational to supply Hendrina Power Station.

The risks associated with this current operation are:

- Hendrina Power Station requires 5.5Mta and therefore there would be an estimated 1Mt shortfall that would have to be sourced from alternative suppliers
- The supply from the underground only renders the mine an Eskom only product and therefore with the closure of the open cast, from which the export product was produced, terminates the subsidisation principle of the operations resulting in Eskom potentially incurring the full costs of production

The proposed mitigation of these risks should supply from Optimum to Hendrina be reduced or stop completely, Eskom has the right to put forward a case to obtain an urgent court interdict compelling Optimum to supply coal, as contractually bound. Should Optimum reduce supply to levels well below contractual limits, Eskom has the right to implement as per the CSA, the export parity price penalties for short supply as dictated by the CSA. Alternatively, Eskom can negotiate the costs for production as well as opening the open cast for additional Eskom product. This would allow for Hendrina to obtain their full burn requirement.

Hendrina Logistical Constraints

Should Optimum succeed in their Hardship claim and successful cease operations, Hendrina would have to source their full burn requirement from alternative suppliers. The small Hendrina stockyard cannot manage an additional 4Mt per annum by road. Should all the coal have to be trucked into Hendrina, the current logistics infrastructure will have to be modified to meet Hendrina's full burn requirements. Coal import infrastructure is insufficient to accept and manage total daily burn through Import coal delivered via Trucks

- Only one weighbridge system, historical maximum imports was 16 000 tons per day, once off.
- D2274 (District Road) damaged with potholes poses a serious safety concern
- Only one level crossing which is the point of passing the rail, only one truck can pass through at a time. This could lead to traffic congestion, limiting the number to trucks to the stockyard and hence delivered coal tonnages

The Power Station will need to make significant infrastructure changes to cater for their full requirement to be delivered by road.

Alternative Sources

The advantage of the Optimum supply is that it is delivered via conveyor belt to Hendrina. Therefore, the delivered cost is significantly reduced. Coal delivered by conveyor incurs a logistics cost in the order of R5 to R10 per ton compared to road or rail of between R150 and R180 per ton, depending on the distance and sidings used. While there are alternate sources available, these have already been earmarked to fulfil the burn requirements at other Eskom power stations and it is unlikely that these will be available to Hendrina

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immediately as potential alternative mines have indicated a lead time for development of eighteen months.

3. Recommendation

In conclusion the recommendation is to increase the contract price from R154 per tonne to R442 per tonne (February 2015 money values), for a CV of 23.5MJ/kg Dry basis from 1 April 2015 to 31 December 2018 for up to 5.5 million tons per annum, on condition that Eskom has the right,

- until 31 December 2015, to extend the contract until 2023 and
- to take up to 15% of the shares in Optimum in the form of a free carry.

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"BM16"

Mboweni then told me to get it done but not to conclude a price higher than R15 per GJ (as usual he never discussed the price with me or asked for my views).

36.

On 15 July 2015, Eskom announced that the inquiry cleared all the executives of wrongdoing and reinstated the last remaining suspended executive, Mr Matshela Koko. The other three executives, Mr Tshediso Matona, Mr Tsholofelo Molefe and Mr Dan Marokane had already reached agreements to leave Eskom. On his first day back on 20 July 2015, Mr Koko told me he wanted to be brought up to speed with important transactions, such as our negotiations with Optimum/Glencore as it related to the Optimum coal supply agreement for Hendrina Power Station. He wanted all briefing notes and third-party reports and recommendations. He also wanted the feasibility study report and other documentation relating to the New Largo Project for the supply to Kusile Power Station.

37.

Prior to Mr Koko asking for the Optimum and New Largo information I had for almost an hour fully appraised him of the status on Optimum and New Largo.

I also explained to Mr Koko how important it was to keep the Optimum mine from shutting down and that as a last resort Eskom should rather consider purchasing Optimum from Glencore to supply Exxaro as it was relatively close logistically and the qualities were also similar.

But then Mr Koko started asking a little too much detail and for documents that I thought was unusual for someone at his level. I asked myself where he would even get the time to read through the New Largo feasibility study.

38.

The negotiations with OCM regarding the price adjustment for Hendrina Power Station coal supply agreement from Optimum Colliery, refer also to the Affidavit made to the SAPS Serious Corruption Offences (SCO) office for more details.

PED appointed Nedbank and an independent technical consultant, Basis Point, to evaluate the cost structure of the Optimum supply to Eskom. This is covered extensively in the Affidavit and the Annexures to my Affidavit made to the SAPS SCO / DPCI, as attached hereto.

The analysis suggested that Optimum required R442 per ton just to break even and that it would be difficult for Eskom to procure coal from third-party suppliers for less than R300 to R350 per tonne and then it would cost Eskom in excess of R100 per tonne to deliver the coal by truck to Hendrina Power Station.

39.

Thus Eskom's alternative would be at least R400 per tonne. However, an analysis by my commercial team and the PED Technical and the PED Transport teams and a team from Hendrina Power Station suggested that:

1) The power station's coal stockyard isn't big enough to safely accommodate approximately 400 trucks per day. The stockyard was designed to accommodate road deliveries for the entire power station burn.
2) There is an underpass that is en route to the stockyard that can only accommodate one truck at a time, i.e. trucks can't pass each other but need to wait for the underpass to be clear before being accessed from the opposite direction, thus it would be a challenge to get c.a. 400 truck in and out every day
3) We would struggle to procure the full Hendrina Power Station burn of approximately 5 million tonnes p.a.

40.

It is my view that a transaction / relationship / contract is only sustainable if both parties derive a benefit. It was clearly not sustainable if Optimum continued to lose R60 million to R100 million per month. It would eventually go into business rescue and file for bankruptcy, the eventual outcome would be no coal supply.

It was not my job to play hero and blame Glencore for a clearly unsustainable business, there simply was no golden wand or miracle solution other than paying a fair price for the coal or shutting the power station, which Eskom would have been able to do had the Medupi and Kusile Power Station new build been on time.

41.

On 4 May 2015 I wrote a memo to Mr Vusi Mboweni, for him to share with Mr Brian Molefe as per the proper protocol. The Memo would then go to Mr Edwin Mabalane who was acting GE in Mr Matshela Koko's absence, see **Annexure JAB/Z14**

I was at least called to a meeting in the CE's office,Mr Molefe's. Mr Mboweni was there with Mr Freddy Ndou (Acting Divisional Executive in the Office of the Chief Executive).

I don't recall the exact date of the meeting, it would have been after the Board meeting that was held on 23 April 2015, and after Mr Molefe decided to end the negotiations with Optimum/Glencore, but it may have been even later, when Optimum/Glencore had declared Optimum to be in business rescue.

Mr Molefe wanted to force Glencore/Optimum to continue supplying at R154 per tonne and asked me what my plan B was if Glencore/Optimum stopped supply.

FMP / JABS

2.2

Mr Molefe said he wanted to force Glencore to continue supplying at R154 per tonne. I explained to him that this was not sustainable as Glencore would simply not continue to fund the losses at Optimum; they would stop funding and the business would be declared bankrupt. Mr Molefe asked me what my plan B was.

42.

I then explained to Mr Molefe that PED that we had been considering alternatives but that it would be a challenge to procure the full volume in the market in the short term and that even if we could, it would cost more than R400 per tonne made up of around R300 per tonne for the coal and most likely more than R100 per tonne for the transport cost. Then we would struggle to get the coal onto the stockyard, the stockyard having not been designed for road deliveries but primarily for conveyor belt deliveries, the stockyard was too small for multiple trucks to offload onto (When there are multiple trucks on a small stockpile they start to struggle to make safe turning circles). Furthermore, I explained, it would be a challenge to deliver the full power station burn by road and I went into some of the details on the road constraints.

43.

Mr Molefe said he would get Transnet to build railway line to Hendrina Power Station, Mr Mboweni and Mr Freddy Ndou agreed that it was a great idea. I objected and said something along the lines of "with all due respect Mr Molefe but it is my view that by the time a railway line is planned, permitted and constructed Hendrina Power Station would have reached the end of its life, which will probably be between 2023 and 2026".

I figured that maybe they (Mr Molefe and Mr Mboweni) didn't believe me so I asked my team to compile a memo summarising the analysis we had had done on alternatives based on our market intelligence and on the tender process we had run the previous year (Annexure JAB/Z15) for coal supply to Hendrina Power Station.

44.

I wasn't surprised that the Board Tender Committee didn't feel comfortable to approve the recommendation to increase the price from R154.40 per ton to R442.00 per tonne. The reason I wasn't surprised is that I was asking for the price to be almost tripled. Everyone would therefore expect to draw criticism and there would be, and should be, questions asked and I therefore wasn't surprised that the BTC just "kicked the ball down the road". I had, however made it abundantly clear that it was not sustainable and that I had also made it conditional that Eskom had the right to continue to procure coal from Optimum at the same price of R442 per tonne plus inflation every year until 2023.

My concern was the continued supply of Hendrina Power Station after the original contract expires on 31 December 2018

45.

Mr Molefe had been there for a couple of days when he told the Eskom Board he would resolve the Optimum Coal supply issue and about a month later he made the call to hold Optimum to the original contract price. The following key dates are relevant:

28 February 2014 - Hardship Arbitration process initiated by Optimum against Eskom

23 May 2014 - Agreement between Eskom and Optimum / Glencore to review and extend the Coal Supply Agreement for the Hendrina Power Station

2014 - Nedbank and Basis Points Capital appointed by Eskom to conduct a cost analysis

27 October 2014 - update to Mr Mboweni on negotiations with Optimum (Annexure JAB/Z18)

13 November 2014 - letter from Optimum agreeing to extend Agreement (Annexure JAB/Z19)

26 February 2015 - submission *"Mandate to conclude negotiations with Optimum Coal Mine for Coal Supply to Hendrina power station"*

23 March 2015 - letter to Mr Ephron to avoid prescription of penalties older than three years not yet claimed because it was agreed not to claim during the negotiations,

26 March 2015 - OCM's letter of agreement to the stay of prescription of Eskom's accrued penalties claim

15 April 2015 – Board Tender Committee (BTC) defer decision to full Eskom Board meeting

17 April 2015 – Mr Molefe arrives at Eskom

23 April 2015 – full Eskom Board meeting held in Cape Town, but the Optimum submission *"Mandate to conclude negotiations with Optimum Coal Mine for Coal Supply to Hendrina power station"* was not presented as per the BTC recommendation (i.e. it would have been on the agenda), according to Ms Suzanne Daniels. Mr Molefe did however inform the Board that he would take it upon himself to resolve.

18 May 2015 – Mr Molefe meets with Mr Clinton Ephron and advises that Eskom would not be concluding any deal with Optimum and would continue enforcing the existing coal supply agreement.

46.

In the past there had been two instances where hardships were raised by suppliers and in the interest of security of supply we dealt with these fairly. In my time we had adjusted the prices of a contract

with the Van der Burgh's and from Keaton Energy, but these were relatively small percentages, less than 10% I think, not the more than double as was the case here for the Optimum contract. To increase the price from R154.4 per ton to R442 per ton was certainly a big step, but in proper context Eskom had benefitted for decades from this contract and the cost of supplying Eskom was clearly being cross subsidised by the export sales from Optimum mine. But that doesn't make the low price of R154 per tonne sustainable under the then market conditions. Nor would Eskom be doing itself any favours in forcing the mine into bankruptcy. I pleaded with my leadership not to allow a 15 million ton per annum mine shut down, one of the largest in the country, probably in the top 5 biggest coal mines on the continent.

When my team and I and my colleagues across PED, recommended R442 per ton, to extend the contract with Optimum, it was compared to the then average price we were concluding for new coal supply of R300 to R350 per ton plus delivery costs of at least R100 to R150 per ton, i.e. R400 to R500 per ton delivered, then R442 per ton into the stockyard by conveyor was a better commercial option.

47.

After Mr Molefe rejected my recommendation for the higher pricing, declaring this in public, using the press to communicate, "that the negotiations were ended and that he would enforce the contract terms". Optimum countered, offering to continue to supply until the end of the contract at R300 per tonne, thus Glencore would subsidise the coal price from the Optimum Colliery to Hendrina Power Station until the end of 2018, see **Annexure JAB/Z16**.

I was told by Mr Mboweni not to acknowledge the R300 per tonne counter offer from Optimum. It had been addressed to Mr Molefe and Mr Mboweni was copied. I had also been copied on the email. I had drafted a formal reply, see **Annexure JAB/Z17**.

48.

In the time leading up to my resignation I had become more aware and suspicious that Ms Ayanda Nteta was taking instructions directly from Mr Mboweni, yet she was my direct report, but this didn't concern me as much as Ms Nteta taking instructions directly from Mr Koko and I believe from the Eskom Chairman's office from time to time.

49.

Grové Steyn, of Meridian Economics built a Discounted Cash Flow model of the Optimum Coal Mine early in 2016 and valued the mine at between R2.4 billion and R2.5 billion if my recollection of a recent conversation with him is correct. He may have additional information that could be useful. Contact:

grove.steyn@meridianeconomics.co.za

Another issue that may be worth raising is that Mr Mark Pamensky, shortly after his appointment to the Board of Eskom, was introduced to me by Mr Mboweni. Mr Mboweni set up a meeting at Mr Pamensky's office in Sandton, at Blue IQ, where Mr Mboweni told me that Mr Pamensky had years of strategic business experience and that he suggested I take Mr Pamensky into my confidence and use him as a sounding board for my coal strategies, from transport to pricing to renegotiating the cost plus mines and the New Largo contract with Anglo American for Kusile Power Station. I did google Mr Pamensky before the time and read his profile on the Eskom website, I did not pick up that he was also linked to Oakbay. Shortly afterwards I received a request through Ms Suzanne Daniels to write a "Eskom Coal 101" document for Mr Pamensky, summarising what we had discussed over the 3 to 4 hours I had spent with him. I sent this through and Ms Daniels forwarded me Mr Pamensky's appreciation for a well written document, probably in excess of 20 to 30 pages. If it is possible to access emails between Ms Daniels and myself it should be possible to prove this. Mr Pamensky was appointed in December 2014.

Declaration

I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.
I consider the prescribed oath to be binding on my conscience.

JASteyn

Signature of deponent

I certify that the deponent has acknowledged that he knows and understands the contents of this statement. This statement was sworn to before me and the deponent's signature was placed thereon in my presence at Johannesburg on 16 January 2019 at 20.19

Commissioner of Oaths

FRANK HUMPHRY PISANE
ATTORNEY
COMMISSIONER OF OATHS (RSA)
THEBE HOUSE, 2ND FLOOR,
166 JAN SMUTS AVENUE
ROSEBANK, 2196

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1108

"BM17"

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Pembani Group Proprietary v Shanduka Group Proprietary Limited (LM041Jun15) [2015] ZACT 126 (18 September 2015)

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM041Jun15

In the matter between:

Pembani Group Proprietary Limited Primary Acquiring Firm

And

Shanduka Group Proprietary Limited Primary Target Firm

Panel : Norman Manoim (Presiding Member),

Andiswa Ndoni (Tribunal Member)

Yasmin Carrim (Tribunal Member)

Heard on : 19 August 2015

Order issued on : 19 August 2015

Last submissions on : 17 September 2015

Reasons issued on : 18 September 2015

Reasons for Decision (Public version)

Approval

U14-VK-1109

[1] On 19 August 2015 the Competition Tribunal ("Tribunal") conditionally approved the large merger between Pembani Group Proprietary Limited (Pembani") and Shanduka Group Proprietary Limited ("Shanduka Group"). The reasons for approving the transaction follow.

Parties to the transaction

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[2] The primary acquiring firm is Pembani an investment holding firm, which holds both controlling and minority shareholdings in a number of subsidiaries in South Africa. Pembani is ultimately controlled by Mr Phutuma Nhleko ("Mr Nhleko") and companies under his control ("Nhleko Entities"), and Old Mutual Life Assurance Company (South Africa) Limited ("OMLACSA")[1] As a result of their control in Pembani, the Nhleko Entities and OMLACSA[2] are also acquiring firms in the proposed transaction, along with Pembani Development Trust ("PDT"), Lexshell 849 (Pty) Ltd ("Lexshell 849"), Jadeite (Pty) Ltd ("Jadeite"),[3] Standard Bank of South Africa Limited ("Standard Bank")[4] and Micawber 799 (Pty) Ltd ("Micawber 799"). Micawber has a shareholding in Shanduka Group.

[3] Pembani has non-controlling interests in various companies, with a primary focus on oil, gas and mineral resources sectors. Of relevance to the proposed transaction, as we discuss later, is Pembani's 6% shareholding interest in **BHP** Billiton Energy Coal South Africa Proprietary Limited ("BECSA").[5] BECSA is active in the production and sales of thermal coal in South Africa. Pembani also has an approximate 1% shareholding interest in Exxaro Resources Limited ("Exxaro") and controlling interests in Pembani Coal Carolina (Pty) Ltd ("PCC"), Afric Oil (Pty) Ltd ("Afric Oil") and AfriSam Group (Pty) Ltd ("AfriSam").

[4] The primary target firm is Shanduka Group, which is the holding company for Shanduka Restaurants (Pty) Ltd ("Shanduka Restaurants) and Shanduka Resources (Pty) Ltd ("Shanduka Resources"). The merger has different consequences for these two subsidiaries.

[5] Shanduka Restaurants holds a single investment; a 100% shareholding in McDonald's South Africa (Pty) Ltd ("McDonald's SA") the well-known fast food outlet. This stake will remain the only asset retained post-merger by the Shanduka Group although Pembani will acquire a non controlling interest in the Shanduka Group.[6]For ease of reference we have attached to these reasons a post-merger diagram of how the holdings change in respect of McDonald's SA marked Annexure "B".[7]

[6] Shanduka Resources is invested in a wide portfolio of listed and unlisted companies ranging from resources, financial services, energy and telecommunications amongst others. Some of these interests are purely investment stakes whilst others allow Shanduka or its subsidiaries to control or jointly control underlying operating companies. At the hearing the merging parties identified the following companies as one's where the merger would lead to a change of control or joint control, namely The Coca Cola Shanduka Beverages, Shanduka Coal Proprietary Limited ("Shanduka Coal"), McDonald's SA, McDonald's Property Portfolio, Diepkloof Square, 18 Acacia Road, Chislehurston, Icon House, Ghana, Attacq (Atterbury), Mondi Shanduka Newsprint ("Mondi Shanduka") Zebediela Platinum Exploration Project and Incwala Resources.[8]

[7] In respect of one of the operating companies, Mondi Shanduka, we were advised at the hearing that although Shanduka holds a 42% stake in it, this is not a controlling stake and the company is controlled by Mondi.

[8] For competition analysis purposes, of relevance to the proposed transaction is Shanduka Resources' coal mining interest in Shanduka Coal, which also has mining interests in various companies that are active in the mining and sale of coal. These companies are namely: Kangra Coal Proprietary Limited ("Kangra"), Graspan Colliery (Ply) Ltd ("Graspan"), Wakefields Investments (Ply) Ltd ("Wakefields"), Springlake Holdings (Ply) Ltd ("Springlake Holdings"), Springboklaagte Mining (Ply) Ltd ("Springboklaagte") and Dialstat Trading 115 (Ply) Ltd ("Dialstat"). The other firms relevant to the proposed transaction is Lexshell 849 (Pty) Ltd ("Lexshell 849), a special purpose investment-holding vehicle for the empowerment shareholdir

Umcebo Mining (Pty) Ltd ("Umcebo") and Optimum Coal Holdings Ltd ("Optimum"). Lexshell 849 does not conduct any operational business.

Proposed transaction and rationale

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[9] The proposed transaction, which will take place through a series of repurchase, dilution, share exchanges and subscription agreements, involves the acquisition by Pembani of Shanduka Group's shareholding and loan claims in a portfolio of investments held by Shanduka Group. The proposed transaction will take place in three steps. We have not burdened this decision with the details of these steps which involve many entities and much complexity. Nevertheless for ease of reference we have attached a post-merger diagram marked hereto as Annexure "C".[9]

[10] Our concern is to analyse the transaction after all three steps have been implemented to consider the impact of the transaction as finally consummated. As we go on to consider below there are only two consequences to be considered; one in relation to competition and the other the public interest.

[11] As far as the rationale is concerned Pembani submits that the proposed transaction provides it with a platform to create a sizeable black controlled natural resources and industrial company, whilst the Shanduka Group submits that it has identified Pembani as a suitable and complementary strategic Black Economic Empowerment ("BEE") partner. [10]

Competition assessment

Unilateral effects

[12] Despite the complexity of the transaction and the number of entities involved, the only one with an implication for competition is a horizontal overlap in the national market for the mining and sale of thermal coal and access to the export allocation capacity at the Richards Bay Coal Terminal ("RBCT"). This is because both the merging parties, through their shareholding interests in various firms (viz. Shanduka Coal and Pembani's investment stake in BECSA) are active in the market for the mining and sale of thermal coal, as well as access to export allocations at RBCT. Typically in past cases coal mining mergers have distinguished between two market segments - what is termed the tied domestic market and the residual market. In relation to the tied domestic market, the post-merger market shares will be less than 14%. In the residual domestic market the post-merger market shares will be less than 21%. Note that the merging firms themselves do not own all this interest, rather this is the combined market share of all the operating firms in which they have controlling and non-controlling interests. The proposed transaction is thus unlikely to raise any unilateral effects competition concerns as the merged entity will continue to be constrained by firms such as Anglo Coal (Pty) Limited ("Anglo Coal") and Exxaro Resources amongst others. In relation to the export market at RBCT, the Commission found that the proposed transaction will increase the export allocation of the merged entity to less than 15%. The Commission again concluded that such an increase does not raise competition concerns. We agree with the Commission's findings.

Co-ordinated effects - concerns on information exchange

[13] As noted Pembani currently holds 6% shareholding interest in BECSA. This shareholding allows Pembani to appoint a director to the board of BECSA. The Commission's main concern was that this cross directorship between the Shanduka coal entities ('Coal Entities") and BECSA would facilitate the sharing of competitively sensitive information which might diminish competitive constraints between the Coal Entities and BECSA, through the medium of Pembani, which would now have board access to both companies. BECSA is a significant player in the coal markets with market shares of approximately 15% in the tied domestic market and approximately 1%market share in the residual market as well as having access to RBCT. The Comr

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thus recommended that the merger be approved subject to a condition that will address its concerns on possible information exchange. The condition can be summarised as follows:

[14] The person elected to sit on the board of directors of BECSA ("the Pembani BECSA Nominee"), may not at the same time be -

14.1 a director on the board of directors of any of the Coal Entities; or

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14.2 an employee of Pembani occupying a coal marketing position; or

14.3 an employee of the Coal Entities occupying a coal marketing position;

14.4 and the Pembani BECSA Nominee may not have held such a position for a period of one year prior to the Pembani BECSA Nominee's appointment to the BECSA board of directors, nor may any person be appointed to hold a director or coal marketing position during a period of one year following that person having ceased to be the Pembani BECSA Nominee.

[15] Pembani confirmed that it had no objection to the imposition of the conditions, as they are in line with its existing governance practice not to facilitate the flow of competitively sensitive information between subsidiaries.

[16] Based on the above analysis, the Commission came to the conclusion that the proposed transaction will not substantially prevent or lessen competition in the identified markets. We concur with the Commission on this finding.

Public Interest

[17] The proposed transaction may have an impact on employment. Post merger the positions of eight employees may become redundant. Although the potential job losses are thus merger specific we see no reason to impose a condition in this respect for the following reasons. Firstly, the nature of the jobs is such that those who may be affected are highly qualified with post graduate qualifications. Secondly, the number affected is small and thirdly, the impact of any retrenchment will be delayed for at least one year post- merger and that those affected had been informed of this. We were also told that depending on the merged firm's fortunes after the year, no retrenchments may be required. These factors suggest that the merger does not give rise to a substantial public interest concern in respect of employment. Nor did the Commission or any of the affected employees suggest a condition was required.[11] The proposed transaction raises no other public interest concerns.

CONCLUSION

[18] We agree with the Commission's findings that the proposed transaction is unlikely to substantially prevent or lessen competition in the identified market provided concerns over potential co-ordinated effects are constrained by preventing the possibility of information exchange as discussed earlier. We therefore approve the transaction subject to the conditions attached hereto as Annexure "A".

18 September 2015

DATE

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Mr Norman Manoim

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Ms Andiswa Ndoni and Ms Yasmin Carrim concurring.

Tribunal Researcher: Caroline Sserufusa

For the merging parties: Paul Cleland of Werksmans Attorneys and Lital Avivi of Bowman Gilfillan

For the Commission: Rakgole Mokolo

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Pembani Group (Proprietary) Limited and Shanduka Resources (Proprietary) Limited

Cc Case Number: 2015May0255

1 DEFINITIONS

The following expressions shalt bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

1.1 **"BECSA"** means the company previously named BHP Billiton Energy Coal Proprietary Limited, recently renamed to South32 SA Coal Proprietary Limited;

1.2 **"Coal Entities"** mean all companies that conduct coal mining activities in respect of whom Pembani will, as a result of this merger, acquire control, being Shanduka Coal Investments Proprietary Limited, Shanduka Coal Proprietary Limited, Umcebo Mining Proprietary Limited and their subsidiaries. For the purpose of these conditions, the Coal Entities include Kangra Coal Proprietary Limited and Optimum Coal Holdings Proprietary Limited and their subsidiaries, if any;

1.3 **"Commission"** means the Competition Commission of South Africa;

1.4 **"Competition Act"** means the **Competition Act 89 of 1998**, as amended;

1.5 **"Competitively sensitive information"** includes all pricing infonnation Including but not limited to prices charged for thermal coal, rebates, discounts and planned thermal coal volumes to be supplied; information on thermal coal purchasing contract; information on production capacity; information on tendering; information on customers including sales volumes of clients; marketing strategies of each coal mining entity; investment strategies; budgets, Business Models and Business Plans; Promotion Plans and expansion plans.

1.6 **"Conditions"** mean these conditions;

1.7 **"Implementation Date"** means the date of implementation of this merger;

1.8 **"Merger"** means the transaction notrtied to the Commission on 19 May 2015 under case

number 2015May0255, in terms of which *inter alia* Pembani will acquire the entireIssued

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share capital of Shanduka Resources and will acquire 37% of the issued share capital of

Shanduka;

1.9 **"Merging Parties"** mean, for the purpose of these conditions, Pembani, Shanduka and the Coal Entities (although there are other merging parties, named In the merger filing submission, who are not relevant to these Conditions);

1.10 **"Newshelf"** means Newshelf 1129 Proprietary Limited; a firm in which Pembani holds 75% of the issued share capital and which in turn holds 8o/o of the issued share capital of BECSA, a company involved in coal mining activities in South Africa;

1.11 **"Pembani"** means Pembani Group Proprietary Umited, one of the primary acquiring firms in this merger, and its subsidiaries including (without limitation) Newshelf;

1.12 **"Pembani BECSA Nominee"** means the person nominated by Pembani to the BECSA board of directors from time to time;

1,13 **"Shanduka"** means, collectively, Shanduka Group, Shanduka Resources and their subsidiaries;

1.14 "Shanduka Group" means Shanduka Group Proprietary Limited, one of the primary

target firms in this merger; and

1.15 **"Shanduka Resources"** means Shanduka Resources Proprietary Limited, one of the primary target firms in this merger.

2 CROSS-DIRECTORSHIPS

The person elected to sit on the board of directors of BECSA ethe Pembani BECSA Nominee"), may not at the same time be -

2.1 a director on the board of directors of any of the Coal Entities; or

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2.2 an employee of Pembani occupying a coal marketing position; or

2.3 an employee of the Coal Entities occupying a coal marketing position, and the Pembani BECSA Nominee may not have held such a position for a period of one year prior to the Pembani BECSA Nominee's appointment to the BECSA board of directors, nor may any person be appointed to hold a director or coal marketing position referred to in clauses 2.1,

2.2 or 2.3 during a period of one year following that person having ceased to be the Pembani BECSA Nominee.

3 LIMITATION IN RESPECT OF COMPETITIVELY SENSITIVE INFORMATION

3.1 To the extent that the Pembani BECSA Nominee has access to competitively sensitive information pertaining to BECSA, the Pembani BECSA Nominee shall -

3.1.1 ensure that he/she shall not communicate such competitively sensitive information to any other Newshelf or Pembani personnel, or facilitate or permit the use of such information by Pembani, other than such information in aggregated, his

summary form; and

3.1.2 not communicate any competitively sensitive information to any person who is a director of, or holds a coal mark position within, any of the Coal Entities.

3.2 Within three months of the Implementation Date, the Pembani BECSA Nominee shall sign a confidentiality undertaking confirming that he/she will protect the compeUtively sensitive information of BECSA and comply with the provisions of clause 3.1.

3.3 Any newly appointed Pembani BECSA Nominee shall sign a similar confidentiality undertaking within 1 month of being elected confirming that he/she will protect the competitlvefy sensitive information of BECSA and comply with the provisions of clause

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3.1. Such undertaking signed by any newly appointed Pembani BECSA Nominee shall be sent to the Commission within 1 month of signature.

4 MONITORING OF COMPLIANCE WITH THE CONDITIONS

4.1 Within three months of the Implementation Date, Pembani shall provide the Commission

with -

4.1.1 written confirmation that it has circulated a copy of these conditions to the current

Pembani BECSA Nominee and to BECSA;

4.1,2 written confirmation that the current Pembani BECSA Nominee meets the requirements set out in clause 2; and

4.1.3 a copy of the confidentiality undertaking referred to In clause 3.2.

4.2 Within one month of the first and second yearly anniversaries of the Implementation Date, if there has been any change in the identity of the Pembani BECSA Nominee in the preceding twelve months, Pembani shall -

4,2.1 notify the Commission of that change and confirm that such person meets the requirements set out in clause 2; and

4.2.2 provide the Commission with written confimiation that the new Pembanl BECSA Nominee has been provided with a copy of these conditions and has signed a confidentiality undertaking as required by clause 3.2 and 3.3.

4.3 All correspondence in relation to these conditions must be submitted to the following

email address: *mergerconditionsCW compcom.co.za*.

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5 DURATION

5.1 These Conditions will apply for as long as Pembani through its shareholding in Newshelf has the right to nominate one director to the board of directors of BECSA. Should Pembani no longer have this right, \t shall notify the Commission in writing and provide proof that the right no longer exists.

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5.2 The Merging Parties may nevertheless apply to the Competition Tribunal at any time to lift, revise or amend these Conditions on good cause shown.

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1 Mr Nhleko controls Pembani as a result of his direct and indirect shareholding in Pembani, his indirect shareholding be through Micawber 766 Proprietary Limited ("Micawber 766") and Richtrau Number 94 Proprietary Limited (Richtrau"). Mica 766 and Richtrau are special purpose ring fenced entities that do not conduct any business activities other than holding shares in Pembani.

2 OMLACSA is a registered financial services provider, which provides a variety of products and services, including long-term and short-term insurance products, financial planning products and services, investment and asset management services and fund administration.

3 Jadeite is a subsidiary of the Chinese Investment Corporation, a sovereign wealth fund of the People's Republic of China.

4 Standard Bank is a wholly-owned subsidiary of Standard Bank Group Limited, which is listed on the JSE, and is a leading provider of financial services.

5 This interest is held through a special purpose vehicle, Newshelf 1129 (Pty) Ltd ("Newshelf").Pembani holds 75% of Newshelf which in turn holds 8% of BECSA. Newshelf can thus nominate one director and one alternate director to the BECSA board.

6 The Shanduka Group shareholding will be held as follows; [CONFIDENTIAL INFORMATION ....]

7 This Annexure is omitted from the public version as it contains confidential information.

8 See pages 10-13 of the transcript of hearing.

9 This Annexure is omitted from the public version as it contains confidential information.

10 See page 13 of Transcript of hearing.

11 See pages 7-8 of the Tra nscri pt.

COMMISSION OF INQUIRY INTO STATE CAPTURE

"BM 18"

Draft – 29.01.19

PRIVILEGED AND CONFIDENTIAL

STATEMENT OF CLINTON MARTIN EPHRON

for the purpose of the

JUDICIAL COMMISSION OF ENQUIRY TO ENQUIRE INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR, INCLUDING ORGANS OF STATE ("*Commission*")

1. I am a chartered accountant, having qualified as such in South Africa in 1993. During the period 2013 to 2017, I was the Chief Executive Officer ("**CEO**") of Glencore's coal business in South Africa and a director of both Optimum Coal Mine Proprietary Limited ("**OCM**") and Optimum Coal Holdings Proprietary Limited ("**OCH**").

2. Where I refer to "Glencore" in this statement, I am referring to the Glencore group of companies.

3. This statement is intended to provide information relating to the sale by OCH of shares held by it in its subsidiaries, including OCM.

The period prior to the acquisition of Glencore's interest in OCH

4. The matters set out in this section represent my current understanding of the history of OCH and OCM prior to Glencore acquiring its interest in them.

5. To the best of my knowledge, Optimum Collieries (the "**Mine**") had been supplying coal to Eskom since the 1970s. Initially, coal was supplied only to Eskom on a cost-plus-margin basis but, from approximately 1983, the Mine operated as a "multi-product" mine, supplying coal locally to Eskom as well as to the export market.

6. On 4 January 1993, a Coal Supply Agreement (the "**CSA**") was concluded between Eskom and Trans-Natal Coal Corporation Limited and Trans-Natal Collieries Limited ("**TNC**"), pursuant to which TNC

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undertook to supply the Hendrina Power Station ("**Hendrina**") with an annual volume of 6,500,000 tons of coal (with certain specifications) at a fixed price per tonne.

7. Again, to the best of my knowledge, at some stage prior to May 2008 BHP Billiton Energy Coal South Africa Limited ("**BHP**") acquired ownership of the Mine. In June 2008, OCM acquired Optimum Collieries and a 9.5% interest in Richards Bay Coal Terminal from BHP. OCM was incorporated on 15 March 2006 as a BEE coal mining and exploration company.

8. As part of the sale by BHP to OCM, BHP (as the supplier of coal to Eskom under the CSA) ceded its right, title and interest under the CSA to OCM. Eskom consented to this substitution and certain amendments were made to the CSA, principally in relation to the quantity and quality specifications of the coal, reflecting the fact that there were disputes at that stage regarding the coal being supplied to Eskom.

9. I understand that other disputes subsequently arose between OCM and Eskom, primarily in relation to the price paid for coal by Eskom, resulting in amendments to the CSA in April 2011 following an arbitration commenced by OCM.

10. In March 2010, OCH, the holding company of OCM, listed on the Johannesburg Stock Exchange.

The acquisition of OCH by Glencore

11. In the period June 2011 to March 2012, Piruto BV (an entity within the Glencore group) and Lexshell 849 Proprietary Limited ("**Lexshell**") (an entity then owned by Cyril Ramaphosa) acquired OCH through a series of transactions resulting in Piruto BV (Glencore) holding a 67.58% effective interest in OCH and Lexshell holding a 9.64% effective interest

in OCH. The remaining shares in OCH were held by various minority partners (2.92%) and the Community Trust and the Employee Trust (19.86%). This transaction closed during March 2012 and OCM was delisted in July 2012.

12. For completeness, I note that Mr Ramaphosa divested his entire interest in OCH on 22 May 2014.

13. Prior the acquisition of its interest in OCH, Glencore was not able to undertake a comprehensive due diligence exercise. In particular, Glencore only had publicly available information regarding the CSA and, accordingly, it only knew the duration, volume to be supplied and price per tonne provided by the CSA. Glencore did not, for example, know how any price-adjustment mechanisms in the CSA worked.

OCM's relationship with Eskom in 2012 to 2014

14. Following the acquisition by Glencore of its interest in OCH, differences continued to arise between OCM and Eskom, particularly in relation to sizing and quality of the coal supplied to Hendrina (although Eskom continued to accept and use the coal). In April 2013, OCM issued a notice requesting renegotiation of the sizing provisions in accordance with a provision in the CSA which specifically provided for such renegotiation. OCM believed that the sizing provisions were a primary reason for some of the issues with Eskom.

15. As regards the price of the coal supplied pursuant to the CSA, upon acquiring OCH, Glencore naturally took steps to better understand the viability of OCM and, in particular, the CSA. As a result of this post-acquisition review, by July 2013 OCM considered that the CSA was no longer commercially viable.

16. By way of further explanation, at that time about half of OCM's coal was

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supplied to Eskom, and the price at which OCM was selling coal to Eskom pursuant to the CSA was significantly below the cost of producing each tonne of coal. Specifically, based on March 2013 invoice prices, OCM was losing approximately R150 per tonne of coal delivered to Eskom (the equivalent of R829 million per annum).

17. In OCM's considered view, these circumstances triggered the "*Hardship*" clause in the CSA, which entitled OCM to a revision of the purchase price for the coal. Eskom disputed OCM's declaration of "Hardship", and a disputed "*Hardship Notice*" from OCM to Eskom was subjected to arbitration (the "**Hardship Arbitration**") pursuant to an arbitration agreement concluded during December 2013.

18. While the arbitration proceedings were progressing, OCM and Eskom engaged in discussions regarding various other disputes concerning penalties, delivery shortfalls and other alleged breaches of the CSA.

19. In early 2014, Eskom approached OCM to see if it would agree to suspend the Hardship Arbitration to allow for a period of negotiation regarding the hardship claim and other disputes. OCM agreed, and on 23 May 2014, OCM/OCH and Eskom entered into a co-operation agreement (the "**Co-operation Agreement**") providing a process to further negotiate potential amendments and an extension to the CSA, as well as the possible settlement of disputes in relation to hardship and penalties. The Hardship Arbitration was suspended and certain interim arrangements were put in place to ameliorate the difficulties experienced by OCM. The parties also suspended the enforcement of their respective rights on account of alleged breaches of the CSA, and an effective moratorium was agreed.

20. Whilst engaging with Eskom, OCM continued to review the rest of its business in order to determine how best to address its deteriorating

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financial situation.

Closure of the opencast section of the Mine

21. As at 2012, about half of OCM's coal was supplied to Eskom and the other half was exported. I understand that, prior to the acquisition of Glencore's interest in OCM, the export operations of OCM had generally subsidised the price at which coal was supplied locally to Eskom pursuant to the CSA. However, the export coal price began to decline in 2012, to a level at which it became impossible for OCM to operate profitably on the same basis.

22. By 2014 (i.e. around the time the Cooperation Agreement came into effect), OCM was losing cash of approximately R80 million to R100 million per month.

23. Following a review by OCM of its operations, OCM commenced a process to consider the closure of the opencast section of the Mine in January 2015 from which OCM was producing coal for export. This closure meant that the Mine could not produce enough coal both to supply Eskom and to export. From this point, Eskom was OCM's only customer, with all coal being supplied pursuant to the CSA.

24. Whilst the closure of the opencast section of the Mine enabled OCM to reduce its losses, it remained loss-making and OCM was accordingly required to raise additional funding, to which Glencore, as the majority shareholder of OCH, contributed. However, this funding did not prove to be sufficient and OCM soon required yet further funding. In January and February 2015 alone, Glencore made approximately R480 million available to OCM by way of shareholder funding.

25. **OCM's relationship with Eskom in the first half of 2015**

26. Progress was made in the negotiations between OCM and Eskom in 2014 and early 2015, giving rise to the production of a draft addendum to the CSA in early 2015 (the "**Fourth Addendum**"). The Fourth Addendum would have provided for an extension of the CSA until 2023 (the existing expiry being 31 December 2018), a revised price for coal, a mechanism whereby Eskom would be able to source coal elsewhere if it could do so at a lower prices and a settlement of claims between OCM and Eskom. Glencore considered this proposal to be beneficial to all parties (a "win-win"), because it would have (i) ensured security of coal supply to Hendrina beyond 31 December 2018, (ii) enabled OCM to sell coal to Eskom at a more sustainable price, (iii) ensured the continued operation of the Mine and (iv) settled the claims between OCM and Eskom.

27. On 25 March 2015, OCM was advised that Eskom's Executive Procurement Committee had approved the Fourth Addendum subject to approval by the Eskom Board's Procurement Committee, which was scheduled to meet on 15 April 2015. My understanding is that, on 15 April 2015, the Fourth Addendum was presented to the Eskom Board Procurement Sub-Committee, which in turn referred the matter to the Eskom Main Board for consideration. Given that the Fourth Addendum had been presented to the Main Board of Eskom and would therefore have been acceptable to the Eskom Board Procurement Sub-Committee, OCM was hopeful that the requisite approval would be forthcoming.

28. The Eskom Board had recently been reconstituted and, during late April 2015, OCM was informed by Mr Johann Bester of Eskom that the Fourth Addendum was to be reviewed by the then (newly appointed) Group Acting Chief Executive Officer, Mr Brian Molefe ("**Mr Molefe**"). OCM was further informed by Mr Molefe that he would contact OCM to discuss.

29. However, OCM did not hear from Mr Molefe. I therefore attempted to arrange to meet with him.

30. After a number of attempts at arranging a meeting with Mr Molefe, I was finally able to meet with him on 18 May 2015. At that meeting, Mr Molefe adopted an inflexible approach and indicated that Eskom would not amend the terms of the CSA and would instead continue to enforce its terms. He said that any amendments to the CSA would be considered closer to the end of the term of the CSA.

31. OCM considered this turn of events to be unfortunate given its belief that the Fourth Addendum represented a win-win for all parties, and wished to ensure that Mr Molefe had all the facts and information available to him (Mr Molefe having only taken office approximately three days prior to 23 April 2018, being the date when the Fourth Addendum was furnished to the Eskom Main Board). Accordingly, in a further attempt to resolve the impasse with Eskom, OCM addressed a letter to Mr Molefe on 22 May 2015 for the purpose of furnishing him with a synopsis of OCM's financial position and details of the engagement between OCM and Eskom which had culminated in the draft Fourth Addendum.

32. Eskom was advised in this letter of 22 May 2015 that the shareholders of OCM had indicated that if no progress was made with Eskom by the end of May 2015, "*the shareholders will have to reconsider their support for OCM and might withdraw all funding. If this occurs, the directors of OCM will, in accordance with their legal duties, have no choice but to place OCM in business rescue* [("**BR**")] *or liquidation…*". As a responsible contractual counterparty, OCM felt it appropriate to ensure that Eskom was apprised of the difficult financial position that OCM was in, and the real risk of BR, so as to avoid uncertainty regarding the potential consequences of not concluding an agreement with OCM by 31 May 2015. By that stage, the funding provided by shareholders of

OCM since October 2014 totalled approximately R1 billion.

33. Eskom failed to respond to this letter and I arranged to meet once again with Mr Molefe on 11 June 2015. I was accompanied on this occasion by the Glencore Group's CEO, Mr Ivan Glasenberg ("**Mr Glasenberg**") (who was visiting South Africa at the time). Mr Molefe was accompanied by a number of representatives of Eskom and he advised that, in his view, OCM must honour the CSA and that he would not renegotiate the terms of the CSA.

34. We made it plain to Mr Molefe that OCM had not overstated the consequences of a failure to renegotiate the CSA but, rather, that OCM had endeavoured to explore a number of options since 2012. We tried to impress upon Mr Molefe that the amendments proposed to the CSA were intended to achieve a win-win situation. We were of course very mindful that we were asking Eskom to expend more for coal for the immediate future but, in Glencore's view, this needed to be balanced against Eskom's long-term interest in obtaining security of supply at a reasonable price.

35. Mr Molefe was unwavering in his stance and refused to agree to any changes. This was subsequently confirmed in writing when, on 22 June 2015, Eskom sent a letter (dated 10 June 2015) in which it stated that it no longer wished to participate in the settlement process envisaged by the Co-operation Agreement and, further, that it would enter into negotiations for a new CSA only in respect of the period after 31 December 2018 (that being the expiry date of the existing CSA).

36. While Glencore and OCM understood that Mr Molefe was entitled to his position and how that position might benefit Eskom in the very short-term (i.e. Eskom would continue to receive coal at low prices), we felt that Mr Molefe's position did not necessarily appreciate the risk that Eskom

faced after 2018 where they would have no security of coal supply from the Mine (which was located very close to Hendrina) and therefore would be left in a weak negotiating position.

37. On 30 June 2015, and in response to Eskom's letter, OCM addressed a further letter to Mr Molefe and Mr Vusi Mboweni (the acting Head of Primary Energy for Eskom), in which OCM made a final proposal in a last attempt to resolve the dispute with Eskom and reach a new long-term agreement with Eskom. This letter provided for a further reduced price, which was now below OCM's cost of production. No response was received to this letter.

38. Ultimately, Eskom's termination of the settlement process led to the Hardship Arbitration being re-commenced on 23 June 2015 and a hearing was scheduled for the period 16-27 May 2016.

The First Oakbay Offer and Eskom's alleged R2 billion penalty

The First Oakbay Offer (1)

39. On 1 July 2015, Glencore received a letter from KPMG Services ("**KPMG**") advising that it had been requested by one of its clients, who wished to remain anonymous, to present an expression of interest to purchase either OCM or OCH for R2 billion (the "**First Oakbay Offer**"). KPMG further advised that its client would, in the event of an acquisition, continue to honour the existing CSA with Eskom. Mr Shaun Blankfield ("**Mr Blankfield**"), on behalf of Glencore, contacted Mr Werner Jacobs ("**Mr Jacobs**") of KPMG and told Mr Jacobs that OCM and OCH would not engage with an "anonymous" offeror. Mr Jacobs thereafter advised that the interested offeror was Oakbay Investments Proprietary Limited ("**Oakbay**").

The alleged R2 billion penalty

40. By mid-July 2015, OCM had been able to secure additional funding from Glencore to enable OCM to continue supplying coal to Eskom for the time being and intended to continue complying with its obligations to Eskom.

41. Shortly afterwards, on 16 July 2015, OCM received a letter from attorneys Cliffe Dekker Hofmeyr ("**CDH**"), representing Eskom, demanding payment of (alleged) penalties in an aggregate amount of approximately R2 billion in respect of alleged sizing and quality issues with the coal supplied to (and accepted by) Eskom between 1 March 2012 and 31 May 2015. This letter came as a complete shock to OCM because we had been discussing these penalties with Eskom for a number of years and they knew that OCM did not believe they were legitimate, and that OCM accordingly disputed them.

42. The manner in which the penalty provisions of the CSA worked meant that penalties could potentially be set off against the price at which coal was supplied to Eskom by OCM, with the effect that OCM could be required to supply coal at R1 per tonne. The alleged penalties were therefore a matter of serious concern to OCM and made BR proceedings very likely.

The First Oakbay Offer (2)

43. Shortly afterwards, on 25 July 2015, OCM and OCH signed a confidentiality and non-disclosure agreement with Oakbay pursuant to which OCM and OCH provided Oakbay with high level information concerning OCM. The reason for providing this information despite the fact that the R2 billion penalty was likely to lead to an imminent BR process was simply to maintain a potential option for keeping the Mine operational, albeit that OCH and OCM knew this would be an option for the BR practitioners (the "**BRPs**") to pursue in the event that BR

proceedings were commenced (i.e. on the basis that the BRPs would assume control of OCH and OCM).

The commencement of BR proceedings and subsequent discussions between the BRPs and Eskom

44. On 31 July 2015, the boards of directors of OCH and OCM resolved to commence voluntary BR proceedings in respect of each of OCM and OCH. The decision to place the business under BR was driven by the fact that, in addition to OCM being required to sell all coal produced below cost, it now had to contend with an alleged R2 billion penalty and the prospect of supplying coal to Eskom for effectively R1 per tonne.

45. The BR proceedings commenced on 4 August 2015, from which point OCH and OCM were under the management control of the BRPs.

46. Relations with Eskom continued to deteriorate following the commencement of BR. By way of illustration, at the end of July 2015 Eskom withheld payment for no justifiable reason in an amount of approximately R58 million for coal which OCM had delivered that month. This was despite a letter addressed to the BRPs, dated 14 August 2015, in which Eskom confirmed that it would make payment. Payment was then refused again at the end of August 2015 for coal delivered that month (this time, the amount in issue was approximately R34 million). In fact, these payments were eventually made in June 2016, when Tegeta Exploration and Resources Proprietary Limited ("***Tegeta***") (a subsidiary of Oakbay and the purchaser of OCM referred to below) had become owner of the Mine.

47. Following their appointment on 4 August 2015, the BRPs identified the CSA as the key issue causing OCH's and OCM's financial hardship. The BRPs' main objective was to avoid a liquidation process and, accordingly, they requested a meeting with Eskom with a view to

reaching an agreement which would avoid liquidation. However, Eskom refused to meet with the BRPs.

48. On 20 August 2015, the BRPs suspended the supply of coal by OCM to Eskom, which I understood to be an attempt to mitigate OCM's losses. The BRPs also provided Eskom with an interim proposal for the supply of coal at this time.

49. After the BRPs had ceased the supply of coal to Eskom, Eskom requested a meeting with the BRPs. The BRPs and I arranged to meet with Mr Molefe and the then Group Executive: Technology of Eskom, Mr Matshela Koko (**"Mr Koko"**), on 3 September 2015. However, when we arrived at Eskom's premises, Mr Molefe and Mr Koko insisted that the BRPs remain outside, and I accordingly met with them alone.

50. At this meeting, Mr Molefe insisted that I restore the supply of coal to Hendrina. I explained to Mr Molefe that it was the BRPs who had ceased the supply of coal and that any decision to recommence supply was theirs. In my position as a representative of Glencore (as opposed to on behalf of OCH and/or OCM, who were under the control of the BRPs), which would need to fund any recommencement of supply to Hendrina, I further explained to Mr Molefe that Glencore could only financially support OCM to recommence supply if Eskom undertook a commitment to negotiate with OCM in good faith. Mr Molefe agreed that Eskom would engage in good faith negotiations with OCM and I accordingly undertook to speak to Mr Glasenberg after our meeting regarding Glencore providing further funding to OCM to allow it to continue supplying Eskom.

51. I spoke to Mr Glasenberg on the same day, and Glencore agreed to provide further funding in light of Eskom's undertaking to engage in good faith negotiations. On this basis, the BRPs agreed to recommence the supply of coal to Eskom.

52. I contacted Mr Molefe shortly after speaking to Mr Glasenberg and advised him that Glencore would provide further funding for OCM, and that the BRPs had agreed that OCM would recommence the supply of coal to Eskom, during a negotiation period, at a price of R150 per tonne which was the CSA price, with payment to be made within 7 days of receipt of coal, subject to Eskom committing to negotiating with OCM in good faith. This was agreed and this interim arrangement was extended several times during the course of the BR. On this basis, OCM recommenced supplying coal to Eskom.

53. However, Eskom did not engage in any further negotiations, despite OCM providing significant information to Eskom to demonstrate its precarious financial position (see paragraphs 58 to 60 below).

The Second Oakbay Offer

54. On 10 September 2015, OCM received a non-binding indicative offer from Oakbay (the "**Second Oakbay Offer**") for the acquisition of OCM as a going concern, for consideration of R1.00 and with a commitment to fund OCM's continuing operations, including working capital and fulfilment of its obligations for the remainder of the CSA.

55. The BRPs responded to the Second Oakbay Offer in writing on 17 September 2015, requesting clarification regarding certain matters (for example, going to financing and environmental liabilities) and noting that they were not yet formally considering a sale of OCM but that, if an offer were made which might represent the best option for rescuing OCM, it would be considered. At this time, I understand that the BRPs' preferred option remained reaching a sustainable agreement with Eskom.

56. On 21 September 2015, Oakbay responded to the BRPs' letter, noting, *inter alia*, that they were confident that Eskom's consent to Oakbay acceding to the CSA would be forthcoming and that KPMG had been

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retained as Oakbay's advisers for the potential sale.

57. The following day, on 22 September 2015, President Jacob Zuma announced that Mr Mosebenzi Zwane ("**Minister Zwane**") was appointed as Minister of Mineral Resources from 23 September 2015.

The BRPs' First Long-Term Proposal to Eskom

58. At the same time that they were engaging with Oakbay, the BRPs were also seeking to engage with Eskom. On 17 September 2015, the BRPs submitted a proposal (the "**BRPs' First Long-Term Proposal**") to Mr Koko for the long-term supply of coal to Eskom. Similar to the proposal submitted to Eskom by OCM prior to the BR (i.e. the Fourth Addendum, see paragraph 26 above), the BRPs sought to agree an increase in the price paid by Eskom in return for security of supply after 2018. In submitting this proposal, the BRPs sought to commence the negotiations that Mr Molefe and Mr Koko had agreed to pursue in return for recommencement of the supply of coal.

59. On 22 September 2015, the BRPs confirmed the terms of an Interim Agreement with Eskom, which included no sizing or quality specifications (despite Eskom having repeatedly raised complaints regarding sizing and quality), no penalty being applied by Eskom and Eskom agreeing to engage with OCM in good faith.

60. About a week later, on 30 September 2015, CDH, on behalf of Eskom, advised the BRPs that Eskom had considered the BRPs' First Long-Term Proposal and was not willing to entertain it. They further advised that any discussion and negotiation concerning a new price for coal would only be entertained closer to 2017 and that the penalties would have to be settled immediately in full. This was a clear breach of the 3 September 2015 agreement to engage in good faith negotiations and OCM advised Eskom of its disappointment in a letter dated 5 October

2015.

The Phembani Offer

61. As a result of Eskom's unwillingness to engage further with OCM, the BRPs and Glencore considered further options, one of which was for Phembani Group Proprietary Limited ("Phembani"), a minority shareholder of OCH, to acquire OCM.

62. Following engagements with representatives of Phembani, Phembani made an offer to OCH to acquire its shares in OCM on 7 October 2015. On this day, the BRPs advised Oakbay that they had received an offer for the shares in OCM from a third party which the BRPs considered to be more favourable, on the whole, than the Second Oakbay Offer. The BRPs further advised that the third party had requested that OCM engage exclusively with it and that the BRPs would therefore not be able to progress discussions with Oakbay in relation to the Second Oakbay Offer nor permit Oakbay to proceed with its due diligence.

63. On 9 October 2015, the BRPs and Phembani signed a non-disclosure agreement.

64. However, shortly after the conclusion of the non-disclosure agreement, Phembani requested a meeting with me and explained at that meeting that Eskom had informed them that it would not consent to Phembani acceding to the CSA. This position was confirmed in writing much later in a letter to the BRPs received on 11 February 2016. It appears from that letter that the reason why Eskom refused to engage with Phembani was that Phembani indicated it would seek to renegotiate the CSA.

The resumption of discussions with Oakbay

65. As a result of Eskom's rejection of Phembani as a purchaser of OCM, the BRPs informed Oakbay, on or around 20 October 2015, that they

were in a position to engage further with Oakbay in negotiations for the acquisition of shares in OCM.

66. On 20 October 2015, the BRPs, representatives of Glencore (Mr Blankfield and me), representatives of Oakbay (including Mr Ajay Gupta) ("**Mr A Gupta**"), Ashru Chawla, Varun Gupta, Ronica Ragavan ("**Ms Ragavan**") and Nazeem Howa ("**Mr Howa**"), together with Nic Mathews and Mr Jacobs (of KPMG) met in Saxonwold, Johannesburg for the purpose of discussing the Second Oakbay Offer. It was noted that the proposed sale was of the shares in OCM only and the BRPs indicated that they needed an assurance from Oakbay that Oakbay would fund OCM for the duration of OCM's BR. It was agreed that Oakbay would continue with its due diligence. Messrs Blankfield and Van den Steen (one of the BRPs) met KPMG separately after this meeting to discuss the structure of a possible transaction.

67. On 23 October 2015, the BRPs confirmed to Oakbay that they were willing to proceed with the negotiation for the sale of the shares in OCM to Oakbay but that agreement needed to be reached regarding certain transaction parameters. The BRPs advised that only OCM was for sale and that the purchase consideration of R1.00 did not include OCH's interest in the Richards Bay Coal Terminal, which was owned by Optimum Coal Terminal Proprietary Limited ("**OCT**"). The BRPs gave Oakbay until 30 November 2015 to conduct a due diligence on OCM and to execute definitive agreements for the transaction. The BRPs further advised Oakbay that it would need to assume all of OCM's liabilities.

68. Oakbay commenced with the due diligence (which included a site visit) of OCM, and KPMG attended to most of the due diligence work.

69. At that time, OCM and Glencore considered that it would be in their best interests to proceed with the proposed Oakbay transaction, because:

Eskom was not prepared to negotiate with OCM; Eskom would not consent to an assignment of the CSA to Phembani; and the proposed Oakbay transaction would enable OCM to continue operating and to supply Eskom. As regards the proposed consideration of R1.00, in view of the heavily loss-making CSA, the low export price of coal, the debts owed by OCM and the security held over OCM's assets, Glencore considered this to be reasonable.

70. On 12 November 2015, Oakbay, OCH and OCM concluded a non-binding Term Sheet (the "**Oakbay Term Sheet**") for the proposed acquisition of OCM by Oakbay. The Oakbay Term Sheet recorded that the transaction was subject to due diligence and certain other conditions, including Eskom's support for the transaction and the release of OCH from all its obligations in respect of the CSA.

The meeting with Mr Raphela and the expansion of the proposed transaction

71. During November 2015, I was contacted by Mr Joel Raphela ("**Mr Raphela**"), the Deputy Director General ("**DDG**") of the Department of Mineral Resources (the "**DMR**"), who requested that I meet with him at Melrose Arch, Johannesburg. At that meeting, Mr Raphela indicated that the sale of all of OCM, OCT and Koornfontein Mines Propriety Limited ("**Koornfontein**") (another subsidiary of OCH) should be considered, as opposed to just OCM (which was the deal currently on the table). Mr Raphela appeared to have detailed knowledge of the negotiations with Oakbay.

72. A meeting was called with Eskom on 24 November 2015 in order to update them regarding the discussions with Oakbay. The meeting was attended by Mr Blankfield on behalf of Glencore, the BRPs, Oakbay (represented by Mr Howa, Ashu Chalwa, Ms Ragavan) and Eskom

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(represented by Mr Koko, Suzanne Daniels, Edwin Mabalane and Ayanda Nteta); and was chaired by Mr Koko. Mr Blankfield advised the meeting that Oakbay was conducting a due diligence and that funding had been secured for OCM for the duration of Oakbay's due diligence period, so as to ensure continuity of coal supply to Eskom during that period. Mr Koko responded by saying that Eskom expected OCM to honour the CSA until 2018 and that Eskom would not waive any penalty.

73. Mr Koko further stated that Eskom would not provide consent in respect of any transaction with Oakbay unless the transaction extended beyond OCM to include all assets of the OCH Group, including OCH's interest in the Richards Bay Coal Terminal and Koornfontein. Mr Koko required confirmation by the end of that weekend as to whether this would be acceptable.

74. Since a transaction with Oakbay appeared to be the only option at that stage, Glencore and OCM/OCH agreed to engage further with Oakbay in respect of a transaction for all assets of OCH.

Initial contact from Minister Zwane's office

75. On 24 November 2015, Mr Glasenberg received a call from a representative of Minister Zwane's office, who said that Minister Zwane would be visiting Switzerland and would like to meet with Mr Glasenberg. It is not unusual for Ministers and Ambassadors to engage with Mr Glasenberg having regard to the nature of Glencore's international operations.

76. A meeting was scheduled between the Minister and Mr Glasenberg in Switzerland on 1 December 2015. There was no indication to Mr Glasenberg of the purpose of the meeting.

The Third Oakbay Offer

77. On 25 November 2015 (i.e. prior to the meeting with Minister Zwane), Mr A Gupta, on behalf of Oakbay, briefly met with me to convey an offer to acquire the shares held by OCH in OCM and other subsidiaries of OCH, for purchase consideration of R1 billion (the "**Third Oakbay Offer**").

78. For context, all of OCM's assets were pledged as security and the corresponding debt would need to be settled as part of any deal. As a result, the proposed consideration of R1 billion would have left a shortfall of approximately R1.5 billion that Glencore would have needed to fund.

79. Glencore considered the Third Oakbay Offer but was not prepared to fund the significant shortfall – as a result, the offer was declined.

80. At a meeting held on 26 November 2015, I informed Mr A Gupta that the offer had been declined.

81. After Glencore/OCH had declined the Third Oakbay Offer, Glencore considered its options regarding OCM, which at that stage consisted of letting the BRPs put the Mine into liquidation (i.e. by withdrawing the funding being provided by Glencore) or providing further funding to keep the Mine operational and so that the BRPs could take it out of business rescue. Glencore decided that the collateral damage of putting OCM into liquidation (for example, the impact on the Mine's employees) would have been too significant and it therefore decided to provide further funding and to continue operating the Mine.

The Section 54 Notices

82. At 14h00 on the same day I informed Mr A Gupta that the Second Oakbay Offer had been rejected (26 November 2015), a notice was issued by the DMR to the Koornfontein mine pursuant to section 54 of the Mine Health and Safety Act 29 of 1996 (a "**Section 54 Notice**"). That Section 54 Notice ordered the withdrawal of employees from the

underground mine and termination of the use of certain equipment.

83. In the subsequent four days, three further Section 54 Notices were issued to other mines in which Glencore had an interest: the Wonderfontein Colliery, the Tweefontein Opencast Mine and the Goedgevonden Colliery.

84. The reasons provided for the suspensions, as set out in the Section 54 Notices, included the following representative examples:

84.1. *"An operator for Excavo mining mini truck not having license and checklist with him while operating."*

84.2. *"Safety belt was not used by the Excavo mining truck operator..."*

84.3. *"...operator's seat was not adjusted and there were engine oil leaks..."*

84.4. *"Four dump trucks found without first aid kit..."*

84.5. *"Wheel Loader 2 with cracked windscreen since 21 November 2015."*

85. In light of these alleged issues, Glencore considered the Section 54 Notices to be unduly harsh and disproportionate, particularly in their demands for a complete cessation of all mining operations.

86. It is not common for multiple Section 54 Notices to be issued to a single operator so close in time, and they were accordingly of serious concern to Glencore.

87. In addition, inspectors from the DMR conducted inspections at certain of Glencore's mines, including over the weekend (which was itself unusual).

88. Glencore was of the view that the Section 54 Notices had been issued, and the inspections ordered, for the purpose of pressurising Glencore to support the Third Oakbay Offer.

NB

The meetings on 1 and 2 December 2015

89. I understand that the meeting requested by Minister Zwane in Switzerland on 1 December 2015, which took place at the Dolder Hotel in Zurich, Switzerland, was also attended by Mr Salim Essa (**"Mr Essa"**). Mr Glasenberg had not met Mr Essa before, and when he asked who Mr Essa was, he was told that he was an advisor to Minister Zwane.

90. I understand that Mr Glasenberg asked Minister Zwane about the Section 54 Notices but that Minister Zwane did not engage with him on this issue, instead noting that he wished to use the meeting to discuss Optimum.

91. I also understand that Mr Glasenberg informed Minister Zwane that Glencore was willing to provide sufficient funding to have OCM and OCH discharged from BR and that OCM would continue supplying Eskom with coal, but that Glencore would also be open to a sale at an appropriate price, to which Minister Zwane responded that he was sure Glencore could reach a deal with the Gupta family. Of course, any deal would also have needed to be acceptable to the BRPs.

92. Also on 1 December 2015, a meeting was held at Eskom's offices, attended by Mr Koko (representing Eskom), Mr Piers Marsden (representing the BRPs), Mr Blankfield and myself (representing OCM), at which we conveyed that the Third Oakbay Offer had been rejected, that Glencore would continue to support OCM, and that both OCM and OCH would be discharged from BR. Mr Koko indicated that he was happy with this and conveyed the message to Mr Anoj Singh (Eskom's Chief Financial Officer) as we left the meeting.

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93. When Mr Blankfield and I left that meeting and were in the parking area at Eskom, Mr Glasenberg contacted me to inform me that Minister Zwane had informed him that Mr Tony Gupta ("**Mr T Gupta**") wished to meet with him on 2 December 2015 in Switzerland to discuss a potential transaction, and that he wanted me to join him at the meeting. I immediately travelled to Switzerland to attend the meeting on 2 December 2015.

94. There were essentially three parts of the meeting on 2 December 2015, which also took place at the Dolder Hotel:

94.1. The first part of the meeting commenced mid-morning and was attended by Minister Zwane, Mr Essa, Mr T Gupta, Mr Glasenberg and me. It was opened by Minister Zwane, who noted the importance of securing employment at the Mine, expressed concern that the Mine should not enter a liquidation process and stated that the best outcome would be for Glencore and Oakbay to reach a deal.

94.2. Mr Zwane then left the meeting, following which Mr T Gupta and Mr Glasenberg discussed the Third Oakbay Offer. After negotiation of the terms of a potential transaction, a purchase price of R2.15 billion was agreed (i.e. over double the amount of the Third Oakbay Offer).

94.3. The third part of the meeting was held over lunch. Shaun Teichner (Glencore's General Counsel) joined to discuss the principal terms of the transaction and the implementation process (regulatory approvals, documentation etc). It was noted that the proposed transaction would need the approval of the BRPs, given that they were in control of OCH and OCM. Mr T Gupta also spoke about the rehabilitation trust funds. He

for the transaction. Ultimately, on 10 December 2015, a written Sale of Shares and Claims Agreement (the **"Sale Agreement"**) was concluded between OCH, Tegeta, Glencore International AG and Oakbay.

99. On 6 January 2016, the BRPs confirmed the sale of OCH's shares and requested regulatory consent to the transaction from the DMR.

100. The conditions precedent in the Sale Agreement were fulfilled on 8 April 2016 and the transaction was implemented.

101. On 31 March 2016, the BR plan of OCH was published and a notice to this effect was sent to all affected persons, notifying them of the meeting to vote on the BR plan. The BR plan was ultimately approved on 8 April 2016.

102. In the week beginning 4 April 2016, I received a telephone call from Mr Essa advising that Tegeta was short of an amount of R600 million for the purposes of payment of the purchase price. He requested that Glencore fund the shortfall of R600 million and said that Oakbay would get Eskom to pay the first R600 million from coal sales to Glencore. Glencore declined this request. At a meeting on 11 April 2016, Mr Marsden (one of the BRPs) was advised by Mr Howa that Tegeta was R600 million short and requested that Mr Marsden approach the consortium of banks requesting a bridging loan in an amount of R600 million in order to finance the shortfall on the purchase price. Mr Marsden arranged a meeting with the consortium of banks, whereafter Mr Marsden advised Mr Howa that the consortium of banks were not prepared to finance the shortfall of the purchase price.

103. The closing meeting for the Sale Agreement was held at the offices of Werksmans Attorneys, Johannesburg on 15 April 2016, at which the shares in OCH's subsidiaries were formally delivered to representatives of Tegeta. The transaction accordingly closed on 15 April 2016.

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104. OCH was discharged from BR on 15 April 2016 and OCM was discharged from BR on 31 August 2016.

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PEMBANI GROUP

Pembani Group Proprietary Limited
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Brian Molefe

Eskom Group Chief Executive Officer

16 October 2015

Dear Brian

Thank you for kindly availing yourself during your hectic schedule to engage myself and Kennedy Bungane on the Optimum matter.

As indicated, the Pembani Group ("PG") recently acquired most of Shanduka assets through a merger. One of the holdings in the merged entity is the Optimum Coal Holdings ("OCH") and its subsidiary Optimum Coal Mine ("OCM"). We have recently acquainted ourselves with the many legacy issues surrounding OCH, not least what appears to us, to be a rather difficult relationship between Eskom and Glencore, the largest shareholder in OCH. Post the merger, we learnt of the R2.1bn claim levelled on OCM by Eskom and the subsequent business rescue ("BR") status of both OCM and OCH.

As OCM inter alia, was a material consideration in the rationale for PG acquiring Shanduka, PG felt it was imperative to make a concerted effort to save OCM from BR and possible eventual liquidation, as we reasoned that BR or liquidation could not be in the interest of any of the other stakeholders (including but not limited to Eskom, and the miners) not least PG. To this end, on the 9th of October we entered into an agreement with the BR practitioners to acquire OCM with a view to continuing to fund its working capital as a going concern. Understandably, the respective PG and Shanduka boards would only allow irreversible conclusion of the PG acquisition of OCM provided a fair, reasonable and commercially sound new long term agreement could be reached between Eskom, PG and OCH. This was our primary purpose of urgently seeking your engagement last Wednesday.

I affirm my understanding that Eskom's firm position is that it is unable to enter into any discussion with PG that would vary the current OCM contract, nor vary the claim of R2.1bn on OCM and/or its guarantors. Further, that any engagement as regards a new contract, would only take place in 2018 and that the current BR and liquidation process should be left to run its course to a certain conclusion.

Directors:
PF Nhleko (Chairman), KG Bungane (CEO), PN Boynton, A Jeawon* C Kula
LM Nyhonyha, JL Parnensky, RJA Sparks, RJ Wessels*
Alternates:
MM Isaacs
Company Secretary:
MM Booysen
* Executive
September 2014

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We are hopeful and respectfully assume that should this position held by Eskom and/or the prevailing circumstances change, Eskom will in good faith engage PG, given the fact that PG is already a highly vested BEE shareholder in OCM and intended to acquire 100% of the issued capital in OCM.

Lastly, in light of the foregoing and with a view to still progressing PG's vision to consolidated certain coal producers and become one of the black controlled key suppliers to Eskom, we intend to acquire the Koorfontein mine from Glencore. Once again, this is a coal mine at virtually the end of its contract with Eskom (January 16). We seek your support to urgently enter into a new contract with Eskom which would ensure that on PG purchasing this coal mine, it may continue into the future as a credible supplier to Eskom on commercially sound and market related terms. We would be most grateful and appreciative to secure your support and assistance to engage Eskom on this matter at your earliest convenience.

Kind Regards

Phuthuma Nhleko

Chairman

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		Document Type	OCSDTE
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

TITLE OF THE SUBMISSION

Strategy to develop the current TOP Engineers programme into an Internal Consulting Unit that can provide world class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash

1. PURPOSE

It is proposed to develop the TOP Engineers programme into a fully functioning internal consulting unit that can provide world class management consulting services capable to resolving emerging company-wide risks as well as temporarily run critical line functions as the need arises. This will require fundamental transformation of the current engineering focused Top Engineer's program through:-

- Expanding the professional background of the internal consultants from engineering to finance, economics and other relevant disciplines.
- Forming an internal leadership team by transferring senior Eskom talent into the unit and external recruiting,
- Developing a knowledge base capable of storing frameworks, best practice approaches, and benchmark data relevant to all core elements of Eskom's business
- Setting up governance within Eskom that gives the unit responsibility for all external consulting and outsourcing work.
- Adapting the current concept to enable a rapid increase of number of internal consultants to fulfil Eskom's current and future needs

2. BACKGROUND

- Eskom annually spends between R2 Billion and R4 Billion for external consulting support directly and additionally outsources many tasks that in principle, a significant part should be performed by own staff complement.
- Given Eskom's current financial situation this amount needs to be reduced to an absolute minimum as soon as possible. The manner in which to achieve this target is to build up capacity and capability internally. The Internal Consulting Unit is a vehicle proposed for that purpose.

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- It will be essential that this unit has to have the management consulting as well as the professional competence to successfully deliver projects and line function work that Eskom currently seeks external support for.

- Eskom has already started to build such capacity with the TOP Engineers group. TOP Engineers are young high potentials within Eskom's organisation that combine a solid engineering background together with a one year management consulting skills training by the global leading consulting firm McKinsey.

- To date, 2 cohorts of TOP Engineers, roughly 30 individuals, have graduated from the programme and taken up consulting work within Eskom across all functions.

- With their consulting work, the TOP Engineers have generated significant impact. They have designed Eskom's future gas strategy, run various work streams of Eskom's BPP programme and rolled out Eskom's new gold standard for outages execution. Consequently, the TOP Engineers have saved Eskom approximately R 500 Million in external consulting fees.

- Further development of the Top Engineers program and its conversion into a capable Internal Consulting unit will require services of a suitable strategic partner with extensive skills and capabilities in the consulting world.

3. CHOICE OF STRATEGIC PARTNER

It is proposed that McKinsey & Co be chosen as a Strategic Partner for the development of the new Eskom Internal Consulting unit. McKinsey is a suitable due to the following reasons:

- McKinsey developed the original TOP Engineers Programme and has intellectual property in the design of the programme that Eskom cannot recreate in respect of:

  - Content of class room training programmes;
  - Reverse secondment approach to include Eskom employees as trainees on McKinsey's engagements within Eskom and at other clients;
  - Specific mentorship methodology to fast track development; and
  - Specific evaluation schemes to assess consulting readiness of engineers in training

- Additionally, McKinsey is the only leading global consulting firm capable of delivering this world class knowledge in South Africa, bearing in mind the following:

  - McKinsey is the largest global management consulting house;
  - McKinsey has the largest knowledge development spent in the industry;
  - McKinsey is the only global consulting company with a local presence of over 20 years, having transformed to a level 1 B-BBEE contributor

- Eskom has completed the majority of its management consulting projects with McKinsey support, giving McKinsey privileged insight into the business, culture, processes, and people of Eskom. This intrinsic insight cannot be offered by any other consultancy.

4. MOTIVATION FOR TYPE OF CONTRACTING

The development of the internal consulting unit is envisioned to be a 2-3 year journey. During this period the strategic partner will lead the internal consulting unit to deliver consulting projects focusing on accelerating efficiencies that can unlock immediate cash for Eskom as well as embedding long term efficiencies.

The strategic partner will make all of these projects accessible as training environment for Eskom's new internal consulting unit. The Strategic Partner will be paid for their consulting services as well as the development of the internal consulting unit out of the impact they generate during these projects and thus be self-funding. Total fee volume will depend on the benefits generated for Eskom.

Eskom's would be required approve work packages that will be earmarked for savings and the strategic partner will be required to define savings and capability-building targets/objectives early in each work package.

Impact would be measured separately to ensure transparency and close monitoring so that management can decide how to continue. The strategic partner would be contracted on a performance basis, where Eskom pays professional fees only if savings are achieved.

It is proposed that to kick-start the process, the BPP value package on optimization of Eskom's external spend currently with the commercial department and work underway on securitization of the EFC (Eskom Finance Company) for made available as first work packages into the project.

Other projects will be added as they are identified and as the program matures but will also be on the same fee structure.

5. FINANCIAL IMPLICATION

The strategic partner will be contracted in a manner that is self-funding and directly linked to their impact. This means that the professional fees in the project will be paid out of the cash in-flows generated by the project work, e.g., procurement savings.

It is anticipated that the positive financial impact of the work of the strategic partner will exceed their professional fees significantly. This means that the net financial impact of the above proposed development of the internal consulting unit will be positive.

Eskom	MEMORUNDUM	Unique Identifier	[illegible]-222
		Document Type	OCSDTE
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

It is Eskom's intention to negotiate zero payment from new cash. This will means that the strategic partner will only be paid once savings are realised in a manner that will first make-up required project set-up costs prior to kick-in of benefits sharing as per the table below. (Indicative Pricing)

	Impact (ZAR bn) Min	Max	Fees at risk	Success share	Fee (ZAR bn) Min	Max
Module procurement (18 - 24 months)						
Base component						
Consulting and initiation fee	-	-	0%		0,050	0,050
Expenses	-	-	0%		0,060	0,100
Success based component						
Success on capex and opex spent (~R 40 bn spent) @8-1	3,2	6,4	100%	10,00%	0,320	0,640
Module claim and counter claim management (24 months)						
Base component						
Consulting and initiation fee	-	-	0%		0,150	0,150
Expenses	-	-	0%		0,060	0,100
Success based component						
Success on capex and opex spent (~R 10 bn claims) @8-1	0,8	1,6	100%	5,00%	0,040	0,080
Module balance sheet optimisation						
Base component						
Consulting and initiation fee	-	-	0%		0,025	0,025
Expenses	-	-	0%		0,008	0,008
Success based component						
Sale of non-core property - agents commision	2,5	2,5	100%	2,00%	0,050	0,050
EFC Mortgage portfolio securitization	4,7	6,6	100%	1,20%	0,056	0,079
Sales of municipalities receivables	4	4,7	100%	2,00%	0,080	0,094
Forward sales of accounts receivable	9	10	100%	2,00%	0,180	0,200
Coal Monetisation*	9	9	100%	2,00%	0,180	0,180
Module "Additional financing"						
Base component						
Consulting and initiation fee	-	-	0%		0,025	0,025
Expenses	-	-	0%		0,008	0,008
Success based component						
Hybrid instruments	10	10	100%	1,20%	0,120	0,120
Discounting NERSA refund	8	8	100%	1,20%	0,096	0,096
Total	51,2	58,8			1,508	2,005
Thereoff fixed fees					0,386	0,466
					26%	23%
Thereoff risk based fees					1,122	1,539
					74%	77%

* On coal monetization there will additional fees born by the subsequent SPV of 100 bps

6. HUMAN RESOURCE IMPLIOCATIONS

In order to make this programme successful Eskom needs to be willing to commit its young high potentials as well as key senior management resources to the development of the new Internal Consulting Unit. In certain instances, internal resources will not be sufficient to fill all necessary positions and external recruiting of people with specific skills and experience will be necessary.

7. RECOMMENDATION

It is recommended that the strategy for the development of Eskom's Internal Consulting Unit be approved and that the Acting Group Executive: Technology &

Par

Eskom	MEMORUNDUM	Unique Identifier	222
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Commercial be authorised to put measures in place within Eskom's governance and commercial processes to secure services of McKinsey as a sole partner for the purpose of implementing the recommendation on the following parameters:

7.1 McKinsey be contracted in a manner that is self-funding and the project duration be limited to a maximum of 3 years;

7.2 The BPP value package on optimisation of Eskom's external spend, currently located within Group Commercial be used as base project to generation savings that will fund project set-up costs;

7.3 The development of packages relating to the unlocking of cash by optimising the balance sheet, the unlocking of funding sources through additional financing opportunities and claim management at Medupi, Kusile and Ingula, is hereby approved. These projects to be included at Eskom's sole discretion on a case by case basis depending on value to Eskom.

7.4 Other projects be added as they are identified and as the programme matures; and

7.5 That a Negotiating Team that will also serve as a Steering Committee for the development of Eskom Internal Consulting Unit be authorise under the Chairmanship of the Acting Group Executive: Technology and Commercial

Prepared By:

2015/05/13

EDWIN MABELANE
GROUP EXECUTIVE: TECHNOLOGY AND COMMERCIAL (Acting)

Approved

Acting CE
13.5.15

Eskom	MEMORUNDUM	Unique Identifier	2[illegible]
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		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

Recommended / Not Recommended

EDWIN MABELANE
GROUP EXECUTIVE: TECHNOLOGY AND COMMERCIAL (Acting)

Approved / Not Approved

BRIAN MOLEFE
Acting CHIEF EXECUTIVE

Date

COMMISSION OF INQUIRY INTO STATE CAPTURE

"BM21"

From: Saharaloan Saharaloan <financeloansahara@gmail.com>
Sent: Friday, 23 June 2017 14:26
To: undisclosed-recipients:
Subject: LOAN OFFER
Attachments: SAHARA PTY.pdf

Sahara Finance Loan (Pty),
No. 9 Bloe Street, Summerstrand, Port Elizabeth, 6000,
Eastern Cape.
South Africa.

23rd June 2017

Dear:Client.

Its my delight that I invite you to partake in our Sahara Loans at 5% interest rate.

We offer business loan, personal loans, vehicle finance, home loans, new home loan, further advance home loan, unsecured debt consolidation loan, debt consolidation and Agricultural Loans at guaranteed 5% interest rate.

View attachment for more detailed information!

IF YOU ARE INTERESTED IN THIS OFFER, KINDLY EMAIL sfinloan@gmail.com

***Blacklisted Individuals and Commission Earners may also apply.

Regards,

Mrs.Nicky Trevor.
Loan Services Controller
Direct Tel No: +27-61-139-1034 or 0611391034
Fax : +27- 86-216-9785
Email : sfinloan@gmail.com
Website: www.saharahousingfina.com

DISCLAIMER: The information in or attached to this e-mail message is confidential and may be ... to

Sahara Financial Services
No.9 Bloe Street Summerstrand,
Port Elizabeth, 6000,
Eastern Cape, South Africa.

II 1.1

155

Welcome To Sahara Loan Pty.

If you want to give your lifestyle a boost or have an unexpected expense to deal with, a Loan from Sahara Financial Services is the cost-effective way of making it happen.

Sahara Financial Services is flexible: You can borrow from R20, 000 to R40, 000, 000 and affordable repayment periods range from 6 months to 20years.

We offer a comprehensive range of personal loans, business loans, home loans and debt consolidation loans that can be adapted to suit you're changing needs and circumstances at 5% interest rate.

What you get

- Immediate access to your funds after approval
- Competitive interest rates
- Flexible repayment terms
- The ability to pay off your loan faster (extra payments reduce the capital amount of the loan)
- Easy approval if you require additional funds
- Your first repayment of the loan begins in three months after approval.

Sahara Loan Repayment Schedule

Loan Amount	Duration (Year)	Repayment Period	Loan Amount	Duration (Year)	Repayment Period	Loan Amount	Duration (Year)	Repayment Period
R20,000	2	R877.43	R20,000	3	R599.42	R20,000	5	R377.42
R50,000	2	R2,193.57	R50,000	3	R1,498.54	R50,000	5	R943.56
R100,000	3	R2,997.09	R100,000	4	R2,302.93	R100,000	6	R1,610.49
R150,000	3	R4,495.63	R150,000	5	R2,830.69	R150,000	7	R2,120.09
R300,000	4	R6,908.79	R300,000	6	R4,831.48	R300,000	8	R3,797.98
R400,000	5	R7,548.49	R400,000	7	R5,653.56	R400,000	9	R4,606.91
R600,000	6	R9,662.96	R600,000	8	R7,595.95	R600,000	10	R6,363.93
R800,000	7	R11,307.13	R800,000	9	R9,213.82	R800,000	11	R7,891.59
R1,000,000	8	R12,659.92	R1,000,000	10	R10,606.55	R1,000,000	12	R9,248.90

How to apply

Applying for a loan is quick and easy!

Businesses or Individuals interested in applying for a loan with Sahara Financial Services or who simply require more information. TO APPLY, simply SEND AN EMAIL with your ID Number, Full Names, Occupation, Monthly Income and Contact details to: (**sfinloan@gmail.com**) Call: +2761 139 1034.

Regards,

Nicky Trevor (Mrs.)
Senior Loan Manager

Nico Smith declares under oath in English:

"BM 22"

1.

I am an adult male with ID number 7112025079084, I am the HOD: Intelligence and Investigations employed by Combined Private Investigations (CPI), and I am based at CPI Head Office in Midrand Gauteng. My cell phone number is 0824612773.

I am an Afrikaans speaking male and have compiled this affidavit to the best of my abilities in English.

2.

I was in the South African Police Services for almost 19 years, of which the last 12 years of my SAPS career, was spent at the Organised Crime Unit of SAPS and the DPCI (Hawks).

I attended the following courses and workshops during my career in the South African Police Service: Detective Course; Informer Handling; Human Trafficking; Advanced Human Trafficking; Organized Crime; Anti- Corruption and Section 252A of the Criminal Procedure Act.

During 1999, I attended the First Detective Commanders Course at the Detective Academy at Silverton whereby I was nominated as the best student for the above-mentioned course.

During my Investigations at the Organised Crime Unit and the Hawks, I was commended by various Regional Magistrates and Judges for my investigations, presentation of cases and successes regarding syndicates as well as cell phone data analysis regarding syndicates.

3.

I have been employed by Combined Private Investigations (CPI) since 2011.

Combined Private Investigations (CPI) is a private corporate investigation company, specialising in the investigations of non-ferrous metal thefts, specifically focusing on syndicates targeting the electrical networks used by electricity supplying companies as well as the railway networks.

Nico Smith declares further under oath in English:

I will employ the following nomenclature in this affidavit:

- Brian Molefe will be referred to as Molefe
- Combined Private Investigations will be referred to as CPI.

On 15 May 2017, I received a mandate from (Eskom Group Executive Chairman) Mr Brian Molefe to conduct a comprehensive analysis on his cell phone data for the period of July 2015 to November 2016. This mandate came at the hand of Genrl Rakau Security Head of Eskom with the request that this investigation and analysis should be done.

The mandate given was the following:

- By using the State of Capture Report, Report No. 6 of 2016/2017, a detailed report and analysis should be made regarding allegations on Cell Phone data of Mr Molefe.
- By using the State of Capture Report, Report No. 6 of 2016/2017, make objective inferences based on the findings of the analysing.

Mr Molefe, ID number 6612285778086, gave a written application in terms of the Promotion of Access to Information Act NO. 2 OF 2000 (PAIA) and he submitted a sworn affidavit to this effect. Furthermore, he gave MTN written consent to process his request and to extract information pertaining to cellular number 0835552121 in terms of the said Act and to release the records to myself. (***Attached find Request for access to record of private body and affidavit as per Annexure A***).

During my last case whilst still at the HAWKS I have submitted cell phone analysis in the Supreme Court regarding my findings on cell phone data that was analysed by myself, whereby retired Judge, Faan Hancke took judicial notice of my analysis which also resulted in the conviction of the ten (10) accused.

Reference to case: Unreported matter St vs MA Mabusa and nine (9) other at Free State High Court, Bloemfontein (CASE: 40/2010) refers.

Nico Smith declares further under oath in English:

After receiving the Cell Phone data on number 0835552121, I proceeded to do the following:

1. I printed the "raw" data as received from MTN in PDF format.
2. I filed this data. This data is unedited and is still in its original format.
3. I have printed the State of Capture Report - Report No. 6 of 2016/2017.
4. Formatted the PDF data into Excel format for Notebook Analysis purposes.
5. I have edited data which I've filed separately for more user friendliness.

6.

Herewith my findings regarding pages 122,123 and 124 of The State of Capture report – Report No. 6 of 2016/2017:

1) According to page 123 in the State of Capture Report – Report No. 6 of 2016/2017 it is alleged that:

"5.100. For the period of 05 August 2015 to 17 November 2015, Mr Molefe can be placed in the Saxonwold area on 19 occasions. (sic)"

My inference and analysis will proof that this allegation is not correct.

Reference to the Cell Phone Number of Mr Molefe 0835552121:

- <u>05 August 2015 – Time period of cell phone signal in the Saxonwold area 09:17:57 to 09:41:52</u> (***Attached as Annexure B to this affidavit***):

  It is Factual that number 0835552121 was in the Saxonwold area during time-period as per data.

According to the Report no 6 of 2016/2017 it is clear that all these calls were accumulated as to be placed in the Saxonworld area and a wrong inference was made as to say that these calls place the number 0835552121 on 19 different occasions in the Saxonworld area. In fact, number 0835552121 was in the Saxonwold area and it should reflect as one occasion.

- 17 August 2015 – Time period of cell phone signal in the Saxonwold area 07:47:08 pm (***Attached as Annexure C to this affidavit***):

According to Report no 6 of 2016/2017 it is clear that this incident is also been deemed as to place number 0835552121 in the Saxonworld area.
It is Factual that Number 0835552121 made one call to 0825730878 whilst in Houghton and **NOT** in Saxonwold. Number 0825730878 was in the Saxonwold area.

- 18 August 2015 – Time period of cell phone signal in the Saxonwold area 06:22:15 pm to 06:33:18 pm (***Attached as Annexure D to this affidavit***):

It is Factual that number 0835552121 was in the Saxonwold area during time-period as per data.

- 23 August 2015 – Time period of cell phone signal in the Saxonwold area 09:48:50 am (***Attached as Annexure E to this affidavit***):

It is Factual that number 0835552121 was in the Saxonwold area during time-period as per data.

- 28 August 2015 – Time period of cell phone signal in the Saxonwold area 07:36:27 pm to 07:42:07 pm (***Attached as Annexure F to this affidavit***)

It is Factual that number 0835552121 was in the Saxonwold area during time-period as per data.

- 17 November 2015 – Time period of cell phone signal in the Saxonwold area 08:05:28 pm (***Attached as Annexure G to this affidavit***)

It is Factual that number 0835552121 was in the Saxonwold area during time-period as per data.

According to me and the inferences based on the Cell Phone Data of number 0835552121 the following conclusion can be made:

- Number 0835552121 was in the Saxonwold area only **FIVE (5)** times and **NOT** nineteen (19) times as alleged in the State of Capture Report – Report 6 of 2016/2017.
- Cell phone data should be analysed in context and with objectivity as the paramount principal. For Example:

  i. The routes, distances, traffic delays must always be considered when a person receives a cell phone signal for a period of time from a certain Cell Phone Base Station.

  ii. On data, there are different headings and in this particular case, the Originating Base Station, Originating Suburb, Terminating Base Station and Terminating Suburb plays a significant role as to where a cell phone receives (calling number) it's signal from and where the other cell phone (called number) receives it's signal from.

  iii. It is important to analyse the procedure or routine of the calling number prior and after the dates and times in question.

  iv. Time frames and amount of calls are cardinal factors to establish where a specific cell phone is.

7.

Further inferences regarding point number 5.101. page 124 of the State of Capture Report – Report 6 of 2016/2017 it depicts that there was contact between Mr Molefe and Mr Atul Gupta.

My inference is that there was no direct contact between the two, hence the data indicates a call forwarding action. Mr Atul Gutpa 0716131583 phoned Molefe on 2015/10/16 at 01:30:13 PM, the call forwarding action diverted the call to Molefe's voicemail. (***Attached as Annexure H to this affidavit***).

8.

I have formatted the PDF data onto an Excel Spread Sheet, thereafter I have imported the data onto Analyst Notebook 8.9. I have filtered the non-essential numbers to focus on the numbers of the

Nico Smith declares further under oath in English: 161

subjects in question. It is clear that there is no linkage (in other words, direct contact) between Atul Gupta and Molefe on 2015/10/16 at 01:30:13 PM. (***Attached as Annexure I - Analyst Notebook 8.9***).

9.

As indicated in the State of Capture Report – Report 6 of 2016/2017, there was a clear and indicative contact between Mr Molefe and Nazeem Howa and Rajesh Kumar Gupta during the period between July 2015 and November 2016. (***Attached as Annexure J - Edited Colour Coded MTN Cell Phone Data – 0835552121, Mr Brian Molefe to this affidavit***).

This is all that I can declare.

I know and understand the contents of this statement.

I have no objection in taking the prescribed oath.

I consider the prescribed oath as binding on my conscience.

Nico Smith

MIDRAND 2017/05/24 11:00

7043887 SGT

(SIGNATURE) COMMISSARIS VAN EDE
(SIGNATURE) COMMISSIONER OF OATHS
L.F. LEDWABA

FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS
40 SMUTS & ORALLE CLOSE

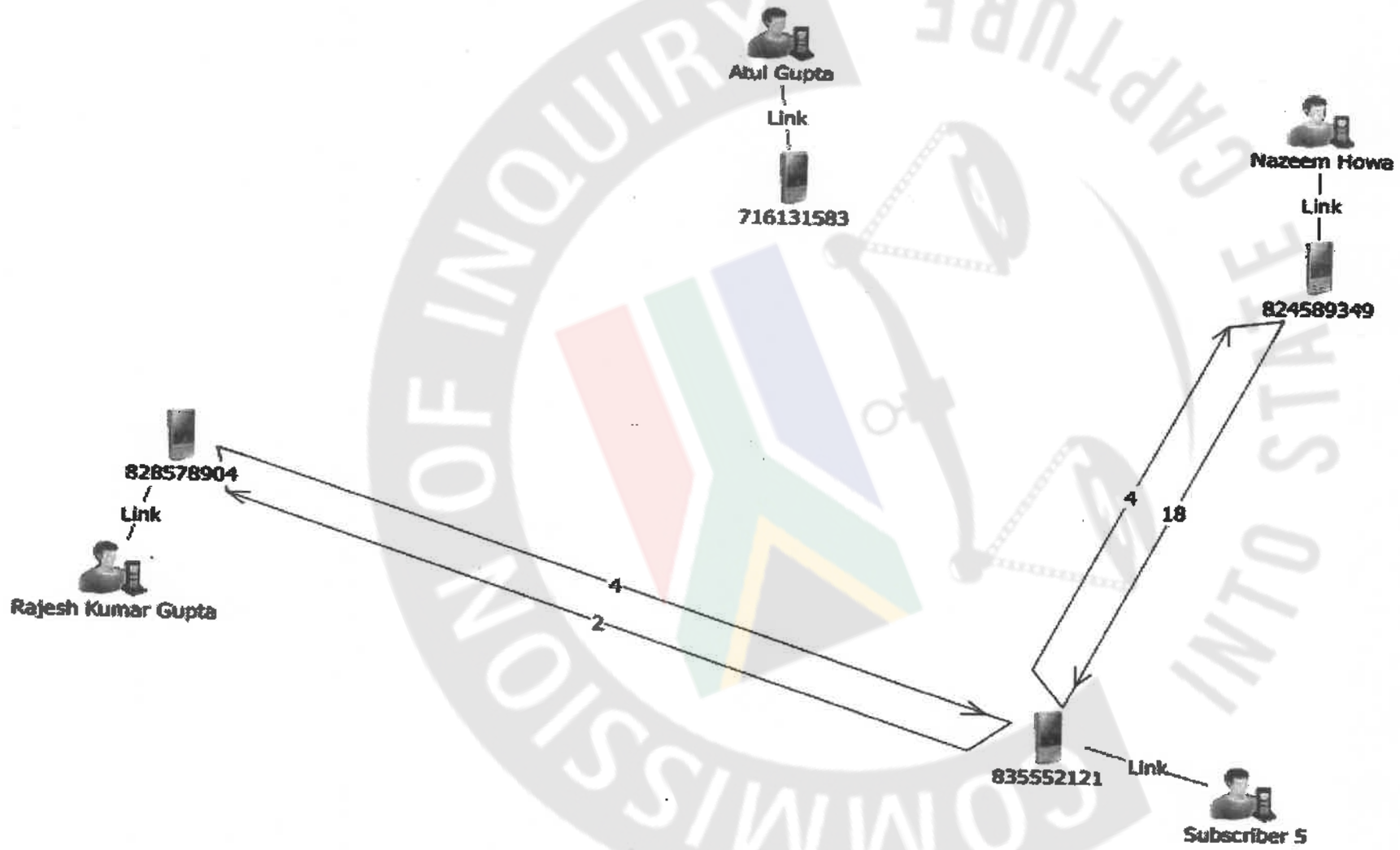
BUSINESS ADDRESS (STREET ADDRESS)
HALFWAY GARDENS, MIDRAND.
SGT.

SA POLISIEDIENS
SA POLICE SERVICE

SOUTH AFRICAN POLICE SERVICE
INFORMATION MANAGEMENT CENTRE
MIDRAND
2017-05-24
SUID AFRIKAANSE POLISIEDIENS

U14-VK-1156

Analyst Notebook 8.9 as per Excel Import from MTN Data



"BM 23"

RESOLUTION

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

1. The current Eskom Pension and Provident Fund (EPPF) rule that Employees may proceed on retirement from age 50 with 10 years' service, remains applicable.

2. In cases where Executive Director's (appointed on fixed term contracts) decide to take early retirement and there is a shortfall regarding the EPPF 10 years' service rule, Eskom shall:

   i. Bridge the gap to make up for the 10 years'

   ii. Waive penalties applicable to early retirement

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

Dr B S Ngubane

CHAIRMAN: ESKOM

Ms V J Klein

CHAIRPERSON: PEOPLE AND GOVERNANCE COMMITTEE

COMMISSION OF INQUIRY INTO STATE CAPTURE

"BM 24"

Eskom
Pension and Provident Fund

Member's guide to benefits

A member of the Eskom Pension and Provident Fund (The Fund) participates in a defined benefit pension fund. This means that the member will retire or withdraw in terms of certain defined formulae detailed in the rules of the Fund. For example, when a member retires, he/she will receive a pension from the Fund that will depend largely on the number of years service to the company and salary at retirement. Should you however withdraw before retirement, the benefit that you will receive will be based on accrued value as determined by the formula.

As a member of the Fund you will receive regular benefit statements that will give you an estimate of your pension at retirement in present value every year.

This brochure aims to set out the rules of the Fund. It is in a member's best interest to read this brochure and to contact the Fund if there are any questions or concerns.

1. MEMBERSHIP OF THE EPPF

All permanent employees of employers that participate in the Fund, who are younger than the normal retirement age (65), and pay monthly contributions to the Fund, are deemed to be members of the Fund.

Pensioners who receive a monthly pension from the Fund are also part of the membership of the Fund.

2. CONTRIBUTIONS TO THE FUND

The member and employer contribute fixed percentages of salary as monthly contributions to the Fund.

Members

1. Members contribute 7,3% of their pensionable salaries to the Fund every month.

2. However, due to historical reasons, there are still a few members who contribute 4 % or 6 % of their pensionable salary.

3. Former non-contributory members, who were in service before the 1st of August 1964, now contribute 7.3% of their basic salaries. For the calculation of retirement or death in service benefits, the pensionable salary will be increased by a factor of 25%.

Note: 4 % and 6 % members can no longer choose to convert to 7.3% membership.

Employer contributions

The Employers contribute 13,5% of the members' pensionable salaries on behalf of the members.

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1159

ADDITIONAL CONTRIBUTIONS

1. Additional voluntary contributions

A member may elect to contribute additional amounts into the Fund in order to boost retirement benefits. These extra contributions will be administered in the Additional Voluntary Contribution Scheme and the member will be able to access the money on withdrawal or retirement.

Lump sum amounts, such as transfers from previous employers' retirement funds, can also be invested in the Scheme.

The member's contribution may vary from month to month, with no limit to the amount. However, the maximum tax deduction that SARS will allow is R 1 800 per annum, which is treated as an arrear contribution to a pension fund, implying that any additional contribution more than R1 800 per annum, will be made from after tax money. The Fund issues tax certificates at the end of February every year, which need to be submitted to the Receiver of Revenue, in order to qualify for a tax deduction. Balance certificates are also issued, to show the growth for the year.

Note: The application forms are available from the employer's HR department or on the Fund's website.

(For more details on the Fund's Additional Contribution Scheme, please see item 5.)

2. Performance bonus contributions

Contributions to the Fund are also deducted when performance bonuses are paid. Members pay 7,3% of their performance bonuses as a contribution and the employer pays 13,5% on behalf of the member. These contributions are invested for the member in the Performance Bonus Contribution Scheme.

3. BENEFITS OF THE FUND

Benefits are defined in terms of the Rules of the Fund.

3.1 BENEFITS PAYABLE ON WITHDRAWAL

Withdrawal benefits refer to benefits payable upon resignation, dismissal or abscondment.

The Minimum Individual Reserve payable to a member must be <u>the greater</u> of the Accumulated Contribution or the Fair Value.

Accumulated Contribution - the Fund calculates the capital value of the member's accumulated past contributions (the total amount of money the member has paid into the Fund) plus interest. The rate of interest after December 2001 must compare reasonably with the actual rate of investment return that the Fund has earned on its assets.

Fair Value – the Fund must calculate the value of the "accrued deferred pension", which is the amount of pension that a member has earned for past service up to the date of leaving the Fund, based on the member's salary at the date of leaving the Fund.

The capital value of this amount is calculated using financial assumptions, including items such as the rate of future salary increases and future investment returns.

The Pension Funds Act prescribes the assumptions used in calculating the above benefits.

3.2 RETRENCHMENT

The Minimum Individual Reserve payable to a member must be the greater of the Accumulated Contribution, or the Fair Value, or the Retrenchment benefit.

Retrenchment benefit - Three times the member's own contributions (the total amount of money the member has paid into the Fund).

Note: The accumulated balances in the Additional Voluntary Contribution and Performance Bonus Contribution Schemes are added to the above withdrawal benefits.

Note: When a member withdraws from the Fund, only the first R 1 800 is tax free, the balance is taxable at the member's marginal tax rate.

Options on withdrawal

The following options are available on withdrawal:

a) Transfer the full benefit to an approved pension fund (such as a new employer's fund), retirement annuity (individual pension plan bought from an insurer where the member keeps making contributions) or a preservation fund (bought from an insurer to preserve benefits, but no future contributions allowed).

b) Take the maximum tax-free amount (R1 800) and transfer the balance to an approved pension fund or a retirement annuity.

c) Take the full benefit in cash.

d) Take R1 800 tax-free and defer the remainder of the actuarial value into the Fund's Deferred Pension Scheme. (For full details about the Deferred Pension Scheme, please see item 4.)

e) Transfer the full actuarial value into the Fund's Deferred Pension Scheme.

f) Withdraw the accumulated contributions and defer the remainder of the actuarial value into the Fund's Deferred Pension Scheme (Retrenchment only).

Note: The accumulated balances in the Additional Voluntary Contribution and Performance Bonus Contribution Schemes are utilised as additional withdrawal benefits.

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1161

3.3 RETIREMENT BENEFITS

The following retirement options are available:

Note: all retirement benefits are calculated on the following basic formula:

***Final Average Emoluments x Service in months x pension rate**

(*Final Average Emolument = Final Average Pensionable Salary)

a) Normal retirement

All members must retire from the Fund at the end of the month in which they reach the age of 65.

b) Early retirement with penalty

A member may elect to take early retirement between the ages of 55 and 63, but penalties apply: The member's annual pension is reduced by 3.9 % per annum or .325 % per month until age 63. The employer's approval is not required.

c) Early retirement without penalty, without potential service.

A member between the ages of **50 and 63** may go on early retirement without penalty and without potential service by mutual agreement with the employer, where the employer will pay for the cost of early retirement (i.e. the penalty). Members between the ages of 50 and 55 need to have contributed to the Fund for a minimum of ten years in order to qualify for this benefit.

A member between the ages of **63 and 65** may retire without penalty and without potential service with no reduction in benefits or costs to the employer. The employer's approval is not required.

d) Early retirement with separation benefits.

A member between the ages of 50 and 65, who has contributed to the Fund for a minimum of 10 years, may go on early retirement with separation benefits and without penalties, by mutual agreement with the employer.

The member will be granted an additional 10% of his actual service as part of his benefits.

The employer will carry the cost of early retirement (including the 10 %) and any extra service that might be granted by the employer over and above the 10 %.

e) Retirement due to ill health

A member, who is permanently physically or mentally disabled and is granted an ill-health retirement benefit in terms of the Rules of the Fund, will, in addition to actual service, receive an additional 75 % of potential service up to age 65. There is no age or minimum service requirement.

U14-VK-1162

Options on retirement

A member may:

- Take a monthly pension for life plus a maximum of one-third lump sum, or
- Take a monthly pension for life plus the maximum tax-free lump sum (not more than one third), or
- Take a monthly pension for life plus any nominated amount of lump sum (not more than one third), or
- Choose not to take a lump sum, but to receive an increased monthly pension for life.

Note: The accumulated balances in the Additional Voluntary Contribution and Performance Bonus Contribution Schemes are utilised as additional retirement benefits.

3.4 DEATH BENEFITS

All death benefit claims are investigated and adjudicated subject to the provisions of Section 37C of the Pension Funds Act, which deals with the distribution of lump sum death benefits.

In order to arrive at a decision on the distribution of a death benefit lump sum, the Board of Trustees will consider, inter alia, the dependants' ages, extent of dependency, relationship, the amount of the death benefit lump sum and financial acumen may be taken into account. Dependency will be confirmed by conducting interviews with family, friends, tribal authorities, colleagues and so on.

Death in service with dependants

Death benefit lump sum

If a member dies in service and is survived by a spouse and/or eligible children and/or other dependants, the following death benefit lump sums are payable:

a) Twice the member's annual pensionable salary plus the accumulated values in the Additional Voluntary Contribution- and Performance Bonus Schemes will be paid to the surviving dependants as a lump sum death benefit.
b) In case of minor children, their portion of the death benefit will be invested in the Fund's instalment lump sum account or in an external trust account until age 21.
c) The benefit will be divided per household if there is more than one household.

Note: Eligible children refers to the member's own children under the age of 21, and/or legally adopted children, or a disabled child over the age of 21.

Monthly pension

If a member dies in service and is survived by a spouse, and/or eligible children, the following monthly pension benefit is payable:

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An annual pension will be calculated (including potential service to age 65 years). The spouse qualifies for 60% of this benefit, while a spouse with one eligible child qualifies for an additional 30% of the benefit. (This amounts to 90% of the benefit in total.) If the spouse has two or more children, the household then qualifies for 100% of the benefit.

Notes: 1) The benefit will be divided if there is more than one household.
2) A disabled child receives a pension for life.

Death in service without dependants

If a member dies without leaving a surviving spouse, eligible children, or any other dependants, the greater of two death benefit lump sum calculations as shown below will be payable to his /her estate:

a) Twice the member's annual pensionable salary plus the accumulated values in the Additional Voluntary Contribution and Performance Bonus Schemes.

b) Final average salary multiplied by the member's actual service, divided by 120 plus once the member's annual pensionable salary, plus the accumulated values in the Additional Voluntary Contribution and Performance Bonus Schemes.

Death in service with a live-in partner relationship

If a member dies in service and the Fund receives a claim from a live-in or common-law partner, the Fund will apply the dominant/servant relationship test where the partner who was a member of the Fund was dominant in the relationship, with the surviving partner substantially dependent on the deceased. In such an event, the surviving partner may be considered to benefit from the lump sum death benefit.

If the surviving partner was not financially dependent on the deceased, but was nominated on the beneficiary nomination form, he/she may be considered for a portion of the lump sum death benefit.

Death after retirement with dependants

Death benefit lump sum

A lump sum of R3000 is payable to the surviving spouse, and/or eligible children and / or other dependants, if any.

Monthly pension

If a pensioner dies and is survived by a spouse, and/or eligible children, the Fund will recalculate a monthly pension based on the original value of the annual pension at retirement (disregarding the amount already paid as a lump sum at retirement) plus all increases the pensioner received while on retirement.

The spouse will receive 60 % of the recalculated pension for life, even if he/she remarries.

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Plus

A further 30 % for one eligible child or 40 % for two or more eligible children until they turn 21 years.

If a pensioner dies and is survived by one eligible child only (no surviving spouse), the child will receive 60 % of the recalculated monthly pension until age 21.

If a pensioner dies and is survived by two or more children, they will receive 100% of the recalculated monthly pension until age 21.

Death after retirement without dependants

Death benefit lump sum (payable to the estate)

A lump sum of R3000.

Plus

The greater of the excess benefit (if any) as defined below:

a. Twice the member's annual pensionable salary at the time of retirement less total benefits already paid (lump sum plus monthly pension); or

b. The member's annual pensionable salary at the time of retirement plus 10 % of the member's final average salary for each completed year of pensionable service, less total benefits already paid (lump sum plus monthly pension paid).

4. DEFERRED PENSION SCHEME

General conditions

When a member resigns or is granted a retrenchment benefit, he/she has an option to defer his/her transfer value into the Deferred Pension Scheme.

The value of the deferred benefit is calculated by using the retirement formula in the Rules.

The following conditions are applicable:

a) The decision to defer is irrevocable once made.
b) No further additional contributions are allowed into the deferred scheme.
c) Interest, compounded on a monthly basis is added to the member's value in the deferred scheme at an interest rate reviewed by the Board of Trustees on a quarterly basis.
d) The Board of Trustees may declare bonuses on the Scheme, depending on the Fund's investment performance.
e) The member can only retire from this Scheme at any time from age 55, but not later than age 65.

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Note: Updating personal and address details are very important, as the Fund sends out a statement to show the member's balance in the Scheme in March of every year.

Benefits applicable to the Scheme

Retirement benefits

At the date of the commencement of the pension a member may elect to receive a lump sum in cash of up to one-third of the accumulated value (transfer value, interest and bonuses, if any) in the Scheme. The balance shall be utilised to provide a monthly pension for life.

The member may choose instead not to take a lump sum, but to receive an increased monthly pension.

Death benefits

All death benefit claims are investigated and considered for payment subject to the provisions of Section 37C of the Pension Funds Act, which deals with the distribution of lump sum death benefits.

In order to arrive at a decision on the distribution of a death benefit lump sum, the Board of Trustees will consider, inter alia, the dependants' ages, extent of dependency, relationship, the amount of the death benefit lump sum and financial acumen. Dependency will be confirmed by conducting interviews with family, friends, tribal authorities, colleagues and so on.

Death before retirement

If a member dies before retirement from the Scheme, the accumulated, of the members, value is paid as a lump sum to the dependants, or to the member's estate if there are no dependants.

No monthly pension is payable to the dependants.

Death after retirement with dependants

If the member is survived by the spouse he/she had at the date of the commencement of the pension, a life-long pension equal to 60% of the member's monthly pension at date of death is payable.

If there are eligible children, a pension is payable to them until age 21.

Death after retirement without dependants

If the member does not have dependants, the pension ceases on the death of the member.

If the member re-marries after the commencement of the pension, the new spouse is not entitled to a monthly pension from the Scheme upon the death of the member.

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5. ADDITIONAL VOLUNTARY CONTRIBUTIONS SCHEME

In order to enhance their pension benefits at retirement, members can contribute additional amounts to the Fund's Additional Voluntary Contribution Scheme.

Benefits from any other approved retirement arrangement (such as the withdrawal benefits from a previous employer) may be transferred to this Scheme when joining the EPPF.

Members can make lump sum payments into the Scheme at any time.

Members can also contribute on a monthly basis to the Scheme and may increase or decrease their monthly contributions at any time.

In terms of the Pension Funds Act, contributions are not refundable until termination of service and members may not take a loan from the Scheme. No other person or institution may claim the member's monies from this Scheme.

Monthly and lump-sum contributions up to a maximum of R1 800 per annum are currently tax deductible.

The R1 800 per annum tax deduction is over and above the amount deductible in respect of normal pension fund contributions and any contributions towards a retirement annuity fund.

A tax certificate in respect of contributions to the Scheme, together with a certificate reflecting interest and bonuses earned, is issued annually in February.

If a member elects not to defer the pension benefits upon withdrawal, the accumulated value in the Scheme will be refunded to the member.

At retirement the Fund will convert the accumulated value in the Scheme into a pension. A member can elect to take one third of this amount as a lump sum, or choose not to take a lump sum in order to receive a bigger amount as a monthly pension.

As for the normal pension, the additional pension benefit is guaranteed for life and the life of the member's spouse and for any children as long as they are eligible.

The Board of Trustees reviews the interest rate on this and the Fund's other schemes, on a quarterly basis.

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6. HOW TO CLAIM BENEFITS

Benefit application forms are hosted on the Fund's website (www.eppf.co.za) and alternatively are available at local Human Resources Offices or the Fund's offices.

Important Notes to speed up payment of benefits:

1. Ensure that your personal details are always updated on your personal file at HR.
2. Ensure that you are registered with SARS as a taxpayer.
3. Ensure that benefit application forms are correctly and fully completed.
4. Ensure supporting documents are original certified copies and are attached to the benefit application forms.
5. Ensure that you understand the available options on the application forms, as well as the implications of the options elected. (Contact HR for information in this regard.)
6. If applicable, attach certified copies of divorce orders and the settlement agreements.
7. Ensure that your dependants know how to claim benefits.
8. Ensure that your beneficiary nomination form is always updated and kept at HR.

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom "BM 25"

EXECUTIVE EMPLOYMENT CONTRACT

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EMPLOYMENT CONTRACT

entered into between

ESKOM HOLDINGS SOC LIMITED

(Registration No. 2002/015527/30)

and

BRIAN MOLEFE

(Identity No. 6612285778086)

COMMISSION OF INQUIRY INTO STATE CAPTURE

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WHEREBY IT IS AGREED AS FOLLOWS :

1. **INTERPRETATION AND PRELIMINARY**

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

1.1. words importing -

1.1.1. any one gender include the other gender;

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

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

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

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

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

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

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

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

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

1.2.7. "**Commencement Date**" means 1 October 2015;

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

1.2.9. "**Executive**" means Brian Molefe (Identity No. 6612285778086);

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

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

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

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

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

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

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

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

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

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

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

1.8. where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in this interpretation clause;

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

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

2. APPOINTMENT OF EXECUTIVE

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

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

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

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

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

3. PERIOD OF EMPLOYMENT

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

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

3.3. In dealing with the Executive's conduct, performance or any other issue arising from or in relation ot the Executive's employment with the Company, the Company shall be guided by, *inter alia*, the Company's disciplinary, performance management, grievance and other procedures applicable from time to time, with the Board specifically having the discretion to

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

4. **EFFECT OF TERMINATION OF EMPLOYMENT**

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

5. **SUSPENSION OF EMPLOYMENT**

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

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

5.2. be entitled to his Remuneration Package.

6. **DUTIES OF EXECUTIVE**

The Executive shall -

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

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

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

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

6.2.2. which competes with the Business.

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

6.2.3. his having *bona fide* financial interests in any business, trade, undertaking or concern which does not directly or indirectly compete with the Company and/or any Group Company and which has been disclosed to the Company in writing and/or after disclosing his intention to do so to the Company in writing, his accepting appointment as a non-executive director of or his acquiring a financial interest in any such business, trade, undertaking or concern and devoting a reasonable amount of time to such financial interests and directorships, provided that no such interests of or activities by the Executive are prejudicial to or adversely affect the performance of his duties hereunder; and/or

6.2.4. his holding shares (including derivatives) in any company the shares of which are listed on a recognised stock exchange if the shares owned by him (including indirectly through any other Entity) do not in the aggregate constitute more than 5% (five per cent) of any class of the issued share capital of such company; and/or

6.2.5. his being an officer of or holding shares in the Company and/or any Group Company;

6.3. obey the orders and directions of the Board and use his utmost endeavours to protect and promote the Business and interests of the Company and the Group Companies and to preserve their reputation and goodwill;

6.4. be true and faithful to the Company and all Group Companies in all dealings and transactions whatsoever relating to their business and interests; and

6.5. submit to the Board or to any person nominated by it, such information and reports as may be required of him in connection with the performance of his duties and the Business.

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7. **REMUNERATION**

7.1. As remuneration for his services hereunder, the Company shall pay to the Executive a total annual guaranteed remuneration package of R7 656 000.00 (seven million six hundred and fifty six thousand rand) ("**Remuneration Package**"), less tax and other lawful deductions. The specific structure of the Executive's Remuneration Package will be agreed upon by the Company and the Executive as soon as possible after the Signature Date. The salary element of such amount shall be paid in 12 (twelve) equal monthly instalments and directly into the Executive's bank account monthly in arrears.

7.2. The Remuneration Package referred to in clause 7.1 shall be subject to annual review by the Company's remuneration committee in April of each year.

8. **SHORT TERM INCENTIVE SCHEME**

8.1. The Executive will be entitled to participate in the Company's short term incentive scheme in accordance with the rules applicable thereto from time to time.

8.2. The payment of any short term incentive will be taxable in the hands of the Executive but will not form part of the Executive's pensionable remuneration.

9. **LONG TERM INCENTIVE SCHEME**

9.1. The Executive be entitled to participate in the Company's long term incentive ("**LTI**") scheme in accordance with the rules applicable thereto from time to time. The broad principles of the LTI scheme have already been furnished to the Executive.

9.2. The payment of any LTI will be taxable in the hand of the Executive but will not form part of the Executive's pensionable remuneration.

9.3. In the event of the vesting date occurring beyond the specified term of the contract and the contract terminating on the Termination Date, all such granted values will be deemed to have accrued on the Termination Date and will be calculated as part of the final payment to you. Insofar as vesting after the specified term of the contract is dependent on targeted performance criteria the performance will be deemed to be "*on target*". Such final payment shall be fully inclusive of any amounts owed to you in terms of Eskom's Long Term Incentive Scheme rules.

9.4. On resignation by mutual agreement all Grants allocated will be payable on a pro-rated basis.

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10. **PENSION AND PROVIDENT FUND**

10.1. The Executive shall continue as a member of the Eskom Pension and Provident Fund or any other such fund established or participated in by the Company from time to time, subject to the rules thereof.

10.2. The Company shall pay the Executive's monthly contributions to the fund on behalf of the Executive, monthly in arrears, the cost of which forms part of the Executive's Remuneration Package contemplated in clause 7 above.

11. **MEDICAL AID**

11.1. The Executive shall continue as a member of the Company's Medical Aid Scheme or any other medical aid scheme that the Company may contract with from time to time, subject to the rules and regulations of that scheme.

11.2. The Company shall pay the Executive's monthly premiums to that scheme on behalf of the Executive, monthly in arrears, the cost of which forms part of the Executive's Remuneration Package contemplated in clause 7 above.

12. **GROUP LIFE ASSURANCE AND FUNERAL BENEFIT**

12.1. The Executive shall continue to be entitled to Group Life Assurance and Funeral Benefit Cover, subject to the rules and regulations applicable thereto from time to time.

12.2. The Company shall pay the Executive's contribution thereto on behalf of the Executive, monthly in arrears, the cost of which forms part of the Remuneration Package contemplated in clause 7 above.

13. **ADDITIONAL BENEFITS**

13.1. The Executive shall be entitled to the following additional benefits which are in addition to the Executive's Remuneration Package contemplated in clause 8 above :

13.1.1. **Bank Fleet Card**

13.1.1.1. The Executive shall be entitled to use the Company's Bank Fleet Card, in order to conduct his duties and responsibilities for the

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Company, the use of which is governed by the Company's rules a policies applicable thereto from time to time.

13.1.1.2. The Executive shall be responsible for any taxes payable by him, in respect of any taxable personal benefit which he derives therefrom.

13.1.2. **Financial/Tax Planning Fees**

13.1.2.1. The Executive shall be entitled to receive both financial and tax planning advice, the reasonable costs of which will be borne by the Company in accordance with the rules and policies applicable thereto from time to time.

13.1.2.2. The Executive shall be responsible for all and any tax consequences arising therefrom.

13.1.3. **Personal Security**

13.1.3.1. The Company is desirous of ensuring the safety of the Executive and the security of the Executive's residence.

13.1.3.2. The Company will bear the reasonable costs associated with the Executive's home security system, the installation and maintenance thereof, the monthly subscription to a security company, guards, vehicle tracking and armed response, in accordance with the rules and policies of the Company applicable thereto from time to time.

13.1.3.3. The Executive shall be responsible for all and any tax consequences arising therefrom.

13.1.4. **Telephone Services**

13.1.4.1. The Company will bear the costs of the Executive's telephone that is utilised for business purposes at the residence of the Executive and in accordance with the rules and policies of the Company applicable thereto from time to time.

13.1.4.2. The Executive is issued with a cell phone and the Company will bear the business usage costs thereof in accordance with the Company's rules and policies applicable thereto from time to time.

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13.1.4.3. The Executive shall be responsible for any taxes payable by him, in respect of any taxable personal benefit which he derives therefrom.

14. ANNUAL LEAVE

The Executive shall continue to qualify for annual leave in accordance with the Company's annual leave policy. The Executive acknowledges that he has had sight of that policy.

15. SICK LEAVE

The Executive shall continue to qualify for sick leave in accordance with the Company's sick leave policy. The Executive acknowledges that he had sight of that policy.

16. CONFIDENTIALITY

16.1. In performing his duties and responsibilities with the Company and/or any Group Company, the Executive will have access to non-public information or materials describing or relating to the Company and/or any Group Company, its clients and/or third parties to whom the Company and/or any Group Company has a duty of confidentiality (the "**Third Parties**") including, but not limited to, materials describing or relating to the business, affairs, processes, trade secrets, client lists, trade connections, policies and/or procedures of the Company and/or any Group Company, its clients and/or the Third Parties; formulae, strategies, methods, processes, computer materials (including but not limited to source or object codes, data files, computer listings, computer programs and other computer materials regardless of the medium in which they are stored), and/or other confidential information of the Company and/or any Group Company, its clients and/or the Third Parties (the "**Confidential Information**").

16.2. With respect to such Confidential Information, the Executive agrees that during his employment by the Company and thereafter in perpetuity, regardless of the reason for the termination of his employment, he shall:

16.2.1. hold the Confidential Information in strict confidence and will not, nor will he permit any other person to, copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give and/or disclose the Confidential Information to any unauthorised person;

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16.2.2. take all reasonable steps to minimise the risk of disclosure of the Confidential Information to unauthorised persons, and to ensure the proper and secure storage of any such Confidential Information;

16.2.3. not, during his employment by the Company or thereafter, use for his own benefit or for the benefit of any other person or divulge or communicate to any person or persons, except to those officials of the Company and/or any Group Company whose province it is to know same, any of the Company's or such Group Company's secrets or any other Confidential Information which he may receive or obtain in relation to its affairs or its clients.

16.3. Upon the termination of his employment for any reason whatsoever, the Executive shall return to the Company any documents, papers and other materials relating to the Company or obtained or developed in the course of his employment by the Company and/or whilst providing services to any Group Company or containing or derived from the Confidential Information in his possession, and all copies thereof.

17. INVENTIONS, DISCOVERIES, COPYRIGHT AND DOCUMENTS

17.1. Any discovery or invention or secret process or improvement in procedure made or discovered by the Executive in the course and scope of his employment by the Company in connection with or in any way affecting or relating to the Business or capable of being used or adapted for use by the Company and/or any Group Company or in connection with its business shall be disclosed to the Company and/or any Group Company and shall belong to and be the absolute property of the Company and/or any Group Company or any other company nominated by it.

17.2. The Executive shall, if and when required by the Company and/or any Group Company, apply or join with the Company and/or any Group Company concerned at its expense in applying for Letters Patent or other equivalent protection in the Republic of South Africa or in any other part of the world for such discovery, invention, process or improvement and shall at the expense of the Company and/or any Group Company concerned execute all instruments and do all things necessary for vesting the said Letters Patent or other equivalent protection in the name of the Company and/or any Group Company as sole beneficial owner or in the name of such other company as the Company and/or Group Company may nominate.

17.3. Insofar as may be necessary the Executive hereby assigns to the Company and/or any Group Company the copyright in all present and future works eligible for copyright, including, without

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limitation, literary or artistic works or software programmes of which he may be the author, which works were or are created, compiled, devised or brought into being during the course and scope of his employment by the Company and/or whilst providing services to any Group Company. No consideration shall be payable by the Company to the Executive in respect of this assignment.

17.4. All reports, manuals, financial statements, budgets, indices, research papers, letters or other similar documents (the nature of which is not limited by the specific reference to the aforegoing items) which are created, compiled or devised or brought into being by the Executive or come into the Executive's possession during the course and scope of his employment by the Company (including whilst providing services to any Group Company) and all copies thereof will be the property of the Company and/or any Group Company and, upon the Termination Date or earlier if required by the Company and/or any Group Company, such documents and all copies shall be returned to the Company and/or any Group Company.

18. STIPULATIO ALTERI

Without derogating from the generality of clause 2.3 above, the undertakings given by the Executive in clauses 16 and 17 of this Agreement constitute a *stipulatio alteri* in favour of any Group Company and are capable of acceptance at any time by such Group Company, whether before or after the Termination Date.

19. GENERAL

19.1. The Executive shall adhere to the Company's written policies, procedures or the like which are applicable from time to time, save for where they have been amended by this Agreement.

19.2. No remedy granted by this Agreement shall exclude any other remedy available at law.

19.3. No amendment of this Agreement or any consensual cancellation thereof or any part thereof shall be binding on the parties unless reduced to a written document and signed by them.

19.4. If any of the terms of this Agreement, such as the rate of remuneration payable to the Executive, are varied, the other terms shall, unless otherwise agreed in writing, remain of full force and effect.

19.5. No relaxation or indulgence which either Party may show to the other shall in any way prejudice or be deemed to be a waiver of its rights hereunder nor shall such relaxation or

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indulgence preclude or estop the other Party from exercising its rights in terms of this Agreement in respect of any further breach.

19.6. This Agreement constitutes the whole agreement between the Parties and no warranties or representations whether express or implied have been given or made by the Company to the Executive.

19.7. The Company shall be entitled to cede and delegate all or any of its rights and obligations under this Agreement to any Group Company, whether such cession and delegation takes place before or after the Termination Date.

20. DOMICILIA CITANDI ET EXECUTANDI

20.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses -

20.1.1. the Company:

Physical: Megawatt Park, Maxwell Drive, Sunninghill, Johannesburg
Postal: P.O. Box 1091, Johannesburg, 2000
Telefax: 011 800 6132

20.1.2. the Executive:

Physical: 759 Camelford Road, Cornwall Hill Estate, Irene, 0178
Postal: P.O. Box 18, CORNWALL HILL, 0178
Telephone: 012 6671885

20.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.

20.3. Either Party may by notice to the other party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in Gauteng or its postal address or its telefax number, provided that the change shall become effective on the 10th (tenth) Business Day from the deemed receipt of the notice by the other party.

20.4. Any notice to a Party -

20.4.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the

U14-VK-1181

10th (tenth) Business Day after posting (unless the contrary is proved) and provided that any notice to a party sent by prepaid registered post shall only be valid if such notice is simultaneously sent by telefax to the chosen telefax number stipulated in clause 20.1;

20.4.2. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

20.4.3. sent by telefax to its chosen telefax number stipulated in clause 20.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

20.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi.*

21. RESIGNATION

21.1. On the Termination Date, the Executive will *ipso facto* be deemed to have resigned as a director of the Company and any other Group Company of which he is a director at that date.

21.2. The Executive hereby irrevocably appoints the then auditors of the Company as his agent *in rem suam* to sign all such documents and to do all such acts as may be necessary to effect and implement such resignation.

22. ELECTRONIC AND OTHER COMMUNICATIONS

The Executive hereby expressly gives the Company permission to intercept, monitor, read, block or act upon any of the Executive's electronic and other communications made from the Company telephone, Company computer and other Company devices which shall include, but not be limited to, telephonic conversations, e-mails and any stored files.

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1182

23. **RULES, REGULATIONS AND POLICIES**

The Company has various rules, regulations, policies and procedures (**"the Policies"**) in place which may be amended from time to time in the sole discretion of the Company. The Policies may be accessed via the Company's intranet, alternatively copies may be requested from the Company's human resources department. It is the Executive's obligation to familiarise himself with all of the Policies and ensure that he complies therewith.

24. **SEVERABILITY**

If any provision of this Agreement is found by a court of law to be invalid or void, such provision shall be severed from the remaining provisions, which shall continue to be of force and effect.

25. **COSTS**

The costs of and incidental to the drawing of this Agreement shall be paid by the Company.

26. **ARBITRATION**

In the event that the Company's internal mechanisms contemplated in clause 3.3 above have been exhausted, then any dispute concerning the fairness or otherwise of the termination of the Executive's employment, the Executive's performance, a grievance lodged by the Executive, or any other dispute arising out of the Executive's employment that would, save for this clause, fall to be determined by the CCMA or a Court having the requisite jurisdiction, shall be finally resolved by arbitration conducted in accordance with the rules of the Arbitration Foundation of South Africa, by an arbitrator agreed to by the Parties or, failing such agreement, appointment by that Foundation. The Company will be responsible for the costs of the arbitrator, the venue and any recording or transcription services related to any such arbitration.

Signed at ***Megawatt Park*** this 7th day of MARCH 2016.

COMMISSION OF INQUIRY INTO STATE CAPTURE

FOR: **ESKOM HOLDINGS LIMITED**

Signature: _____

who warrants that he / ~~she~~ is duly authorised thereto

Name: B S Ngubane CHAIRMAN

Date: 15/03/16

Place: Megawatt Park

Witness: _____

Witness: _____

Signed at Sandton this 7th day of March 2016

BRIAN MOLEFE

Signature: _____

who warrants that he / she is duly authorised thereto

Name: B Molefe GROUP CHIEF EXECUTIVE

Date: 7.3.16

Place: SANDTON

Witness: _____

Witness: _____

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom

"BM 26"

190

Brian Molefe
759 Camelford Road
Cornwall Hill Estate
IRENE

Dear Brian

ESKOM HOLDINGS SOC LIMITED / YOUR POSITION

1. In terms of a letter dated 31 May 2017, the Minister of Public Enterprises has directed the Eskom Board to rescind its decision "to reinstate Mr Molefe as the Group Chief Executive of Eskom". A copy of the letter is attached hereto.

2. You were invited to the urgent meeting of the Board held on 2 June 2017. The item on the agenda was the letter from the Minister of Public Enterprises dated 31 May 2017. You were asked to recuse yourself as you have a conflict of interest. You duly did.

3. In giving effect to the directive of the Minister of Public Enterprises, the Board has resolved to rescind the Reinstatement Agreement concluded between you and Eskom on 11 May 2017, as a consequence of which, you are, effective immediately, no longer the Group Chief Executive of Eskom.

4. I enclose for your records a copy of the Board resolution.

Yours sincerely

Dr BS Ngubane
CHAIRMAN
Date: 02/06/17

COMMISSION OF INQUIRY INTO STATE CAPTURE

Head Office
Megawatt Park Maxwell Drive Sunninghill Sandton
PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 2030 Fax +27 11 800 5803 www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/015527/30

MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Hatfield, 0028 Tel: 012 431 1118/1160 Fax: 012 431 1039
Private Bag X9079, Cape Town, 8000 Tel: 021 461 8376/7 Fax: 021 465 2381/461 1741

Dr. Ben Ngubane
Eskom Chairperson
Eskom Holdings SOC Limited
PO Box 1091
Johannesburg
2000

Tel: 011 800 2030
Fax: 011 800 5803

Dear Dr Ngubane

Directive to the board to rescind the decision to re-instate Mr. Brian Molefe as Group Chief Executive

Your letter dated 17 February 2017 has reference

Following my engagements with Government through the Inter-Ministerial Committee and filing of respective affidavits, I have come to the conclusion that the appropriate process was not followed in the appointment of Mr. Molefe. I therefore direct the Board to rescind its decision to reinstate Mr. Molefe as the Group Chief Executive of Eskom.

As previously communicated to the Board on 08 March 2017, I wish to reiterate that the Board should follow an open competitive recruitment process which must be advertised internally and externally in the selection of the most suitable candidate. In the meantime, I request the Board to provide me with names to consider for acting Group Chief Executive within 48 hours.

I further request that the Board takes appropriate steps to ensure that there is stability in the organization.

Yours sincerely

MS. LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 31/05/2017

COMMISSION OF INQUIRY INTO STATE CAPTURE

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Eskom	EXTRACT OF MINUTES	Template Identifier	240-43921804	Rev	
		Document Identifier	240-123927074	Rev	1
		Effective Date	08 February 2017		
		Review Date	February 2020		

EXTRACT FROM THE MINUTES OF *BOARD OF* DIRECTORS MEETING 06/2017/18 HELD ON 2 JUNE 2017 AT THE HUVO NKULU BOARDROOM, MEGAWATT PARK, AT *9h30*

The Board of Directors received a letter from the Minister dated 31 May 2017. A copy of the letter is attached marked 1.

In terms of this letter, the Minister has directed the Board to "rescind its decision to re-instate Mr Molefe as the Group Chief Executive of Eskom".

The Minister incorrectly made reference to a letter dated 17 February 2017. The letter that was sent to the Minister was 11 May 2017.

In giving effect to and on the basis of the Minister's directive contained in the letter dated 31 May 2017, it is resolved:

1. That the resolution of the Board of Directors taken on 2 May 2017 is rescinded.
2. That the Reinstatement Agreement concluded between Mr Molefe and Eskom on 11 May 2017 be rescinded.

It is therefore noted that in consequence, Mr Molefe is no longer the Group Chief Executive of Eskom and will no longer serve as a director on the Board of Eskom.

CERTIFIED AS A TRUE EXTRACT

S Daniels (Ms)

GROUP COMPANY SECRETARY

Date: 2/6/2017

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom
Pension and Provident Fund

"BM 27"

193

Mr. B MOLEFE

2015/11/04

Contact Centre
☎ (011) 709-7492

Dear Mr. B MOLEFE

SCHEME FOR THE PURCHASE OF ADDITONAL PENSION BENEFITS
UNIQUE NUMBER: 4610263

We acknowledge receipt of your money deposit amounting **to R 4 264 575.34** which was added to your capital in the Additional Benefit Scheme. (Receipt number F2895, attached).

Yours sincerely

Joey Sankar

RETIREMENT FUND OPERATION MANAGER

COMMISSION OF INQUIRY INTO STATE CAPTURE

EPPF Office Park 24 Georgian Crescent East. Bryanston East 2191 South Africa
Private Bag 50 Bryanston 2021 South Africa
Tel +27 11 709 7400 Fax +27 11 709 7554

Eskom
Pension and Provident Fund

ESKOM PENSION AND PROVIDENT FUND
RECEIPT
RECEIVED
28 OCT 2015
CS
SCANNED ORIGINAL

P POHO 2015/10/26 F 2895

26/10/2015

RECEIVED from MOMENTUM RETIREMENT ADMINISTRATOR'S

the sum of FOUR MILLION TWO HUNDRED AND SIXTY FOUR THOUSAND AND FIVE HUNDRED AND SEVENTY FIVE RAND & 34/100

in settlement of B. MOLELE - ID 6612295778086

Cost Centre EP0001 Acc. No. ~~9905~~ 1907 AVC TRANSFER IN

R 4264575.34

ACCOUNTING MANAGER

w MANNE & McCANN Tel: 618-1120 WT 46953

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U14-VK-1188

"BM 28"

mbm1

From: Ko K. Pather <KoP@commissionsc.org.za>
Sent: Thursday, March 5, 2020 3:33 PM
To: mbm1
Cc: Pule Seleka; Denzel Potgieter; Jabu J. Mahlangu; Jan Dekker; Jabu Masilela; Tshego T. Mahlangu-Yiwombe; Rohan R. Hiles; Cobus C. De Wet Bester
Subject: RE: Affidavit of Mr Brian Molefe

Dear Mr Molefe

I refer to our earlier communications in the abovementioned regard.

On further reflection, our legal team has indicated that it is prudent that we make available documentation you requested and to the extent that these may be in our possession, regardless of their perceived relevance or otherwise.

We are in the process of collating these for you.

Furthermore, our evidence leaders are currently perusing your draft affidavit and their comments, if any, will be communicated to you shortly for possible consideration before finalising your affidavit.

I trust you will find this in order.

Yours sincerely

Ko Pather

From: mbm1 <mbm1@mweb.co.za>
Sent: Monday, 02 March 2020 13:47
To: Ko K. Pather <KoP@commissionsc.org.za>
Subject: RE: Affidavit

Mr Pather

I have commissioned it. Your copy does not have annexures.

But I will hold on to it.

bm

From: Ko K. Pather [mailto:KoP@commissionsc.org.za]
Sent: Monday, March 2, 2020 10:22 AM
To: mbm1 <mbm1@mweb.co.za>
Subject: RE: Affidavit

Dear Mr Molefe

We acknowledge receipt of your email and attachment in the abovementioned regard, thank you.

May I suggest that you hold off on having the affidavit commissioned, until our evidence leader has an opportunity to have sight of the draft.

"BM29"

mbm1

From: Ko K. Pather <KoP@commissionsc.org.za>
Sent: Wednesday, April 15, 2020 11:59 AM
To: mbm1
Cc: Pule Seleka; Denzel Potgieter; Jabu J. Mahlangu; Jan Dekker; Jabu Masilela; Tshego T. Mahlangu-Yiwombe; Rohan R. Hiles; Cobus C. De Wet Bester; Prenisha Jagganath
Subject: RE: Affidavit of Mr Brian Molefe
Attachments: Copy of Mr Molefe document request_14 April 2020 (002) Final.xlsx; Consolidated Annexures.zip

Dear Mr Molefe

I refer to our previous correspondence in the abovementioned regard.

Attached, please find an Excel spreadsheet reconciliation of the documentation you requested, identifying what has been provided to you, as an attachment to this email (some of these may have been provided to you previously) and what has not been provided to you, because the Commission is not in possession of all requested documents.

Column C provides an indication of documents provided to you, either as an attachment hereto, or previously provided. (For ease of reference, we have included as attachments, all available documents, including those that may have already been provided to you previously).

Column E provides an indication of documents that are not in our possession, but we have nevertheless requested Eskom to furnish us with these. As soon as we receive these from Eskom, we will make these available to you.

Column F refers to documents external to Eskom and which are not in the possession of the Commission. May I suggest that you source these directly from the authors concerned should you believe that these are pertinent to your affidavit.

Column G sets out comments pertaining to certain documents requested, for which we are not in a position to furnish to you.

You may also access the documents attached herewith by clicking on the following link:
https://www.dropbox.com/sh/ny51oupi4pt4loa/AADvFqDXv5qLl050Ehw517Oya?dl=0

The comments following review by the evidence leaders will be sent to you shortly.

Kindly acknowledge receipt hereof.

Yours sincerely

Ko Pather

From: Ko K. Pather
Sent: Tuesday, 07 April 2020 06:12
To: 'mbm1' <mbm1@mweb.co.za>
Cc: Pule Seleka <PuleS@commissionsc.org.za>; Denzel Potgieter <DenzelP@commissionsc.org.za>; Jabu J. Mahlangu <JabuM@commissionsc.org.za>; Jan Dekker <JanD@commissionsc.org.za>; Jabu Masilela <JabuM2@commissionsc.org.za>; Tshego T. Mahlangu-Yiwombe <TshegoMY@commissionsc.org.za>; Rohan R. Hiles <RohanH@commissionsc.org.za>; Cobus C. De Wet Bester <CobusD@commissionsc.org.za>
Subject: RE: Affidavit of Mr Brian Molefe

"BM 30"

Eskom

The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

Dear Minister Brown

APPOINTMENT OF GROUP CHIEF EXECUTIVE OFFICER

The above matter has reference.

At the last sitting of Eskom's People and Governance Committee on 9 September 2015, which is the subcommittee of the Board of Directors tasked with dealing with the appointment of senior executive managers within Eskom, it was resolved that the appointment of Brian Molefe to the position of Group Chief Executive Officer of Eskom, be confirmed as soon as possible.

The rationale for the appointment of Mr Molefe as a permanent employee, rather than on a secondment basis, is based on the following considerations:

i) He has a well-known track record in the market both nationally and abroad for being able to turnaround ailing companies and this experience has been demonstrated in the stability and marked improvement in performance he has brought to Eskom since he joined 5 months ago;

ii) His academic background and more particularly, his considerable financial acumen has already been demonstrated in the more positive outlook Eskom, and consequently South Africa, enjoys with the ratings agencies which are key to addressing the liquidity issues;

iii) His hands on approach to operational matters, particularly with regard to maintenance and load shedding, at the time of crisis which the company found itself in, has made high performance in Eskom, not negotiable;

iv) To support this culture, he has already revisited the approach to performance management so as to instil appropriate levels of accountability at all levels of staff thereby raising the bar on all fronts for his executive management team to follow;

v) At the same time he has succeeded in harnessing the know-hows and experience of the current executive management committee in the most optimal manner to address the issues that have bedeviled the company for too long a time;

vi) During his tenure, he has successfully taken the Board into his confidence by presenting a turnaround plan at its meeting of 22 July 2015, which was also endorsed by the Board; and

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vii) Implementation of this plan has resulted in marked improvements in all areas of the Eskom operations

a. A generation maintenance strategy with minimal load shedding is now in place and implementation is monitored;
b. Staff morale is on the upturn and an employee engagement strategy is now in place and being rolled out across the country to all Eskom employees;
c. Eskom's reputation and brand is being rebuilt with more positive stories in the media.

Public confidence has increased exponentially and Mr Molefe's ability to meaningfully engage the various stakeholders of Eskom, including the media, has really stood us in great stead.

Future strategies have been developed and are in the process of being developed for final consideration by the Board. Most importantly, the quality and clarity of information presented to Board has improved and he enjoys the full support of the Board.

Certainty of leadership at the top would allow for stabilising the management team internally together with allowing him to be able to attract the requisite skilled professional talent outside of Eskom to take up critical roles in Eskom which are vacant at present or may occur in the future and thereby create the confidence and predictability required of Eskom at this time.

Given the fact that Eskom is the core driving force of the South African economy, we are of one mind that no other person would at this point be able to maintain the current upward trajectory that Mr Molefe has placed the company on since his secondment in April this year. It is with this is mind that the board unanimously supports his appointment.

Accordingly, on behalf of the Eskom Board of Directors, I recommend to Honourable Minister that Mr Brian Molefe be appointed as Group Chief Executive Officer of Eskom Holdings SOC Ltd.

Should Minister require any other information prior to taking a decision on the matter, please let me know.

Yours sincerely

Dr BS Ngubane
INTERIM CHAIRMAN
Date:

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1193

CONFIDENTIAL

MINUTES OF THE SPECIAL BOARD OF DIRECTORS OF TRANSNET SOC LTD MEETING NO. 1-15/16FY HELD ON 20 APRIL 2015 AT 08:30 IN THE PORT MANAGER'S BOARDROOM, OCEAN TERMINAL BUILDING, PORT OF DURBAN

Resolution No/ For Attention

1 **CONSTITUTION OF MEETING AND APOLOGIES**

1.1 **Present**

Ms LC Mabaso	Chairperson
Ms Y Forbes	Non-Executive Director
Mr SI Gama	Chief Executive Officer: Transnet Freight Rail
Mr GJ Mahlalela	Non-Executive Director
Ms PEB Mathekga	Non-Executive Director
Ms N Moola	Non-Executive Director *(through video-conference)*
Mr ZA Nagdee	Non-Executive Director
Mr VM Nkonyane	Non-Executive Director
Mr MR Seleke	Non-Executive Director *(through video-conference)*
Mr SD Shane	Non-Executive Director *(through video-conference)*
Mr A Singh	Group Chief Financial Officer *(through video-conference)*
Mr PG Williams	Non-Executive Director

1.2 **In attendance**

Mr N Silinga	Group Executive: Legal and Compliance *(through video-conference)*
Ms S Qalinge	General Manager: Office of the Group Chief Executive *(through video-conference)*
Ms NE Khumalo	Deputy Group Company Secretary *(through video-conference)*
Mr KL Mosia	Company Secretary *(through video-conference)*
Ms ANC Ceba	Group Company Secretary

1.3 **Partial attendance**

Mr M Sigonyela	General Manager: Corporate and Public Affairs

1.4 **Apologies**

1.4.1 Mr BG Stagman — Non-Executive Director

1.5 **Welcome and Signing of Attendance Register**

1.5.1 The Chairperson welcomed all members and attendees present. Having observed a quorum, she declared the meeting duly constituted. She noted an apology from Mr Stagman who was abroad. She indicated the purpose of the Special Meeting, and the rationale for its urgency. The Attendance Register was circulated for signature.

1.6 **Adoption of Agenda**

1.6.1 The Agenda was adopted as tabled.

2 **SAFETY BRIEFING AND EVACUATION PROCEDURE**

2.1 The safety briefing and evacuation procedures of the Port Manager's Boardroom were conducted by the Port Manager.

3 **DIRECTORS' DECLARATION OF INTERESTS REGISTER**

3.1 **Declaration of Interest for the meeting**

3.1.1 The Declaration of Interests Register was circulated for signature.

3.2 **Comments by Chairperson**

3.2.1 The Chairperson thanked the Members for availing themselves for the special meeting at short notice. She apologised for not consulting the Board appropriately on matters relating to the Secondment of the GCE to *Eskom SOC Ltd* on Friday 17 April 2015. She indicated that she was informed of the matter late. She attempted to arrange a teleconference with the Board, but could not participate anymore as the media briefing was commencing. She apologised for the mishap, and indicated that it was not her intention to undermine the Board. She indicated that

the Shareholder Minister also expressed her sincere apologies, and undertook to meet with the Board to apologise. A date for the meeting will be secured through the Office of the Group Company Secretariat, and communicated accordingly to the Board. Ms Ceba

Mr Sigonyela joined the meeting a 08:35.

3.2.2 He highlighted the order of proceedings for the Maritime School of Excellence Graduation Ceremony to the Board.

Mr Sigonyela was excused from the meeting at 08:40.
Mr Shane joined the meeting at 08:41.

The Board accepted the Chairperson's apology in relation to the GCE's secondment to *Eskom*.

4 **MATTERS FOR APPROVAL/RECOMMENDATION**

4.1 **Secondment Agreement between *Transnet SOC Ltd* and *Eskom SOC Ltd***

4.1.1 Management took the Board through the submission. The submission was taken as read. The purpose of the submission was to request the Board to approve the Secondment Agreement ("the Agreement") between the Company and *Eskom SOC Ltd*, and to delegate authority to the Chairperson to sign the Agreement on behalf of the Board.

4.1.2 Management stated that the Agreement was circulated to the Board on 19 April 2015 for comment. Management highlighted the salient features of the Secondment Agreement to include, amongst others, the following:

- The rationale behind the secondment period of 3 months.
- The treatment of Mr Molefe's salary, and other related expenses.

4.1.3 Management stated that the Shareholder Minister indicated that the GCE may be seconded to *Eskom* for a period of 12 months. Mr Stagman's comments were read out to the Board for consideration. Mr Williams commended the Shareholder Minister for taking decisive action on dealing with *Eskom*'s challenges. However, he was of the view that there was a process to be followed by the Board in relation to the secondment of the GCE, and in this regard, the matter could have been dealt with in another manner. He indicated, amongst others, the following from the Agreement:

- Clause 1.6 has a spelling error.
- Clause 3.1 should be cautiously managed to fulfil legitimate expectations of the parties.
- Mr Molefe's benefits should be protected during his secondment period. Further, performance management issues during the secondment period should be outlined in advance to manage Mr Molefe's other benefits.

Mr Seleke joined the meeting at 08:58.

4.1.4 The Chairperson apologised to Mr Seleke for the events on 17 April 2015. Mr Seleke indicated that he understood the Chairperson's circumstances prior to the media briefing, and he accepted the apology. Ms Moola requested Management to protect Mr Molefe's Short-Term and Long-Term Incentives in the Agreement. She was of the view that if the secondment period is longer than 3 months, Mr Molefe's performance management issues will need to be aligned to *Eskom's* deliverables. Management indicated that any emerging matter will be tabled to the Board for consideration at a later stage, if the secondment is extended beyond the 3 months. Mr Molefe's current benefits at the Company would stand for determining benefits during secondment. The Board will be granted an opportunity to apply its mind properly to a long term agreement, if the need arises.

4.1.5 The Chairperson indicated that *Eskom* would be invoiced on a monthly basis for payments made by the Company to the GCE on secondment at Eskom, including both salary and benefits. Ms Forbes was concerned that the media seemed to have more detail on the matter than the Board. She indicated she was not aware of the 3 potential candidates nominated for the acting position as per media reports. She cautioned that governance systems should be protected in the Company's activities. She sought clarity on how the Corporate Governance and Nominations Committee would address the GCE's extension of employment contract. Mr Seleke was of the

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view that it was unfair to put the Chairperson on scrutiny for decisions that occurred from the Ministry's activities. He indicated that the media is provocative, and there should be no reliance on media pronouncements. He was of the view that the Board's focus should be on the acting appointee's role and the required support to successfully execute the role. Mr Nkonyane requested Management to ensure that the Secondment Agreement should be explicit that any role beyond the 3 months period would be re-negotiated accordingly with the Board.

RESOLVED that the Board approved the following:

- The secondment of the GCE to Eskom SOC Ltd *post facto*.
- The Secondment Agreement between the Company and *Eskom SOC Ltd*, subject to incorporating inputs received from the Board.
- Delegated authority to the Chairperson to sign the Secondment Agreement on behalf of the Board.

1-15/16FY/1

5 **MATTERS FOR NOTING**

5.1 **Appointment of the Acting Group Chief Executive**

5.1.1 The Chairperson stated that the purpose was to request the Board to note the appointment of the Acting Group Chief Executive. The Chairperson gave the Board background on Mr Siyabonga Gama and indicated that he was currently appointed as the Chief Executive at Transnet Freight Rail. Mr Gama was chosen to be Acting Group Chief Executive due to his vast knowledge of the Company. The Chairperson indicated that Mr Gama was appointed acting GCE with effect from 20 April to 19 July 2015.

5.1.2 Ms Moola sought detail on the remuneration during the acting period. Management indicated that there was an Acting Policy for Management Employees that would determine Mr Gama's benefits.

Mr Gama was recused from the meeting at 09:20.

The matter was deliberated in a Closed Session.
A separate record has been prepared.

6 **GENERAL**

6.1 There were no matters for discussion.

7 **BOARD OF DIRECTORS MANDATE**

7.1 The Board noted the Board of Directors' Mandate as contained in the meeting pack.

8 **CLOSING**

8.1 The Chairperson thanked the Board for its participation in the special meeting, and for valuable contributions in the meeting. There being no further business to conduct; the Chairperson declared the meeting closed at 09:28.

CHAIRPERSON
DATE: 03/06/2015

GROUP COMPANY SECRETARY
DATE: 02 JUNE 2015

"BM 32"

202

SECONDMENT AGREEMENT

Between

Transnet SOC Ltd

Registration No: 1990/000900/30

Herein represented by Ms Linda Mabaso

In her capacity as Chairperson of the Board

And

ESKOM HOLDINGS SOC Ltd

Registration No: 2002/015527/30

Herein represented by Dr Ben Ngubane

In his capacity as Chairperson of the Board

COMMISSION OF INQUIRY INTO STATE CAPTURE

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COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1198

1 DEFINITIONS AND INTERPRETATION

1.1 In this agreement, the following terms shall have the meaning assigned to each-

1.1.1 Parties : (1) Transnet SOC Ltd

("Transnet.")

And

(2) ESKOM HOLDINGS SOC Ltd

("Eskom")

1.1.2 Secondee: shall mean Brian Molefe, an employee of Transnet

1.2 The singular includes the plural and *vice versa*.

1.3 Reference to a gender includes any other gender.

1.4 Reference to natural persons includes legal persons and *vice versa*.

1.5 Headings to clauses are for reference purposes only and shall not affect construction or interpretation of this agreement.

1.6 The interpretation rule *contra proferentem* shall not apply to this Agreement.

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1199

2 PREAMBLE

2.1 Eskom requires the services of a Senior Executive to assist as Acting Chief Executive

2.2 Transnet agrees and is willing to second Brian Molefe to Eskom as Acting Chief Executive.

2.3 The Parties therefore enter into this Agreement to regulate and formalise their respective rights and obligations with regard to the secondment of the Secondee to Eskom.

3 DURATION OF SECONDMENT

3.1 Irrespective of the last date of signature hereof, the secondment will commence on the 20 April 2015 and shall, unless the Parties agree otherwise, automatically terminate on the 19 July 2015, provided that –

3.1.1 It may be terminated by either, Transnet or Eskom, subject to at least 30 days written notice, or otherwise by mutual agreement; and

3.2 In the event of the Secondee's employment with Transnet coming to an end for whatever reason, this secondment agreement shall also simultaneously lapse.

3.3 In the event that Eskom requires an extension, is shall indicate its intentions and initiate negotiations with Transnet within a reasonable time.

U14-VK-1200

4 SERVICES

4.1 The Secondee shall be seconded to Eskom and will be based at Megawatt Park, Maxwell Drive, Sunninghill where he will perform the functions and duties of a **Chief Executive** as may be determined by the Eskom Board from time to time.

5 EMPLOYMENT RELATIONSHIP

5.1 The Secondee shall remain an employee of Transnet whilst seconded to Eskom and, unless otherwise stipulated in or implied by this Agreement, he shall remain subject to the Transnet Conditions of Service.

5.2 In the event Eskom is of the view that disciplinary action needs to be taken against the Secondee, Eskom shall provide Transnet with a detailed report on the alleged transgression, in which event Transnet will, in its sole discretion, decide whether or not to take any action in accordance with the Transnet Code of Conduct.

6 REMUNERATION

6.1 Transnet shall remain responsible for, and shall continue to pay to the Secondee his total remuneration in terms of his service/employment contract with Transnet as well as all additional benefits as he is entitled to receive.

6.2 Transnet shall, for the duration of this secondment agreement, recoup from Eskom all payments made to and/or expenses incurred by it with regards to the Secondee, in his capacity as the Acting Chief Executive of Eskom.

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6.3 Transnet shall invoice Eskom for any amounts due at least one month after each payment or benefit was made to the Secondee.

7 INDEMNITY

7.1 Whenever a claim is made or legal proceedings are instituted against the Secondee and/or Transnet arising out of any act or omission in the execution of his powers, or the performance of his duties and functions in consequence of his secondment, Eskom –

7.1.1 Shall, in the event of a civil claim or civil proceedings, indemnify the Secondee and/or Transnet in respect of such claim or proceedings.

7.1.1.1 In the event that the Secondee acts outside his scope of duties and functions as determined by the Eskom Board from time to time, this indemnity shall only apply in favour of Transnet.

8 COMMUNICATION

8.1 The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses –

COMMISSION OF INQUIRY INTO STATE CAPTURE

Name	Physical Address
Eskom	Megawatt Park Maxwell Drive Sunninghill

Marked for the attention of: the Chairperson of the Board of Eskom

Name	Physical Address
Transnet	47th Floor, Carlton Centre 150 Commissioner Street Johannesburg 2001

Marked for the attention of the Chairperson of the Board of Transnet provided that a Party may change its *domicilium* or its address for the purposes of notices to any other physical address by written notice to the other Party to that effect. Such change of address will be effective 5 (five) Business days after receipt of the notice of the change.

9 **ENTIRE AGREEMENT**

9.1 This Agreement constitutes the entire agreement between the parties with regard to the subject matter dealt with herein and no prior agreements, representations or undertakings whether verbal or in writing, with regard to the subject matter shall be binding on either party.

9.2 No variation, modification or waiver of any provision of this Agreement, or consent to any departure therefrom, or any consensual termination of this Agreement shall in any event be of

U14-VK-1203

any force or effect, unless confirmed in writing and signed by duly authorised representatives of both parties.

SIGNED at Megawatt Park on 20 April 2015

WITNESSES: For and on behalf of Eskom

1. _____

2. _____

SIGNED at Carlton Centre on 23 April 2015

WITNESSES: For and on behalf of Transnet

1. _____

2. _____

COMMISSION OF INQUIRY INTO STATE CAPTURE

"BM 33"

MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X16, Hatfield, 0028 Tel: 012 431 1110/1160 Fax: 012 431 1039
Private Bag X9079, Cape Town, 8000 Tel: 021 461 6370/7459 Fax: 021 465 2381/461 1741

Dr. B Ngubane
Interim Chairperson
Eskom Holdings SOC Limited
P.O. Box 1091
Megawatt Park
Johannesburg
2000

Tel: 011 800 5808
Fax: 011 800 4938
Email: Baldwin.ngubane@gmail.com /
DanielSM@eskom.co.za
venete@kleinfnc.co.za

Dear Dr. Ngubane

Re: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Your letters regarding the above-mentioned matter, dated 11 September 2015, have reference.

Subsequent to receiving Cabinet's endorsement, I approve the appointments of Mr Brian Molefe as the Chief Executive Officer and Mr Anoj Singh as Chief Financial Officer of Eskom and *ex-officio* Directors of the Eskom Board of Directors. Please extend my congratulations to Mr Molefe and Mr Singh on their appointments.

I have enclosed herewith, letters to Mr Molefe and Mr Singh confirming their appointments. Kindly ensure that it is delivered to and signed after finalising their appointments to Eskom.

The Board must ensure that the employment and performance contract is aligned to meet strategic objectives within, but not limited to, the following stipulations:

COMMISSION OF INQUIRY INTO STATE CAPTURE

- Their appointment as ex officio to the Board shall, irrespective of any other term stipulated in any other agreement, terminate with immediate effect upon date of notice of termination of employment, notice of resignation or notice of suspension, in line with the provisions of the MOI.
- As ex officio to the Board, the Executives shall not be entitled to any additional remuneration, other than that provided for in the contract of employment.

In drafting the contracts, kindly liaise with the Department in the finalisation of the employment and performance contract of the CEO and provide me with a copy within three (3) months of the date of my letter.

In terms of remuneration, in line with the DPE Remuneration Guidelines, I approve a guaranteed remuneration of R7, 032,000.00 for Mr Molefe and a guaranteed remuneration R4, 607,000.00 for Mr Singh.

I trust that these appointments will add to the much needed leadership stability at Eskom and further encourage the Board and CEO designate to finalise, amongst other immediate priorities, the filling of vacancies at Executive level.

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 22/10/2015

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02-10-2015

MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Hatfield, 0028 Tel: 012 431 1118/1150 Fax: 012 431 1039
Private Bag X9078, Cape Town, 8000 Tel: 021 461 6378/7/658 Fax: 021 465 2381/461 1741

Mr Brian Molefe
Chief Executive Officer
Eskom Holdings SOC Limited
P.O. Box 1091
Megawatt Park
Johannesburg
2000

Tel: 011 800 5808
Fax: 011 800 4938
Email: [illegible]
[illegible]

Dear Mr Molefe

Appointment as Chief Executive Officer and *Ex Officio* Member of the Eskom Board of Directors

I am pleased to inform you of your appointment to Eskom as Chief Executive Officer and *ex officio* member of the Board of Directors.

Your appointment to the Eskom Board is *ex officio* and therefore the following stipulations apply:

- Your appointment to the Board shall, irrespective of any other term stipulated in any other agreement, terminate with immediate effect upon the date of notice of termination of employment or notice of resignation or notice of suspension;
- You shall not be entitled to any additional remuneration, other than that provided for in your contract of employment as Chief Executive Officer of Eskom; and
- All Board activities you perform, including but not limited to preparing for Board meetings, travelling time to and from Board meetings, and participation in Board activities/responsibilities, whether within or outside normal working

hours, are regarded as official duties and do not require you to take leave to attend to them.

I have requested the Chairperson to facilitate, in consultation with you, the alignment of your contract of employment in accordance with the above stipulations. I have no doubt that you will make a real contribution to the future success of Eskom.

Please confirm your acceptance as *ex officio* to the Board by signing the attached statement and returning a copy to myself.

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 02/10/2015

CC: Dr Ngubane, Interim Chairperson of the Eskom Board

COMMISSION OF INQUIRY INTO STATE CAPTURE

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Eskom	RESOLUTION OF THE BOARD OF DIRECTORS OF ESKOM HOLDINGS SOC LTD	Unique Identifier	221-209
		Document Type	CCGTE
		Revision	0
		Effective Date	October 2012
		Office of the Company Secretary	

RESOLUTION OF THE BOARD OF DIRECTORS OF ESKOM HOLDINGS SOC LTD

STRICTLY CONFIDENTIAL

URGENT REQUEST TO APPROVE THE PREPURCHASE OF COAL FROM OPTIMUM COAL (PTY) LTD

Having had due regard for the following factors:

1. Eskom faces a supply risk of coal to the Hendrina Power Station of 5.5 Mtpa by OCM as a result of business rescue proceedings.
2. There is a potential proposal from the business rescue practitioner supported by the Department of Mineral Resources.
3. The solution relates to a prepurchase of coal to the value of R1.68 billion which mitigates supply risk.
4. The funding of the prepurchase will be made by an inventory working capital reduction of 54 days to approximately 40 days.
5. The proposal will result in a net present value benefit to Eskom of R238.9 million.
6. In conclusion, this proposal provides much needed coal for business operations; mitigates the supply risk and provides commercial benefit to Eskom.

RESOLUTION REQUIRED:

It is hereby resolved that:

2.1.1 The request from the Department of Mineral Resources is hereby noted.

2.1.2 The Group Chief Executive together with the Group Executive for Generation and Chief Financial Officer, are hereby authorised to negotiate and conclude a prepurchase of coal agreement with the proposed owners of OCM (coal supplier).

2.1.3 This agreement shall be subject to the necessary regulatory approvals having been obtained by Eskom and the supplier respectively as and when necessary.

2.1.4 The Chief Financial Officer is hereby authorised to take all the necessary steps to give effect to the above, including the signing of any consents, or any other documentation necessary or related thereto.

Eskom	RESOLUTION OF THE BOARD OF DIRECTORS OF ESKOM HOLDINGS SOC LTD	Unique Identifier	221-209
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The resolutions above are approved / not approved:

BOARD MEMBER	APPROVED (Signature)	NOT APPROVED (Signature)	DATE
BS Ngubane	×		
M Pamensky	Declared conflict of interest		
Z Khoza	×		
C Mabude	×		
V Klein	×		
R Khumalo	×		
P Naidoo	×		
V Naidoo	×		
N Carrim	×		
M Cassim	×		
G Leonardi	×		
B Molefe	Off sick		
A Singh	×		

PLEASE FAX OR E-MAIL THE COMPLETED ROUND ROBIN REQUEST BY NO LATER THAN 12h00 ON 9 DECEMBER 2015

THE GROUP COMPANY SECRETARY
TEL: +2711 800 3091 / +2782 5807832
FAX: +2786 662 7327
EMAIL: danielsm@eskom.co.za

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Eskom

Contract Number: 4600059576

SECOND ADDENDUM

to the

COAL SUPPLY AGREEMENT
entered into between

ESKOM HOLDINGS SOC LTD ("Eskom")
Reg no: 2002/015527/30

and

TEGETA EXPLORATION AND RESOURCES (PROPRIETARY) LIMITED
("Supplier")

Reg no: 2006/014492/07

(Collectively referred to as "the Parties")

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom

Contract Number: 4600059576

1. **PREAMBLE:**

1.1. The Parties entered into a Coal Supply Agreement on 16 February 2016 to supply 500 000 tons of contract coal to Arnot Power Station or any other Eskom owned or operated power station within the Republic of South Africa and which has been designated by Eskom as the destination of Contract Coal.

1.2. The Parties entered into a First Addendum to the Coal Supply Agreement on 15 March 2016 to amend the invoicing and payment terms from a monthly invoicing and payment to a weekly invoicing and payment with effect from 17 February 2016.

1.3. The Parties have agreed to enter into a Second Addendum to the Coal Supply Agreement to supply an additional 1 250 000 tons of contract coal or 28 787 500 GJ to increase the total quantity of Contract Coal to be supplied under the Coal Supply Agreement to a total of 1 750 000 tons or 40 302 500 GJ.

1.4. The Parties, by agreement, hereby amend the Coal Supply Agreement which shall together with the First Addendum and this Second Addendum, constitute the entire Agreement between the Parties.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

2. **DEFINITIONS AND INTERPRETATION**

2.1. In this Agreement, unless the context requires otherwise:

2.1.1. **Addendum** means this Second Addendum to the Coal Supply Agreement;

2.1.2. **Coal Supply Agreement** means the Coal Supply Agreement in respect of coal supplied from Optimum Colliery, concluded between the Parties on 16 February 2016 as amended.

2.1.3. **Signature Date** means the date of the last signature to this Addendum by the Party signing.

2.2. Words and phrases not defined in this Addendum have the same meaning as defined in the Coal Supply Agreement.

2.3. Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

2.4. The headings do not govern or affect the interpretation of this Addendum.

2.5. A reference to a Party includes that Party's successors-in-title and permitted assigns.

2.6. The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the contract does not apply.

3. **AD CLAUSE 2 OF THE COAL SUPPLY AGREEMENT – DEFINITIONS AND INTERPRETATION**

Clause 2.1.12 of the Coal Supply Agreement is hereby amended as follows:

2.1.12 "Coal Reserve" means, at any time during the currency of this Agreement, so much of the Coal Resource from which a quantity of Contract Coal can be produced for Supply to Eskom in terms of this Agreement equal to at least the difference between 40 302 500 (forty million three hundred and two thousand five hundred) GJ (being approximately 1 750 000 Tons (As Received) and the quantity of Contract Coal in the Coal Resource (expressed as an energy quantity) then actually Supplied to Eskom in terms of this Agreement;

4. **AD CLAUSE 8 OF THE COAL SUPPLY AGREEMENT – DURATION**

Clause 8 of the Coal Supply Agreement is hereby amended as follows:

8. The term of this Agreement shall be for a period commencing on the Commencement Date and expiring on 15 September 2016 unless extended or earlier terminated in accordance with the terms of this Agreement.

5. **AD CLAUSE 10 OF THE COAL SUPPLY AGREEMENT – COAL QUANTITIES**

Clause 10.4 and Table 1 of the Coal Supply Agreement are hereby amended as follows:

10.4 The total quantity of Contract Coal to be supplied under this Agreement shall equal an energy quantity of 40 302 500 GJ ("the Total Energy Quantity"), being approximately 1 750 000 Tons (As Received) at an expected CV 23.03 MJ/kg on an As Received basis.

Table 1 Contract Coal Supply Schedule

Month	Monthly Quantity	Minimum Monthly Quantity (10%)	Maximum Monthly Quantity (10%)	Weekly Quantity	Minimum Weekly Quantity (20%)	Maximum Weekly Quantity (20%)
February 2016 (tons)	125 000	112 500	137 500	62 500	50 000	75 000
February 2016 Energy (GJ)	2 878 750	2 590 875	3 166 625	1 439 375	1 151 500	1 727 250
March 2016 (Tons)	250 000	225 000	275 000	62 500	50 000	75 000
March 2016 Energy (GJ)	5 757 500	5 181 750	6 333 250	1 439 375	1 151 500	1 727 250
April 2016 (Tons)	250 000	225 000	275 000	62 500	50 000	75 000
April 2016 Energy (GJ)	5 757 500	5 181 750	6 333 250	1 439 375	1 151 500	1 727 250
May 2016 (Tons)	250 000	225 000	275 000	62 500	50 000	75 000
May 2016 Energy (GJ)	5 757 500	5 181 750	6 333 250	1 439 375	1 151 500	1 727 250
June 2016 (Tons)	250 000	225 000	275 000	62 500	50 000	75 000

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Eskom

Contract Number: 4600059576

Month	Monthly Quantity	Minimum Monthly Quantity (10%)	Maximum Monthly Quantity (10%)	Weekly Quantity	Minimum Weekly Quantity (20%)	Maximum Weekly Quantity (20%)
June 2016 Energy (GJ)	5 757 500	5 181 750	6 333 250	1 439 375	1 151 500	1 727 250
July 2016 (Tons)	250 000	225 000	275 000	62 500	50 000	75 000
July 2016 Energy (GJ)	5 757 500	5 181 750	6 333 250	1 439 375	1 151 500	1 727 250
August 2016 (Tons)	250 000	225 000	275 000	62 500	50 000	75 000
August 2016 Energy (GJ)	5 757 500	5 181 750	6 333 250	1 439 375	1 151 500	1 727 250
September 2016 (tons)	125 000	112 500	137 500	62 500	50 000	75 000
September 2016 Energy (GJ)	2 878 750	2 590 875	3 166 625	1 439 375	1 151 500	1 727 250

Total Contract Quantity (Tons)	1 750 000
Energy (GJ)	40 302 500

The tonnages indicated are on an As Received basis assuming a target CV of 24.01MJ/kg (Air Dried), 23.03MJ/kg (As Received), a Total Moisture of 8.0% (As Received) and Inherent Moisture of 4.1.

6. AD CLAUSE 16 OF THE COAL SUPPLY AGREEMENT – COAL QUANTITIES

Clause 16.1 and Table 2 of the Coal Supply Agreement are hereby amended as follows:

16.1 The Supplier shall ensure that each quality parameter of the Contract Coal Delivered to Eskom in terms of this Agreement shall comply with the Quality Specifications for Contract Coal set out in Table 2 hereunder.

Table 2: Coal Quality Specification and Rejection Levels

Quality parameter	Unit	Quality Expected	Quality Specifications	Quality Rejection Limit	Measurement basis
Calorific Value	MJ/kg	24.0	≥ 23.0	<23.0	Air Dried
Total Moisture	%	8	≤ 9.0	>9.0	As Received
Inherent Moisture	%	4.1			As Received
Ash	%	20.2	≤ 22.8	>22.8	Air Dried
Abrasive Index (Eskom Mining House Method)	mgFe/4kg	<450	≤ 450	>450	Air Dried
Sulphur	%	1.19	≤ 1.19	>1.19	Air Dried
Volatiles	%	21.7	≥ 20.5	<20.5	Air Dried

M.C

mmt

Quality parameter	Unit	Quality Expected	Quality Specifications	Quality Rejection Limit	Measurement basis
AFT (Initial deformation)	°C	1380	≥ 1380	<1380	N / A
Sizing: (cumulative)					
+60mm	%	0.0	0	>0.0	N / A
+50mm	%	5.0	≤5.0	>5.0	
-6.35mm	%	50.0	≤50.0	>50.0	
-3.35mm	%	30.0	≤30.0	>30.0	
-1mm	%	15.0	≤15.0	>15.0	

All parameters are measured to 1 (one) decimal place, except Al and AFT, which shall be measured to the nearest integer. Sulphur to 2 decimal places

7. AD CLAUSE 22 OF THE COAL SUPPLY AGREEMENT – ROAD COAL TRANSPORTATION

Clause 22.2 of the Coal Supply Agreement is hereby amended as follows:

22.2 The Supplier shall, at its own cost, provide, maintain and operate Pre-Certified Stockpiles with a total capacity of no less than 10 000 Tons, an access road, equipped with a weighbridge, terminating on the D2274 road, and truck loading equipment such that a maximum of 1 750 000 Tons of coal can be uniformly loaded into trucks and transported to the Power Station by road.

8. GENERAL

8.1. Save to the extent expressly set out in this Second Addendum and except as it is otherwise mutually agreed between the Parties and reduced in writing, all the remaining terms and conditions contained in the Coal Supply Agreement, shall remain unaltered and in full force and effect.

8.2. This Second Addendum constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof. No Party will be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Second Addendum accordingly supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof.

8.3. No addition to, variation, novation or agreed cancellation of any provision of this Second Addendum shall be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties.

Eskom

Contract Number: 4600059576

Signed at Sunninghill **on the** 13 **day of April 2016.**

FOR: ESKOM HOLDINGS SOC LTD

Matshela Koko (Mr)
GROUP EXECUTIVE: GENERATION
Who warrants that he is duly authorised to sign on Eskom's behalf.

AS WITNESSES:

1. Marumo Letoto
Specify full names — Signature

2. _____
Specify full names — Signature

Signed at Sunninghill **on the** 14th **day of April 2016.**

FOR: TEGETA EXPLORATION AND RESOURCES (PTY) LTD

Ravindra Nath (Mr)
CHIEF EXECUTIVE OFFICER
Who warrants that he is duly authorised to sign on the supplier's behalf.

AS WITNESSES:

1. ADITI SINGH
Specify full names — Signature

2. M. McCurrach
Specify full names — Signature

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Eskom

STRICTLY PRIVATE AND CONFIDENTIAL

Mr B Molefe

Dear Brian

OFFER OF EMPLOYMENT

I have pleasure in confirming your appointment in the following position:

Designation: GROUP CHIEF EXECUTIVE

1. **Conditions**

You will be required to enter into a fixed term Employment Contract. This Offer of Employment is also subject to Eskom's Conditions of Service - abridged version attached.

2. **Remuneration Package**

Your remuneration package will be structured as follows:

- Total guaranteed package of R 7 656 000.00 per annum.
- 70% of the total guaranteed amount will be deemed to be pensionable earnings as a basis for the calculation of certain benefits, for example, pension fund.
- The package may be structured to provide for a car allowance and 13th cheque.

In addition, the package will be influenced by factors described below.

3. **Deductible Benefits**

Deductions are applicable to the following benefits:

- Pension Fund – A contribution of 20.8% will be calculated on pensionable earnings of 70% in accordance with the rules and regulations of the Eskom Pension and Provident Fund.

Head Office
Megawatt Park, Maxwell Drive, Sunninghill, Sandton
PO Box 1091, Johannesburg, 2000, SA
Tel +27 11 800 2000 Fax +27 11 800 5803 www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/015527/30

COMMISSION OF INQUIRY INTO STATE CAPTURE

OFFER OF EMPLOYMENT (Continue)

- Medical Aid – Subject to your agreement with the Chairman that you continue with your chosen medical aid, you will be required to subscribe to one of the Eskom approved Medical Aid Schemes (presently Bestmed, Bonitas or Medihelp).
- Death Benefit Scheme (Funeral Policy) – The payout related to this scheme is equal to R15 000.
- Group Life Cover (non-taxable). This benefit is calculated at three times your total guaranteed package.

4. **Taxable benefits**

The following benefits are taxable:

- Supplementary Medical Cover.
- Stated Benefits (Disability Cover).
- Installation or upgrade / maintenance of a security system at your home will be borne by Eskom, however, the entire benefit (including installation and guarding services) received by you will be taxable. The asset will depreciate over a period of 3 years in terms of the executive protection policy. Should you resign before expiry of the three year period, you will be liable to reimburse Eskom equal to the depreciated value.
- You will be liable for the tax portion of all tax counselling and financial planning fees, limited to R12 000.00 per annum.
- Bank fleet card for operating and maintenance expenses on your car.

5. **Non-taxable Benefits**

The following benefits are non-taxable:

- Use of the Executive gymnasium at Megawatt Park Health Centre.
- Payment of Professional fees (maximum of 2 work related institutions).
- Group Life Cover – equal to three times annual pensionable earnings.
- Home installed telephone for business usage.

6. **Short Term Incentive Scheme (STI) - Annual Performance Bonus**

Annual performance ratings are determined according to predetermined targets and resultant payouts are taxable.

7. **Long Term Incentive Scheme (LTI)**

As an executive, you will automatically participate in Eskom's Long Term Incentive Scheme, which is based on annual taxable grants vesting over periods of three (3) years. In the event of the vesting date occuring beyond the specified term of the contract, all such granted values would be deemed to have accrued to you and will be calculated as part of the final payment to you. Such final payment shall be fully inclusive of any amounts owed to you in terms of Eskom's Long Term Incentive Scheme rules.

OFFER OF EMPLOYMENT (Continue)

Please sign below, acknowledging receipt of this letter, and return it to me at your earliest convenience. Your appointment is effective from 1 October 2015.

An appointment will be arranged to discuss the structure of your total package to suit your personal tax requirements and other needs. Anton Minnaar and his Executive Support Team will assist you with all the support functions. Please contact Anton directly on tel. (011) 800-3088.

Kind regards

Dr Baldwin Ngubane
CHAIRMAN
Date: 09/11/15

ACKNOWLEDGMENT OF RECEIPT:

Signature
B Molefe

11.11.15.
Date

COMMISSION OF INQUIRY INTO STATE CAPTURE

"BM 38"

RESOLUTION

AT ITS MEETING ON 9 FEBRUARY 2016, THE PEOPLE AND GOVERNANCE COMMITTEE OF THE ESKOM BOARD RESOLVED THE FOLLOWING:

1. The current Eskom Pension and Provident Fund (EPPF) rule that Employees may proceed on retirement from age 50 with 10 years' service, remains applicable.

2. In cases where Executive Director's (appointed on fixed term contracts) decide to take early retirement and there is a shortfall regarding the EPPF 10 years' service rule, Eskom shall:

   i. Bridge the gap to make up for the 10 years'

   ii. Waive penalties applicable to early retirement

   iii. Refund EPPF actual costs for additional service added, plus penalties applicable to early retirement

pp.

Dr B S Ngubane

CHAIRMAN: ESKOM

Ms V J Klein

CHAIRPERSON: PEOPLE AND GOVERNANCE COMMITTEE

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1220

"BM 39"

Eskom

CONFIDENTIAL

MEMORANDUM

Tegeta Exploration & Resources (Pty) Ltd
Advance Payment Review

Eskom Holdings SOC Ltd, Primary Energy Department

Assurance and Forensic

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom

MEMORANDUM

To : Anoj Singh (Group Chief Financial Officer)

From : Molefi Nkhabu – Senior General Manager (Assurance and Forensic)

SUBJECT : **TEGETA EXPLORATION & RESOURCES (PTY) LTD ADVANCE PAYMENT REVIEW**

1. INTRODUCTION

A&F conducted a review of the procurement process followed in awarding the Exploration & Resources (Pty) Ltd (Tegeta) contract for Arnot supply and the subsequent advance payment made to (Tegeta), in terms of the request from the Group Chief Financial Officer that has been approved following internal Assurance and Forensic (A&F) protocol and hereby report in this regard

A&F's activities are conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

2. OBJECTIVE AND SCOPE:

4.1 Objective

To objective of the review was to determine.

- The robustness of the procurement process followed in awarding the Tegeta contract relating to the advance payment;
- Whether the advance payment made was in line with the governance processes and contract terms, and
- Whether the recoveries are in terms of the contract

4.2 Scope

Based on A&F's understanding of the requirements and the special request received, we performed the review of the following

- The procurement process followed to award the contract relating to the advance payment
- The process followed by Eskom in effecting the advance payment for compliance with the existing governance processes (policies, procedures and processes),
- The advance payment recovery in line with the contract terms; and
- The existence of the security from Tegeta for the advance payment in line with the contract terms

The scope of this review is confined to the procurement aspect of the contract relating to the advance payment of Tegeta and subsequent recovery only

Assurance and Forensic Department
Megawatt Park Maxwell Drive Sunninghill Sandton
PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 5300 Fax +27 11 800 2028 www.eskom.co.za

Eskom Holdings SOC Ltd Reg No 2002/015527/30

3. BACKGROUND

During February 2016, the need was identified to increase the supply of coal for the 3 months to 30 April 2016 This was due to the shortfall identified from the Coal Supply Plan and the delays in finalising the Request for Proposal (RFP) issued earlier The plan was to increase stock day to mitigate this risk. After assessing a number of suppliers, Tegeta was contracted for the 3 month period to supply this coal

As per the April 2016 Supply Plan as presented at the Primary Energy Technical Control Centre of the 8 April 2016, it was identified that supply to Arnot will be inadequate to meet the burn requirements of the power station over the winter months and that there is an urgent need for additional coal. The identified requirement was owing to the need to build up stock days over a short period while the RFP was being finalised

In securing this supply, Tegeta requested for a prepayment/advance payment The Eskom Board Tender Committee approved the basis for advance payment to Tegeta in order to secure the fixed coal price for the period of extension of the existing Coal Supply Agreement

An advance payment of R 578 559 718 74 (excluding VAT) was made by Eskom to Tegeta in lieu of future coal supply Tegeta agreed to supply Eskom from the Optimum mine in terms of the existing Coal Supply Agreement, for the 5 months period commencing **16 April 2016** to **30 September 2016** A **3.5%** discount was to be applied to the agreed price of **R20.41** per Gigajoule and accordingly the price payable for supply from the Optimum mine was to be **R19.69** per Gigajoule.

Tegeta pledged its shares to Eskom as **security** for the advance payment

4. EXECTIVE SUMMARY

4.1 The procurement process followed to award the contract including the advance payment

ANALYSIS OF FACTS

The procurement of these short-term contracts was effected under the Medium Term Mandate approved in 2008 In terms of this mandate Primary Energy Department (PED) can negotiate and conclude contracts with suppliers after the PED Senior General Manager approval Most of the transactions under the 2008 Mandate are based on unsolicited offers; the mandate is silent on the process to source the suppliers.

Amongst others, the following are the main requirements/criteria from the 2008 Medium Term Mandate

- Contract period must be between October 2008 to March 2018
- Maximum contract price per gigajoule and quality CV
- Contract limited to total mandated limit

We have confirmed compliance to the above requirements

During February 2016 PED identified an urgent need for 6 months coal supply, based on the Supply Plan (version 7) and the need to build up stock days

Further, there was an anticipated delay in finalising the RFP in progress at the time, after feedback from the 11 February 2016 Board Tender Committee (BTC) PED Technical Services identified potential suppliers suitable for Arnot requirements based on the

database of coal combustion test reports, then shortlisted 7 potential suppliers based on the database. Of the 7 potential suppliers, 4 were in negotiations on tenders in progress, and negotiations were at a sensitive stage, thus could not contract them further The remaining 3 were in the early stages of engagement and no technical and environmental due diligence reviews had been conducted PED concluded that the 3 suppliers would not have been in a position supply coal immediately

Eskom had received an offer on 17 January 2016 for 500kt from Tegeta The offer was made after discussions between General Manager Fuel Sourcing and Tegeta and reflected as such on the offer PED consequently considered the Tegeta offer as the coal was readily available and Tegeta had not tendered for the RFP in progress The acceptance of the offer was based on the following.

- Results of the coal quality evaluations performed by PED Technical services who recommended that PED could contract with the supplier.
- The price offered by Tegeta was comparable with prices which were offered for Arnot coal on proposals from current tenders in progress

At the PED TCC of 08 April 2016, a Supply Plan was presented highlighting a Coal supply shortage of 2 1 million tons in anticipation of the winter months for Arnot Power Station

In response to the supply plan shortage, Eskom negotiated and extended the short term agreements with Umsimbithi and Tegeta for the supply of coal to Arnot Power Station under the 2008 Medium Term Mandate granted by the Board Tender Committee

The Arnot Power Station RFP was still in the negotiation phase and anticipated to take a further 5 months to conclude the supply contracts

Umsimbithi	Tegeta
• Eskom negotiated for an extension of the Short Term Contract to supply an additional 540kt from July 2016 to September 2016. • BTC approved the contract extension, for the supply of additional 540kt, from July 2016 to September 2016 on 11 April 2016	• An unsolicited offer was received from Tegeta for the supply of additional 1250kt to Arnot • A request was received from Tegeta for an advance payment of R 578 559 718 74 (excluding VAT) less 3 5% discount • BTC approved the contract extension, including the advance payment, for five months to 15 September 2016 on 11 April 2016

FINDING

The appointment or extensions of contracts of Tegeta and Umsimbithi for the coal supply was in line with the Procurement process

The offered rand per gigajoule price to Tegeta compares favourably to the information obtained from the market.

4.2 The process followed by Eskom in effecting the advance payment for compliance with the existing governance processes (policies, procedures and processes)

ANALYSIS OF FACTS

The advanced payment was approved by BTC on 11 April 2016 and was made on 13 April 2016 in terms of the contract signed on 13 April 2016 Tegeta pledged its shares to Eskom as a security for pre-payment.

Following are the requirements for advance payment·

- The advance payment must be in terms of contractual arrangement
- The supplier to claim the advance payment via an invoice
- A bond/security will be kept in safe custody by Eskom Treasury

FINDING

The process followed by Eskom in effecting the advance payment was in compliance with the following existing governance processes (policies, procedures and processes)

- Treasury Regulations Issued in terms of the Public Finance Management Act, 1999 (Paragraph 15 10 1.2 c)
- Eskom's Procurement and Supply Chain Management Procedure (32-1034)
- Cash Management Policy (32-1028)
- Accounts Payable Policy (32-1084)

4.3 The advance payment recovery in line with the contract terms

ANALYSIS OF FACTS

Tegeta issued Eskom with invoices and related credit notes on a monthly basis (for the coal delivered) until the full amount of the advance payment was recovered in full.

All recoveries against the advance payment were based on confirmed qualities by the Geologist in line with contracted requirements

The price applied was discounted at 3.5% as per the agreement

FINDING

The recovery of the advance payment was in line with the contract terms

4.4 The existence of the security from Tegeta for the advance payment in line with the contract terms

ANALYSIS OF FACTS

Tegeta pledged its shares to Eskom as security for pre-payment Share Certificates were received by Eskom

The contract required that Tegeta pledges shares and cedes in *securitatem debiti* (i.e. as security for a debt) to Eskom all its present rights and interests, as continuing general covering collateral security for the due, proper and punctual performance in full of all the obligations in terms of the agreement

FINDING

The security exists from Tegeta for the advance payment in line with the contract terms

Further, considering that the Optimum contract with Hendrina is valid until December 2018 at 5 5Mt per annum at a cost of R180 R/t (R150 base cost plus CPA) which amounts to R 990 million rand per year Therefore the security covered the advance payment

5. CONCLUSION

Based on the review conducted, A&F hereby concludes as follows

- The appointment or extensions of contracts of Tegeta and Umsimbithi for the coal supply was in line with the Procurement process.
- The process followed by Eskom in effecting the advance payment was in compliance with the existing governance processes (policies, procedures and processes)
- The offered rand per gigajoule price to Tegeta compares favourably to the information obtained from the market
- The recovery of the advance payment was in line with the contract terms.
- The security exists from Tegeta for the advance payment in line with the contract terms

Moleti Nkhabu – Senior General Manager
Assurance and Forensic
14/09/2016

COMMISSION OF INQUIRY INTO STATE CAPTURE

"BM 40"

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EXECUTIVE SUMMARY

SUBMISSION TO:

BOARD TENDER COMMITTEE (BTC) **DATE: 08 August 2016**

1. TITLE OF THE SUBMISSION

Feedback on Mckinsey & Co. Top Consultants Programme MSA Settlement Process

2. RESOLUTION REQUIRED

The BTC notes the following:

2.1 To date the initiatives under the Top Consultants Programme MSA have achieved more than R18.6 billion of annualised impact for Eskom.

2.2 Applying the Termination and Settlement clauses within the MSA, Eskom may need to pay up to R2.84 billion (inclusive of payment to the BBBEE partner) for the value achieved to date

The BTC approves the following:

2.3 An already negotiated lower settlement value of R1.8 billion (inclusive of payment to the BBBEE partner)

2.4 The R1.8bn settlement negotiated will consist of an initial cash payment of R800m to cover the utilisation of the consultant's resources to date.

2.5 The current consultants have made an offer to reinvest the risk premium (R1bn) from the settlement to cater for the following:

2.5.1 A transition period of six months whilst Eskom transfers outstanding work beyond 6 months and any other new initiatives to another contracting mechanism. During this period Eskom would reimburse the consultant on a rates basis. It is proposed that the new contracting mechanism should cater for a risk based approach on the same T&Cs negotiated with the current consultants as far as possible. Where not possible a standard rates based approach would be adopted.

2.5.2 Any future work based on new saving initiatives or any other activities that Eskom may require from a management consultancy and financial advisory perspective that the consultant has been awarded through the appropriate procurement process.

2.6 If total risk premium is not paid to the consultant through 2.5 above, the balance will be redeemable by the consultant after a three year period.

2.7 The Group Chief Executive, Group Chief Financial Officer and Group Executive Generation and Technology are authorised to negotiate more favourable terms and conditions to the settlement process.

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3. BACKGROUND

3.1 The Master Service Agreement (MSA) provides the backbone of the Top Consultant Programme and describes the intention of the programme, the governance, the scope and the process to add scope, the payment logic and the risk-based remuneration scheme as well as the legal terms and the respective escalation mechanisms

3.2 The MSA was given effect by the Letter of Acceptance that Eskom issued in December 2015 and by Steering Committees that have taken place in the last seven months

3.3 The termination clauses of the MSA require that the current consultants are compensated for ideas that have reached Payment Trigger and be partly compensated for ideas that have been developed and approved to certain Implementation Levels ("IL Levels")

3.4 The Top Consultant Programme was introduced to turnaround Eskom when faced with a precarious financial and operational constraints in late 2015 when there were prospects of a net loss financial position and a severely constrained generation grid for winter 2016

3.5 Under the umbrella of the (MSA), The Top Consultant Programme was set-up to deliver key Corporate Plan priorities and develop critical skills in Eskom, including:

- 3.5.1 Increasing the energy availability factor at the power station fleet, with Majuba serving as the first pilot station
- 3.5.2 Reducing unnecessary external in spend in procurement
- 3.5.3 Reducing coal cost to or below MYPD3 targets
- 3.5.4 Limiting Medupi and Kusile claims to the figures outlined in the P50 business case
- 3.5.5 Training and further developing more Top Consultants, with the target of 150 top consultants trained by 2020
- 3.5.6 Requiring the consultant to achieve up to 50% SD&L contract share with black woman owned and BBEEE companies

3.6 The conditions of the Top Consultant Programme, under the charter of the MSA, were favourable for Eskom and should be maintained going forward, these terms included:

- 3.6.1 The consultant only being paid based on impact achieved, with a share of 10.8% on once-off impacts and share 10.55% on recurring impacts paid over 3 years
- 3.6.2 The consultant deploying an audited and IT Security approved impact tracking tool for corporate plan initiative tracking
- 3.6.3 The consultant providing additional non billable initiatives such as the Project Management Office to aid in the administering of the programme, the 3 year Top Consultant Programme (worth R1.3billion), the coal strategy, the support on key strategic initiatives
- 3.6.4 The consultant guaranteeing an SD&L share between 25% and 95% per work package resulting in an average of ~50% across the programme
- 3.6.5 The consultant providing favorable termination conditions for Eskom, with ideas in the pipeline to be compensated at a discount

3.7 The Top Consultant Programme has delivered considerable impact for Eskom already, including:

3.7.1 In Generation, the first six months of the Majuba turnaround programme ("Sakhasonke") have reduced 12-month moving average UCLF by 4.97pp and the support of the Unit 6 GO has help limit work to a single outage and avoid a further 4.5pp of PCLF in 2017/18 for Unit 6

3.7.2 In Procurement, average savings of 15% have been attained, a Spend Control Tower has been implemented and the Top Buyer training programme have been launched

3.7.3 In Primary Energy, fixed price coal contracts price have reduced by 2.5 - 15% and stockpile height and geography of stockpiles expansion have been addressed to mitigate the impact of the Medupi claim which can have a R3.2billion EBITDA impact for Eskom

3.7.4 In Claims, historical claims for boilers and turbines have been addressed limiting claims potential down by R5.1billion and the boiler delivery model and turbine claim avoidance strategies have been developed which will limit future claims by more than R3.7billion

3.8 The programme has created change momentum across Eskom with a number of sustainability actions taking place, examples:

3.8.1 Over 300 commercial colleagues have attended the launch of the cost saving programme

3.8.2 More than 50 TOP consultants have been working on high impact and top priority topics

3.8.3 The Top Buyer programs provides technical and management training both in classroom style and with practical application on the job for the first cohort of 40 Eskom employees

3.8.4 More the 70 Eskom employees have been trained in using Wave to capture and track business improvement ideas, improving their business acumen and project management skill

4. PROGRESS TO DATE

4.1 Initiatives under the MSA have achieved more than R18.6 billion of annualised impact for Eskom (R34,9 billion over a five year basis) – this impact is a combination of capex and opex savings and improvements in revenue potential through increased EAF of the Majuba Power Station

4.2 The Programme has also identified a further R29 billion of initiatives (Pre-IL statues and beyond) that can be delivered over the next three years, covering key aspects of the Corporate Plan like external spend, coal procurement, employer claims at new build sites and improved EAF at Majuba

4.3 The Board Tender Committee on 22 June 2016 approved the decision to wind down the existing Top Consulting Programme Master Services Agreement (MSA) with the current consultants, based on an inability to reach agreement on the final T&Cs of the contract

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5. SETTLEMENT PROCEDURE

5.1 Applying the Termination and Settlement clauses within the MSA Eskom may need to pay up to R2.84 billion for the value achieved to date

5.2 The settlement values indicated include respective share for SD&L partners

5.3 The breakdown per work package is described below:

- 5.3.1 Generation R1.036 billion
- 5.3.2 Claims R804 million
- 5.3.3 Procurement R489 million
- 5.3.4 Primary Energy R407 million
- 5.3.5 Finance R107 million

5.4 Eskom has already negotiated a lower settlement value of R1.8 billion

5.5 The R1.8bn settlement negotiated will consist of an initial cash payment of R800m to cover the utilisation of their resources to date.

5.6 The current consultants have made an offer to reinvest the risk premium (R1bn) from the settlement to cater for the following:

- 5.6.1 A transition period of six months whilst Eskom transfers outstanding work beyond 6 months and any other new initiatives to another contracting mechanism. During this period Eskom would reimburse the consultant on a rates basis It is proposed that the new contracting mechanism should cater for a risk based approach on the same T&Cs negotiated with the current consultants as far as possible. Where not possible a standard rates based approach would be adopted.
- 5.6.2 Any future work based on new saving initiatives or any other activities that Eskom may require from a management consultancy and financial advisory perspective that the consultant has been awarded through the appropriate procurement process.

5.7 If total risk premium is not paid to the consultant through 5.6 above, the balance will be redeemable by the consultant after a three year period.

6. IMPLEMENTATION CONSIDERATIONS

6.1 The 17.5pp (R3.8 billion in annual revenue potential) forecast EAF increase for Majuba power station (9.9pp already realised) may lose momentum and thereby limit Eskom's strategic capacity optimisation options across the fleet

6.2 The engagement and improved performance from more than 580 Eskom employees and hundreds more contractors at Majuba who have been touched by the Sakhasonke programme could be lost and make reviving a new a program very cumbersome

6.3 The work in Claims requires specialized skills and hands-on commercial experience of the Eskom new build programmes and in-depth knowledge of the contractors, replacing these scarce skills may very time consuming and reduce the capex savings potential for FY17-21

6.4 Within Primary Energy, terms have been agreed with suppliers, a delayed transfer would destabilize the process of finalizing contracts potentially losing

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Eskom the 5%-15% savings that have been negotiated on a number of coal contracts

6.5 Within Cost-Plus mines, memorandums of understanding have been concluded with the mining houses, a delayed transfer of these initiatives would cause Eskom to lose the trust and credibility of the mining operators, and create the perception we are unable to implement our plans

6.6 A significant amount of work has been done to deliver Procurement savings that will only materialise later in the financial year, a delayed transfer decreases the capacity of the Procurement employees to capture all of these savings

6.7 Further uncertainty and discontinuity in the training and development of the 31 new Top Consultants and the 23 more experienced Top Consultants in the Top Consultant Programme may cause many of them to lose motivation and leave the programme or Eskom

7. FUTURE PIPELINE OF INITIATIVES

7.1 There is currently R29 billon of initiatives in the pipeline (Pre-IL statues and beyond) that can be delivered over the next three years, covering key aspects of the Corporate Plan including external spend savings, coal procurement optimisation, delivery of new build sites at or below P80 and improved EAF of plant

7.2 Given the importance of achieving DTC1, the value of the initiatives currently in the pipeline cannot be foregone during this process of transforming the MSA

7.3 To ensure that initiatives in the pipeline are not compromised, it is prudent to allow the current consultants maintain and prepare the current initiatives for transition until the 31st December 2016

7.4 This transition period will allow Eskom time to negotiate terms with any new consultants on the Management Consultant Panel, while ensuring the timing and impact of ideas in the pipeline are not compromised

8. FINANCIAL IMPLICATIONS

8.1 The termination clauses of the MSA will require Eskom to compensate the current consultants for the value of impact achieved as well as a percentage for the value of ideas generated depending on the IL status of each idea at the date of termination

8.2 Under the termination and settlement clauses of MSA Eskom may be liable to pay the current consultants up to R2.8 billion for termination of contract

8.3 Eskom has already agreed a negotiation position with the current consultants of R1.8bn.

8.4 The settlement of R1.8bn will be treated as per sections 5.5 and 5.6 above.

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9. HUMAN RESOURCE IMPLICATIONS

9.1 The launch of Design to Cost 1 (Project Mario) will cascade across the 43,000 people in the Eskom organization, the TCP is key part of this narrative

9.2 There are 54 Top Consultants currently in the programme, 31 new joiners that require 1 year of training and 22 that are growing in to senior consultant and manager roles who need training and coaching

9.3 The 580 Majuba Eskom employees that have been engaged in the Sakhasonke turnaround program that is reviving trainings and station wide communications

9.4 The 12-month Top Buyer capability building programme in Procurement has onboarded the first cohort of 40 Eskom employees

10. RISKS

RISK	MITIGATING FACTORS/ Actions	LEVEL (HIGH/MEDIUM/LOW)
Loss of value or delay in impact timing caused by transition to new vehicle	• Ideas in the pipeline moved into new contractual vehicle to limit lost value • Conclude transfer to new contracting vehicle within an expedited timeframe • Allow for a transition period of 6 months with the current consultants	High
Terms of new contracting vehicle less favourable than current MSA in place	• Apply the same service conditions as in the MSA to the new RFP(e.g. 100% at risk, up to 50% SD&L share, free work), including: - Maintain the ROI and speed of delivery of current programme, so as not to prejudice the timing or value of impact for Eskom - Deliver Major sustainability actions at no additional cost to Eskom, i.e.: Top Consultant Programme, Top Buyer in Procurement - Continue developing further ideas to capture full value available	Medium

Risk to 54 Top Consultants currently in the Top Consultant Progamme	• Additional value drivers not to be compromised • To be included as negotiating parameters for the new contracting mechanism	High
Risk to 40 people from Procurement that have been onboarded to the 12-month Top Buyer capability building programme	• Additional value drivers not to be compromised • To be included as negotiating parameters for the new contracting mechanism	High
Risk to foregoing to R29 billion in future impact	• Ideas in the pipeline moved into new contractual vehicle to limit lost value	High
Place strain on relationships and activities with external stakeholders such as: - Volume and operations improvements at cost plus mines - Finalizing prices and contracts with key suppliers in procurement - Optimizing commercial and delivery models – Major contractors at Kusile and Medupi	• Conclude transfer to new contracting vehicle within an expedited timeframe • Allow for a transition period of 6 months with the current consultants	High

11. VERIFICATION BY INDEPENDENT PARTY (if applicable)

Not applicable

12. OTHER APPROVALS REQUIRED

None

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SIGNATURE:

PRISH GOVENDER
GROUP CAPITAL INTEGRATION AND ASSURANCE

SIGNATURE
Who hereby represents that the above Information is correct.

05/08/2016.
DATE

EDWIN MABELANE
CHIEF PROCUREMENT OFFICER

SIGNATURE
Who hereby represents that the above Information is correct.

2016/08/05
DATE

ANOJ SINGH
GROUP CHIEF FINANCIAL OFFICER

SIGNATURE
Who hereby represents that the above Information is correct.

05/08/16
DATE

COMMISSION OF INQUIRY INTO STATE CAPTURE

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CHECKLIST 1

		N/A	Yes	No
1.	**INTERNAL PROCESS**			
1.1	**BUSINESS PLAN** Has the project/issue been included in the business plan? (If no, information/explanation to be highlighted in documentation/ presentation/attachment.)		X	
1.2	**BUDGET** If financial approval is required, is the project/matter within the approved budget? (If no, information/explanation to be highlighted in documentation/ presentation/attachment.)		X	
1.3	**HUMAN RESOURCE IMPLICATIONS** Does the project have any HR implications? (If yes, information/explanation to be highlighted in documentation/presentation/attachment.)		X	
1.4	**FINANCIAL EVALUATION** - Has the project/issue undergone a financial evaluation? (If yes, by whom) - Has the evaluation been verified? All initiatives making up the total settlement value has been reviewed and verified by the stream leads and minutes have been captured in the respective steercoms		X	
1.5	**LEGAL/CONTRACTUAL ISSUES** - Are there legal implications? - Has Corporate legal department input been obtained? - If so, is the approval sought consistent with the legal input?	X		
1.6	**TAX IMPLICATIONS** - Are there tax implications? - Has corporate tax department input been obtained? - If so, is the approval sought consistent with the tax input? -	X		

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	N/A	Yes	No
1.7 CAPITAL PROJECTS If the project is of a capital nature the checklist 2 (attached) for the evaluation of capital projects should be completed as well.	X		
1.8 TECHNICAL EVALUATION - Has the project/issue undergone a technical evaluation? (If yes, by whom) - Has the evaluation been verified? - By whom (internally or independent)?	X		
1.9 BLACK ECONOMIC EMPOWERMENT IMPLICATIONS Does the project have any BEE implications?		X	
1.10 EMPLOYMENT EQUITY Was due consideration given to employment equity in terms of the following:		X	
- Project team - Drafting of submission documentation - Individual(s) presenting to EXCO -			
2. ADDITIONAL APPROVALS			
2.1 NERSA - Is NERSA approval/consultation required? - If approval or consultation is required, provide details and also highlight the time lines, deadlines, etc.	X		
2.2 PUBLIC FINANCE MANAGEMENT ACT (PFMA) - Is any PFMA approval required?	X		
2.3 ARE THERE ANY OTHER APPROVALS REQUIRED? IN PARTICULAR - Reserve Bank - Competition Commission - National Treasury	X		

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SIGNATURE:

PRISH GOVENDER
GROUP CAPITAL INTEGRATION AND ASSURANCE

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05/08/2016
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2016/08/05
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COMMISSION OF INQUIRY INTO STATE CAPTURE

"BM 41"

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EXECUTIVE SUMMARY

SUBMISSION TO THE BOARD TENDER COMMITTEE (BTC) ON 13 DECEMBER 2016

1. TITLE OF THE SUBMISSION

Update on McKinsey & Company Top Consultants Programme Master Service Agreement (MSA) Settlement Process

2. RESOLUTION REQUIRED

The Board Tender Committee approves the following:

2.1 A mandate to negotiate and conclude the remaining portion of the settlement up to **R849 million**, based on the total value of R1.8 billion communicated to the Board Tender Committee (BTC) in August 2016, noting the Legal, Internal Audit and External Benefits review of the contract. Once the negotiation is complete, the necessary feedback will be provided to the Board Tender Committee.

2.2 A payment of **R134 million** to finalise payments up to August 2016 to the BBBEE partner that was due as per the work split agreed with McKinsey & Company

2.3 That the Acting Group Chief Executive, the Chief Financial Officer and the Chief Procurement Officer are authorised to negotiate and conclude the settlement process with McKinsey & Company.

3. BACKGROUND

3.1 The Master Service Agreement (MSA) provides the backbone of the Top Consultant Programme and describes the intention of the programme, the governance, the scope and the process to add scope, the payment logic and the risk-based remuneration scheme as well as the legal terms and the respective escalation mechanisms

3.2 The termination clauses of the MSA require that the current consultants are compensated for ideas that have reached Payment Trigger and be partly compensated for ideas that have been developed and approved to certain Implementation Levels ("IL Levels")

3.3 Under the umbrella of the (MSA), The Top Consultant Programme was set-up to deliver key Corporate Plan priorities and develop critical skills in Eskom, including:

1. Increasing the energy availability factor at the power station fleet, with Majuba serving as the first pilot station
2. Reducing unnecessary external in spend in procurement

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3. Reducing coal cost to or below MYPD3 targets
4. Limiting Medupi and Kusile claims to the figures outlined in the P50 business case
5. Training and further developing more Top Consultants, with the target of 150 top consultants trained by 2020
6. Requiring the consultant to achieve up to 50% SD&L contract share with black woman owned and BBEEE companies

3.4 McKinsey & Co. has claimed that up to August 2016, the initiatives under the Top Consultants Programme MSA have achieved more than R18.6 billion of annualised impact for Eskom.

3.5 Applying the Termination and Settlement clauses within the MSA, Eskom may need to pay up to R2.84 billion (inclusive of payment to the BBBEE partner), for the value achieved.

3.6 An initial lower negotiated lower settlement value of R1.8 billion was presented to Board Tender Committee in August 2016.

3.7 In line with the approval granted by (BTC) in August 2016, an initial payment of R800 million (inclusive of payment to the BBBEE partner) was made to the consultant for work done up to August 2016.

3.8 In August 2016, the BTC also approved that the Group Chief Executive, Group Chief Financial Officer and Group Executive Generation and Technology are authorised to negotiate more favourable terms and conditions to the settlement process.

4. PROGRESS TO DATE

4.1 The initial payment of R803.5 million (inclusive of payment to the BBBEE partner) has been made.

4.2 Letter of demand from McKinsey & Co. and the BBBEE partner has been received claiming outstanding payments up to the R1.8 billion

4.3 Management has put into place three review initiatives to assist with compliance and assurance on the overall process including any further payments that could be necessary.

4.4 An internal audit was conducted on the MSA procurement process. There were no major findings in the report. The report is attached as appendix A.

4.5 Oliver Wyman was appointed to conduct a detailed assessment of the claimed value and payments due upon the cancellation of the MSA. A preliminary report is attached as appendix B and a final report is due on 15 December 2016. This assessment will be used as guidance for further negotiation of a final settlement value. Key points from the report can be summarised as follows:

1. Of the R2,84 billion payment Eskom might have needed to pay under the termination and settlement clauses of the MSA:
   - R1.05 billion is accounted for by payments that are required under the MSA for early cancellation of

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consulting initiatives, despite these payments not having been approved by the steering committee

- R1.79 billion is accounted for by payments for consulting initiatives that were approved by the steering committee (R1.68 billion) payments for the financial advisory work (R107 million)

2. Of the R1,79 billion:
   - R803.5 million has already been paid to the Consultant supplier and the BBBEE partner
3. Based on the invoice from the Consultant supplier and the split of revenues they have set out, a further payment of R134 million is due to the BBBEE partner for their contribution to the consulting work packages
4. The payment of the remaining R849 million could be further negotiated with the Consultant:
   - There appear to be clear-cut reasons to challenge R380 million of the payments
   - The other R469 million seems justified for payment, but there are reasons to argue that a portion of it should be delayed rather than paid immediately
5. These findings will be refined over the next week. The final report from the review will include a summary of lessons learned on the design of the contract for this type of work, to allow future contracts to be tailored to specific project needs.

4.6 Finally a legal review on the process was done by Cliff Dekker Hofmeyr. The key conclusions are summarised in section 8.

5. FINANCIAL IMPLICATIONS

5.1 Under the termination and settlement clauses of MSA Eskom may be liable to pay the current consultants up to R2.84 billion for termination of contract

5.2 Eskom has already agreed a negotiation position with the Consultants of R1.8bn.

5.3 R 803.5 million has already been paid to McKinsey & Co. inclusive of the BBBEE partner portion

5.4 A payment of R134 million in addition to the R803.5 million paid, is due to the BBBEE partner, in accordance to the pre-agreed work split with McKinsey & Co., to settle the initial payment process. The payment has been verified and supported by Oliver Wyman in the attached report.

5.5 A final negotiated value will be communicated to Board and could be between 0 and R849 million depending on the external benefits review and legal review.

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6. HUMAN RESOURCE IMPLICATIONS

None

7. RISKS

RISK	MITIGATING FACTORS/ ACTIONS	LEVEL (HIGH/MEDIUM/LOW)
Loss of value or delay in impact timing caused by transition to new vehicle	• Ideas in the pipeline moved into new contractual vehicle to limit lost value • Conclude transfer to new contracting vehicle within an expedited timeframe	High
Terms of new contracting vehicle less favourable than current MSA in place	• Apply the same service conditions as in the MSA to the new RFP (e.g. 100% at risk, up to 50% SD&L share, free work), including: – Maintain the ROI and speed of delivery of programme. So as not to prejudice the timing or value of impact to Eskom – Deliver major sustainability actions at no additional cost to Eskom i.e. Top Consultant Programme, Top Buyer in Procurement – Continue developing further ideas to capture full value available	Medium

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RISK	MITIGATING FACTORS/ ACTIONS	LEVEL (HIGH/MEDIUM/LOW)
Risk to 54 Top Consultants currently in the Top Consultant Programme	• Additional value drivers not to be compromised • To be included as negotiating parameters for the new contracting mechanism	High
Risk to 40 people from Procurement that have been on-boarded to the 12 month Top Buyer capability building programme	• Additional value drivers not to be compromised • To be included as negotiating parameters for the new contracting mechanism	High
Risk to foregoing R29 billion in future impact	– Ideas in the pipeline moved into new contractual vehicle to limit lost value	High
Place strain on relationships and activities with external stakeholders such as: – Volume and operations improvements at cost plus mines – Finalising prices and contracts with key suppliers in procurement – Optimising commercial and delivery models – major contractors at Kusile and Medupi	– Conclude transfer to new contracting vehicle within an expected timeframe – Allow for transition period of 6 months with the current consultants	High

8. EXTERNAL LEGAL REVIEW

Cliffe Dekker Hofmeyer was retained to conduct the review and the conclusion is that Eskom needs to enter into a Termination Agreement with the parties to bring the matter to finality. This will absolve Eskom from any further liability once the Termination Agreement is in place.

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9. OTHER APPROVALS REQUIRED

None.

10. Appendices

- Appendix A – Eskom Internal Audit Report
- Appendix B – Detail Assessment Preliminary Report (Oliver Wyman)

Approved By:

EDWIN MABELANE
CHIEF PROCUREMENT OFFICER

SIGNATURE
Who hereby represents that the above Information is correct.

2016/12/12
DATE

Submission Compiled by: Prish Govender
Contact Number: 0824690467
Date: 09 December 2016

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1243

"BM 42"

In recognition of the
Quality and Accreditation
of its training programs
KOEBERG NUCLEAR POWER
is designated as a branch of
The National Academy for Nuclear
November 2003

Chief Executive Officer
Institute of Nuclear Power Operations

Executive Director
National Academy for Nuclear Training

COMMISSION OF INQUIRY INTO STATE CAPTURE

"BM 43"

Eskom

MEMORANDUM

To: Elsie Pule, Group Executive HR (Acting) & Riedewaan Bakardien, PSM

From: Cynthia Tsabadi
Project Manager: KOU Transformation

Date: 12 April 2016

SUBJECT: APPROVAL OF THE ARTISAN NUCLEAR OPERATING PIPELINE 2016 MASTER LIST.

PURPOSE:

1. The aim of this submission is:
   - To share the updated list of potential candidates Nuclear Operating training programme candidates
   - To request the abovementioned key stakeholders to approve the list to trigger the offer stage of the programme.

BACKGROUND:

2. The Generation Division with regard to its nuclear operations does not have a sustainable pipeline of Nuclear Plant Operators to feed into higher skills requirement opportunities within Koeberg, and for future nuclear build that is in support of both the regional and national demographics of the country.
3. Based on the above it was necessary to:
   - Focus on leveraging on already existing initiatives (Internal and External to Eskom) by to build a nuclear skills pipeline.
   - Deliver an accelerated Skills Development Programme that will run over a period of five (5) years.
   - Consciously source candidates to reflect the National Demographics.
   - Leveraging other Eskom Programmes, e.g. Artisan Training Programme

Group/Division Human Resources
Megawatt Park Maxwell Drive Sunninghill Sandton
PO Box 1091 Johannesburg 2000 SA
Tel +27 11 516 7017 Fax +27 86 665 3041www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/015527/30

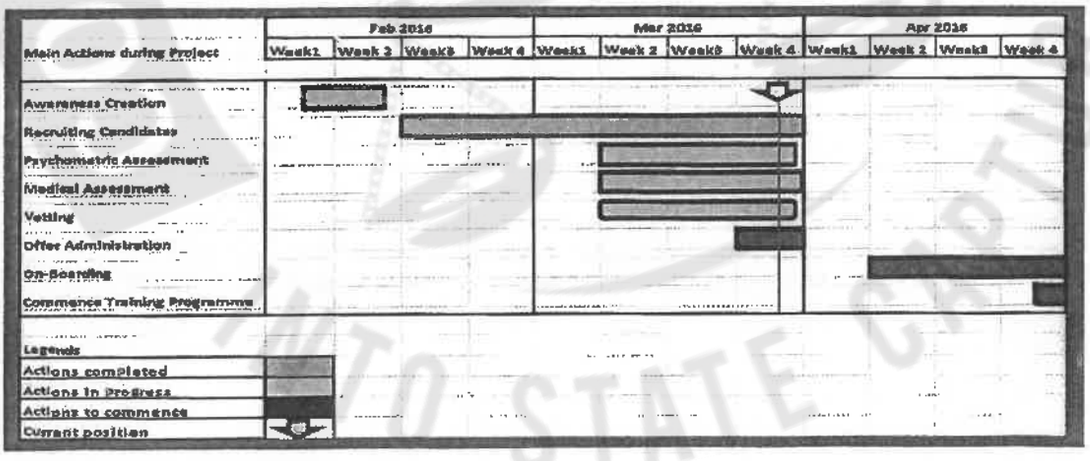
COMMISSION OF INQUIRY INTO STATE CAPTURE

- Accelerate the KOU Employment Equity Plan

4. The Koeberg Transformation Programme therefore has two objectives namely;
   - Building and sustaining Nuclear skills in the country and
   - Creating an enabling environment by transforming the culture at Koeberg in alignment with the strategic objectives of the organization.
5. In terms of building and sustaining nuclear skills, Koeberg will ensure that a robust skills pipeline exists to address current and future needs.
6. Other programmes in terms of accelerating skills development, ensuring representivity of the workforce to match those of the regional and national EAP demographics
7. Work to create an enabling environment by transforming the culture at Koeberg in alignment with the strategic objectives has commenced and a transformation plan supported by an Employment Equity Plan is in place to ensure a diverse workplace in the coming years.
8. The KOU has raised the concern through WANO reviews, and various platforms on the insufficient resources within operating as well as the fact that the Nuclear Operator pipeline was a risk. The intervention therefore is geared towards augmenting this pipeline into the future.
9. The nuclear operator training pipeline is one such flagship programme that will not only increase the nuclear operator skills base but also improve the diversity of the workforce within this workforce segment.

DISCUSSION:

10. Below is the project plan for this project:



11. In order to impact the transformation positively it became imperative to ensure that :

- The 100 recruits contributes to Eskom meeting the Shareholder Compact requirements of training in line with the National Development Plan.
- An opportunity to increase the representivity of females to support the KOU's gender

COMMISSION OF INQUIRY INTO STATE CAPTURE

Minister Lynne Brown appoints Brian Molefe as Acting Chief Executive of Eskom

17 Apr 2015

On Wednesday, I briefed the nation on the current state of the grid and the reasons for the implementation of stage 3 load shedding by Eskom. I am informed that the system is still tight. However, Eskom and its engineers are doing their utmost to contain further interruptions at our power plants. With than announcement I also informed the nation that I am looking at immediate steps to stabilise leadership at Eskom both at Executive and Board level.

Eskom is a strategic asset and one of the major utilities on the continent. It is therefore critical that Eskom operates optimally and contributes to economic growth of the country.

The decision to institute an inquiry has created uncertainty on Eskom's ability to ensure security of supply and successful delivery of its build programme. I am happy to announce that the Terms of Reference for the appointment of an investigator is concluded and Dentons has been appointed to lead the enquiry. I will await a report from the Board as this process unfolds.

In order to stabilise the executive leadership and after consultations with various stakeholders including President Jacob Zuma, Deputy President Cyril Ramaphosa, the Boards of both Transnet and Eskom, I have decided to second Mr. Brian Molefe as Acting Chief Executive of Eskom.

Mr Molefe is the current Group Chief Executive of Transnet and his secondment is with immediate effect.

His experience in having turned around the Public Investment Corporation and providing stability at Transnet is a clear indication that Mr Molefe is no stranger in leading complex institutions. Given Eskom's current financial and operational position, I am confident that we will be able to draw on his experience and understanding of the financial markets.

This secondment is also considered in light of Mr Molefe's extensive understanding of the public sector and the environment in which State-Owned Companies operate. As is evident from his CV, he has been involved with entities such as Telkom, the Airports Company of

U14-VK-1248

South Africa, the National Empowerment Fund and the Export Credit Insurance Corporation amongst others.

Ladies and gentlemen, I now call on Mr Molefe to join us.

This secondment allows Mr Sinethemba Khoza to resume his role as a member of the Board. I want to take this opportunity to thank Mr Khoza for acceding to the call to step in at a critical moment when his leadership was needed.

To consolidate the leadership at Eskom, I will soon be submitting my recommendations to Cabinet on appointing additional members to strengthen and augment the required skills on the Board.

In conclusion,

I would like to thank the Transnet Board for agreeing to the secondment of Mr. Molefe and the manner they dealt with this request. I would also like to appeal to the Eskom Executives and employees to welcome Mr Molefe and provide him with all the necessary support that he would require as he steers the company.

Condensed CV of Mr Brian Molefe

Mr Molefe's qualifications include the following: Masters of Business Leadership, University of South Africa; Post-Graduate Diploma in Economics, London University, School of Oriental and African Studies and a Bachelor of Commerce, University of South Africa. Majors: Accounting and Economics. Other training courses include: a Programme for Young Global Leaders, Kennedy School of Government, Harvard University (Cambridge, Mass. USA, 2009), Advanced Management Program, Harvard Business School (Boston 2006); and Executive Programme at Wharton Business School (Philadelphia USA, 2003).

For enquiries contact:
Colin Cruywagen
Cell: 082 377 9916
E-mail: colin.cruywagen@dpe.gov.za

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From: Malesela Phukubje <PhukubM@eskom.co.za>
Sent: Monday, 20 April 2015 13:00
To: baldwin ngubane; Zethembe Khoza; chwayitam; nazia.c@vodamail.co.za; viroshini naidoo; Venete Klein; Mark Pamensky; Pat Naidoo; romeo.kumalo@gmail.com
Cc: Neo Tsholanku; Suzanne Daniels
Subject: Secondment Agreement

Dear Board Members,

I refer to the above matter and transmit a Secondment Agreement which was approved by the Board of Transnet this morning.

Please peruse the agreement and advise whether there are any comments or changes you would like to incorporate.

It would be appreciated if the agreement is signed today so that it coincides with the official date of commencement of Mr. Molefe's tenure at Eskom.

Kindly let us have your comments as soon as possible.

Regards,

Malesela Phukubje I Company Secretary
Office of the Company Secretary I Office of the Chairman I Third Floor T36
2 Maxwell Drive Megawatt Park I Tel : +27 11 800 8542 I Cell : +27 84 200 0087 I Fax : +27 86 652 3139 I
eFax: 0866523139
E-mail : phukubm@eskom.co.za
Secretariat website: http://sivmas045.eskom.co.za/corporate_secretariat/

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REMEMBER YOUR POWER 49

From: Ndiphiwe Silinga Transnet Corporate JHB [mailto:Ndiphiwe.Silinga@transnet.net]
Sent: Monday, April 20, 2015 11:56 AM
To: Neo Tsholanku; Malesela Phukubje
Cc: Ayanda Ceba Transnet Corporate JHB
Subject: FW:

Good day

Please find the version approved by the Transnet Board.

Regards,

Ndiphiwe

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From: Ayanda Ceba Transnet Corporate JHB <Ayanda.Ceba@transnet.net>
Sent: Tuesday, 28 April 2015 15:30
To: stan@integratedcapital.co.za; zainul@lechabile.co.za; nkonyanemv@telkomsa.net; peter.williams276@gmail.com; brett@pops.co.za; potso.mathekga@yahoo.com; gideon@swazi.net; blueberries.slk@gmail.com; Linda Mabaso Transnet Corporate JHB; BM Yasmin Forbes; Nazmeera Moola (Nazmeera.Moola@investecmail.com); Siyabonga Gama Transnet Freight Rail JHB; Anoj Singh Corporate JHB
Cc: Nokuthula Khumalo Transnet Corportate JHB; Karabelo Mosia Transnet Corporate; Lynnette Marais Corporate JHB; Shulami Qalinge Corporate JHB; Ndiphiwe Silinga Transnet Corporate JHB; Morwadi Mokae Transnet Freight Rail JHB; Lydia Matebisi Transnet Corporate JHB; andy@integratedcapital.co.za; Roschelle Valentine Transnet Corporate JHB; Molly Mcrowdie Transnet Corporate JHB
Subject: FYI: Speaking Notes from the meeting between the Shareholder Minister and the Board on 21 April 2015
Attachments: Minister Lynne Brown_notes on meeting with Transnet re GCEO_21April2015.pdf

Dear Board Member

We trust that you are well.

Find transmitted herewith the Shareholder Minister's Speaking Notes for your information.

Kind regards

Ms. Ayanda Ceba
Group Company Secretary
Group Company Secretariat
Transnet SOC Ltd

011 308 2719
083 281 1628
011 308 2430
ayanda.ceba@transnet.net
www.transnet.net

MISSION OF INQUIRY INTO STATE CAPTURE

public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

Minister Brown's meeting with the Transnet Board

Date: 21 April 2015
Venue: 1st Floor, the Junction, Modderfontein Road,
Esselenpark, Kempton Park

RE: Appointment of Mr. Brian Molefe as Acting Chief Executive of Eskom

Greetings to all present,

I am advised that this is an in-committee meeting and not a formal Shareholder's meeting.

On Wednesday, 15 April 2015 I briefed the nation on the current state of the grid and the reasons for the implementation of stage 3 load shedding by Eskom.

With that announcement I also informed the nation that I am looking at immediate steps to stabilise leadership at Eskom both at Executive and Board level.

On 17 April 2015, I subsequently announced my decision to second Mr. Brian Molefe as the new Acting Chief Executive of Eskom. I alluded to consultations with various stakeholders, including President Jacob Zuma, and the Boards of both Transnet and Eskom. I believe that the statement needs to be clarified.

Due to the urgency to stabilise Eskom, I called a meeting with the Chairperson of Transnet Board, Ms. Linda Mabaso, and the Acting Chairperson of Eskom Board, prior

to making the announcement. This decision was taken within the context of challenges facing Eskom as well as the urgency with which it needed to be implemented.

I could only consult, at this opportune moment, with the full Board. At the time, I needed to contain the matter in confidence and avoid any media leaks. Because it was not pre-planned, the Chairperson of Transnet Board could not get hold of all members of the Board.

I therefore understand that the manner in which the decision was communicated may have created a level of uncertainty in the Company. However, I wish to assure you that it was an emergency intervention, in the national interest of the country, and I needed to move with speed to implement the decision.

As you are now aware, Mr. Molefe's secondment is with immediate effect and I wish to sincerely thank the Board for swiftly accommodating my decision. I am keen to hear from the Board members how they would have voted on the matter, if I were to ask the Board to support my decision, prior to taking it.

I did not intend to violate corporate governance procedures, however, the situation called for urgent action.

Being mindful of the impact of the announcement, I appreciate that the Board has responded by taking the decision to appoint Mr. Gama as Acting Group Chief Executive. Transnet is the jewel of the DPE portfolio and I am confident that the Board and Management will continue on the same sustainable path.

I believe that we must use the 3-month window of the inquiry currently being undertaken by the Eskom Board. With Mr. Molefe being seconded and Mr. Gama being appointed to act as Transnet GCE, I request both Boards to apply their collective minds to the practical arrangements of the secondment.

I have had 2 meetings so far with Mr. Molefe and already I can begin to feel confident.

Following this meeting today and in consultation with the Department, the formal contractual arrangements and other legal implications can be discussed and agreed between the 2 Companies. In light of Mr. Molefe being an Executive of Transnet, the Board is thus requested to submit a firm proposal to me thereafter.

I had indicated that it would be advisable to have Mr. Molefe secondment for a year; however, the details must still be worked out.

I thank you all for making the extra effort to be here today to allow me the opportunity to clarify matters.

/end.

COMMISSION OF INQUIRY INTO STATE CAPTURE

CONFIDENTIAL

MINUTES OF THE SPECIAL BOARD OF DIRECTORS OF TRANSNET SOC LTD MEETING NO. 1-15/16FY HELD ON 20 APRIL 2015 AT 08:30 IN THE PORT MANAGER'S BOARDROOM, OCEAN TERMINAL BUILDING, PORT OF DURBAN

Resolution No/ For Attention

1 **CONSTITUTION OF MEETING AND APOLOGIES**

1.1 **Present**

Ms LC Mabaso	Chairperson
Ms Y Forbes	Non-Executive Director
Mr SI Gama	Chief Executive Officer: Transnet Freight Rail
Mr GJ Mahlalela	Non-Executive Director
Ms PEB Mathekga	Non-Executive Director
Ms N Moola	Non-Executive Director *(through video-conference)*
Mr ZA Nagdee	Non-Executive Director
Mr VM Nkonyane	Non-Executive Director
Mr MR Seleke	Non-Executive Director *(through video-conference)*
Mr SD Shane	Non-Executive Director *(through video-conference)*
Mr A Singh	Group Chief Financial Officer *(through video-conference)*
Mr PG Williams	Non-Executive Director

1.2 **In attendance**

Mr N Silinga	Group Executive: Legal and Compliance *(through video-conference)*
Ms S Qalinge	General Manager: Office of the Group Chief Executive *(through video-conference)*
Ms NE Khumalo	Deputy Group Company Secretary *(through video-conference)*
Mr KL Mosia	Company Secretary *(through video-conference)*
Ms ANC Ceba	Group Company Secretary

1.3 **Partial attendance**

Mr M Sigonyela	General Manager: Corporate and Public Affairs

1.4 **Apologies**

1.4.1 Mr BG Stagman — Non-Executive Director

1.5 **Welcome and Signing of Attendance Register**

1.5.1 The Chairperson welcomed all members and attendees present. Having observed a quorum, she declared the meeting duly constituted. She noted an apology from Mr Stagman who was abroad. She indicated the purpose of the Special Meeting, and the rationale for its urgency. The Attendance Register was circulated for signature.

1.6 **Adoption of Agenda**

1.6.1 The Agenda was adopted as tabled.

2 **SAFETY BRIEFING AND EVACUATION PROCEDURE**

2.1 The safety briefing and evacuation procedures of the Port Manager's Boardroom were conducted by the Port Manager.

3 **DIRECTORS' DECLARATION OF INTERESTS REGISTER**

3.1 **Declaration of Interest for the meeting**

3.1.1 The Declaration of Interests Register was circulated for signature.

3.2 **Comments by Chairperson**

3.2.1 The Chairperson thanked the Members for availing themselves for the special meeting at short notice. She apologised for not consulting the Board appropriately on matters relating to the Secondment of the GCE to *Eskom SOC Ltd* on Friday 17 April 2015. She indicated that she was informed of the matter late. She attempted to arrange a teleconference with the Board, but could not participate anymore as the media briefing was commencing. She apologised for the mishap, and indicated that it was not her intention to undermine the Board. She indicated that

the Shareholder Minister also expressed her sincere apologies, and undertook to meet with the Board to apologise. A date for the meeting will be secured through the Office of the Group Company Secretariat, and communicated accordingly to the Board. Ms Ceba

Mr Sigonyela joined the meeting a 08:35.

3.2.2 He highlighted the order of proceedings for the Maritime School of Excellence Graduation Ceremony to the Board.

Mr Sigonyela was excused from the meeting at 08:40.
Mr Shane joined the meeting at 08:41.

The Board accepted the Chairperson's apology in relation to the GCE's secondment to *Eskom*.

4 MATTERS FOR APPROVAL/RECOMMENDATION

4.1 Secondment Agreement between *Transnet SOC Ltd* and *Eskom SOC Ltd*

4.1.1 Management took the Board through the submission. The submission was taken as read. The purpose of the submission was to request the Board to approve the Secondment Agreement ("the Agreement") between the Company and *Eskom SOC Ltd*, and to delegate authority to the Chairperson to sign the Agreement on behalf of the Board.

4.1.2 Management stated that the Agreement was circulated to the Board on 19 April 2015 for comment. Management highlighted the salient features of the Secondment Agreement to include, amongst others, the following:

- The rationale behind the secondment period of 3 months.
- The treatment of Mr Molefe's salary, and other related expenses.

4.1.3 Management stated that the Shareholder Minister indicated that the GCE may be seconded to *Eskom* for a period of 12 months. Mr Stagman's comments were read out to the Board for consideration. Mr Williams commended the Shareholder Minister for taking decisive action on dealing with *Eskom*'s challenges. However, he was of the view that there was a process to be followed by the Board in relation to the secondment of the GCE, and in this regard, the matter could have been dealt with in another manner. He indicated, amongst others, the following from the Agreement:

- Clause 1.6 has a spelling error.
- Clause 3.1 should be cautiously managed to fulfil legitimate expectations of the parties.
- Mr Molefe's benefits should be protected during his secondment period. Further, performance management issues during the secondment period should be outlined in advance to manage Mr Molefe's other benefits.

Mr Seleke joined the meeting at 08:58.

4.1.4 The Chairperson apologised to Mr Seleke for the events on 17 April 2015. Mr Seleke indicated that he understood the Chairperson's circumstances prior to the media briefing, and he accepted the apology. Ms Moola requested Management to protect Mr Molefe's Short-Term and Long-Term Incentives in the Agreement. She was of the view that if the secondment period is longer than 3 months, Mr Molefe's performance management issues will need to be aligned to *Eskom's* deliverables. Management indicated that any emerging matter will be tabled to the Board for consideration at a later stage, if the secondment is extended beyond the 3 months. Mr Molefe's current benefits at the Company would stand for determining benefits during secondment. The Board will be granted an opportunity to apply its mind properly to a long term agreement, if the need arises.

4.1.5 The Chairperson indicated that *Eskom* would be invoiced on a monthly basis for payments made by the Company to the GCE on secondment at Eskom, including both salary and benefits. Ms Forbes was concerned that the media seemed to have more detail on the matter than the Board. She indicated she was not aware of the 3 potential candidates nominated for the acting position as per media reports. She cautioned that governance systems should be protected in the Company's activities. She sought clarity on how the Corporate Governance and Nominations Committee would address the GCE's extension of employment contract. Mr Seleke was of the

view that it was unfair to put the Chairperson on scrutiny for decisions that occurred from the Ministry's activities. He indicated that the media is provocative, and there should be no reliance on media pronouncements. He was of the view that the Board's focus should be on the acting appointee's role and the required support to successfully execute the role. Mr Nkonyane requested Management to ensure that the Secondment Agreement should be explicit that any role beyond the 3 months period would be re-negotiated accordingly with the Board.

RESOLVED that the Board approved the following:

- The secondment of the GCE to Eskom SOC Ltd *post facto*.
- The Secondment Agreement between the Company and *Eskom SOC Ltd*, subject to incorporating inputs received from the Board.
- Delegated authority to the Chairperson to sign the Secondment Agreement on behalf of the Board. 1-15/16FY/1

5 **MATTERS FOR NOTING**

5.1 **Appointment of the Acting Group Chief Executive**

5.1.1 The Chairperson stated that the purpose was to request the Board to note the appointment of the Acting Group Chief Executive. The Chairperson gave the Board background on Mr Siyabonga Gama and indicated that he was currently appointed as the Chief Executive at Transnet Freight Rail. Mr Gama was chosen to be Acting Group Chief Executive due to his vast knowledge of the Company. The Chairperson indicated that Mr Gama was appointed acting GCE with effect from 20 April to 19 July 2015.

5.1.2 Ms Moola sought detail on the remuneration during the acting period. Management indicated that there was an Acting Policy for Management Employees that would determine Mr Gama's benefits.

Mr Gama was recused from the meeting at 09:20.

The matter was deliberated in a Closed Session.
A separate record has been prepared.

6 **GENERAL**

6.1 There were no matters for discussion.

7 **BOARD OF DIRECTORS MANDATE**

7.1 The Board noted the Board of Directors' Mandate as contained in the meeting pack.

8 **CLOSING**

8.1 The Chairperson thanked the Board for its participation in the special meeting, and for valuable contributions in the meeting. There being no further business to conduct; the Chairperson declared the meeting closed at 09:28.

CHAIRPERSON
DATE: 03/06/2015

GROUP COMPANY SECRETARY
DATE: 02 JUNE 2015

Eskom	MINUTES OF THE ESKOM HOLDINGS SOC LTD BOARD MEETING	Unique Identifier	221-209
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		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

MINUTES OF THE ESKOM BOARD MEETING 02-2015/16 HELD ON 23 APRIL 2015 HORSESHOW BOARDROOM, ESKOM BELLVILLE OFFICES, CAPE TOWN FROM 09H00

STRICTLY CONFIDENTIAL

PRESENT

Dr BS Ngubane	Acting Chairman
Ms N Carrim	Member
Mr Z W Khoza	Member
Ms V J Klein	Member
Mr R Kumalo	Member (Tele-conference)
Ms C Mabude	Member
Dr P Naidoo	Member
Ms V Naidoo	Member
Mr MV Pamensky	Member (Tele-conference)

OFFICIALS

Mr M Phukubje	Company Secretary

IN ATTENDANCE

Mr W Venner	Committee Secretary

COMMISSION OF INQUIRY INTO STATE CAPTURE

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1. OPENING AND WELCOME

The Acting Chairman welcomed members to the meeting.

2. APOLOGIES

There were no apologies.

3. QUORUM

A quorum being present, the Chairman declared the meeting duly constituted.

4. DECLARATIONS OF INTEREST

There were no other declarations of interest pertaining to items on the Agenda.

5. SAFETY AND EVACUATION PROCEDURE

The safety and evacuation process to be followed in the event of an emergency was presented and noted.

6. APPROVAL OF THE AGENDA

Mr Pamensky and Ms Klein stated that they did not approve of the Agenda as it had been distributed late. Mr Khoza apologised for the late distribution and advised that it was as a result of circumstances beyond his control. The Acting CE stated further that it was a necessity for the Board to approve the Corporate Plan for submission to the Shareholder by 30 April 2015.

It was requested that 2 additional items be added to the Agenda under the In-committee session of the meeting, vis (i) Removal of a Director and (ii) the CCMA case under discussion.

7. MATTERS FOR APPROVAL AND INFORMATION

7.1. Appointment of Mr B Molefe as Interim Chief Executive

On 20 April 2015, the Minister of Public Enterprises announced the secondment of Mr Brian Molefe from Transnet SOC Ltd as Interim Chief Executive for Eskom Holdings SOC Ltd, with effect from 20 April 2015, to replace Mr Z Khoza, who had been in that position since 11 March 2015.

Resolved that:

1. the secondment of Mr. Brian Molefe from Transnet SOC Ltd as Interim Chief Executive for Eskom Holdings SOC Ltd, is approved with effect from 20 April 2015; and
2. the Chairman of the Board is authorised to sign any and all agreements and documents to give effect to the above resolution.

7.2. Mandate to Conclude Negotiations with Optimum Coal Mine for Coal Supply to Hendrina Power Station
Reference document 7.4 (a) (b) (c)

The Referral from the Board Tender Committee for approval of the mandate to conclude negotiations with Optimum Coal Mine for Coal Supply to Hendrina Power Station was tabled, details of which had been circulated to members.

It was requested that the submission should be taken off the Agenda and submitted to the Acting CE before being tabled for approval. In response to a member's suggestion that Resolution 2.5 (around the mandate to negotiate but not to conclude with Optimum, for Eskom to take up a free carry shareholding of 10% to 15% equity and/or to engage with Optimum to facilitate the purchase of Optimum by Eskom or one of the state owned mining companies) should be revised to include a seat on the Board for Eskom as well as oversight, it was reported that this had been included in the Board Tender Committee discussion.

Resolved that:

1. the Referral from the Board Tender Committee for approval of the mandate to conclude negotiations with Optimum Coal Mine for Coal Supply to Hendrina Power Station is not approved: and
2. the mandate should be referred to the Acting Chief Executive before being tabled at Board for approval.

7.3. Approval of the 2015/16 - 2019/20Corporate Plan Approval
Reference document 7.2 (a) (b) (c) (d) (e)

The 2015/16 - 2019/20 Corporate Plan ("the Plan") was tabled for approval to submit to the Department of Public Enterprises ("DPE") and the National Treasury in terms of Section 52 of the PFMA and Section 29 of the National Treasury Regulations, details of which had been circulated to members.

It was reported that Exco had approved the Plan on 9 February 2015 for submission to Board. The 2015/16-2019/20 Corporate Plan (version 2.18) and 2015/16 Shareholder Compact were concluded and were to be tabled for approval at the Eskom Board meeting on 26 February 2015, the meeting was cancelled. Through the Chairman's office, letters were sent to the Treasury and DPE ministers requesting for an extension for the submission of both the Corporate Plan and the Shareholder Compact to 1 June 2015. DPE had granted

Eskom an extension until 30 April 2015 and required Eskom to submit an integrated and comprehensive Corporate Plan and Shareholder Compact.

The CFO reported that the Plan had been discussed individually with all members and there had been few changes and the Plan had been updated accordingly. It would be necessary to ensure that the Plan was adequately funded and management would have to remain within the Budget. It was noted that Ernst and Young had been requested to examine the Plan and provide an objective opinion.

The representatives from Ernst and Young joined the meeting for the purposes of the discussion.

The presentation from Ernst and Young was tabled for information, details of which had been distributed to members. The key findings were that the Corporate Plan & Financial Plan addressed the turnaround and integrated the specific assumptions, risk and issues included in the scope of the review. The context within which Eskom was operating was rapidly evolving. Within this context, the Corporate Plan & Financial Plan could be viewed as a base plan that needed to be implemented with the urgency of a turnaround strategy, and then developed over time.

The Summary of Review Findings was noted as follows, details of which were included in the presentation:

- Financial and corporate planning assumptions appeared to be appropriately integrated & aligned.
- The assumptions appeared reasonably aligned with the external data.
- The specific significant risks identified by Eskom appeared to be appropriately integrated into the Corporate Plan and the Financial Plan.
- The Corporate Plan and Financial Plan appeared to be aligned with the PFMA, National Treasury requirements and the Companies Act, although some gaps were identified.
- The MYPD process was addressed within the Corporate Plan and the Financial Plan, although a greater level of focus and action could be focused on improving the quality of the relationship with the Regulator.
- The Corporate Plan addressed the requirements and focus of the Government War Room.
- The link between a business objective, planned initiative to achieve the objective, and the cost to deliver the initiative could be directly identified. This potential lack of clear linkage raised a question around whether the Corporate Plan could be successfully implemented.
- It was common for the turnaround strategy to be made completely central to the business planning and execution of organizations experiencing similar challenges to Eskom. The review identified that although the turnaround strategy was included in the Corporate Plan, it was not the primary focus of the plan.

- Eskom had experienced significant change internally and externally in the months that had followed the preparation of the Corporate Plan and Financial Plan in late 2014, and the context within which Eskom needed to execute the turnaround strategy continued to evolve rapidly. As a result, the Corporate Plan should be seen as a base plan that needed to be reviewed and updated regularly throughout the year to ensure it was increasingly focused and aligned with the current challenges that Eskom was experiencing

In response to a query as to whether the objectives and strategy were clear and the objectives achievable it was reported that all plans were linked and between the plans and the implementation there could be more clarity around whose responsibility it was to implement, especially around generation.

The Plan had been developed in consultation with the Shareholder during regular monthly meetings, at which the turnaround strategy had also been discussed. There were KPIs for every section of the Plan which would be tracked going forward.

The GE: Gx reported that the turnaround strategy for Generation was available and included in the Plan. However the strategy was not fully funded and once funding was available it would need to be ring fenced outside of normal operations.

It was agreed that the current Plan should be within the available resources. In this regard the Plan had deliberately excluded items that were not funded.

The Acting CE stated that the Plan was a high level document that touched key activities during the year and indicated targets where funding was available. In this regard the Plan was practical but it was not the turnaround strategy. He stated that the next activity for the Board would be to translate the Plan into a turnaround strategy.

In response to a query it was reported that the Plan had been canvassed with DPE and the DPE had requested a list of unfunded items which would be included in the turnaround strategy.

With respect to HR costs it was reported that the 8,5% increase for the Bargaining Unit was part of the two year agreement. It was noted that 8% was considered good for the years going forward and management would commit to controlling staff costs.

A member stated that the failure of the War Room to address the issues facing Eskom would be blamed on Eskom. In this regard it reported that key decisions had been identified that Eskom wanted the War Room to unblock. The Acting CE stated that the War Room was a separate issue and would be dealt with separately from the Plan.

The Acting CE stated that he was not satisfied with the target for fatalities in that it was assumed that Eskom was the employer for contractors. He noted that Eskom's behaviour should not be such that it creates the impression that Eskom is the employer for contractors nor create the perception that Eskom has total control of contractors. The GE: Tx reported

that it had been debated that the targets did not include contractors. There had also been a significant improvement in Eskom fatalities but there was a deterioration in contractors. He undertook to exclude contractors from future targets but would ensure that contractors do comply with Eskom safety standards and processes. A member noted globally and legally Eskom was not responsible for contractor fatalities but morally it should hold contractors responsible. The Acting CE agreed but stated that it should not be made a matter that Eskom promised to perform with.

A member recommended that a chapter should be added to the Plan to reflect the shareholder aspirations and to show the business unusual approach and Eskom's focus around the following issues:

- The new Build programme in terms of lock down on time to completion, cost and quality;
- Generation turnaround and the 80:10:10 strategy;
- Load shedding and actions to restrict it.

A member noted that the R23Bn injection by government was shown in the Plan but there was no indication of the spend. It was reported that R10Bn would be received in June 2015, R10Bn in December 2015 but there was no indication at present for the balance of R3Bn.

A member stated that the Plan was well constructed. However he noted that the borrowing programme included in the Plan had not yet been approved by the IFC because the IFC could not approve it without the Plan which had never been tabled at IFC. In this regard the CFO stated that the issues were the different tranches and the delegation of authority around the approvals. This would be tabled at Board in due course.

Resolved that:

1. the 2015/16 - 2019/20 Corporate Plan ("the Plan") is approved for submission to the Department of Public Enterprises ("DPE") and the National Treasury in terms of Section 52 of the PFMA and Section 29 of the National Treasury Regulations;
2. the turnaround strategy should be aligned with the current Memorandum of Incorporation for Eskom;
3. a separate exercise should be conducted to identify any changes required for the Memorandum of Incorporation.

7.4. War Room Update

Reference document 7.3 (a)

The update on the War Room was tabled for information, details of which had been circulated to members.

It was reported that the War Room was led by government and Eskom was a member thereof. The Acting CE and CFO were standing members of the committee. In response to concerns by members about Board representation at the War Room besides the Acting CE

and CFO, it was reported that a letter had been sent to the Chairman of the War Room to note that the War Room was not a statutory body and therefore engagements should be between management and the War Room. Furthermore the War Room was not a decision making body. It was reported that the government had set up the war Room and it had been Eskom's decision to join it. The Acting CE stated that there was no contradiction to Board representation if only the CE and CFO were present at the War Room as they were both accountable to the Board and would ensure that a report was made to Board and any decisions were aligned with the Board decisions.

The Chairman stated that he was satisfied that the Board was adequately represented at the War Room and that feedback from the War Room should be a standing item on the Board agenda. It was agreed further that the Acting CE should clarify this point with the Shareholder as the Shareholder had stated that the Board was absent from the War Room. The Chairman requested that a letter be drafted in this regard and it should state that the Board is participating at the War Room through the executive directors.

It was requested that a tracking sheet be put in place for all information sent to the War Room for the War Room to acknowledge receipt and the information was accurate and complied with the request. It was requested further that the Terms of Reference of the War Room be tabled at Board to allow Board to confirm what expectations the War Room had of the Board.

In respect of the War Room investigation into the affairs of Eskom it was requested that the DPE request a non-disclosure agreement be signed before the work commences. It was noted further that Eskom's engagement of Denton's to do the inquiry was a separate exercise and the War Room had been advised accordingly.

The Chairman of the Audit and Risk Committee ("ARC") expressed a concern as to how ARC would deal with Dentons and the War Room investigation in that should ARC see the report before it finalises the AFS as there may be a contradiction between the two reports. It was noted that the Terms of Reference should indicate the interaction between the parties. It was reported that the War Room had been requested to direct any queries around the inquiry to the DPE as Eskom could not allow the War Room inquiry to proceed until it was approved by the Minister of PE.

It was reported that the Deputy President had appointed a panel of advisors on 15 December 2014 to assist the War Room. It would be necessary to discuss how Eskom would interact with the panel as they should be requested to sign a non-disclosure agreement as well as submit their Terms of Reference to the Chairman and CE. It was recommended that this also be dealt with through the DPE and a letter should be sent to the Minister of PE around the non-disclosure and Terms of Reference.

In response to a report that the panel was already doing site visits it was stated that the Acting CE should address this issue as a non-disclosure agreement had not yet been signed. The Acting CE undertook to formally raise the issue at the War Room.

It was reported further that sensitive information was being requested from the Office of the Deputy President and it was recommended again that the Acting CE deal with this issue formally.

The Chairman stated that any request for information by the War Room could be made to the Office of the CE but formal communications should pass through the DPE. In response to concerns that attendees at the War Room were business people who were being given deep insight into Eskom's business, the Chairman stated that this should be left to the Acting CE to determine a plan to resolve and revert to the Board once a solution was in place. This would include rules of engagement for the entire War Room team and clarity on the various roles and responsibilities.

The Acting CE stated that Eskom's expectation of the War Room was that it would provide a space for Eskom to do maintenance. However Eskom had to find 5000Mw as urgently as possible and still do the maintenance without load shedding. In this regard if Eskom did not have a problem then the War Room would not exist. Therefore it was incumbent upon management to do the work necessary to find the 5000MW without motivation. Consideration would be given to establishing a special group in management to find the 5000MW. Once this was found then there would be space to sort out all the other issues.

The Acting CE also undertook to ensure that all good news in Eskom was adequately communicated and published.

The Short-term focus to close Gap of 5000MW was tabled, details of which were included in the presentation. It indicated how 3875 MW could be found but there was still a shortfall of 1125MW. In response to a query it was reported that the 3875MW was equal to R24Bn. The Acting CE stated that as Generation completed maintenance the 3875MW would reduce and therefore as money was raised it should be ringfenced.

The Acting CE said consideration should be given to selling off Eskom Provident and Pension Fund to the Trade Unions.

The Eskom focus in terms of the 5 Point Plan was noted, details of which were included in the presentation. It was noted that the support by Eskom from the War Room included coal contracts licences. It was reported that the open coal mine licences issue had been tabled at government and the current holders thereof wanted to sell their licences to Eskom.

It was noted that the War Room had to be seen in terms of the IMC as the War Room reported to the IMC. In this regard there had to be clarity and alignment around the expectations of the War Room and the IMC.

Resolved that:

1. the update on the War Room is noted;
2. feedback from the War Room should be a standing item on the Board agenda;

3. the Acting CE should clarify the issue of Board representation at the War Room with the Shareholder and should indicate that the Board is participating at the War Room through the executive directors;
4. a tracking sheet be put in place for all information sent to the War Room for the War Room to acknowledge receipt and that the information is accurate and complied with the request;
5. the Terms of Reference of the War Room should be tabled at Board to allow Board to confirm what expectations the War Room had of the Board;
6. the DPE should be engaged to request a non-disclosure agreement be signed before the work commences for the War Room investigation into the affairs of Eskom;
7. a letter should be sent to the Minister of PE around the non-disclosure agreement and Terms of Reference for the panel of advisors appointed by the Deputy President to assist the War Room;
8. the Acting CE should address the issue of the panel conducting site visit before the issues in Resolution 7 are resolved;
9. the request for sensitive information by the Office of the Deputy President should be dealt with formally by the Acting CE.

8. General

The Chairman stated that process to cut off non-paying municipalities was in progress but the Board should wait for the media statement from the Minister of Finance before implementation. Mr Pamensky reported that some municipalities were using electricity payments by their residents to fund other operations.

It was noted that the Board had made a decision in this regard and would continue with the implementation of that decision notwithstanding any agreements between the Minister of Finance and COPTA around the ring-fencing of municipal grants.

9. CLOSURE

There being no further matters for discussion, the Chairman declared the meeting closed and the Board went into an In-committee session.

SIGNED BY THE CHAIRMAN AS AN ACCURATE RECORD OF THE PROCEEDINGS

CHAIRMAN: _____ **DATE:** 02/07/15

SECONDMENT AGREEMENT

Between

Transnet SOC Ltd

Registration No: 1990/000900/30

Herein represented by Ms Linda Mabaso

In her capacity as Chairperson of the Board

And

ESKOM HOLDINGS SOC Ltd

Registration No: 2002/015527/30

Herein represented by Dr Ben Ngubane

In his capacity as Chairperson of the Board

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1269

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COMMISSION OF INQUIRY INTO STATE CAPTURE

1 DEFINITIONS AND INTERPRETATION

1.1 In this agreement, the following terms shall have the meaning assigned to each-

1.1.1 Parties : (1) Transnet SOC Ltd

("Transnet.")

And

(2) ESKOM HOLDINGS SOC Ltd

("Eskom")

1.1.2 Secondee: shall mean Brian Molefe, an employee of Transnet

1.2 The singular includes the plural and *vice versa*.

1.3 Reference to a gender includes any other gender.

1.4 Reference to natural persons includes legal persons and *vice versa*.

1.5 Headings to clauses are for reference purposes only and shall not affect construction or interpretation of this agreement.

1.6 The interpretation rule *contra proferentem* shall not apply to this Agreement.

COMMISSION OF INQUIRY INTO STATE CAPTURE

2 PREAMBLE

2.1 Eskom requires the services of a Senior Executive to assist as Acting Chief Executive

2.2 Transnet agrees and is willing to second Brian Molefe to Eskom as Acting Chief Executive.

2.3 The Parties therefore enter into this Agreement to regulate and formalise their respective rights and obligations with regard to the secondment of the Secondee to Eskom.

3 DURATION OF SECONDMENT

3.1 Irrespective of the last date of signature hereof, the secondment will commence on the 20 April 2015 and shall, unless the Parties agree otherwise, automatically terminate on the 19 July 2015, provided that –

3.1.1 It may be terminated by either, Transnet or Eskom, subject to at least 30 days written notice, or otherwise by mutual agreement; and

3.2 In the event of the Secondee's employment with Transnet coming to an end for whatever reason, this secondment agreement shall also simultaneously lapse.

3.3 In the event that Eskom requires an extension, is shall indicate its intentions and initiate negotiations with Transnet within a reasonable time.

4 SERVICES

4.1 The Secondee shall be seconded to Eskom and will be based at Megawatt Park, Maxwell Drive, Sunninghill where he will perform the functions and duties of a **Chief Executive** as may be determined by the Eskom Board from time to time.

5 EMPLOYMENT RELATIONSHIP

5.1 The Secondee shall remain an employee of Transnet whilst seconded to Eskom and, unless otherwise stipulated in or implied by this Agreement, he shall remain subject to the Transnet Conditions of Service.

5.2 In the event Eskom is of the view that disciplinary action needs to be taken against the Secondee, Eskom shall provide Transnet with a detailed report on the alleged transgression, in which event Transnet will, in its sole discretion, decide whether or not to take any action in accordance with the Transnet Code of Conduct.

6 REMUNERATION

6.1 Transnet shall remain responsible for, and shall continue to pay to the Secondee his total remuneration in terms of his service/employment contract with Transnet as well as all additional benefits as he is entitled to receive.

6.2 Transnet shall, for the duration of this secondment agreement, recoup from Eskom all payments made to and/or expenses incurred by it with regards to the Secondee, in his capacity as the Acting Chief Executive of Eskom.

6.3 Transnet shall invoice Eskom for any amounts due at least one month after each payment or benefit was made to the Secondee.

7 **INDEMNITY**

7.1 Whenever a claim is made or legal proceedings are instituted against the Secondee and/or Transnet arising out of any act or omission in the execution of his powers, or the performance of his duties and functions in consequence of his secondment, Eskom –

7.1.1 Shall, in the event of a civil claim or civil proceedings, indemnify the Secondee and/or Transnet in respect of such claim or proceedings.

7.1.1.1 In the event that the Secondee acts outside his scope of duties and functions as determined by the Eskom Board from time to time, this indemnity shall only apply in favour of Transnet.

8 **COMMUNICATION**

8.1 The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses –

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1274

Name	**Physical Address**
Eskom	Megawatt Park Maxwell Drive Sunninghill

Marked for the attention of: the Chairperson of the Board of Eskom

Name	**Physical Address**
Transnet	47th Floor, Carlton Centre 150 Commissioner Street Johannesburg 2001

Marked for the attention of the Chairperson of the Board of Transnet provided that a Party may change its *domicilium* or its address for the purposes of notices to any other physical address by written notice to the other Party to that effect. Such change of address will be effective 5 (five) Business days after receipt of the notice of the change.

9 **ENTIRE AGREEMENT**

9.1 This Agreement constitutes the entire agreement between the parties with regard to the subject matter dealt with herein and no prior agreements, representations or undertakings whether verbal or in writing, with regard to the subject matter shall be binding on either party.

9.2 No variation, modification or waiver of any provision of this Agreement, or consent to any departure therefrom, or any consensual termination of this Agreement shall in any event be of

any force or effect, unless confirmed in writing and signed by duly authorised representatives of both parties.

SIGNED at Megawatt Park on 20 April 2015

WITNESSES: For and on behalf of Eskom

1. _____

2. _____

SIGNED at Carlton Centre on 23 April 2015

WITNESSES: For and on behalf of Transnet

1. _____

2. _____

COMMISSION OF INQUIRY INTO STATE CAPTURE

From: Venete Klein <venete@kleininc.co.za>
Sent: Friday, 19 June 2015 09:36
To: danielsm@eskom.co.za
Subject: EO appt

P&G resolved that the Appt of CEO - B. Molefe be confirmed, soonest.

Act Chair of P&G to get legal opinion in terms of process (being received today).

Reasons for the appt of B. Molefe

1) Stability he has brought to Eskom since he joined
2) The confidence that he has built both internal external of Eskom
3) Improved stakeholder relationships built in this short time
4) His hands on approach which has made performance in Eskom - as it relates to maintenance & load-shedding specifically - not negotiable
5) Raising the bar on all fronts for his executive team to follow
6) His no nonsense approach towards business and the media has really stood us in great stead.

Given the reliance that the SA Economy places on Eskom we are of one mind that no other CEO will be able to maintain the current upward trajectory the Brian has given us.

It is with this is mind that the board unanimously supports his appointment - officially.

Whilst we understand that is process may require some time, it may be necessary to extend his contract on the Transnet side in order to ensure that we done have a period where he is not contracted to either ourselves or Transnet.

First prize of course is to have him confirmed as CE of Eskom as soon as possible.

Just some of my thoughts

Pls add whatever is necessary as we carve

luv

Sent from my iPhone

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Friday, 19 June 2015 11:41
To: Venete Klein
Subject: RE: EO appt
Attachments: 20150619 DPEMIN Appointment of CE v1.pdf; 20150619 DPEMIN Appointment of CE v1.docx

Importance: High

Please see attached for your consideration. In pdf and word version for easy reference.

Regards
Suzanne

-----Original Message-----
From: Venete Klein [mailto:venete@kleininc.co.za]
Sent: Friday, June 19, 2015 9:36 AM
To: Suzanne Daniels
Subject: EO appt

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Just some of my thoughts

Pls add whatever is necessary as we carve

luv

Sent from my iPhone

Eskom

The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

Dear Minister Brown

APPOINTMENT OF CHIEF EXECUTIVE OFFICER

The above matter has reference.

At the last sitting of Eskom's People and Governance Committee on 28 May 2015, which is the subcommittee of the Board of Directors tasked with dealing with the appointment of senior executive managers within Eskom, it was resolved that the appointment of Brian Molefe to the position of Chief Executive of Eskom, be confirmed as soon as possible.

The rationale for the appointment of Mr Molefe as a permanent employee, rather than on a secondment basis, is based on the following considerations:

i) He has a well-known track record in the market both nationally and abroad for being able to turnaround ailing companies and this experience has been demonstrated in the stability and marked improvement in performance he has brought to Eskom since he joined 63 days ago;
ii) His hands on approach to operational matters, particularly with regard to maintenance and load shedding, at the time of crisis which the company found itself in, has made high performance in Eskom, not negotiable;
iii) To support this culture, he has already revisited the approach to performance management so as to instil appropriate levels of accountability at all levels of staff thereby raising the bar on all fronts for his executive management team to follow;
iv) During his short tenure, he has successfully taken the Board into his confidence by presenting a turnaround plan at its meeting of **[*]** which was also endorsed by the Board;
v) At the same time he has succeeded in harnessing the know-hows and experience of the current executive management committee to address the issues that have bedeviled the company for too long a time;
vi) His academic background and more particularly his considerable financial acumen has already been demonstrated in the more positive outlook Eskom, and consequently South Africa, enjoys with the ratings agencies which are key to addressing the liquidity issues;

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Eskom Holdings SOC Ltd Reg No 2002/015527/30

U14-VK-1279

vii) His further ability to meaningfully engage the various stakeholders of Eskom, including the media, has really stood us in great stead; and

viii) Certainty of leadership at the top would allow for stabilising the management team internally and therefore create the confidence and predictability required of Eskom at this time.

Given the fact that Eskom is the core driving force of the South African economy, we are of one mind that no other person would at this point be able to maintain the current upward trajectory that Brian has placed the company on since his secondment in April this year. It is with this is mind that the board unanimously supports his appointment as formally recorded at its meeting of **[*]**.

Fully cognisant of the process and procedural issues that will need to be addressed in securing such an appointment in the most effective and efficient manner, the Acting Chairperson of the People and Governance Committee was tasked with obtaining the requisite legal opinion on the most optimal route to be followed to give effect to the resolution. The legal opinion indicates **[*].**

Based on the foregoing, and whilst we appreciate that this process may demand some time, it may be prudent to extend the duration of the secondment agreement from Transnet in order to ensure that we do not have a period where he is not contracted to either Eskom or Transnet. As a matter of course, the first prize for Eskom would be a seamless transition from Transnet to Eskom with the effective date being 1 July 2015.

I am available at the Minister's convenience to engage my Transnet counterpart on the issues and finalise the terms and conditions of the appointment.

Accordingly, I hereby request Minister's support and endorsement for the permanent appointment of Brian Molefe as chief executive officer of Eskom.

Should Minister require any other information prior to taking a decision on the matter, please let me know.

Yours sincerely

Dr Ben Ngubane
INTERIM CHAIRMAN
Date:

DRAFT
INTO STATE CAPTURE

Eskom

The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

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U14-VK-1281

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Should Minister require any other information prior to taking a decision on the matter, please let me know.

Yours sincerely

Dr Ben Ngubane
INTERIM CHAIRMAN
Date:

DRAFT
INTO STATE CAPTURE

From: Venete Klein <venete@kleininc.co.za>
Sent: Friday, 19 June 2015 12:03
To: Suzanne Daniels
Subject: RE: EO appt

Hi S, I love it.

Roman v) Just a thought - can we add to this that having him leading this organisation - we will be able to attract top SA talent for positions which have become vacant? Don't want to give the impression that the current team is the A Team

-----Original Message-----
From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 19 June 2015 11:41 AM
To: Venete Klein
Subject: RE: EO appt
Importance: High

Please see attached for your consideration. In pdf and word version for easy reference.

Regards
Suzanne

-----Original Message-----
From: Venete Klein [mailto:venete@kleininc.co.za]
Sent: Friday, June 19, 2015 9:36 AM
To: Suzanne Daniels
Subject: EO appt

P&G resolved that the Appt of CEO - B. Molefe be confirmed, soonest.

Act Chair of P&G to get legal opinion in terms of process (being received today).

Reasons for the appt of B. Molefe

1) Stability he has brought to Eskom since he joined
2) The confidence that he has built both internal external of Eskom
3) Improved stakeholder relationships built in this short time
4) His hands on approach which has made performance in Eskom - as it relates to maintenance & load-shedding specifically - not negotiable
5) Raising the bar on all fronts for his executive team to follow
6) His no nonsense approach towards business and the media has really stood us in great stead.

Given the reliance that the SA Economy places on Eskom we are of one mind that no other CEO will be able to maintain the current upward trajectory the Brian has given us.

It is with this is mind that the board unanimously supports his appointment - officially.

Whilst we understand that is process may require some time, it may be necessary to extend his contract on the Transnet side in order to ensure that we done have a period where he is not contracted to either ourselves or Transnet.

First prize of course is to have him confirmed as CE of Eskom as soon as possible.

Just some of my thoughts

Pls add whatever is necessary as we carve

luv

Sent from my iPhone

I'm part of the 49Million initiative.
http://www.49Million.co.za

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COMMISSION OF INQUIRY INTO STATE CAPTURE

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Friday, 19 June 2015 12:33
To: Venete Klein
Subject: RE: EO appt
Attachments: 20150619 DPEMIN Appointment of CE v1&v2 compare.pdf; 20150619 DPEMIN Appointment of CE v2.pdf; 20150619 DPEMIN Appointment of CE v2.docx

Importance: High

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See if that works. (I attach v2 in pdf and word format)

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From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 19 June 2015 11:41 AM
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Eskom

The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

Dear Minister Brown

APPOINTMENT OF CHIEF EXECUTIVE OFFICER

The above matter has reference.

At the last sitting of Eskom's People and Governance Committee on 28 May 2015, which is the subcommittee of the Board of Directors tasked with dealing with the appointment of senior executive managers within Eskom, it was resolved that the appointment of Brian Molefe to the position of Chief Executive of Eskom, be confirmed as soon as possible.

The rationale for the appointment of Mr Molefe as a permanent employee, rather than on a secondment basis, is based on the following considerations:

i) He has a well-known track record in the market both nationally and abroad for being able to turnaround ailing companies and this experience has been demonstrated in the stability and marked improvement in performance he has brought to Eskom since he joined 63 days ago;
ii) His hands on approach to operational matters, particularly with regard to maintenance and load shedding, at the time of crisis which the company found itself in, has made high performance in Eskom, not negotiable;
iii) To support this culture, he has already revisited the approach to performance management so as to instil appropriate levels of accountability at all levels of staff thereby raising the bar on all fronts for his executive management team to follow;
iv) At the same time he has succeeded in harnessing the know-hows and experience of the current executive management committee in the most optimal manner to address the issues that have bedeviled the company for too long a time;
~~iv)~~v) During his short tenure, he has successfully taken the Board into his confidence by presenting a turnaround plan at its meeting of **[*]** which was also endorsed by the Board;
~~v) At the same time he has succeeded in harnessing the know-hows and experience of the current executive management committee to address the issues that have bedeviled the company for too long a time;~~
vi) His academic background and more particularly, his considerable financial acumen has already been demonstrated in the more positive outlook Eskom, and consequently South Africa, enjoys with the ratings agencies which are key to addressing the liquidity issues;

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vii) His further ability to meaningfully engage the various stakeholders of Eskom, including the media, has really stood us in great stead; and

viii) Certainty of leadership at the top would allow for stabilising the management team internally together with allowing him to be able to attract the requisite skilled professional talent outside of Eskom to fill the vacancies that currently exist and therefore create the confidence and predictability required of Eskom at this time.

Given the fact that Eskom is the core driving force of the South African economy, we are of one mind that no other person would at this point be able to maintain the current upward trajectory that Brian has placed the company on since his secondment in April this year. It is with this is mind that the board unanimously supports his appointment as formally recorded at its meeting of **[*]**.

Fully cognisant of the process and procedural issues that will need to be addressed in securing such an appointment in the most effective and efficient manner, the Acting Chairperson of the People and Governance Committee was tasked with obtaining the requisite legal opinion on the most optimal route to be followed to give effect to the resolution. The legal opinion indicates **[*].**

Based on the foregoing, and whilst we appreciate that this process may demand some time, it may be prudent to extend the duration of the secondment agreement from Transnet in order to ensure that we do not have a period where he is not contracted to either Eskom or Transnet. As a matter of course, the first prize for Eskom would be a seamless transition from Transnet to Eskom with the effective date being 1 July 2015.

I am available at the Minister's convenience to engage my Transnet counterpart on the issues and finalise the terms and conditions of the appointment.

Accordingly, I hereby request Minister's support and endorsement for the permanent appointment of Brian Molefe as chief executive officer of Eskom.

Should Minister require any other information prior to taking a decision on the matter, please let me know.

Yours sincerely

Dr Ben Ngubane
INTERIM CHAIRMAN
Date:

DRAFT INTO STATE CAPTURE

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Subject: Re: EO appt

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COMMISSION OF INQUIRY INTO STATE CAPTURE

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Hi

We didn't have the board meeting yet as you will see from malelsela's letter?

I kept it as candidates as the moi talks of them.

Will we send this without the chairman's signature? I will send the cleaned up version to you and him?

Regards
Suzanne Daniels

Sent from my Samsung Galaxy smartphone.

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COMMISSION OF INQUIRY INTO STATE CAPTURE

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Friday, 19 June 2015 15:02
To: Matsietsi Mokholo; kim.davids@dpe.gov.za
Cc: baldwin.ngubane@gmail.com; Venete Klein; Zethembe Khoza
Subject: APPOINTMENT OF CHIEF EXECUTIVE OFFICER
Attachments: 20150619 DPEMIN Appointment of CE execution copy.pdf

Importance: High
Sensitivity: Confidential

Good Afternoon Matsietsi and Kim

Please find correspondence attached for the Minister's attention.

Best regards
Suzanne

SUZANNE DANIELS
Office of the Chairman
Eskom Holdings SOC Limited
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za

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COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom

The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

Dear Minister Brown

APPOINTMENT OF CHIEF EXECUTIVE OFFICER

The above matter has reference.

At the last sitting of Eskom's People and Governance Committee on 28 May 2015, which is the subcommittee of the Board of Directors tasked with dealing with the appointment of senior executive managers within Eskom, it was resolved that the appointment of Brian Molefe to the position of Chief Executive of Eskom, be confirmed as soon as possible.

The rationale for the appointment of Mr Molefe as a permanent employee, rather than on a secondment basis, is based on the following considerations:

i) He has a well-known track record in the market both nationally and abroad for being able to turnaround ailing companies and this experience has been demonstrated in the stability and marked improvement in performance he has brought to Eskom since he joined 63 days ago;
ii) His hands on approach to operational matters, particularly with regard to maintenance and load shedding, at the time of crisis which the company found itself in, has made high performance in Eskom, not negotiable;
iii) To support this culture, he has already revisited the approach to performance management so as to instil appropriate levels of accountability at all levels of staff thereby raising the bar on all fronts for his executive management team to follow;
iv) At the same time he has succeeded in harnessing the know-hows and experience of the current executive management committee in the most optimal manner to address the issues that have bedeviled the company for too long a time;
v) During his short tenure, he has successfully taken the Board into his confidence by presenting a turnaround plan at its meeting of 28 May 2015, which was also endorsed by the Board;
vi) His academic background and more particularly, his considerable financial acumen has already been demonstrated in the more positive outlook Eskom, and consequently South Africa, enjoys with the ratings agencies which are key to addressing the liquidity issues;
vii) Certainty of leadership at the top would allow for stabilising the management team internally together with allowing him to be able to attract the requisite skilled professional talent outside of Eskom to take up critical roles in Eskom which are vacant at present or may occur in the future and thereby create the confidence and predictability required of Eskom at this time;

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Eskom Holdings SOC Ltd Reg No 2002/015527/30

U14-VK-1302

viii) His further ability to meaningfully engage the various stakeholders of Eskom, including the media, has really stood us in great stead; and
ix) Public confidence has increased exponentially in the period since the commencement of his secondment to Eskom.

Given the fact that Eskom is the core driving force of the South African economy, we are of one mind that no other person would at this point be able to maintain the current upward trajectory that Brian has placed the company on since his secondment in April this year. It is with this is mind that the board unanimously supports his appointment.

Fully cognisant of the process and procedural issues that will need to be addressed in securing such an appointment in the most effective and efficient manner, the Acting Chairperson of the People and Governance Committee was tasked with obtaining the requisite legal opinion on the most optimal route to be followed to give effect to the resolution.

The legal opinion indicates that the process to be followed in the appointment of the Chief Executive is set out in the Memorandum of Incorporation. While the Memorandum of Incorporation contemplates that the Board must identify potential candidates, it does not preclude the Board from identifying, nominating and evaluating one candidate as the Shareholder, represented by the Honourable Minister in this instance, would still have discretion on whether or not to appoint the preferred candidate. The Memorandum of Incorporation also does not have as a requirement that the candidate should be publicly invited to apply for the position.

Based on the foregoing, and whilst we appreciate that this process may demand some time, it may be prudent to extend the duration of the secondment agreement from Transnet in order to ensure that we do not have a period where he is not contracted to either Eskom or Transnet. As a matter of course, the first prize for Eskom would be a seamless transition from Transnet to Eskom with the effective date being 1 July 2015. I am available at the Minister's convenience to engage my Transnet counterpart on the issues and finalise the terms and conditions of the appointment.

Accordingly, I hereby request Minister's support and endorsement for the permanent appointment of Brian Molefe as chief executive officer of Eskom.

Should Minister require any other information prior to taking a decision on the matter, please let me know.

Yours sincerely

Dr Ben Ngubane
INTERIM CHAIRMAN
Date: 19 June 2015
Not signed as electronically submitted

INTO STATE CAPTURE

From: baldwin ngubane <baldwin.ngubane@gmail.com>
Sent: Friday, 19 June 2015 15:51
To: Suzanne Daniels
Subject: Re: APPOINTMENT OF CHIEF EXECUTIVE OFFICER

Dear Suzanne,
At this stage I am not able to recommend to the Minister as decided by the P&G as the Minister cant confirm an acting person into a permanent position unless the person has acted for six months.
The last thing we want to do is to create controversy around Brian's presence at Eskom. The ridht approach as far as I am concerned is to request the Minister to accept extension for another three months.
Best,
Ben

On Fri, Jun 19, 2015 at 3:02 PM, Suzanne Daniels <DanielSM@eskom.co.za> wrote:

Good Afternoon Matsietsi and Kim

Please find correspondence attached for the Minister's attention.

Best regards

Suzanne

SUZANNE DANIELS

Office of the Chairman

Eskom Holdings SOC Limited

Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327

Email: daniels.suzanne@eskom.co.za

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From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Friday, 19 June 2015 16:22
To: Venete Klein
Subject: Fwd: APPOINTMENT OF CHIEF EXECUTIVE OFFICER

Regards
Suzanne Daniels

Sent from my Samsung Galaxy smartphone.

-------- Original message --------
From: baldwin ngubane
Date:19/06/2015 15:50 (GMT+02:00)
To: Suzanne Daniels
Cc:
Subject: Re: APPOINTMENT OF CHIEF EXECUTIVE OFFICER

Dear Suzanne,
At this stage I am not able to recommend to the Minister as decided by the P&G as the Minister cant confirm an acting person into a permanent position unless the person has acted for six months.
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Best,
Ben

On Fri, Jun 19, 2015 at 3:02 PM, Suzanne Daniels <DanielSM@eskom.co.za> wrote:

Good Afternoon Matsietsi and Kim

Please find correspondence attached for the Minister's attention.

Best regards

Suzanne

SUZANNE DANIELS

Office of the Chairman

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Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327

Email: daniels.suzanne@eskom.co.za

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COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1306

Eskom

The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

Dear Minister Brown

EXTENSION OF SECONDMENT AGREEMENT OF BRIAN MOLEFE

The above matter has reference.

At the last sitting of Eskom's People and Governance Committee on 28 May 2015, which is the subcommittee of the Board of Directors tasked with dealing with the appointment of senior executive managers within Eskom, it was resolved that the appointment of Brian Molefe to the position of Chief Executive of Eskom, be confirmed as soon as possible.

Fully cognisant of the process and procedural issues that will need to be addressed in securing such an appointment in the most effective and efficient manner, the Acting Chairperson of the People and Governance Committee was tasked with obtaining the requisite legal opinion on the most optimal route to be followed to give effect to the resolution.

I have requested a more thorough examination of the public service rules as this opinion was obtained on an urgent basis, before taking it to the full board for consideration.

Based on the foregoing, and whilst we appreciate that this process may demand some time, it may be prudent to extend the duration of the secondment agreement from Transnet in order to ensure that we do not have a period where he is not contracted to either Eskom or Transnet. I am available at the Minister's convenience to engage my Transnet counterpart on the issues and finalise the terms and conditions of the extension.

Accordingly, I hereby request Minister's support and endorsement for the extension of the secondment of Brian Molefe as chief executive officer of Eskom for a further period to be negotiated between Eskom and Transnet.

Should Minister require any other information prior to taking a decision on the matter, please let me know.

Yours sincerely

Dr Ben Ngubane
INTERIM CHAIRMAN
Date: 23/06/15

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"VK5"

MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Private Bag X9079, Cape Town, 8000 Tel: 021 461 6375/7 Fax: 021 465 2301/461 1741

Dr. B Ngubane
Interim Chairperson
Eskom holdings SOC Limited
P.O. Box 1091
Megawatt Park
Johannesburg
2000

Tel: 011 800 5808
Fax: 011 800 4938
Email: Baldwin.ngubane@gmail.com / Daniels.suzanne@eskom.co.za

Dear Dr. Ngubane

Appointment of Chief Executive of Eskom

Your letter dated 23 June 2015 has reference.

In essence, I concur with your request to extend the period of the secondment agreement of Mr Brian Molefe.

Following the announcement of the resignation of Mr Tshediso Matona as Chief Executive, the Board is required to provide me with a report thereon, as well as expected timelines and milestones for the recruitment and appointment process of a new Chief Executive.

I am of the view is that the Eskom Board must deal expeditiously with the process, in line with the Memorandum of Incorporation, Labour Relations Act, Eskom's employment policies and procedures.

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The position of the Chief Executive is critical, hence, the attraction and retention of a candidate with a right mix of qualifications, leadership, experience and technical knowledge is vital. In consideration of the business imperatives and the need to build public confidence, I urge the Board to observe the acceptable procedure so that the recruitment process and submission is managed with integrity and transparency and is able to withstand scrutiny.

It will therefore be useful for me to have sight of the legal opinion and recommendation on the optimal route to follow. Feedback as soon as the Board has applied its mind to the issue will be appreciated.

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 27/06/2018

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom	MINUTES OF THE ESKOM HOLDINGS SOC LTD PEOPLE AND GOVENRANCE COMMITTEE MEETING	Unique Identifier	221-204
		Document Type	OCSDTE
		Revision	0
		Revision Date	July 2015
		Office of the Company Secretary Department	

MINUTES OF THE PEOPLE AND GOVERNANCE COMMITTEE MEETING NO HELD IN THE HUVO NKULU BOARDROOM, MEGAWATT PARK ON 09 SEPTEMBER 2015 AT 11:46

STRICTLY CONFIDENTIAL

PRESENT

MEMBERS

Ms V Klein	Chairman
Ms N Carrim	Member
Ms C Mabude	Member
Mr Z Khoza	Member
Dr B Ngubane	Member

IN ATTENDANCE

Mr B Lolefe	Acting CE
Mr A Singh	Acting CFO
Mr M Phukubje	Company Secretary

APOLOGIES

No apologies were noted.

1. OPENING AND WELCOME

The Chairman welcomed all members and officials present and declared the meeting open.

2. APOLOGIES

There were no apologies.

3. QUORUM

A quorum being present, the Chairman declared the meeting duly constituted.

4. DISCUSSION OF AGENDA ITEMS

The CE was briefed on the manner in which the meeting was organized and that it was a "disaster" in the sense that there was no good communication between Secretariat and HR. As a result of this, the pack, submission and the general coordination of the meeting was not what was expected.
The CFO stated that these could be complications which arise due to the transition phase and that matters would improve within the next two meetings or so, as the team aligned and started speaking the same language. It was agreed that this should not

U14-VK-1310

recur in the future and that the CE would attend to it.

It was requested that the action list be aligned with the resolutions sought.

With regard to the Remuneration of Executives and that of Non-Executive Directors, the CE reported that the DPE had issued guidelines regarding the matter and that it was a shareholder matter. The Committee could however make its inputs and share the benchmarking with the Shareholder. He confirmed that feedback will be provided in the next P&G meeting in October 2015.

Management was requested to proceed with an STI and LTI view, which will be presented to the Committee. It was noted that there had been no LTI incentives in the 2014/2015 financial year and management was requested to go back and look into the current rules with a view to determining whether they would like to change these.

It was reported that the performance contracts for senior executives were available but unsigned as they would be affected by the Turnaround Plan which would be presented to the Board in the upcoming Board Breakaway. It was agreed that a letter of comfort from the CE confirming that performance agreements have been signed be presented to the Committee in its next meeting.

The Treasury Department's incentive scheme was discussed. There was consensus that Treasury should not have its own, stand-alone incentive scheme. It was agreed that management would look into the matter, review the scheme and report to the Committee

The issue of executive vacancies was discussed and it was proposed and agreed that the positions of CE and FD be filled first and that this proposal be presented to the Board, after which it will be circulated to the Shareholder for information.

A proposal was tabled that the Acting CE and Acting CFO be appointed as directors of the company for the duration of their appointment. The proposal was supported and it was resolved that this be presented to the Board in its next meeting.

The Chairman requested that the structure be presented by October 2015.

There being no further matters for discussion, the Chairman declared the meeting closed at 12h31.

SIGNED AS A CORRECT RECORD OF THE PROCEEDINGS.

CHAIRMAN: _____ **DATE:** _____

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom	MINUTES OF THE ESKOM HOLDINGS SOC LTD BOARD MEETING	Unique Identifier	221-209
		Document Type	OCSDFM
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

MINUTES OF THE SPECIAL ESKOM BOARD MEETING 10-2015/16 HELD ON 10 SEPTEMBER 2015 AT VENUE 7, ESKOM LEADERSHIP DEVELOPMENT CENTRE, MIDRAND FROM 16H00

STRICTLY CONFIDENTIAL

PRESENT

Dr BS Ngubane	Acting Chairman
Ms N Carrim	Member
Ms M Cassim	Member
Mr Z W Khoza	Member
Ms V J Klein	Member
Mr R Kumalo	Member
Mr G Leonardi	Member
Ms C Mabude	Member
Dr P Naidoo	Member
Ms V Naidoo	Member
Mr MV Pamensky	Member

OFFICIALS

Mr B Molefe	Acting Chief Executive ("Acting CE")
Mr M Phukubje	Company Secretary
Mr A Singh	Acting Chief financial Officer ("Acting CFO")

APOLOGIES

None

BY INVITATION

None

IN ATTENDANCE

Ms S Daniels	
Mr W Venner	Committee Secretary

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom	MINUTES OF THE ESKOM HOLDINGS SOC LTD BOARD MEETING	Unique Identifier	221-209
		Document Type	OCSDFM
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

1. OPENING AND WELCOME

The Acting Chairman welcomed members to the meeting.

2. APOLOGIES

Apologies as above were noted.

3. QUORUM

A quorum being present, the Acting Chairman declared the meeting duly constituted.

4. DECLARATIONS OF INTEREST

There were no declarations of interest pertaining to items on the Agenda.

5. SAFETY AND EVACUATION PROCEDURE

The safety and evacuation process to be followed in the event of an emergency was presented and noted.

6. ADOPTION OF THE AGENDA

The Agenda for the meeting was approved. It was requested that Item 9.2, Diesel report be dealt with first and then Item 9.3 McKinsey mandates.

7. ITEMS FOR DISCUSSION AND/OR APPROVAL

7.1. Ad-Hoc Diesel Audit as discussed at Audit & Risk Committee

Reference document 9.2 (a) (b) (c) (d)

The SGM: A&F joined the meeting for the purposes of the discussion.

The Ad-Hoc Diesel Audit as discussed at Audit & Risk Committee was tabled for information, details of which were included in the meeting pack.

According to management the following were key factors that played a significant role in the decision to use ad-hoc suppliers:

- The OCGTs were installed as peaking generators only, intended to operate for 2-3 hours a day maximum. Fuel supply contracts and logistics were then concluded around this operating regime in 2008. The contracts were of 10 year duration with an end date of 2018.
- Due to constraints in the grid that emerged in 2012 already, the OCGTs were required to operate for up to 17 hours a day progressively from 2012 to date.
- Because of the increased OCGT load factor, additional suppliers had to be introduced to supplement the contracted suppliers who had reached their contracted capacity

limits. Contracted capacity consisted of contracted volume capacity plus logistics capacity. Logistics capacity became the primary driver of increased use of ad hoc suppliers.

- With high continuous usage (14-17 hours at 425 KL/hour) delivery capacities of contracted suppliers often reached their limits and supplementary suppliers were required to keep the tank levels healthy to avoid fuel-out trips. For example in the first 4 months of the current financial year, logistics capacity primarily increased the use of ad hoc suppliers.
- It was important to note that there was no preset volume allocated to the ad hoc suppliers as this was driven by the capacity required by Eskom.

It was noted that the concern raised by members had been around the process itself and not the actual awarding of the tenders for short term diesel purchases.

The emergency procurement of fuel oil for Coal Fired Power Stations and diesel for OCGTs during the period September 2012 to February 2013 was ratified by EXCOPS and BTC during February and March 2013 respectively. The review therefore excluded the period before March 2013 as the Board then ratified whatever took place prior to that period.

The Board Tender Committee then approved that a new tender be issued issue to the open market for the purpose of constituting a panel of service providers who would supply a minimum of 25% of the required quantities for fuel oil and diesel to Eskom on an "as and when required basis" for a 5 year period. In the interim, management continued to use ad hoc suppliers.

The following criteria for new ad hoc suppliers was set:

- Have a valid wholesale license;
- Evidence of a credible source of diesel; and
- A letter of financial support

A&F was of the view that the criteria was not adequate.

With respect to General Controls it was reported that the sourcing of suppliers was based on word of mouth from both Eskom employees who knew the diesel suppliers and probably the other source was word of mouth from the market itself as the bulk of them were unsolicited. A&F was of the view that the process required a robust internal evaluation process before approval to be captured on the Vendor Master, which evaluation process was not evidenced.

The suppliers were evaluated on whether they comply with the 3 criteria ratified by the Board, however evidence of this evaluation and approval did not exist. There was evidence that the two suppliers met 2 of the 3 criteria. There was no evidence that evaluation and approval process took place.

With regard to the Process of allocation of suppliers once on the panel, according to management, once the supply was on the database they had an opportunity to be requested

to supply Eskom with Fuel (only these suppliers who were on the data base). The process was initially at random

In respect of Performance assessment and re-selection for use management reported that the suppliers were re-selected or not re-selected based on their performance. However there was no evidence that this actually happened.

A&F performed independent probity checks relative to these suppliers and found no evidence of conflict of interest from both Eskom employees who were involved in the value chain, Exco and the Board.

With respect to the specific controls issues related to 2 suppliers, it was found that the appointment of these 2 followed the same process and there was no extraordinary change to accommodate them. The last criterion were not complied with (obtaining the letter of support).

It was reported that A&F had recommended that Management should consider the potential savings as well as logistical efficiencies to be realised by contracting directly with Chevron. A&F was alive to the socio economic benefits that may be forfeited by doing away with the creation of a market for Ad-Hoc diesel suppliers. This was a cost benefit analysis exercise worth considering particularly under the current environment.

If the decision was to continue with a panel of Ad-Hoc suppliers, then the adjudicating process relating to the evaluation of the final offers from the short-listed diesel suppliers needed to be finalised as a matter of urgency and contracts should have been concluded with the successful suppliers. There had been pro-active assurance on the tender process for the new panel, which found the process overall to be fair, transparent and free of conflicts of interest.

The Chairman stated that that management should have reported to the Board Tender Committee to implement the ad-hoc purchases. A member requested that the strategy in terms of procuring diesel in the light of recommendations from ARC should be tabled for information.

In response to a query as to why ad-hoc suppliers were used instead of contracted suppliers it was reported that as soon as Eskom hit the load factor it required more than the 5 million litres of diesel per the contract with the normal suppliers. This was beyond the capacity of the oil companies to supply due to logistics. In order to de-risk the supply chain it was necessary to source from the ad-hoc suppliers to make up the difference between the 5 million litres and up to the required 7 to 7,5 million litres being used. The logistical problems emanated from the decanting facilities which could not supply the difference as well as Eskom's own facilities for receiving the diesel.

The Chairman recommended that the issue be left to the Acting CE to review the processes and make a report in due course.

Resolved that:

1. the Ad-Hoc Diesel Audit as discussed at Audit & Risk Committee is noted;
2. the Acting Chief Executive should review the processes around ad-hoc diesel purchases and make a report in due course.

7.2. **McKinsey Contract Approval**
Reference document 9.3 (a) (b)

The GE: T&C joined the meeting for the purposes of the discussion.

The Strategy to appoint Mckinsey as a strategic partner support to Eskom on the emerging work around financial and strategic topics that do not fit under the currently negotiated performance based MSA, and the Mandate to negotiate and conclude external Strategic Partner support to Eskom on the emerging work around financial and strategic topics that do not fit under the currently negotiated performance based MSA were tabled for approval, details of which were included in the meeting pack.

Ms Klein declared a possible Conflict of Interest in that her company did some work for McKinsey. Members agreed that there was no Conflict of Interest and declined her request to recuse herself for the discussion.

The Acting CFO reported that the original contract was not risk based and was not self funding and this submission sought to amend that. It was noted that the Acting CE would sign off on the aspects of the R101m. A skills development plan was in place for skills transfer.

Resolved that:

7.2.1 the appointment of McKinsey and Company ("McKinsey") as the sole partner for the financial and strategic topics of: cash flow and profitability targets for FY16; updating the business cases for Medupi and Kusile; further developing and disseminating Eskom's new design to cost strategy; and adapting Eskom's governance model to ensure delivery of the new strategy is approved;

7.2.2 McKinsey & Company should be contracted on a fixed-cost basis with a total contract value of R 101,733,124.80 for an effective duration of 8 months;

7.2.3 the Group Executive: Technology and Commercial is hereby authorised, with the power to delegate further, to take all the necessary steps to give effect to the above, including the signing of any agreements, consents or other documentation necessary or related thereto;

7.2.4 The Mandate to negotiate and conclude with a Strategic Partner on the financial and strategic topics of: cash flow and profitability targets for FY16; updating the business cases for Medupi and Kusile; further developing and disseminating Eskom's new design to cost strategy; and adapting Eskom's governance model to ensure delivery of the new strategy is hereby approved subject to the following:

7.2.4.1 McKinsey & Company be contracted on a fixed-cost basis with a total

7.2.4.2 contract value of R101,733,124.80 for an effective duration of 8 months; and the Group Executive for Commercial and Technology is given the necessary authority to execute this contract in line with the Eskom delegation of authority.

8. REPORTS AND FEEDBACK

8.1. Chairman's Report

Current Significant Issues

The Chairman stated that uppermost in the Board's mind must be the path that Eskom set itself to ensure its full recovery, stability and sustainability.

Minister Brown had indicated at the AGM that the Board's priority should be to disrupt the downward trajectory that the company found itself on. She had clearly articulated her areas of concerns in the various spheres of the business.

Eskom's liquidity position and medium to long term financial health remained a concern notwithstanding the equity injection and funds provided through the Government Support Package. As the Minister had indicated, Eskom should not expect further bailouts from the fiscus but look inward to resolving its issues.

The agenda items for discussion at the Board breakaway pointed to the many demands that Eskom was dealing with and we would need to maintain that fine balance between continued electricity supply and the sustainability of the company.

Our relationship with NERSA needed to be rebuilt. While the officials had established processes and procedures for engagement, the Board was not yet fully assured that the engagement of executive management team was at the correct level. Given our strategies going forward on the tariff, it would be imperative that any issues of interpretation and the like were cleared up prior to us engaging on the MYPD4 application process.

The build programme remained a key focus area and the Board congratulated the management team on a successful handover of Medupi Unit 6 to the generation business. This important milestone had contributed to Eskom being able to break the cycle of continuous load shedding and had gone a significant distance in restoring the confidence of the South African public in Eskom.

We now needed to focus on delivering on schedule and eliminating the cost overruns that we had experienced in getting to this milestone. It was gratifying to see that the lessons learned at Medupi were indeed being applied at the management of Kusile and the other build projects.

The future role of Eskom would need to clarified and confirmed. A number of key strategic influences were at play in this regard and these were the issues that confronted this Board:

- Gas Strategy (based on current exchange rate fluctuations, what would influence the long term strategy
- We need to take a position on nuclear.
- Our future coal strategy.
- Our role in the renewables sector also needs to be identified.

Update on Board Activities

This Board had met 12 times this year which was a sure indication of the rigorous attention the business of Eskom had demanded. The issues put before this Board were by no means small in magnitude and affected the very core of the business.

Key issues dealt with were:

- The Turnaround Plan for Eskom in this financial year and the strategies going forward;
- Executive performance management;
- Eskom's liquidity position and the impact of the NERSA decision;
- The build programme – revised business cases for Medupi and Kusile;

Key Performance Indicators

The Acting CE had reported that the executive compacting would be in place shortly. The Board would need to look at how appropriate this was for the oversight role that the Board needed to play.

The Board would need to consider the Shareholder Compact carefully as this would hold us accountable to the Shareholder for delivery thereon.

The Chairman requested the support of the Board for a letter he would submit to the Minister advising her that the Board had instructed Eskom to withdraw from the War Room. This was unanimously supported. Members were of the opinion that it was not practical to have a separate structure determining the Eskom business.

It was agreed that the letter would be followed up with explanatory meetings with the Minister to explain the demands and risks that the Board faced in terms of significance and fiduciary duty by remaining in the War Room.

Resolved that:

8.1.1 the Chairman's Report is noted;
8.1.2 the Chairman is supported to submit a letter to the Minister advising her that the Board had instructed Eskom to withdraw from the War Room; and
8.1.3 the letter should be followed up with explanatory meetings with the Minister to explain the demands and risks that the Board faced in terms of significance and fiduciary duty by remaining in the War Room.

8.2. **Chief Executive's Report**
Reference document 7.2 (a)

The Acting CE's Report as at 7 September 2015 was tabled for information, details of which were included in the meeting pack which was taken as read.

It was noted that the pack had been distributed late and members could direct any queries around the Acting CE's Report to the Acting CE.

Resolved that:

8.2.1 the Acting CE's Report as at 7 September 2015 is noted.

9. BOARD COMMITTEE REPORTS

All the Board committee reports were taken as read. In response to members' concerns that the pack had been delivered late and as a result they had not had enough time to go through them it was recommended that members send any requests for further information to the relevant Chairman of the Committees.

It was noted that from a governance perspective, some Committees had become very operational. In this regard members were advised to reflect on the work that their Committee should not be involved with and review the level of detail they received in the submissions from management to ensure that the meetings were productive and constructive. Furthermore this would allow for streamlining of meetings to free management to do their normal work. It was noted later in the meeting that the Minister had felt that there needed to be clarity around the duty of Committees in terms of operational issues.

The Chairman reported that he had requested Ms Klein to conduct interviews with each of the Board members around governance and requested that these meetings be convened as soon as possible. In response to a member's recommendation that consideration should be given to also conducting individual interviews with executives, the Chairman requested that the Acting CE conduct this exercise.

Resolved that:

9.1. members should send any requests for further information around Board Committees actions to the relevant Chairman of the Committees;
9.2. members were advised to reflect on the work that their Committee should not be involved with and review the level of detail they received in the submissions from management to ensure that the meetings were productive and constructive;
9.3. the interviews between Ms Klein and each of the Board members around governance should be convened as soon as possible;
9.4. the Acting CE should also conduct individual interviews with executives.

9.1 Audit & Risk Committee ("ARC") Report
Reference document 8.1 (a)

The ARC Committee Reports Template for the meeting held on 10 February 2015, 14 April 2015, 8 May 2015, 27 May 2015, 5 August 2015 and 4 September 2015 was taken as read and noted, details of which were included in the meeting pack.

Resolved that:

9.1.1 the reports of the Audit & Risk Committee meetings held on 10 February 2015, 14 April 2015, 8 May 2015, 27 May 2015, 5 August 2015 and 4 September 2015 are noted.

9.2 Social, Ethics & Sustainability Committee ("SESC")
Reference document 8.2 (a)

The SESC report for the meeting held on 14 August 2015 was taken as read and noted, details of which were included in the meeting pack.

Resolved that:

9.2.1. the Social, Ethics & Sustainability Committee report for the meeting held on 14 August 2015 is noted.

9.3 People & Governance ("P&G") Committee
Reference document 8.3 (a)

The P&G Committee Reports for the meetings held on 20 May 2015 and 9 September 2015 were taken as read and noted, details of which were included in the meeting pack.

Resolved that:

9.3.1 the People & Governance Committee reports for the meetings held on 20 May 2015 and 9 September 2015 are noted.

9.4 Investment & Finance Committee ("IFC")
Reference document 8.4 (a) (b) (c)

The IFC reports for the meetings held on 2 July 2015, 31 July 2015 and 6 August 2015 were taken as read and noted, details of which were included in the meeting pack.

It was reported that the IFC Terms of Reference had been approved by the Board previously but on investigation after the meeting it was found that they had not been tabled for approval. This would be done at the next Board meeting.

Resolved that:

9.4.1 the Investment & Finance Committee reports for the meetings held on 2 July 2015, 31 July 2015 and 6 August 2015 are noted.

9.5 Board Review and Build Programme Review Committee ("BRBPR")
Reference document 8.5 (a) (b) (c) (d)

The BRBPR reports for the meeting held on 29 July 2015, the Dashboard and the briefing note – update on Eskom IDM programme were taken as read and noted, details of which were included in the meeting pack.

In response to a query it was confirmed that the BRBPR Terms of Reference had been approved by the Board on 28 May 2015. It was requested that a copy thereof be included in the next Board pack for information.

Resolved that:

9.5.1 the Board Review and Build Programme Review Committee report for the meeting held on 29 July 2015, the Dashboard and the briefing note – update on Eskom IDM programme are noted; and

9.5.2 a copy of the Board Review and Build Programme Review Committee Terms of Reference should be included in the next Board pack for information.

9.6 Board Tender Committee
Reference document 15.3 (a) (b)

The Board Tender Committee Reports for the meetings held on 3 June 2015, 21 July 2015 and 18 August 2015 were taken as read and noted, details of which were included in the meeting pack.

Resolved that:

9.6.1 the Tender Committee reports for the meetings held on 3 June 2015, 21 July 2015 and 18 August 2015 are noted.

11 ITEMS FOR DISCUSSION AND/OR APPROVAL

11.1 Memorandum of Incorporation ("MoI)
Reference document 9.1 (a) (b) (c) (d)

The Draft revised MoI was tabled for information, details of which were included in the meeting pack.

In response to members' concerns that due to late delivery of the pack, they had not had enough time to prepare, it was recommended that members send any queries for further information or recommendations to Ms Klein who was managing the revision process.

Ms Klein thanked members for their support around this issue in order to move the Board forward.

Resolved that:

10.1.1 the Draft revised Memorandum of Incorporation of Eskom Holding SOC Ltd is noted; and

10.1.2 members should send any queries for further information or recommendations to Ms Klein.

11.2 Conversion of Loan

Reference document 11.2 (c) (d)

The Subscription Agreement (loan) and Subscription Agreement (Special appropriation) were tabled for approval of the mandate for the Acting CFO to sign the documents on behalf of Eskom Holdings SOC Ltd.

Resolved that:

11.2.1 the Acting Chief Financial Officer is mandated to sign the Subscription Agreement entered into between Eskom Holdings SOC Ltd and the Government of the Republic of South Africa represented by the Minister of Public Enterprises in respect of the subscription for 23 000 000 000 (twenty three billion) ordinary no par value shares in Eskom Holdings SOC Ltd; and

11.2.2 the Acting Chief Financial Officer is mandated to sign the subscription agreement entered into between Eskom Holdings SOC Ltd and the Government of the Republic Of South Africa represented by the Minister Of Public Enterprises in respect of the subscription for 60 000 000 000 (sixty billion) ordinary no par value shares in Eskom.

11.3 Executive Vacancies

The Chairman reported the Board, P&G, the Minister and Cabinet had agreed to finalise the appointment of a permanent Chief Executive in October 2015 and then deal with the rest of the vacancies.

In response to a request by Ms Klein, as Chairman of P&G, the Board supported that P&G submit a recommendation to the Minister around the appointment of a CE. Thereafter the P&G would engage with the nominee to conclude the appointment of Executives for the vacant and acting executive positions.

It was noted that a person could be confirmed for a position they had been acting in after 6 months without advertising. However a recommendation could be submitted at any time and the Cabinet process took 6 weeks to confirm the appointment.

Resolved that:

11.3.1 the submission by People and Governance Committee ("P&G") to the Minister of Public Enterprises for the permanent appointment of a Chief Executive ("CE") and a Financial Director is approved;

11.3.2 after confirmation of the appointments in Resolution 1 the P&G will engage with the CE to conclude the permanent appointments of executives in vacant or acting positions.

12. CLOSURE

There being no further matters for discussion, the Chairman declared the meeting closed at 19h50.

Signed by Dr Ngubane for purposes of noting the meeting's proceedings

CHAIRMAN: _____ **DATE:** 29/04/16

From: Orcilla Ruthnam <Orcilla.Ruthnam@dpe.gov.za>
Sent: Sunday, 13 September 2015 14:28
To: Annelize Van Wyk; Suzanne Daniels
Cc: Kim Davids
Subject: RE: Dr Ngubane's CV

Sensitivity: Confidential

Hi
It would also be appreciated if I can receive the following info:

- Is there a relevant clause in the HR policy which were considered by Eskom when making the recommendation to appoint without going through the competitive recruitment process? If so, please provide.
- Notwithstanding the right of the Board to recommend the current incumbents be appointed, there is a need for a competency assessment. Usually, the SOC would undertake a psychometric evaluation. Was this done? If so, please provide copies.
- Can we confirm that both Executives are to be appointed on a 5 year fixed term contract, subject to annual review?
- What is the remuneration package to be offered to the candidates?

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance
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Department:
Public Enterprises
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From: Annelize Van Wyk
Sent: 13 September 2015 02:07 PM
To: Orcilla Ruthnam; Suzanne Daniels
Cc: Kim Davids
Subject: Re: Dr Ngubane's CV
Sensitivity: Confidential

Thanks Orcilla. Suzanne please note that it must be very early tomorrow morning as everything needs to go through tomorrow.

Annelize van Wyk
Special Advisor to Minister Lynne Brown
Minister of Public Enterprises

-------- Original message --------
From: Orcilla Ruthnam <Orcilla.Ruthnam@dpe.gov.za>
Date:13/09/2015 13:55 (GMT+02:00)
To: Suzanne Daniels <DanielSM@eskom.co.za>
Cc: Kim Davids <Kim.Davids@dpe.gov.za>, Annelize Van Wyk <Annelize.VanWyk@dpe.gov.za>
Subject: RE: Dr Ngubane's CV

Hi Suzanne
I will use this for today, but it needs to be updated to included appointment to Eskom Board as NED on 11 December 2014. The copy is also difficult to see. It would be appreciated if the CV could be updated and a better copy sent to me by tomorrow morning.

Regards

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Click on the following link to view directions to DPE http://www.dpe.gov.za/home.asp?id=1053

From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 13 September 2015 01:07 PM
To: Orcilla Ruthnam
Cc: Kim Davids
Subject: Dr Ngubane's CV
Importance: High
Sensitivity: Confidential

Dear Orcilla

Herewith Dr Ngubane's CV.

Best regards
Suzanne

SUZANNE DANIELS
Office of the Chairman
Eskom Holdings SOC Ltd
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za

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COMMISSION OF INQUIRY INTO STATE CAPTURE

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Sunday, 13 September 2015 20:00
To: Orcilla Ruthnam
Cc: Venete Klein; baldwin.ngubane@gmail.com
Subject: CE and CFO appointments
Attachments: Letter of advice_app of CEO_19 June 2015_(6190551_1).pdf

Importance: High
Sensitivity: Confidential

Good evening Orcilla

On behalf of the Chairperson of the People and Governance Committee, in consultation with the Chairperson of the Board of Eskom, please find the replies to your request below:

1. Please find attached hereto the legal opinion obtained by the People and Governance Committee in the consideration of whether to follow the competitive recruitment process.
2. Given the performance track record of both incumbents at another SOC (Transnet), coupled with their continued performance in a new environment (Eskom) – the Board does not deem this evaluation necessary. The evaluations will not give the Board input into any areas that it has not already been able to assess during their secondments.
3. The standard DPE policies will apply here, so the Board will be comfortable with the 5 year fixed term.
4. As senior executives of the same ministry – the Board would like the salaries to remain at the same level as it was at Transnet. The Board would like to review their participation in the Long Term Incentive programme in line with the steep commitments in our turnaround plan.

Should you have any further queries, please let me know.

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Sunday, September 13, 2015 2:28 PM
To: Annelize Van Wyk; Suzanne Daniels
Cc: Kim Davids
Subject: RE: Dr Ngubane's CV
Sensitivity: Confidential

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- What is the remuneration package to be offered to the candidates?

Regards

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Sent: 13 September 2015 02:07 PM
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Cc: Kim Davids
Subject: Re: Dr Ngubane's CV
Sensitivity: Confidential

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Annelize van Wyk
Special Advisor to Minister Lynne Brown
Minister of Public Enterprises

-------- Original message --------
From: Orcilla Ruthnam <Orcilla.Ruthnam@dpe.gov.za>
Date:13/09/2015 13:55 (GMT+02:00)
To: Suzanne Daniels <DanielSM@eskom.co.za>
Cc: Kim Davids <Kim.Davids@dpe.gov.za>, Annelize Van Wyk <Annelize.VanWyk@dpe.gov.za>
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From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 13 September 2015 01:07 PM

To: Orcilla Ruthnam
Cc: Kim Davids
Subject: Dr Ngubane's CV
Importance: High
Sensitivity: Confidential

Dear Orcilla

Herewith Dr Ngubane's CV.

Best regards
Suzanne

SUZANNE DANIELS
Office of the Chairman
Eskom Holdings SOC Ltd
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
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COMMISSION OF INQUIRY INTO STATE CAPTURE

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Our Reference:	Mr Jerry Kaapu	Your Reference:	Ms Venete Klein
Direct Line:	(011) 669 9519	Date:	18 June 2015
E-mail Address:	j.kaapu@bowman.co.za		

Per e-mail

ESKOM HOLDINGS (SOC) LIMITED

Attention Ms Venete Klein

E-mail address: venete@kleininc.co.za

Dear Venete,

RE: APPOINTMENT OF CHIEF EXECUTIVE OFFICER

1. INTRODUCTION

1.1 We have been instructed to urgently consider and advise Eskom on the appointment process for its Chief Executive ("CE"). We are advised that Eskom wishes to take steps to appoint a new CE as expediently as possible and, in so doing, has already identified a suitable potential candidate for the position. Eskom seeks advice on whether it can consider the said candidate without engaging in a full blown recruitment process (public invitation to apply for the position) but, in so doing, complying with all of its duties and obligations.

1.2 We advise that due to the urgency of the requested advice, we do not set out a comprehensive overview and analysis of all legislation and documentation which may relate to the matter but confine ourselves strictly with addressing the advice sought. To this extent, we confirm that we have considered all legislation which may be applicable, including the Companies Act, No. 71 of 2008, the Eskom Conversion Act, No. 13 of 2001

Bowman Gilfillan Inc. Reg. No. 1998/021409/21 Attorneys Notaries Conveyancers

Directors RA Legh (Chairman) | PM Maduna (Deputy Chairman) | AJ Keep (Managing Partner) | AG Anderson | DP Anderson | LJ Anderson | M Angumuthoo | J Banoobhai | AM Barnes-Webb | TL Beira | ARJ Bertrand | F Bhayat | CM Bouwer | JL Brink | REW Burman | LD Campbell | RM Carr | PM Carter | LA Chater | RA Cohen | CN Cunningham | GH Damant | RA Davey | MEC Davids | D de Klerk | ID Dhladhla | TC Dlod | CR Douglas | HD Duffey | BR du Plessis | IL Dyer | JE Esterhuizen | E Fetter | KA Fulton | BJ Garven | TM Gcabashe | DJ Geral | LHM Gerstle | D Gewer | AA Gordon | TJ Gordon-Grant | K Goss | CB Green | S Grimwood | A Hale | AS Harris | P Hart-Davies | PA Hirsch | T Jithoo | JR Kaapu | G Kakesi | CP Kennedy | KM Kerr | FJ Khoza | ID Kirkman | U Kondile | JG Kruger | JP Kruger | R Lobnischagne | FB Laher | HY Laher | S Laubscher | DA Lorter | KS Makapane | M Makola | A McAllister | JM McKinnell | JY Meijer | PH Modi | SNI Mokose | TL Mongae | RPM Morson | AV Munro-Smith | UBU Naumann | HB Ngcobo | TH Nichols | MAJ Oppenheim | AJ Pike | P Pillay | JD Prain | MA Purchase | Y Ram | LV Raphulu | CL Reidy | JB Ripley-Evans | MS Rusa | GI Rushton | JW Sahli | MY Sass | CG Schafer | JH Schlosberg | DE Serchuk | RZ Stein | CEC Smith | CD Stein | PW Stelling | R Straughan | BGM Strydom | V Subhan | CFN Todd | CE Tucker | CL van Heerden | MR van Velden | RJ van Voore | NC van Zuyden | MG Vermaak | L Verster | SHE Voigt | DS Webb | DCJ Wessels | RS Wessels | PE Whelan | HJ Wilsenach | SG Wilton | DD Yuill | D Zussa Consultants JWD Brand | S Esterhuyse | ND Rissik Special Counsel CL Vallon
Practice Partner and Head of Africa JL Long Group COO BJ Smith CFO GJ Karolus

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and the Public Finance Management Act, No. 1 of 1999. In addition, we have considered Eskom's Memorandum of Incorporation ("the MoI"), Eskom's shareholders compact, a document entitled the Governance Oversight Role Over State-Owned Enterprises (SOE's) ("the SOE Governance Oversight document") and a document entitled the Protocol on Corporate Governance in the Public Sector (Department of Public Enterprises) ("the Protocol on Corporate Governance document").

2. THE APPLICABLE LEGISLATION

2.1 Chapter 2 of the Companies Act regulates the Formation, Administration and Dissolution of Companies. Under the part of this chapter which deals with Governance of Companies is section 66 which governs the Board, Directors and Prescribed Officers of a Company. Sections 66(1) and 66(4) provides as follows:

> *"1) The business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise.*
>
> ...
>
> *4) A company's Memorandum of Incorporation –*
>
> *a) may provide for –*
>
> > *i) the direct appointment and removal of one or more directors by any person who is named in, or determined in terms of, the Memorandum of Incorporation;*
> >
> > *ii) a person to be an ex officio director of the company as a consequence of that person holding some other office, title, designation or similar status, subject to*

subsection (5)(a); or

iii) the appointment or election of one or more persons as alternate directors of the company; and

b) in the case of a profit company other than a state-owned company, must provide for the election by shareholders of at least 50% of the directors, and 50% of any alternate directors."

2.2 Section 68 further provides as follows:

"1) Subject to subsection (3), each director of a profit company, other than the first directors or a director contemplated in section 66(4)(a)(i) or (ii), must be elected by the persons entitled to exercise voting rights in such an election, to serve for an indefinite term, or for a term as set out in the Memorandum of Incorporation.

2) Unless a profit company's Memorandum of Incorporation provides otherwise, in any election of directors –

a) the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the board at that time have been filled; and

b) in each vote to fill a vacancy –

i) each voting right entitled to be exercised may be exercised once; and

ii) the vacancy is filled only if a majority of the voting rights exercised support the candidate.

3) Unless the Memorandum of Incorporation of a profit company provides otherwise, the board may appoint a person who satisfies the requirements for election as a director to fill any vacancy and serve as a director of the company on a temporary basis until the vacancy has been filled by election in terms of subsection (2), and during that period any person so appointed has all of the powers, functions and duties, and is subject to all of the liabilities, of any other director of the company."

2.3 It is clear from the above that unless the MoI provides otherwise, the appointment by Eskom of its CE would be conducted in terms of section 68(2) of the Companies Act, as set out above. In the circumstances, it is therefore necessary to consider the provisions of the MoI.

2.4 We note that aside from section 69 which governs the "Ineligibility and Disqualification of Persons to be Director or Prescribed Officer", which we understand not to be applicable in this case, we do not consider any other provisions of the Companies Act to be applicable to the advice sought.

2.5 We confirm further that we have considered all other legislation which we thought may possibly be relevant to this instruction, including the Eskom Conversion Act and the Public Finance Management Act, and confirm that there are no provisions therein which we consider applicable to this advice sought. Accordingly, the next step is to consider what is provided in the MoI.

3. THE MEMORANDUM OF INCORPORATION

3.1 The first clause from Eskom's MoI which we consider relevant for the purposes of this advice is clause 13.1.4 which states:

"The Shareholder shall have the right to appoint a Director to the Board, who may be a

Government official, whenever the Shareholder deems it necessary, subject always to the provisions of the Companies Act and this MOI."

3.2 "Shareholder" is defined in clause 1.2.42 of the MoI as "the Government" as represented by "the Minister", which is further defined in clause 1.2.27 to mean "the Minister of Public Enterprises".

3.3 Clause 13.3 of Eskom's MoI is headed "Process of appointment of the CE and FD" and states the following in respect of appointing a CE:

"13.3.1 The Board shall identify, nominate and evaluate potential candidates for appointment as the CE in accordance with the Guidelines.

13.3.2 The Shareholder shall appoint the CE from the shortlist of candidates provided by the Board, in accordance with the Guidelines."

3.4 The MoI simply provides that the Board of Eskom shall identify, nominate and evaluate potential candidates for appointment as the CE and that the Shareholder should then appoint the CE from the shortlist of candidates provided by the Board. This is however subject to "the Guidelines".

3.5 Clause 1.2.23 of the MoI defines the "Guidelines'" as the "*guidelines for the appointment of a Chief Executive for a State Owned Enterprise' as issued by the Minister from time to time*".

3.6 We have contacted the Department of Public Enterprises and have been informed that there is no document specifically entitled "*guidelines for the appointment of a Chief Executive for a State Owned Enterprise*" or anything similar. However, our own research conducted revealed two documents, namely, the SOE Governance Oversight document and the Protocol on Corporate Governance document, which provide further guidelines on the

appointment of the CE. It appears that these are the documents referred to in the MoI.

3.7 The SOE Governance Oversight document provides an overview of Government's governance oversight over SOE's and sets out the following summary at item 2:

> *"Corporate governance embodies processes and systems by which SOE's are directed, controlled and held to account. In addition to legislative requirements based on a SOE's enabling legislation, and the Companies Act, corporate governance with regard to SOE's is applied through the precepts of the Public Finance Management Act (PFMA) and run in tandem with the Protocol on Corporate Governance, which encapsulates the principles contained in the King II Report on Corporate Governance."*

3.8 Item 6.4 then addresses the Protocol on Corporate Governance document further and states as follows:

> *"The Protocol on Corporate Governance was accepted by Cabinet in 2003 and all Public Entities have been informed that they must comply with the principles contained therein. The Protocol is a code of conduct similar to the King Report on Corporate Governance and has not been legislated. It encapsulates the King II Report and aligns corporate governance principles to the PFMA, while striving to maintain the independence of SOE's."*

3.9 Having regard to the above, it is necessary to also consider the Protocol on Corporate Governance document. Item 5.1.1.1 of this document sets out the Roles of the Board of a SOE and provides as follows:

> *"The board of the SOE has absolute responsibility for the performance of the SOE and is fully accountable to the shareholder for such performance. As a result, the board should give strategic direction to the SOE, and in concurrence with the Executive Authority*

appoint the chief executive officer and ensure that an effective succession plan for all directors and key executives is in place and adhered to."

3.10 Item 5.1.3 of the Protocol on Corporate Governance document further states:

"Unless otherwise agreed in the shareholders agreement or shareholder compact (as the case may be) the Executive Authority should appoint the chief executive officer whose role should, preferably, be separate from that of the chairperson. The Executive Authority should consult with the board about its preferred candidate for the position of Chief Executive Officer and provide sufficient time for the board to consider the candidate and respond prior to an appointment being made. The chief executive officer's role should focus mainly on the operations of the SOE, ensuring that the SOE is run efficiently and effectively and in accordance with the strategic decisions of the board. The chief executive officer is accountable to the board".

3.11 We have had sight of Eskom's shareholders compact and confirm that it does not provide otherwise in relation to what is in the Protocol on Corporate Governance document. We deem only the above provisions from the documentation considered outside of the legislation to be applicable to the reference made to it in Eskom's MoI and for the purposes of the advice sought herein. It is therefore within the context of the above provisions that the advice sought must be considered.

4. OUR ADVICE

4.1 We have considered the various legislation, documentation and guidelines applicable to the process of Eskom appointing its CE, and having considered all the relevant provisions, we advise that the process that must be followed in appointing the CE is as set out in clauses 13.3.1 and 13.3.2 of the MoI. The legislation and guidelines (or any other documentation) have not altered this process in any manner.

4.1 The process that Eskom must follow in appointing a CE essentially requires that the Board of Eskom must identify, nominate and evaluate potential candidates for appointment as the CE and that the Minister of Public Enterprises, as the Executive Authority, should then appoint the CE from the shortlist of candidates provided by the Board. There is no requirement that the candidates should be publicly invited to apply for this position.

4.2 Having considered the above requirements, we advise that the Board should resolve a shortlist of candidates for the position of CE. Further, the Board must in accordance with the provisions of item 5.1.3 of the Protocol on Corporate Governance indicate its preferred candidate for the position for consultation with the Minister of Public Enterprises prior to the appointment being made.

4.3 One of the issues of concern emanating from the reading of clauses 13.3.1 and 13.3.2 of the MoI is that the MoI suggests that a shortlist should be compiled which suggests that more than one candidate should be included on this list, thereby allowing the Minister of Public Enterprises some discretion in terms of who to appoint. Having considered this aspect, we are of the view that if a list of only one person was compiled and a recommendation made to the Minister of Public Enterprises on the appointment of such candidate, the Minister would still have discretion on whether or not to appoint the preferred candidate. Therefore, we are of the view that an argument can be sustained that a list of only one person will not be in breach of clauses 13.3.1 and 13.3.2 of the MoI.

4.4 However, in order to err on the side of caution in this regard, we would suggest that whilst the preferred candidate is shortlisted and nominated for appointment, a second option should, to the extent possible, be identified, evaluated and nominated as well. In the event that a second candidate cannot be identified, evaluated and nominated within the timeframe Eskom wishes to appoint the CE, a list of one person can be compiled and

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a recommendation made to the Minister of Public Enterprises for appointment.

5. We trust that the above addresses your instruction to us. Should you have any queries in regard to the above or any other queries, please do not hesitate to contact us as we remain at your service to ensure that the best interests of Eskom are achieved.

Yours faithfully

Bowman Gilfillan Inc.
Jerry Kaapu / Luway Mongie

COMMISSION OF INQUIRY INTO STATE CAPTURE

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Sunday, 13 September 2015 20:00
To: Orcilla Ruthnam
Cc: Venete Klein; baldwin.ngubane@gmail.com
Subject: CE and CFO appointments
Attachments: Letter of advice_app of CEO_19 June 2015_(6190551_1).pdf

Importance: High
Sensitivity: Confidential

Good evening Orcilla

On behalf of the Chairperson of the People and Governance Committee, in consultation with the Chairperson of the Board of Eskom, please find the replies to your request below:

1. Please find attached hereto the legal opinion obtained by the People and Governance Committee in the consideration of whether to follow the competitive recruitment process.
2. Given the performance track record of both incumbents at another SOC (Transnet), coupled with their continued performance in a new environment (Eskom) – the Board does not deem this evaluation necessary. The evaluations will not give the Board input into any areas that it has not already been able to assess during their secondments.
3. The standard DPE policies will apply here, so the Board will be comfortable with the 5 year fixed term.
4. As senior executives of the same ministry – the Board would like the salaries to remain at the same level as it was at Transnet. The Board would like to review their participation in the Long Term Incentive programme in line with the steep commitments in our turnaround plan.

Should you have any further queries, please let me know.

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Sunday, September 13, 2015 2:28 PM
To: Annelize Van Wyk; Suzanne Daniels
Cc: Kim Davids
Subject: RE: Dr Ngubane's CV
Sensitivity: Confidential

Hi
It would also be appreciated if I can receive the following info:

- Is there a relevant clause in the HR policy which were considered by Eskom when making the recommendation to appoint without going through the competitive recruitment process? If so, please provide.
- Notwithstanding the right of the Board to recommend the current incumbents be appointed, there is a need for a competency assessment. Usually, the SOC would undertake a psychometric evaluation. Was this done? If so, please provide copies.
- Can we confirm that both Executives are to be appointed on a 5 year fixed term contract, subject to annual review?
- What is the remuneration package to be offered to the candidates?

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
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Click on the following link to view directions to DPE http://www.dpe.gov.za/home.asp?id=1053

From: Annelize Van Wyk
Sent: 13 September 2015 02:07 PM
To: Orcilla Ruthnam; Suzanne Daniels
Cc: Kim Davids
Subject: Re: Dr Ngubane's CV
Sensitivity: Confidential

Thanks Orcilla. Suzanne please note that it must be very early tomorrow morning as everything needs to go through tomorrow.

Annelize van Wyk
Special Advisor to Minister Lynne Brown
Minister of Public Enterprises

-------- Original message --------
From: Orcilla Ruthnam <Orcilla.Ruthnam@dpe.gov.za>
Date:13/09/2015 13:55 (GMT+02:00)
To: Suzanne Daniels <DanielSM@eskom.co.za>
Cc: Kim Davids <Kim.Davids@dpe.gov.za>, Annelize Van Wyk <Annelize.VanWyk@dpe.gov.za>
Subject: RE: Dr Ngubane's CV

Hi Suzanne
I will use this for today, but it needs to be updated to included appointment to Eskom Board as NED on 11 December 2014. The copy is also difficult to see. It would be appreciated if the CV could be updated and a better copy sent to me by tomorrow morning.

Regards

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Click on the following link to view directions to DPE http://www.dpe.gov.za/home.asp?id=1053

From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 13 September 2015 01:07 PM

To: Orcilla Ruthnam
Cc: Kim Davids
Subject: Dr Ngubane's CV
Importance: High
Sensitivity: Confidential

Dear Orcilla

Herewith Dr Ngubane's CV.

Best regards
Suzanne

SUZANNE DANIELS
Office of the Chairman
Eskom Holdings SOC Ltd
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za

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COMMISSION OF INQUIRY INTO STATE CAPTURE

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Our Reference:	Mr Jerry Kaapu	Your Reference:	Ms Venete Klein
Direct Line:	(011) 669 9519	Date:	18 June 2015
E-mail Address:	j.kaapu@bowman.co.za		

Per e-mail

ESKOM HOLDINGS (SOC) LIMITED

Attention Ms Venete Klein

E-mail address: venete@kleininc.co.za

Dear Venete,

RE: APPOINTMENT OF CHIEF EXECUTIVE OFFICER

1. INTRODUCTION

1.1 We have been instructed to urgently consider and advise Eskom on the appointment process for its Chief Executive ("CE"). We are advised that Eskom wishes to take steps to appoint a new CE as expediently as possible and, in so doing, has already identified a suitable potential candidate for the position. Eskom seeks advice on whether it can consider the said candidate without engaging in a full blown recruitment process (public invitation to apply for the position) but, in so doing, complying with all of its duties and obligations.

1.2 We advise that due to the urgency of the requested advice, we do not set out a comprehensive overview and analysis of all legislation and documentation which may relate to the matter but confine ourselves strictly with addressing the advice sought. To this extent, we confirm that we have considered all legislation which may be applicable, including the Companies Act, No. 71 of 2008, the Eskom Conversion Act, No. 13 of 2001

Bowman Gilfillan Inc. Reg. No. 1998/021409/21 Attorneys Notaries Conveyancers

Directors RA Legh (Chairman) | PM Moduna (Deputy Chairman) | AJ Keep (Managing Partner) | AG Anderson | DP Anderson | LJ Anderson | M Angumuthoo | J Banoobhai | AM Barnes-Webb | TL Beira | ARL Bertrand | F Bhayat | CM Bouwer | IL Brink | REW Burman | LD Campbell | RM Carr | PM Carter | LA Chater | RA Cohen | CN Cunningham | GH Damant | RA Davey | MEC Davids | D de Klerk | ID Dhladhla | TC Dini | CR Douglas | HD Duffey | BR du Plessis | L Dyer | JE Esterhuizen | E Reiser | KA Fulton | BJ Garven | TM Gcabashe | DJ Geral | LHM Gerstle | D Gewer | AA Gordon | TJ Gordon-Grant | K Goss | CB Green | S Grimwood | A Hale | AS Harris | P Hart-Davies | PA Hirsch | T Jithoo | JR Kaapu | G Kekesi | CP Kennedy | KM Kern | FJ Khoza | ID Kirkman | U Kondile | JG Kruger | JP Kruger | R Lobnschagne | FB Laher | HY Laher | T Laubscher | DA Lotter | KS Makapane | M Makola | A McAllister | JM McKinnell | JY Meijer | PH Modi | SNI Mokose | TL Mongae | RPM Morson | AV Munro-Smith | UEBU Naumann | HB Ngcobo | TH Nichols | MAJ Oppenheim | AJ Pike | P Pillay | JD Prain | MA Purchase | Y Ram | LV Raphulu | CL Reidy | JB Ripley-Evans | MS Rusa | GI Rushton | JW Sahli | MY Sass | CG Schafer | JH Schlosberg | DE Serchuk | RZ Shein | CEC Smith | CD Stein | PW Stelling | R Straughan | BGM Strydom | V Subhan | CFN Todd | CE Tucker | CL van Heerden | MR van Velden | RJ van Voore | NC van Zuylen | MG Vermaak | L Verster | SHE Voigt | DS Webb | DCJ Wessels | RS Wessels | PE Whelan | HJ Wilsenach | SG Wilson | DD Yuill | D Zussa Consultants JWD Brand | S Esterhuyse | ND Rissik Special Counsel CL Valkin Practice Partner and Head of Africa JL Long Group COO RJ Smith CFO GJ Karolus

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and the Public Finance Management Act, No. 1 of 1999. In addition, we have considered Eskom's Memorandum of Incorporation ("the MoI"), Eskom's shareholders compact, a document entitled the Governance Oversight Role Over State-Owned Enterprises (SOE's) ("the SOE Governance Oversight document") and a document entitled the Protocol on Corporate Governance in the Public Sector (Department of Public Enterprises) ("the Protocol on Corporate Governance document").

2. THE APPLICABLE LEGISLATION

2.1 Chapter 2 of the Companies Act regulates the Formation, Administration and Dissolution of Companies. Under the part of this chapter which deals with Governance of Companies is section 66 which governs the Board, Directors and Prescribed Officers of a Company. Sections 66(1) and 66(4) provides as follows:

> *"1) The business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise.*
>
> ...
>
> *4) A company's Memorandum of Incorporation –*
>
> *a) may provide for –*
>
> > *i) the direct appointment and removal of one or more directors by any person who is named in, or determined in terms of, the Memorandum of Incorporation;*
> >
> > *ii) a person to be an ex officio director of the company as a consequence of that person holding some other office, title, designation or similar status, subject to*

subsection (5)(a); or

iii) the appointment or election of one or more persons as alternate directors of the company; and

b) in the case of a profit company other than a state-owned company, must provide for the election by shareholders of at least 50% of the directors, and 50% of any alternate directors."

2.2 Section 68 further provides as follows:

"1) Subject to subsection (3), each director of a profit company, other than the first directors or a director contemplated in section 66(4)(a)(i) or (ii), must be elected by the persons entitled to exercise voting rights in such an election, to serve for an indefinite term, or for a term as set out in the Memorandum of Incorporation.

2) Unless a profit company's Memorandum of Incorporation provides otherwise, in any election of directors –

a) the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the board at that time have been filled; and

b) in each vote to fill a vacancy –

i) each voting right entitled to be exercised may be exercised once; and

ii) the vacancy is filled only if a majority of the voting rights exercised support the candidate.

3) Unless the Memorandum of Incorporation of a profit company provides otherwise, the board may appoint a person who satisfies the requirements for election as a director to fill any vacancy and serve as a director of the company on a temporary basis until the vacancy has been filled by election in terms of subsection (2), and during that period any person so appointed has all of the powers, functions and duties, and is subject to all of the liabilities, of any other director of the company."

2.3 It is clear from the above that unless the MoI provides otherwise, the appointment by Eskom of its CE would be conducted in terms of section 68(2) of the Companies Act, as set out above. In the circumstances, it is therefore necessary to consider the provisions of the MoI.

2.4 We note that aside from section 69 which governs the "Ineligibility and Disqualification of Persons to be Director or Prescribed Officer", which we understand not to be applicable in this case, we do not consider any other provisions of the Companies Act to be applicable to the advice sought.

2.5 We confirm further that we have considered all other legislation which we thought may possibly be relevant to this instruction, including the Eskom Conversion Act and the Public Finance Management Act, and confirm that there are no provisions therein which we consider applicable to this advice sought. Accordingly, the next step is to consider what is provided in the MoI.

3. THE MEMORANDUM OF INCORPORATION

3.1 The first clause from Eskom's MoI which we consider relevant for the purposes of this advice is clause 13.1.4 which states:

"The Shareholder shall have the right to appoint a Director to the Board, who may be a

Government official, whenever the Shareholder deems it necessary, subject always to the provisions of the Companies Act and this MOI."

3.2 "Shareholder" is defined in clause 1.2.42 of the MoI as "the Government" as represented by "the Minister", which is further defined in clause 1.2.27 to mean "the Minister of Public Enterprises".

3.3 Clause 13.3 of Eskom's MoI is headed "Process of appointment of the CE and FD" and states the following in respect of appointing a CE:

"13.3.1 The Board shall identify, nominate and evaluate potential candidates for appointment as the CE in accordance with the Guidelines.

13.3.2 The Shareholder shall appoint the CE from the shortlist of candidates provided by the Board, in accordance with the Guidelines."

3.4 The MoI simply provides that the Board of Eskom shall identify, nominate and evaluate potential candidates for appointment as the CE and that the Shareholder should then appoint the CE from the shortlist of candidates provided by the Board. This is however subject to "the Guidelines".

3.5 Clause 1.2.23 of the MoI defines the "Guidelines'" as the "*guidelines for the appointment of a Chief Executive for a State Owned Enterprise' as issued by the Minister from time to time*".

3.6 We have contacted the Department of Public Enterprises and have been informed that there is no document specifically entitled "*guidelines for the appointment of a Chief Executive for a State Owned Enterprise*" or anything similar. However, our own research conducted revealed two documents, namely, the SOE Governance Oversight document and the Protocol on Corporate Governance document, which provide further guidelines on the

appointment of the CE. It appears that these are the documents referred to in the MoI.

3.7 The SOE Governance Oversight document provides an overview of Government's governance oversight over SOE's and sets out the following summary at item 2:

> *"Corporate governance embodies processes and systems by which SOE's are directed, controlled and held to account. In addition to legislative requirements based on a SOE's enabling legislation, and the Companies Act, corporate governance with regard to SOE's is applied through the precepts of the Public Finance Management Act (PFMA) and run in tandem with the Protocol on Corporate Governance, which encapsulates the principles contained in the King II Report on Corporate Governance."*

3.8 Item 6.4 then addresses the Protocol on Corporate Governance document further and states as follows:

> *"The Protocol on Corporate Governance was accepted by Cabinet in 2003 and all Public Entities have been informed that they must comply with the principles contained therein. The Protocol is a code of conduct similar to the King Report on Corporate Governance and has not been legislated. It encapsulates the King II Report and aligns corporate governance principles to the PFMA, while striving to maintain the independence of SOE's."*

3.9 Having regard to the above, it is necessary to also consider the Protocol on Corporate Governance document. Item 5.1.1.1 of this document sets out the Roles of the Board of a SOE and provides as follows:

> *"The board of the SOE has absolute responsibility for the performance of the SOE and is fully accountable to the shareholder for such performance. As a result, the board should give strategic direction to the SOE, and in concurrence with the Executive Authority*

appoint the chief executive officer and ensure that an effective succession plan for all directors and key executives is in place and adhered to."

3.10 Item 5.1.3 of the Protocol on Corporate Governance document further states:

"Unless otherwise agreed in the shareholders agreement or shareholder compact (as the case may be) the Executive Authority should appoint the chief executive officer whose role should, preferably, be separate from that of the chairperson. The Executive Authority should consult with the board about its preferred candidate for the position of Chief Executive Officer and provide sufficient time for the board to consider the candidate and respond prior to an appointment being made. The chief executive officer's role should focus mainly on the operations of the SOE, ensuring that the SOE is run efficiently and effectively and in accordance with the strategic decisions of the board. The chief executive officer is accountable to the board".

3.11 We have had sight of Eskom's shareholders compact and confirm that it does not provide otherwise in relation to what is in the Protocol on Corporate Governance document. We deem only the above provisions from the documentation considered outside of the legislation to be applicable to the reference made to it in Eskom's MoI and for the purposes of the advice sought herein. It is therefore within the context of the above provisions that the advice sought must be considered.

4. OUR ADVICE

4.1 We have considered the various legislation, documentation and guidelines applicable to the process of Eskom appointing its CE, and having considered all the relevant provisions, we advise that the process that must be followed in appointing the CE is as set out in clauses 13.3.1 and 13.3.2 of the MoI. The legislation and guidelines (or any other documentation) have not altered this process in any manner.

4.1 The process that Eskom must follow in appointing a CE essentially requires that the Board of Eskom must identify, nominate and evaluate potential candidates for appointment as the CE and that the Minister of Public Enterprises, as the Executive Authority, should then appoint the CE from the shortlist of candidates provided by the Board. There is no requirement that the candidates should be publicly invited to apply for this position.

4.2 Having considered the above requirements, we advise that the Board should resolve a shortlist of candidates for the position of CE. Further, the Board must in accordance with the provisions of item 5.1.3 of the Protocol on Corporate Governance indicate its preferred candidate for the position for consultation with the Minister of Public Enterprises prior to the appointment being made.

4.3 One of the issues of concern emanating from the reading of clauses 13.3.1 and 13.3.2 of the MoI is that the MoI suggests that a shortlist should be compiled which suggests that more than one candidate should be included on this list, thereby allowing the Minister of Public Enterprises some discretion in terms of who to appoint. Having considered this aspect, we are of the view that if a list of only one person was compiled and a recommendation made to the Minister of Public Enterprises on the appointment of such candidate, the Minister would still have discretion on whether or not to appoint the preferred candidate. Therefore, we are of the view that an argument can be sustained that a list of only one person will not be in breach of clauses 13.3.1 and 13.3.2 of the MoI.

4.4 However, in order to err on the side of caution in this regard, we would suggest that whilst the preferred candidate is shortlisted and nominated for appointment, a second option should, to the extent possible, be identified, evaluated and nominated as well. In the event that a second candidate cannot be identified, evaluated and nominated within the timeframe Eskom wishes to appoint the CE, a list of one person can be compiled and

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a recommendation made to the Minister of Public Enterprises for appointment.

5. We trust that the above addresses your instruction to us. Should you have any queries in regard to the above or any other queries, please do not hesitate to contact us as we remain at your service to ensure that the best interests of Eskom are achieved.

Yours faithfully

Bowman Gilfillan Inc.
Jerry Kaapu / Luway Mongie

COMMISSION OF INQUIRY INTO STATE CAPTURE

From: Orcilla Ruthnam <Orcilla.Ruthnam@dpe.gov.za>
Sent: Monday, 14 September 2015 12:59
To: Suzanne Daniels (DanielSM@eskom.co.za)
Cc: Venete Klein
Subject: RE: Remuneration of prescribed officers
Attachments: Letter to Eskom re appointment of CEO.pdf; Guidelines for Appointment of CEO of SOC.pdf

Dear Suzanne
I was reading through the opinion and was concerned about paragraph 3.6 which indicated that the Department was contacted for a copy of the guideline referenced in the MOI. It is unfortunate that I was not approached.

For record, the guideline (attached) has been the Department's basis for advising the Minister and is therefore written into all SOC MOIs as well as the updated Protocol. In terms of the appointment of the CFO, the MOI is clearer on the process, however, the guideline also covers the appointment.

Hence, Minister's letter of July (attached) was informed by these guidelines.

Please provide me with a copy of the document entitled "SOE Governance Oversight Document".

Many thanks

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From: Venete Klein [mailto:venete@kleininc.co.za]
Sent: 14 September 2015 09:44 AM
To: Orcilla Ruthnam
Cc: Suzanne Daniels (DanielSM@eskom.co.za)
Subject: Re: Remuneration of prescribed officers

Thanks Orcilla, we await the feedback then.

Warm regards

Sent from my iPhone

On 14 Sep 2015, at 8:29, "Orcilla Ruthnam" <Orcilla.Ruthnam@dpe.gov.za> wrote:

FYI

From: Orcilla Ruthnam
Sent: 14 September 2015 08:22 AM
To: 'Ayanda Ceba Transnet Corporate JHB'
Cc: Lawrence Nevondo; Nokuthula Khumalo Transnet Corportate JHB (NokuthulaE.Khumalo@transnet.net); Karabelo Mosia Transnet Corporate (Karabelo.Mosia@transnet.net)
Subject: Remuneration of prescribed officers
Importance: High

Dear Ayanda
Please urgently provide me with a schedule of remuneration of prescribed officers (names disclosed in the Integrated Report) after the resolution of the AGM. In other words, the names and amounts including the 5.4% awarded at the AGM.

Many thanks

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COMMISSION OF INQUIRY INTO STATE CAPTURE

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REPUBLIC OF SOUTH AFRICA

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Tel: 011 800 5808
Fax: 011 800 4938
Email: Baldwin.ngubane@gmail.com / Daniels.suzanne@eskom.co.za

Dear Dr. Ngubane

Appointment of Chief Executive of Eskom

Your letter dated 23 June 2015 has reference.

In essence, I concur with your request to extend the period of the secondment agreement of Mr Brian Molefe.

Following the announcement of the resignation of Mr Tshediso Matona as Chief Executive, the Board is required to provide me with a report thereon, as well as expected timelines and milestones for the recruitment and appointment process of a new Chief Executive.

I am of the view is that the Eskom Board must deal expeditiously with the process, in line with the Memorandum of Incorporation, Labour Relations Act, Eskom's employment policies and procedures.

The position of the Chief Executive is critical, hence, the attraction and retention of a candidate with a right mix of qualifications, leadership, experience and technical knowledge is vital. In consideration of the business imperatives and the need to build public confidence, I urge the Board to observe the acceptable procedure so that the recruitment process and submission is managed with integrity and transparency and is able to withstand scrutiny.

It will therefore be useful for me to have sight of the legal opinion and recommendation on the optimal route to follow. Feedback as soon as the Board has applied its mind to the issue will be appreciated.

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 27/06/2018

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1354

public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

GUIDELINES FOR THE APPOINTMENT OF A CHIEF EXECUTIVE OFFICER FOR A STATE OWNED ENTERPRISE ("SOE")

INTRODUCTION

South African company law authorizes the shareholders of a company to appoint the Board of Directors to represent the shareholders and act in the best interests of the company. The shareholders' authority includes appointing the executive directors of a company, which include the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), as *ex officio* Board members. The CEO provides the critical link between management, the Board and the shareholder.

Therefore, the Minister of Public Enterprises ("the Minister") has prepared a guideline for the appointment of SOE CEOs. This guideline is intended to set out the framework governing the roles and assist the SOE Boards of Directors ("Boards") with providing a framework for succession planning and the appointment of CEOs. Where a Board believes that the guideline or part thereof does not lend itself to implementation or application to address its requirements, and seeks to depart from such application, the Board must notify the Minister in writing of any such departure, providing reasons for any such departure.

The guideline is further intended to ensure effective oversight and monitoring of SOE as strategic national instruments intended to grow and develop the SA economy. This is in recognition of the fact that a CEO is central to the performance and the ability of an enterprise to deliver on its expected performance and to provide economic value to its shareholder. The Governance and Nominations Committee of the Board (composed only of non-executive directors) shall administer and manage the selection process of the CEO on behalf of the Board and make recommendations on the top 3 candidates, in order of priority, to the shareholder.

1. SUCCESSION PLAN

1.1 The Board, through its Governance and Nominations Committee, must develop an ongoing process to identify, develop and/or seek a CEO candidate with the relevant skills required to meet the challenges likely to be faced by the SOE in the foreseeable future and to implement Government's strategic objectives relative to such SOE. Accordingly, the Board shall prepare and submit an annual report to the shareholder Minister on its succession planning which must include, but not be limited to, the status of the CEO's contract, the CEO's performance and exit plans.

1.2 The Board must, at the earliest possible stage, seek the shareholder Minister's view on whether re-appointment of an incumbent is likely to be considered. If the Board recommends that the incumbent continue, the Board must submit the

CEO's performance report for the last 3 years and the reasons for continuing with such incumbent.

1.3 In the event re-appointment of an incumbent is not being considered, the Board, through the Governance and Nominations Committee, shall nominate and evaluate potential successors to the CEO. The CEO shall meet periodically with the Board to submit his or her recommendations and evaluations of potential successors along with a review of any development plans recommended for such individuals. The Governance and Nominations Committee will consult the CEO regarding his/her recommendations of potential successors from internal candidates.

2. DUE PROCESS

2.1 The Board shall endeavor to commence and complete its recruitment and appointment process of a new CEO at least 3 months before the intended departure of the incumbent CEO. In this way the Board should avoid, as far as possible, appointing an 'acting' CEO.

2.2 The Board must disclose to the shareholder Minister the recruitment process to be used by the Board in identifying the candidates.

2.3 Prior to commencing with the recruitment process, the Board must submit a description of the key specifications of the position as well as its selection criteria that will be used to select and assess candidates to the shareholder Minister for his/her consideration. The Board shall ensure that the said key specifications are informed by the SOE specific challenges, requirements and Governments' strategic objectives. Therefore, the candidates' profiles should match those of the SOE's challenges and Government's strategic objectives.

2.4 During the assessment of the candidates, the Board should verify and confirm that all shortlisted candidates have no conflicts of interest and will be able to fully execute and carry out executive duties required of a CEO. Should the recommended candidate hold any non-executive directorships in other Boards, such Board directorships should be a maximum of two directorships and should not interfere with his/her executive duties at the SOE. The Board must also advise the candidate that his/her acceptance of nominations onto other Boards post his/her appointment as CEO shall be subject to the Board's approval.

2.5 The Board shall, through its Governance and Nominations Committee, submit a minimum of three shortlisted candidates and their preferred candidate to the shareholder Minister for further assessment and interview by the Minister if he/she deems it necessary especially if this is an external candidate.

2.6 The shareholder Minister may approve, disapprove and/or express an opinion on the shortlist. If the Minister approves the shortlist, s/he will submit his/ her recommendation to Cabinet for noting, prior to the Board appointing a candidate as CEO.

3. APPOINTMENT

3.1 The successful applicant should not commence with his/her duties until the contract of employment has been signed. The contract should include a performance agreement with the Board, which shall include the activities, performance measures and targets specified in the SOE's Shareholder Compact, Corporate Plan, as well as government's strategic intent communicated to the SOE from time-to-time.

3.2 The CEO of a SOE is an employee of that SOE and is accountable to its Board in terms of employment legislation. As an *ex officio* Board director, the CEO's position in this respect is governed by Company law and the Public Finance Management Act, 1 of 1999. Accordingly, to align the two offices and recognize that one arises by virtue of the other, the CEO's employment contract must ensure that the CEO's termination of employment results in the simultaneous removal as *ex officio* Board member.

3.3 The contract should specify the steps that the Board may take in the event of any alleged misconduct and specify the proposed measures to address the misconduct, including ensuring that the CEO will not be immune from prosecution in terms of applicable law.

3.4 Considering the critical and strategic role of the CEO must play in the operational success of a SOE's business, some of the key performance deliverables by the CEO, which must also for part of his/her Performance Agreement, are:

3.4.1 Developing and recommending to the Board a long-term strategy and vision for the SOE to implement Government's strategic objectives, the shareholder compact and SOE corporate plan that will generate satisfactory levels of economic value;

3.4.2 Developing annual business plans and budgets that support the SOE's long term strategy and prudently manages the SOE's resources within those budget guidelines according to the SOE's applicable regulatory framework and governing laws;

3.4.3 Striving consistently to achieve the SOE's financial and operational goals and objectives, and ensuring that the SOE's day to day business affairs are appropriately monitored and managed;

3.4.4 Ensuring continuous improvement in the quality and value of the products and services provided by the SOE, and that the SOE achieves and maintains a satisfactory competitive advantage within its industry;

3.4.5 Ensuring that the SOE has an effective management team and to actively participate in the development of management and succession planning;

3.4.6 Formulating and overseeing the implementation of major corporate policies, procedures and standards;

3.4.7 Serving as the chief spokesperson of the SOE with a full appreciation of the necessity to protect the SOE against a loss of reputation and assuring the SOE and its mission, programmes, products and services are consistently presented in a strong and positive image to relevant stakeholders; and

3.4.8 Ensuring alignment with the Minister's delivery agreement concluded with the President of the Republic of South Africa from time to time.

3.5 The Board should pay special attention to the right to terminate the employment contract as well as to any material changes to any declared material interests and conflicts of interest by the new CEO. There should be adequate mechanisms to address such changes and to allow the Board to terminate the contract, should the changes limit the CEO's ability to undertake and execute his or her duties in the interests of the SOE.

3.6 The remuneration package in the contract of employment must also be in accordance with the department's current Remuneration Guidelines for SOE. The key performance indicators in the shareholder compact should also be used to determine the CEO's remuneration and the discretionary pay.

3.7 The contract should also address any performance by the CEO that significantly and materially deviates from the SOE's strategic objectives and should provide for measures to address such material performance failures and deviations.

3.8 The notice period for termination of employment by the CEO should not be less than 6 months and should not contain an evergreen notice period.

DECEMBER 2010

COMMISSION OF INQUIRY INTO STATE CAPTURE

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Monday, 14 September 2015 15:34
To: Jerry Kaapu
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Documents referenced [BG-JhbActive.FID877382]
Attachments: Guidelines for Appointment of CEO of SOC.PDF

Importance: High
Sensitivity: Confidential

Hi Jerry

Please see the attached document which the DPE provided to us. Would this impact on the letter of advice in any way?

Best regards
Suzanne

From: Jerry Kaapu [mailto:j.kaapu@bowman.co.za]
Sent: Monday, September 14, 2015 3:21 PM
To: Suzanne Daniels
Cc: Venete Klein (venete@kleininc.co.za)
Subject: FW: Documents referenced [BG-JhbActive.FID877382]
Sensitivity: Confidential

Dear Suzanne

This is second batch of documents requested.

Kind regards

Jerry Kaapu
Partner

BG Bowman Gilfillan

Member of Bowman Gilfillan Africa Group

165 West Street, Sandton, Johannesburg
P O Box 785812, Sandton, 2146
South Africa

t +27 11 669 9000 | **d** +27 11 669 9519
f +27 11 669 9001 | **m** +27 82 563 3300
e j.kaapu@bowman.co.za
www.bowman.co.za

From: Jerry Kaapu
Sent: 14 September 2015 3:16 PM
To: 'Suzanne Daniels'
Cc: Venete Klein; Luway Mongie
Subject: RE: Documents referenced [BG-JhbActive.FID877382]
Sensitivity: Confidential

Dear Suzanne

Please find hereto attached the referenced documents as requested.

Kind regards

Jerry Kaapu
Partner

BG Bowman Gilfillan

Member of Bowman Gilfillan Africa Group

165 West Street, Sandton, Johannesburg
P O Box 785812, Sandton, 2146
South Africa

t +27 11 669 9000 | **d** +27 11 669 9519
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e j.kaapu@bowman.co.za
www.bowman.co.za

From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 14 September 2015 1:43 PM
To: Jerry Kaapu
Cc: Venete Klein; Luway Mongie
Subject: RE: Documents referenced [BG-JhbActive.FID877382]
Importance: High
Sensitivity: Confidential

Thank you Jerry that will assist in answering the queries from DPE.

Best regards
Suzanne

From: Jerry Kaapu [mailto:j.kaapu@bowman.co.za]
Sent: Monday, September 14, 2015 1:41 PM
To: Suzanne Daniels
Cc: Venete Klein; Luway Mongie
Subject: RE: Documents referenced [BG-JhbActive.FID877382]
Sensitivity: Confidential

Dear Suzanne

We shall do so. Please confirm if you also require copies of the legislation referenced.

Kind regards

Jerry Kaapu
Partner

BG Bowman Gilfillan

Member of Bowman Gilfillan Africa Group

165 West Street, Sandton, Johannesburg
P O Box 785812, Sandton, 2146
South Africa

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e j.kaapu@bowman.co.za
www.bowman.co.za

From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 14 September 2015 1:22 PM

To: Jerry Kaapu
Cc: Venete Klein
Subject: Documents referenced
Importance: High
Sensitivity: Confidential

Good afternoon Jerry

Can you please send me the documents which you referenced in the attached letter of advice.

Best regards
Suzanne

SUZANNE DANIELS
Office of the Chairman
Eskom Holdings SOC Ltd
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za

I'm part of the 49Million initiative...
http://www.49Million.co.za

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http://www.49Million.co.za

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U14-VK-1362

public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

GUIDELINES FOR THE APPOINTMENT OF A CHIEF EXECUTIVE OFFICER FOR A STATE OWNED ENTERPRISE ("SOE")

INTRODUCTION

South African company law authorizes the shareholders of a company to appoint the Board of Directors to represent the shareholders and act in the best interests of the company. The shareholders' authority includes appointing the executive directors of a company, which include the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), as *ex officio* Board members. The CEO provides the critical link between management, the Board and the shareholder.

Therefore, the Minister of Public Enterprises ("the Minister") has prepared a guideline for the appointment of SOE CEOs. This guideline is intended to set out the framework governing the roles and assist the SOE Boards of Directors ("Boards") with providing a framework for succession planning and the appointment of CEOs. Where a Board believes that the guideline or part thereof does not lend itself to implementation or application to address its requirements, and seeks to depart from such application, the Board must notify the Minister in writing of any such departure, providing reasons for any such departure.

The guideline is further intended to ensure effective oversight and monitoring of SOE as strategic national instruments intended to grow and develop the SA economy. This is in recognition of the fact that a CEO is central to the performance and the ability of an enterprise to deliver on its expected performance and to provide economic value to its shareholder. The Governance and Nominations Committee of the Board (composed only of non-executive directors) shall administer and manage the selection process of the CEO on behalf of the Board and make recommendations on the top 3 candidates, in order of priority, to the shareholder.

1. SUCCESSION PLAN

1.1 The Board, through its Governance and Nominations Committee, must develop an ongoing process to identify, develop and/or seek a CEO candidate with the relevant skills required to meet the challenges likely to be faced by the SOE in the foreseeable future and to implement Government's strategic objectives relative to such SOE. Accordingly, the Board shall prepare and submit an annual report to the shareholder Minister on its succession planning which must include, but not be limited to, the status of the CEO's contract, the CEO's performance and exit plans.

1.2 The Board must, at the earliest possible stage, seek the shareholder Minister's view on whether re-appointment of an incumbent is likely to be considered. If the Board recommends that the incumbent continue, the Board must submit the

U14-VK-1363

CEO's performance report for the last 3 years and the reasons for continuing with such incumbent.

1.3 In the event re-appointment of an incumbent is not being considered, the Board, through the Governance and Nominations Committee, shall nominate and evaluate potential successors to the CEO. The CEO shall meet periodically with the Board to submit his or her recommendations and evaluations of potential successors along with a review of any development plans recommended for such individuals. The Governance and Nominations Committee will consult the CEO regarding his/her recommendations of potential successors from internal candidates.

2. DUE PROCESS

2.1 The Board shall endeavor to commence and complete its recruitment and appointment process of a new CEO at least 3 months before the intended departure of the incumbent CEO. In this way the Board should avoid, as far as possible, appointing an 'acting' CEO.

2.2 The Board must disclose to the shareholder Minister the recruitment process to be used by the Board in identifying the candidates.

2.3 Prior to commencing with the recruitment process, the Board must submit a description of the key specifications of the position as well as its selection criteria that will be used to select and assess candidates to the shareholder Minister for his/her consideration. The Board shall ensure that the said key specifications are informed by the SOE specific challenges, requirements and Governments' strategic objectives. Therefore, the candidates' profiles should match those of the SOE's challenges and Government's strategic objectives.

2.4 During the assessment of the candidates, the Board should verify and confirm that all shortlisted candidates have no conflicts of interest and will be able to fully execute and carry out executive duties required of a CEO. Should the recommended candidate hold any non-executive directorships in other Boards, such Board directorships should be a maximum of two directorships and should not interfere with his/her executive duties at the SOE. The Board must also advise the candidate that his/her acceptance of nominations onto other Boards post his/her appointment as CEO shall be subject to the Board's approval.

2.5 The Board shall, through its Governance and Nominations Committee, submit a minimum of three shortlisted candidates and their preferred candidate to the shareholder Minister for further assessment and interview by the Minister if he/she deems it necessary especially if this is an external candidate.

2.6 The shareholder Minister may approve, disapprove and/or express an opinion on the shortlist. If the Minister approves the shortlist, s/he will submit his/ her recommendation to Cabinet for noting, prior to the Board appointing a candidate as CEO.

3. APPOINTMENT

3.1 The successful applicant should not commence with his/her duties until the contract of employment has been signed. The contract should include a performance agreement with the Board, which shall include the activities, performance measures and targets specified in the SOE's Shareholder Compact, Corporate Plan, as well as government's strategic intent communicated to the SOE from time-to-time.

3.2 The CEO of a SOE is an employee of that SOE and is accountable to its Board in terms of employment legislation. As an *ex officio* Board director, the CEO's position in this respect is governed by Company law and the Public Finance Management Act, 1 of 1999. Accordingly, to align the two offices and recognize that one arises by virtue of the other, the CEO's employment contract must ensure that the CEO's termination of employment results in the simultaneous removal as *ex officio* Board member.

3.3 The contract should specify the steps that the Board may take in the event of any alleged misconduct and specify the proposed measures to address the misconduct, including ensuring that the CEO will not be immune from prosecution in terms of applicable law.

3.4 Considering the critical and strategic role of the CEO must play in the operational success of a SOE's business, some of the key performance deliverables by the CEO, which must also for part of his/her Performance Agreement, are:

3.4.1 Developing and recommending to the Board a long-term strategy and vision for the SOE to implement Government's strategic objectives, the shareholder compact and SOE corporate plan that will generate satisfactory levels of economic value;

3.4.2 Developing annual business plans and budgets that support the SOE's long term strategy and prudently manages the SOE's resources within those budget guidelines according to the SOE's applicable regulatory framework and governing laws;

3.4.3 Striving consistently to achieve the SOE's financial and operational goals and objectives, and ensuring that the SOE's day to day business affairs are appropriately monitored and managed;

3.4.4 Ensuring continuous improvement in the quality and value of the products and services provided by the SOE, and that the SOE achieves and maintains a satisfactory competitive advantage within its industry;

3.4.5 Ensuring that the SOE has an effective management team and to actively participate in the development of management and succession planning;

3.4.6 Formulating and overseeing the implementation of major corporate policies, procedures and standards;

3.4.7 Serving as the chief spokesperson of the SOE with a full appreciation of the necessity to protect the SOE against a loss of reputation and assuring the SOE and its mission, programmes, products and services are consistently presented in a strong and positive image to relevant stakeholders; and

3.4.8 Ensuring alignment with the Minister's delivery agreement concluded with the President of the Republic of South Africa from time to time.

3.5 The Board should pay special attention to the right to terminate the employment contract as well as to any material changes to any declared material interests and conflicts of interest by the new CEO. There should be adequate mechanisms to address such changes and to allow the Board to terminate the contract, should the changes limit the CEO's ability to undertake and execute his or her duties in the interests of the SOE.

3.6 The remuneration package in the contract of employment must also be in accordance with the department's current Remuneration Guidelines for SOE. The key performance indicators in the shareholder compact should also be used to determine the CEO's remuneration and the discretionary pay.

3.7 The contract should also address any performance by the CEO that significantly and materially deviates from the SOE's strategic objectives and should provide for measures to address such material performance failures and deviations.

3.8 The notice period for termination of employment by the CEO should not be less than 6 months and should not contain an evergreen notice period.

DECEMBER 2010

COMMISSION OF INQUIRY INTO STATE CAPTURE

From: Venete Klein <venete@kleininc.co.za>
Sent: Wednesday, 16 September 2015 07:09
To: danielsm@eskom.co.za
Subject: Fwd: APPOINTMENT OF CE [BG-JhbActive.FID877382]

Sent from my iPhone

Begin forwarded message:

From: Jerry Kaapu <j.kaapu@bowman.co.za>
Date: 16 September 2015 at 6:52:17 SAST
To: "Venete Klein (venete@kleininc.co.za)" <venete@kleininc.co.za>
Cc: Suzanne Daniels <DanielSM@eskom.co.za>, Keshni Pillay <k.pillay@bowman.co.za>
Subject: APPOINTMENT OF CE [BG-JhbActive.FID877382]

Dear Venete
Please find hereto attached our supplementary letter of advice.
Kind regards
Jerry Kaapu
Partner

COMMISSION OF INQUIRY INTO STATE CAPTURE

BG Bowman Gilfillan

Member of Bowman Gilfillan Africa Group

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Our Reference:	Mr Jerry Kaapu	Your Reference:	Ms Venete Klein
Direct Line:	(011) 669 9519	Date:	15 September 2015
E-mail Address:	j.kaapu@bowman.co.za		

Per E-mail

ESKOM HOLDINGS (SOC) LIMITED

Attention Ms Venete Klein

E-mail address: venete@kleininc.co.za

Dear Ms Klein,

RE: APPOINTMENT OF CHIEF EXECUTIVE OFFICER

1. BACKGROUND

1.1 We refer to the above matter and to our previous letter of advice of 18 June 2015, wherein we were instructed to urgently consider and advise Eskom Holdings (SOC) Limited ("Eskom") on the appointment process for its Chief Executive Officer ("CEO" or "CE").

1.2 At the time of compiling the aforementioned letter of advice, we were advised, during our research process, that the *Guidelines for the Appointment of a Chief Executive Officer for a State Owned Enterprise* ("the Guidelines") did not exist. Consequently, our previous advice was based on that premise, as we were unaware of the existence of the Guidelines.

1.3 However, we were recently made aware by Eskom of the existence of the Guidelines. It appears from the Guidelines that they were issued in December 2010. In the circumstances, we have been instructed to urgently consider the Guidelines and advise whether the contents thereof impact on our previous letter of advice of 18 June 2015.

Bowman Gilfillan Inc. Reg. No. 1998/021409/21 **Attorneys Notaries Conveyancers**

Directors RA Legh (Chairman) | PM Maduna (Deputy Chairman) | AJ Keep (Managing Partner) | AG Anderson | DP Anderson | LJ Anderson | M Angumuthoo | Banoobhai | AM Barnes-Webb | TL Beira | ARL Bertrand | F Bhayat | CM Bouwer | IL Brink | REW Burman | LD Campbell | RM Carr | PM Carter | LA Chater | RA Cohen CN Cunningham | GH Damant | RA Davey | MEC Davids | D de Klerk | ID Dhladhla | TC Dini | CR Douglas | HD Duffey | BR du Plessis | L Dyer | JE Esterhuizen | L Fleiser KA Fulton | BJ Garven | TM Gcabashe | DJ Geral | LHM Gerstle | D Gewer | AA Gordon | TJ Gordon-Grant | CB Green | S Grimwood | A Hale | AS Harris | P Hart-Davies PA Hirsch | JR Kaapu | G Kekesi | CP Kennedy | KM Kern | FJ Khoza | ID Kirkman | U Kondile | JG Kruger | JP Kruger | R Labuschagne | FB Laher | HY Laher | T Laubscher DA Lotter | KS Makapane | M Makola | A McAllister | JM McKinnell | JV Meijer | SNI Mokose | TE Mongae | RPM Morson | AV Munro-Smith | UEBU Naumann | HB Ngcobo TH Nichols | MAJ Oppenheim | AJ Pike | P Pillay | JD Prain | MA Purchase | Y Ram | LV Raphulu | CL Reidy | JB Ripley-Evans | MS Rusa | GI Rushton | JW Sahli | MY Sass CG Schafer | JH Schlosberg | DE Serchuk | RZ Shein | CEC Smith | CD Stein | PW Stelling | R Straughan | BGM Strydom | V Subban | CFN Todd | CE Tucker | CL van Heerden MR van Velden | RJ van Voore | NC van Zuylen | MG Vermaak | L Verster | SHE Voigt | DS Webb | DCJ Wessels | RS Wessels | PE Whelan | HJ Wilsenach | SG Wilson DD Yuill | D Zussa **Of Counsel** S Esterhuyse | K Goss | T Jithoo **Consultant** JWD Brand **Special Counsel** CL Valkin
Practice Partner and Head of Africa JL Lang **Group COO** RJ Smith **CFO** GJ Karolus

Antananarivo | Cape Town | Dar es Salaam | Durban | Gaborone | Johannesburg | Kampala | Nairobi

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A LexMundi Member

1.4 We advise that due to the urgency of the requested advice, we do not set out a comprehensive overview and analysis of all the legislation and documentation which may relate to the matter but confine ourselves strictly to addressing the supplementary advice sought.

2. THE GUIDELINES

2.1 The Guidelines reiterate that South African Company Law authorizes the shareholders of a company to appoint a Board of Directors ("Board") to represent the shareholders and act in the best interests of the company.

2.2 The shareholders' authority includes appointing the executive officers of a company, which includes the Chief Executive Officer and Chief Financial Officer as *ex officio* Board members.

2.3 In terms of the Guidelines, the CEO provides a critical link between management, the Board, and the shareholder. It is for this reason that the Shareholder Minister, the Minister of Public Enterprises ("the Minister"), has prepared the Guidelines.

2.4 As set out in the introduction to the Guidelines:-

> *"This guideline is intended to set out the framework governing the roles and assist the SOE Boards of Directors ("Boards") with providing a framework for succession planning and the appointment of CEOs. Where a Board believes that the guideline or part thereof does not lend itself to implementation or application to address its requirements, and seeks to depart from such application, <u>the Board must notify the Minister in writing of any such departure, providing reasons for any such departure</u>"*. (own underlining)

2.5 The Guidelines further provide that:--

> *"The Governance and Nominations Committee of the Board (composed only of non-executives directors) shall administer and manage the selection process of the CEO on behalf of the Board and make recommendations on the top 3 candidates in order of priority, to the shareholder".* (own underlining)

2.6 Paragraph 1 of the Guidelines deals with a succession plan and provides, at paragraph 1.3, that in the event re-appointment of an incumbent is not being considered:-

> *"...the Board, through the Governance and Nominations Committee shall nominate and evaluate potential successors to the CEO. The CEO shall meet periodically with the Board to submit his or her recommendations and evaluations of potential successors along with a review of any development plans recommended for such individuals. The Governance and Nominations Committee will consult the CEO regarding his/her recommendations of potential successors from internal candidates".*

2.7 The Guidelines also set out, at paragraph 2, the due process to be followed by the Board of a State Owned Enterprise ("SOE") when appointing a CEO. The due process can be summarised as follows:-

2.7.1 in order to avoid as far as possible, appointing an "acting" CEO, the Board should endeavour to commence and complete its recruitment and appointment process at least three months before the departure of the incumbent CEO;

2.7.2 the Board must disclose to the Minister, the recruitment process to be used to identify the candidates;

2.7.3 the Board must submit a description of the key specifications of the position and its selection criteria to the Minister for consideration before commencing with the

recruitment process;

2.7.4 the Board should verify and confirm that all shortlisted candidates have no conflicts of interests and will be able to fully execute and carry out the duties of a CEO;

2.7.5 the Board should submit a minimum of three (3) shortlisted candidates and their preferred candidate to the Minster for further assessment and when necessary, interview by the Minister;

2.7.6 the Minister may approve, disapprove and/or express an opinion on the shortlist; and

2.7.7 if the Minister approves he/she will submit his/her recommendations to Cabinet for noting.

3. OUR ADVICE

3.1 As previously advised, the process that must be followed by Eskom in appointing a CE, is as set out in clauses 13.3.1 and 13.3.2 of Eskom's Memorandum of Incorporation ("MOI"). The MOI provides, in summary, that the Board should identify, nominate and evaluate potential candidates for the appointment as the CE and the Minister should then appoint the CE from the shortlist of candidates provided by the Board. We note and confirm that the Guidelines do not alter this process.

3.2 In so far as public invitation for application for the CE position is concerned, which is one of the issues that were raised with us, we are not aware of any legislative requirement that candidates should be publicly invited to apply for the position. Furthermore, the Guidelines and MOI do not provide any requirement that the candidates should be

publicly invited to apply for the position. Despite this, in terms of the Guidelines, the Board must disclose to the Minister the recruitment process to be used to identify the candidates. In the circumstances, we confirm our previous advice that Eskom can consider the identified candidate without engaging in a full blown "recruitment process" through public invitation and in so doing will not be acting contrary to any duties and obligations.

3.3 One of the issues of concern which was raised in our previous letter of advice, which emanates from the MOI, is that the MOI suggests that a shortlist should be compiled, which suggest that more than one candidate should be included on this list thereby allowing the Minister discretion in terms of who to appoint. Having considered the Guidelines, we note the requirement that the Board should make recommendations on the top three candidates in order of priority to the Minister. Furthermore, paragraph 2.5 provides that the Board should submit a minimum of three shortlisted candidates to the Minister.

3.4 As stated at paragraph 2.4 above, where a Board seeks to depart from the application of the Guidelines, the Board must notify the Minister in writing of such a departure, providing reasons for such departure. Therefore, we advise that if a second and third candidate cannot be identified, evaluated and nominated by the Board, then the Board is required in terms of the Guidelines to notify the Minister in writing of the departure, providing reasons for the departure. We note that the Guidelines merely require that the Board must *notify* the Minister and it does not appear that an onerous process of application and approval for the deviation must be followed, provided that the Board furnishes the Minister with reasons for the departure.

3.5 Lastly the Guidelines, at paragraph 2.3, provide that even before commencing with the recruitment process, the Board is required to submit a description of the key specifications of the position as well as its selection criteria that will be used to select and

BG Bowman Gilfillan

assess candidates to the Minister for consideration. To the extent that this preliminary step has not yet been complied with, we advise that the Board should endeavour to take steps and do so. To the extent that it is not possible to do so, thereby deviating from the Guidelines, we advise that the Board should notify the Minister of the deviation in writing, providing reasons for the deviation.

4. We trust that the above addresses your instruction to us. Should you have any further queries in regard to the above or any other queries, please do not hesitate to contact us as we remain at your service to ensure that the best interests of Eskom are achieved.

Yours faithfully

P.P.

Bowman Gilfillan Inc.
Jerry Kaapu/ Keshni Pillay

COMMISSION OF INQUIRY INTO STATE CAPTURE

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Wednesday, 16 September 2015 09:47
To: Orcilla Ruthnam
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers
Attachments: Letter of Advice_Appointment of Chief Executive Officer.pdf

Importance: High

Morning Orcilla

Please find the Bowman's supplementary opinion.

In the interim, we have noted the contents of items 3.4 and 3.5 and have actioned them. You can expect the responses during the course of today.

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Tuesday, September 15, 2015 11:36 AM
To: Suzanne Daniels
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers

Noted, thanks Suzanne

I had a chat with Jerry this morning and he indicated that there would be a supplementary opinion coming to you to by tomorrow. This is merely to strengthen the current opinion and would deal with the DPE guidelines as well as the mandate of the Board and Minister to consider the options available to them on the recruitment of an ideal candidate.

Please call should you wish to discuss further.

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance
+27 (0)82 567 3408 | +27 (0)12 431 1144 | +27 (0)12 342 4146 | Orcilla.Ruthnam@dpe.gov.za
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public enterprises
Department:
Public Enterprises
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From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 14 September 2015 04:36 PM
To: Orcilla Ruthnam
Cc: Venete Klein (venete@kleininc.co.za)

Subject: RE: Remuneration of prescribed officers
Importance: High

Orcilla, please use this version as I have inserted the headings into the various columns for easy reading.

Best regards
Suzanne

From: Suzanne Daniels
Sent: Monday, September 14, 2015 4:11 PM
To: 'Orcilla Ruthnam'
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers
Importance: High

Dear Orcilla

Please find the information attached as requested. The extracts are from the annual financial statements that are audited by the external auditors. (I have copied the extract from the financial statements and then converted it into a table.)

Please let me know if you need anything else.

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Monday, September 14, 2015 2:08 PM
To: Suzanne Daniels
Subject: RE: Remuneration of prescribed officers

Not yet, they are updating the table as we speak

Please also send me a similar table but with 13/14 figures as well as 2014/15.

Thanks
Orcilla

From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 14 September 2015 02:06 PM
To: Orcilla Ruthnam
Subject: RE: Remuneration of prescribed officers
Importance: High

Hi

Did you get the information that you require from Transnet?

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Monday, September 14, 2015 8:27 AM
To: Venete Klein
Cc: Suzanne Daniels

Subject: FW: Remuneration of prescribed officers
Importance: High

FYI

From: Orcilla Ruthnam
Sent: 14 September 2015 08:22 AM
To: 'Ayanda Ceba Transnet Corporate JHB'
Cc: Lawrence Nevondo; Nokuthula Khumalo Transnet Corportate JHB (NokuthulaE.Khumalo@transnet.net); Karabelo Mosia Transnet Corporate (Karabelo.Mosia@transnet.net)
Subject: Remuneration of prescribed officers
Importance: High

Dear Ayanda
Please urgently provide me with a schedule of remuneration of prescribed officers (names disclosed in the Integrated Report) after the resolution of the AGM. In other words, the names and amounts including the 5.4% awarded at the AGM.

Many thanks

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance
+27 (0)82 567 3408 | +27 (0)12 431 1144 | +27 (0)12 342 4146 | Orcilla.Ruthnam@dpe.gov.za
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From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Wednesday, 16 September 2015 18:01
To: Orcilla Ruthnam
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers
Attachments: CE Full Specification v01.doc; 16092015 DPEMIN Motivation for Departure from Guidelines.docx

Importance: High

Dear Orcilla

Please find the documentation in relation to items 3.4 and 3.5 attached.

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Wednesday, September 16, 2015 1:32 PM
To: Suzanne Daniels
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers

Noted, with thanks Suzanne

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance
+27 (0)82 567 3408 | +27 (0)12 431 1144 | +27 (0)12 342 4146 | Orcilla.Ruthnam@dpe.gov.za
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From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 16 September 2015 09:47 AM
To: Orcilla Ruthnam
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers
Importance: High

Morning Orcilla

Please find the Bowman's supplementary opinion.

In the interim, we have noted the contents of items 3.4 and 3.5 and have actioned them. You can expect the responses during the course of today.

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Tuesday, September 15, 2015 11:36 AM
To: Suzanne Daniels
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers

Noted, thanks Suzanne

I had a chat with Jerry this morning and he indicated that there would be a supplementary opinion coming to you to by tomorrow. This is merely to strengthen the current opinion and would deal with the DPE guidelines as well as the mandate of the Board and Minister to consider the options available to them on the recruitment of an ideal candidate.

Please call should you wish to discuss further.

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance
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Importance: High

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Eskom

The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

Dear Minister Brown

NOTIFIATION OF DEPARTURE FROM THE APPLICATION OF THE GUIDELINES IN THE APPOINTMENT OF CHIEF EXECUTIVE OFFICER

This correspondence serves to notify the Honourable Minister of the departure from the application of the Guidelines and the reasons for this departure.

The rationale for the appointment of Mr Molefe as an employee, was based on the following considerations:

i) He has a well-known track record in the market both nationally and abroad for being able to turnaround ailing companies and this experience has been demonstrated in the stability and marked improvement in performance he has brought to Eskom since he joined five months ago;
ii) His hands on approach to operational matters, particularly with regard to maintenance and load shedding, at the time of crisis which the company found itself in, has made high performance in Eskom, not negotiable;
iii) To support this culture, he has already revisited the approach to performance management so as to instil appropriate levels of accountability at all levels of staff thereby raising the bar on all fronts for his executive management team to follow;
iv) At the same time he has succeeded in harnessing the know-hows and experience of the current executive management committee in the most optimal manner to address the issues that have bedeviled the company for too long a time;
v) During his short tenure, he has successfully taken the Board into his confidence by presenting a turnaround plan at its meeting of 22 July 2015, which was endorsed by the Board;
vi) His academic background and more particularly, his considerable financial acumen has already been demonstrated in the more positive outlook Eskom, and consequently South Africa, enjoys with the ratings agencies which are key to addressing the liquidity issues;
vii) Certainty of leadership at the top would allow for stabilising the management team internally together with allowing him to be able to attract the requisite skilled professional talent outside of Eskom to take up critical roles in Eskom which are vacant at present or may occur in the future and thereby create the confidence and predictability required of Eskom at this time;
viii) His further ability to meaningfully engage the various stakeholders of Eskom, including the media, has really stood us in great stead; and
ix) Public confidence has increased exponentially in the period since the commencement of his secondment to Eskom.

Head Office
Megawatt Park Maxwell Drive Sunninghill Sandton
PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 2030 Fax +27 11 800 5803 www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/015527/30

U14-VK-1381

Given the fact that Eskom is the core driving force of the South African economy, we are of one mind that no other person would at this point be able to maintain the current upward trajectory that Brian has placed the company on since his secondment in April this year. It is with this is mind that the board unanimously supports his appointment.

Fully cognisant of the process and procedural issues that will need to be addressed in securing such an appointment in the most effective and efficient manner, the Chairperson of the People and Governance Committee was tasked with obtaining the requisite legal opinion on the most optimal route to be followed to give effect to the resolution.

The legal opinion indicates that the process to be followed in the appointment of the Chief Executive is set out in the Memorandum of Incorporation. While the Memorandum of Incorporation contemplates that the Board must identify potential candidates, it does not preclude the Board from identifying, nominating and evaluating one candidate as the Shareholder, represented by the Honourable Minister in this instance, would still have discretion on whether or not to appoint the preferred candidate. The Memorandum of Incorporation also does not have as a requirement that the candidate should be publicly invited to apply for the position.

We also provided the Guidelines to our lawyers and it was recommended that we notify Honourable Minister, as we hereby do, of the departure from the Guidelines and the reasons therefor.

Accordingly, I hereby request Minister's support and endorsement for the permanent appointment of Brian Molefe as chief executive officer of Eskom.

Should Minister require any other information prior to taking a decision on the matter, please let me know.

Yours sincerely

Mrs. V Klein
CHAIRPERSON (PEOPLE AND GOVERNANCE COMMITTEE)
Date: 9 September 2015
Signed on original

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom

The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

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Eskom Holdings SOC Ltd Reg No 2002/015527/30

U14-VK-1383

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Should Minister require any other information prior to taking a decision on the matter, please let me know.

Yours sincerely

Mrs. V Klein
CHAIRPERSON (PEOPLE AND GOVERNANCE COMMITTEE)
Date: 9 September 2015

COMMISSION OF INQUIRY INTO STATE CAPTURE

Did not receive this letter.
"AM 10"
02-10-2015

MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Hatfield, 0028 Tel: 012 431 1118/1150 Fax: 012 431 1039
Private Bag X9079, Cape Town, 8000 Tel: 021 461 6376/7/469 Fax: 021 465 2381/461 1741

Mr Brian Molefe
Chief Executive Officer
Eskom Holdings SOC Limited
P.O. Box 1091
Megawatt Park
Johannesburg
2000

Tel: 011 800 5808
Fax: 011 800 4938
Email: [illegible]

Dear Mr Molefe

Appointment as Chief Executive Officer and *Ex Officio* Member of the Eskom Board of Directors

I am pleased to inform you of your appointment to Eskom as Chief Executive Officer and *ex officio* member of the Board of Directors.

Your appointment to the Eskom Board is *ex officio* and therefore the following stipulations apply:

- Your appointment to the Board shall, irrespective of any other term stipulated in any other agreement, terminate with immediate effect upon the date of notice of termination of employment or notice of resignation or notice of suspension;
- You shall not be entitled to any additional remuneration, other than that provided for in your contract of employment as Chief Executive Officer of Eskom; and
- All Board activities you perform, including but not limited to preparing for Board meetings, travelling time to and from Board meetings, and participation in Board activities/responsibilities, whether within or outside normal working

hours, are regarded as official duties and do not require you to take leave to attend to them.

I have requested the Chairperson to facilitate, in consultation with you, the alignment of your contract of employment in accordance with the above stipulations. I have no doubt that you will make a real contribution to the future success of Eskom.

Please confirm your acceptance as *ex officio* to the Board by signing the attached statement and returning a copy to myself.

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 02/10/2015

CC: Dr Ngubane, Interim Chairperson of the Eskom Board

COMMISSION OF INQUIRY INTO STATE CAPTURE

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Thursday, 08 October 2015 13:13
To: Orcilla Ruthnam
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Importance: High

Hi Orcilla

Will you please check as the letter we received form the Minister does not mention a 5 year contract? Also, all the executives prior to this were permanent employees so I will need to advise the chairperson of the P&G.

Please call if you need to.

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Thursday, October 8, 2015 11:09 AM
To: Suzanne Daniels; Masenya Selatswa; Baldwin.ngubane@gmail.com; venete@kleininc.co.za
Cc: Lawrence Nevondo; Keromamang Mhlongo; Jumarie Botha
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Hi Suzanne

Just to confirm, in view of the Minister's approval of a 5 year contract, subject to annual performance review, the appointment dates will be from 1 October 2015 to 30 September 2020.

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance
+27 (0)82 567 3408 | +27 (0)12 431 1144 | +27 (0)12 342 4146 | Orcilla.Ruthnam@dpe.gov.za
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From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 08 October 2015 09:19 AM
To: Orcilla Ruthnam; Masenya Selatswa; Baldwin.ngubane@gmail.com; venete@kleininc.co.za
Cc: Lawrence Nevondo; Keromamang Mhlongo; Jumarie Botha
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom
Importance: High

Dear Orcilla

The effective date of the appointment at Eskom for the Group Chief Executive and Group Chief Financial Officer is 1 October 2015.

Best regards
Suzanne

SUZANNE DANIELS
Company Secretary
Eskom Holdings SOC Ltd
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Thursday, October 8, 2015 8:41 AM
To: Suzanne Daniels; Masenya Selatswa; Baldwin.ngubane@gmail.com; venete@kleininc.co.za
Cc: Lawrence Nevondo; Keromamang Mhlongo; Jumarie Botha
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Dear Suzanne
For purposes of record kindly confirm the effect date of appointment at Eskom for both the CEO and CFO.

The information is required before 10h00 today. Hence, just a response with the effective date will suffice for now.

Your prompt response will be highly appreciated.

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
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From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 02 October 2015 03:22 PM
To: Masenya Selatswa; Baldwin.ngubane@gmail.com; venete@kleininc.co.za
Cc: Orcilla Ruthnam; Lawrence Nevondo; Keromamang Mhlongo
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom
Importance: High

Good afternoon

Receipt is hereby confirmed.

Regards
Suzanne

SUZANNE DANIELS
Senior Manager
Office of the Group Executive, Technology and Commercial
Eskom Holdings SOC Limited
Megawatt Park A3E35
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za

From: Masenya Selatswa [mailto:Masenya.Selatswa@dpe.gov.za]
Sent: Friday, October 2, 2015 2:55 PM
To: Baldwin.ngubane@gmail.com; Suzanne Daniels; venete@kleininc.co.za
Cc: Orcilla Ruthnam; Lawrence Nevondo; Keromamang Mhlongo
Subject: Re: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Good day

On behalf of Minister Lynne Brown the Minister of Public Enterprises, kindly find attached a letter on the above mentioned subject for the attention of Dr B Ngubane, Interim Chairperson of Eskom.

Please acknowledge receipt.

Thank you,

Kind regards,

Mr Selatswa Masenya
Registry
Ministry of Public Enterprises

+27 (0)12 431 1158 | +27 (0) 21 469 6760 +27 (0) 12 431 1039 | ministry.registry@dpe.gov.za

1090 Arcadia Street | InfoTech Building | Hatfield | Pretoria | Switchboard: +27 12 431 1000

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COMMISSION OF INQUIRY INTO STATE CAPTURE

From: Orcilla Ruthnam <Orcilla.Ruthnam@dpe.gov.za>
Sent: Thursday, 08 October 2015 14:29
To: Suzanne Daniels
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Hi Suzanne
I have checked the appointment letters and see that it is silent on the term of contract. You will recall our email exchange on the 5 year contract term. The term is mentioned in the decision memo and was a requirement from Cabinet. I will revert as to whether Minister must write back to the Board on the matter.

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance
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Importance: High

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Click on the following link to view directions to DPE http://www.dpe.gov.za/home.asp?id=1053

From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 08 October 2015 09:19 AM
To: Orcilla Ruthnam; Masenya Selatswa; Baldwin.ngubane@gmail.com; venete@kleininc.co.za
Cc: Lawrence Nevondo; Keromamang Mhlongo; Jumarie Botha
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom
Importance: High

Dear Orcilla

The effective date of the appointment at Eskom for the Group Chief Executive and Group Chief Financial Officer is 1 October 2015.

Best regards
Suzanne

SUZANNE DANIELS
Company Secretary
Eskom Holdings SOC Ltd
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za

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To: Suzanne Daniels; Masenya Selatswa; Baldwin.ngubane@gmail.com; venete@kleininc.co.za
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Regards

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Legal and Governance
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Cc: Orcilla Ruthnam; Lawrence Nevondo; Keromamang Mhlongo
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom
Importance: High

Good afternoon

Receipt is hereby confirmed.

Regards
Suzanne

SUZANNE DANIELS
Senior Manager
Office of the Group Executive, Technology and Commercial
Eskom Holdings SOC Limited
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Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za

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From: Masenya Selatswa [mailto:Masenya.Selatswa@dpe.gov.za]
Sent: Friday, October 2, 2015 2:55 PM
To: Baldwin.ngubane@gmail.com; Suzanne Daniels; venete@kleininc.co.za
Cc: Orcilla Ruthnam; Lawrence Nevondo; Keromamang Mhlongo
Subject: Re: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Good day

On behalf of Minister Lynne Brown the Minister of Public Enterprises, kindly find attached a letter on the above mentioned subject for the attention of Dr B Ngubane, Interim Chairperson of Eskom.

Please acknowledge receipt.

Thank you,

Kind regards,

Mr Selatswa Masenya
Registry
Ministry of Public Enterprises

+27 (0)12 431 1158 | +27 (0) 21 469 6760 +27 (0) 12 431 1039 | ministry.registry@dpe.gov.za

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From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Thursday, 08 October 2015 14:35
To: Orcilla Ruthnam
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Importance: High

Ok thank you.

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Thursday, October 8, 2015 2:29 PM
To: Suzanne Daniels
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Hi Suzanne
I have checked the appointment letters and see that it is silent on the term of contract. You will recall our email exchange on the 5 year contract term. The term is mentioned in the decision memo and was a requirement from Cabinet. I will revert as to whether Minister must write back to the Board on the matter.

Regards

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Hi Orcilla

Will you please check as the letter we received form the Minister does not mention a 5 year contract? Also, all the executives prior to this were permanent employees so I will need to advise the chairperson of the P&G.

Please call if you need to.

Best regards
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Sent: Thursday, October 8, 2015 11:09 AM
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Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

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Ms. Orcilla Ruthnam | Chief Director: Governance
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Suzanne

SUZANNE DANIELS
Company Secretary
Eskom Holdings SOC Ltd
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za

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Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom
Importance: High

Good afternoon

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Regards
Suzanne

SUZANNE DANIELS
Senior Manager
Office of the Group Executive, Technology and Commercial
Eskom Holdings SOC Limited
Megawatt Park A3E35
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za

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From: Masenya Selatswa [mailto:Masenya.Selatswa@dpe.gov.za]
Sent: Friday, October 2, 2015 2:55 PM
To: Baldwin.ngubane@gmail.com; Suzanne Daniels; venete@kleininc.co.za
Cc: Orcilla Ruthnam; Lawrence Nevondo; Keromamang Mhlongo
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Good day

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Please acknowledge receipt.

Thank you,

Kind regards,

Mr Selatswa Masenya
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Ministry of Public Enterprises

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From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Friday, 09 October 2015 15:30
To: Venete Klein
Subject: FW: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Fyi

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Thursday, October 8, 2015 2:29 PM
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Importance: High

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Email: daniels.suzanne@eskom.co.za

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From: Masenya Selatswa [mailto:Masenya.Selatswa@dpe.gov.za]
Sent: Friday, October 2, 2015 2:55 PM
To: Baldwin.ngubane@gmail.com; Suzanne Daniels; venete@kleininc.co.za
Cc: Orcilla Ruthnam; Lawrence Nevondo; Keromamang Mhlongo
Subject: Re: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

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Please acknowledge receipt.

Thank you,

Kind regards,

Mr Selatswa Masenya
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Ministry of Public Enterprises

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"AM11"
"ESK1"

Eskom

The Honourable Ms Lynne Brown (MP)
Minister of Public Enterprises
Infotech Building, Suite 401
1090 Arcadia Street
Hatfield
Pretoria
0001

Dear Minister

REMUNERATION: MR B MOLEFE

The appointment of Mr. B Molefe as Chief Executive of Eskom with effect from 1 October 2015 has reference.

Please find set out herein, a proposal on his remuneration for your consideration.

The table below reflects the September 2015 benchmarks conducted by Mercer, PE Corporate Services and Deloitte Consulting for a Chief Executive of a large company.

Initials & Surname	Designation	Current Transnet Corporate Guaranteed Package 2015	Mercer Per Company	Mercer Per Category	Mercer Per Category	PE Corporate Services 2015	PE Corporate Services 2015	PE Corporate Services 2015	Deloitte Benchmark
B Molefe	CHIEF EXECUTIVE	7 656 003	6 634 445	3 463 266	12 639 152	7 158 105	8 098 292	9 261 995	30 360 000

The benchmarks reflect that the current remuneration, as paid by Transnet, of Mr. Molefe is below the following statistical measurements, that is:

- 10.6% below the median of Mercer
- 5.4% below the median of PE Corporate Services and
- 37.9% below the average of Deloitte Consulting. The Deloitte benchmark is based on listed JSE companies of similar size.

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Eskom Holdings SOC Ltd Reg No 2002/015527/30

Rmk

In keeping with his current remuneration paid by Transnet and taking the benchmarks into consideration, I submit for your approval the following annual recommended total guaranteed remuneration package:

EXECUTIVE	POSITION	TOTAL GUARANTEED PACKAGE
B Molefe	Chief Executive	R7 656 000.00

Minister's favorable consideration hereof would be appreciated. Should Minister have any queries hereon, please do not hesitate to contact me.

Thanking you in anticipation.

Yours sincerely

Dr Baleka Ngubane
CHAIRMAN
Date: 16/10/15

APPROVED

Ms Lynne Brown (MP)
MINISTER OF PUBLIC ENTERPRISES
Date:

COMMISSION OF INQUIRY INTO STATE CAPTURE

From: Keromamang Mhlongo <Keromamang.mhlongo@dpe.gov.za>
Sent: Wednesday, 04 November 2015 15:18
To: baldwin.ngubane@gmail.com; danielsm@eskom.co.za
Cc: Lawrence Nevondo; Orcilla Ruthnam; Masenya Selatswa
Subject: Re:Remuneration of Mr B Molefe:Chief Executive Officer

Dear Daniel.

On Behalf of Minister Lynne Brown Minister of Public Enterprises kindly find attached letter on the above mention subject for the attention of the Chairperson.

Please acknowledge receipt.

Kind regards.

Ms Keromamang Mhlongo.
Registry.
Ministry of Public Enterprises.

Tel:012 431 1118

COMMISSION OF INQUIRY INTO STATE CAPTURE

MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Private Bag X9079, CAPE TOWN, 8000 Tel: (021) 461 6376/7/469 6760 Fax: (021) 465 2381/461 1741

Dr. B Ngubane
Chairperson
Eskom Holdings SOC Limited
P.O. Box 1091
Megawatt Park
Johannesburg
2000

Tel: 011 800 5808
Fax: 011 800 4938
Email: Baldwin.ngubane@gmail.com/
DanielSM@eskom.co.za

Dear Dr Ngubane

Re: Remuneration of Mr B Molefe: Chief Executive of Eskom

Your letter regarding the above-mentioned matter, dated 16 October 2015, has reference.

After having seen the contract of employment between Mr Brian Molefe and Transnet SOC Limited and the recommendations of the Board, I hereby approve the total guaranteed remuneration of R7 656 000.00 to Mr Molefe with effect from the date of appointment.

Following my letter to you, dated 2 October 2015, Cabinet further noted the appointment, subject to the period of employment being confirmed. In this regard, it is my view and that of Cabinet that the period of employment be stipulated as five (5) years, subject to annual performance reviews.

The specified term of the employment contract must also apply to the Chief Financial Officer.

I look forward to receiving the draft employment contract and performance agreement as requested in the aforementioned letter.

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 1/11/2015

COMMISSION OF INQUIRY INTO STATE CAPTURE

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Wednesday, 04 November 2015 16:42
To: Venete Klein
Subject: Fwd: emuneration of Mr B Molefe:Chief Executive Officer

Regards
SUZANNE DANIELS
+27825807832

Sent from my Samsung device

-------- Original message --------
From: Keromamang Mhlongo
Date: 04/11/2015 15:20 (GMT+02:00)
To: Baldwin.ngubane@gmail.com, Suzanne Daniels
Cc: Lawrence Nevondo , Orcilla Ruthnam , Masenya Selatswa
Subject: Re:Remuneration of Mr B Molefe:Chief Executive Officer

Dear Daniel.
On Behalf of Minister Lynne Brown Minister of Public Enterprises kindly find attached letter on the above mention subject for the attention of the Chairperson.
Please acknowledge receipt.
Kind regards.
Ms Keromamang Mhlongo.
Registry.
Ministry of Public Enterprises.
Tel:012 431 1118

MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Private Bag X9079, CAPE TOWN, 8000 Tel: (021) 461 6376/7/469 6760 Fax: (021) 465 2381/461 1741

Dr. B Ngubane
Chairperson
Eskom Holdings SOC Limited
P.O. Box 1091
Megawatt Park
Johannesburg
2000

Tel: 011 800 5808
Fax: 011 800 4938
Email: Baldwin.ngubane@gmail.com/
DanielSM@eskom.co.za

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MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 1/11/2015

COMMISSION OF INQUIRY INTO STATE CAPTURE

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Monday, 09 November 2015 06:56
To: Anton Minnaar
Subject: FW: Remuneration of Mr B Molefe:Chief Executive Officer
Attachments: 020 Appointment Letter Brian Molefe revised.doc; 021 Appointment Letter A Singh revised.doc

Good morning Anton

I have revised the attached letters as indicated in tracked changes. Will you please have a look and let me know if in order so that I can send to MS Klein for sign off.

You will be dealing with the foxed term contracts I assume?

Best regards
Suzanne

SUZANNE DANIELS
Company Secretary
Eskom Holdings SOC Ltd
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za

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REMEMBER YOUR POWER 49

From: Keromamang Mhlongo [mailto:Keromamang.mhlongo@dpe.gov.za]
Sent: Wednesday, November 4, 2015 3:18 PM
To: Baldwin.ngubane@gmail.com; Suzanne Daniels
Cc: Lawrence Nevondo; Orcilla Ruthnam; Masenya Selatswa
Subject: Re:Remuneration of Mr B Molefe:Chief Executive Officer

Dear Daniel.

On Behalf of Minister Lynne Brown Minister of Public Enterprises kindly find attached letter on the above mention subject for the attention of the Chairperson.

Please acknowledge receipt.

Kind regards.

Ms Keromamang Mhlongo.
Registry.
Ministry of Public Enterprises.

Tel:012 431 1118

MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Private Bag X9079, CAPE TOWN, 8000 Tel: (021) 461 6376/7/469 6760 Fax: (021) 465 2381/461 1741

Dr. B Ngubane
Chairperson
Eskom Holdings SOC Limited
P.O. Box 1091
Megawatt Park
Johannesburg
2000

Tel: 011 800 5808
Fax: 011 800 4938
Email: Baldwin.ngubane@gmail.com/
DanielSM@eskom.co.za

Dear Dr Ngubane

Re: Remuneration of Mr B Molefe: Chief Executive of Eskom

Your letter regarding the above-mentioned matter, dated 16 October 2015, has reference.

After having seen the contract of employment between Mr Brian Molefe and Transnet SOC Limited and the recommendations of the Board, I hereby approve the total guaranteed remuneration of R7 656 000.00 to Mr Molefe with effect from the date of appointment.

Following my letter to you, dated 2 October 2015, Cabinet further noted the appointment, subject to the period of employment being confirmed. In this regard, it is my view and that of Cabinet that the period of employment be stipulated as five (5) years, subject to annual performance reviews.

The specified term of the employment contract must also apply to the Chief Financial Officer.

I look forward to receiving the draft employment contract and performance agreement as requested in the aforementioned letter.

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 1/11/2015

COMMISSION OF INQUIRY INTO STATE CAPTURE

STRICTLY PRIVATE AND CONFIDENTIAL

Mr B Molefe

13 October 2015

Dear Brian

OFFER OF EMPLOYMENT

I have pleasure in confirming your appointment in the following position:

Designation: GROUP CHIEF EXECUTIVE

1. Conditions

You will be required to enter into a ~~standard~~ fixed term F Band Executive Employment Contract. This Offer of Employment is also subject to Eskom's Conditions of Service - abridged version attached.

2. Remuneration Package

Your remuneration package will be structured as follows:

- Total guaranteed value of R 7 ~~032~~ 656 000.00 per annum.
- 70% of the total guaranteed value will be deemed to be pensionable earnings as a basis for the calculation of certain benefits, for example, pension fund, housing loan, etc.
- The package may be structured to provide for a car allowance and 13th cheque.

In addition, the package will be influenced by factors described below.

3. Deductible Benefits

Deductions are applicable to the following benefits:

- Pension Fund – A contribution of 20.8% will be calculated on pensionable earnings of 70% in accordance with the rules and regulations of the Eskom Pension and Provident Fund.

- Medical Aid – Unless you can provide proof that you are on the medical aid of your spouse / partner, you will be required to subscribe to one of the Eskom approved Medical Aid Schemes (presently Bestmed, Bonitas or Medihelp).
- Death Benefit Scheme (Funeral Policy) – The payout related to this scheme is equal to R15 000.
- Group Life Cover (non-taxable). This benefit is calculated at three times your total guaranteed package.

4. Taxable benefits

The following benefits are taxable:

- Supplementary Medical Cover.
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- Installation or upgrade / maintenance of a security system at your home will be borne by Eskom, however, the entire benefit (including installation and guarding services) received by you will be taxable. The asset will depreciate over a period of 3 years in terms of the executive protection policy. Should you resign before expiry of the three year period, you will be liable to reimburse Eskom equal to the depreciated value.
- You will be liable for the tax portion of all tax counselling and financial planning fees, limited to R12 000.00 per annum.
- Bank fleet card for operating and maintenance expenses on your car.

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The following benefits are non-taxable:

- Use of the Executive gymnasium at Megawatt Park Health Centre.
- Payment of Professional fees (maximum of 2 work related institutions).
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- Home installed telephone for business usage.

6. Short Term Incentive Scheme (STI) - Annual Performance Bonus

Annual performance ratings are determined according to predetermined targets and resultant payouts are taxable.

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As an executive, you will automatically participate in Eskom's Long Term Incentive Scheme, which is based on annual taxable grants vesting over periods of three (3) years. In the event of the vesting date occurring beyond the specified term of the contract, yet you are entitled to the grant, such grant would be deemed to have accrued to you and will be calculated as part of the final payment to you which final payment shall be fully inclusive of any amount owed or that may become owing in terms of Eskom's Long Term Incentive Scheme to you.

Please sign below, acknowledging receipt of this letter, and return it to me at your earliest convenience. Your appointment is effective from 1 October 2015.

An appointment will be arranged to discuss the structure of your total package to suit your personal tax requirements and other needs. **Anton Minnaar and his Executive Support Team** will assist you with all the support functions. Please contact Anton directly on tel. (011) 800-3088.

Kind regards

Dr ~~B S~~Baldwin -Ngubane
CHAIRMAN

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Signature Date

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    2.2 Assign all rights which he/she may have in and to any invention, process, new and useful art and/or any new and useful improvement thereof, which may be invented or designed by the employee in the course and scope of his/her employment with Eskom and the employee hereby assigns all such rights in favour of Eskom. Further the employee undertakes to sign all the necessary documents to enable Eskom to obtain patent rights in such invention or design.
    2.3 Assign and cede to Eskom all his/her rights as author of any work which is subject to copyright in terms of the Copyright Act, 1978 produced in the course and scope of his/her employment with Eskom. The employee indemnifies Eskom against any claims resulting from the infringement by him/her of the copyright of any other author.
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3. Infringement of any of the Conditions of Service, or rules of Eskom, will render the employee liable for dismissal, suspension or any other disciplinary action which Eskom in its discretion may deem fit in accordance with the disciplinary code.
4. The employee declares that he/she has no conscientious objection to working Saturdays, Sundays and public holidays and to work overtime and shift work if required to do so. If the employee objects, notice must be given in advance (prior to signing acceptance hereof).
5. During the first four weeks of employment one week's notice of termination can be given by either party.
6. After expiration of the first four weeks of employment, two weeks notice of termination of employment is required. After 12 months of service, not less than four weeks' notice is required.
7. The employee shall not submit his/her resignation and Eskom shall not terminate his/her employment whilst absent on annual, accumulated, sick or special leave.
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9. Eskom shall be entitled to terminate the employee's employment immediately and without any notice for misconduct or breach of any Eskom rule or Condition of Service or as a result of any false information furnished in the application for employment.
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STRICTLY PRIVATE AND CONFIDENTIAL

Mr A Singh

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From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Monday, 09 November 2015 07:26
To: Anton Minnaar
Subject: RE: Remuneration of Mr B Molefe:Chief Executive Officer
Attachments: 7h22 020 Appointment Letter Brian Molefe revised.doc; 7h22 021 Appointment Letter A Singh revised.doc

Importance: High

Ms Klein has made the following amendments and I have updated the letters accordingly.

Best regards
Suzanne

SUZANNE DANIELS
Company Secretary
Eskom Holdings SOC Ltd
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za

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REMEMBER YOUR POWER 49

From: Anton Minnaar
Sent: Monday, November 9, 2015 6:59 AM
To: Suzanne Daniels
Subject: RE: Remuneration of Mr B Molefe:Chief Executive Officer

Morning Suzanne

Will do. I will also finalise the fix contracts.

Kind regards
Anton

From: Suzanne Daniels
Sent: 09 November 2015 06:56 AM
To: Anton Minnaar
Subject: FW: Remuneration of Mr B Molefe:Chief Executive Officer

Good morning Anton

I have revised the attached letters as indicated in tracked changes. Will you please have a look and let me know if in order so that I can send to MS Klein for sign off.

You will be dealing with the foxed term contracts I assume?

Best regards
Suzanne

SUZANNE DANIELS
Company Secretary
Eskom Holdings SOC Ltd
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za

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REMEMBER YOUR POWER 49

From: Keromamang Mhlongo [mailto:Keromamang.mhlongo@dpe.gov.za]
Sent: Wednesday, November 4, 2015 3:18 PM
To: Baldwin.ngubane@gmail.com; Suzanne Daniels
Cc: Lawrence Nevondo; Orcilla Ruthnam; Masenya Selatswa
Subject: Re:Remuneration of Mr B Molefe:Chief Executive Officer

Dear Daniel.

On Behalf of Minister Lynne Brown Minister of Public Enterprises kindly find attached letter on the above mention subject for the attention of the Chairperson.

Please acknowledge receipt.

Kind regards.

Ms Keromamang Mhlongo.
Registry.
Ministry of Public Enterprises.

Tel:012 431 1118

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom

STRICTLY PRIVATE AND CONFIDENTIAL

Mr A Singh

Dear Anoj

OFFER OF EMPLOYMENT

I have pleasure in confirming your appointment in the following position:

Designation: CHIEF FINANCIAL OFFICER

1. Conditions

You will be required to enter into a fixed term Employment Contract. This Offer of Employment is also subject to Eskom's Conditions of Service - abridged version attached.

2. Remuneration Package

Your remuneration package will be structured as follows:

- Total guaranteed amount of R 4 607 000.00 per annum.
- 70% of the total guaranteed amount will be deemed to be pensionable earnings as a basis for the calculation of certain benefits, for example, pension fund.
- The package may be structured to provide for a car allowance and 13th cheque.

In addition, the package will be influenced by factors described below.

3. Deductible Benefits

Deductions are applicable to the following benefits:

- Pension Fund – A contribution of 20.8% will be calculated on pensionable earnings of 70% in accordance with the rules and regulations of the Eskom Pension and Provident Fund.

Head Office
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PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 2030 Fax +27 11 800 5803 www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/015527/30

OFFER OF EMPLOYMENT (Continue)

- Medical Aid – Unless you can provide proof that you are on the medical aid of your spouse / partner, you will be required to subscribe to one of the Eskom approved Medical Aid Schemes (presently Bestmed, Bonitas or Medihelp).
- Death Benefit Scheme (Funeral Policy) – The payout related to this scheme is equal to R15 000.
- Group Life Cover (non-taxable). This benefit is calculated at three times your total guaranteed package.

4. Taxable benefits

The following benefits are taxable:

- Supplementary Medical Cover.
- Stated Benefits (Disability Cover).
- Installation or upgrade / maintenance of a security system at your home will be borne by Eskom, however, the entire benefit (including installation and guarding services) received by you will be taxable. The asset will depreciate over a period of 3 years in terms of the executive protection policy. Should you resign before expiry of the three year period, you will be liable to reimburse Eskom equal to the depreciated value.
- You will be liable for the tax portion of all tax counselling and financial planning fees, limited to R12 000.00 per annum.
- Bank fleet card for operating and maintenance expenses on your car.

5. Non-taxable Benefits

The following benefits are non-taxable:

- Use of the Executive gymnasium at Megawatt Park Health Centre.
- Payment of Professional fees (maximum of 2 work related institutions).
- Group Life Cover – equal to three times annual pensionable earnings.
- Home installed telephone for business usage.

6. Short Term Incentive Scheme (STI) - Annual Performance Bonus

Annual performance ratings are determined according to predetermined targets and resultant payouts are taxable.

7. Long Term Incentive Scheme (LTI)

As an executive, you will automatically participate in Eskom's Long Term Incentive Scheme, which is based on annual taxable grants vesting over periods of three (3) years. In the event of the vesting date occurring beyond the specified term of the contract, all such grant values will be deemed to have accrued to you and will be calculated as part of the final payment. Such final payment will be fully inclusive of any amounts owed to you in terms of Eskom's Long Term Incentive Scheme rules.

OFFER OF EMPLOYMENT (Continue)

Please sign below, acknowledging receipt of this letter, and return it to me at your earliest convenience. Your appointment is effective from 1 October 2015.

An appointment will be arranged to discuss the structure of your total package to suit your personal tax requirements and other needs. **Anton Minnaar and his Executive Support Team** will assist you with all the support functions. Please contact Anton directly on tel. (011) 800-3088.

Kind regards

Dr Baldwin Ngubane
CHAIRMAN
Date:

ACKNOWLEDGMENT OF RECEIPT:

_____ _____
Signature Date
A Singh

COMMISSION OF INQUIRY INTO STATE CAPTURE

ABRIDGED VERSION OF ESKOM'S CONDITIONS OF SERVICE

The following is an abridged version of Eskom's Conditions of Service:

1. The normal working day, which includes a lunch break of forty-five (45) minutes, is from 08:00 until 16:45 from Monday to Friday.
2. The employee shall:

    2.1 Not become involved in any part-time work without the consent of Eskom.
    2.2 Assign all rights which he/she may have in and to any invention, process, new and useful art and/or any new and useful improvement thereof, which may be invented or designed by the employee in the course and scope of his/her employment with Eskom and the employee hereby assigns all such rights in favour of Eskom. Further the employee undertakes to sign all the necessary documents to enable Eskom to obtain patent rights in such invention or design.
    2.3 Assign and cede to Eskom all his/her rights as author of any work which is subject to copyright in terms of the Copyright Act, 1978 produced in the course and scope of his/her employment with Eskom. The employee indemnifies Eskom against any claims resulting from the infringement by him/her of the copyright of any other author.
    2.4 Conform to, obey and abide by any rule, regulation or law of Eskom which may be in force from time to time and to the hours of work insofar as these are applicable to the employee in the capacity in which he/she is employed.
    2.5 Not cede, assign or hypothecate his/her right and claim to any monies payable to him/her in respect of his/her employment with Eskom, except with the consent of Eskom.

3. Infringement of any of the Conditions of Service, or rules of Eskom, will render the employee liable for dismissal, suspension or any other disciplinary action which Eskom in its discretion may deem fit in accordance with the disciplinary code.
4. The employee declares that he/she has no conscientious objection to working Saturdays, Sundays and public holidays and to work overtime and shift work if required to do so. If the employee objects, notice must be given in advance (prior to signing acceptance hereof).
5. During the first four weeks of employment one week's notice of termination can be given by either party.
6. After expiration of the first four weeks of employment, two weeks notice of termination of employment is required. After 12 months of service, not less than four weeks' notice is required.
7. The employee shall not submit his/her resignation and Eskom shall not terminate his/her employment whilst absent on annual, accumulated, sick or special leave.
8. Annual, accumulated and special leave will also not be granted after an employee has submitted his/her resignation.
9. Eskom shall be entitled to terminate the employee's employment immediately and without any notice for misconduct or breach of any Eskom rule or Condition of Service or as a result of any false information furnished in the application for employment.
10. Eskom at all times reserves the right to transfer the employee to any place where such employee's services are required.
11. Leave is granted in several categories, however, the main categories are described below:

    11.1 Annual leave - accrues on an annual basis on each service anniversary date or deemed starting date at the rate of 21 calendar days per completed year of service.
    11.2 Occasional leave - accrues on an annual basis on each service anniversary date or deemed starting date at the rate of 9 calendar days per completed year of service.
    11.3 Service leave – 42 calendar days is credited after 6 years continuous service and thereafter accrues at the rate of 7 calendar days per annum for each completed year of service.
    11.4 Sick leave - amounts to 45 calendar days per completed year of service, accumulative to a maximum of 180 calendar days.

Eskom

STRICTLY PRIVATE AND CONFIDENTIAL

Mr B Molefe

Dear Brian

OFFER OF EMPLOYMENT

I have pleasure in confirming your appointment in the following position:

Designation: GROUP CHIEF EXECUTIVE

1. Conditions

You will be required to enter into a fixed term Employment Contract. This Offer of Employment is also subject to Eskom's Conditions of Service - abridged version attached.

2. Remuneration Package

Your remuneration package will be structured as follows:

- Total guaranteed package of R 7 656 000.00 per annum.
- 70% of the total guaranteed amount will be deemed to be pensionable earnings as a basis for the calculation of certain benefits, for example, pension fund.
- The package may be structured to provide for a car allowance and 13th cheque.

In addition, the package will be influenced by factors described below.

3. Deductible Benefits

Deductions are applicable to the following benefits:

- Pension Fund – A contribution of 20.8% will be calculated on pensionable earnings of 70% in accordance with the rules and regulations of the Eskom Pension and Provident Fund.

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Tel +27 11 800 2030 Fax +27 11 800 5803 www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/015527/30

OFFER OF EMPLOYMENT (Continue)

- Medical Aid – Subject to your agreement with the Chairman that you continue with your chosen medical aid, you will be required to subscribe to one of the Eskom approved Medical Aid Schemes (presently Bestmed, Bonitas or Medihelp).
- Death Benefit Scheme (Funeral Policy) – The payout related to this scheme is equal to R15 000.
- Group Life Cover (non-taxable). This benefit is calculated at three times your total guaranteed package.

4. Taxable benefits

The following benefits are taxable:

- Supplementary Medical Cover.
- Stated Benefits (Disability Cover).
- Installation or upgrade / maintenance of a security system at your home will be borne by Eskom, however, the entire benefit (including installation and guarding services) received by you will be taxable. The asset will depreciate over a period of 3 years in terms of the executive protection policy. Should you resign before expiry of the three year period, you will be liable to reimburse Eskom equal to the depreciated value.
- You will be liable for the tax portion of all tax counselling and financial planning fees, limited to R12 000.00 per annum.
- Bank fleet card for operating and maintenance expenses on your car.

5. Non-taxable Benefits

The following benefits are non-taxable:

- Use of the Executive gymnasium at Megawatt Park Health Centre.
- Payment of Professional fees (maximum of 2 work related institutions).
- Group Life Cover – equal to three times annual pensionable earnings.
- Home installed telephone for business usage.

6. Short Term Incentive Scheme (STI) - Annual Performance Bonus

Annual performance ratings are determined according to predetermined targets and resultant payouts are taxable.

7. Long Term Incentive Scheme (LTI)

As an executive, you will automatically participate in Eskom's Long Term Incentive Scheme, which is based on annual taxable grants vesting over periods of three (3) years. In the event of the vesting date occurring beyond the specified term of the contract, all such granted values would be deemed to have accrued to you and will be calculated as part of the final payment to you. Such final payment shall be fully inclusive of any amounts owed to you in terms of Eskom's Long Term Incentive Scheme rules.

OFFER OF EMPLOYMENT (Continue)

Please sign below, acknowledging receipt of this letter, and return it to me at your earliest convenience. Your appointment is effective from 1 October 2015.

An appointment will be arranged to discuss the structure of your total package to suit your personal tax requirements and other needs. **Anton Minnaar and his Executive Support Team** will assist you with all the support functions. Please contact Anton directly on tel. (011) 800-3088.

Kind regards

Dr Baldwin Ngubane
CHAIRMAN
Date:

ACKNOWLEDGMENT OF RECEIPT:

_____ _____
Signature Date
B Molefe

COMMISSION OF INQUIRY INTO STATE CAPTURE

ABRIDGED VERSION OF ESKOM'S CONDITIONS OF SERVICE

The following is an abridged version of Eskom's Conditions of Service:

1. The normal working day, which includes a lunch break of forty-five (45) minutes, is from 08:00 until 16:45 from Monday to Friday.
2. The employee shall:

    2.1 Not become involved in any part-time work without the consent of Eskom.
    2.2 Assign all rights which he/she may have in and to any invention, process, new and useful art and/or any new and useful improvement thereof, which may be invented or designed by the employee in the course and scope of his/her employment with Eskom and the employee hereby assigns all such rights in favour of Eskom. Further the employee undertakes to sign all the necessary documents to enable Eskom to obtain patent rights in such invention or design.
    2.3 Assign and cede to Eskom all his/her rights as author of any work which is subject to copyright in terms of the Copyright Act, 1978 produced in the course and scope of his/her employment with Eskom. The employee indemnifies Eskom against any claims resulting from the infringement by him/her of the copyright of any other author.
    2.4 Conform to, obey and abide by any rule, regulation or law of Eskom which may be in force from time to time and to the hours of work insofar as these are applicable to the employee in the capacity in which he/she is employed.
    2.5 Not cede, assign or hypothecate his/her right and claim to any monies payable to him/her in respect of his/her employment with Eskom, except with the consent of Eskom.

3. Infringement of any of the Conditions of Service, or rules of Eskom, will render the employee liable for dismissal, suspension or any other disciplinary action which Eskom in its discretion may deem fit in accordance with the disciplinary code.
4. The employee declares that he/she has no conscientious objection to working Saturdays, Sundays and public holidays and to work overtime and shift work if required to do so. If the employee objects, notice must be given in advance (prior to signing acceptance hereof).
5. During the first four weeks of employment one week's notice of termination can be given by either party.
6. After expiration of the first four weeks of employment, two weeks notice of termination of employment is required. After 12 months of service, not less than four weeks' notice is required.
7. The employee shall not submit his/her resignation and Eskom shall not terminate his/her employment whilst absent on annual, accumulated, sick or special leave.
8. Annual, accumulated and special leave will also not be granted after an employee has submitted his/her resignation.
9. Eskom shall be entitled to terminate the employee's employment immediately and without any notice for misconduct or breach of any Eskom rule or Condition of Service or as a result of any false information furnished in the application for employment.
10. Eskom at all times reserves the right to transfer the employee to any place where such employee's services are required.
11. Leave is granted in several categories, however, the main categories are described below:

    11.1 Annual leave - accrues on an annual basis on each service anniversary date or deemed starting date at the rate of 21 calendar days per completed year of service.
    11.2 Occasional leave - accrues on an annual basis on each service anniversary date or deemed starting date at the rate of 9 calendar days per completed year of service.
    11.3 Service leave – 42 calendar days is credited after 6 years continuous service and thereafter accrues at the rate of 7 calendar days per annum for each completed year of service.
    11.4 Sick leave - amounts to 45 calendar days per completed year of service, accumulative to a maximum of 180 calendar days.

From: Anton Minnaar <MinnaaAi@eskom.co.za>
Sent: Monday, 09 November 2015 09:58
To: Suzanne Daniels
Subject: STRICTLY CONFIDENTIAL
Attachments: 029 Offer of Employment A Singh.docx; 028 Offer of Employment B Molefe.docx

Importance: High

Dear Suzanne

Attached as requested. I have left the hard copies in a confidential envelope at your office.

Kind regards
Anton

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1440

07

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom	Procedure	Human Resources Division

Title:	**Disciplinary**	Unique Identifier:	**32-1113**
		Alternative Reference Number:	**NA**
		Area of Applicability:	**E**
		Documentation Type:	**PC**
		Revision:	**0**
		Total Pages:	**14**
		Next Review Date:	**November 2013**
		Disclosure Classification:	**CONTROLLED DISCLOSURE**

Compiled by	Functional Responsibility	Authorized by
.....	.....	.....
N Theko	**T Ngele**	**BE Bulunga**
Employee Relations Officer	**Senior Manager Legal and Statutory Portfolio**	**Divisional Executive**
Human Resources Division	**Human Resources Division**	**Human Resources**
Date: 02/03/2011	Date: 02/03/2011	Date: 2011/03/02

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1. INTRODUCTION

The Disciplinary Procedure outlines the process to be followed or utilised in the event of alleged misconduct as provided for in the Disciplinary Code/Standard.

2. SUPPORTING CLAUSES

2.1 SCOPE

2.1.1 Purpose

The purpose of the Disciplinary Procedure is to correct behaviour that is unsatisfactory to Eskom and to encourage expected behaviour.

Discipline will, on the whole, be applied progressively with due regard to the nature and seriousness of infringements, but will not preclude dismissal for first infringement.

2.1.2 Applicability

This Procedure shall apply throughout Eskom Holdings Limited, its Divisions, and Business Units.

Employees who participate in unprotected industrial action need not necessarily be dealt with in terms of this Procedure, but subject to the requirements of the specific circumstances and with due cognisance of the provisions of the Labour Relations Act (66/1995), hereinafter referred to as the Act.

2.2 NORMATIVE/INFORMATIVE REFERENCES

Parties using this procedure shall apply the most recent edition of the documents listed below:

2.2.1 Normative

[1] ISO 9001 Quality Management Systems.

[2] Recognition Agreement.

[3] Grievance Procedure.

[4] Disciplinary Code.

[5] Disciplinary Procedure

[6] Sexual Harassment Standard

[7] Labour Relations Act.

2.2.2 Informative

[1] Constitution of the Republic of South Africa.

[2] Labour Relations Act.

[3] Basic Conditions of Employment Act.

[4] Employment Equity Act.

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[5] Collective agreements.

[6] Codes of Good Practice.

[7] Various Conditions of Services.

2.3 DEFINITIONS

2.3.1 Controlled disclosure: controlled disclosure to external parties (either enforced by law or discretionary)

2.3.2 Eskom: is used for Eskom Holdings Limited and its Divisions and owned subsidiaries.

2.3.3 Him/His: is used for describing a "person" and is not gender based, that is, male or female gender.

2.3.4 Representative: is a fellow employee or an official of a recognised trade union appointed by the employee to assist him/her.

2.4 ABBREVIATIONS

Abbreviation	Description
CCMA	Commission for Conciliation Mediation Arbitration
ER	Employment Relations
HR	Human Resources
IR	Industrial Relations

2.5 ROLES AND RESPONSIBILITIES

It is the responsibility of management to institute discipline in a lawful and equitable manner.

An employee shall, during all disciplinary proceedings, be entitled to be assisted or advised by a representative.

2.6 PROCESS FOR MONITORING

Annual review and implementation of new collective agreements and legislation.

2.7 RELATED/SUPPORTING DOCUMENTS

This procedure supersedes the previous version of the document.

3. PRINCIPLES

The following principles will be observed when applying the procedure:

3.1 The principle of fairness and equity shall always be adhered to.

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3.2 Any disciplinary action, shall as far as possible, emphasize corrective measures rather than punitive measures.

3.3 Eskom will endeavour to take disciplinary action within three (3) months from the date that it becomes aware of any misconduct.

4. DISCIPLINARY PROCEDURE

No disciplinary action shall be instituted against an employee unless he/she is afforded a proper opportunity to state his/her case and to defend him/herself against any allegations that may be taken into consideration against him/her.

When it is suspected that an employee has committed misconduct, one of the following disciplinary processes will be followed:

4.1 Disciplinary Enquiry

4.1.1 Disciplinary enquiry is an inquisitorial process to be conducted by the manager or supervisor of the employee. The manager has a right to determine the finding and sanction, having considered the facts.

4.1.2 The process will only be utilized for offences that, on the face of it, may not result in severe sanction.

4.1.3 In the event where it becomes apparent during the enquiry that the misconduct may require a disciplinary hearing, the manager must advise the employee and refer it to a disciplinary hearing.

4.2 Disciplinary Hearing

4.2.1 Disciplinary hearing is an adversarial process to be chaired by an internal independent chairperson.

4.2.2 The process will only be utilised for offences that may, or have the potential to, result in/or warrant a penalty of dismissal.

4.2.2 The utilisation of this process does not necessarily mean that a sanction of dismissal will be the only sanction. It means a sanction of dismissal and other sanctions (as prescribed in the Disciplinary Code/Standard) are appropriate sanctions.

4.3 Pre-Dismissal Arbitration

4.3.1 Pre-dismissal arbitration is an adversarial process to be chaired by an independent external chairperson.

4.3.2 The process will only be utilised for offences that may, or have the potential to, result in/or warrant a penalty of dismissal.

4.3.3 The process can only be utilised if the parties (employer and employee) involved in that particular disciplinary case agree to utilise the process.

4.3.4 The process is, *mutatis mutandis,* subject to the provision of Section the 188A of the LRA 66 of 1995, as amended.

4.3.5 If the parties agreed to follow a pre-dismissal arbitration procedure in terms of the LRA 66 of 1995, an agreement shall be made in writing by the parties before the case can be referred to the Commission or a selected accredited agency.

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4.3.6 The parties must exchange all relevant documents to be submitted into evidence at the arbitration, at least 4 days prior to the arbitration.

4.3.7 The process will constitute the following:

a. A list of all arbitrators from the Commission or Panellists from any Accredited Agency shall be acquired by the parties.

b. Parties to choose three (3) possible names from the list and, finally, select one name of the Arbitrator who will chair the Pre-dismissal arbitration.

c. The case presenter to lead employer's case.

d. Alleged offender and his/her representative.

e. Legal representation during the pre-dismissal arbitration will subject to the provisions of Rule 25 of the Commission for Conciliation Meditation Arbitration rules.

f. The arbitrator shall have the same powers as contemplated by Section 188A(7) of the LRA 66 of 1995.

g. The provisions of Section 143 to 146 of LRA 66 of 1995 shall apply to any award made by an arbitrator in terms of this procedure.

h. The method of recording will include audio tape recording but exclude visual recordings.

i. The arbitrator will have 14 days to make an award; the award must be in writing.

j. An arbitrator's award will be final and binding and have similar status and effect as those issued by the arbitrator at arbitration under auspices of the CCMA.

4.4 Suspension of employee with pay pending Disciplinary Enquiry, Hearing or Pre-dismissal arbitration

4.4.1 When it is suspected that an employee may have committed misconduct and that his/her continued presence in the premises of the company might interfere with the disciplinary investigations, the manager may decide to suspend the employee with pay pending the outcome of the investigation.

4.4.2 Depending on the outcome of the investigation, the manager may extend the suspension or impose the suspension (if the employee was not suspended) pending the outcome of disciplinary process.

4.4.3 The decision to suspend the employee must be considered if and when one or more of the following factors are involved:

a. element of dishonesty in the alleged misconduct
b. possibility of tampering with evidence
c. possibility of interfering with the investigation process
d. possibility of intimidating witnesses.

4.5 Notification of Disciplinary Enquiry, Disciplinary Hearing or Pre-dismissal arbitration

A written notice advising the employee of the alleged misconduct (charge), process to be followed (enquiry, hearing or Pre-dismissal arbitration), the particulars relating thereto, as well as his/her rights and the time and place of the hearing shall be furnished to the employee at least five (5) days prior to the hearing or three (3) days for enquiry or ten (10) days for pre-dismissal arbitration.

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5 DISCIPLINARY ENQUIRY PROCEDURE

5.1 Once the manager has determined that the process to be followed is a disciplinary enquiry procedure in terms of paragraph 4.1 and the employee has been advised in terms of paragraph 4.5, the manager shall prepare for an inquisitorial approach.

5.2 The parties must exchange all relevant documents to be relied upon at the enquiry at least 24 hours prior to the enquiry.

5.3 At the disciplinary enquiry, the following process will be followed:

5.3.1 The manager will put the charge(s) and all the relevant facts and documents to the employee.

5.3.2 The employee will be afforded an opportunity to give an explanation for the allegations.

5.3.3 Witnesses may be called in to give evidence.

5.3.4 The manager will consider all the facts and make a finding. The finding must be in writing.

5.3.5 If the finding is a guilty verdict, the employee must be advised to furnish mitigating factors.

5.3.6 The manager must consider the mitigating factors and aggravating factors and issue a sanction. The sanction must be in writing.

5.3.7 The finding and the sanction of the manager do not necessarily have to be given on the same day.

5.3.8 The only method of recording will be in terms of the Disciplinary Enquiry Summary of Events form.

6 DISCIPLINARY HEARING PROCEDURE

6.1 Once the manager has determined that the process to be followed is a disciplinary hearing procedure in terms of paragraph 4.2 and the employee has been advised in terms of paragraph 4.5, the manager shall prepare for an adversarial approach.

6.2 The parties must exchange all relevant documents to be submitted into evidence at the hearing, at least two days prior to the hearing.

6.3 The process will constitute:

6.3.1 an internal independent chairperson; a prosecutor or case presenter;

6.3.2 accused employee and his representative; and

6.3.3 an employee relations practitioner.

6.4 The method of recording will include audio tape recording, but exclude visual recordings.

6.5 The parties will be given an opportunity to lead their respective evidence.

6.6 The chairperson will have 5 days to make a finding. The finding must be in writing.

7.7 If the finding is a guilty verdict, the employee and the case presenter must be advised to furnish mitigating and aggravating factors, respectively.

6.8 The chairperson must consider the mitigating and aggravating factors and issue a sanction. The written sanction must be issued within five days.

6.9 The sanction notice must advise the employee of his/her right to lodge an appeal against the finding and/or sanction.

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When downloaded from the EDC database, this document is uncontrolled and the responsibility rests with the user to ensure it is in line with the authorized version on the database.

7 PRE-DISMISSAL ARBITRATION PROCEDURE

7.1 Once the parties have agreed to follow a pre-dismissal arbitration procedure in terms of paragraph 4.3 and the employee has been advised in terms of paragraph 4.5, the manager shall prepare for a pre-dismissal arbitration approach.

7.2 The parties must exchange all relevant documents to be submitted into evidence at the arbitration at least four days prior to the arbitration.

7.3 The process will constitute the following:

7.3.1 An external independent chairperson agreed to by both parties (the employer will submit three (3) names from the Tokiso Panel or any other dispute resolution agency and the employee must choose one from the names submitted) or appointed by the CCMA.

7.3.2 A prosecutor or case presenter to lead employer's case.

7.3.3 Accused employee and his/her representative (Legal representation during the pre-discipline arbitration will be subject to the provisions of Rule 25 of the CCMA rules).

7.3.4 An employee relations practitioner.

7.3.5 The arbitrator shall have the same powers as contemplated by Section 188A(7) of LRA 66 of 1995.

7.3.6 The provisions of Sections 143 to 146 of LRA 66 of 1995 shall apply to any award made by an arbitrator in terms of this procedure.

7.3.7 The method of recording will include audio tape recording, but exclude visual recordings.

7.3.8 The arbitrator will have 14 days to make an award; the award must be in writing.

7.3.9 An arbitration award will be final and binding and have similar status and effect as those issued by an arbitrator at arbitration under auspices of CCMA.

8 APPEAL

8.1 The employee must lodge his/her appeal in writing with the employee relations practitioner (in case of hearing) or the manager (in case of enquiry) within five working days of receipt of the sanction.

8.2 The employee must clearly specify his/her grounds of appeal.

8.3 In case of a hearing, the employee relations practitioner must advise the case presenter of the appeal and furnish him/her with a copy of the grounds of appeal.

8.4 The case presenter must furnish the employee relations practitioner with his/her grounds of response within 5 days of receipt of the grounds of appeal. The employee relations practitioner must furnish the employee with a copy of the grounds of response.

8.5 The employee relations practitioner (in case of hearing) or manager (in case of enquiry) must forward all the relevant documents (minutes, finding, sanction, grounds of appeal and grounds of responses) to the duly nominated internal independent chairperson or his/her senior manager respectively.

(Note: appeal will only be considered on the submitted documents).

8.6 New evidence that was not presented at the hearing or enquiry will not be automatically considered. The appeal chairperson must evaluate the reasons for failure to lead the evidence in the disciplinary Hearing and the significance of the evidence and decide whether he/she is going to take it into consideration.

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8.7 The appeal chairperson (in case hearing) or appeal senior manager (in case of an enquiry) has five days to consider all the relevant documents and issue a written finding.

8.8 The appeal chairperson or senior manager has a right to:

8.8.1 uphold the finding and/or sanction of the disciplinary/enquiry chairperson;

8.8.2 vary or rescind the finding, and/or sanction of the disciplinary/enquiry chairperson; and

8.8.3 order a *de novo* hearing where there was a procedural defect that was prejudicial.

9 DISPUTE SETTLEMENT MECHANISM

In the event of the employee not being satisfied with the outcome of the appeal, the employee may, if he/she so wishes, invokes Part 6 of the Recognition Agreement, as amended.

10 AUTHORIZATION

Not applicable.

11 REVISIONS

Date	Rev.	Compiler	Remarks
October 2010	0	T Ngele	Adopted for Back to basics and allocated a new number

12 DEVELOPMENT TEAM

This procedure was developed in consultation with the following stakeholders:

- Eskom Holdings
- National Union of Metalworkers of South Africa (NUMSA)
- Solidarity
- National Union of Mineworkers (NUM)

13 ACKNOWLEDGEMENTS

This procedure has been negotiated with the following stakeholders:

- NUMSA
- NUM
- Solidarity

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Annexure A

(Normative)

Notice to Attend Disciplinary Enquiry

NOTICE TO ATTEND DISCIPLINARY ENQUIRY PERSONAL DETAILS			
NAME OF THE ALLEGED OFFENDER:		UNIQUE NO:	
DEPARTMENT:		POSITION:	

ALLEGED MISCONDUCT (Note: name the misconduct, and give a brief description of the incident.)

ADMINISTRATIVE DETAILS **BE ADVISED THAT THE DISCIPLINARY ENQUIRY WILL TAKE PLACE AT:**			
DATE:		TIME:	
PLACE:			

RIGHTS

Kindly take note that you have the following rights to:

- present your case/defence;
- call witnesses; and
- be represented by a fellow employee or trade union representative.

DOCUMENTATION

The parties must exchange all relevant documentation to be relied upon at the enquiry at least 24 hours prior to the enquiry.

SERVICE			
SERVED BY:		RECEIVED BY:	
SIGNATURE:		SIGNATURE:	
DATE:		DATE:	

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Annexure B

(Normative)

Notice to Attend Disciplinary Hearing

NOTICE TO ATTEND DISCIPLINARY HEARING

PERSONAL DETAILS

NAME OF THE ALLEGED OFFENDER:		UNIQUE NO:	
DEPARTMENT:		POSITION:	

ALLEGED MISCONDUCT

(Note: name the misconduct, and give a brief description of the incident.)

ADMINISTRATIVE DETAILS

BE ADVISED THAT THE DISCIPLINARY HEARING WILL TAKE PLACE AT:

DATE:		TIME:	
PLACE:			

RIGHTS

Kindly take note that you have the following rights to:

- present your case/defence;
- call witnesses; and
- be represented by a fellow employee or trade union representative.

DOCUMENTATION

The parties must exchange all relevant documentation to be relied upon at the hearing at least two days prior to the hearing.

SERVICE

SERVED BY:		RECEIVED BY:	
SIGNATURE:		SIGNATURE:	
DATE:		DATE:	

CONTROLLED DISCLOSURE

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Annexure C

(Normative)

Disciplinary Enquiry Summary

DISCIPLINARY ENQUIRY SUMMARY OF EVENTS			
PARTIES			
MANAGER:		ALLEGED OFFENDER'S NAME:	
DESIGNATION:		REPRESENTATIVE:	
ADMINISTRATIVE DETAILS			
DATE OF ENQUIRY:		TIME:	
PLACE:			
SUMMARISED ALLEGATION			
SUMMARISED RESPONSE			

CONTROLLED DISCLOSURE

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Annexure C

(Concluded)

FINDINGS:	**GUILTY**		**NOT GUILTY**		

SUMMARISED REASONS FOR FINDING

MITIGATING FACTORS

AGGRAVATING FACTORS

SANCTION

ACKNOWLEDGEMENT OF PROCESS

I hereby confirm that the above-mentioned information was discussed with me during the disciplinary enquiry. (Note: acknowledgement of discussion does not mean that the employee agrees with the content.)

NAME OF ALLEGED OFFENDER:_____ CHAIRPERSON'S NAME:_____
DATE: _____ DATE: _____
SIGNATURE:_____ SIGNATURE: _____

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Annexure D

(Normative)

Notice to Attend Pre-Dismissal Arbitration

NOTICE TO ATTEND PRE-DISMISSAL ARBITRATION **PERSONAL DETAILS**			
NAME OF THE ALLEGED OFFENDER:		UNIQUE NO:	
DEPARTMENT:		POSITION:	

ALLEGED MISCONDUCT (Note: name the misconduct, and give a brief description of the incident.)

ADMINISTRATIVE DETAILS **BE ADVISED THAT THE PRE-DISMISSAL ARBITRATION WILL TAKE PLACE AT:**			
DATE:		TIME:	
PLACE:		CHAIRPERSON:	

RIGHTS

Kindly take note that you have the following rights to:

- present your case/defence;
- call witnesses; and
- be represented by a fellow employee or trade union representative.

DOCUMENTATION

The parties must exchange all relevant documentation to be relied upon at the hearing at least four days prior to the arbitration.

SERVICE			
SERVED BY:		RECEIVED BY:	
SIGNATURE:		SIGNATURE:	
DATE:		DATE:	

CONTROLLED DISCLOSURE

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08

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
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		Revision	0
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		Office of the Company Secretary Department	

Signed by Dr Ngubane for purposes of noting the meeting's proceedings

CHAIRMAN: _____ **DATE:** 18/11/16

HERE

COMMISSION OF INQUIRY INTO STATE CAPTURE

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.

<u>Mr T Matona</u>
(No record was kept of this discussion.)

<u>Ms T Molefe</u>
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)

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Upon his return he was advised that the Board had deliberated and made its decision and that its position had not changed. He was informed that his presence during the inquiry would not be ideal and the committee had decided to give him a notice of suspension. He stated that the nature of the inquiry had nothing to do with maintenance or technology and this was noted. The letter of suspension was then handed to him to read and he wanted to clarify that the period of the inquiry would be three months and this was confirmed. He then signed and accepted the letter.

11. CLOSURE

There being no further matters for discussion the Chairman declared the meeting closed at 16h25.

SIGNED AS A CORRECT RECORD OF THE PROCEEDINGS

CHAIRMAN 01/12/2017 **DATE**

COMMISSION OF INQUIRY INTO STATE CAPTURE

U14-VK-1464

09

COMMISSION OF INQUIRY INTO STATE CAPTURE

ESKOM

BOARD MEETING

11 MARCH 2015

Gauteng Transcribers
Recording & Transcriptions

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COMMISSION OF INQUIRY INTO STATE CAPTURE

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, ***in as far as it is audible***, the aforegoing is a ***VERBATIM*** transcription from the soundtrack of proceedings, as was ordered to be transcribed by Gauteng Transcribers and which had been recorded by the client

ESKOM

BOARD MEETING

11 MARCH 2015

DATE OF HEARING:	11 MARCH 2015
TRANSCRIBERS:	V FAASEN
TRANSCRIBED ON:	30 AUGUST 2020

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.

10 What the board had asked me to do the last time with that was make certain that we can carry on with the presence of the board and that indeed is the case and that is why I thought it prudent that we should go back and resume the meeting that we had postponed on the 26th and try and get that presence done.

What we then propose to do was, given the time constraints, considering the fact that the Minister will spend some of our time with us that let us work through the urgent business, the business that requires the board's 20 decision, the business that is that time barred in terms of requirements by the shareholder. Let us get that business done, at least, and therefore, we will hold over the balance of the mundane part of the meeting, the minutes and this type of thing, consideration of the reports to the next time around when we decide when next we can meet because I

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]

10 **CHAIRPERSON**: Okay.

[6.19]

MALE VOICE: Based on the agenda, Chairman, from the executives' sides will be covered on the – on a corporate plan. Freddy will take us through that very quickly and then on the borrowing programme, the Financial Director was here on the Eskom debt strategy cover is here and then I will talk to the MOU between Eskom and its strategy(?) fund, I will be assisted by head of legal, the layout and so on, so I think we should be covered.

20 It may be that once they have got ratification that they can attend the meeting the other executives will come.

[7.22]

CHAIRPERSON: Okay, thank you very much. Let us go on then to item 7. I just have a few issues really and let me start with the housekeeping issues which have to do

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
10 it does not work well and consequently he finds that he has to now start patching up things after the fact because, you know, people have done things sometimes in his name without his knowledge.

So I think it would be just nice courtesy, whenever you see the need, to ensure that the Chief Executive knows what is going on, just to let him know that look, I need to have discussions with so and so and so on.

As I say, this may be actually a small matter but, you know, progressively it can get complicated over a
20 period of time so I think it is important for us, as a board, to protect his position when it comes to that.

Okay. Right, just a few things then from my side beyond that, as I said, the minister is coming in to see us this morning and this was part and parcel of what we had requested when we had the induction with her downstairs

last time, we met with her. So I think we would then be in a position to address whatever issues that we need, we need to address with her. And when I get word that she is coming, as I am aware, I would have to excuse myself and go and bring her into the meeting.

Okay. I do not know if I mentioned the one visit to the board – I am sure I did do it, did I?

[12.13]

MALE VOICE: Yes, you did.

10 **[12.16]**

CHAIRPERSON: Oh, okay, alright. So the board is fully aware of the visit. So that is fine.

[12.22]

MALE VOICE: Chairman, may I – excuse me for the interruption. I think it was one of the subcommittees that was aware.

[12.28]

FEMALE VOICE: Ja, the social and ethic.

[12.31]

20 **CHAIRPERSON**: Oh, yes. Oh, okay, sorry about that. Ja. No, what happens is that on every occasion and organisation called the World Association of Nuclear Operators visits us in respect of Koeberg, obviously, and they come and do an assessment of how the plant is operating. Now, as you are well-aware, the nuclear industry is very highly regulated, extremely highly

regulated and everything is absolutely pinpoint I think Steve can certainly give us the, you know, background but this visit is one of those visits that they make and have to satisfy themselves that not only is it management the board is also fully aware of the situation or the nuclear operation so they interviewed me as team of them, I think there were five guys.

[13.52]

MALE VOICE: It was a total of about ten of them, Chair.

10 **[13.53]**

CHAIRPERSON: Ja.

[13.54]

MALE VOICE: But they broke up into different groups.

[13.56]

CHAIRPERSON: Ja. Just elaborate briefly, Steve, on the purpose of ...[intervenes]

[13:59]

STEVE: So, Chair, this review was a corporate review, WANA, World Associated Nuclear Operators, they – Eskom

20 is an active participant in WANA. They do peer reviews which they do and they have done several peer reviews at Koeberg itself which is basically a very operational one, it looks at the operations of the plant and big focus on nuclear safety, of course.

This corporate review was about looking at the relationship between the nuclear operations which, in our

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]

10 **MALE VOICE**: And the strengths.

[16:25]

STEVE: Sorry?

[16:26]

MALE VOICE: What were the strengths in the AFI?

[16:27]

STEVE: The strengths were – and I am going to have to remember. The strengths were the leadership development elements, the training. What was the other strength? The areas for improvement related to very clear levels of

20 accountability are required. I cannot recall the rest and they just gave us verbal feedback so unfortunately, I have not got the rest here.

[16:58]

CHAIRPERSON: I think once the report is back ...[intervenes]

[16:59]

STEVE: Feedback formally once...

[17:02]

CHAIRPERSON: Once they have given us the report we will share it with board members.

[17:06]

FEMALE VOICE: Did they interview [indistinct]

[17:08]

CHAIRPERSON: Excuse me?

10 **[17:09]**

FEMALE VOICE: They interview or [indistinct].

[17:12]

FEMALE VOICE: I am not sure.

[17:12]

FEMALE VOICE: Can I respond, Chair? No, they did not and I must tell you I felt that it was an opportunity lost because it was in my diary and a day before the time I was told it is not necessary so – but that is something I am going to be taking up because I believe that it is an

20 opportunity lost because my understanding of the scope of that report or the interview was to test leadership readiness and in the sustainability in assess(?) meeting I actually raised concern around the fact that I did not think that we had done adequate work around getting leadership ready for the review, so I will be taking that up but you are right, it was an opportunity lost.

[17:52]

CHAIRPERSON: No, I am sorry, I assumed because I was aware that [inaudible – speaking simultaneously]

[17:55]

STEVE: I do not know how that happened, Chair.

[17:56]

CHAIRPERSON: I assumed that they did ...[intervenes]

[17:58]

FEMALE VOICE(VENITTA KLEIN): No, a day before the time, it is not necessary so...

10 **[18:02]**

CHAIRPERSON: H'm, not acceptable.

[18:03]

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.

20 **[18:12]**

CHAIRPERSON: Okay. I think the last thing for me – thank you, Steve, thanks – has got to do with, you know, the board members have raised concerns about availability of documents prior to meetings. I have raised the issue with the secretariat and I think they had a staffing problem, from what I understood, and now unlock that stuff and problem and hopefully with the people that they now have

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.

10 So we, in the context of the war room, worked on the generation turnaround, a maintenance plan. All of these plans including the financial issues, we have been sharing that information with the war room, we have been sharing that information with the war room. We have submitted 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.

20 I believe we have achieved that objective, I believe we have achieved that objective. I know expect that government having understood will now say, from our point of view this is the way to go, this is the direction that they believe we should follow, these are the expectations they have of Eskom and of us as a collective, executives and

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.

10 **[35:38]**

UNIDENTIFIED LADY SPEAKER: Does that help?

[35:39]

MALE VOICE: Yes.

[35:40]

CHIEF EXECUTIVE: Okay, thanks. Ja, so the – I was on the financial situation, Eskom is financially challenged. Again, we have – arising from the engagement in the IFC, I have also with the war room requested that we have managed to identify the key challenges, financial

20 challenges and perhaps options and in summary, without spending too much in that regard, Eskom has now increased funding requirements, our liquidity situation is at risk, we liquidity challenges, in other words, which needs urgent attention.

We have 3 billion promised equity, we hope it comes in time but also other initiatives were undertaking

with the regulator on the revenue side.

Part of what financial turnaround involves, savings programmes, BPP, it is being presented the IFC as well and I am sure board members are aware of it, we have spoken about it a few times in these forums. So again, I will not spend too much time because I think the issues have been canvassed. We need an opportunity to get – have a deep dive, if we would be available to do so as executives.

10 The PP targets, the savings targets will be met but they have been serious leakages and those leakages have to do with rising primary energy cost, mainly diesel or GCT(?) and then of course municipal debt which we spoke about.

Another area of leakage in the savings is voluntary severance package. The staff reduction package which we have suspended because some risk with regard to loss of skills. The intention is to revise it and put back something else because in the HR area, manpower area, we need –

20 there are opportunities for savings which we will have to pursue.

We undertook a foreign borrowing road show a few weeks ago, the outcome of that still have to be shared with the board and engage with that. The one area which I would like to highlight on group capital and perhaps I can

stop because I am assuming that members opportunity to read the document but I am happy to answer any part of the document that was circulated. It is on the bill programme.

The board did undertake a visit to Medupi, they saw the amazing achievement, engineering, the construction achievement at unit 6 and the entire project actually represents and we finally after several postponements, postponements of that date of conclusion
10 we were able to synchronise the first unit of Medupi which, in the life of Eskom is a big – it is a big event.

We really need to celebrate that milestone because it is significant in many ways, it is the first time Eskom puts new power, fresh power into the grid in 20 years and it is part of 17 gigawatts additional capacity. You know, for Eskom employees and the people working on the project it is such a morale booster and I do believe we have to make a big deal about it. We allowed the Minister having – she had expressed desire that whenever that
20 whenever big milestones she would like to be part of it, to also, you know, share in that success and we were told that there would be a media briefing. I was supposed to be today led by the Minister but that was cancelled. She is coming here, so the Deputy President will do it but that did not happen.

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.

10 **[44:14]**

MALE VOICE: And that is why people [indistinct] so you understand the going-concern on liquidity. Even financial institutions are coming now with conditions, or concerns. So I just want the board to note specifically the financial strain that we are in, that is why I keep on emphasising that position we find ourselves in.

[44:21]

FEMALE VOICE: And just to add, Chair, again, in November/December we actually saw our commercial – our

20 bonds being dumped in the market following the Moody downgrade that took place in November but also African Investment Bank limited SADAC, that we saw happening, most investors were uncomfortable to really take up our bonds or even, you know, take the commercial paper from our perspective.

So it has been difficult. I think December, if we

did not go to the PIC, to National Treasury, we were ready for an overdraft but we managed to get short term bridging finance to pick it up and we ...[intervenes]

[45:03]

MALE VOICE: So what rate did we pay? What was the interest rate roughly?

[45:07]

FEMALE VOICE: It is prime, it is about 6 – it was 6.85. Sorry, it was about 6.85.

10 **[45:14]**

FEMALE VOICE: Can I maybe make a comment? I think this was a point that - I am not sure about anybody else but I certainly would want to just deliberate a little bit further and I would want to hold it over as part of our discussions after when the Minister has left, if that is okay with everybody? It looks like there are other people with input as well. Alright? I will take further comments, inputs, Doctor?

[45:33]

20 **DR NGUBANE**: Thanks, Chairperson, the issue of primary energy cost, I think are a concern to some of us, we saw the article in the Sunday Times saying Eskom was entering a crazy [indistinct – dropping voice]

we would like to know exactly how pricing is set for primary end. For instance, Glenco gets R40 per CV whereas other

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.

10 **[47:24]**

MALE VOICE: Alright.

[47:25]

FEMALE VOICE: Let us agree a way forward then that in terms of this, it is either going to be deliberated at another time or we get the set information with the detail info attached to it at different times. CFO, do you want to...?

[47:38]

CFO: Ja, I just wanted to say to you we are trying to arrange a board workshop for the committee for the board

20 members to do deep dives on maintenance, I think it was requested [inaudible – speaking simultaneously]

[47:48]

MALE VOICE: We have got the details but I think, Chairman, looking, so just to highlight the subject.

[47:51]

MALE VOICE: So what I will do because we have this information readily available.

[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.

10 So I would want to maybe when – after the Minister is done, for us, after the war room, if we can maybe spend some time on governance issues around how this board should operate.

[50:39]

MALE VOICE: Chair, is it possible for the board to maybe use the breakaway type for – to consolidate all these deep dives and go into detail on all the aspects that I have reported because – which is scheduled to be held in two weeks time, yes, because scheduling a special day for all

20 of them would be a challenge, we will need a full day or at least two days to go through everything and the board breakaway is ideally structured for that. So if we can agree to – I am proposing that it be considered for use for that purpose.

[51:15]

FEMALE VOICE: I am happy with the proposal, Malisela,

on condition that it does not impact on anything else that was already planned because I would have assumed that there is a set plan for a board breakaway.

[51:29]

MALE VOICE: Ja, Chair, the board breakaway is intended to allow the board to get detail on matters. So it is definitely suited for that.

[51:41]

FEMALE VOICE: For that.

10 **[51:42]**

MALE VOICE: However, you know, maybe there are other opportunities outside of that.

[51:50]

FEMALE VOICE: Okay, I think just before I allow somebody to comment let me just ask one question, though, are all of the board members available for this breakaway?

[52:00]

MALE VOICE: I cannot confirm now, Chair, I do not have

20 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]

10 **FEMALE VOICE**: Thank you, Varanshni, then Doctor, and I think Matshela(?) you also had something?

[53:53]

FEMALE VOICE: Okay, on the first part that we were talking about in terms of the breakaway, can all of these auctioned items be included? I mean, in terms of what we are talking about now. If you put them in an action list to be spoken of there.

You are definitely incorrect because I did advise you that I was not available, I followed it up with a
20 telephone call and you said to me it was not confirmed. I am hearing for the first time now that it has been confirmed or it is in two weeks time and I am definitely not available but I did tell you that and I did speak to your verbally on it as well.

[54:24]

MALE VOICE: I do not want to enter into a ping pong

[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
10 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
20 wanted to assure the board that the purpose of the breakaway – and Dr Ngubane, you are spot on, you are making the point for the [indistinct – dropping voice]. Typically, the Eskom tradition is three days, but we do not have to take three days. We have planned an Exco breakaway, part of which will be to prepare for the breakaway, taking account all of the issues that we have

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.

10 **[01:02:29]**

UNIDENTIFIED SPEAKER: I support it, absolutely support it.

[01:02:31]

UNIDENTIFIED LADY SPEAKER: Which is 15 years from what it was, cover(?). So what else do you need from us? This is a board resolution.

[01:02:37]

UNIDENTIFIED SPEAKER: No, nothing, we still have to come back with the Soweto issue. That is the free(?) issue

20 we agreed on.

[01:02:40]

UNIDENTIFIED LADY SPEAKER: Okay.

[01:02:42]

UNIDENTIFIED SPEAKER: That is it.

[01:02:45]

CHAIRPERSON: Can we just see, so we have three in support. I just want to go through the board members.

[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]

10 **UNIDENTIFIED LADY SPEAKER**: Okay. Our leg break is not going to happen.

[01:09:58]

UNIDENTIFIED SPEAKER: Not going to happen.

[01:10:00]

UNIDENTIFIED LADY SPEAKER: I apologise to the board and to everybody. You see, this is what happens when you talk too much.

[01:10:19]

UNIDENTIFIED SPEAKER: Morning, Minister.

20 **[01:10:20]**

MINISTER BROWN: Morning everybody, please sit.

[01:10:27]

UNIDENTIFIED LADY SPEAKER: Chairman, am I sitting in your house.

[01:10:30]

DR NGUBANE: No, no, no – ja, sit next to the CE, I will sit here.

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
10 relevant for certain people because we can take decisions that don't affect somebody or the person who is totally innocent and so on.

So I wanted us to, maybe, when we get into the terms of reference the decision is made on certain issues that are critical for the business, for this business, for this decision for this business within the organisation so that when we do suspend, we suspend having the facts that there is a serious issue that is in this division that needs to be looked at seriously and a person has to be set aside so
20 that we can investigate this particular point seriously because there is a serious consequence on this specific issue.

I will not prefer that we take a blind spot to say that Executives must be set aside because they must ...[indistinct], there may be Executives that are totally

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?

10 **[09:09]**

CHAIRPERSON: No, no, no that's once again, don't forget load shedding is a consequence of maintenance and lack thereof so it is still engineering it's not generations.

[09:20]

MS NAIDOO: Okay.

[09:22]

FEMALE VOICE: Chairperson, look, I think as a Board we've been grappling with a whole lot of issues which, as she's correctly pointed out, she was concerned we're

20 worrying ourselves about the rats and mice and the burning platforms not being attacked but I think as a Board, this is going to be one time when we must step up to the plate and must make hard calls because we've been saying we've been disengaged, now we're engaged.

Now, the real question becomes, do we now want to now delay this by going into sub-committee work before we

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.

10 **[12:57]**

MR LINNEL: Yes.

[12:59]

CHAIRPERSON: They're quite different. Don't forget the financial crunch that Eskom is experiencing is not as a result of an operational issue, it is as a result of consumers not being given adequate tariff for us to run the operation. So the financial is in a different realm whereas the other issues has got to do with specific operational things that can and do go wrong as a consequence of

20 whatever the consequences are which then lead to the load shedding, lead to the cost of ...[indistinct] and so on, so I think those are two different situations, okay hang on a second I thought...[intervenes].

[13:42]

FEMALE VOICE (MS 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.

10 **[30:12]**

UNIDENTIFIED PERSON: Chair, we have a slightly different ... [indistinct 30.12].

[30:14]

DR NGUBANE: Ja, don't stop that investigation.

[30:15]

MR PHUKUBJE: I don't think we should look at individual, I know you've got the contents around the individuals now. I think we should look at it from a governance point of view, from an audit and risk point of view. We're looking at

20 the total organisation, total organisation, so we're not particularly focusing on any specific area or sector, we vouch the total top layer to please the...[indistinct] while this investigation is in process so we're not finger pointing to nobody, we're not doing anything and then let the forensics go through it and in this interim period we've got acting appointments made in terms of sorting this thing out

and it's purely from a risk point of view that we're now batting this issue as we believe that the situation of Eskom in the country is serious enough for the new Board to get a handle on it, sort of generalised.

[31:10]

MALE VOICE: We must finalise this today.

[31:11]

MR PHUKUBJE: Today ja.

[31:12]

10 **MALE VOICE**: If we leave here, I mean, then we are in serious trouble.

[31:16]

MR PHUKUBJE: Ja, don't finger point to any particular individual.

[31:18]

CHAIRPERSON: No, no, no I think we're dealing with specific areas of the business, I mean, if you talk about transmission, you set somebody aside in transmission for what reason. No, no, I understand, you see we must

20 understand, we have to be clear, people take accountability for the things that they do, from that position.

[31:38]

MR PHUBUBJE: I agree.

[31:39]

CHAIRPERSON: We mustn't soft pedal when it comes to saying, we need to investigate specific areas in the

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]

10 **[41:19]**

MALE VOICE: Well, you know, I understand where Norman comes from but we are not at that stage yet to be writing people, give us reasons why you shouldn't be suspended, we are not there. All we want – we have no document, there may be a document somewhere in Government but it's not our document, it's not Eskom Board document, so that is a sign. All we want to establish is the status quo as you have said, what has happened in Eskom informing ourselves, therefore, we investigate.

20 **[41:53]**

CHAIRPERSON: We are going to get to where Norman wants us to go to.

[41:55]

FEMALE VOICE: Chairman, you know, I always think in numbers and I think we all heard the CFO this morning, she said that we normally run on a four month buffer as a

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]

10 **CHAIRPERSON**: Okay can we break for lunch then.

[43:45]

UNIDENTIFIED SPEAKER: I think we'd have to...

[

ALL SPEAKERS SPEAKING AT ONCE

[44:58]

CHAIRPERSON: The resolution is to proceed with the investigation as quickly as possible and we'll give it...[indistinct 45.08] by asking the specific layer that's concerned and the Chief Executive to take forced leave so

20 that they don't impede the investigation and then from then on terms of reference have to be prepared for the investigation and this is work that will be done by the audit and risk committee with whatever support it gets and then all of that, then gets reported back to the Board. Now, it may be that all of that cannot be completed today. So, in

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]

10 **DR NGUBANE**: Before lunch, we can also meet before lunch.

[48:02]

CHAIRPERSON: Okay you meet before lunch we'll meet after lunch.

[48:05]

MR LINNELL: Chair what happens to the Board meetings...[intervenes].

[48:08]

CHAIRPERSON: No, no we're coming to that.

20 **[48:15]**

MR BALOYI: Sorry Chair, let risk meet first then we will meet up with risk once we get their input.

[48:22]

MALE VOICE: Sorry Chair, I just wanted to – just one last minute... [indistinct 48.22] in this process.

[48:25]

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]

10 **CHAIRPERSON**: So obviously we cannot deal with it, so we have to shelf it.

[49:48]

DR NGUBANE: [Indistinct 49.48] we have not received any other versions.

[49:49]

MALE VOICE: The borrowing plan – the borrowing plan as well, we're supposed to ... [indistinct 49.53].

[49:53]

CHAIRPERSON: Okay there's a corporate plan, then

20 there's a borrowing plan, the borrowing programme, was that discussed?

[49:58]

DR NGUBANE: No, just the debt strategy but the corporate plan, the version that we got is the one that we received the day before the Board meeting. I had my meeting last week with Exco, they sent three versions after

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.

10 **[51:59]**

CHAIRPERSON: But we are finished so you can still have your meeting.

[52:02]

DR NGUBANE: Ja but there's going to be other meetings now, HR and audit, the same individuals.

[52:08]

CHAIRPERSON: Okay fine, so we'll be flexible then in terms of the next time we convene but we must convene when we've got all the information in order to complete the

20 corporate plan and the borrowing programme, alright.

[52:22]

MALE VOICE: Chair, can we please check, maybe with Board members if we can't schedule meetings from around four, four thirty.

[52:29]

CHAIRPERSON: Perfect.

ALL MEMBERS SPEAKING

[52:35]

FEMALE VOICE: Chairperson, as a rule I also want to have it minuted, you know, that I will make every effort to be here but guys some of us travel out of time.

[52:44]

CHAIRPERSON: Do we need the relevant Executives to be here now when we make this determination about what we need to do with the corporate plan and the borrowing programme because they're going to have to do the work, will they know – will someone be able to give them an instruction as to what it is that is required to be done in order to complete the work on the corporate side.

[53:06]

MR LINNELL: The borrowing plan?

[53:07]

CHAIRPERSON: The borrowing programme and the corporate plan because, evidently from the Minister's statement something needs to be done.

[53:16]

DR NGUBANE: When I met with Execs, they kept saying to me they've got to comply with the set requirements that comes from public enterprises.

[53:22]

CHAIRPERSON: Well we've written to them to say that we're going to....

ESKOM

PEOPLE AND GOVERNANCE

IN-COMMITTEE MEETING

11 MARCH 2015

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PROCEEDINGS RESUME

[14:48]

CHAIRPERSON: ...asked our Head of Legal to be here as well, just so he is fully abreast with the matters that we are dealing with and that is the aspects from this side of Eskom that he feels that they're aware of it ja ...[indistinct – dropping voice].

10 So Nick the purpose of what we have here Nick is basically the Board members, we had the sub-committee meetings earlier but the rest of the Board is here, and basically I explained to the Board that you had been asked to support Eskom in this whole exercise of this investigation, this inquiry so that certainly the governance issues, and taking care that this thing is done properly and it is done in a manner that cannot be challenged and cannot reflect badly on this issue.

Now the Board has made some significant 20 decisions, and the decisions the Board has made in respect of the investigation are that; one, the investigation will proceed as soon as possible. Number two, those executives who are directly involved with the areas where the investigation will focus will be suspended, and these are ...[indistinct 00.01.53]. This was to inform also the

Chief Executive and then it is the Executive for Group Capital, the Executive for Commercial and Executive for Finance, and the reason for that is because it is important that the ability to carry out the investigation is not compromised in any kind of way.

]

FEMALE VOICE: Sorry Chair is the Executive for Finance included as well?

[

10 **CHAIRPERSON**: Oh yes, four. And that the work that needs to be done in respect of the investigation must not be compromised by the presence of these particular executives, one of the two that from the work you have done the committee would like to know and needs to be updated in terms of the potential charges that are on the table in respect of the executives, and probably exclude the FD because you were not briefed on the FD as far as I know, but certainly on the other three executives, maybe you want to take the committee through that, and also the

20 processes that need to come into play for this to be effected which include managing the media and the public perceptions and all of those things.

Nick should we just talk around those issues then, how you see the process going forward?

[03:58]

MR LINNELL: Certainly Chair, maybe if I could start in

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]

10 **CHAIRPERSON**: Thank you.

[06:22]

MR LINNELL: I would just add that I have a lot of profile players, wherever I work I work in companies which I am not a person you see in the press, I never publicise what I do and that is not because it is quiet, it is just my profile is get it done when I work in a company I am not the feature or the focus of what's happening, so you won't typically Googly my name and find that I work with certain entities, it is just not the way I work.

20 So confidentiality in what I do is always of primary importance and if I can touch on one thing, the GSS in all my experience and particularly in State owned companies the most – the biggest imperative is every single thing we do must be lawful, it must be procedurally correct and the moment we make one mistake, even if you have good intentions, the whole of it is undone simply because we did

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
10 people on the inside as to where should those focus areas be and where should the limitations and the filters be, and I think that should be done taking my lead from the Chairperson that this must be done urgently, that can be done even this week or Monday, you know to be – it shouldn't take time and then that can evolve, because as one gets into it, it will identify areas that you haven't anticipated and I think that is in your own experience you will find that's typically the case, as you start looking in an area it will highlight things that you hadn't understood to
20 be there and that will – might create some variation to your approach, so that would be the approach, I don't think you should cast it in concrete at the outset.

I think then you've got the issue in this project of who is going to do this and my understanding is basically from the shareholder, the imperative is almost beyond

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
10 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
20 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]

10 **MR LINNELL:** What I would suggest to you and I mean this is for you ultimately to decide but my thoughts, if I might, my role would be a coordinating role. I have a legal background by nature, it is an inquiring nature, I do investigative work, not the Paul O'Sullivan type work, we are not involved in that sort of stuff, commercial work, you find out the facts in a company. So that is typically what we do, so – and my company has done call it project management work for many of the big corporate here and in Europe, so we are – have a skill base of coordinating

20 inquiries or projects, call it projects.

[16:46]

MALE VOICE: Sorry Chair, Nick alluded to using ENS, and he said he is aware that they may have not – they have not done any investigation of this nature at Eskom that may create a conflict, if I understood you correctly. There have been two major investigations at Eskom, one was done by

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]

10 **MR LINNELL**: No but good process.

[19:03]

MS MABUDE: Can I come in here?

[19:04]

CHAIRPERSON: Yes.

[19:06]

MS MABUDE: Audit & Risk has raised the ENS as well and BNG.

[19:13]

MR LINNELL: Sorry, I missed that.

20 **[19:16]**

MS KLEIN; The Audit & Risk sub-committees had a meeting prior to this and we were mandated to deal with this.

[19:23]

MS MABUDE: And we had mentioned the ENS and BNG and ...[indistinct] and Associates so those three as well we were looking at, but ...[intervenes]

[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
10 careful about – because the shareholder is the State, as to what is the fallout beyond the company, and what that means is when you do a project in a State Owned Entity confidentiality and very strict confidentiality is extremely important because leakages lead to manipulative outcomes.

So if there's a vested interest and the inquiry is heading in a certain direction which a vested interested does not like there is bound to be interference and that happens when there's leaks from the investigative team,
20 and it is so, so important. If you start at this point where you are and you say we don't want a certain outcome one has to be very careful that you have that built in, and I don't have a brief for ENS, I don't get a single cent out of using them, the value of me using them is if people look to me to deliver I have to deliver and it's the same as if I'm

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
10 process package coming out and I would suggest it would be better for you on the technical side to hand-pick people under a credible – you regard yourselves as credible and knowledgeable, but again it is an issue to be discussed, but in your case that's a very important part of this and so if I could, if we can – another thing I am conscious about if you just went out into the market you stood on the corner of a street and you asked people about Eskom, everyone has got a preconceived idea and everyone has got a solution and the more you – if you segregated those people
20 and you said the technical people stand here and the laymen stand over there, the technical people are going to have technical solutions for you than the man in the street. Everyone has got an idea what you should be doing and I think you need to choose people there who demonstrate they don't have a solution so if you're determining who to

use on the technical side and the person said I think I know what you should be doing here, he is not the right man for you. You want someone who ...[intervenes]

[25:34]

FEMALE VOICE: What are you saying? Are you saying through the right contract a company with good technical acumen around what we want to investigate and also another one who has got good commercial, or there is a company that has got best of both?

10 **[26:00]**

MR LINNELL: No I don't think so, I think you want the best in both commercial areas, you focus on that but having said that we are going to make a mistake if for example we had a commercial team looking at the arts of it, you know and tertiary standards and then the sciences over here because they have to – they are intertwined. If you're looking at tenders on the commercial side there is a technical aspect to those tenders which has to be understand, so although you have teams the coordination

20 of those teams this side determines something that they think is relevant, this side must be able to pick it up and follow it, and you don't want to go 100 metres and find these people haven't communicated, so communication, effective communication, not sending each other notes, I am saying effective integration of those teams they have a focus, so it's not one team. I think if you have one

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.

10 There are certain things that they might well have done wrong, absolutely, but that is not the reason you are asking to be suspended. The reason you are asking them to be suspended is they have situational influence which will pervade where you want to do the investigation, and certainly there are – we are all aware probably of – there's likely to be as in any organisation things which will come out and are known to yourselves where some of these guys have not behaved correctly but we are on day one and that is not proven or established, these things are just – they

20 are gossip, and some of those gossips have foundation, but I think we as we sit here that is not the reason you are asking them to be suspended. The assumption is they have done no wrong, and if I could follow that up and say for the good of them and the good of the organisation bear in mind what happens in Eskom is a national thing, we are

not talking about a company here.

If Eskom gets scratched the nation is affected, emotionally, financially and everywhere, so if you have, if you create bad press it will unnerve people outside and this is a confidence game within the country, so I think the ideal would be to say to these executives this is the situation, we are not sitting here saying you have done any wrongdoing, it might turn out that yes you have and that might be so severe you will get dismissed. We do not
10 know at the moment so the suspension is not that you are guilty, but if you volunteered to go on leave and we made the public understand that you as a leader had decided voluntarily to go on leave so that you open up the space to make this a credible thing it stands them in good stead in the public's eyes and in the staff, say let's assume nothing comes out of this investigation and they return, because that must be our assumption at the moment because there's no wrongdoing, we are on day one, you want them to come back without a sense of people feeling that they
20 were – there was something which they were guilty of but it didn't get proven.

So it is ideal for them for them to go on leave with their heads held high and with no people assuming that there is an innuendo in their suspension, that is ideal, people don't often ...[intervenes]

[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
10 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
20 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]

10 **[47:52]**

CHAIRPERSON: We know that

[47:53]

MALE VOICE: Yes, what I am saying is that the Board should record that precautionary I mean suspension notices will be issued to certain members of the Executive, you resolve it ...[indistinct]

[48:08]

CHAIRPERSON: The intention to suspend.48:08]

[48:09]

20 **BOARD MEMBER**: Of course.

[48:10]

CHAIRPERSON: That is fine, that is what I am talking about.

[48:11]

BOARD MEMBER: Have you got a copy of that, that we can read?

[48:12]

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]

10 **[51:43]**

MR LINNELL: Ja, I think you've got, you are agreeing in principle ...[intervenes]

[51:46]

BOARD MEMBER: You are confident of what we are doing, ja, I think that's right.

[51:47]

MR LINNELL: I think everyone is on the same side, just a question of wording, and the wording is as the Chair says is very important because as soon as people go to court

20 the first thing, they are going to do is say can I have an extract of your minutes.

[51:58]

CHAIRPERSON: And then it says you suspended this man before you even gave him a chance to respond, so your suspension is invalid, so it is important for us to couch the words properly.

[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.

10 **[59:39]**

MR LINNELL: But in a labour context it makes it difficult because if they resign and you accept it then you have got no employee/employer relationship and a disciplinary procedure is premised on that relationship, so if you terminate the relationship you can't have an employment discussion with you.

[59:57]

CHAIRPERSON: Nick can I just read what Eskom's – what is Eskom's disciplinary code? Article 4, for a

20 suspension of an employee with pay pending disciplinary inquiry, hearing or pre-dismissal arbitration. 4.1 says:

> "When it is suspected that an employee may have committed misconduct and that his/her continued presence in the premises of the company might interfere with the disciplinary investigation the manager may decide to suspend the employee with

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.

10 **[01:02:10]**

BOARD MEMBER: Suppose that the person is new into the portfolio that they are the Chief Executive and he doesn't see himself directly or indirectly implicated, how do you pursue that type of a person?

[01:02:30]

MR LINNELL: I thought about that, I think he has been in office about five months, and in that five months certain things have happened in this business which might be evidenced during the investigation. In other words I don't

20 think everything which has been done wrong, if there is anything here, has been done in the far distant past, it could have been done yesterday, but there is also suggestions that the CEO has condoned things or done something even in the short space of time he has been here, so even if he had just been here for a month the same would apply.

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.

10 **[01:03:42]**

MS KLEIN: It redefines his judiciary duty.

[01:03:44]

MR LINNELL: His on record in the presses to saying in fact that one of the prime problems here is policy. The inference being the shareholder policy has manicured this company. The CEO was part of the policy maker so I am not sure what he meant when he made the press statement but the important thing is his been here for a number of months. His been here for a number of months and that

20 puts him in a position.

The CEO is a critical person overseeing everybody. I have just even doing some work with another re-sized small and less complicated big standing company and the CEO is on suspension and it is quite clear that the CEO's thing is penetrate the business, down to the lowest levels. And if he sat there you would have impact the investigation

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]

10 **MALE VOICE:** No, we cannot.

[01:07:13]

MALE VOICE: Ok we have asked that Can question. [indistinct-cross-talking]

[01:07:20]

CHAIRPERSON: Okay can we do this then Nick the mandate we would like to give you as you have explained one of coordinating this entire exercise fortunately you have done work on this you are familiar with what is going on. That means to say you worked with it particularly the

20 audit and risk committee.

I think we also need for you to support them in terms of the terms of reference that must be put in place and then assist them as the expert input that needs to come in to do specific things and they will then suggest a modes operandi between them and yourself. There is also the people in governance committee which committee then

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.

10 **[01:12:09]**

MALE VOICE: Ja, ja.

[01:11:10]

MR LINNELL: And so do not ever assume you are in a boardroom and you talking in confidence because I am afraid the same as yourself and it got smaller and smaller these sort of devices get smaller and smaller.

[01:12:21]

MALE VOICE: It is very small.

[01:12:22]

20 **MR LINNELL**: So to coming back to the information the media communication is so important again. The nation agrees on what happens in here. So the press right now is going to read into this which they already know all sorts of things. You are targeting his people; it is political it is this it is whatever that I have mentioned.

So an appropriate media statement is very important

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]

10 **CHAIRPERSON**: Sorry?

[01:15:32]

MS NAIDOO: Are we not getting a service provider to do this?

[01:15:33]

CHAIRPERSON: No, no the individuals.

[01:15:35]

MR LINNELL: Your sub-committee takes that decision.

[01:15:36]

MS NAIDOO: Ja.

20 **[01:15:37]**

MS KLEIN: Ja but must the sub-committee sit across from the leaders.

[01:15:39]

MR LINNELL: Yes, ja and have that discussion.

[01:15:43]

MALE VOICE: But Chairperson we thinking and in principle decision to suspend. They must now together

with our service provider work out the processes.

[01:15:52]

MALE VOICE: Okay.

[01:15:53]

MS NAIDOO: We must have had that conversation now with them we need to follow due process. Those letters have to be drafted and everything or is the letters already ready?

[01:16:02]

10 **CHAIRPERSON:** Already ready.

[01:16:03]

MALE VOICE: Ja.

[01:16:04]

CHAIRPERSON: I do not know are the letters ready?

[01:16:06]

MR LINNELL: I have not seen any. [indistinct-cross-talking]

[01:16:08]

MALE VOICE: We have to just check that.

20 **[01:16:10]**

CHAIRPERSON: No sorry, sorry this is now really a no, no. There are no letters ready these people will prepare the letters with the help of the service provider and carry out the process.

[01:16:20]

MS KLEIN: Ja.

[01:16:21]

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]

10 **[01:17:23]**

MR LINNELL: So they are in charge so the board has given them the authority.

[01:17:27]

MALE VOICE: And the longer we talk Chairperson the longer we delay their work. [indistinct-cross-talking]

[01:17:31]

MR LINNELL: If you are part of their committee you must just say.

[01:17:33]

20 **CHAIRPERSON**: No okay fine can I just establish are you saying that the audit and risk will take up the whole process from now on going forward.

[01:17:44]

MR LINNELL: No, no.

[01:17:45]

CHAIRPERSON: Or will people in governance do that and hand over once the suspensions have been done.

[01:17:51]

MALE VOICE: Ja.

[01:17:51]

CHAIRPERSON: Hand over the process to the people in governance.

[01:17:53]

MALE VOICE: To audit risk.

[01:17:55]

CHAIRPERSON: Okay now I understand.

10 **[01:17:57]**

MS NAIDOO: But Chairperson there is one other thing that came up from Nick as well we did speak about the fact that this information is probably out there somewhere but that does not sit with any of those schematics. Something needs to happen concurrently with the work that now gets done.

[01:18:09]

MS KLEIN: Do you mean a parcel bar thing?

[01:18:10]

20 **MS NAIDOO**: No, no not a parcel bar I am talking about getting statements ready etcetera, etcetera because it has got nothing to do with people and risk sorry people and governance and it has got nothing to do – it is part of a discussion but we must make a decision in terms of who is going to be engaged to help us with that because that becomes critical once this is done.

[01:18:34]

MALE VOICE: It is a PR exercise yes.

[01:18:35]

MS NAIDOO: Ja.

[01:18:37]

CHAIRPERSON: Remember that we discussed this matter with Ronny and Ronny knows people who can do this

[01:18:44].

MS KLEIN: Who is Ronny?

[01:18:45]

10 **MALE VOICE**: Romeo.

[01:18:45]

MS KLEIN: Oh.

[01:18:47]

CHAIRPERSON: He knows – he said he can give us advise before he left here, he said it was important that we get the best. This is a member of the board ja, we get the best communications person to handle these matters. So we need to now conducting and find out if there is a person to do that.

20 **[01:19:08]**

MS KLEIN: I have also given a name to which Mia...

[01:19:09]

MALE VOICE: Leo.

[01:19:11]

MS KLEIN: Leo was looking chuck that out the back.

[01:19:13]

CHAIRPERSON: Okay let us hear it then.

[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.

10 Now you need to tell us why that is not the right thing to do etcetera, etcetera what we just discussed and then you say to them – and you have to do it one at a time you cannot do it as a group. We going to go out of the room now you stay here we will come back in an hour okay and when you come back you say please give me your reasons because the process part of it is one of fairness. They going to come back and say you surprised me so much that you only gave me an hour to think about it. These allegations are quite simple, we followed them in, in

20 a few minutes. It is common sense that if you have leaders overseeing an investigation it is going to lead to impairing the process. They do not need more than an hour.

[01:21:30]

MS MABUDE: But...

[01:21:31]

CHAIRPERSON: Yes.

[01:21:32]

MS MABUDE: What is going to come out of mind is the people of governance sitting discussing this thing and then after that getting into the decisions...[intervene]

[01:21:49]

MR LINNELL: Sorry what is that I do not understand that decisions.

[01:21:52]

10 **MALE VOICE**: Okay let us go again to the Chairperson.

[01:21:54]

CHAIRPERSON: No, no I did not – listen to what they are saying here. What she is saying is this...[intervene]

[01:22:00]

MS NAIDOO: Because Nick is not aware that we started here on the CEO. [indistinct-cross-talking]

[01:22:09]

MS MABUDE: Ja, but let me check.

[01:22:10]

20 **CHAIRPERSON**: Nick, what is happening is that the Chairperson of people and governance happens to be the same individual the board has agreed will temporarily sit in the CEO's position. Now the question that she is asking is if he is going to be the one who is chairing the committee that is harassing the suspension.

[01:22:33]

MR LINNELL: Yes, you are absolutely right it is not good

practice.

[01:22:35]

MALE VOICE: No it is not good practice.

[01:22:37]

MR LINNELL: No you are judge and jury...

[01:22:38]

MALE VOICE: Ja judge and referee all at the same time.

[01:22:39]

MR LINNELL: Oh yes.

10 **[01:22:40]**

MS NAIDOO: Does it have to be one of us board members why cannot this be an independents service provider, a law firm?

[01:22:45]

MR LINNELL: No, it is the employer.

[01:22:46]

MS NAIDOO: Is it?

[01:22:51]

MR LINNELL: Ja in fact if he said I am going to phone my

20 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.

10 **[01:23:24]**

MALE VOICE: I think Chairperson you have to do it. The seniority is so...[intervene]

[01:23:29]

MALE VOICE: Ja, absolutely.

[01:23:33]

MALE VOICE: I just want to catch this one point, this two points...[intervene]

[01:23:34]

MR LINNELL: Did you have as a Chairperson received

20 the delegated authority of the board to do that because in a normal situation if you suspending say the CEO who reports directly to the board the board has the power to suspend, no one else. The Chairperson cannot suspend; the board is the majority. So you will just have to be comfortable that the board has given him the delegated authority to do that

.[01:23;58]

MALE VOICE: Ja.

[01:23:59]

MR LINNELL: Then he can do with it whatever he likes.

[01:24:01]

MS KLEIN: Well right now.

[[01:24:02]

MALE VOICE: Right now the delegated authority, ja. [indistinct-cross-talking]

10 [01:24:04]

CHAIRPERSON: No, no wait no misunderstandings. It is the people and governance committee that is doing this. That is where the delegated authority who it has gone to.

[01:24:19]

MR LINNELL: Then they must do it but you must...[intervene]

[01:24:21]

CHAIRPERSON: Now hang on.

[01:24:23]

20 **MALE VOICE**: Ja, he is in a complicated position himself.

[01:24:25]

MR LINNELL: Then he just need to recuse himself from that.

[01:24:27]

CHAIRPERSON: No hang on wait a minute let me explain. It is the people and governance committee that the board has delegated to carry out this exercise. Now he being the

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]

10 **CHAIRPERSON:** And they are saying okay his not available to do it so why don't I do it.

[01:26:16]

MR LINNELL: Ja I agree. I do not see why the committee cannot do it with the Chairperson of the committee recusing himself for obvious reasons. The rest of the committee continues with the process and they decide on the matter as a collective.

[01:26:29]

MS NAIDOO: Ja.

20 **[01:26:30]**

MR LINNELL: Except you recuse yourself and you say, you just recuse yourself you say you are conflicted.

[01:26:36]

MALE VOICE: Yes we put him in his place as Chairman of the governance committee.

[01:26:40]

MALE VOICE: Ja.

[01:26:41]

MALE VOICE: Him, we members of the committee appoint him.

[01:26:43]

MS KLEIN: That is right given where we going.

[01:26:46]

MALE VOICE: That is allowed in terms of your terms of reference.

[01:26:48]

10 **CHAIRPERSON:** They are saying I should act as the Chairperson of the governance committee something like that.

[01:26:51]

MR LINNELL: Ja that is not an important legal decision you can do that from one meeting to the next. So you sit down at this meeting of the committee that committee and you say the Chairperson is not at this meeting today he has recused himself who shall we have as Chairman for this meeting. You appoint a person, you record he is
20 appointed for this meeting and that is final. So it is a procedure within your committee so it is not a big issue.

[01:27:17]

MALE VOICE: Chair the – I just wanted to also highlight something that may also be an issue to consider. Remember that the chief executive and the FDR non-executive director their appointment is non-executive

directors comes from the executive directors.

[01:27:40]

MR LINNELL: Except the CEO, ja.

[01:27:41]

MALE VOICE: There appointment comes from the shareholder.

[01:27:43]

CHAIRPERSON: Yes.

[01:27:44]

10 **MALE VOICE:** I am sitting here and thinking have we requested, have we notified the shareholder or recommend to the shareholder that because of A, B and C this is what the board has decided to do because I am still struggling to think whether can the board without a nod from the shareholder suspend both.

[01:28:10]

MS NAIDOO: Are you asking like whether there is a written letter that is beings sent to like a formality.

[01:28:14]

20 **MALE VOICE:** Yes.

[01:28:15]

MS NAIDOO: The nod is there the formality.

[01:28:16]

MALE VOICE: Ah, the formality.

[01:28:17]

CHAIRPERSON: But sorry we are not suspending them as directors only the shareholder can do that. We are just

suspending them as officers of this organisation but as directors of the board is the shareholder who will do that.

[01:28:33]

MR LINNELL: Can I answer there because that is the right answer. You dealing with them in an employee capacity.

[01:28:40]

CHAIRPERSON: Yes.

[01:28:41]

10 **MR LINNELL:** Not as a director the memorandum of a corporation specifies that there are as ex-officio directors. So this board has no power to remove them.

[01:28:51]

CHAIRPERSON: Yes, that is the point...[intervene]

[01:28:52]

MR LINNELL: Because the memorandum of a corporation determines what this boards powers are and so this board is not interested as you rightly say their role as director and if you have a board meeting tomorrow even though

20 they are suspended as an employee they could come to the board meeting...[intervene]

[01:29:06]

MALE VOICE: Absolutely.

[01:29:07]

MR LINNELL: And we will have to send them a notice of all board meetings as you would normally do you cannot

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
10 months and you might be making major commercial decisions and you suspended the person because of his involvement in one of those decisions. So he is not allowed to come to work but he can sit and adjudicate over this decision.

[01:29:41]

MALE VOICE: Absolutely.

[01:29:42]

MR LINNELL: So it compromises the process but at the moment the law, the regulations governing this board says
20 you cannot change it. So you dealing with him greatly as an employee, you do not – I think the courtesy you should tell your CEO or the minister that this has happened but it is not approval. You are not advocating that status.

[01:30:04]

CHAIRPERSON: Can the shareholder then exercise any right to suspend them from directorship?

[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]

10 **MR LINNELL**: It is the board. Look there is some interesting recent cases and there is one going on I think with the Department of Agriculture, Department of Energy at the moment that the board suspended the CEO. So the board took a decision like you taking suspended here and then the Minister came and said to the board no you must put them back and they refused and then they had a meeting and they all walked out of the meeting with their heads down and reinstated him. Now I am afraid to say either they were cajoled to do that but in law the
20 shareholder had no power to that whatsoever it is the board's decision and so the shareholder can say to the board if you do not do as I tell you I have got to fire you guys in 14 days. So that is a thing you think about but you cannot tell him what to do, you are in charge of this business and she is not. But it is an interesting, it will be an interesting case reported to tell the board to reinstate.

[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]

10 **MS KLEIN:** Ja you do not want to be in that position right now do you.

[01:40:42]

MALE VOICE: This is a manual I had his name linked to the communication. I do not even know what it is ambassador.

[01:40:55]

MS KLEIN: Ja.

[01:40:56]

MALE VOICE: But Chair if you do have a press

20 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.

10 **[01:41:17]**

MALE VOICE: Alright Chairperson.

[01:41:18]

CHAIRPERSON: No I will be the person that is for sure.

[01:41:20]

MS NAIDOO: Ja.

[01:41:21]

MALE VOICE: A press release?

[01:41:22]

CHAIRPERSON: I will not call a press media conference.

20 **[01:41:23]**

MS NAIDOO: The press will have a field day with you.

[01:41:25]

CHAIRPERSON: I will not do that now.

[01:41:27]

MS KLEIN: Absolutely until we have you know enough information. [indistinct-cross-talking]

[01:41:33]

MS NAIDOO: Is this meeting over or are we going to dismiss because I think some of us can be excused.

[01:41:40]

CHAIRPERSON: Okay look we done on the board side. [indistinct-cross-talking]. We are done on the board side.

[01:41:58]

MALE VOICE: Yes sir.

[01:41:59]

CHAIRPERSON: So let us just sit as a...

10 **[01:42:01]**

MALE VOICE: Peoples governance.

[01:42:02]

CHAIRPERSON: As a people's governance and just see where we going to go.

[01:42:04]

MS KLEIN: Okay fine.

[01:42:05]

MS MABUDE: Chairperson.

[01:42:06]

20 **CHAIRPERSON**: Yes.

[01:42:07]

MS MABUDE: Your colleague.

[01:42:10]

MALE VOICE: You had something that you did not even do.

[01:42:12]

MS NAIDOO: You did not even respond to.

[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.

10 We have load shedding cost by maintenance and irregular maintenance really. We have a financial client here were almost bankrupted as a company. We cannot sit here as a board and wonder why we need to make an investigation. No we cannot it is unacceptable. I cannot have board members asking what is the root cause for us to have this investigation, I cannot accept that.

[01:45:38]

MALE VOICE: No I think Chairperson it the...[intervene]

[01:45:41]

20 **CHAIRPERSON**: If I understand it we will be saying then it is unacceptable, I cannot.

[01:45:43]

NORMAN: No, no it is emanating from the fact that there are some reports somewhere when we had our meeting that there are some reports that you already done hence, I was just hopeful for searching for such reports if they are

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]

10 **CHAIRPERSON:** Unless the others want to join the committee that is fine we can proceed.

[01:46:47]

MS NAIDOO: Okay I can stay.

[01:46:49]

CHAIRPERSON: Oh they will stay; okay fine we can go into the committees meeting. Now modes operandi since I have now been asked...

[01:46:58]

MR LINNELL: Pressed by these communications because

20 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]

10 **MR LINNELL:** You implement them; you have the power.

[01:47:45]

MS KLEIN: But you can inform the board.

[01:47:46]

MALE VOICE: Ja.

[01:47:47]

MR LINNELL: Very important step you should not cut the board out everything you do you should inform them,that is out of keeping them informed but not to counter your decisions.

20 **[01:47:56]**

MALE VOICE: Your committee is statutory also, no.

[01:48:01]

MALE VOICE: No audit and risk.

[01:48:02]

MALE VOICE: Oh you talking about audit and risk.

[01:48:03]

MR LINNELL: But not for this purpose.

[01:48:05]

MALE VOICE: No not for this purpose.

[01:48:06]

CHAIRPERSON: Okay can we have – what were you saying Nick what is the modes operandi?

[01:48:11]

MR LINNELL: I would think that you have got to look at this communication it should be because the rumour mill will be running wild.

10 **[01:48:16]**

CHAIRPERSON: Yes.

[01:48:17]

MR LINNELL: And if you do not say anything people fill the vacuum with what they think is a good thing to say. So I think you have got to think of the two communications one to the media and one to your staff. At the moment you have not suspended anyone as you sit here so your first communication is probably to tell people that you had taken a decision to do something which is this investigation

20 and you have appointed a sub-committee to do, to have oversight and to do the necessary things to enable it.

That is your first communication and then internally you want to tell them but I again with more heart and then as soon as you have taken any new decisions with regards to suspension you will make another communication both internally and externally and then internally then becomes

more important because as I say...[intervene]

[01:49:05]

MALE VOICE: But Chairperson just to clear all sorts of if we – I propose a resolution that the people in governance committee has been delegated to implement the in-principle board decision to suspend the four executives and to follow due process. Yes, it summarises...[intervene]

[01:49:29]

CHAIRPERSON: Okay have you got that now.

10 **[01:49:30]**

MR LINNELL: Ja.

[01:49:30]

CHAIRPERSON: Okay that is the answer.

[01:49:33]

MALE VOICE: Sure. Okay alright in terms of the communication I think there is four key stakeholders here. One is we got to communicate to the shareholder. The other one is we got to communicate to the customers.

[01:49:42]

20 **CHAIRPERSON:** Sure.

[01:49:43]

MALE VOICE: The customers both as an Eskom direct customers and also as the public and we should be able to communicate to the employees and management of the employees of this, there is two things there. So if we can capture that correctly so that we get the message across

correctly.

[01:49:59]

CHAIRPERSON: Okay.

[01:50:00]

MALE VOICE: If we can do all that in writing.

[01:50:02]

CHAIRPERSON: So the messaging is simply saying that the board has decided that it is – to carry out and...[intervene]

10 **[01:50:13]**

MS MABUDE: Fact finding.

[01:50:14]

CHAIRPERSON: A fact finding – what did we say?

[01:50:15]

MALE VOICE: A fact finding exercise to fix the business an independent fact gathering exercise fact finding to fix the business, right and do in lieu of that you have requested these particular.

[01:50:37]

20 **CHAIRPERSON**: No before that.

[01:50:38]

MALE VOICE: Before that.

[01:50:39]

MS NAIDOO: Sorry I cannot read you verbatim, can you.

[01:50:41]

CHAIRPERSON: No I just stopped it there. So the communicate will say the board has decided that it will

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]

10 **MALE VOICE**: That is fine.

[01:51:14]

MR LINNELL: And the word true might be a problem because it implies that it is currently not true.

[01:51:17]

CHAIRPERSON: Okay.

[01:51:20]

MR LINNELL: So it is an unnecessary adjective.

[01:51:22]

CHAIRPERSON: To establish an accurate status of the

20 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
10 message. So I think your message is a public now is a very short it is one or two paragraphs. We doing this and you make also the point that it does not imply that there is any sense of wrongdoing or an anticipated or unexpected risks because you do not want tomorrow the financial papers to say Eskom's board is doing this because they heard something awful is going to happen like we going to have a blackout tomorrow. So you have to say we doing this in a sense is proactive but you make a statement this does not mean the board fears there is any reasonable
20 likelihood from a deterioration of the current situation.

So people have got to be understanding we doing this for positive reasons there is no negative influence in this communication and I would keep it at that and say the board will communicate further. So keep that short and sweet you do not want any massaging. I think you would understand any risk phrases coming in and I think soon as

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.

10 **[01:57:33]**

MR LINNELL: What you want to do is say we as a board have taken a decision to do this the reason is that we want to better understand the status, the condition of our capacity and capability and make adjustments as are necessary in this business responsibility. And then reassure the public that there is no immediate risk that you are concerned of that they have not been previously told about. So it is a positive statement with countering a negative and then there are no negatives.

20 **[01:58:09]**

CHAIRPERSON: You will have to put something together.

[01:58:10]

MALE VOICE: Capture all that.

[01:58:10]

CHAIRPERSON: Did you capture all that?

[01:58:11]

MS NAIDOO: But you can work with Nick.

[01:58:12]

MALE VOICE: Ja.

[01:58:14]

MS MABUDE: And Andrew where does he fit in here?

[01:58:19]

MALE VOICE: Okay let me see, let me just get my...[intervene]

[01:58:21]

MR LINNELL: I did draft something.

10 **[01:58:23]**

CHAIRPERSON: Did you draft something?

[01:58:24]

MR LINNELL: Ja.

[01:58:25]

CHAIRPERSON: So let us have a listen then.

[01:58:26]

MR LINNELL: But again it is your decision I mean I just because obviously I have been thinking about the logical steps.

20 **[01:58:32]**

MALE VOICE: We are delaying the process in telling people that they are gone, they are going to go.

[01:58:35]

MS NAIDOO: Ja you all need to go ahead and do that.

[01:58:37]

MALE VOICE: They going to leave the offices.

[01:58:39]

MR LINNELL: Ja, can I just test an understanding with you as I understand it I might not be right but did the Minister inform any of the individuals that could well be suspended?

[01:58:55]

MALE VOICE: No the Minister is not involved no.

[01:58:56]

MS NAIDOO: No.

[01:58:57]

10 **CHAIRPERSON:** Our Minister is not involved.

[01:58:57]

MS NAIDOO: The Minister not, this is a board decision.

[01:58:58]

CHAIRPERSON: This is a board discussion.

[01:59:00]

MR LINNELL: Okay it might not be so in which case they already know.

[01:59:08]

MALE VOICE: Ja you sense the fact that sitting members

20 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.

10 **[01:59:32]**

MS MABUDE: It is the EC and the FDR directors so when he wants to see the board, they are part of the board but he specifically asked them...[intervene]

[01:59:47]

MR LINNELL: So was there any committee discussions done?

[01:59:48]

MALE VOICE: That is still there.

[01:59:50]

20 **MR LINNELL**: Oh okay she is, it is her call I mean there are no A and B to create directors typically but it is her call and there is nothing wrong with that. Absolutely she is allowed to come and talk in the committee it is not a board meeting. When she was addressing you, she was addressing you as a shareholder informally sharing with you her feelings.

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.

10 **[02:01:22]**

MR LINNELL: I assume I would have said something. [indistinct-cross-talking]

[02:01:42]

CHAIRPERSON: Okay this is Nick's...[intervene]

[02:01:45]

MS KLEIN: Suggested statement.

[02:01:46]

CHAIRPERSON: But we will print it, Leo.

[02:01:48]

20 **MALE VOICE**: Chairman

[02:01:50]

MS NAIDOO: Just read it to us it is fine.

[02:01:51]

MALE VOICE: Okays sorry can I just say Romeo said he has got a person to polish and handle our statement in such a way that it is well received but he cannot see this person right now. We need to draft it and email it to him...

[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.

10 **[02:05:25]**

MR LINNELL: What you're telling them at the moment is that you have taken a decision to have this investigation.

[02:05:27]

MALE VOICE: The investigation.

[02:05:28]

CHAIRPERSON: Okay, alright, right.

[02:05:31]

MS MABUDE: Chair can we leave after the mandatory part with the matter.

20 **[02:05:35]**

CHAIRPERSON: Okay.

[02:05:36]

MALE VOICE: Just leave it to the Chair.

[02:05:37]

CHAIRPERSON: Alright... [recording cuts off]

END OF RECORDING

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10

COMMISSION OF INQUIRY INTO STATE CAPTURE

12:10 4G

212

From: Venete Klein
To: Dan Marokane
Cc: Baldwin.Ngubane@gmail.c...
Zethembe Khoza
Anton Minnaar
21 May 2015 at 16:49

Settlement Agreement

Found in Gmail All Mail Mailbox

Hi Dan,

Herewith please find the settlement agreement as per the agreed offer that you have signed.

Kindly peruse and feel free to call me should you have any questions or comments.

My contact details are listed in the footer below.

Warm regards

Venete Klein
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