EXHIBIT

U4

BRAKFONTEIN BUNDLE

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01

STATEMENTS AND AFFIDAVITS

01.1
Mr Bester

AFFIDAVIT

I, the undersigned

Johann Andries Bester

do hereby state under oath in English:

1.

I am an adult male, with identity number 680206 5049 085. I am currently employed as a Project Manager at Thebe Investment Corporation. My office is situated at 18 Fricker Road, Illovo, Johannesburg.

My contact details are:
Office: +27 (0)11 447 7800;
Cell: +27 (0)71 591 8568; and
E-mail: johannabester@gmail.com

2.

This statement is true to the best of my knowledge and belief, I make it knowing that if it were tendered in evidence, I shall be liable for prosecution if I have wilfully stated in it anything, which I know to be false or do not believe to be true.

3.

I have been requested to provide information and to comment on my knowledge with regard to coal supply agreement entered into with Tegeta Exploration and Resources Pty Ltd (**Tegeta**) from their Brakfontein and Brakfontein Extension Coal Mines and to comment on the Optimum Coal Mine (**OCM**) coal supply agreement to the Hendrina Power Station. I have been shown documentation and correspondence relating to the matter. My knowledge and/or involvement during the relevant period will be discussed in further detail herein below.

4.

I obtained a MSc in Materials Science and Engineering from UCT in 1992 and worked for Boart Longyear (Boart manufactures equipment for the mining industry and was focussed on underground gold and coal mining) in various technical roles until I joined the Industrial Development Corporation (IDC) in 1999. I worked for IDC for c.a. 11 years in mining and large project finance. Shortly after returning from a secondment by the IDC to the role of COO of the Development Bank of Namibia in 2007 and 2008, I took a one-year sabbatical from IDC (my manager at the time didn't accept my resignation and held my job for me until I was due to finish my MBA). The sabbatical was towards the

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end of 2009, during which time I studied for my MBA from the University of the West of England. While completing my studies I was approached by Mr Dan Marokane, the then Group Executive - Technology and Commercial, to head up the coal procurement at Eskom SOC Limited (**Eskom**).

5.

I was employed by Eskom during the period 1 December 2010 to 20 August 2015 as General Manager: Fuel Sourcing, heading up a team of around 23 staff. Fuel Sourcing is one of the departments within the Primary Energy Division (**PED**). PED being a division of Group Commercial. In June 2013 I was asked by Mr Dan Marokane to act as Divisional Executive (**DE**) of PED, with its staff of 143, until 30 November 2013, the acting role was later extended until 31 March 2014. Attached as **Annexure JAB/Z1** is the organogram of the PED Structure.

6.

Attached as **Annexure JAB/Z2** is a high-level timeline of important events and employment dates of key people involved with the matters discussed herein.

On the morning of 20 July 2015, the day Mr Matshela Koko returned from his 11 March 2015 suspension, I told him at around 10h30 of my discomfort to continue discussing the Optimum and the New Largo Projects with him. I was uncomfortable because of the level of detail Mr Koko wanted from me, he wanted copies of every report that the consultants had produced for the Optimum negotiations, the independent valuations and reports written by both the technical consultant and Nedbank, he wanted the entire New Largo Feasibility Study. The Optimum reports I could still accept as these were relatively short but the New Largo Feasibility Study is several hundred pages. I told him I would bring him my resignation before 12 o'clock that same day. When I returned at around 11h00 he wasn't in his office, so I handed my resignation to Mr Koko's PA. My employment contract required me to only work a 30-day notice period, which was therefore until 20 August 2015 but on 18 August 2015 my then manager, Mr Vusi Mboweni, told me I no longer had to come to the office every day and he actually asked me why I had bothered coming in all these past weeks. Since my resignation I was effectively relieved of my duties and was left off most of the Primary Energy Division (**PED**) email groups and I was no longer invited to participate in PED meetings. However, I continued to have my own Fuel Sourcing Department meetings.

7.

In my role as the General Manager of Fuel Sourcing, I mostly reported to the Divisional Executive (**DE**) of PED. I initially reported directly to Mr Dan Morakane who was then a Group Executive of Group Commercial, until Mrs Kiren Maharaj was appointed during 2011 to the post of the Divisional

Executive: PED. After Mrs Maharaj left, by mid-2014, I reported to Mr Mboweni who was acting DE and the Senior General Manager (when he was appointed to the role permanently) until I left Eskom. I cannot recall the exact dates when each of them were appointed in the said positions, but Mrs Kiren Maharaj was appointed to the position of DE of PED during 2011 and left Eskom around July 2014 (having worked for Eskom for more than 20 years).

Until Mrs Maharaj's appointment I reported to Mr Dan Marokane, who had recruited me because he said he wanted someone from outside of the organisation who understood the real commercial world outside of Eskom, he also liked that I had mining project finance experience and had been involved in some multibillion rand projects and had operated at an executive level. Mr Dan Marokane was also suspended on 11 March 2014 along with Mr Matshela Koko but apparently Mr Marokane left after a financial settlement agreement was reached with Eskom for him to resign. Mrs Maharaj was drummed out of Eskom by June or July 2014, apparently she was also offered a financial settlement to resign. When Mrs Kiren Maharaj left, we functioned without a DE for a number of weeks until Mr Vusi Mboweni was appointed to be acting Divisional Executive towards the start of August 2014. I also acted in the position of DE of PED from time to time, as and when required. As General Manager: Fuel Sourcing, I was responsible for the commercial negotiations for the contracting of coal for supply to Eskom.

8.

As noted above, my role as acting DE for PED was until 31 March 2014 when Mrs Kiren Maharaj resumed her role as the DE of PED. After Mr Brian Dames left Eskom in March 2014, Mrs Kiren Maharaj, then the appointed DE of PED, was left reporting to Mr Matshela Koko, who took over from Kannan Lakmeeharan as Group Executive Technology and Commercial, when Mr Dan Marokane was asked to move to the Group Capital Division, responsible mainly for the building of the new power stations Medupi and Kusile, a year earlier Mr Lakmeeharan had stepped into his role. With Mr Dames and Mr Dan Marokane gone, Mrs Kiren Maharaj was left exposed. Mrs Maharaj was eventually paid to leave a few months later, her downfall was trying to push through a 15% cost saving for the road haulage rates for coal. Mrs Kiren Maharaj's position, that of DE for PED, was left open for a number of weeks until Mr Vusi Mboweni was asked to take the role of acting DE from the around the beginning of August 2014. Mr Mboweni's appointment was effective on Thursday 7 August 2014 to 30 November 2014 (this was extended later, and eventually he was appointed permanently but not as DE but as a Senior General Manager.

9.

Mr Matshela Koko's 1st day back at the office after his more than three-month suspension was Monday 20 July 2015. He had me summonsed to his office at 9h00 on that same morning. Mr Koko told me he wanted to be brought up to speed with important transactions such as Eskom's negotiations with Optimum (essentially Glencore as the main shareholder and funding partner of Optimum) 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.

10.

Prior to Mr Koko asking for the detailed Optimum and New Largo information I had for almost an hour fully appraised him of the status on Optimum and New Largo.

I recall that I explained to Mr Koko how important it was to keep the Optimum mine from shutting down and that as a last resort if Eskom did not have the stomach to pay a sustainable price for the coal from Optimum, in addition to Hendrina Power Station, then Eskom should rather consider purchasing Optimum from Glencore to supply Arnot Power Station, as we were running into supply problems from Exxaro's Arnot Colliery. I explained to Mr Koko that Optimum Colliery was relatively near logistically and the coal qualities were also similar. I told him that one could apparently see the washing plant at Exxaro's Arnot mine from the northern operations of the Optimum opencast section. But then Mr Matshela Koko started asking a little too much detail and for documents that I thought was unusual for someone at his level of seniority. I asked myself where he would even get the time to read through the New Largo feasibility study.

11.

I told Mr Koko that I was uncomfortable continuing meeting with him and that he would have my resignation before 12h00 that day and I walked out. I didn't wait for a reply. I dropped my resignation at his office at around 11h00.

I should have given my resignation to my line manager, Mr Vusi Mboweni, but he wasn't there for the day and I didn't want to be under Mr Koko's management for a day longer than I needed to be and I wanted to give my resignation to him. Also, Mr Mboweni had already threatened me twice, once when I was alone with him in his office and once in front of my colleagues at a PED meeting that he "would find someone else to do my job".

12.

Although I drafted my resignation quickly, I made sure I kept it simple and cryptic enough not to create a problem for myself. It was, however, still strange that Mr Koko felt comfortable to ask me to stay on for a further 3-months, he also did not sign my resignation until some weeks later. I was afraid that if I stayed, I might be set up to take the fall for something or that I would be asked to do something that would not be able to deliver. In any event I knew that Ms Ayanda Nteta was taking orders from above and that I had lost control of the negotiations with Optimum/Glencore, to find a workable solution for the Optimum coal supply to Hendrina Power Station. I knew my days were probably numbered. Almost immediately after my resignation Mr Mboweni dropped me from PED communications and from PED meeting invites, the only meeting I still attended were those that I arranged. I hardly saw Messrs Koko and Mboweni after this and Ms Nteta and I didn't discuss much after that.

13.

Tegeta's initial approaches to Eskom came through the different parties. I don't recall specific meetings, but I probably attended initial introductions in 2011. I had a team of 20 to 25 staff which were split into three teams, of which the relevant head of each team reported to me. I therefore had three 'direct reports', for most of the time Mr Sagie Chetty, Mr Mudzi Marageni and Ms Ayanda Nteta reported to me. Mr Chetty is still at Eskom and Mr Marageni and Nteta have since resigned. When Tegeta initially approached Eskom in 2011, it was probably Mr Chetty that met with them. Tegeta wasn't the initial name of the entity used, they used the names GoldRidge / Arctos / Idwala Crypts and two different companies and sets of frontmen were used to offer Eskom coal from their Vierfontein and Brakfontein Collieries. Mr. Rajiv Dabas was one of the initial representatives for Arctos, see **Annexure JAB/Z3**, it is also clear from this letter from Eskom to Arctos Trading (Pty) Ltd (**Arctos**) that PED was not going to compromise Eskom.

14.

It is clear from a later internal PED memo by PED's Environmental Department, dated 30 May 2012, see **Annexure JAB/Z4**, that a site visit to the Vierfontein Colliery, was conducted on 16 September 2011 and again on 30 May 2012 that there were still findings and not all of the required information had yet been provided. The memo also suggests there must have been some engagement even prior to the 16 September 2011 date. It is clear from this memo that the entity that approached Eskom was either referred to as Arctos or Idwala Crypts.

FnP JAB

15.

A memo drafted on 3 July 2012 to Mr Dan Marokane, see **Annexure JAB/Z5**, notes the serious environmental risks in contracting with Arctos/Idwala for the Vierfontein colliery. It also refers to legal opinion we sought from Webber Wentzel, see **Annexure JAB/Z6**, which is unusual, but in this instance we already new the stakes were high and we wanted to cover ourselves we didn't want Arctos/Idwala or their handlers questioning the stance we took, that of not contracting for coal from Vierfontein.

I always tried to word my correspondence carefully so as not to give "them" an inch of leverage, I state that the reason I sought legal counsel was "due to a desire to secure coal supply" for Eskom, note also that I changed the wording "non-compliance" to "status" in the 5 January 2012 letter to Mr Dabas, see **Annexure JAB/Z3**.

The fact that I was writing internal memos to Mr Marokane, then Chief Commercial Office (Group Commercial) on an operational matter shows that there was pressure from the top even on him to provide answers as to why Arctos/Idwala couldn't just jump onto the Eskom coal supply train.

The other interesting part of the 3 July 2012 note, see **Annexure JAB/Z5**, is that it refers to Goldridge/Arctos having offered coal from Brakfontein to Eskom as far back as May 2012, eventually it would take almost three years to start supplying Eskom. Thus anyone that claims that I or anyone within the PED team or my team bent over backwards to accommodate them need to retract such claims.

According to the correspondence from Idwala Coal to the DMR, in its letter dated 28 September 2011, it states in paragraph 3, that the holder of the mining right is Idwala Crypts Coal (Pty) Limited.

16.

Tegeta's environmental issues and lack of a water use license was eventually sorted out by the time the Brakfontein supply contract was signed, see **Annexure JAB/Z7**.

A memo from PED's Water and Environmental team was written after the site visit conducted on 30 May 2012, and it recommended that Eskom should not to contract Vierfontein as Arctos (later referred to as Tegeta) was mining through a wetland and did not have a water use licence, see **Annexure JAB/Z4.** Eskom would have informed Arctos that it would not enter into negotiations for coal from Vierfontein and never did.

FHP / JAB

17.

Even though the coal from the Brakfontein colliery could be burnt at Majuba Power Station, Eskom did not, until early 2015, contract with Tegeta, due mainly to environmental directives that PED was aware of at Brakfontein and their other colliery, Vierfontein. The directives were related to environmental transgressions and were issued by the then Department of Water Affairs (now the Department of Water and Sanitation). Towards the end of 2014 Tegeta rectified the river diversion and wetland issues, which were the subject of the directives, and they were eventually issued with an Integrated Water Use License by 22 December 2014, see **Annexure JAB/27.**

I was surprised that the Department of Water and Sanitation would issue a water use license during the period when most folk are on holiday already. When discussing the date with an Eskom colleague, my colleague advised me (I genuinely still believe my colleague had my best interest at heart) not to be foolish, that it was not my job to police another government department and that it would give those that wanted to get rid of me the ammunition they needed. This advice, I think was from Ms Suzanne Daniels, but I don't recall the incident well enough to be certain.

18.

This remainder of the discussion mainly applies to Tegeta's Brakfontein Colliery since Eskom would not take coal from Vierfontein Colliery for environmental reasons. I recall that the first test failed and if my recollection is correct, it was due to low volatiles.

It was then suggested that this was because the coal sampled was from a stockpile that had already been built, which was entirely possible since the mine was already operating in February 2014 when visited by the Mail & Guardian, see link to the article below.

https://mg.co.za/article/2014-02-06-illegal-gupta-coal-mine-accused-of-polluting-crop-irrigation-water

19.

I find it hard to accept that the sample was taken from a stockpile that had been allowed to weather for months above ground and not from a fresh stockpile. PED's Technical team would not, as a rule, have taken the sample from a stockpile that was weathered and thus having a high probability of having partly lost volatiles. The Technical team should have requested a freshly mined sample and they should have been there to observe and verify that this was the case.

The explanation was probably true, but I can't imagine that the PED Technical team would have allowed the sample to be taken from the old stockpile.

FMP / JAB

20.

A second test was run and because of the cost (I heard a figure of R200,000 mentioned before, but that might be the cost of running Research Technology and Development (RT&D) for a year divided by the number of tests performed) the need to re-run test would be avoided at best, i.e. the Technical team would do their work right the first time.

There was a request for a further test to be conducted and PED complied. I think even at this stage we already knew the stakes where high because it was a Gupta company and the President's son was a shareholder. I don't recall if we knew this as fact yet or by hearsay. Initially, the structure shown in **Annexure JAB/28** was provided. From time to time Mr Mboweni would call me, even on the weekend to check on progress with sampling and site visits. Although I knew who was probably behind the calls, I told him that he shouldn't entertain suppliers and that he should let his team deal with matters. The scheduling of site visits, sampling and testing is not the responsibility of Fuel Sourcing and I am not aware of a formal approval process to run a second test. Although it was probably unusual for a second test to have been conducted, there wasn't a rule against such a practice. Usually freshly mined coal is sampled and the seams are kept separate and are tested separately. Why this was not done in the first place should be of more concern than the retesting.

21.

At the end of March 2014, I received an instruction from the chairman's office to call my entire PED team to the main Eskom auditorium. At the time I was still acting DE, but my manager, Mrs Kiren Maharaj (who had been seconded to head the cost saving initiative at Eskom for the past financial year) attended, as she was aware of the meeting and was due to take over from me as DE of PED from 1 April 2014 and I would resume my role as General Manager of Fuel Sourcing. The Chairman, Mr Zola Tsotsi, berated the entire PED team on frustrating black owned suppliers and the coal transporters. For about 20 minutes he ranted and raged and then walked off the stage.

Mr Zola Tsotsi was not specific with any names or references. Ms Suzanne Daniels later told me he was unhappy with the progress on the coal supply agreement for Tegeta / Brakfontein and the other issue was related to the cost savings Mrs Kiren Maharaj wanted implement on the coal road truck transporting. This would later cost her, her job.

22.

Mr Tsotsi didn't allow for any responses and didn't allow for clarification questions. Fortunately for me, Mrs Maharaj then took the stage and responded gracefully saying that PED would do better and that the issues Mr Tsotsi had raised were important. Later she told me that the executive environment was very toxic and dangerous at the time and that it would be ill advised to challenge the Chairman.

FP JAB

We were gobsmacked as to the complete lack of respect for proper protocol. In what normal governance structure does the Chairman of a company address employees without going through the CE or without the CE present? What about the relevant Group Executive? Whether this was Mr Marokane or Mr Koko at the time I don't recall, because neither were there.

23.

A coal supply agreement from Brakfontein would always be a relatively small and short-term opportunity, not 30 to 40 years and initially for less than one million tonnes per annum, which we referred to as Medium Term (usually 10-years and less); and thus I would not normally get involved personally in the negotiations, my direct reports would lead the negotiations and I would only be concerned with the outcomes or if matters had deadlocked. Ultimately, I had oversight and my team would report to me from time to time and when concluding negotiations, neither I or my team had authority to sign, although Mr Vusi Mboweni would as a norm delegate his signing authority to me.

24.

When Arctos Idwala had initially approached Eskom in 2011, Mr Sagie Chetty, who I understand still works in the same or similar role at Eskom, dealt with them and then a couple of years later after I appointed Ms Ayanda Nteta and I asked her to manage part of the Medium Term portfolio, i.e. those suppliers that were emerging miners with a view to develop and bring emerging black owned miners/suppliers onto Eskom's books. During my time we increased the spend with black owned suppliers from R1.7 billion per annum to just short of R7 billion (Exxaro is excluded from this value calculation as it was near to R10 billion per annum on its own). Everyone knew the two golden rules, we did not buy coal from traders and we did not pay more for black ownership. If we compromised on this, it was my view that we would gradually see all coal being supplied at a higher cost without adding value, it was a target and not a policy and black owned suppliers had to compete on price as a first pass.

25.

Tegeta initially wanted R17.50 per GJ. On 23 September 2014 we received a written offer of R17 per MJ (this should have been per GJ) (see let in **Annexure JAB/Z10**). When I asked Ms Ayanda Nteta why they wanted such a high price, she said that Tegeta said that they needed a higher margin to fund their BEE shareholder.

I asked Ms Ayanda Nteta to make it abundantly clear to Tegeta that as a principle Eskom does not pay a higher coal price for black ownership, with black ownership being a target, paying a higher price for black ownership would be contrary to good procurement practice, as it would artificially increase

FHP/JAB

Eskom's coal price over time. It is a myth that so called "energy expert" Ted Blom, Mr Brian Molefe and Mr Matshela Koko enjoyed to propagate from time to time. See link below for full article.

https://www.news24.com/Columnists/DonwaldPressly/Inside-Parliament-Private-sector-crowded-out-from-Eskom-rescue-20150402

26.

When Mr Vusi Mboweni told me to conclude negotiations with Tegeta by the end of the week ending 30 January 2015, Ms Ayanda Nteta set up a meeting for Friday, 30 January 2015, where Tegeta's CEO, Mr Ravindra Nath and myself could meet (see minutes a copy of the draft minutes in **Annexure JAB/Z11**). At the meeting I made it clear to Mr Nath that a R17.00 per GJ price was far higher than Eskom should be paying and that Tegeta should be more reasonable with their expectations as Eskom had other options.

I offered them R12.50 per GJ after showing them a graph of their R17.00 per GJ price vs other suppliers to Majuba, similar to that in **Annexure JAB/Z12**. I had deleted the axis and source labels so as not to disclose confidential information, but the graph clearly showed how ridiculous their expectation was and in the back of my mind, I was thinking that it would be challenging for Mr Mboweni to take action against me for not having concluded at R15 per GJ.

27.

Mr Nath and his colleagues walked out of the meeting. I went back to my office. About half an hour later Ms Ayanda Nteta came to my office and told me that there had been a lot of shouting at the executive suite and that "people were very upset" (I assumed she meant those who would benefit from Tegeta signing a contract with Eskom where upset and would have complained to Mr Koko or the Chairman) but that the Tegeta negotiating team were prepared to make a counter offer and had come back to the meeting room. We used a boardroom in the executive suite, almost directly opposite Mr Koko's office and one or two doors from Mr Mboweni's office. It was unusual for PED to meet suppliers in the executive suite if there was no Eskom executive involved. Tegeta was clearly getting special treatment.

I went back to the boardroom in the executive suite, where Mr Nath informed me that Tegeta wanted to counter offer with a price of R13.50 per GJ. I told Mr Nath and his colleague that I would accept the offer provided that Eskom had the first right of refusal to take any additional coal from the adjacent property that they were still developing (Brakfontein extension), on the same terms and conditions, i.e. including but not limited to quality and pricing. I wanted Eskom at least to have a valuable right for making a concession on price and I wanted to avoid the price from becoming a negotiating point again in the future, and by then the supply plan was showing that we actually required additional coal at Majuba over the next few years. I captured the terms on a letter dated to Tegeta dated 12 February 2015, see **Annexure JAB/Z13**.

28.

Tegeta, later turned this around and made it that Tegeta had the right to supply Eskom the additional coal. I don't recall exactly why I agreed to this nor exactly how this evolved, this is the one part of my statement that bothers me, unless, as I said earlier, I didn't think they would ever get to supply Eskom the additional volume, I guess I was right.

29.

The Technical team would ordinarily have recommended that we don't contract with Tegeta whilst we had other options, as their qualities were marginal from Brakfontein, although seam 4 lower was acceptable, this is typical across the coalfield. But this is not the only coal supplier blending seam 4 upper into their blend and Eskom did need additional coal at the time, the Integrated Planning Department of PED can confirm this.

30.

I always knew that there was interest in the Tegeta / Brakfontein contract from higher up, even since 2012, but significant pressure and focus came from the start of 2015, Brakfontein by then had its water use licence and we had run out of legal excuses to keep batting them away. From the beginning of 2015 we had to provide Mr Matshela Koko with weekly progress reports. Also I suspected that Mr Koko was engaging Ms Ayanda Nteta directly, although she reported to me. He never directly put pressure on me, but he did on her. Mr Vusi Mboweni at one stage instructed me to finish off the commercial pricing negotiations before the end of the week and a number of weeks later he told me to get the agreements ready to sign within 48 hours or he would find someone else to do it. I tried and explain to him that we had only recently agreed on price and that the Tegeta team were a little out of their depth in terms of their first Eskom coal supply contract and they need to go through the nearly 160 pages, including Annexures. The annexures relating to the coal quality management procedure and the transport annexure are complex and need to be tweaked depending on the equipment, stockyard layout and availability of weighbridges.

31.

I saw Mr Mboweni's threat of finding someone else to do my job as moving someone into my role that would just do as they were told. I reasoned that if I allowed Mr Mboweni to replace me, it would

FMP JAB

allow him and his handlers to dictate terms and would have put the next layer of employees below me under the same threat. So I figured I would try and get the best outcome under the circumstances, get the contract agreed but with all the conditions that we needed to protect Eskom.

(Moving people around Eskom without a proper process had also become the norm, and I think many were too scared to cry foul. Mr Mboweni being appointed to act as DE was fine, but why was there no proper process when he was made the permanent head of PED. When I joined Eskom, there was a rigorous interview programme over two days, including a psychological evaluation, an aptitude test, a case study I had to prepare overnight and present the next day and then a panel interview which included members of Eskom's Exco. Why had I not been offered the post, in which I had acted for most of the previous year and I had a far more commercial and mining industry related experience than he did?)

32.

There was a chance that whenTegeta actually had to run the operations at the volumes they wanted to supply, they would fail, either by not being able to supply the volumes, or not being able to meet the qualities (in which case they would not be able to supply) or they would not be able to run their operation profitably.

I and my Eskom/PED legal counsel, Ms Andrea Williams, and Ms Ayanda Nteta, came under huge pressure to turn the contract over in 48 hours from the Monday of the week that Mr Koko was suspended. Ms Williams worked through the night and we eventually signed on Tuesday 10 March 2015, but because not all conditions had been met Ms Williams covered Eskom by including those as conditions subsequent.

33.

I realised later that Mr Koko and his handlers had two games running, each with their own timelines, the primary one was to get rid of Finance Director, Ms Tsholofelo Molefe and Group Capital Executive, Mr Dan Marokane. In hindsight, it makes sense why we came under such pressure from Mr Koko and Mr Mboweni as those pulling the strings needed to effect the suspension of the four executives including Mr Koko (as a ruse) and the Brakfontein contract was taking longer than they had anticipated and I guess they were worried that without Mr Koko they would not be able to apply any leverage over PED. It is well documented that the contract was signed on 10 March 2015 and that Mr Koko was suspended on 11 March 2015, the next day after the contract was signed, but few have joined the dots.

FMP VAB

34.

Also of interest is that Mr Vusi Mboweni signed this contract, at the time he was acting DE of PED (in other words the head of the Primary Energy Division, in charge of several departments, including Technical, Fuel Sourcing (me), Environmental and Operations. It was clear that Mr Mbowni often did not want to be accountable and didn't take responsibility, as a norm he delegated his authority to me which meant for me to get my job done and get coal contracts signed I would have to vouch that each of his direct reports and support departments had done their work, see **Annexure JAB/Z9**. I had to sign off that the Technical, Environmental and Finance Departments had done their work and were compliant with internal procedures. Similarly, I recall when I had asked Mr Mboweni to sign the submission in support for the extension of the Medium Term mandate, he didn't want to, he wanted every new contract to go to the Eskom Board Tender Committee (BTC), probably to absolve him further of being accountable. This would become impractical to manage; no wonder Eskom keeps having coal supply shortfalls over the last number of years. It is well known that as recently as November 2018, Eskom entered into 27 new coal supply contracts, the shear volume of approvals and the six-week run up to the BTC would be a challenge (Submissions are sent to Excops first, two weeks before they meet and then it is a couple of weeks between Excops and the BTC and if you miss a cycle you have to wait four weeks for the next, so on average there would be a six-week period between negotiations ending and BTC approving.). The Medium Mandate had worked well until then, and in fact I still believe that even the Brakfontein contract was valid and properly negotiated and although entered into under pressure, did not compromise Eskom. Eskom was compromised when Mr Koko suspended those trying to implement the conditions of the contract. The system wasn't broken, people like Mr Koko tried to compromise the system that was in place and people like Mr Mboweni appeared to be powerless to push back. Interestingly, in this instance Mr Mboweni signed, he was probably told to so, to ensure that the validity of the contract couldn't be questioned.

35.

In the days leading up to the suspension by Eskom Chairperson Mr Zola Tsotsi of the four executives – CEO Mr Tshediso Matona, Finance Director Ms Tsholofelo Molefe, Group Capital Executive Mr Dan Marokane and Technology and Commercial Executive Mr Matshela Koko, Mr Mboweni told me to conclude the commercial negotiations with Tegeta / Brakfontein before the end of the week because there was a perception that we have been frustrating this transaction for over 4-years. I told Mr Mboweni that he knew full well that this was not a true reflection of events and as it was Tegeta themselves that weren't able to meet our environmental and technical requirements timeously and that the price they were demanding was ridiculous for the coal quality they were offering. Mr

FMP JAB

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.

FM JAB

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

FAP JAB

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

50.

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.

JABaxter

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

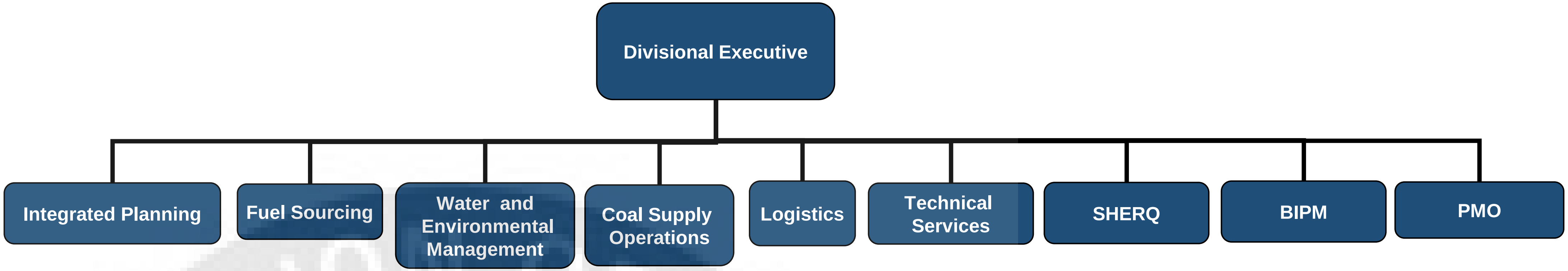
FRANK HUMPHRY PISANE
ATTORNEY
COMMISSIONER OF OATHS (RSA)
THEBE HOUSE, 2ND FLOOR,
166 JAN SMUTS AVENUE
ROSEBANK, 2196

FHP JAB

Annexure "JAB/Z1"

BRAK-023

Primary Energy Structure



Annexure "JAB/Z2"

Timelines

Mr Johann Bester
Employment commenced 1 December 2010
Resignation 20 July 2015
last day of 30-day notice period was 18 August 2015

Mr Matshela Koko
Started working at Eskom straight after university, say from around the mid-1990's
Suspended 11 March 2015 (Brakfontein/Tegeta contract signed 10 March 2018)
Suspension lifted 15 July 2015
Returned 20 July 2105

Mrs Kiren Maharaj
I think she started working for Eskom in the late 1990's
Suspended after March 2014 and paid to leave by July 2014

Mr Vusi Mboweni
According to Mboweni, during July 2014, Koko approached him to act as Divisional Executive of PED.
August 2014 – Mr Mboweni joined PED as acting DE

Mr Brian Molefe
appointed Acting GCE of Eskom and
later GCE from 1 March 2015

Brakfontein / Tegeta
23 January 2015 - meeting held between Eskom and Tegeta, discussion of tests results conducted on the Brakfontein seam 4 lower, seam 4 upper and a blend of the seams.
30 January 2015 - terms and conditions of the Brakfontein offer agreed
Minutes of the meeting held between Eskom and Tegeta on 20 February 2015
10 March 2015 – Memo to Mr Mboweni summarising key contract conditions
10 March 2015 – Brakfontein CSA signed by Mr Mboweni
Minutes of a meeting held between Eskom and Tegeta on 16 April 2015 and

Optimum timelines
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

13 November 2014 - letter to extend Agreement

26 February 2015 - submission "Mandate to conclude negotiations with Optimum Coal Mine for Coal Supply to Hendrina power station"

25 March 2015 – the submission "Mandate to conclude negotiations with Optimum Coal Mine for Coal Supply to Hendrina power station"
26 March 2015 memo summarising the negotiated position

15 April 2015 – Board Tender Committee (BTC) defer decision to full Eskom Board meeting

17 April 2015 – Brian Molefe arrives at Eskom

23 April 2015 – full Board meeting, but not presented according to Suzanne Brian takes it upon himself to resolve

18 May 2015 – Brian meets with Clinton and advises that Eskom would not be concluding any deal with Optimum and would continue enforcing the existing coal supply agreement

22 May 2015 - Hendrina Coal Supply Agreement letter from Optimum stating that it has exhausted its available banking facilities and requires approximately R100 million per month in order to sustain operations

10 June 2015 – Letter from Brian that Eskom will enforce the contract and terminates the settlement process

Ivan Glasenberg meeting with Brian

23 June 2015 – Reinstatement of Hardship Arbitration in response to 10 June 2015 letter from Eskom

30 June 2015 – Letter from Clinton Ephron to Brian Molefe with R300 per tonne offer

31 June 2015 – Brian rejects Clinton's Offer

16 July 2015 - Eskom letter of demand to Optimum to claim historical penalties and future penalties

31 July 2015 – Optimum Board resolves to place company in business rescue

4 August 2015 Glencore announces business rescue proceedings

7 August 2015 - Optimum Coal Mine's mining licence was briefly suspended by the DMR

13 August 2015 - Marsden wrote a letter to Nteta confirming various calls and SMS's between them and requesting confirmation of a meeting to be held between Eskom and the OCH Business Rescue Practitioners.

14 August 2015 – Nteta response to Marsden meeting request

18 August 2015 – Johann Bester's last day

Annexure “JAB/Z3”

Eskom

Mr R Dabas
Director
Arctos Trading (Pty) Ltd
Block A, First Floor, Grayston Ridge
144, Katherine Street
SANDTON
2146

Date:
05 January 2012

Enquiries:
+27 11 516 7373
Nqabakazi Tetyana
Ref: 717300

Dear Mr. Dabas

~~RESPONSE TO~~ ARCTOS ON ENVIRONMENTAL STATUS~~NON-COMPLIANCE~~

Commented [JB1]: Not sure we can head the letter as non-compliance as we are not the regulator and there appears to be disagreement.

Discussions between Eskom and Arctos regarding the environmental non-compliance of Vierfontein Coal Mine refer;

In previous meetings with Arctos, 11 environmental concerns were discussed. According to Arctos, all of the concerns had been rectified and conclusive documentation would be provided, except for ~~the~~ one relating to the river diversion approvals (point No. 10). The relevan documention~~is~~ has not yet been received by Eskom~~did not happen as committed~~. The information pack submitted on the 14th of December by Arctos does not provide sufficient information to give assurance that Arctos/IDWALA complies with the current environmental legislation requirements.

Eskom is concerned that the lack of environmental compliance poses a legislative risk to Vierfontein Colliery, and subsequently to Eskom's coal supply~~reputation by contracting with Arctos and the potential supply of coal to Eskom~~ and Eskom's corporate practices.

Point No. 10 previously earmarked for consideration as a suspensive condition will have to be resolved prior ~~before~~ to the conclusion of a contract. The suggestion to make it a suspensive condition was based on Arctos's verbal assurances~~guarantee~~ that the wetland was "non-sensitive". However, the specialist report (Wetland Assessment Report by GEM-SCIENCE CC on 13 December 2011) received conflicts with this view point. The fact that the specialist report states that "Our scientific observation is that mining activities at the Vierfontein Site have additionally modified the environment and mined a portion of a non-perennial stream and its associated wetlands" is cause for concern and supports the matters of concern in the pre-directive from the Department of Water Affairs ("DWA").

Eskom is of the opinion that there is a high possibility and likelihood that DWA could issue Arctos/IDWALA with a directive to discontinue operations in the absence of an acceptable action plan to rectify DWA's concerns. Based on this, Eskom cannot continue with the negotiations for coal supply from Vierfontein Mine until all the issues have been resolved with DWA, and sufficient comfort has been provided that mining operations are compliant.

Arctos is thus requested to rectify all environmental concerns and furnish Eskom with written proof from DWA that the Vierfontein Mine operation is compliant with all environmental requirements. Eskom is willing~~may~~, without creating any obligation on either Eskom or Arctos, to provide some guidance on how to meet the environmental requirements. Please note that this is a mere expression of intent to assist Arctos/IDWALA towards compliance. It does not create any obligation on either Eskom or Arctos/Idwala to enter into an agreement regarding the purchase and or supply of coal.

Commented [N2]: Perhaps we can agree on a reasonable date here taking into account the amount of work they need to do to be compliant, after which the offer to help them get to this stage lapses???

Only after the environmental concerns are resolved to Eskom and DWA's satisfaction and the rest of Eskom's contracting requirements are met, including but not limited to submission of Tax clearance certificates, BEE scorecards, and the last three year's financial statements, will negotiations towards a Coal Supply Agreement recommence.

Regards

Kiren Maharaj
Divisional Executive Primary Energy Division.

Annexure "JAB/Z4"

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Primary Energy Division: Medium Term Negotiations

Environmental Portfolio

Supplier	**Arctos / Idwala Crypts (Pty) Ltd**
Source	**Vierfontein Colliery**
Date of Assessment	**30 May 2012 (2nd assessment)**

Compliance by the abovementioned Supplier to the Eskom criteria is as follows:

Document	Yes	No	N/A	Comments
Approved & Valid Mining Right/Authorisation	X			Valid, granted on the 25 October 2010.
Approved EMP	X			Approved 28 October 2010
Water Use Licence / Permits		X		New application submitted to DWA on 23 April 2012. This proof of submission has not been provided to Eskom. No acknowledgement from DWA that this is a valid submission.
Closure cost assessments		X		No quantum's to date.

Background

This report provides feedback on previous consultations with the Supplier and the subsequent site visit held on 30 May 2012.

A number of concerns were raised following the site visit 16 September 2011 and subsequently eleven items of concern were required to be addressed by the Supplier. This was communicated to the supplier on various occasions.

The supplier responded to these items of concern and provided some of the documentation as requested in December 2011. This information was however, incomplete. Subsequent consultation with the Supplier did not result in the correct information being furnished.

A follow-up site visit was conducted by the Primary Energy Division (PED) Environmental Department on 30 May 2012.

Recommendations

Based on the incomplete information previously received from the supplier in December 2011, the subsequent discussions with them and the additional site inspection conducted on the 30 May 2012, Primary Energy Division (PED) Environmental Department maintains that we **do not** support the contracting of the above-mentioned supplier due to the following reasons:

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1. Legal compliance

Public concerns were raised in July / August 2012 regarding the Supplier mining through a wetland and not having a Water Use Licence (WUL).

a) The Supplier has had verbal contact with the aggrieved parties regarding the concerns raised. The Supplier needs to assure Eskom that these parties are satisfied with the discussions and the activities taking place on site.

b) The Supplier submitted a WUL application in October 2010 to the Department of Water Affairs (DWA). Additional information was requested by DWA and this information was submitted in November 2011by the supplier. The DWA responded to this application in November 2011. This application was rejected by the department as not all the information for evaluation was submitted. The Supplier subsequently submitted a second application on 23 April 2012. Proof of this submission has not been sent to Eskom.

c) The Supplier has previously mined through the Rietspruit River. A wetland specialist assessment was completed by GEM Science and the report completed end 2011. This report has been submitted to the DWA enforcement team. The Supplier needs to assure Eskom that the report is acceptable to the DWA.

d) The DWA issued the Supplier with a pre-directive in August 2011, to which the Supplier subsequently responded. The DWA enforcement office responded in November 2011 that the aspects identified were not satisfactorily addressed and were going to issue a directive. No response or further communication from DWA has been received in this regard.

2. Outstanding information/requirements

The following information is to be provided to Eskom to obtain assurance that the concerns raised previously have been addressed accordingly.

a) Confirmation from the authorities (DWA and Mpumalanga Department of Economic Development, Environment and Tourism – MDEDET) that they are in agreement with the activities taking place on site.

b) Confirmation and assurance from DWA that the WUL submitted in April 2012 is a complete application and may be considered for evaluation.

c) Copies of minutes of meetings/site visits held with DWA regarding the applications and discussions with them.

d) Implementation of the recommendations made in the wetland management rehabilitation plan.

e) Supplier to confirm in writing with DWA enforcement office that no directive will be issued and provide evidence of such to Eskom

f) Supplier to confirm if the WUL application on 23 April 2012 contained all water uses, including the pollution control dams and river diversion.

g) Proof of engagement with MDEDET regarding the mining through the Rietspruit River and subsequent EIA application thereof.

Compiled by:

Eappleyard.

Esther Appleyard
Senior Environmental Advisor

Supported by:

Meera Mban
Environmental Manager

Annexure "JAB/Z5"

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Eskom

Dan Marokane

**CHIEF COMMERCIAL OFFICER
(GROUP COMMERCIAL)**

Date:

03 July 2012

Enquiries:
Nqabakazi Tetyana
+27 11 516 7373
Our Ref.: 717xxx

Dear Dan

DISCONTINUATION OF COAL SUPPLY NEGOTIATIONS WITH VIERFONTEIN COAL MINE (ARCTOS/IDWALA) DUE TO ENVIRONMENTAL NON-COMPLIANCE.

An environmental due diligence completed at Vierfontein Colliery identified serious environmental risks that needed to be addressed by Arctos/Idwala before a coal supply contract could be considered.

Arctos undertook to rectify all the risks and submit proof of documentation to Eskom but failed to comply with this undertaking. Furthermore, Arctos failed to submit supporting documentation (Mine plans and schedules) for the resources declared. There was also a concern that the mining and environmental approvals were obtained for a combination of underground and opencast mining methods, while the company planned to mine using opencast methods only throughout the resource area to maximise extraction.

Due to the desire to secure coal supply, Eskom sought legal opinion from Webber Wentzel through the Corporate Legal department, and the opinion recommended that Eskom not contract with Vierfontein as they are mining in contravention of legislation. (See attached from Corporate Legal). Eskom has not yet officially communicated this to

Primary Energy Division
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Tel +27 11 800 8111 Fax +27 11 800 5555 www.eskom.co.za

Arctos; however Arctos have also not come back to Eskom with the requested proof of compliance.

In May 2012, Goldridge/Arctos offered coal (S4 and S2) to Eskom from Brakfontein (see attached offer). A cross functional team is currently evaluating the resource.

A sample from the 4 seam has been taken for combustion tests and results are expected this week ending 6 July 2012. Preliminary desktop technical investigation shows that Brakfontein 4 seam may need beneficiation while the 2 seam can make a Raw Eskom product. This will be confirmed after the sample results are received. A sample from the 2 seam will be taken as soon as it is exposed.

An environmental due diligence has revealed that there are outstanding approvals with regards to the water use licence and Mr. Rajiv Dabas of Arctos has undertaken to liaise with the authorities to get the required approvals. An environmental report is pending Mr. Dabas submitting these documents to Eskom. There is a concern that Brakfontein environmental compliance may take a similar route as that of Vierfontein since the two sources are under the same management. Eskom awaits submission of documents since 13 June 2012.

Yours sincerely

Johann Bester
GENERAL MANAGER (FUEL SOURCING)

Annexure “JAB/Z6”

WEBBER WENTZEL

ALN

10 Fricker Road, Illovo Boulevard, Johannesburg
South Africa, 2196
P O Box 61771, Marshalltown, South Africa, 2107
Docex 26 Johannesburg
T +27 11 530 5000
www.webberwentzel.com

Andrea Williams
Eskom Holdings (SOC) Limited
CC: Sagie Chetty

Your reference	Our reference	Date
	DHL Booysen/ Sanusha Govender 2293566	05 June 2012

Dear Andrea

Compliance at Vierfontein Mine - Idwala Crypts (Pty) Limited

1. **Introduction**

1.1 Eskom wishes to enter into a Coal Supply Agreement with Idwala Crypts Proprietary Limited ("**Idwala**"), for the supply of coal to Eskom's power station. During Eskom's environmental due diligence, it was ascertained that Idwala has not complied and is not complying with certain environmental laws.

1.2 Eskom has requested us to provide an opinion on:

1.2.1 whether or not Idwala is mining lawfully in the context that the Department of Water Affairs ("**DWA**") and/or Department of Mineral Resources ("**DMR**") has not suspended Idwala's mining operations;

1.2.2 whether Eskom can be protected if Idwala guarantees that they are compliant; and

1.2.3 what liability and/or risks are Eskom exposed to, should it enter into a coal supply agreement with Idwala.

2. **Applicable Legislative Provisions**

2.1 <u>National Environmental Management Act No 107 of 1998 ("**NEMA**")</u>

2.1.1 NEMA came into operation on 29 January 1999. Chapter 5 of NEMA deals with integrated environmental management, including environmental impact assessments. Since 2006, NEMA has largely replaced the old Environmental Conservation Act, 73 of 1989 as the primary statute that regulates "listed activities" and "specified activities" (published by Minister and/or MEC) that require authorisation following some form of Environmental Impact Assessment ("**EIA**").

2.1.2 Section 24F(1) of NEMA stipulates that, notwithstanding the provisions of any other Act, no person may commence an activity listed or specified in terms of section 24(2)(a) or (b) unless the competent authority has granted an environmental authorisation for the activity In terms of section 24F(2), it is an offence for any person to fail to comply with or to contravene these stipulations. Failure to obtain such authorisation may result, upon conviction, to imprisonment for a period not exceeding 10 years or a fine not exceeding R5 million (or both).

2.1.3 Section 24 requires the applicant to consider, investigate, assess and report the consequences for or impacts on the environment of the listed activity or specified activity to the competent authority. This requirement is fulfilled through the process of conducting an EIA.

2.1.4 The first set of NEMA EIA Regulations and listed activities in terms of Chapter 5 of NEMA were promulgated on 21 April 2006 under GNR 385, GNR 386 and GNR 387 of *GG 28753* and came into operation on 3 July 2006 ("**2006 NEMA EIA Regulations**" and "**2006 NEMA listed activities**").

2.1.5 On 18 June 2010 the second set of NEMA EIA Regulations and listed activities were promulgated under GNR 543 *GG 33306* which were subsequently amended and came into operation on 2 August 2010 ("**2010 NEMA EIA Regulations**"). With these 2010 NEMA EIA Regulations coming into operation, the 2006 NEMA EIA Regulations were repealed, subject to the transitional provisions.

2.1.6 In addition to the 2010 NEMA EIA Regulations, three sets of NEMA listed activities were published on 18 June 2010 and came into operation on 2 August 2010:

2.1.6.1 GNR 544: These activities ("**Listing Notice 1**") deal with nationally listed activities for which a streamlined basic assessment is to be conducted as part of the application process. Listing Notice 1 replaced the 2006 NEMA listed activities under GNR 386.

2.1.6.2 GNR 545: These activities ("**Listing Notice 2**") deal with nationally listed activities for which a more cumbersome scoping report and EIA / EMP is required to be conducted as part of the application process. Listing Notice 2 replaced the 2006 NEMA listed activities under GNR 387.

2.1.6.3 GNR 546: These activities ("**Listing Notice 3**") deal with listed activities for which a basic assessment is required in respect of certain geographical areas only. Listing Notice 3 is novel in that none of the previous listed activities were geographically specific.

2.1.7 Triggering a listed activity requires that environmental authorisation be obtained before the commencement of the activity.

2.1.8 Section 24G of NEMA provides for rectification of the unlawful commencement of listed activities without the requisite environmental authorisation from the competent authority. The procedure involves the submission of reports, paying of an administrative fine, which may not exceed R1 million and which must be determined by the competent authority and consideration of the rectification application once the administrative fine has been paid. The competent authority may:

2.1.8.1 direct the applicant to cease the activity, either wholly or in part, and to rehabilitate the environment within such time and subject to such conditions as the competent authority may deem necessary; or

2.1.8.2 issue an environmental authorisation subject to conditions as the competent authority may deem necessary.

2.1.9 The competent authority may issue a directive requiring that an application for rectification of unlawful activities be lodged in terms of section 24G of NEMA.

2.1.10 There is a legal debate as to whether mining companies need to comply with the environmental authorisation requirements of NEMA. Some argue that because mining operations are authorised in terms of the Mineral and Petroleum Resources Development Act, 28 of 2002 ("**MPRDA**") and conducted in terms of an approved EMPR, separate environmental authorisation is not required under NEMA. Our courts have not decided on this issue and therefore mining companies remain at risk should they be operating without the required environmental authorisations. In the Western Cape High Court case of *City of Cape Town v Maccsand (Pty) Ltd and others* [2010] JOL 25970 (WCC) the court interdicted the Respondent mining company from commencing or continuing with mining activities until such time as it had obtained NEMA approval. This interdict was, however, overturned on appeal to the Supreme Court of Appeal and the Constitutional Court has recently (12 April 2012) also chosen not to deal with this issue and therefore the Supreme Court of Appeal's decision to overturn the interdict in respect of the NEMA issue was indirectly confirmed by the Constitutional Court. A number of other cases will soon be heard by the courts on the NEMA / MPRDA debate, which will be settled in the near future.

2.1.11 In addition to the NEMA offences (and other offences for non-compliance with environmental laws described below), there are criminal enforcement provisions in section 34 of NEMA which augment the criminal sanction or assist in the prosecution of environmental offenders.

2.1.12 The provisions of section 34 apply to convictions for offences as listed in Schedule 3 to NEMA. Schedule 3 of NEMA lists offences under both national and provincial legislation and these may, respectively be amended by the Minister or MEC in respect of the province of his or her jurisdiction by regulation. The most recent amendment to this Schedule was in terms of section 25 of the National Environmental Laws Amendment Act, 14 of 2009 which added offences under, *inter alia*, NEMA and the National Environmental Management: Air Quality Act, 39 of 2004 to the list of national offences.

2.1.13 There is provision allowing for the Court that has convicted a person who is guilty of any of the offences listed in Schedule 3 of NEMA to order the payment of compensation for damage arising from the offence.

Section 34(1) provides that if any organ of state or person has suffered loss or damage as a result of the offence (including costs of rehabilitation) the Court may in the same proceedings, at the written request of the Minister, organ of state or person, inquire summarily and without pleadings into the amount of the loss or damage caused. Once the amount has been proved, the Court may give judgment against the convicted person which will have the same force and effect and which is executable in the same manner as if it had been given in a civil action duly instituted before a competent court.[1]

2.1.14 The Court is also empowered to impose a fine equivalent to the monetary advantage the offender would have gained from the offence, or order the offender to take such remedial measure as the Court may determine, in addition to the fine provided for in the environmental statute under which the offender has been convicted.[2]

2.1.15 NEMA also provides for employer's liability (not strictly vicarious liability). Section 34(5) provides that whenever any manager, agent or employee does or omits to do an act (within their responsibility) on behalf of the employer (because the employer failed to take all reasonable steps to prevent the act or omission in question) and which would be an offence under Schedule 3, then the employer will be guilty of the said offence and will be liable for the monetary penalty specified in the Act and any other under section 34(2), (3) and (4). In these instances the act or omission of the manager, agent or employee constitutes prima facie evidence that the employer is guilty of the offence. The reciprocal of this provision is found in section 34(6) which provides that managers, agents and employees may be held liable for offences committed by their employer if he or she does or omits to do an act which was within his or her task on behalf of the employer.

2.1.16 The liability of directors is dealt with in section 34(7) of NEMA which provides that any person who is or was a director[3] of a firm[4] at the time of the commission by that firm of an offence listed in Schedule 3 shall himself or herself be guilty of the said offence and liable to conviction (including orders under section 34(2), (3) and (4)), if the offence in question resulted from the failure of the director to take all reasonable steps what were necessary under the circumstances to prevent the commission of the offence. In these instances, proof of an offence by the firm shall constitute prima facie evidence that the director is guilty of the offence.

2.1.17 In addition to criminal liability, civil liability may also be imposed in terms of NEMA.

2.1.17.1 NEMA is applicable to general pollution or degradation of the environment in South Africa. The ‘polluter pays’ principle is one of NEMA’s environmental management principles and is directly relevant

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[1] Section 34(2) of NEMA.

[2] Section 34(3) of NEMA.

[3] Defined in section 34(9)(b) as a member of the board, executive committee, or other managing body of a corporate body.

[4] Defined in section 34(9)(a) as a body incorporated by or in terms of any law.

to liability for environmental incidents or damage. The polluter pays principle provides that:

> '*The costs of remedying pollution, environmental degradation and consequent adverse health effect and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment.*'

2.1.17.2 The polluter pays principle requires that the costs associated with the pollution of the environment should be borne by the persons who caused the damage to the environment.

2.1.17.3 Furthermore, section 28 of NEMA places a duty of care on every person who causes, has caused or may cause significant pollution or degradation of the environment to take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring. Although failure to comply with the duty of care is not a criminal offence, the regulatory authority concerned may direct a person who fails to comply with the duty of care to commence with reasonable measures before a certain date. Failure to comply with a directive is a criminal offence and entitles the regulatory authority concerned to take those reasonable measures itself and recover the costs of remediation from:

2.1.17.3.1 any person who is or was responsible or who directly or indirectly contributed to the pollution;

2.1.17.3.2 the owner of the land at the time when the pollution occurred, or that owner's successor in title;

2.1.17.3.3 the person in control of the land or any person who has or had a right to use the land at the time when the activity was performed or the situation came about; and

2.1.17.3.4 any person who negligently failed to prevent the activity or the process from being performed or the situation from coming about.

2.2 <u>National Water Act 36 of 1998 ("NWA")</u>

2.2.1 It is clear from section 5 of the MPRDA that holders of mining and prospecting rights may use water from any natural spring, lake, river or stream, situated on, or flowing through, such land or from any excavation previously made and used for prospecting or mining purposes, or sink a well or borehole required for use relating to prospecting or mining on such land, subject to the NWA.

2.2.2 The NWA describes certain water uses in section 21 which if engaged in must be permitted in terms of the NWA. The permissible means of using water without a licence under the NWA are as follows:

2.2.2.1 using water from a water resource for purposes such as reasonable domestic use, domestic gardening, animal watering, fire fighting and recreational use (described in Schedule 1);

2.2.2.2 if the water use is permissible as a continuation of an existing lawful water use ie if it was authorised by or under any law which was in force immediately before the Act came into operation and which had taken place at any time during a period of two years immediately before the date of commencement of the Act;

2.2.2.3 if the water use is permissible in terms of a general authorisation. A number of general authorisations have been published under section 39 of the NWA. If a person's water use is contemplated under these general authorisations, an individual licence application will not need to be made to authorise the uses. Conditions are however attached to such authorisations and these will need to be complied with. Registration of the water use is generally required in terms of the general authorisations which have been published.

In all other instances a water use licence must be obtained under the NWA.

2.2.3 Due to the nature of coal mining, such operations generally have to apply for a water use licence ("**WUL**") or an integrated water use licence ("**IWUL**"), the latter of which is required if the mine engages in both raw water use (ie extracting and storing of raw water) and waste discharge / disposal related water uses. Water uses include waste rock dumps, the disposal and storage of wastewater in wastewater treatment systems, such as oxidation ponds and wastewater ponds. Impoundments such as the evaporation dams, pollution control dams, maturation dams and return water dams are considered to be water uses. The dewatering of mines and dewatering boreholes, as well as the diversion of a water resource are also considered to be water uses which require authorisation.

2.2.4 A water resource is widely defined in terms of the NWA and it includes wetlands.

2.2.5 In terms of section 53 of the NWA directives may be issued to shut down operations and force compliance and rectification with contraventions of the NWA. A pre-directive will generally be issued to provide an opportunity to the alleged wrong-doer to prove compliance to the NWA.

2.2.6 In terms of section 151 any person who contravenes section 151(1) of the NWA is guilty of an offence. Offences include, use of water otherwise than as permitted by the NWA and failure to comply with directives issued. Offences in terms of section 151 of the NWA are punishable, upon first conviction to a fine or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment and, in the case of a second or subsequent conviction, to a fine or imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.

2.2.7 With regard to the pollution of a water resource, section 19 of the NWA has similar provisions to NEMA regarding the duty of care to take reasonable measures to prevent pollution, the issuing of directives and remedying the effects of pollution. Failure to comply to inadequate compliance with a directive may prompt the catchment management agency established in the area (if operational) to take measures it considers necessary to remedy the situation. Costs incurred may jointly and severally be recovered from "*the person responsible; the person in control; the owner of the land; or any person who negligently failed to prevent (i) the activity or the process being performed or undertaken; or (ii)the situation from arising*." Section 19(6) also allows for costs to be recovered from "*any other person who, in the opinion of the catchment management agency, benefited from the [rehabilitation measures]…, to the extent of such benefit*."

2.2.8 Non-compliance with a directive issued in terms of section 19 is also an offence in terms of section 151 of the NWA. Furthermore it is an offence to unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to affect a water resource.

2.2.9 The NWA provides for vicarious liability and states that whenever an act or omission takes place with the express or implied permission of the employer, the employer may also be held liable in addition to the employee or agent who committed the offence.

2.2.10 GN R704

2.2.10.1 These regulations relate to measures aimed at the prevention of water pollution resulting from mining and related activities were published on 4 June 1999.

2.2.10.2 The regulation covers inter alia the depositing of "residues" (which is basically any waste product derived from or incidental to mining operations or the operation of an activity) and the stockpiling of any such substance for re-use or recycling. It imposes a very wide obligation to notify the DWA of any intention to operate a new mine or conduct any new activity. "Activity" is defined to include any mining related process on the mine (including the operation of washing plants, mineral processing facilities, mineral refineries and extraction plants) and the operation of mineral loading zones, transport facilities and mineral storage yards (whether situated at the mine or not) where a substance is stockpiled, accumulated or stored, transported for use in such process or out of which process any residue is derived, stored, stockpiled, accumulated, dumped, disposed of or transported. "Stockpile" is defined to include any heap, pile, slurry pond and accumulation of any substance where such substance is stored as a product or stored for use at any mine or activity.

2.2.10.3 In terms of regulation 3 exemptions are possible from the requirements of certain of the other regulations.

2.2.10.4 Restrictions are imposed on the locality of certain infrastructure like residue deposits, dams, boreholes, sanitary conveniences, fuel deposits as well as the carrying out of mining or other activities within certain distances of water resources. Restrictions are placed on the use of residues and other potentially polluting substances for the purpose of constructing dams, impoundments, etc. A duty is imposed to confine clean water to a clean water system and dirty water to a dirty water system which must be designed so as not to spill into the clean water system more than once in 50 years. General duties are imposed to take measures to protect water resources.

2.2.10.5 More specifically, regulation 4(a) provides that one may not locate any residue deposit, dam or reservoir together with any associated structure or any other facility within the 1:100 year flood line or within a horizontal distance of 100m of any watercourse (including wetlands) or estuary, borehole or well, excluding boreholes or wells drilled specifically to monitor the pollution of groundwater, or on water-logged ground, or on ground likely to become water-logged, undermined, unstable or cracked. Regulation 4(b) imposes a restriction on carrying on any underground or opencast mining, prospecting or any other operation or activity under or within the 1:50 year flood-line or within a horizontal distance of 100m of any watercourse or estuary, whichever is the greatest. Regulation 4(d) contains yet another restriction on locality i.e. no sanitary convenience, fuel depot or other depot, or reservoir that may cause pollution of a water resource may be located within the 1:50 year flood-line of any watercourse or estuary.

2.2.10.6 Regulation 6(b) provides that a clean water system should be designed, constructed, maintained and operated so as not to spill into any dirty water system more than once in 50 years and Regulation 6(d) requires the design, construction, maintenance and operation of a dirty water system so it will not spill into any clean water system more than once in 50 years. All dams or tailings dams which form part of the dirty water system must be designed, constructed, maintained and operated to have a minimum freeboard of 0.8 metres above full supply level, unless otherwise specified in terms of Chapter 12 of the NWA. Regulation 6(f) also requires that all water systems be designed, constructed and maintained as to guarantee the serviceability of conveyances for flows up to and including those arising from the maximum flood with an average period of recurrence of once in 50 years.

2.2.10.7 Regulation 7 imposes various requirements regarding the protection of water resources. In general the regulation requires that reasonable measures be taken, including regarding mines being inter alia designed and constructed so as to avoid the pollution of water resources, prevent flooding and maintain the stability of residue deposits and stockpiles.

2.2.10.8 Regulation 3 allows for exemptions from the requirements of certain of the Regulations. All existing structures and activities that are not in compliance with regulations 4, 5, 6, 7, 8, 10 or 11 would require an exemption.

2.2.10.9 Regulation 8 imposes various security and additional measures, regulation 9 deals with the temporary or permanent cessation of a mine or activity, and regulation 11 provides for additional regulations for rehabilitation of coal residue deposits (coal residue deposits must be rehabilitated so that all residue deposits are compacted to prevent spontaneous combustion and minimise the infiltration of water; and the rehabilitation of the residue deposits is implemented concurrently with the mining operation).

2.2.10.10 Regulation 12(6) requires the submission of plans, specifications and design reports approved by a professional engineer to the Minister, not later than 60 days prior to commencement of the construction of any surface dam for the purpose of impounding polluted water, waste or slurry, so as to prevent the pollution of a water resource; the implementation of any pollution control measures at any residue deposit or stockpile; and the implementation of any water control measures at any residue deposit or stockpile, so as to prevent the pollution of a water resource.

2.2.10.11 The person in control of a mine or activity is obliged to provide the manager with the means to enable the manager to comply with the provisions of the regulations.

2.3 <u>MPRDA</u>

2.3.1 Section 38 of the MPRDA places obligations on a holder of *inter alia* a mining right to give effect to the general objectives of integrated environmental management laid down in Chapter 5 of NEMA and to rehabilitate the environment affected by mining authorisations.

2.3.2 Holders of prospecting and mining rights must also:

2.3.2.1 comply with the requirements of the approved Environmental Management Plan ("**EMP**") / Environmental Management Programme ("**EMPr**") attached to the right; and

2.3.2.2 manage all environmental impacts in accordance with the management objectives of the EMP / EMPR and as an integral part of the prospecting / mining operations.

2.3.3 The rehabilitation obligations, as well as the responsibility for environmental damage, pollution or ecological degradation as a result of the prospecting or mining operations remain that of the holder of the right until such time as a closure certificate is granted.

2.3.4 Section 38(2) of the MPRDA provides that the directors of a company or members of a close corporation are jointly and severally liable for any unacceptable negative impact on the environment advertently or inadvertently caused by the company.

2.3.5 In terms of section 47 of the MPRDA the Minister may suspend or cancel rights if a holder of mining right *inter alia* is contravening the approved EMPR, subject to the Minister giving notice to the holder to remedy such contravention within a stipulated time period.

3. Non Compliance identified by Eskom Environmental Department

3.1 Eskom addressed a letter to Arctos Trading Proprietary Limited ("**Arctos**") dated 10 January 2012, stating that Arctos has failed to comply with its undertakings to Eskom to rectify all the environmental risks identified by Eskom and failed to submit proof of documentation to Eskom. It is not necessary for this opinion, to set out each of the risks identified.

3.2 We have not been instructed as to the relationship between Arctos and Idwala. We note that all correspondence is addressed to Arctos and refers to "*Arctos complying*" and "*Arctos undertaking*" and that Arctos and Idwala are used interchangeably. For the purpose of this opinion, we have assumed that Arctos is the authorised representative of Idwala.

4. **Summary of documents reviewed**

4.1 Letter from Idwala Coal (Pty) Limited ("**Idwala Coal**") to DWA dated 28 September 2011

Idwala Coal responds to the DWA's pre-directive dated 26 August 2011. Idwala Coal alleges that it has no intention to contravene any statutory obligations and has been mining in accordance with its mining right and EMPR. It states that the holder of the mining right is Idwala Crypts Coal (Pty) Limited. Idwala Coal alleges that the Run Of Mine coal is removed from the pit and the coal product is loaded onto trucks and removed from the mining area. Idwala Coal further states that, the mine disposing of water containing waste into dirty dam water is an interim emergency measure designed to comply with GN R704. It is stated that a water use licence is not required, because no washing takes place on the mining area. Idwala Coal denies that the mining area falls within a wetland and that a road has been constructed on a wetland, as the environmental consultant has informed it that cultivated mielie field do not grow in saturated soil. Idwala Coal confirms that it has applied for IWUL.

4.2 IWUL Application by Idwala - October 2011.

It is noted that the cover page of the IWUL application refers to Idwala Coal and Idwala. We have not been instructed on the relationship between these entities. It is further noted on page 6 of the IWUL application that coal will be mined by opencast and underground methods.

4.3 Letter from DWA to Idwala dated 28 November 2011

This letter is from the DWA acknowledging receipt of Idwala's IWUL application submitted on 22 November 2011. The letter requests further outstanding information for the purpose of the IWUL application and the application is returned to Idwala to be submitted with all relevant information.

4.4 Letter from DWA to Idwala dated 30 November 2011.

This is the reply to the notice of intention to issue a directive by the DWA to Idwala in terms of section 53 (1) of the NWA. The letter refers to Idwala's representations made on 28 September 2011. The letter sets out the time lines within which Idwala has to provide the DWA with proof of its environmental authorisations. The DWA states that during its investigations a water tanker was seen pumping from the stream for dust suppression, two pollution dams were constructed without lining and the mine constructed a road and was mining through a wetland. The DWA informed Idwala that it will continue to issue a directive in terms of section 53 (1) of the NWA and failure to comply constitute an offence in terms of section 151 of the NWA.

4.5 Letter from Arctos to Eskom dated 24 January 2012

Arctos states that it is in the process of ensuring that reasonable measures are undertaken in order to mine in an environmentally sustainable manner. Arctos further states that it was not intentional to mine on the wetland areas, and it has shared the wetland report with the DWA. DWA completed a mine inspection on 18 January 2012. Arctos contends that the DWA is aware of the environmental matters and Arctos is already in the process of complying with the necessary regulations.

4.6 GEM Science CC - Concept Wetland Rehabilitation Plan for Vierfontein Colliery dated 31 January 2012

Idwala engaged GEM's services to assist in compiling a concept wetland rehabilitation plan for the Vierfontein Colliery. It is stated that the wetland rehabilitation report has to be submitted to the DWA as part of the IWUL application. It is stated that the baseline information regarding the wetland before commencement of mining operation is lacking, and therefore a detailed rehabilitation plan cannot be compiled. Information has to be collected over a period of time, and once there is sufficient information, a final rehabilitation report can be compiled. On page 5 of the report, it states that an unnamed non-perennial stream flowing through the Vierfontein Colliery has been diverted due to mining operations. On page 4, the report states that the current status of the river ecosystem near the Vierfontein Colliery is critically endangered. On page 16, the report provides that the vegetation unit is seen as endangered. On page 18 of the report, it is suggested that the mine focus its rehabilitation efforts not only on restring the non-perennial stream and wetland areas but also on restoring the wetland ecosystem function. On page 21 of the report, it is stated that the estimated time period for the rehabilitation report is between 25-30 months.

4.7 Email dated 13 May 2012 from Arctos to Eskom attaching a letter

The letter states that all reports have been submitted to the DWA and that a concept rehabilitation report was submitted on 31 January 2012. The IWUL DWA team visited the mine on 18 January 2012 and that the latest application submission was made to DWA on 23 April 2012. In addition, Arctos provided the details of the Mpumalanga Wetland Forum and Agricultural & Commercial Farming Union. It is alleged by Arctos that they are in touch with other departments. Arctos states again, it is in the process of complying with all necessary regulations.

4.8 Internal email dated 15 May 2012, from Esther Appleyard to the Eskom team

It is stated that no further documentation / proof of submission of Idwala's IWUL Application has been provided to Eskom. The DWA and other authorities have not provided a response to Arctos. Esther further mentions that Arctos has indicated to Eskom that it wished to mine underground rather than open cast, and if this is the case then Idwala will have to amend its EMPR. In addition the information submitted to DWA conflicts with the information provided in the EMPR. We have not been provided with a copy of the EMPR and therefore cannot confirm whether or not there is a discrepancy. Further we are not in a position to determine whether or not Idwala is in compliance with its EMPR, as this is a technical aspect.

4.9 Eskom's PED Contracting Procedure - Environmental Requirements

This document sets out that Eskom requires suppliers to comply with relevant environmental legislation and sets out the procedure to be followed. In terms of this document, Eskom is obliged to ensure that there is compliance by its suppliers to environmental legislation, and to continue ensuring that there is compliance throughout the contract period.

5. Opinion and Conclusion

5.1 Is Idwala mining lawfully in the context that the DWA and / or DMR has not suspended Idwala's mining operations

5.1.1 Based on the information provided to us we are of the opinion that Idwala is currently mining in contravention of environmental legislation. It is clearly evident from the GEM Science report that Vierfontein Colliery is situated on a wetland area, which area is protected in terms of environmental law.

5.1.2 It is not clear, how Idwala's EMPR was approved by the DMR, without taking the wetland area into consideration. The diversion of a stream requires authorisation in terms of the NWA, and Idwala has diverted the stream without such authorisations. It is further likely that Idwala is not complying with numerous provisions of GN R704.

5.1.3 Idwala continually states in its letters that "it is in the process of complying", which can only mean that Idwala, itself is aware that it is mining without environmental compliance. The fact that the DWA and/or the DMR has not issued a notice or suspended Idwala's operations, does not imply that Idwala's non-compliance has been condoned and it can continue its mining operations in anticipation of the relevant authorisations.

5.1.4 Because the Vierfontein Colliery is situated on a wetland area, a wetland rehabilitation report has been earmarked as a specialist report which must be submitted with the IWUL Application. As indicated above, the specialists are of the view that this report will take between 25-30 months to complete.

5.1.5 We are of the opinion that it is unlikely that the IWUL Application will be granted in the near future. Until such time as the IWUL Application is granted or refused by the DWA, the DWA is still at liberty and in terms of legislation entitled to suspend mining operations. In addition, the DMR in terms of section 47 may also suspend Idwala's mining operations.

5.2 Can Eskom be protected if Idwala guarantees they are compliant?

5.2.1 With regards to the question of whether an indemnity / guarantee from Idwala that it is compliant with all environmental legislation will protect Eskom, this will amount to a breach by Idwala of its warranties upon signature of the Coal Supply Agreement. An indemnity by Idwala, if Eskom has to invoke the indemnity clause, will only protect Eskom if Idwala is able to pay any amounts claimed by Eskom.

5.2.2 It is our view that if Eskom concludes a Coal Supply Agreement with Idwala, there is a risk that Idwala may not be able to comply with its obligations in terms of the Coal Supply Agreement if Idwala's operations are suspended by the DWA and/or DMR. In terms of Eskom PED Contracting Procedure - Environmental Requirements, Eskom is required to ascertain and ensure that its suppliers comply with environmental legislation. If Eskom contracts with Idwala, knowing that Idwala is mining without environmental authorisations, then Eskom would be contracting outside its PED Contracting Procedure - Environmental Requirements.

5.2.3 As Eskom is aware of the environmental non-compliances at Idwala it may be presumed that any indemnity / guarantee provided by Idwala would be of no force due to the implied consent by Eskom of the non-compliances.

5.3 What liability and/or risks is Eskom exposed to, should it enter into a coal supply agreement with Idwala?

5.3.1 NEMA, the NWA and the MPRDA do not deal with any liability in respect of Companies that enter into Coal Supply Agreements with mining companies. Based on the information received, there is no legal liability on Eskom in terms of this legislation. However, we would like to bring the following commercial risks to your attention:

5.3.1.1 Eskom, as well as its directors, managers and employees have the general duties of care provided for in NEMA and the NWA to ensure that all reasonable measures have been taken in the prevention of pollution or degradation from occurring or recurring. This duty would extend to the knowledge Eskom has of the non-compliances identified with Idwala. However, we are of the opinion that entering into a coal supply agreement with Idwala will not necessarily constitute a breach of this duty. We say this on the basis that it is the actual mining of coal by Idwala which causes pollution or degradation of the environment, and not necessarily the undertaking of activities without the necessary authorisations. On this basis we are of the opinion that it is unlikely for Eskom to incur liability for environmental damage caused by Idwala if Eskom were to conclude a coal supply agreement with Idwala. Eskom's knowledge of Idwala 's non-compliance will however contribute to the reputational risk identified below;

5.3.1.2 Eskom may suffer a reputational risk if it concludes the Coal Supply Agreement with Idwala as Eskom has sufficient information and knowledge that demonstrates Idwala is not upholding its prescribed environmental responsibilities;

5.3.1.3 we do not know whether Eskom has entered into funding or other agreements with third parties which impose obligations on Eskom to ensure that its suppliers comply with applicable environmental legislation. To the extent that such agreements exist, concluding a coal supply agreement with Idwala may have adverse consequences for Eskom;

5.3.1.4 there is a risk that Idwala's operations will be stopped, either by directives issued by the DWA and / or DMR, or by an interdict application brought by civil society. In this instance Eskom will be placed at risk because Idwala will not be in a position to honour the terms of any Coal Supply Agreement concluded; and

5.3.1.5 to the extent that Eskom is certified in terms of ISO 14001, Eskom may be at risk of losing this certification as this standard requires that organisations (as defined in the standard) management their controllables and influenceables through their Environmental Management System. In this case Idwala would be an influenceable which Eskom would have an obligation to ensure was complying with all relevant environmental laws.

5.3.2 In view of the aforesaid, we do not recommend that Eskom concludes a Coal Supply Agreement with Idwala until such time as Idwala has demonstrated adequate compliance with applicable environmental laws, including but not limited to permitting and authorisation obligations.

6. Additional Notes

6.1 According to the correspondence from Idwala Coal to the DMR, in its letter dated 28 September 2011, it states in paragraph 3, that the holder of the mining right is Idwala Crypts Coal (Pty) Limited. It further refers to a pre-directive dated 26 August 2011, which we have not received a copy of. We are only in receipt of the reply to the pre-directive dated 30 November 2011.

6.2 At an internal question paper number 23 hearing, dated 12 August 2011, the Minister of Mineral Resources confirmed that mining right 393MR was granted to Idwala Crypts (Pty) Limited on 25 October 2010 and that the EMPR has been approved for this mining right. The aforesaid letter in paragraph 6.1 states that the holder is Idwala Crypts Coal (Pty) Limited. In addition the GEM Science report refers to 510MR and the Minister refers to 393MR.

6.3 We undertook a company search on Idwala with registration number 2006/014492/07 (which we obtained from the IWUL Application) and a search on Idwala Coal. It is noted that according to CIPC records, the name of the company is now Tegeta Exploration Resources.

6.4 We have had sight of newspaper articles published during November 2011 that state that Idwala has been issued with a directive from the DWA, which is recommended be investigated further.

Yours faithfully

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Annexure "JAB/Z7"

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Water and Sanitation
REPUBLIC OF SOUTH AFRICA

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**LICENCE IN TERMS OF CHAPTER 4 OF THE
NATIONAL WATER ACT, 1998 (ACT NO. 36 OF 1998) (THE ACT)**

I, ***Margaret-Ann Diedricks***, in my capacity as Director General in the Department of Water and Sanitation acting under authority of the powers delegated to me by the Minister of Water and Sanitation, hereby authorise the following water uses in respect of this licence.

SIGNED: ....

DATE: ....22/12/14....

LICENCE NO. 04/B20E/ABCGIJ/2994
FILE NUMBER: 16/2/7/B200/C585

1.	**Licensee:**	**Tegeta Resources and Exploration (Pty) Ltd: Brakfontein Colliery**
	Postal Address :	Private Pag X9 **BENMORE** 2010
2.	**Water Uses**	
2.1	Section 21(a) of the Act:	Taking water from a water resource, subject to the conditions as set out in Appendices I and II.
2.2	Section 21 (c) of the Act:	Impeding or diverting the flow of water in a watercourse subject to conditions as set out in Appendices I and III.
2.3	Section 21(g) of the Act:	Disposing of waste in a manner which may detrimentally impact on a water resource, subject to the conditions as set out in Appendices I and IV.
2.4	Section 21 (i) of the Act:	Altering the bed, banks course or characteristics of a watercourse, subject to conditions as set out in Appendices I and III.

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2.5 Section 21(j) of the Act: Removing, discharging or disposing of water found underground, if it is necessary for the efficient continuation of an activity or for the safety of people , subject to the conditions as set out in Appendices I and V

3. Property on which the use will be exercised

Table 1: Property Details

Description	Area (ha)	Title deed no.	Property owner
Brakfontein 264 IR Ptn 17	58.2337	T228/2012	Confident Concept Pty Ltd
Brakfontein 264 IR Ptn 22	63.3834	T152242/2006	Hannes Potgieter Trustfonds
Brakfontein 264 IR Ptn 25	168.4375	T9659/2011	Confident Concept Pty Ltd
Brakfontein 264 IR Ptn 27	30.9546	T9659/2011	Confident Concept Pty Ltd
Brakfontein 264 IR Ptn 28	86.4684	T21084/1979	Combrink Petrus Johannes
Brakfontein 264 IR Ptn 16	150.8995	T690/2008	Koos Uys & Seun Boerdery CC

5. Licence and Review Period

5.1 This licence is valid for a period of fifteen years (15) years from the date of issuance and as provided for under Section 49 of the Act, it may be reviewed every five (5) years

6. Definitions

"Any terms, words and expressions as defined in the National Water Act, 1998 (Act 36 of 1998) shall bear the same meaning when used in this licence."

"The Provincial Head" means the Head of Operations Provincial: Mpumalanga, Department of Water and Sanitation, Private Bag X11259, Mbombela, 1200.

"Report" refers to the report: Tegeta Exploration and Resources (Pty) Ltd:Integrated Water And Waste Management Plan (IWWMP) FOR BRAKFONTEIN COLLIERY Portions 4, 16, 17, 22, 24, 25, 27, 28 And 29 Of The Farm Brakfontein 264 IR 16/2/7/B200/C585 Volume 1 July 2013 (Amended November 2014)

7. Brief description of the application

This licence authorises Tegeta Resources and Exploration (Pty) Ltd for Brakfontein colliery. The water uses associated with opencast coal mining and underground mining on portion 16,17,22,25, 27 and 28 of the farm Brakfontein 264 IR. The water uses are for Section 21(a),(c), (g), (i) and (j) as per section 40 of the National Water Act (Act 36 of 1998). The study area falls within Water Management Area 4 (WMA4) of the Upper Olifants River. Specifically the area occurs within quaternary catchment B20E. The far western extremity of Portion 16 is within quaternary catchment B20A, but this area should remain unaffected by surface disturbance.

The proposed area which will be directly affected by the opencast mining is around 138ha of portions 17, 22, 25 and 27 (Plan 2 and Plan 3). Approximately 70 ha of mining area have been lost due to the implementation of the 200m buffer zones. Infrastructure areas have and will disturb a further 135 ha in tota

Licence No: 04/B20E/ABCGIJ/2994
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APPENDIX I

General conditions for the licence

1. This licence is subject to all applicable provisions of the National Water Act, 1998 (Act 36 of 1998).

2. The responsibility for complying with the provisions of the licence is vested in the Licensee and not any other person or body.

3. The Licensee must immediately inform the Provincial Head of any change of name, address, premises and/or legal status.

4. If the property(ies) in respect of which this licence is issued is subdivided or consolidated, the Licensee must provide full details of all changes in respect of the properties to the Provincial Head within sixty (60) days of the said change taking place.

5. If a water user association is established in the area to manage the resource, membership of the Licensee to this association is compulsory.

6. The Licensee shall be responsible for any water use charges or levies imposed by a responsible authority.

7. While effect must be given to the Reserve as determined in terms of the Act, where a desktop determination of the Reserve has been used in issuance of a licence, when a comprehensive determination of the Reserve has finally been made; it shall be given effect to.

8. The licence shall not be construed as exempting the Licensee from compliance with the provisions any other applicable Act, Ordinance, Regulation or By-law.

9. The licence and amendment of this licence are also subject to all the applicable procedural requirements and other applicable provisions of the Act, as amended from time to time.

10. The Licensee shall conduct an annual internal audit on compliance with the conditions of licence. A report on the audit shall be submitted to the Provincial Head within one (1) month of finalisation of the audit.

11. The Licensee shall appoint an independent external auditor to conduct an annual audit on compliance with the conditions of this licence. The first audit must be conducted within three (3) months of the date this licence is issued and a report on the audit shall be submitted to the Provincial Head within one (1) month of finalisation of the report.

12. Flow metering, recording and integrating devices shall be maintained in a sound state of repair and calibrated by a competent person at intervals of not more than two (2) years. Calibration certificates shall be available for inspection by the Provincial Head or his representative upon request.

13. Any incident that causes or may cause water pollution shall be reported to the Provincial Head or his/her designated representative within 24 hours.

14. If the water use described in this licence is not exercised within three (3) years of the date of the licence, the authorisation will be withdrawn. Upon commencement of the water use, the Licensee must inform the relevant authority in writing.

APPENDIX II

Section 21 (a) of the Act: Taking water from a water resource

1. This licence authorises the taking of a maximum quantity of groundwater in property as indicated in Table 2:

Table 2: Section 21 (a) water activities

Water use(s)	Purpose	Capacity/ Volume (m^3, tonnes and/or m^3/annum)	Property Description	Co-ordinates
Section 21(a)				
Abstraction of groundwater from a borehole	The water is for drinking, water, toilets and change houses.	657m^3/a	Portion 25 of farm Brakfontein 264 IR	26°13'32.05"S 28°50'59.24"E
		657m^3/a	Portion 27 of farm Brakfontein 264 IR	26°13'50.70"S 28°50'51.00"E
Abstraction of ground water from mining operations	Water will be used in the processing plants.	54 700 m^3/a	Portion 16 of farm Brakfontein 264 IR	26°13'38.21"S 28°49'55.88"E
		36 500 m^3/a	Portion 17and 27 of farm Brakfontein 264 IR	26°13'22.12"S 28°51'0.94"E
		54 700 m^3/a	Portion 22 and 25 of farm Brakfontein 264 IR	26°14'4.92"S 28°50'18.49"E

2. The quantity of water authorised to be taken in terms of this licence may not be exceeded without prior authorisation by the Minister.

3. This licence does not imply any guarantee that the said quantities and qualities of water will be available at present or at any time in the future.

4. The volumes may be reduced when the licence is reviewed.

5. The Licensee shall continually investigate new and emerging technologies and put into practice water efficient devices or apply technique for the efficient use of water containing waste, in an endeavour to conserve water at all times.

6. The Licensee shall be responsible for any water use charges or levies, which may be imposed from time to time by the Department or Responsible Authority in terms of the Department's Raw Water Pricing Strategy.

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Director –General

7. The Licensee shall establish and implement a continual process of raising awareness amongst itself, its workers and stakeholders with respect to Water Conservation and Water Demand Management initiatives.

8. All water taken from the resource shall be measured as follows:

   8.1 The daily quantity of water taken must be metered or gauged and the total recorded at the last day of each months; and
   8.2 The licence shall keep record of all water taken and a copy of the records shall be forwarded to the Provincial Head on or before 25 January and July of each year.

9. No water taken may be pumped, stored, diverted, or alienated for purposes other than intended in this licence, without written approval by the Minister or his/her delegated nominee.

10. The Licensee shall install and monitor appropriate water measuring devices to measure the amount of water abstracted, received and/or consumed, as applicable to the infrastructure.

11. Notices prohibiting unauthorised persons from entering the certain areas, as well as internationally acceptable signs indicating the risks involved in case of an unauthorised entry must be displayed along the boundary fence of these areas.

12. The Department accepts no liability for any damage, loss or inconvenience, of whatever nature, suffered as a result of:

    12.1 Shortage of water;
    12.2 Inundations or flood;
    12.3 Siltation of the resource; and
    12.4 Required reserve releases.

13. The Licensee shall ensure that all measuring devices are properly maintained and in good working order and must be easily accessible. This shall include a programme of checking, calibration, and/or renewal of measuring devices.

14. The Licensee shall establish a programme of formal Information Management System, which maintains a database on water supply, distribution and delivery infrastructure.

APPENDIX III

Section 21(c) of the Act: **Impeding or diverting the flow of water in a watercourse; and**

Section 21(i) of the Act: **Altering the bed, banks, course or characteristics of a watercourse**

Table 3: Details of water resource crossings

Section 21 c & i	Water Use Activity	Co-ordinates	Co-ordinates
Wetland areas, tributaries and boreholes have/will be affected by mining activities	Incline shaft and associated stockpiles will be established outside the 200m buffer but within 500m of a hillslope seep HGM 4 associated with tributary 1, channelled valley bottom wetland HGM3 and a pan.	Portion 16 of farm Brakfontein 264 IR	26°13'36.52"S 28°49'53.54"E
	Underground mining will take place outside the 200m buffer but within the 500m regulated area of the pan	Portion 16 farm Brakfontein 264 IR	26°13'22.94"S 28°49'43.54"E
	Underground mining will take place outside the 200m buffer but within the 500m upper reaches and the origin of tributary 1 (±500 long)and associated wetlands (HGM 3 and 4)	Portion 16 farm Brakfontein 264 IR	26°13'29.28"S 28°49'54.55"E 26°13'30.79"S 28°50'12.05"E
	Isolated Hillslope seep wetland (HGM3 B - Seriously modified - PES: E) area have been affected by existing mining activities on this	Brakfontein 264 IR Portion 17 and 27:	26°13'20.46"S 28°50'41.27"E
	Isolated Hillslope seep wetland (HGM2 B - Seriously modified - PES: E) area have been affected by existing	Brakfontein 264 IR Portion 17:	26°13'13.33"S 28°51'4.18"E

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Director –General

Section 21 c & i	Water Use Activity	Co-ordinates	Co-ordinates
	mining activities on this property.		
	Mining within 500m of unchanneled valley bottom wetland (HGM1 B).	Brakfontein 264 IR Portion 17:	26°13'7.68"S 28°51'11.56"E
	Existing mining within 500m of unchanneled valley bottom wetland (HGM4 B).	Brakfontein 264 IR Portion 17:	26°13'7.75"S 28°51'14.51"E 26°13'7.75"S 28°51'14.51"E
	Existing mining and haul road within 100m of tributary 3 and associated channeled valley bottom wetland(HGM4 B).	Brakfontein 264 IR Portion 27:	26°13'37.20"S 28°50'48.37"E 26°13'42.24"S 28°51'7.20"E
	Existing mining outside the 200m buffer but within 500m of unchanneled valley bottom wetland (HGM4 B).	Brakfontein 264 IR Portion 27:	26°13'28.16"S 28°51'9.97"E 26°13'42.24"S 28°51'7.20"E
	Existing PCD within 100m of wetland area encroaching into wetland edge associated with tributary 1 (HGM4 B). PCD is planned on being relocated outside the 100m buffer.	Brakfontein 264 IR Portion 27:	26°13'42.24"S 28°51'7.20"E
	Mining within 500m of a spring (CBFS1).	Brakfontein 264 IR Portion 27:	26°13'47.86"S 28°51'17.93"E
	ROM Stockpiling within 500m of tributary 2 and associated wetlands.	Brakfontein 264 IR Portions 25:	26°13'48.36"S 28°50'39.59"E

Section 21 c & i	Water Use Activity	Co-ordinates	Co-ordinates
	Overburden stockpiles outside the 200m buffer but within 500m of tributary 2 and associated wetlands.	Brakfontein 264 IR Portions 22 and 25:	26°14'15.00"S 28°49'51.89"E
	Mining outside the 200m buffer but within 500m of Wilge River and associated wetlands.	Brakfontein 264 IR Portions 22 and 25:	Eastern extent: 26°14'13.74"S 28°50'59.32"E
	Discard dump within 500m of Wilge River and tributary 3 and associated wetlands.	Brakfontein 264 IR Portions 25:	26°14'1.54"S 28°51'7.88"E 26°13'57.58"S 28°51'2.84"E
	PCD within 500m of Wilge River, tributary 3 and associated wetlands.	Brakfontein 264 IR Portions 25:	26°13'55.99"S 28°51'9.04"E 26°13'54.73"S 28°51'3.89"E
	Septic tank within 500m of tributary 3 and associated wetlands.	Brakfontein 264 IR Portions 25:	26°13'46.38"S 28°50'52.76"E
	Wash plant within 500m of tributary 2 and tributary 3 and their associated wetlands.	Brakfontein 264 IR Portions 25:	26°13'55.96"S 28°50'44.56"E

1. Construction, Operation and Maintenance

1.1 The Licensee shall carry out and complete all the activities according to the following:

1.1.1 Report(s) submitted to the Department or the Responsible Authority
1.1.1.1 Surface water assessment for Brakfontein colliery prepared by Letsolo dated 2013
1.1.1.2 Surface water assessment for Brakfontein extension prepared by Letsolo dated 2013
1.1.1.3 Aquatic assessment for Brakfontein colliery prepared by SEF dated 2013
1.1.1.4 Aquatic assessment for Brakfontein extension prepared by SEF dated 2013

1.1.1.5 Wetland assessment Brakfontein colliery prepared by SEF dated 2013
1.1.1.6 Wetland assessment Brakfontein extension prepared by SEF dated 2013
1.1.1.7 Section 21 (c) & (i) supplementary form.

1.1.2 Conditions of this licence; and

1.1.3 Any other written direction issued by the Storm Water Head in relation to this licence.

1.2 The conditions of this licence shall be brought to the attention of all persons (employees, sub-consultants, contractors etc.) associated with the undertaking of this activity and the Licensee shall take such measures that are necessary to bind such persons to the conditions of this licence.

1.3 Construction activities must not take place within the 1:100 year flood-line or within a horizontal distance of 100 metres from any watercourse, estuary, borehole or well, whichever is the greatest, unless authorised by this licence.

1.4 Compensation measures for damage to and or mitigation measures must be recommended if avoidance or minimisation of the impacts of the proposed development is not possible or if mitigation measures fail to adequately protect the in-stream and riparian habitat.

1.5 No material with pollution generating potential will be used in any construction activities.

1.6 Necessary erosion prevention mechanisms shall be employed to ensure the sustainability of all structures.

1.7 The Licensee must ensure that structures such as the river, road crossings, weirs and the culverts are not damaged excessively by floods exceeding the magnitude of floods occurring on average once in every 100 years.

1.8 The structure of temporary crossings must be non-erosive, structurally stable and must not induce any flooding or safety hazard. Temporary crossings must be inspected regularly for accumulation of debris, blockage, erosion of abutments and overflow areas. Debris must be removed and damages must be repaired and reinforced immediately.

1.9 Construction activities shall start up-stream and proceed into a down-stream direction, so that the recovery processes can start immediately, without further disturbance from upstream construction works.

1.10 Construction activities must be scheduled to take place during dry seasons when flows are lowest.

1.11 The natural migration of aquatic biota and upstream movement of fish must not be disturbed.

1.12 The development may not impede natural drainage lines.

1.13 The construction camp shall not be located within the 1:100 year flood line or within 100 metres of any watercourse whatever the greatest.

1.14 Vehicles and other machinery must be serviced well above the 1:100 year flood line or within a horizontal distance of 100 metres from any watercourse or estuary. Oils and other potential pollutants must be disposed off at an appropriate licensed site, with the necessary agreement from the owner of such a site.

1.15 All reagent storage tanks and reaction units must be supplied with a bunded area built to the capacity of the facility and provided with sumps and pumps to return the spilled material back into the system.

1.16 The system shall be maintained in a state of good repair and standby pumps must be provided.

1.17 Any hazardous substances must be handled according to the relevant legislation relating to transport, storage and use of the substance.

1.18 Pollutions caused by spills from the conveyances of any pollution generating potential must be prevented through proper maintenance and effective protective measures especially near all stream crossings.

1.19 Any access roads or temporary crossings must be:

1.19.1 non-erosive, structurally stable and should not induce any flooding or safety hazard;

1.19.2 Repaired immediately should damage occur to prevent further damage.

2. Storm water Management

2.1 Storm water shall be diverted from the construction works and roads must be managed in such a manner as to disperse runoff and to prevent the concentration of storm water flow.

2.1 Where necessary, works must be constructed to attenuate the velocity of the storm water discharge and to protect the banks of the watercourse.

2.2 Storm water control works must be constructed, operated and maintained in a sustainable manner throughout the project.

2.4 Increased runoff due to vegetation clearance and/or soil compaction must be managed, and steps must be taken to ensure that storm water does not lead to bank instability and excessive levels of silt entering the watercourse.

2.5 Storm water leaving the Licensee's premises must in no way be contaminated by any substance, whether such substance is a solid, liquid, vapour or gas or a combination thereof which is produced, used, stored, dumped or spilled on the premises.

3. Water Quality and Quantity

3.1 The in-stream water quality must be analysed on a weekly basis during the construction period for activities occurring closer than 100m to a watercourse, at the monitoring points on both upstream and downstream of the activities for the following variables: pH, Electrical conductivity (mS/M), suspended solids (mg/l), and total dissolved solids (mg/l). Monitoring shall continue on monthly basis after the cessation of the activities.

3.2 Activities (such as maintenance) that lead to elevated levels of turbidity of any watercourse must be minimised.

3.3 The Licensee shall ensure that the quantity of water to downstream water users does not decrease because of the existence of the river diversions, river crossings, and culverts and associated maintenance of road crossings.

4. General Specifications

4.1 A suitably qualified person, appointed by the Licensee, and approved, in writing, by the Storm Water Provincial Head, must be responsible for ensuring that the structures are maintained in line with the design specifications.

4.2 The Licensee shall have a full time Civil Engineer Supervisor on the site during construction of river diversions, river crossings, culverts and pollution control dams. The contractor shall have an approved Site Agent on the site during construction.

4.3 Necessary erosion prevention mechanisms shall be employed to ensure the sustainability of all the structures.

5. Protective Measures

5.1 The river crossings structures may not restrict river flows by reducing the overall river width or obstructing river flow.

5.2 Operation and storage of equipment within the riparian zone must be limited as far as possible.

5.3 All activities within the riparian zone should be restricted as far as possible.

5.4 Any material removed from the in stream or riparian habitat, may not be stored within the riparian zone, and may not be stored in such a way that will cause damming of water or wash-away.

5.5 Alien vegetation must not be allowed to further colonise the area, and all new alien vegetation recruitment must be eradicated or controlled, using standard methods approved by the Department.

5.6 Soils that have become compacted through the activities of the development must be loosened to an appropriate depth to allow seed germination.

5.7 The proposed development must not impede the upstream movement of fish.

5.8 Increased runoff due to vegetation clearance and/or soil compaction must be managed and steps must be taken to ensure that storm water does not lead to bank instability and excessive levels of silt entering the stream.

5.9 Riparian vegetation, including dead trees, may not be removed from the area; in particular, snags (fallen trees and branches) in the river must be protected (i.e. not collected for firewood or any other purpose).

5.10 All reasonable steps should be made to minimise noise and mechanical vibrations in the vicinity of the river.

6. Rehabilitation

6.1 All disturbed areas must be re-vegetated with an indigenous seed mix in consultation with an indigenous plant expert, ensuring that during rehabilitation only indigenous shrubs, trees and grasses are used in restoring the biodiversity.

6.2 The vegetation of affected environment should also be managed to prevent erosion and siltation of the water course.

6.3 The Licensee shall take steps necessary to allow movement of aquatic species, including migratory species during the rehabilitation programme.

6.4 The Licensee shall embark on a systematic long-term rehabilitation programme to restore natural watercourses to environmentally acceptable and sustainable conditions after construction, which shall include, but not be limited to:

6.4.1 The rehabilitation of disturbed and degraded riparian areas to restore and upgrade the riparian habitat integrity to sustain a bio-diverse riparian ecosystem; and

6.4.2 Annually assess the habitat to monitor the sustainability of the diversions and compliance with these conditions. Action must be taken to rectify any negative impacts.

6.5 The Licensee shall ensure that the volume of flow is not reduced except for natural evaporative losses and the authorised attenuation volumes.

7. General Surface Water Design Requirements and Criteria

7.1 The Licensee shall determine flood lines (1:50 and 1:100 year) prior to construction to ensure risks are adequately managed. Flood lines shall be clearly indicated on the layout plans.

7.2 The Licensee shall schedule construction activities at or close to river crossings, streams or wetlands to take place during low flow periods.

7.3 The Licensee shall clearly indicate all wetlands boundaries within the project area on layout plans.

7.4 Design and planning of all proposed construction activities adjacent to or in the vicinity of rivers, streams and wetlands shall consider the following measures:

7.4.1 Impact of alignment on springs and wetlands shall be investigated and monitored and ensure their continued functioning.

7.4.2 Where appropriate, large individual indigenous riparian trees shall be avoided during construction and shall be clearly marked on site.

7.4.3 All construction roads in or adjacent to the riparian zone shall be minimised and if required, shall be aligned and managed so as to minimise disturbance of the riparian zone and in-stream habitats.

7.5 The Licensee shall do Bio-monitoring to determine the impact, change, deterioration and improvement of the aquatic system associated with the activities that of impeding, altering or diverting the water resource.

8 SITE SPECIFIC CONDITIONS

8.1 Flood lines are to be determined for both rivers surrounding the project area and be submitted to the Provincial Head within six (6) months of the issuance of this licence.

8.2 Mining must exclude the 2 main wetlands on the western and eastern side of the mine.

8.3 All measures and technologies available must be utilized to ensure that decant points are at least 200m away from all rivers.

8.4 Drainage systems, trenches, channels and dams ensuring the separation of clean and dirty water must be constructed and operated in an environmentally friendly.

8.5 An inspectional and maintenance system to clean and access drainage systems, trenches, channels and dams must be established and implemented.

8.6 All diversion trenches and berms as well as soil stockpiles must be seeded with an appropriate seed mixture during the first rainy season after establishment.

APPENDIX IV

Section 21 (g) of the Act: **Disposing of waste in a manner which may detrimentally impact on a water resource**

1. CONSTRUCTION , OPERATION AND MAINTAINANCE

1.1 The Licensee shall carry out and complete all the activities, including the construction and operation of the facilities indicated in Table 4, according to the Report and according to the final plans submitted with the Integrated Water Use Licence Application as approved by the Provincial Head:

Table 4: Geographical positions of all the waste water management facilities

Water use(s)	Purpose	Capacity/ Volume (m^3, tonnes and/or m^3/annum)	Property Description	Co-ordinates
Section 21(g)				
21(g): Storage of dirty water in the PCDs	Mine infrastructure PCD	7 000m^3	Brakfontein 264 IR Portion 27:	26°13'29.78"S 28°50'36.89"E 26°13'32.70"S 28°50'38.44"E 26°13'29.71"S 28°50'40.63"E 26°13'28.78"S 28°50'39.62"E
	Additional infrastructure PCD with 7 000m3 capacity.	7 000m^3		26°13'29.43"S 28°50'40.75"E 26°13'32.56"S 28°50'38.66"E 26°13'34.29"S 28°50'41.76"E

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Water use(s)	Purpose	Capacity/ Volume (m^3, tonnes and/or m^3/annum)	Property Description	Co-ordinates
				26°13'30.56"S 28°50'43.66"E
	PCD at wash plant and co-disposal. PCD with 17 658m^3 capacity. Capacity to increase by 8 147m^3 if mine water is pumped from sumps to PCD.	17 658m^3	Brakfontein 264 IR Portion 25:	26°13'54.23"S 28°50'59.35"E 26°13'54.16"S 28°51'8.89"E 26°13'56.93"S 28°51'8.42"E 26°13'56.78"S 28°50'59.17"E
21(g): Coal Stockpiling and overburden stockpiling	Temporary overburden and ROM coal stockpiles at incline shaft.	1 200 000 tons/year.	Brakfontein 264 IR Portions 16:	26°13'38.21"S 28°49'55.88"E
	Temporary overburden and coal stockpiles at mining area.	600 000 tons/year.	Brakfontein 264 IR Portions 27:	26°13'27.94"S 28°50'44.26"E
	ROM stockpiles at mining area.	1 200 000 tons/year.	Brakfontein 264 IR Portions 17:	26°13'20.24"S 28°50'46.43"E
	Temporary overburden stockpiles at mining area.	450 000 m^3.	Brakfontein 264 IR Portions 17:	26°13'4.26"S 28°51'6.37"E
	Temporary overburden stockpiles at mining area.	450 000 m^3.	Brakfontein 264 IR Portion 22:	26°14'14.93"S 28°49'52.61"E
	Temporary overburden stockpiles at mining area.	500 000 m^3.	Brakfontein 264 IR Portion 25:	26°13'42.28"S 28°50'37.75"E

Water use(s)	Purpose	Capacity/ Volume (m³, tonnes and/or m³/annum)	Property Description	Co-ordinates
	Temporary coal stockpiles at wash plant area.	300 000 m^3	Brakfontein 264 IR Portion 25:	26°13'57.47"S 28°50'40.63"E
21(g) Co-disposal facility for discard and slurry disposal	Containment of waste emanating from the processing and washing plant.	264 000 tons/a	Brakfontein 264 IR Portion 25	26°13'57.67"S 28°50'58.31"E 26°14'3.59"S 28°50'55.28"E 26°14'9.64"S 28°50'59.06"E 26°14'5.93"S 28°51'7.13"E 26°13'57.29"S 28°51'8.32"E
21(g): Dust suppression		32 850m^3/a	Brakfontein 264 IR All portions within the mineral rights boundary	All areas
21(g): Ablutions and septic tanks		22265m^3/a	Brakfontein 264 IR Portions 27 and 25	26°13'34.32"S 28°50'58.56"E 26°13'48.07"S 28°50'53.12"E

1.2 The construction of the waste containment facilities listed in Table 4 must be carried out under the supervision of a professional Civil Engineer, registered under the Engineering Profession of South Africa Act, 1990 (Act 114 of 1990), as approved by the designer.

1.3 Within thirty (30) days after the completion of the activities referred here in accordance with the relevant provisions of this licence, the Licensee shall in writing, under reference 27/2/2/B120/5/4, inform the Provincial Head thereof. This shall be accompanied by a signature of approval from the designer referred to above that the construction was done according to the design plans referred to in the Report.

1.4 The Licensee must ensure that the disposal of the waste or water containing waste and the operation and maintenance of the system are done according to the provisions in the Report.

1.5 The Licensee shall as well submit a set of as-built drawings to the Provincial Head after the completion of the waste facilities listed in Table 4.

1.6 The waste facilities listed in Table 4 shall be operated and maintained to have a minimum freeboard of 0.8 metres above full supply level and all other water systems related thereto shall be operated in such a manner that it is at all times capable of handling the 1:50 year flood-event on top of its mean operating level.

1.7 The Licensee shall use acknowledged methods for sampling and the date, time and sampler must be indicated for each sample.

1.8 The Compacted Clay Layer compaction specification must be amended to a minimum of 95% Standard Proctor density.

1.9 The Geo-membrane shall comply with SANS 1526 and GRI GM13.

1.10 The Pollution Control Dam protection layer of sand on the floor and geo-textile on the wall area shall be removed out as to reinstate the composite effect of the Barrier system.

1.11 The ash layer beneath the Run of Mine pad shall be installed.

2. DISPOSAL OF WASTE OR WATER CONTAINING WASTE

2.1 The Licensee is authorised to dispose of waste or water containing waste into the waste management facilities on the properties described in Table 5:

Table 5: Volumes of waste or water to be disposed at the waste disposal facilities

Description of activity Facilities	Volume in Cubic meters per annum (m^3/a)	Capacity Cubic meters (m^3)	Waste Description	Property Name
Disposal of contaminated run-off and contaminated dewatered water Pollution Control Dam	500 000 m^3/a	47 000	Mine dirty water emanating from the dewatering of opencast pit and dirty water run-off.	Vlakvarkfontein 213 IR portion 4

2.2. The Licensee is authorised to dispose of a maximum volume of two hundred and ninety one thousand three hundred and eight cubic meters per annum (291 308 m^3/a)

of waste water by means of dust suppression onto haul roads and mining area on portion 4 Vlakvarkfontein.

3. MONITORING

3.1 Surface draining via the two streams cross the proposed mining rights area, flowing from south to north towards Delmas, occurs within the study area, therefore reasonable and sound groundwater protection measures are required to ensure that no cumulative pollution affects these water resources.

3.2 There must be an undertaking by the mine to provide and compensate the surrounding groundwater users should their boreholes be affected in terms of quantity and quality in a long term.

3.3 The Licensee must is submit the final groundwater monitoring program with the inclusion of the boreholes in Table 6 of the Licence within six (6) months of issuance of this licence.

3.4 The groundwater model must be updated as more information on the current and additional monitoring boreholes becomes available.

Table 6: Groundwater monitoring boreholes

Monitoring point	Description	Co-ordinates
CBF1	Proposed Underground & Opencast	-26.2247 'S 28.8322 'E
CBF2	Proposed Underground & Opencast	-26.2277 'S 28.8348 'E
CBF3	Proposed Underground & Opencast	-26.2255 'S 28.8376 'E
CBF5	not applicable	-26.2150 'S 28.8620 'E
CBF6	not applicable	-26.2281 'S 28.8609 'E
CBF7	not applicable	-26.23536 'S 28.874 'E
BHA1	Current Opencast	-26.2170 'S 28.8539 'E
BHA3	Current Opencast	-26.2274 'S 28.8544 'E
BHB	Current Surface Infrastructure	-26.22348 'S 28.8443 'E
BHC	Proposed Underground & Opencast	-26.2219 'S 28.8420 'E

Table 7: Groundwater monitoring plan frequency

Phase	Groundwater levels	Groundwater quality	Parameters
During mining	Monthly	Quarterly	Total Dissolved Solids / Electrical Conductivity; pH level; Alkalinity; Carbonates; Magnesium; Calcium; Sodium; Potassium; Sulphate; Chloride; Fluoride; Iron; Manganese; and Aluminum.
Post-Mining	Monthly	Quarterly	

3.5 The Licensee shall monitor on monthly basis the water resources at surface water monitoring points in Tables 8 & 9 and groundwater monitoring points in Tables 6 & 7 on a quarterly basis to determine the impact of the facility and other activities on the water quality by taking samples at the monitoring points.

Table 8: Surface water sampling points.

Monitoring point	Description	Co-ordinates
MP-A	Tributary of the Wilge River, up stream of Ptn 27	-26.2311 'S 28.8403 'E
MP-B	Tributary of the Wilge River, eastern boundary of Ptn 27	-26.2253 'S 28.8416 'E
MP-C	Tributary of the Wilge River, downstream of Ptn 27	-26.2298 'S 28.8553 'E
MP-D	Up stream of Ptn 29 (northern boundary)	-26.2037 'S 28.8417 'E
MP-E	Up stream of Ptn 29 (northern boundary)	-26.1939 'S 28.8439 'E
MP-F	Downstream of Ptn 29	-26.1978 'S 28.8654 'E
MP-G1	Wilge river, upstream of MP-C	-26.2320 'S 28.8558 'E
MP-G2	Upstream of confluence with Wilge River	-26.2347 'S 28.8849 'E
MP-G3	Downstream of Ptn 17 and 27 but up stream if Ptn 4	-26.2093 'S 28.8774 'E
MP-G4	Most downstream point of the entire study area	-26.1748 'S 28.8819 'E
In-pit sump	Location may vary within the general location of the pit	-26.2237 'S 28.8504 'E
PCD	South-western extent of existing mining area. Dirty water containment dam.	-26.2252 'S 28.8440 'E
PCD	Eastern area of portion 25	-26.2322 'S 28.8509 'E

Table 9: Groundwater monitoring plan frequency

Phase	Groundwater levels	Groundwater quality	Parameters
During mining	Monthly	Monthly	Total Dissolved Solids / Electrical Conductivity; pH level; Alkalinity; Carbonates; Magnesium; Calcium; Sodium; Potassium; Sulphate; Chloride; Fluoride; Iron; Manganese; and Aluminum.
Post-Mining	Quarterly	Quarterly	

3.6 The date, time and monitoring point in respect of each sample taken shall be recorded together with the results of the analysis.

3.7 Monitoring points shall not be changed without prior notification to and written approval by the Provincial Head.

3.8 The waste management facilities must be designed in such manner that any leakages can be contained and reclaimed without any impact on the surrounding environment, an early warning detection system must be installed and monitored to detect any leakages or malfunction in the waste management facilities in time in order to take corrective action to protect water resources.

3.9 Post mine closure, there is a great chance of decant and acid mine drainage, the Licensee is required to commit to treat decanting water up to an environmentally acceptable standard before that decant reports to surface water bodies in the study area.

3.10 The groundwater model must be updated as more information in the current and the additional monitoring boreholes becomes available.

3.11 Geochemical studies must be carried out and the numerical groundwater flow and contaminant transport models for the proposed mine must be updated and submitted to the Provincial Head within (12) twelve months of the issuance this licence.

3.12 An acceptable groundwater monitoring network must be established within six (6) months of the date of issuance of this licence.

MS

Director –General

4. WATER RESOURCE PROTECTION

4.1 The impact of the activities of the mine on the groundwater shall not exceed the limits as indicated in Table 10.

Table 10: Ground Reserve Quality

Parameters	Quality Limit
Electrical Conductivity (mS/m)	37.51
pH	5.5-9.5
Sodium (mg/l)	10.45
Magnesium (mg/l)	5.61
Calcium (mg/l)	20.68
Chloride (mg/l)	8.80
Sulphate (mg/l)	14.85
Nitrate (mg/l)	0.48

5. REPORTING

5.1 The Licensee shall update the water balance annually and calculate the loads of waste emanating from the activities. The Licensee shall determine the contribution of their activities to the mass balance for the water resource and must furthermore co-operate with other water users in the catchment to determine the mass balance for the water resource reserve compliance point.

5.2 The Licensee shall submit the results of analysis for the monitoring requirements to the Provincial Head on a quarterly basis under Reference number **16/2/7/B200/C585**.

6. STORMWATER MANAGEMENT

6.1 The stormwater management drawings must be submitted to the Department for approval prior to the commencement of the proposed water use activities and that no mining activity or infrastructure is positioned within the 1: 100 year floodline of the Klipspruit and any other water resources within the vicinity of the mine without the requisite authorisation.

6.2 The Licensee must also ensure that the runoff water storage facilities can accommodate at least 1:50 year stormwater with a minimum 0.8 metre freeboard.

6.3 Stormwater leaving the Licensee's premises shall in no way be contaminated by any substance, whether such substance is a solid, liquid, vapour or gas or a combination thereof which is produced, used, stored, dumped or spilled on the premises.

6.4 Increase runoff due to vegetation clearance and/or soil compaction must be managed, and steps must be taken to ensure that stormwater does not lead to bank instability and excessive levels of silt entering the stream.

6.5 Stormwater shall be diverted from the mine complex site and roads and shall be managed in such a manner as to disperse runoff and concentrating the stormwater low.

6.6 Where necessary works must be constructed to attenuate the velocity of any stormwater discharge and to protect the banks of the affected watercourses.

6.7 Stormwater control works must be constructed, operated and maintained in a sustainable manner throughout the impacted area.

6.8 Increased runoff due to vegetation clearance and/or soil compaction must be managed, and steps must be taken to ensure that stormwater does not lead to bank instability and excessive levels of silt entering the streams.

6.9 All stormwater that would naturally run across the pollution areas shall be diverted via channels and trapezoidal drains designed to contain the 1:50 year flood.

7. PLANT AREAS AND CONVEYANCES

7.1 Pollution caused by spills from the conveyances must be prevented through proper maintenance and effective protective measures especially near all stream crossings.

7.2 All reagent storage tanks and reaction units must be supplied with a bunded area built to the capacity of the facility and provided with sumps and pumps to return the spilled material back into the system. The system shall be maintained in a state of good repair and standby pumps must be provided.

7.3 Any hazardous substances must be handled according to the relevant legislation relating to the transport, storage and use of the substance.

7.4 Any access roads or temporary crossings must be:

7.4.1 Non-erosive, structurally stable and shall not induce any flooding or safety hazard and
7.4.2 Be repaired immediately to prevent further damage.

8. ACCESS CONTROL

8.1 Strict access procedures must be followed in order to gain access to the property.

8.2 Notices prohibiting unauthorised persons from entering the controlled access areas as well as internationally acceptable signs indicating the risks involved in case of an unauthorised entry must be displayed along the boundary fence of these areas.

9. CONTINGENCIES

9.1 Accurate and up-to-date records shall be kept of all system malfunctions resulting in non-compliance with the requirements of this licence. The records shall be available for inspection by the Provincial Head upon request. Such malfunctions shall be tabulated under the following headings with a full explanation of all the contributory circumstances:

9.1.1 Operating errors
9.1.2 Mechanical failures (including design, installation or maintenance)
9.1.3 Environmental factors (e.g. flood)
9.1.4 Loss of supply services (e.g. power failure) and
9.1.5 Other causes.

9.2 The Licensee must, within 24 hours, notify the Provincial Head of the occurrence or potential occurrence of any incident which has the potential to cause, or has caused water pollution, pollution of the environment, health risks or which is a contravention of the licence conditions.

9.3 The Licensee must, within 14 days, or a shorter period of time, as specified by the Provincial Head, from the occurrence or detection of any incident referred above, submit an action plan, which must include a detailed time schedule, to the satisfaction of the Provincial Head of measures taken to:

9.3.1 Correct the impacts resulting from the incident
9.3.2 Prevent the incident from causing any further impacts and
9.3.3 Prevent a recurrence of a similar incident.

10. AUDITING

10.1 The Licensee shall conduct an annual internal audit on compliance with the conditions of this licence. A report on the audit shall be submitted to the Provincial Head within one month of finalisation of the report, and shall be made available to an external auditor should the need arise.

11. INTEGRATED WATER AND WASTE MANAGEMENT

11.1 The Licensee must update an *Integrated Water and Waste Management Plan (IWWMP)*, which must together with the updated *Rehabilitation Strategy* and *Implementation Programme (RSIP)*, be submitted to the Provincial Head for approval within one (1) years from the date of issuance of this licence.

11.2 The IWWMP and RSIP shall thereafter be updated and submitted to the Provincial Head for approval, annually.

11.3 The Licensee must, at least 180 days prior to the intended closure of any facility, or any portion thereof, notify the Provincial Head of such intention and submit any final amendments to the IWWMP and RSIP as well as a final *Closure Plan*, for approval.

11.4 The Licensee shall make full financial provision for all investigations, designs, construction, operation and maintenance for a water treatment plant should it become a requirement as a long-term water management strategy.

11.5 During the operational phase the Licensee must ensure local aquifers are not artificially recharged by the seepage emanating from the opencast mining workings, dirty water dams, leaking pipes or any hazardous waste storage facilities.

11.6 Emergency action plans in cases of groundwater polluted emanating from the opencast mine workings; dirty water dams; any hazardous waste storage facilities (e.g. oil and diesel spills), or leakage occurred along the pipeline must be adhered too to protect groundwater quality from degradation and a plan for remediation must be developed and ensure that the corrective measures implemented are adequate. This action plan should inter alia identify the sources of potential groundwater contamination, the potential impacts should be quantified and their contribution factored into the remedial strategy of groundwater.

11.7 The monitoring data must be analyzed by a hydro-geologist to establish quality trends for the boreholes. This can be used to re-evaluate the aquifer quantity and quality status on an ongoing basis and recommendation adjustment to abstraction rate or daily pump cycle if required.

11.8 Pollution control dams and the groundwater recharge into the mine workings should be managed properly to avoid decant of groundwater poor quality mine water into the surface resources and ensure surface streams do not act as secondary sources of contamination during operational, decommission and closure phases

13 GENERAL CONDITIONS

13.1 Water samples must be taken from all the monitoring boreholes by using approved sampling techniques and adhering to recognized sampling procedures. Samples should be analyzed for both organic as well as inorganic pollutants, as mining activity often lead to hydrocarbon spills in the form of diesel and oil. At least the following water quality parameters should be analyzed for:

13.1.2 Major ions (Ca, K, Mg, Na, SO_4, NO_3, Cl, F)
13.1.3 Electrical Conductivity (EC)
13.1.4 Total Petroleum hydrocarbon (TPH)
13.1.5 Total Alkalinity

These should be recorded on a data sheet. It is proposed that the data should be entered into an appropriate computer database and reported to the Department of Water And Sanitation.

13.2 The final backfilled opencast topography should be engineered such that runoff is directed away from the opencast areas.

13.3 The final layer should be as clayey as possible and compacted if feasible, to reduce recharge to the opencasts.

13.4 Quarterly groundwater sampling must be done to establish a database of plume movement trends, to aid eventual mine closure.

13.5 The Licensee must ensure in advance that alternative water supply for external water users is provided to these users should groundwater resources be impacted

13.6 A proper groundwater and surface water monitoring network should be established to monitor the quality and quantity of groundwater as per the report recommendation and ensuring that water used by other water users are safeguarded in accordance to Chapter 14 of the National Water Act, 1998.

13.7 The waste containment facilities must be designed in such a manner that any spillage can be contained and reclaimed without any impact on the surrounding environment, a plan must be in place to stop overflowing in a dam in case of rainy seasons.

13.8 The Licensee shall at all times together with the conditions of this licence adhere to the Regulations on use of water for mining and related activities aimed at the protection of water resources (GN 704, 4 June 1999).

APPENDIX V

Section 21 (j) of the Act: Removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people.

1. This licence authorises the removal of a maximum volume of water found underground in the property as indicated in Table 11:

Table 11: Section 21 (j) water use activities.

Water use(s)	Purpose	Capacity/ Volume (m3, tonnes and/or m3/annum)	Property Description	Co-ordinates
21(j): Dewatering of mine pits for safe mining	150m^3 /day for dust suppression and mine requirements	54 750m^3/a	Brakfontein 264 IR Portions 16:	26°13'38.21"S 28°49'55.88"E
	100m^3 /day for dust suppression and mine requirements	36 750m^3/a	Brakfontein 264 IR Portions 17 and 27:	26°13'22.12"S 28°51'0.94"E
	150m^3 /day for dust suppression and mine requirements	54 750m^3/a	Brakfontein 264 IR Portions 22 and 25:	26°14'4.92"S 28°50'18.49"E

2. The quantity of the water authorised to be removed in terms of this licence may not be exceeded without prior authorisation by the Minister.

3. The Licensee shall provide any water user whose water supply is impacted by the water use with potable water.

4. The quantity of water removed from underground must be metered and recorded on a daily basis.

5. The groundwater levels shall be monitored monthly.

6. Self registering flow meters must be installed in the delivery lines at easily accessible positions near the dewatering points.

7. Calibration certificates in respect of the pumps must be submitted to the Provincial Head after installation thereof and thereafter at intervals of two (2) years.

8. The date and time of monitoring in respect of each sample taken shall be recorded together with the results of the analysis.

MSS

9. Analysis shall be carried out in accordance with methods prescribed by and obtainable from the South African Bureau of Standards, in terms of the Standards Act, 1982 (Act 30 of 1982).

10. The methods of analysis shall not be changed without prior notification to the Licensee and written approval by the Minister or his/her delegated nominee.

11. The Provincial Head must be informed of any incident that may lead to groundwater being disposed of contrary to the provisions of this licence, by submitting a report containing the following information:

    11.1 Nature of the incident (e.g. operating malfunctions, mechanical failures, environmental factors, loss of supply services, etc)\
    11.2 Actions taken to rectify the situation and to prevent pollution or any other damage to the environment and
    11.3 Measures to be taken to prevent re-occurrence of any similar incident.

12. The Licensee shall follow acceptable construction, maintenance and operational practices to ensure the consistent, effective and safe performance of the groundwater removal system.

13. Reasonable measures must be taken to provide for mechanical, electrical or operational failures and malfunctions of the underground water removal system.

END OF LICENCE

Annexure "JAB/Z8"

Eskom

MEMORANDUM

Mr Vusi Mboweni
Acting Executive Primary Energy Division

SUBJECT

Potential Coal Sources to Hendrina Power Station and Estimated Delivered Price

For your information, please

Introduction

A Request for information was issued to the market for coal supply to Hendrina Power Station post 2018; it was issued on 22 October 2014 and closed on 03 December 2014. The main objective of the RFI was to identify potential coal sources to supply coal to Hendrina post 2018. This will enable timeous engagement with potential coal suppliers to ensure security of supply to the power station. The information obtained through this RFI can be utilised to strengthen Eskom's coal supply database and assist in future coal supply procurements to any alternative power stations.

On the closing date of the RFI3230, 20 suppliers responded with 30 coal resources being offered by these suppliers. During the initial technical evaluation process 4 suppliers and 5 sources were not considered. 1 supplier wanted to supply petrified wood, 2 suppliers only submitted EMPR documents and 2 suppliers did not name their coal sources

During the evaluation process, the technical team had the following experiences in terms of assessing the ROM tons: some suppliers did not provide the ROM-tonnages but rather the mineable tons insitu (MITS) or the total tons insitu (TTIS). The technical team used the following assumptions to calculate and derive the ROM tonnages:

- If the tonnages were quoted as MTIS an extraction factor of 90% was applied for the opencast resources (OC) and 65% for the underground resources. (UG) If the resource was a combination of opencast (OC) and underground (UG), an extraction factor of 77.5% (i.e. average of OC and UG) was applied.
- If the tonnages were quoted as TTIS, a geological and environmental loss of 40% was applied to arrive at the MTIS.

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www.eskom.co.za
Eskom Holdings SOC Limited Reg No 2002/015527/30

- For resources where the mining method was not specified, an extraction factor of 77.5% was applied.
- Where the reserve and resource classification (MTIS, TTIS) was not quoted, it was accepted as MTIS.
- In calculating the ROM tonnages a 5% contamination and 5% surface moisture was applied.

Furthermore other information such as qualities, distance to power stations was not submitted by the supplier.

The suppliers with the sources in dark blue in Figure 1 provided the distances to Hendrina Power Station from their source and the estimated price.

The transport cost was calculated using the average rates paid by Eskom for the distances supplied by the supplier. In the case the Southpansberg coalfield and the Limpopo Coalfield, a road distance of 40km and 450km rail distance was assumed to calculate the transport cost.

Due to limited wash ability data, where the supplier offered a lower calorific value i.e. below 23MJ/kg, a 10% increase in cost was factored in for the yield adjustment.

Where the supplier did not supply the price and qualities, i.e. light blue a price of coal offered by current suppliers in the area was used and adjusted for the quality. The straight line distances from the source to the power station was scaled of a plan and used to calculate the transport cost where distances were not supplied by the supplier.

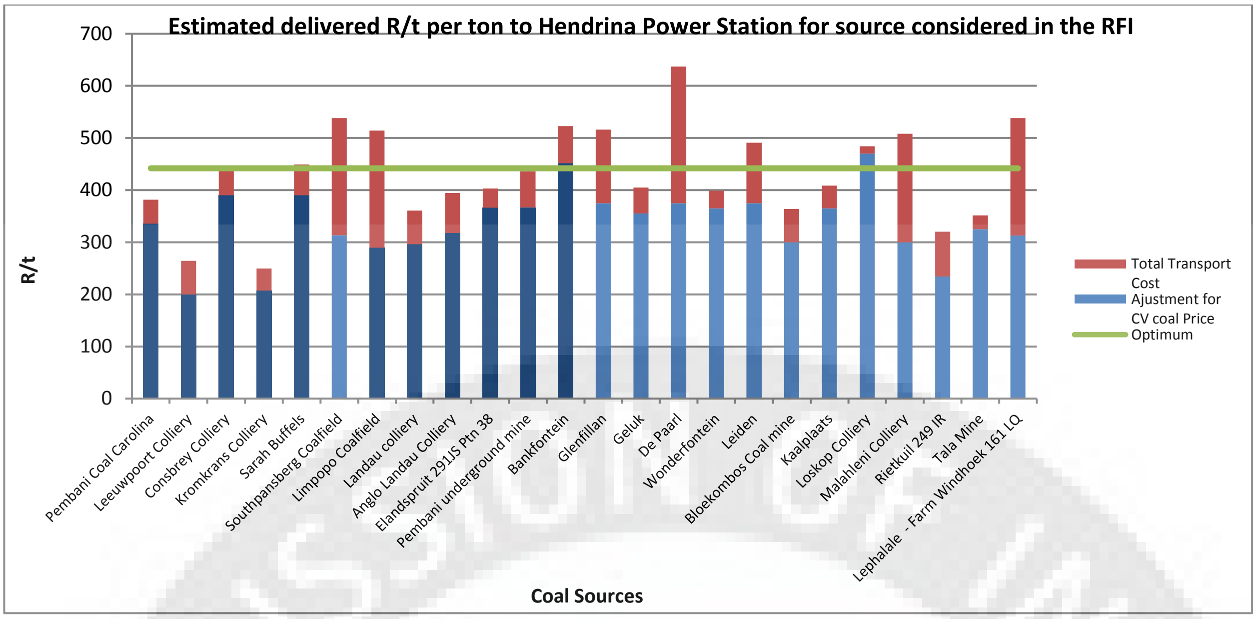

Figure 1: Sources considered from RFI

From the above if the traders / agents and the sources in the Limpopo coalfield are excluded (because of high delivered cost) the remaining sources and estimated delivered price is show below in Figure 2:

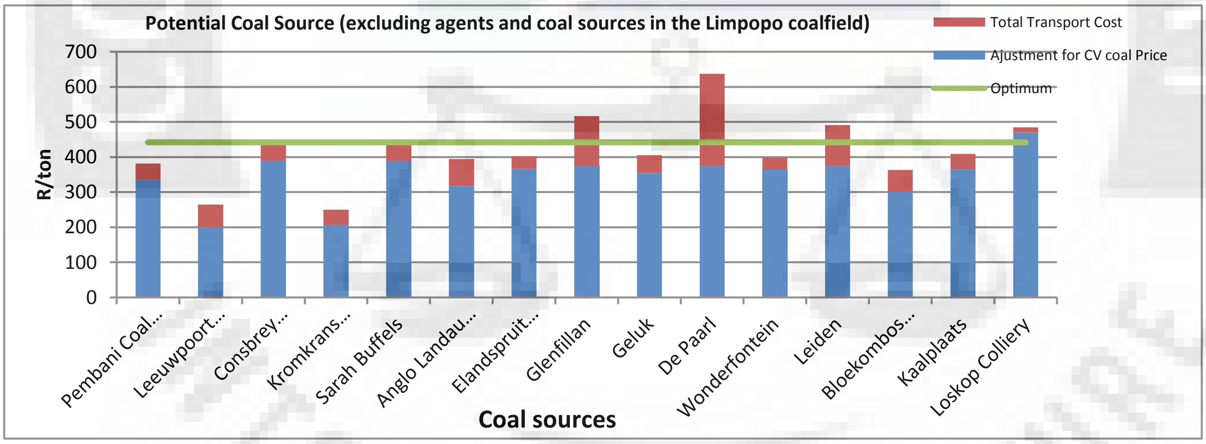

Figure 2: Excluding traders/ agents and coal sources in the Limpopo Coalfield

The estimated monthly tons from each of the sources from Figure 2 is show in figure 3 below:

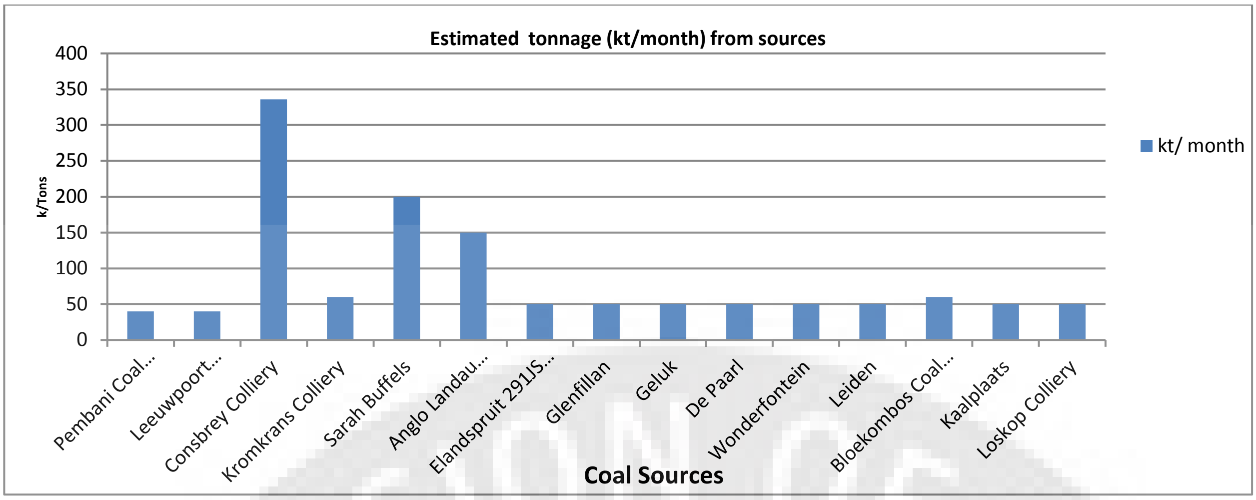

Figure 3: Estimated monthly tonnage

The cumulative monthly tonnage is shown in Figure 4 below. Up to July 2016 the tonnage is below 500Kt and by February 2019 reaches 1000kt.

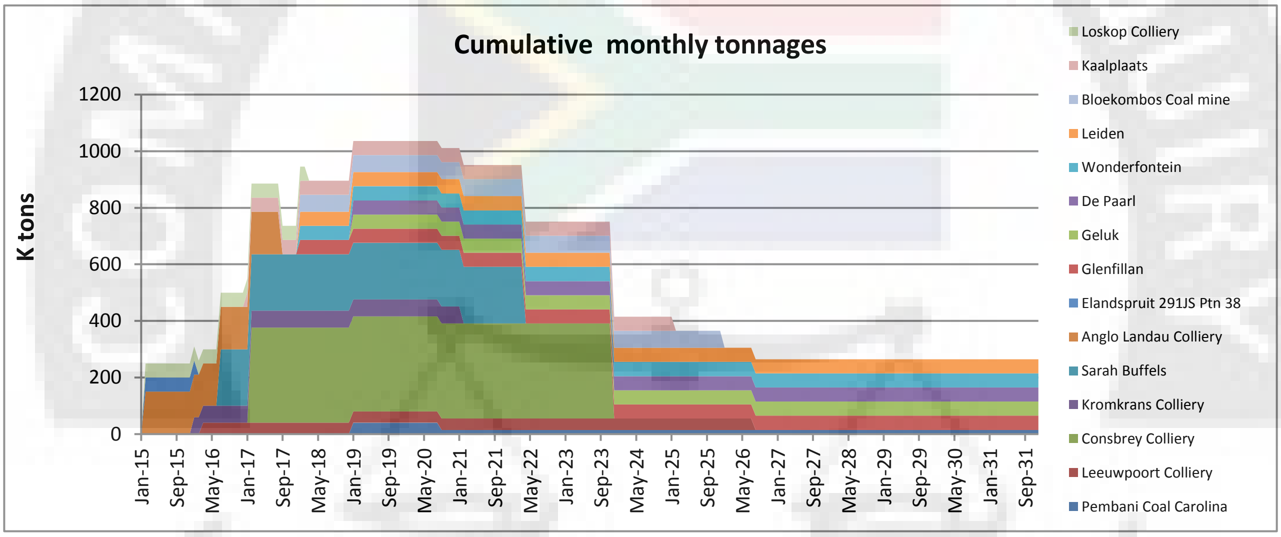

Figure 4: Cumulative monthly tonnages

Conclusion

Based on Figure 4, it is clear that in the first year (July 2016) there will not be enough coal to meet Hendrina power station's burn requirement and additional coal will have to be purchased from other suppliers. Furthermore due to road and stockyard logistics, Hendrina Power Station can only handle 10kt imports out of a standard daily burn requirement of 20kt.

Coal may also be required for Arnot Power Station. It is anticipated that if PED goes out on an RFI for Arnot, the same suppliers respond.

From: Johann Bester

Annexure “JAB/Z9”

Eskom	Approval for the sourcing of coal to fill the shortfall from FY2016	Unique ID:	724503
		Revision:	1
		Effective Date:	26 May 2015
		Page 2 of 5	
		Primary Energy Division	

DELEGATION OF AUTHORITY

In terms of the delegation vested in me and in accordance with resolutions approved by the Board Tender Committee on 11th September 2008 and confirmed at subsequent Board Tender Committee Meetings of 3rd December 2010 and 16th April 2014, I, VUSI MBOWENI, as the Senior General Manager of the Primary Energy Division, hereby delegate further by authorising JOHANN A BESTER, General Manager Fuel Sourcing, to take all the necessary steps to give effect to the signing of the agreements or consents or other documentation necessary or related to the APPROVAL FOR THE SOURCING OF COAL TO FROM FY2016 ONWARDS as set out in the attached document 724503.

The General Manager Fuel Sourcing is required to ensure that all the necessary due diligence prerequisities have been conducted prior to signing of the agreements or consents or other documentation relating to the APPROVAL FOR THE SOURCING OF COAL TO FILL THE SHORTFALL FROM FY2016 ONWARDS, these prerequisites include the following disciplines:

- Commercial and Financial
- Supplier Development and Localisation
- Environmental and Legal
- Technical
- Health and Safety
- Logistics

Kindly therefore, authorise the requested Delegation of Authority if the above is in order.

Regards

9/7/15

Vusi Mboweni
SENIOR GENERAL MANAGER
PRIMARY ENERGY DIVISION

Date

Accepted:

12 June 2015

Johann Bester
GENERAL MANAGER: FUEL SOURCING
PRIMARY ENERGY DIVISION

Date

Annexure "JAB/Z10"

Annexure "JAB/Z10"

Tegeta Exploration & Resources Pty Ltd.

TEGETA
COAL, COPPER & PGM

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Directors :
Ronica Govender
Ravindra Nath
Registration No.:
2006/014492/07

Primary Energy Division
ESKOM Holdings SOC Limited
Magawatt Park
Sandton
Attn. Ms Ayanda Ntshanga

Date: 23rd September 2014

Dear Sir,

COMMERCIAL OFFER FOR SUPPLY OF COAL TO ESKOM

Kindly refer to the meeting we had with you in the captioned matter. In this connection please find below the details of our commercial offer for the supply of coal to ESKOM:

1. Seam Offered: 4th Lower Seam;
2. Quantity Offered(In Mt):
   i. Minimum- 40000 Mt;
   ii. Maximum-70000 Mt
3. Quality:

Sr No	Particulars	Typical	Rejection Limit	Bonus
1.	**Calorific Value**	22.00	19.50	>22.50
2.	**Sulphur**	1.00	>1.30	<1.00
3.	**Volatile**	21.00	<20.00	
4.	**Ash**	25.00	>32.00	<25.00

4. Rate Offered per Mj.: R17.00

Yours Sincerely

(Authorised Signatory)

Annexure “JAB/Z11”

MINUTES OF MEETING WITH **TEGETA-IDWALA** **HELD ON 30 JANUARY 2015** **AT ESKOM'S OFFICES, MEGAWATT PARK, SUNNINGHILL** **GREEN ROOM BOARDROOM**

Attendants:

Eskom

Thabani Mashego (TM)
Ayanda Ntshanga (AN)
Sunjay Andhee (SA)
Johann Bester (JB)

IDWALA

Ravindra Nath (RN)
Satish Mudliar (SM)
A.K. Upadhy (AK)

- JB advised on the evacuation procedures

Commercial Discussion

- JB started the discussion by discussing Eskom's pricing principles.
- JB stated that parties are far apart in terms of the price.
- JB went on to show the average cost of coal delivered to Majuba Power Station
- RN stated that they have increased their BBBEE ownership and a higher price would be needed to finance the BBBEE partners.
- RN also further stated that recent changes in the environmental law as well as royalties justified the need for a higher price.
- JB stated that any price that the parties agree on would set a new benchmark on coal sold to Eskom, so it was important that an acceptable price be agreed between both parties.
- JB urged that Tegeta review their price, if they are unable to review their price Eskom would have to look at alternative suppliers.

- RN requested to call their board and obtain a mandate to adjust their price offer.

- RN came back with a price offer of R13.50/GJ for a five year contract. of approximately 65kt per month from the Brakfontein Resource.

- Eskom agreed to accept the price, provided that Eskom has the first right of refusal, for the additional coal resources at Brakfonein extension. Furthermore the coal must meet the technical and combustion requirements of Majuba Power Station.

Technical Discussion

- AK the Mine Manager presented their proposed technical plan to mitigate the high abrasive (AI) to MM and SA.

- Eskom's other big concern is the Hard Grove Index ("HGI") which is marginal; Eskom requires a minimum of HGI of 50.

- SA and MM were satisfied by the plans presented by Tegeta on how they plan to mitigate the high AI is sound.

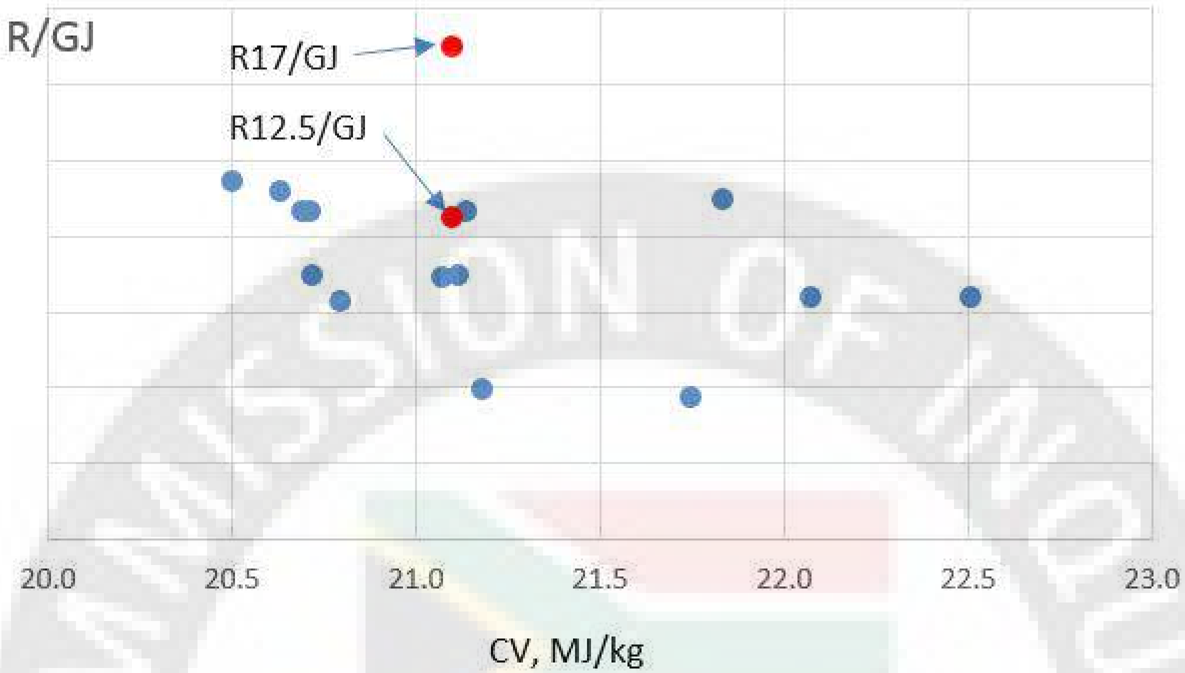
- A newly mined sample of the blended product will have to be collected for testing.

- Tegeta are proposing a supply of 65kT/month of the blended product (seam 4 Upper and seam 4 Lower).

- The proposed start date would be the 1st of April 2015, subject to a successful combustion test.

- AK was requested to provide Eskom with their proposed ramp up plan.

Annexure "JAB/Z12"


R/GJ
R17/GJ
R12.5/GJ
20.0
20.5
21.0
21.5
22.0
22.5
23.0
CV, MJ/kg

Annexure “JAB/Z13”

CONFIDENTIAL

Eskom

Ravindra Nath
Chief Executive
Tegeta Exploration and Resources (Pty) Ltd
Grayston Ridge Office Park
Block A, Lower Ground Floor
144 Katherine Street
SANDTON
2146

Date:
12 February 2015

Enquiries:
A Ntshanga
+27 (011) 800 2936
Our Ref: 722983

Dear Ravindra

COAL SUPPLY OFFER – TEGETA (BRAKFONTEIN COLLIERY AND EXTENSION)

We refer to our recent discussions and your letter dated 3 February 2015 and have amended our coal supply acceptance offer letter referenced as 722981, as follows.

Eskom has agreed to take 65 000 tons from Brakfontein Colliery. Further, Tegeta will offer to Eskom, at the same commercial terms as set out herein, from their Brakfontein Extension Colliery and Eskom has the option to enter into an off-take agreement for the additional coal from Brakfontein Extension Colliery. Each of the tranches are subject to the terms herein.

1. **Coal Specification**
   The coal that will be supplied from the Brakfontein Colliery and Brakfontein Extension Colliery respectively shall comply with the specifications as listed below.

Quality parameter	Unit	Quality Expected	Quality Rejection Limit	Measurement basis
Calorific Value	MJ/kg	21.10	<20.0	Air Dried
Total Moisture	%	<8.0	>10.0	As Received
Inherent Moisture	%	4.4	N/A	As Received
Ash	%	27.9	>30.0	Air Dried
Abrasive Index (Eskom Mining House Method)	mgFe/4kg	<450	>450	Air Dried
Sulphur	%	1.0	>1.3	Air Dried
Volatiles	%	21.3	<20.0	Air Dried
AFT (Initial deformation)	°C	1300	<1220	N / A
Sizing +50mm -3mm (cumulative) -1mm	 % % %	 <5.0 <30.0 <10.0	 >5.0 >35.0 >15.0	N/A

* Hard grove Index should be within Eskom acceptable limit of >50 in order to achieve the desired milling and coal fineness during combustion.

** Full combustion tests will be conducted on all proposed coal prior to delivery and acceptance by Eskom. The objective of the combustion test is to ascertain suitably of the coal for use by Eskom.

2. **Price**
   The price agreed with Tegeta for a combination of seam 4 upper and seam 4 lower from Brakfontein Colliery is R13.50 per gigajoule for a 65 000 tons per month supply.

   A maximum price of R13.50 per gigajoule for an additional 35 000 tons per month from Brakfontein Extension Colliery.

3. **Volumes**
   The proposed volume is 65 000 (sixty five thousand) tons per month from Brakfontein Colliery, 35 000 (thirty five thousand) additional tons per month will become available from Brakfontein Extension Colliery, which shall be offered to Eskom.

4. **Commencement Date of the Contract**
   Notwithstanding signature of the Coal Supply Agreement by the party signing last in time the commencement date shall be 01 April 2015, subject to the Conditions set out below

5. **Duration of the Contract**
   An initial five year duration with an option to extend for an additional five years i.e. for a total duration up to 10 years, for a maximum tonnage of 12 million tons.

6. **Conditions**
   Further to the above, it is important to note that the record of negotiation on the abovementioned material terms are all subject to a duly signed coal supply agreement between the parties and compliance with the following:
   a. The contracted entity will provide a supplier development and localisation plan that stipulates how this entity shall obtain and maintain for the duration of the contract a minimum 50%+1 share Black Ownership within three (3) years from commencement of the coal supply agreement. This plan is subject to approval by Eskom.
   b. The coal proposed to be supplied from, namely Brakfontein and Brakfontein Colliery Extension, must comply with Eskom's technical requirements and Eskom's coal supply requirements, including but not limited to Eskom's full combustion test. For the avoidance of any doubt if these requirements do not render compliance for supply to Eskom's Majuba Power Station, Eskom shall outright reject the proposal and no coal supply agreement shall be entered to.
   c. Eskom's technical requirements are met and confirm that the additional Brakfontein Extension can produce saleable tons prior to the contract being extended to up to 10 years,
   d. The contracting entity complies with all Eskom's requirements which shall include all Eskom policy and procedure, including Vendor registration.
   e. All Eskom's governance processes have been complied with.

Yours sincerely

JABester 12 February 2015

Johann Bester
GENERAL MANAGER: FUEL SOURCING

Annexure "JAB/Z14"

Eskom		Unique ID:	**722438**
		Revision:	**1**
		Effective Date:	**06 August 2014**
		Page **1 of 3**	
		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.

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

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.

Annexure “JAB/Z15”

Eskom

MEMORANDUM

Mr Vusi Mboweni
Acting Executive Primary Energy Division

SUBJECT

Potential Coal Sources to Hendrina Power Station and Estimated Delivered Price

For your information, please

Introduction

A Request for information was issued to the market for coal supply to Hendrina Power Station post 2018; it was issued on 22 October 2014 and closed on 03 December 2014. The main objective of the RFI was to identify potential coal sources to supply coal to Hendrina post 2018. This will enable timeous engagement with potential coal suppliers to ensure security of supply to the power station. The information obtained through this RFI can be utilised to strengthen Eskom's coal supply database and assist in future coal supply procurements to any alternative power stations.

On the closing date of the RFI3230, 20 suppliers responded with 30 coal resources being offered by these suppliers. During the initial technical evaluation process 4 suppliers and 5 sources were not considered. 1 supplier wanted to supply petrified wood, 2 suppliers only submitted EMPR documents and 2 suppliers did not name their coal sources

During the evaluation process, the technical team had the following experiences in terms of assessing the ROM tons: some suppliers did not provide the ROM-tonnages but rather the mineable tons insitu (MITS) or the total tons insitu (TTIS). The technical team used the following assumptions to calculate and derive the ROM tonnages:

- If the tonnages were quoted as MTIS an extraction factor of 90% was applied for the opencast resources (OC) and 65% for the underground resources. (UG) If the resource was a combination of opencast (OC) and underground (UG), an extraction factor of 77.5% (i.e. average of OC and UG) was applied.
- If the tonnages were quoted as TTIS, a geological and environmental loss of 40% was applied to arrive at the MTIS.

Eskom

- For resources where the mining method was not specified, an extraction factor of 77.5% was applied.
- Where the reserve and resource classification (MTIS, TTIS) was not quoted, it was accepted as MTIS.
- In calculating the ROM tonnages a 5% contamination and 5% surface moisture was applied.

Furthermore other information such as qualities, distance to power stations was not submitted by the supplier.

The suppliers with the sources in dark blue in Figure 1 provided the distances to Hendrina Power Station from their source and the estimated price.

The transport cost was calculated using the average rates paid by Eskom for the distances supplied by the supplier. In the case the Southpansberg coalfield and the Limpopo Coalfield, a road distance of 40km and 450km rail distance was assumed to calculate the transport cost.

Due to limited wash ability data, where the supplier offered a lower calorific value i.e. below 23MJ/kg, a 10% increase in cost was factored in for the yield adjustment.

Where the supplier did not supply the price and qualities, i.e. light blue a price of coal offered by current suppliers in the area was used and adjusted for the quality. The straight line distances from the source to the power station was scaled of a plan and used to calculate the transport cost where distances were not supplied by the supplier.

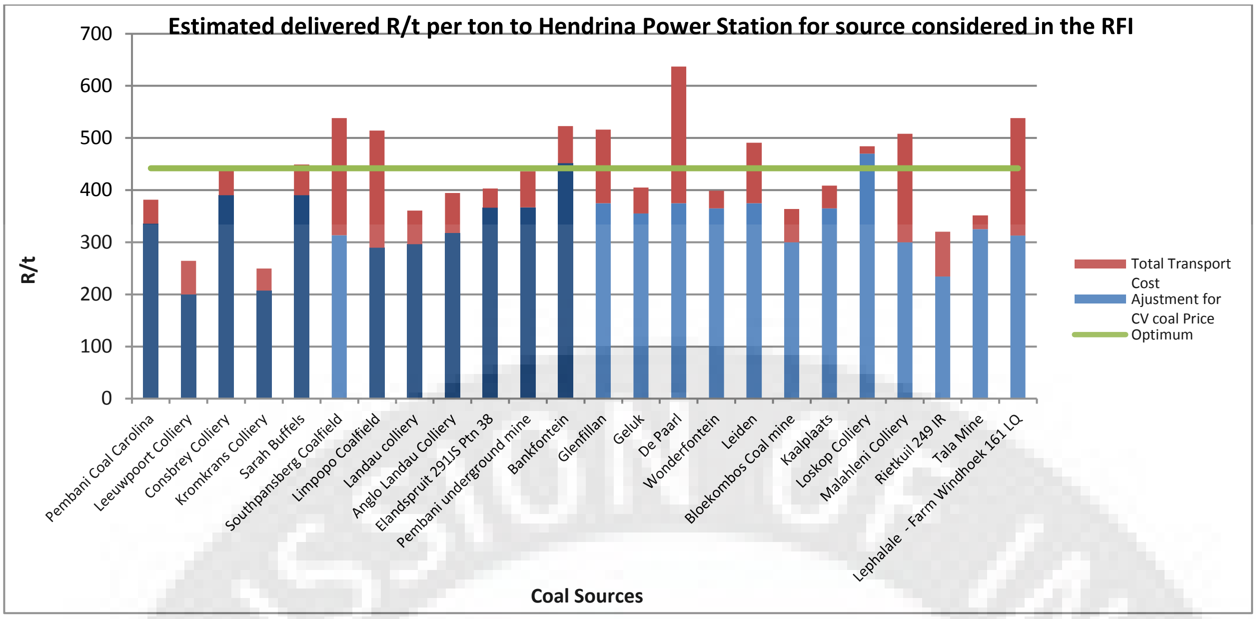


Figure 1: Sources considered from RFI

From the above if the traders / agents and the sources in the Limpopo coalfield are excluded (because of high delivered cost) the remaining sources and estimated delivered price is show below in Figure 2:

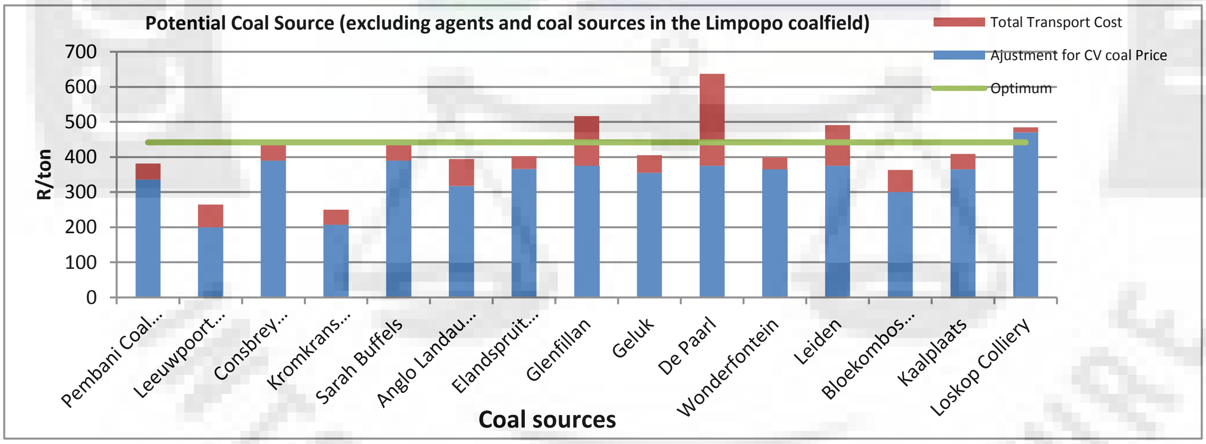


Figure 2: Excluding traders/ agents and coal sources in the Limpopo Coalfield

The estimated monthly tons from each of the sources from Figure 2 is show in figure 3 below:

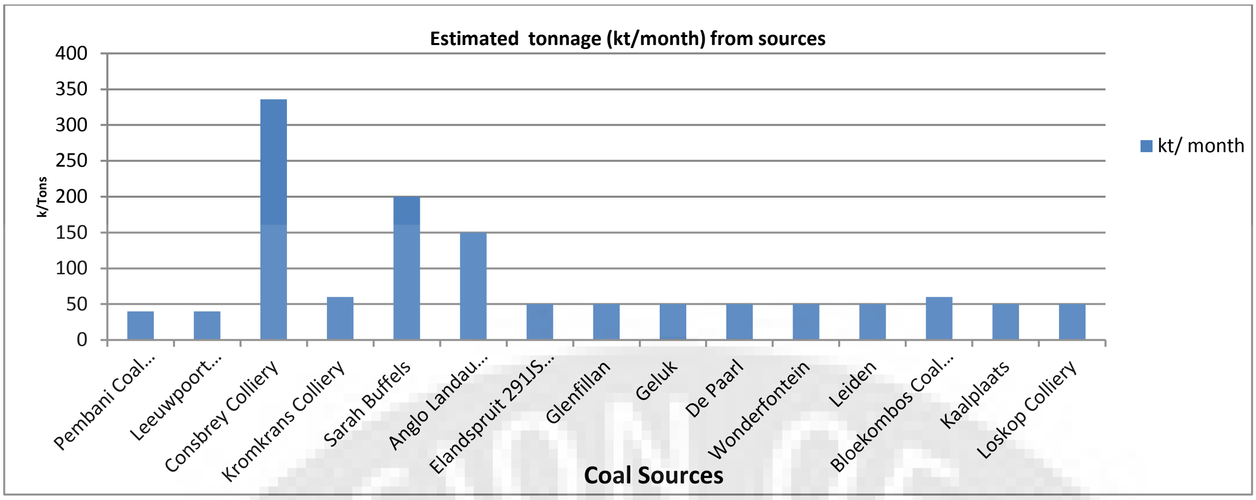


Figure 3: Estimated monthly tonnage

The cumulative monthly tonnage is shown in Figure 4 below. Up to July 2016 the tonnage is below 500Kt and by February 2019 reaches 1000kt.

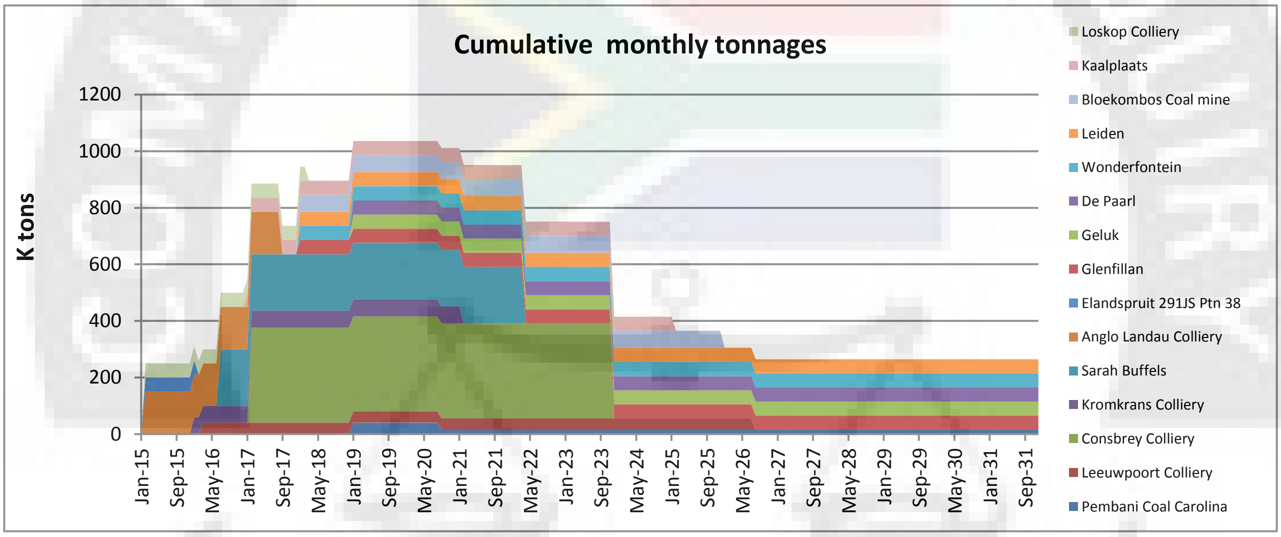


Figure 4: Cumulative monthly tonnages

Conclusion

Based on Figure 4, it is clear that in the first year (July 2016) there will not be enough coal to meet Hendrina power station's burn requirement and additional coal will have to be purchased from other suppliers. Furthermore due to road and stockyard logistics, Hendrina Power Station can only handle 10kt imports out of a standard daily burn requirement of 20kt.

Coal may also be required for Arnot Power Station. It is anticipated that if PED goes out on an RFI for Arnot, the same suppliers respond.

From: Johann Bester

Annexure "JAB/Z16"

OPTIMUM
COAL
MINE

PRIVATE AND CONFIDENTIAL

Eskom Holdings SOC Limited
Megawatt Park
Maxwell Drive
Sunninghill

Attention:

Brian Molefe: Acting Chief Executive Officer
Vusi Mboweni, Acting Head: Primary Energy

with a copy to: Johann Bester: General Manager - Fuel Sourcing

30 June 2015

Dear Sirs

HENDRINA COAL SUPPLY AGREEMENT : REVISED OFFER

We refer to the meeting held at Eskom's offices on 11 June 2015 between your Mr Molefe and Mr Mboweni and our Mr Ivan Glasenberg and Mr Clinton Ephron. As discussed at the meeting, Optimum is willing to consider a compromise deal in relation to the renegotiation and extension of the Hendrina supply agreement. We have given consideration as to what sort of compromise would be feasible in the circumstances and, accordingly, we hereby submit this revised offer for Eskom's consideration. The proposed new agreement would supersede the existing Hendrina coal supply agreement and be in full and final settlement of all pending disputes and claims:

Commencement Date	1 July 2015
Duration	• The agreement will endure until a total quantity of 46,750,000 tonnes of contract coal ("**Total Contract Quantity**") has been supplied by Optimum to Eskom.
Price	• 1 July 2015 to 31 December 2018 ("**First Period**") Base price ("**Base Price**"), as at 1 July 2015 ("**Base Date**"), of R300 per Ton (Moisture free), excluding VAT, for a CV of 23 megajoules/kg (Moisture free); • 1 January 2019 to 31 December 2023 ("**Second Period**") - Base price ("**Second Base Price**") as at the Base Date, of R570 per Ton (Moisture

	free); excluding VAT, for a CV of 23 megajoules/kg (Moisture free).
Escalation	• The Base Price for the First Period and the Second Period shall be escalated on each anniversary of the Base Date in accordance with a Price Adjustment Factor which is to be calculated in accordance with an escalation table to be agreed between Eskom and Optimum.
Quality Specifications and Adjustment	• To be agreed between Eskom and Optimum
Quantity	• The total quantity to be supplied by Optimum to Eskom for the balance of the term of the CSA from 1 July 2015 will, subject to below, be 46,750,000 tonnes or 5 500 000 tonnes per calendar year, except in respect of the 2015 calendar year where the quantity will be 2,750,000 tonnes for the period 1 July 2015 to 31 December 2015. • Eskom shall be entitled, by no later than 31 December 2015, to implement and conclude a tender process to obtain bona fide written offers ("**Third Party Offers**") from third party coal suppliers (each a "**Third Party Supplier**" and collectively the "**Third Party Suppliers**") to supply a quantity of coal to Eskom at the Hendrina power station of not more than 5 500 000 tonnes per annum (ie 27 500 000 tonnes in aggregate) ("**Replacement Quantity**") during the period commencing on 1 January 2019 and ending on 31 December 2023 ("**Second Period**"). • If Eskom wishes to accept one or more Third Party Offers (each an "**Accepted Third Party Offer**"), it must notify Optimum accordingly in writing ("**Third Party Offer Notice**"), by no later than five Business Days after 31 December 2015, and provide the details of each Accepted Third Party Offer including the quantity, the price range (on a delivered basis to Hendrina power station), the quality, the penalty regime and any other relevant information. • Optimum shall be entitled, by notice in writing to Eskom within fifteen Business Days of receipt of the Third Party Offer Notice, to require Eskom to enter into good faith negotiations with Optimum until not later than 31 March 2016 (such period, the "**Negotiation Period**") for the supply by Optimum to Eskom of the quantity that is the subject of the Accepted Third Party Offer ("**Accepted Quantity**") at the terms set out in in the Third Party Offer Notice or such other terms as may be acceptable to Eskom and Optimum. Eskom shall be precluded from concluding a contract in respect of the Accepted Third Party Offer during such Negotiation Period. If during the Negotiation Period, Optimum and Eskom reach agreement regarding the Accepted Quantity (or a portion thereof), then they shall conclude an addendum effecting the necessary changes to the CSA to give effect to such agreement. • If Optimum elects not to require Eskom to enter into negotiations with Optimum, or if Optimum requires Eskom to enter into negotiations with

Optimum Coal Mine (Pty) Ltd
(Registration No: 2007/005308/07)
A Glencore Operation
Business Address: N11 Hendrina Road, Pullenshope Offramp, Pullenshope
Mailing Address: Private Bag X1201, Pullenshope, 1096, South Africa
Tel.: +27 13 2965111
Registered Address: 23 Melrose Boulevard, 1st Floor, Melrose Arch, Melrose North, Johannesburg, 2196, South Africa
Mailing Address: Suite No. 19, Private Bag X1, Melrose Arch, Johannesburg, 2076
Tel: +27 11 772 0600 Fax: +27 11 772 0697

Directors: R Cohen, C M Ephron, P Mahanyele, T Ncube

	Optimum but Optimum and Eskom are unable to reach agreement on the terms for the supply of the Accepted Quantity (or a portion thereof) during the Negotiation Period, the Total Contract Quantity shall be reduced by the Accepted Quantity (or a portion thereof in respect of which no agreement was reached) from the date on which Optimum advises Eskom that it does not require Eskom to enter into negotiations with Optimum or the date of expiry of the Negotiation Period, as applicable.

We remain of the view that this offer represents a reasonable compromise for all parties in that it provides some limited relief for Optimum to allow it to continue operating while at the same time ensures long-term supply for Eskom until 2023 at its preferred efficient cost plus a fair return model.

This offer is valid until 31 July 2015.

We look forward to hearing from you.

Yours faithfully

Clinton Ephron

on behalf of
Optimum Coal Mine (Proprietary) Limited

Annexure "JAB/Z17"

CONFIDENTIAL

Eskom

Mr Clinton Ephron
Chief Executive Officer
Glencore Operations South Africa Ltd
23 Melrose Arch
MELROSE NORTH
2196

Date:
9 July 2015

Dear Clinton

RESPONSE TO THE REVISED OFFER: HENDRINA COAL SUPPLY AGREEMENT

We acknowledge receipt of your letter dated 30 June 2015, in which a revised offer for coal supply to Hendrina Power Station from Optimum Coal Mine was received. Considering Eskom's current financial position, which is public knowledge, we cannot afford to reset the contract price, to that proposed by Optimum Coal Mine. As such Eskom declines to accept the revised offer and will continue to operate in accordance with the existing Coal Supply Agreement (CSA) including all addenda between the parties.

It remains a priority for Eskom, not only to ensure the security of the coal supply to Hendrina Power Station for the remainder of the current coal supply agreement but also for the remaining life of Hendrina Power Station. The disputes and claims emanating from the existing CSA will be resolved within the mechanisms provided for in the CSA.

Therefore it remains critical to all stakeholders that Optimum Coal Mine continues to deliver coal as per the current contract. The existing CSA will conclude on 31 December 2018. For the period 1 January 2019 and beyond Eskom will be issuing an open tender to the market for the supply of coal to Hendrina Power Station. Optimum Coal Holdings is welcome to participate in the tender process in which contracts will be offered on a competitive basis.

Eskom's rights remain strictly reserved.

Yours sincerely

Brian Molefe
CHIEF EXECUTIVE (Acting)
ESKOM

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Eskom Holdings SOC Ltd Reg. No 2002/015527/030

Annexure "JAB/Z18"

Eskom

CONFIDENTIAL

[redacted]

Vusi Mboweni
DIVISIONAL EXECUTIVE (ACTING)
PRIMARY ENERGY DIVISION

Date:
27 October 2014

Enquiries:
Johann Bester
+27 (0) 11 800 3729
Our Ref: 722940

Dear Vusi

UPDATE OF THE COAL SUPPLY AGREEMENT FOR THE HENDRINA POWER STATION

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"), 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 of many years. These impasses and/or issues between the Parties are –

- the interpretation, implementation and execution of the penalty provisions of the CSA and addenda, specifically the amounts Eskom is entitled to deduct from any payment due to Optimum for the coal supplied and delivered, but which fails to comply with the quality specification;

- the interpretation, implementation and execution of the sampling process contemplated by the CSA, its addenda and Coal Quality Management Procedure ("CQMP") for purposes of efficiently and effectively managing the coal qualities being delivered to the Hendrina;

- the continued failure by Optimum to supply and deliver to Eskom coal which complies with the monthly average size distribution as contemplated by the addenda to the CSA;

- issues relating to the availability of the conveyor belt system, including the failure to optimally utilise the conveyor system to ensure that the quantity requirements of the Hendrina are met timeously;

- the claim for payment relating to supplementary fines by Optimum, where Optimum has issued a letter of demand;

- the price adjustment Eskom is entitled to impose, specifically in respect of the failure to comply with the monthly average size distribution as contemplated by the addenda to the CSA;

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Eskom Holdings SOC Limited Reg. No 2002/015527/06

[redacted]

- the hardship arbitration initiated by Optimum against Eskom on the 28 February 2014 pursuant to a hardship notice issued on 3 July 2013 by Optimum, in terms of which Optimum invoked the hardship provisions of the CSA, essentially contending that they are supplying Eskom with coal at less than the cost of production of such coal since sometime in 2006. Eskom filed its statement of defence to Optimum's claim on 31 March 2014 denying that any hardship arose as contemplated by the CSA. A full legal brief is attached hereto that sets out the opinion of external legal counsel on the matter.

As a result of the impasses idenitfied above and more specifically the risk related to Optimum closing the mine as a non-going concern or the arbitration process upholding their hardship claim, Eskom obtained a mandate from Eskom Board Tender Committee ("BTC") to enter into negotiations with Optimum in order to secure coal for Hendrina.

There is consideration for the potential to operate Hendrina to 2023, for an additional 5-years past 2018 (when the current CSA ends). The strategy is therefore to trade off the current contract to achieve security of coal supply post 2018.

Mandate Objectives

The BTC approved that the Primary Energy Division ("PED") is mandated to negotiate with Optimum to ensure security of supply for the life of Hendrina. Additionally approval was granted for PED to issue an open market enquiry to secure coal supply to Hendrina for the period post 2018, taking into consideration Eskom's Emerging Miner Strategy and Supplier Development and Localisation Requirements. To this end, a Request for Information for coal supply to Hendrina post 2018 has been issued to the market and negotiations with Optimum are underway.

Negotiations with Optimum

The negotiations have not been able to progress as desired as there has been no agreement from Hendrina Power Station on the coal quality specification. The Hendrina Power Station would like a more stringent specification, specifically a lower ash %, a lower Abrasive Index and a reduction in the fines. These higher coal quality specifications have a commercial and subsequent implication for Optimum. The volume of mineable product as was contracted in 1993 is no longer available due to the changing geology of the area.

Quality Measurement		Hendrina requirements (474-41)	Contractual
Total Moisture	%	8	9
Inherent Moisture	%	3	
Ash	%	<29.2	<28.8
Calorific Value ("CV")	MJ/kg (mf)	>22.64	>23.3
Volatiles	%	>22.4	
Sulphur	%	<0.8	
Hardgrove Index		>53	
Abrasive Index	mgFe/4kg	<450	<430
Ash Fusion Temperature	°C	1300	
Sizing		>25 mm – 0%	
		-	
		-	

BRAK-118
JAB/Z18

[redacted]

Quality Measurement		Hendrina requirements (474-41)	Contractual
		<3.35 – 20%	<3 mm – 35%
		<1 mm – 15%	<1 mm – 15%

Indications are that Hendrina will propose a more stringent specification post their submissions to the Boiler Committee scheduled for mid-November 2014

The inability to reach consensus on the specification has resulted in Optimum clearly stating that they would re-institute their hardship claim on the 1 January 2015 or declare Optimum a non-going concern thus putting security of coal supply at risk. The attached legal memo further articulates this hardship claim and suggests that Eskom should consider enforcing its legal rights.

Pricing

During the negotiations there have been several iterations of the proposed price offered based on a fluctuation of the specification. The proposed price curve indicated the following:

Caloric Value (moisture free)	Proposed Price	
22.64	R295/ton	Hendrina Requirement 474-41
23.30	R330/ton	Contractual Requirement
23.4	R355/ton	Hendrina proposed rejection limit
23.8	R427/ton	Hendrina Aspiration
25	R657/ton	Hendrina proposed specification to cater for boiler 8,9,10

The pricing model will vary with CV and therefore the price will increase further to accommodate the lower ash % now set by the Power Station.

In a financial due diligence conducted by NedCapital/Basis Points, the recommended price based on mining costs for the current specification is R210/ton, to meet the current contractual specification. However, it should be noted that the existing Hendrina CSA considers that there would be cross subsidisation from Optimum's export business. The current price for coal for Hendrina is R154.40 per ton as per the CSA (after quality price adjustments, this drops to (YTD May 2014).

Abrasive Index Discussion

Historically the Power Station has received coal with an abrasive index consistently higher than the contractual requirement. This has had grave financial implications on Hendrina and has affected the efficient running of the Power Station. A reduction of the AI is one of the areas that the team continually addresses in negotiations with OCM.

Risks

Glencore is pushing for a binding position by the 31 December 2014. However Eskom is not yet in a position to agree on the coal qualities as Hendrina is still going through a process of de-rating Hendrina and getting sign off on their proposed specification. Therefore Eskom is not in a position to commit to a binding offer by the 31 December 2014, which has been communicated to Optimum, who are now threatening to stop supply from 1 January 2015. Eskom's external and internal legal counsel has advised that Eskom have legal recourse on this matter.

[redacted]

As per Eskom's BTC mandate, Eskom has launched a RFI for coal supply to Hendrina, for the period post 2018, the RFI closes on 3 December 2014. Although Eskom will be in a better position to evaluate its alternative supply options, after receiving the RFI responses. Fuel Sourcing is not confident that it will be able to replace the Optimum volumes in the short term and it is unlikely to be able to match the Optimum price offer on a delivered basis.

The negotiating team is therefore recommending that we start engaging our stakeholders such as the DPE, the DMR, NERSA and potentially the Chamber of Mines and start a legal process of pre-empting Optimum's threatened actions.

Regards

RECOMMENDED:

JABester

Johann Bester
GENERAL MANAGER
FUEL SOURCING

27 October 2014

Date

Annexure "JAB/Z19"

Annexure 2

01704

[redacted]

OPTIMUM
COAL
MINE

WITHOUT PREJUDICE

PRIVATE AND CONFIDENTIAL

Eskom Holdings SOC Limited
Megawatt Park
Maxwell Drive
Sunninghill

Attention: Vusi Mboweni, Acting Head: Primary Energy

with a copy to: Tshediso Matona: Chief Executive Officer, Dan Marokane: Group Executive Group Capital, Matshela Koko: Acting Group Executive Technology and Commercial, Freddy Ndou: Acting Divisional Executive, Office of the Chief Executive and Johann Bester: General Manager - Fuel Sourcing

13 November 2014

Dear Sirs

HENDRINA COAL SUPPLY AGREEMENT

As you are aware, Optimum Coal Mine (Pty) Ltd ("OCM") has been in discussions with Eskom for a number of months regarding the severe financial situation at OCM and the need to amend the terms of the Hendrina coal supply agreement in order to ensure the continued survival of OCM.

There has unfortunately been little tangible progress in these discussions. As a result, OCM does not have any committed funding beyond 2014, and, accordingly, as things stand, there is a real risk that with effect from January 2015, the directors of OCM will have no option but to cease operations at OCM which will result in the termination of supply to Eskom. This situation would obviously be highly damaging for Eskom as well as OCM and its shareholders, namely the Optimum Community and Employee Trusts, an affiliate of Shanduka Resources and Glencore, which as Eskom will be aware has over the last number of years made significant investments in South Africa.

Optimum Coal Mine (Pty) Ltd
(Registration No: 2007/005308/07)
A Glencore Operation
Business Address: N11 Hendrina Road, Pullenshope Offramp, Pullenshope
Mailing Address: Private Bag X1201, Pullenshope, 1096, South Africa
Tel.: +27 13 2965111
Registered Address: 23 Melrose Boulevard, 1st Floor, Melrose Arch, Melrose North, Johannesburg, 2196, South Africa
Mailing Address: Suite No. 19, Private Bag X1, Melrose Arch, Johannesburg, 2076
Tel: +27 11 772 0600 Fax: +27 11 772 0697

Directors: R Cohen, C M Ephron, P Mahanyele, T Ncube

[redacted]

This is therefore an outcome which OCM and its shareholders are desperate to avoid and is the reason why over the last year this issue has dominated the agenda of OCM management and OCM has been doing everything in its power to demonstrate to Eskom the gravity of the situation and to identify a solution which is palatable to both parties.

The purpose of this letter is to:

- summarise the current situation at OCM;
- summarise the discussions that have been held between OCM and Eskom on this issue;
- summarise the solution that OCM proposed, and which the Eskom Board Tender Committee approved as a framework for the resolution of the issue;
- summarise why the solution is fair and reasonable for Optimum and Eskom;
- propose certain additional features in order to address certain concerns which have been expressed by Eskom; and
- request Eskom senior management to urgently review the matter and provide the necessary guidance to the Eskom negotiating team so that sufficient progress can be made before the end of the year, so as to enable OCM to try and obtain further funding to continue operating into 2015.

Background and Financial Position of Optimum

OCM is a subsidiary of Optimum Coal Holdings ("Optimum") which is controlled by Glencore Plc. An employee and community trust own 19.96% of the equity of Optimum. The other BEE shareholder of OCM is an affiliate of Shanduka Resources.

OCM employs over 3,700 employees and contractors. OCM supplies Hendrina power station with 5.5 million tons of coal per annum under the Hendrina coal supply agreement. The agreement runs until the end of 2018. OCM also supplies approximately 5.5 million tons into the export market.

The current selling price under the Hendrina coal supply agreement is approximately R150 per ton which is significantly below the cost of production. The reason for this position is that the price escalation mechanism contained in the Hendrina coal supply agreement has not since 2005 been reflective of actual coal mining cost inflation such that the coal is being supplied to Eskom at approximately 50% of the actual cost of production.

The current pricing and penalty regime in the Hendrina coal supply agreement are unsustainable for OCM and has resulted in the following losses and cash flow deficits over the past 3 years:

- 2012 – R53 million loss and R35m negative cash flow;
- 2013 – R206 million loss and R581 million negative cash flow;
- 2014 forecast – R636 million loss and R966 million negative cash flow.

In sum, over the last 3 years OCM has lost approximately R900 million in earnings and has consumed in excess of R1.5 billion in cash. Currently, the mine has a negative cash flow of in excess of R100 million per month. These losses and deficits would have been significantly higher if OCM had not also been exporting a portion of its coal which has subsidised the Eskom losses.

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[redacted]

However, with the current collapse in export prices, the subsidy provided by the export market no longer exists.

In 2011 a debt facility of R1.8 billion was put in place. This facility was refinanced in February 2014 and increased to R2.5 billion. The R2.5 billion facility was fully utilised at the end of September 2014 such that Optimum had to call on its shareholders to provide additional funding to ensure it continued as a going concern. The main shareholders of Optimum, namely Glencore and an affiliate of Shenduka Resources, have committed to fund R475 million which is the required funding for the period October 2014 to December 2014. This funding was made on the expectation that an agreement would be reached with Eskom regarding the Hendrina coal supply agreement before the end of 2014 as envisaged in the co-operation agreement and the Board Tender Committee mandate referred to below. Beyond 31 December 2014, Optimum has no committed funding.

As an aside, we believe that if Optimum was not part of the Glencore Group the funders would not have refinanced the facility in February 2014 which would have resulted in Optimum running out of funds during the first half of 2014 and, with no ability to raise additional debt, it would likely already have become insolvent.

The management of OCM has considered all options to reduce the losses and ensure the sustainability of the mine, including suspending its export operations, but none of these options were viable and, in the absence of a solution with Eskom, the business is unsustainable and will likely be forced into liquidation or business rescue. In fact, the suspension of the export operations would increase the costs of the coal supplied to Eskom and exacerbate OCM's financial distress.

History of discussions regarding the Hendrina Coal Supply Agreement

Glencore assumed control of Optimum in March 2012 and shortly thereafter identified the risk presented by Hendrina coal supply agreement to the viability of OCM. OCM shortly thereafter raised this issue with Eskom, but Eskom was not willing to entertain any amendments to the agreement.

As result of its inability to obtain any relief from Eskom, in July 2013 OCM implemented a hardship claim under the relevant clauses in the Hendrina coal supply agreement. Following, OCM's hardship claim, Eskom adopted a new interpretation of the penalties in the Hendrina coal supply agreement and started imposing penalties on OCM which had never previously been levied. This exacerbated OCM's negative financial position. OCM believes that Eskom breached the Hendrina coal supply agreement in its application of the penalties with the consequence that OCM accrued the right to cancel the agreement.

While the hardship claim was going through the legal process, discussions commenced between Eskom and OCM as to whether it might be possible to agree on a composite settlement of all issues then pending between Eskom and OCM including the hardship and penalty disputes.

This culminated in a co-operation agreement being signed in May 2014. The purpose of the co-operation agreement was to:

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- provide for a process to discuss and agree on the potential amendment and extension of the Hendrina coal supply agreement and for the settlement of various outstanding issues, including the hardship and penalty disputes;
- suspend the hardship arbitration while a settlement was being negotiated;
- provide OCM with some interim relief in respect of quantities, qualities and penalties during the settlement discussions; and
- suspend the exercise of all other accrued rights, including OCM's right to cancel the agreement as a result of Eskom's breach of the agreement in its application of the penalties.

Proposed Solution

Following signature of the co-operation agreement, the OCM and Eskom teams commenced discussions regarding a terms of reference for amendment and extension of the Hendrina coal supply agreement. During the course of these discussions, the following proposed solution emerged which OCM believes is mutually beneficial for both OCM and Eskom.

- the Hendrina coal supply arrangement will be extended to December 2023;
- the quantity will be reduced to 4.5 million tons per annum in accordance with Eskom's burn requirements;
- for the period January 2015 to December 2018 OCM will supply coal to Eskom at cost
- for the period January 2019 to December 2023 OCM will supply coal to Eskom at cost plus an agreed margin (20% was proposed);
- Eskom will have the right after conclusion of the agreement to test the market in order to determine whether it can obtain cheaper supply, and, if it is able to source such cheaper supply, it will be able to substitute the OCM supply with such cheaper supply;
- OCM will assume responsibility at its cost for the operation and maintenance of the conveyor and sampling infrastructure between the mine and Hendrina power station; and
- the coal specifications will be revised to ensure OCM is able to sustainably meet the coal specification without incurring punitive penalties.

During the discussions detailed financial information was shared with Eskom's advisors (Nedbank and Basis Points Capital) in order that they could satisfy themselves as to OCM's financial position and verify the costing information provided by OCM. OCM agreed to bear 50% of the costs of such review. OCM had understood that Nedbank and Basis Points were satisfied with information provided, although we have recently been informed that Eskom still has certain concerns.

As we understand it, Eskom's Board Tender Committee gave the Primary Energy Department a mandate to negotiate based on the above principles.

OCM is acutely aware that the proposed solution would result in an immediate increase to the cost of coal being sourced from OCM, but nevertheless firmly believes that when considered holistically, the solution is fair and reasonable for both parties for, inter alia, the following reasons:

- the solution will ensure the sustainability of OCM for the remaining 4 years of the agreement;

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Directors: R Cohen, C M Ephron, P Mahanyele, T Ncube

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[redacted]

- Eskom will purchase coal at cost for the remaining 4 years of the agreement. There will be no margin for OCM and OCM has agreed to an open book process on cost determination;
- Eskom will receive an extension of the supply arrangement for an additional 5 years thereby locking in additional supply at a price of cost plus a return to be mutually agreed. This will enable Eskom to lock in a tied mine supply at its preferred "efficient cost plus a fair return" model which should be the cheapest delivered supply available. This extension also keeps another 22.5 million tonnes off the public roads and over a conveyor belt into Hendrina power station;
- the market testing option will provide Eskom with the ability to confirm that this is indeed the cheapest delivered supply and, if it is not, to replace it with such cheaper supply;
- the solution will resolve the hardship arbitration, which, if resolved negatively for Eskom, could have resulted in an increase of the price of coal to market prices and a retrospective payment back to the date of filing of the hardship claim in July 2013; and
- the solution avoids litigation on the penalty disputes and a possible cancellation of the agreement by OCM.

There have been various meetings between OCM and Eskom since the mandate was obtained in order to finalise the terms of the solution and to negotiate formal contractual documents, but no tangible progress has been made, as the Eskom negotiating team has been unable to make any commitments. Based on our discussions with Eskom, we understand that there are certain concerns in Eskom that are preventing Eskom from moving forward. OCM is sensitive to these concerns, and, accordingly, in order to provide additional comfort and to try and move the discussions forward, we wish to make the following additional proposals to Eskom.

<u>Additional Proposals</u>

Post-contract cost review

OCM understands that Eskom is concerned that OCM is allocating its costs in a manner which results in a disproportionate amount of fixed costs being allocated to the Eskom production and that it has implemented transfer pricing arrangements which increase the costs of OCM.

OCM does not believe that this is the case and believes it has adopted a fair method of allocation and that its intra-group arrangements are reasonable (and, in any event pre-date, Glencore's acquisition of Optimum), but OCM remains willing to engage with Eskom and its advisers on all aspects of its costs including the allocation of fixed costs and all arrangements with its shareholders and to make available whatever financial information Eskom reasonably requires.

In this regard, if Eskom feels it needs more time to investigate OCM's costs, OCM would be willing to include in the new coal supply agreement which OCM will conclude with Eskom, a provision which gives Eskom the right for a period after conclusion of the agreement to continue reviewing OCM's costs and, if it identifies inconsistencies and/or problems, to require adjustments to the pricing.

Export benefit sharing

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[redacted]

OCM understands that there is a perception in Eskom that the shareholders of Optimum reaped the benefits of high export prices in the past but now that the export price is low, it is not willing to bear the pain and is looking to transfer it to Eskom.

We understand Eskom's sensitivity in this regard, and in an attempt to address this concern, OCM is willing to introduce into the agreement an mechanism which will allow Eskom for the first 4 years of the agreement from 2015 to 2018, to share in the benefit if the export prices rebound. This would be achieved through a rebate on each ton purchased by Eskom equal to 25% of the amount by which the rand equivalent API4 export price exceeds R900 per ton. If export prices return to previous levels, this would result in a significant benefit for Eskom.

Conclusion

In sum, neither Eskom nor OCM can accept the highly damaging situation whereby OCM ceases operating. As a result, there is no option other than Eskom and OCM reaching agreement to amend the Hendrina coal supply agreement. OCM believes that Eskom understands this but is not willing to conclude an agreement because it has residual concerns regarding OCM and Glencore's bona fides and whether the position really is as severe as OCM has alleged. OCM believes that it has acted in the utmost good faith and with full transparency, beyond what would normally be expected from a commercial counterparty, to identify a solution which is fair and reasonable for both parties. This letter includes further proposals in this regard. If Eskom is still not satisfied, then we implore Eskom urgently to engage with us so that we can seek to address and resolve Eskom's concerns and move towards an agreement.

Yours faithfully

Clinton Ephron
Optimum Coal Mine (Proprietary) Limited

Optimum Coal Mine (Pty) Ltd
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Directors: R Cohen, C M Ephron, P Mahanyele, T Ncube

01.2
Mr Mashigo

Eskom	**Statement Submission to the Commission of Inquiry on State Capture**

STATEMENT

I, the undersigned

Dan Mashigo

do hereby state under oath in English:

1.

I am an adult male, with identity number 7102255392083. I am employed as Acting Senior General Manager: Primary Energy, Eskom and report to Mr Andrew Etzinger, Acting Group Executive: Generation. My office is located at Eskom Megawatt Park, 1 Maxwell Drive, Sunninghill, Sandton.

My contact details are:

Office: +27 (0)11 800 6722;

Cell: +27 (0) 72 813 9306; and

E-mail: MashigDM@eskom.co.za

Eskom	**Statement Submission to the Commission of Inquiry on State Capture**

2.

This statement is true to the best of my knowledge and belief, I make it knowing that if it were tendered in evidence, I shall be liable for prosecution if I have wilfully stated in it anything that I know to be false or do not belief to be true.

This statement is a fact-based collation of historical information responding to questions and information request from the Commission of Inquiry on State Capture investigators.

Various Eskom employees within PED provided assistance in compiling this statement and the discovery of documents to assist the investigators. Prior knowledge, involvement, current or past role and general knowledge of the business was the criteria used to identify employees who could assist

I have annexed supporting documents to this statement, to corroborate the facts mentioned.

The opining in this statement serves to explain the discrepancies between certain transactions/events/decisions against processes and practices in the organisation. Some of the opinions are based on own assessment of the discrepancies.

This statement is by no means an admission of first-hand knowledge or involvement in the events or transactions under scrutiny. This statement is made in light of my current role as the Acting Senior General Manager: Primary Energy since April 2018.

Eskom	**Statement Submission to the Commission of Inquiry on State Capture**

3.

I am employed at Eskom SOC Limited (hereinafter referred to as **Eskom**) since June 1993 and in my current position since April 2018. I am responsible amongst other duties for the overall Primary Energy Division (Coal, Water and Sorbent). I was requested to provide information and to comment on certain transaction details based on my knowledge.

SIGNED: ______________________ 2018-12-11

DAN MASHIGO DATE

Eskom	**Statement Submission to the Commission of Inquiry on State Capture**

WHO IS TEGETA

- As per the corporate profile submitted by Tegeta during the contracting process (Annexure A), Tegeta's shareholders were:
  - Oakbay Investments (Pty) Ltd
  - Fidelity Enterprises Limited (UAE)
  - Aerohaven Trading (Pty) Ltd
- The directors were:
  - R Nath
  - Ashu Chawla
  - Ronica Ragavan
- According to my own knowledge and experience, Eskom does not conduct beneficial ownership exercises on suppliers it intends to conclude contracts with. The assurance practice I am aware of is that Eskom appoints external audit companies to conduct probity checks, for identifying conflict and interest, on all the people involved in a particular transaction. Eskom conducts probity check is on procurement team, the supplier representatives and negotiators, bid-adjudicating committee and the secretariat to the bid adjudication committee.

1. WHO IS (GLENCORE) OPTIMUM COAL HOLDINGS

- Optimum Coal Holdings (OCH) is a holding company that owns Optimum Colliery Mine (OCM) and Koornfontein Colliery. The holding company was formed when BHP Billiton sold the two-abovementioned collieries. The ownership history of OCM is as follows:
  - Eskom entered into a coal supply agreement (CSA) with Trans-Natal to supply coal from Optimum Colliery on a Cost Plus basis

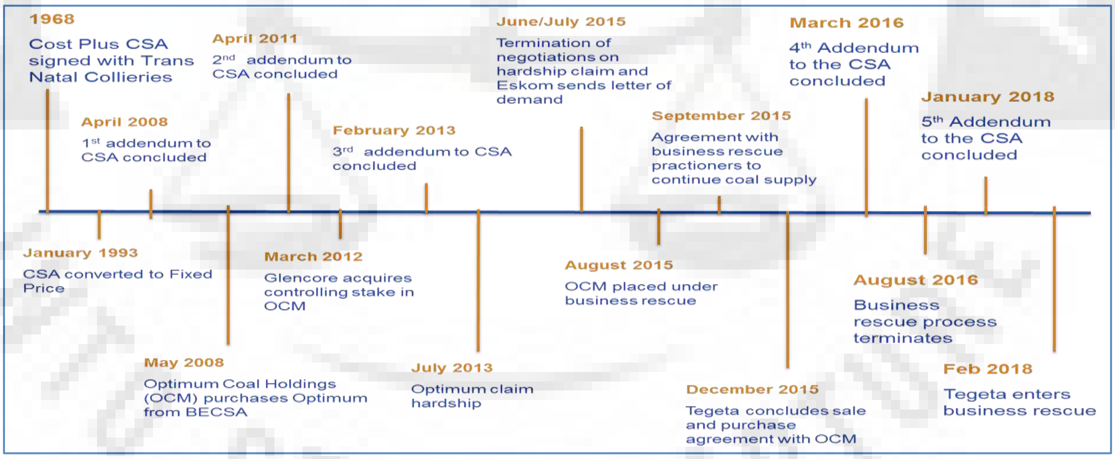
- In 1993, the Coal Supply Agreement was converted from a Cost Plus to a Fixed Price contract to allow Trans-Natal to export coal and in turn to cross subsidize the Eskom coal price.
- In 1993 Trans-Natal and Rand Coal merged to form Ingwe Collieries.
- In 1997, Ingwe Collieries became part of BHP Billiton Energy Coal South Africa (BECSA).
- In 2008, a management buy-out of Optimum from BECSA formed Optimum Coal Holdings (OCH).
- In 2010, OCH was listed on the Johannesburg Stock Exchange.
- In 2012, Glencore acquired a controlling stake of OCH.
- In 2016, Tegeta Exploration and Resources acquired a controlling stake of OCH.

- OCH Directorship under Glencore
  - Based on correspondence records after Glencore acquired a controlling stake (Annexure B), the directors were:
    - C M Ephron
    - R Cohen
    - S Blankfield
  - Based on correspondence records after OCM was placed under business rescue in August 2015 (Annexure C), the directors were:
    - C M Ephron
    - R Cohen
    - P Mahanyele
    - T Ncube

Eskom	**Statement Submission to the Commission of Inquiry on State Capture**

2. Evolution of the OCM contract and changes in ownership

- The ownership history of OCM contract:
  - Eskom entered into a 40 year Coal Supply Agreement (CSA) with Trans-Natal to supply coal from Optimum Coal on a Cost Plus basis. The contract expiry date is 31 December 2018
  - In 1993, the Coal Supply Agreement was converted from a Cost Plus to a Fixed Price contract to allow Trans-Natal to export coal and in turn to cross subsidize the Eskom coal price.
  - In 1993 Trans-Natal and Rand Coal merged to form Ingwe Collieries.
  - In 1997, Ingwe Collieries became part of BHP Billiton Energy Coal South Africa (BECSA).
  - In 2008, a management buy-out of Optimum from BECSA formed Optimum Coal Holdings (OCH).
  - In 2010, OCH was listed on the Johannesburg Stock Exchange.
  - In 2012, Glencore acquired a controlling stake in OCH.
  - In 2016, Tegeta Exploration and Resources acquired a controlling stake in OCH.
- The OCM coal contract evolution schematic diagram:



3. Tegeta Initial Appointment

- We could not identify any person currently still Primary Energy Division who is aware of engagements pre 2014 except for engagement captured later in the document. The initial engagement between Eskom and Tegeta in 2012, is said to have been an unsolicited telephonic bid to the Divisional Executive of Primary Energy.

4. 2008 Medium Term Mandate

Salient Facts on the 2008 Medium Term Mandate

- Rationale for the 2008 Medium Term Mandate (Annexure D attached for detailed motivation)
  - The 2008 Mandate was sought in 2008 after the declaration of an emergency at affected power stations
  - The 2008 Mandate was sought in an effort to mitigate the occurrence of another emergency within 10 years
  - In order to mitigate risk and to prevent any such emergencies in future, a long term strategy was formulated to ensure future supplies to Eskom
  - The supply and demand for future coal supplies were assessed at the time and it was identified that a shortfall of coal existed when comparing the burn requirements to the existing and planned long term supply contracts and this gap was to be covered by Medium term supplies
  - Based on this it was proposed that a mandate be approved for the short and medium term procurement
  - The 2008 Mandate was approved by the Board Tender Committee on 11 September 2008 as per the minutes extract (Annexure E)

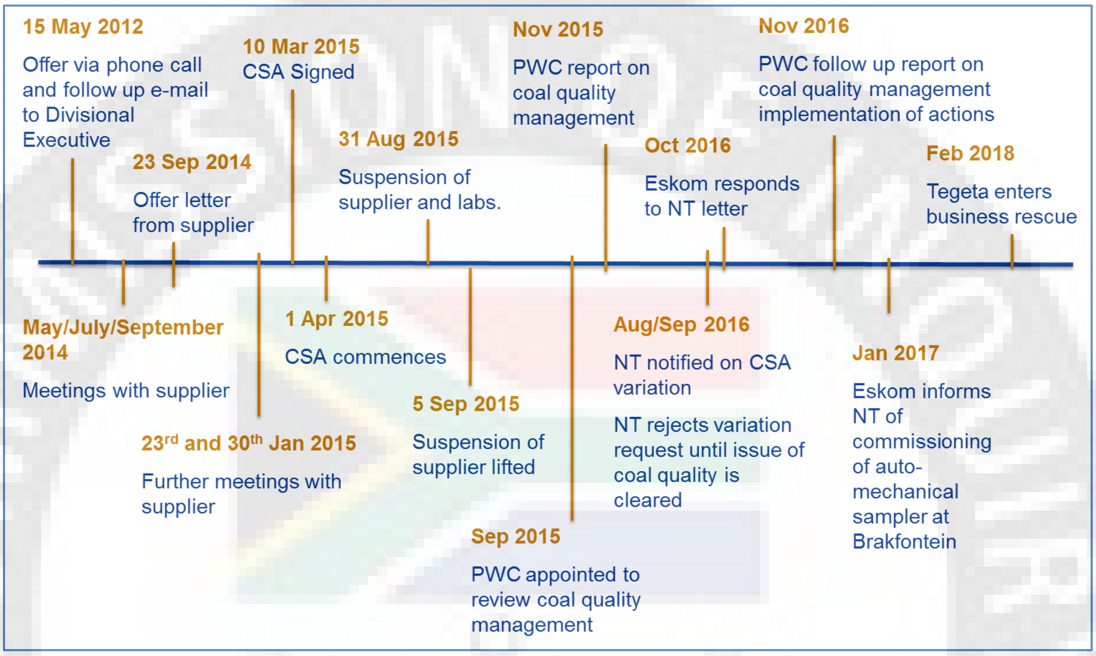
- Primary Energy submitted a mandate feedback report to the in 2010, 2014 and 2016.
- Of the approved 490.8Mt coal, Eskom has contracted 468.15Mt.
- The 2008 Mandate expired on 31 March 2018.

- Audit Findings on the 2008 Medium Term Mandate
    - The 2008 Medium Term Mandate was approved, based on the Eskom Procurement Procedure 32-188 which preceded the current Eskom Procurement Procedure 32-1034.
    - The 2008 Medium Term Mandate allowed for the various procurement processes of coal including unsolicited bids.
    - The Procurement Procedure 32–1034 was not implemented to be retrospective hence there is a misaligned between the process in the current procedure against the 2008 Mandate.
    - A review of the mandate was conducted in 2010 based on a tender process conducted under the 2008 Mandate (Annexure F, unsigned report. No signed report could be located).
    - A pro-active assurance was conducted in 2015 for the process followed to procure coal from 14 suppliers under the 2008 Mandate (Annexure G, unsigned report attached. No signed report could be located).

5. Tegeta (Brakfontein Colliery) contract award evolution

5.1. The timelines for the award of the Tegeta contract (Brakfontein Colliery) is as shown below

NT – refers to National Treasury



5.2. On boarding process for Tegeta: Primary Energy concluded the Tegeta (Brakfontein Colliery) contract under the 2008 Mandate. Annexure shows the sign off against the required documentation.

5.3. The discrepancies in the process are described below:

Action Description	Discrepancy to process
• Multiple combustion tests conducted. • Combustion test report indicated that the coal is suitable for Kendal, Majuba and Matla Power Stations	• Multiple burn tests conducted over period of time – initial tests failed (ash, CV and Sulphur), except for last test (which was passed conditionally)
• Contract signed with Tegeta for coal delivery from Brakfontein to Majuba Power Station on 10 March 2015	• Contract signed prior to evaluation being conducted (including submission of pre-qualification docs, site visits and final burn test reports)
• Drainage test due 30 days from first coal delivery as per CSA	• Test abandoned due to inconclusive results.
• First Addendum signed to change CV rejection limit from <20.0Mj to <20.3Mj and Ash rejection from >30% to >29.7% (other parameters unchanged). The rational for the change could not be established albeit the change was a slight improvement	• Addendum compiled in letter form with no supplier signature
• Coal quality management	• Coal Quality Management Procedure only signed end September 2015 • Laboratories lacked in observing protocols for mine sampling • Integrity of coal sampling at risk due to observers / rovers being ineffective in ensuring compliance • Inconsistency with laboratory result noted during blind sample test
• Due date for automatic coal sampling plant was July 2015 (3 months after CSA signature)	• Plant only commissioned in January 2017. No reasons for the deviation could be established. Contract manager may shed some light.

5.4. Findings on the Tegeta Financial DD and how it was dealt with

- Eskom conducted a financial evaluation of Tegeta Exploration and Resources in April 2015 based on approved financial statements for 2013 and 2014 (Annexure H).
- The conclusion of the report was that Tegeta was not financially sound to be awarded the coal contract. The report further recommended that payments should only be made after work is performed and approved in terms on the contract. All payments to Tegeta for Brakfontein coal supply were made in arrears after the coal has been delivered, as is norm with all coal supply agreements.

6. OVERVIEW OF OCM CONTRACT (FROM INCEPTION, 1968 TO DEC 2018)

6.1. Origination, evolution, addenda, key T& C's, pricing

The original contract was with Trans-Natal Collieries for a 40-year **cost plus** CSA to supply coal exclusively to Eskom, Hendrina Power Station. Cost plus contract is not a price based contract hence the original contract did not have a base price.

In a typical legacy Eskom cost plus contract, the mining house would invest 100% or part percentage of the mine establishment capital with Eskom contributing the balance. Eskom would then have the obligation to fund all the mining costs, i.e. operating and capital (stay in business) for the life of the mine. This is the **cost aspect of the contract**.

The plus aspect of the contract is:

i. The Return on Investment (ROI) the mining house will earn for their contribution of the establishment capital, escalated at PPI for the first 25 years of the contract and thereafter the escalation declines on a sliding scale. The ROI has two components, 50% is fixed and the other 50% is variable linked to the contractual coal volume. The mining house would earn 100% of its variable ROI when it produces the contractual nominal volume with opportunity to increase the variable when Eskom calls for more than the contractual amount. Similarly when the mining house supply below contractual volume the variable ROI would decrease.

The contract of interest is the Fixed Price version after the conversion of the mine in 1993 from an Eskom dedicated mine to a multiproduct mine supplying Eskom, export and other domestic customers.

6.2. OCM hardships (July 2013, June 2015)

- On 3 July 2013, OCM sent a letter to Eskom declaring Hardship (Annexure M)
- OCM invoked the hardship provisions of the CSA, essentially contending that they are supplying Eskom with coal at less than the cost of production of such coal since sometime in 2006. It is important to note that the Eskom pricing after conversion to Fixed Price contract was designed to be below cost, due to the premium export subsidy on Eskom price.
- Eskom and OCM then entered into a Co-operation Agreement on 23 May 2014.
- In August 2015, OCH Board placed OCM under business rescue by the (Annexure I)

6.3. Salient facts of the Eskom and OCM Co-operation Agreement entered into on 23 May 2014 (Annexure J):

- That without acknowledging any liability or wrong doing relating to aforesaid any of the impasses and/or issues or the hardship arbitration between the Parties, that Eskom acknowledges that it is in the best interest of the Parties to reach commercial a resolution to all the impasses and/or issues through a negotiated process in order to ensure that their commercial relationship is sustained for the duration of the CSA, including reaching agreement on any future extension of the CSA beyond 31 December 2018.

- That the Parties not attempt to resolve the issues and impasses through negotiation on each of the issues and impasses, but to rather put these aside for the re-negotiation process in order to achieve their objective of a new revised coal supply agreement. In this way, the Parties can use their best endeavours, through lessons learnt to avoid, in the future any of these issues, through improved drafting and contractual mechanisms to describe and protect the rights and obligations of the Parties.
- That any discussion relating to the re-negotiation of the current CSA should be on the basis that:

ii. All current impasses prior to 1 May 2014, including the hardship arbitration between the Parties relating to the CSA, will be set aside as part of the re-negotiation process;

iii. The hardship arbitration must be suspended on or before the 22nd May 2014.

iv. The terms and conditions of the current CSA including the CQMP to continue to regulate the relationship between the parties in respect of qualities, quantities, pricing, payment and all other terms and conditions, pending the completion of any re-negotiation and conclusion of a new revised coal supply agreement;

- ➢ The running of prescription in respect of any claims by any of the Parties against each relating to any failure or breach in terms of the CSA be suspended by agreement pending the outcome of the renegotiation process;
- ➢ That the representatives of the Parties shall draft a document, setting out the Terms of Reference relating to the possible negotiated process to be followed in order to resolve the disputes between the Parties. The Terms of Reference shall amongst others contain the specific issues to be

negotiated (Technical, Commercial and Contractual), the basis for such negotiation and the period within which the negotiated process should be completed. One of the fundamental considerations for re-negotiation will be the extension of the CSA beyond 31 December 2018 which must form part of the Terms of Reference;

- That any revised terms or conditions negotiated and agreed to, included but not limited to a revised coal supply agreement shall be subject to any requisite Board approval of the Parties. As recorded aforesaid, the terms and conditions of the current CSA shall continue to be complied with pending the conclusion of any revised coal supply agreement.
- That the implication for Eskom in terms of the Public Finance Management Act No. 1 of 1999 ("the PFMA") is considered, specifically should it be required that Eskom must reach a compromise relating to any potential claim it has against Optimum Coal Mine and Optimum Coal Holdings.

- The Co-operation was cancelled on 10 June 2015 by Mr Brian Molefe Eskom Group Chief Executive (Annexure K)

6.4. Optimum Contract Pricing after Tegeta takeover

- No change in the CSA's unit price of coal.
- Eskom Board approved the fifth addendum of the CSA in Jan 2018 to change the annual escalation from the Eskom Cost of Coal Index (CCI) to an escalation basket similar to all Eskom's new Indexed Fixed Price contracts. This was not the first conversion of a long-term Fixed Price contract annual escalation basket from CCI. In the OCM case, the change was due to the volatility of the CCI cited by the supplier. A further amendment was on the contractual volume from 458Kt/pm to 400Kt/pm due to the supplier citing inability to meet the original contractual amount. A 6-month time contingency was added to the contract tenure to allow for supply rectification.

6.5. **Negotiations outcomes on new OCM contract price between Eskom and Glencore (under cooperation agreement)**

- In August 2014, Primary Energy tabled a submission to Board Tender Committee for a mandate to negotiate with OCM to ensure the security of supply to Hendrina Power Station (Annexure J).
- Negotiations with OCM took place in April 2015 and subsequently a submission was tabled to the Board Tender Committee to conclude a new contract with OCM to supply Hendrina Power Station, as per the mandate approved by the same committee.
- The key contract parameters negotiated were writing-off of suspended penalties, unit price of coal, contract tenure beyond OCM Dec 2018 expiry date and contract volume, as detailed below.
- The resolutions requested were as follows (attached documents unsigned and signed copy requested from Company Secretariat);
  1. Primary Energy Division ("PED") is mandated to conclude negotiations with Optimum Coal Mine ("Optimum") to ensure security of supply for Hendrina Power Station ("Hendrina") at R442/ton (February 2015 money values), for a CV of 23.5MJ/kg dry basis, from 1 April 2015 to 31 December 2018, and to include into this new coal supply agreement ("CSA"), the following valuable right, to be exercised by 31 December 2015;
  2. PED is mandated to extend the CSA with Optimum for Hendrina from 1 January 2019 up to 31 December 2035 at a price up to R475/ton (February 2015 money values), excluding a margin of 20%, or from alternate sources, for a CV of 23.5MJ/kg on Dry Basis. As per industry practice, coal quality

can be expressed in three different ways: As Received, Air Dried or Dry Basis.

iii. PED is mandated to negotiate and conclude the termination of the Optimum hardship claim in lieu of writing off the penalties that have been suspended against Optimum since 2012.

iv. PED is mandated to negotiate with Optimum for the full Optimum reserve/resource and production for Eskom supply to Hendrina and for other Eskom power stations including but not limited to Tutuka and Arnot Power Stations, should it be possible to achieve an average cost per ton at or below R500/ton from 1 April 2015 to 31 December 2018 and at or below R527/ton from 1 January 2019 up to 31 December 2035 (February 2015 money values), excluding a margin of 15%, for the entire complex.

v. PED is mandated to engage with alternate suppliers identified from the open market enquiry embarked upon as per BTC mandate to secure and develop alternative coal supply options for Hendrina for the period pre and post 2018 should the opportunity arise to reduce the delivered cost of coal to Hendrina and achieve transformation objectives.

vi. PED is mandated 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.

vii. The Divisional Executive, PED is authorised herewith 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 therewith.

viii. The Board Tender committee noted the tabled resolutions and referred the matter to the Eskom Board.

6.6. Appropriateness of the Board referral of the PED negotiations submission to GE

- Primary Energy cannot comment on Board's decision to refer the outcome of the negotiations to the Group Chief Executive, since we have not been privy to the board discussions and minutes thereof.
- It is not a norm in Eskom for any transaction adjudication to be referred to an individual. Committees usually refer aspects of submissions they may be seeking additional information or clarity on to responsible managers or executives to address and resubmit with feedback.
  i. Adjudication Committees are delegated to decline approval of transactions and would normally state the reasons thereof.
  ii. The delegation to adjudicate and consider commercial/procurement transaction is solely for the tender committees governed by the transaction approval limits on transactions value and contract duration.
  iii. The BTC had delegation to approve the transaction and it is strange the committee opted not to adjudicate on a mandate it approved.
- Eskom is in a worse off position because it lost security of coal supply to Hendrina and other power stations. Secured supply from Optimum Hendrina could have avoided transportation element, currently incurred.
- The business rescue did not achieve the intended purpose to ensure that the mine operates sustainably as a going concern by the time the sale agreement realised.
- Since the stoppage of coal supply from Optimum in Feb 2018 Eskom has been delivering coal to Hendrina meant for other stations at R582/ton (Apr – Oct 2018). The average transport component on the YTD delivered cost is R178/t. Eskom projects that the delivered cost will reach R602/ton (transport component = R184) by Year End based on contracts in the pipeline. The supply volumes are still below required levels leading very low stock levels at Hendrina. The proposed contract price for Optimum coal in 2015 for

Eskom Board Tender Committee approval was R475/t (2015 Money Value). When the 7% Compounded Annual Growth Rate (CAGR) linked to Eskom Medium Term Contracts of per annum is applied to the 2015 Optimum R475/ offer for 2016-2018, today's price would R576/t excluding transport.

6.7. Timing of the referral back to Group Chief Executive in relation to Mr Molefe's appointment as Eskom Interim Group Chief Executive (IGCE)

Primary Energy cannot comment on the relation between Mr Molefe's appointment timing as Eskom's IGCE and the Board's decision to refer the Primary Energy's submission requesting BTC to approve the request to conclude a new contract with Glencore, as we were not privy to the board discussions and recruitment of the IGCE.

6.8. Report back to Board after rejection of new Optimum contract by Mr Molefe

Primary Energy is not aware of the Optimum new contract re-submission to Board after rejection by the Group Chief Executive. No record could be obtained from the company secretariat of such discussions taking place in subsequent Board meetings.

6.9. Relief as per the BR process (pricing, quantities, payment terms)

The business rescue process commenced on 4 August 2015 (Annexure I)

7. OCM CONTRACT PENALTIES

The Optimum Contract like most other contracts has penalty clauses for coal quantity under supply and price adjustment clauses that deal with quality deviations. The volume deviation clause deals with under supply by the mine and under offtake by Eskom, as per Clause 15 of the CSA. The most common quality parameters are on calorific value (CV), Ash, Moisture, Abrasiveness Index and Sizing. The OCM contract had a very complex calculation because it was applied over a sliding scale with a range from 4 days to 7 days. The 7-day penalty is the most severe and can adjust the coal payment down to R1 a ton. One can take the 7-day penalty as the rejection price of the coal. Even today on the new generation contracts if a supplier dispatches the wrong (uncertified) stockpile and the station performs a random test, Eskom only pays R30/ton for the coal that is in rejection.

7.1. Origination of OCM penalties

The OCM contract, when it was converted to fixed price, had a number of quality specifications. This was captured under Clause 9 of the CSA. This was later changed in Clause 3 of the Second Addendum and is the clause applied in the calculation of the R2.1bn penalty.

7.2. Calculation of the R2.1 billion and the accumulation

- Other officials will deal with the calculation of the R2.1 billion penalty.
- None of the current Primary Energy and Finance teams was involved in any of the negotiation proceedings that led to the calculation and settlement of the penalties in March 2017.

7.3. Negotiations, summonses relating to the R2.1 billion (under Glencore)

- On 23 March 2015, Eskom sent a letter to OCM regarding its accrued rights in terms of the penalties not imposed (Annexure L) and OCM responded to this letter on 26 March 2015.
- OCM sent a letter to Eskom on 22 May 2015 about the coal supply agreement, negotiations and hardship (Annexure M).
- The co-operation agreement was cancelled on 10 June 2015 by Brian Molefe
- Optimum sent Eskom a revised offer on 30 June 2015 (Annexure N).
- Eskom issued a letter of demand to OCM on 16 July 2015 (Annexure O).

- The letter of demand was issued with the approval of the Group Chief Executive (Annexure P).
- The issued summons is attached (Annexure Q).
- A further proposal was received from OCM on 17 September 2015 (Annexure IB).

7.4. Determination, levying and administration of penalties under Tegeta

This determination, levying and administration of penalties will be dealt with by other Eskom officials.

7.5. Negotiations, arbitration, reduction of penalties and eventual settlement under Tegeta

The settlement agreement was signed by the CFO (Anoj Singh) on 14 March 2017 (Annexure R) and head of legal (Suzanne Daniels) was involved. The contract manager was not involved in the settlement agreement process.

7.6. **Detailed reconciliation of the penalty from the R2.1 billion to the R254**

Other Eskom officials will deal with the detailed reconciliation of the penalty from R2.1bn to R254M.

7.7. Exclusion of the sizing penalty

- Following numerous efforts to identify the reason for the high percentage of fines reported, a Glencore employee identified the backflow of fines from the crusher in the secondary sampler as the root cause. This discovery was made on 1 October 2015 and a decision was taken to isolate the crusher.
- The other Eskom officials will deal with further details on the reasons for the exclusion of the sizing penalty.

8. OCM BUSINESS RESCUE

8.1. When it happened and the BRPs

Business rescue started on 4 August 2015 and was concluded on 31 August 2016 (Annexure R)

8.2. Impact of the BR process on the CSA for Hendrina (2018)

Coal supply effectively stopped in Feb 2018 with only 34 251 tons delivered in June 2018 from OCM to Hendrina as part an interim agreement entered into based on an offer from the Business Rescue Practitioners.

8.3. Any contractual terms variations during the BR period

The Business Rescue Practitioners proposed a three months interim contract for 200Kt per month at the contractual price (Annexure S). Eskom accepted the offer after board approval to ensure coal supply to Hendrina whilst the BR was underway. Exco resolved to appoint Mr Jerome Mthembu to lead the engagement with the BRPs to secure coal for Hendrina during the Business Rescue process and to lead the negotiations for post-commencement coal supply.

8.4. Impact of unreliable coal supply from Optimum to Hendrina

- The stoppage of coal supply from OCM to Hendrina when the colliery was placed under business rescue in Feb 2018 resulted in an immediate coal shortfall of 400Kt per month for the power station. When the business rescue process started Hendrina's total coal supply was from OCM, i.e. the power station was 100% dependent on the OCM contract for its coal supply. The coal stock at Hendrina was already low and below the prescribed minimum level when OCM was placed under business rescue, due to the consistent OCM undersupply since 2016.
- Eskom diverted contracted coal away from other power stations to supply Hendrina thus preventing the power station from running out of coal and a potential total shutdown. The

diversion of coal led to other power stations and the total system coal stock to reduce drastically. This contributed immensely to the current low coal stock in Eskom.

- Eskom submitted an urgent procurement deviation request to National Treasury to source replacement coal for Hendrina. The process was not a success
- OCM failed to supply ~3.2Mt of coal for the period Feb 2018 to Oct 2018. This impact of the undersupplied coal is equivalent to 8.3 Eskom system stock days.
- Hendrina is one of the stations currently sitting with coal stock level below 10 days. The OCM contract expires 31 Dec 2018 and based on the mine still not supplying, the total volume undersupplied will accumulate to 4Mt.

9. SALE OF OCM TO TEGETA AND CESSION OF THE COAL CONTRACT

9.1. Eskom's obligation and rights relating to the sale as per the Coal Supply Agreement (CSA)

- Clause 28 of the OCM CSA states, "The Company shall not be entitled to cede, assign and transfer its rights and obligations under this agreement to any third part without the written consent of Eskom."
- Under normal circumstances, a Due Diligence (DD) would be undertaken followed by a submission to the Board to support the cession or change in ownership. In this instance, Eskom did not conduct due diligence on Tegeta upon its acquisition of OCH which owns OCM. The assumption is that DD was not conducted because Tegeta just bought the shares. OCH is still the contracted company however it is 100% owned by Tegeta. Eskom conducted financial evaluation of Tegeta as mentioned earlier in the document.

9.2. Eskom's involvement in the purchase of OCM by Tegeta from Glencore

- I have no knowledge of Primary Energy staff members who were involved in the Tegeta transaction to purchase Optimum Colliery from Glencore, during the business rescue process that started in Aug 2015. , other than information reported by media and records of submissions to BTC. I only learnt of involvement of Eskom officials in the OCM sale transaction to Tegeta through media reports and records of submissions to BTC. I only learnt of the prepayment and guarantees via media and when some of the colleagues reported on the instruction received to process the pre-payment transactions.
- Cliff Decker Hofmeyer was Eskom's legal advisor on the business rescue process. Other Eskom departments like legal can assist with details relating CDH's involvement because the issue instructions to law firms on behalf of Eskom.

9.3. Influence by Eskom and/or its officials, and the propriety or lack thereof

- We have no knowledge of Eskom officials who could have in influenced the sale transaction as we were of a view that the OCM sale transaction was under control of the Business Rescue Practitioners (BRPs). When the BRPs published the business rescue plan, it was confirmed publicly that the intention was to rescue the business and sell the mine. I (Dan Mashigo) attended one of the creditors meetings at Optimum in the company of CDH and Ayanda Nteta to find out what the rescue plan was. Other than Eskom, no major creditors were present; it was predominantly suppliers and contractors.

9.4. Other potential buyers Eskom engaged with and outcomes

- I have no knowledge of potential bidders Eskom approached or which bidders approached Eskom and in what capacity. The list of bidders should be available from the BRPs records or the Business Rescue Plan.

9.5. Engagement between Eskom and DMR relating to the sale

- No knowledge of Eskom and DMR engagement relating to the sale of Optimum. We learnt about the Minister of Mineral Resources visit to the Glencore CEO in Switzerland via media and Public Enterprises Portfolio Committee hearings.

10. EVENTS DURING THE INTERIM PERIOD (1 JAN 2016 TO 31 MARCH 2016)

10.1. Rationale for Eskom contracting with Tegeta for coal supplied by OCM

- In the Dec 2015 Arnot Colliery Technical Meeting, the Eskom coal supply team was informed by Exxaro of the alleged threat to blockade coal trucks by colliery employees. The Arnot Colliery employees were aggrieved by the pending mine closure decision by Exxaro following the CSA expiry.
- Primary Energy alerted the Generation Security Business Partner of the risk of coal supply interruption.
- The GE Generation requested the Primary Energy team to increase the Arnot coal stock to 60 days before 31 Dec 2015.
- An Arnot coal emergency was declared by the Primary Energy Tactical Command Centre based on the coal supply interruption threat

- The emergency procurement process was subsequently activated to source coal required to rapidly increase the stock level to 60 days, in anticipation of supply disruption. Various suppliers were contacted. Once of emergency orders were placed where-after South32 MMS delivered 90 000 tons and Tegeta delivered 100 000 tons from OCM (Annexure T). The delivery was completed by the end of January 2016.
- On 22 January 2016, Tegeta sent an offer letter to Eskom proposing a supply of 250 000 tons per month for 3 months (Annexure U)
- The offer was considered and the procurement process as per the 2008 Mandate was undertaken (Annexure V) and the contract was concluded for the supply of 500 000 tons for two months based on the requirements of the February 2016 supply plan (Annexure W). This did not form part of the emergency procurement process.
- Tegeta had not completed the transaction to purchase Optimum Colliery, so they acted as a non-value agent in supplying Eskom with coal from a mine already contracted to Eskom. The Eskom procurement procedure does not allow the use of non-value adding agents.
- No blockade of coal supply to Arnot Power Station took place.

10.2. Appointment of Tegeta prior to the purchase of OCM

- In anticipation of the expiry of the Arnot cost-plus contract on 31 December 2015 and due to the contracted medium term coal supplies not fully meeting the Arnot coal burn requirements, Eskom issued a Request for Proposals (RFP) to the open market in August 2015. This RFP was still undergoing evaluations when the Arnot Cost Plus CSA expired in December 2015.
- As discussed in 14.1 above, there was an alleged threat to coal supply and an emergency was declared to ensure Arnot Power Station had adequate coal stock to

sustain production should supply interruption realise. The emergency procurement process guided the contracting of coal under the emergency.

- For the February 2016 short-term contract with Tegeta, the coal requirements were based on the February 2016 supply plan. The discrepancies in the procurement process as per the 2008 Mandate are as indicated below.

Action Description	Discrepancy to process
• Offtake agreement	• The supplier provided no offtake agreement during the process, only an offtake letter. This was highlighted to the delegated authority as part of the assurance process prior to contracting and it was noted that the supplier was required to provide an offtake agreement. The supplier submitted an offtake agreement after the contract was signed.
• Value add to the coal supplied	• There was no evidence of the value adding of the coal supplied that was required of an offtake supplier

10.3. What did Eskom know of the underlying contracts between Tegeta and OCM (pricing and payment terms, in particular)

- For the Emergency procurement in January 2016, the offtake agreement between Tegeta and OCM was submitted to Eskom (Annexure X). The agreement states the pricing and payment terms to OCM. None of the current Primary Energy employees is aware of any prior engagements between OCM (BRPs) and Tegeta relating to an offtake agreement to supply Arnot.
- The February 2016 short-term coal contract between Eskom and Tegeta to supply Arnot from OCM, the offtake agreement initially provided was the same as for the January 2016 emergency, mentioned above, as per offtake agreement letter dated 3

Feb 2016 from OCM to Tegeta (Annexure Y). This was highlighted in the review undertaken prior to the contract being signed and it was noted that the supplier was required to provide a separate offtake agreement for the new Feb 2016 short-term Tegeta contract to supply Arnot from OCM.

- An offtake agreement signed on 18th February 2016 was provided to Eskom (Annexure Z).

10.4. Clarification on whether the Arnot supply from OCM was sourced from Eskom supply or export coal

- The Eskom contract manager claims that increased coal volume from OCM to supply Arnot was achieved by reducing the underground bypass product to Hendrina and directing it to the processing plant in order to produce the Arnot product. There is no formal reference of such in short term contract. The coal supply to Hendrina reduced during this period
- As mentioned earlier in the document without upfront knowledge of the possible existence of an excess run off mine stockpile or processed coal stockpile it is difficult to understand how the Eskom dedicated mining operation on its own could produce almost million tons of coal per month.
- The Arnot coal offer from Tegeta did not mentioned the possibility of negative impact to Hendrina coal supply.
- The undersupply of the lower priced Hendrina coal (R150/t at the time) in tandem with the performing Arnot higher price (R559.8/t for the Jan 2016 supply and R585/t for the 500Kt short term supply) short term contract from the same mine is questionable. A genuine coal demand at Arnot Power Station was entangled in the Tegeta transaction giving suspicion to Exxaro that Eskom declined to extend the Arnot coal contract in favour of the Tegeta.

- Based on the Tegeta and OCM offtake agreement signed by the two parties on 18 Feb 2016, OCM sold coal to Tegeta at R448/t (excluding transport). Based on the internal approval memo Tegeta offered the coal to Eskom for R470/t (excluding transport). Tegeta did not add any value in the process yet charged a ~5% mark up of R11M. The transport cost to deliver the coal charged to Eskom is R115.5/t for versus the R98/t in 2016 according to the Eskom rates model.

10.5. Origination of the December 2015 emergency supply

- The Arnot coal emergency was declared based on a report that Arnot Colliery employee threatened to blockade Eskom coal trucks.
- The Primary Energy Division Tactical Command Centre declared an emergency on 23 December 2015.

10.6. Any penalties raised on coal supplied through Tegeta

- No penalties were raised on the coal supplied to Arnot from OCM by Tegeta.

11. ADDITIONAL COAL SUPPLY AND PREPAYMENT (R658 MIL)

- Origination of the Arnot emergency coal procurement in Jan 2016 based on Coal Supply Plans
- Eskom prepares annual coal supply plan which gets updated monthly to accommodate deviation from revision zero production plan based on:
- The latest available production plan indicating the energy required from each individual power station. The annual coal burn broken down into monthly burn is derived from the energy output required per station for each power station.

- Ability of existing coal supply contracts to meet required coal burn whilst maintaining prescribed coal stock holding.
- The difference between existing coal supply contracts volumes per power station and the coal demand per power station for the planning period constitutes "shortfall coal", which has to be procured to maintain power stations coal at expected levels.
- The coal supply plan of May 2015 (Annexure AA) identified that Arnot Power Station would require 1.165 million tons additional coal between June 2015 and March 2016 for the station to end the financial year at the expected level of 35 days.
- The November 2015 (Annexure AB) coal supply plan identified that Arnot Power Station required 0.76 million tons additional coal between December 2015 and March 2016 for the station to end the financial year at the expected level of 35 days. Without additional coal, Arnot Power Station would have ended the financial year on 4.7 days.
- The May 2016 (Annexure AC) coal supply plan identified that Arnot Power Station would require 1.77 million tons additional coal between June 2016 and March 2017 for the station to end the financial year above the expected level at 41.9 days. Without additional coal, Arnot Power Station would run out of coal in December 2016.

12. PREPAYMENT/GUARANTEE

12.1. The use of prepayments by Eskom and circumstances under which used

- Upfront payment is common practice in high value construction or manufacturing contracts for high value components whereby long lead items or long lead material have to be pre-ordered or purchased ahead of the supplier job executing and invoicing
- The upfront payment get provided for in the balance sheet until such time that the supplier can start invoicing on progress completion
- The Arnot short-term coal contract concluded with Tegeta in 2016 for coal sourced from Glencore owned Optimum Colliery, which was under business rescue, did not follow default procurement process, i.e. a Purchase Requisition not was not generated in advance. The coal was sourced using the 2008 Mandate. Reasons cited by Group Executive Generation at the time, were that the contract was to secure sufficient coal stock at Arnot for winter based on the coal supply plans. Optimum Colliery undersupplied to Hendrina. No segregation of Hendrina and Arnot power stations coal supply was put forward. No proof that export product mining activity was supplied to Eskom or that the Arnot coal was sourced from the export mining and processing.
- The ~R658M prepayment in lieu of future coal supply on a fixed price contract was a first and departure from Eskom arm's length fixed price coal contracting, where Eskom does not contribute/fund the working capital of running the fixed price coal mines. The money was allegedly paid to restart the export opencast section of the mine, which Glencore closed in 2015. Eskom put no conditions precedent forward for acquisition/lease of mine equipment required to restart the mine, production reports, proof payment to suppliers etc. It also does not make sense why the prepayment was in lump sum instead of on "as and when

expenditure is incurred basis". The equating of the Optimum prepayment to the cost plus mines "stay in business capital" funding is misplaced. On cost plus-contracts, Eskom does prepay for coal production and supply. The "stay in business capital" funding by Eskom for the cost plus mines is a contract-regulated obligation. Eskom does not pay the capital in advance on lump sum to the mining houses. Progress payment is made to the mining house upon invoicing based on progress completion of the project.

- Bank guarantee offered by Eskom to Tegeta was out norm as Eskom never provide guarantees or act as guarantor on behalf of suppliers or private companies. This may as well be outside the company's MOI. It is not clear what governance was followed in obtaining approval to provide guarantee to a privately owned company, which happened to be an existing supplier at the time. The transaction's materiality probably required PFMA Section 54 approval from both Finance and Public Enterprises Ministers it contracts. Supplier normally offers surety/Guarantees through various instruments, e.g. parent company guarantee, bond, bank guarantee.

12.2. Similar past coal prepayments

- The current PED team is not aware of any coal prepayment transactions be it on cost plus or fixed price suppliers

12.3. Rationale and validity of reasons provided by Tegeta for prepayment

- The BTC submission documents states that "Tegeta requested Eskom to consider some form of prepayment to enable it to meet the production requirements from the export component of the mine in lieu of the cross-subsidy of Hendina direct feed as that would enable it to meet the coal supply demand for the two power stations"

- The former Eskom CFO stated at the Public Enterprises Portfolio Committee was that he secured a discount on the coal price linked to the prepayment.
- It was mentioned in the public domain that the prepayment was to enable Tegeta to restart the opencast operations at Optimum Colliery which was main source of export run off mine coal.
- Tegeta did not provide Eskom with evidence that the prepaid working capital was used for predetermined mining activities.
- Tegeta requested upfront payment however they were not the owners of the mine and it is not obvious that their offtake contract with (Glencore) OCM granted them rights to mine on their own.

12.4. Ability of Tegeta to supply the additional coal in light of their reasons for prepayment

- The only way Optimum could supply additional coal would be with the entire opencast and underground operations running or the mine sitting with excessive run off mine coal stockpile.
- With the opencast mine not producing (stopped in 2015 by Glencore), it is unlikely that Optimum could supply the full Hendrina consignment and additional coal to Arnot from the same underground operation without expanding the works or compromising Hendrina supply.
- The Arnot offers were 500Kt per month, which was higher than the Hendrina 458Kt; this implies 1Mt per month supply.

- Other Eskom officials will deal with the details around the prepayment processing.

12.5. Payments to Tegeta by Eskom, also detailing any penalties withheld

- Annexure AD shows payments made to Brakfontein, OCM and Koornfontein from 10 April 2015 to 30 August 2016.

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Annexure "A"

TEGETA EXPLORATION & RESOURCES (PROPRIATARY) LIMITED

TEGETA

CORPORATE PROFILE

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BRAK-166

1. Who We Are

Tegeta Exploration & Resources Limited ("TER") is a South African emerging junior exploration and mining Company engaged in the acquisition, exploration, development of Coal.
Tegeta's activities are concentrated in Southern Africa currently in South Africa, Botswana, and, Mozambique. . Tegeta has taken a First Mover Strategy by aggressively pursuing mineral deposits and exploration opportunities in South Africa.

We have long held the view that the sovereign risk is not as high as perceived and that the world shall ultimately embrace the region once the countries of Angola and the DRC retain political stability once again. Per square kilometre, Southern and Central Africa offers some of the world's most extraordinary and diverse geology and mineral deposits. From the Archaean Southern African Craton to the Great Dyke to the Rift Valleys and the copper belt regions of Zambia comes a world-class under-explored portfolio of minerals. Most of Southern Africa has an infrastructure and skills base almost unrivalled in Africa, with a plethora of historical data to rediscover and reinterpret.

Tegeta has moved from a strategy plan to an established exploration company, with mineral tenements covering several hundred square kilometres of ground of prospecting acreage and a variety of projects at stages from green-field to pre-feasibility resource definition. Tegeta through its associate company Confident Concepts (Pty) Ltd, currently has nine drilling rigs operating on various projects.

2. Corporate Highlights

- Project are in exploration/operational stages
- Mineral Resource has been identified and being evaluated.
- Substantial capital has been raised from shareholders as equity for the acquisition of strategic Mineral Rights, and funding its exploration program.
- Tegeta has 12 prospecting rights granted by the Department of Mineral Resources (DMR), South Africa for bituminous Coal.
- Negotiations to acquire controlling stakes in two (2) companies holding prospecting/mining rights is underway.
- Tegeta has mining expertise through its associate company "JIC Mining Services". JIC Mining Services is one of the largest and most reputed contract mining company with customers like Anglo American, Impala Platinum, Anglogold Ashanti, Hamic Ferrochrome, Harmony etc.
- Tegeta's properties are located in areas with good potential of mineral resources for viable mining operations.

3. Our Mission

- *To be a world-class, owner, explorer, producer and operator of successful, efficient and, cost effective producing mines.*
- To create shareholders wealth by maximising profits and optimising growth.
- To become a reputable exploration and junior mining house.
- To finance its exploration, feasibility studies and development of its mineral resources using best techniques and methodologies and engineering using cutting edge technology in all projects.
- To be internationally competitive and top-rated in terms of financial and operational performance.
- To provide an effective mechanism for bringing the historically disadvantaged local communities into direct participation of equity in businesses taking place in their communities on a scale felt by communities.
- Identify economic green-field mineral resources and diversify opportunistically and selectively into production areas as well as to be a socially responsible company.
- To conduct all its business according to sound principles and high ethical standards, living to its commitment of accountability, transparency and good corporate governance.

4. Objectives

a. Immediate Objective

The ultimate objective of the company is to combine , cash flows and blue sky potential to in order to reduce risk and paving the way to build a successful junior mining-house that is profitable, sustainable, has high-growth) potential, and is positioned across the entire value chain of the coal commodity environment .

b. Medium term Objectives

a. Establish sustainable joint ventures with multinational corporations in order to unlock value in their well defined and broad resources base,
b. Consolidate the business into a profitable and nimble company and to gain value/ mass,
c. Declare above average dividend payouts and improved access to capital,
d. Develop organic growth opportunities within the company,
e. Participate in larger growth (blue sky) opportunities.
f. Skills transfer and aggressive development of in-house expertise.
g. To own operational mines, with longer-term exploration and development (green fields) projects underway.
h. To own state of the art underground and surface mining equipment.
i. Employ competent personnel with skills encompassing management, technical and financial competencies. To grow and develop the business into a world class emerging junior mining company.

5. Business Development Strategy

Our strategy is to position Tegeta as a progressive and professionally managed company with exciting exploration acreage and efficient producing operations.
Tegeta's business model is based on generating exploration projects whose subsequent development growth is funded primarily through organic growth and secondly through joint venture partnerships.

Tegeta is committed to grow its portfolio of assets and has positioned itself to become s the preferred player in the African resources sector by compiling with regulatory requirements in countries it seeks to operate from as well as being more socially and environmentally responsible.

Tegeta's business strategy is to own a mix of established collieries, brown-fields projects as well as green-fields (blue sky) resources. Importantly, Tegeta will manage and grow its coal interests and position in the market to the extent that the company remains able to:

- Remain flexible in terms of product mix (i.e. wide range of resources covering both export quality as well as local refinery and Eskom product.)
- Beneficiate for these different markets.
- Achieve preferred supplier status with Eskom.
- Obtain and expand RBCT (export) allocation facilities.
- Toll beneficiate or load for smaller BEE JV partners.
- Remain focused on employing the broader value chain.
- Become an attractive and sought-after BEE JV partner for the likes of Anglo, Xstrata etc.

6. Investment Strategy

Tegeta's investment strategy is to minimise risk and optimise long term by merging blue sky potential with cash-flows. The Company will primarily focus on businesses based in African countries, where the potential investment opportunity exhibit one or more of the following characteristics:

- under exploited assets
- ability to yield more than average return on investment
- sustainable growth prospects
- a strong position in an established market or an early mover position in a potentially fast growing market
- a valuation representing a discount to net cash or asset value; or
- a conducive business environment coupled with political stability and corporate governance

7. Shareholding Structure

Following are the shareholders of Tegeta:

1. **Oakbay Investments (Pty) Ltd : 48%**
2. **Fidelity Enterprises Limited (Dubai):22%**
3. **Aerohaven Trading (Pty) Ltd: 30%**

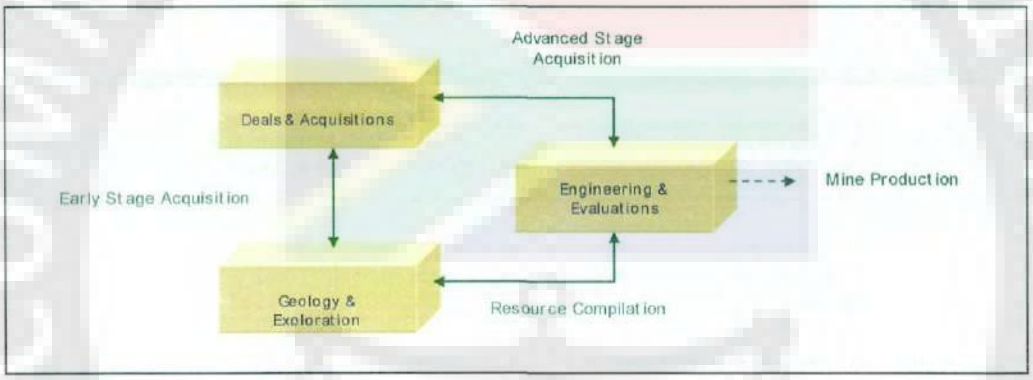
7.1 Background to Shareholders

- **Oakbay Investments Pty Ltd** is the investment company and has substantial investments in Mining and related activities, Information Technology, Real Estate development & Hospitality Industry.
- Aerohaven Trading (Pty) Ltd is a BEE company promoted by Mrs. Ronica Ragavan. She has been on the board of various Companies.
- Fidelity Enterprises Limited is a Dubai based company engaged in strategic investments in various countries. The company will not only help in arranging funds at reasonable cost but also help Tegeta in marketing overseas.

7.2 The Board

Tegeta's board of Directors is made up of R. Nath, Ashu Chawla and Ronica Ragavan. Two other independent and non executive directors shall be appointed to the board in due course.

8. Operations Model/ Structure



9. The Management Team

Tegeta's shareholders recognize that, winning begins and ends with people as a result, the company employs people who are passionate about Tegeta's business, are skilled in their areas of responsibilities and committed to the company's objectives and policies.

The Company's human resources mission is to have:

- The 'best people'
- The 'best performance' workforce
- The 'best employer' reputation within the industry

In addition to the few directly and currently employed by Tegeta , there are several professional consultants (individuals and companies) who provide specialist services to the company from time to time. The main objective is to remain a nimble and cost effective company relative to our peers. We recruit the 'best' professionals and skilled people, who believe in our success driven culture.

The current Management Team consists of:

Ravindra Nath – Chief Executive Officer

Mr. Ravindra Nath is the Chief Executive Officer for Tegeta overseeing all the aspects of the Company.
Mr. Nath brings many years of experience which he gained during his tenure of service with the State Bank of India in India and abroad in senior management positions. While working for the bank, he was part of the senior management team that structured and arranged variety project finance, loans and advances, forex and many related areas of the banking industry.
After his departure from the State Bank of India, Mr. Nath joined Sahara Group in South Africa as their Chief Financial Officer, a position he holds jointly with Tegeta. s CEO. Mr. Nath is a director in various, Group Companies.

Education

BA, LLB, CAIIB

Mr. M.A. J Visser- Senior Consulting Geologist - Coal

Work Experience

Mr Visser is a senior geologist with integrity and many years of experience in Coal.

Mr Visser recently joined Tegeta as a Senior Consulting Geologist charged with the Task of Evaluating and optimising the company's portfolio of Coal Resource and building the critical mass and core competencies within the Company. While at Bhp Billiton, he served in many senior positions, such as, Head of Geology of Ingwe, responsible for BHP Billiton Coal's Reserve and Resource reporting and also responsible for Ingwe's coal reserve and resource management. Mr Visser was a Member of the BORCT committee. In addition to many other responsibilities, he also worked in the following capacities, and these are:

- 2004-2007- Group Manager Geology-Coal BHPB SA
- 2002-2004- Group Manager Geology-BHP Billiton, Coal
- 1998-2002- Senior Consulting Geologist-Ingwe
- 1995-1998- Manager Geology-Operations Coal-Ingwe
- 1990-1995- Assistant Consulting Geologist-Trans-Natal
- 1988-1990- Technical Manager-Delmas
- 1985-1988 Chief Geologist-Delmas1970 – 1973 - Mine geologist (TCL)
- 1973 – 1976 - Exploration Geologist (TCL)
- 1976 – 1979 - Senior Geologist (GEFCO)
- 1979 – 1984 - Chief Geologist (GEFCO).

1984 – 1985 - Research Geologist (GEFCO

Key responsibilities

- Yield and Quality of final coal product
- Resource acquisitions in SA and offshore
- Geology Standards in Ingwe
- Reserve/Resource reporting BHP-Billiton ; Coal
- Optimal exploitation of Coal Resources;

- Mine and Exploration: Asbestos & Manganese
- Manage Exploration Project
- Research on the origin and deposition of Crocidolite

10. Professional Advisors and Consultants

During the first few months of business, the company utilised the services of consultants and advisors whilst building its own staff compliments. Out of the many that we are working with, the five listed below have worked with Tegeta from inception to date.

These are:

- JIC Mining Services Pty Ltd- (Project Managers),
- Shiva Uranium Limited,
- State Bank of India, Bank of Baroda

11. Access to Joint Ventures

Tegeta shareholders recognise the need to have strong relationships, strategic alliances and joint venture partners with other leading industry players on specific projects. As a result of theses relationships, Tegeta shall have access to capital to fund its projects and a wider platform of markets for its commodity.

This is critical for Tegeta's growth and sustainability as it pursues its development strategy of becoming a recognised junior mining Company, with assets and infrastructure representative across the entire value-chain of the mining industry.

The Joint Venture Model is aimed at addressing the following critical components, which are always facing emerging junior mining companies some of the issues are;

- Risk Mitigation;
- Reduced Financial Burden;
- Increased Exposure to Technical Expertise;
- Increased Shareholder Returns;
- A Business Model that Works for Africa.
- Highly competent in house expertise with the ability to select, advance, and to joint venture projects.
- Focused exploration targeted towards early production.
- Ability to finance exploration programs timeously.

12. Why Coal?

Coal Known as the humble fuel is the most abundant resource in sub Saharan Africa. Coal is a fossil fuel. It is a cheap commodity to produce in comparison to other metals.

12.1 The Power Crisis in Southern Africa

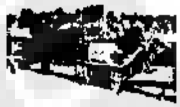
Southern Africa is heading towards a critical regional power shortage as from 2007. It is around this time that, according to general consensus, the region's major power provider, state-owned Eskom will run out of surplus capacity.

Continued moderate economic growth in South Africa, combined with the Government's laudable program to deliver electricity to millions of new households, is driving demand for an additional one thousand plus megawatts of electricity per year. Furthermore, over the next 30 years, it is estimated that global energy demand will increase by almost 60%.Two thirds of the increase will come from developing countries – by 2030 they will account for almost half of total energy demand. However, many of the world's poorest people will still be deprived of modern energy in 30 years time - 1.4 billion people will still be without electricity.

12.2 The Role of Coal

Over the next 30 years, it is estimated that global energy demand will increase by almost 60%. Two thirds of the increase will come from developing countries – by 2030 they will account for almost half of total energy demand. However, many of the world's poorest people will still be deprived of modern energy in 30 years time - 1.4 billion people will still be without electricity.

Access to modern energy services not only contributes to economic growth and household incomes but also to the improved quality of life that comes with better education and health services.



Coal Mining in South Africa is critical to the economy, both in terms of it providing essential national power generation and being the second largest foreign ex earner. The South African Coal Industry has earned an enviable reputation overseas as a consistently reliable producer and supplier. This important factor, together with the elimination of all trade sanctions, has now resulted in an unprecedented overseas demand for South African coal.

As the most important fuel for electricity generation and a vital input into steel production, coal will have a major role to play in meeting future energy needs.

During the past two years, the use of coal has grown at a faster rate than for any other fuel, rising by almost 5% in 2005. Demand in China grew by 11%, in Russia by 5%, in Japan by 5% and in the USA by 2%.

Coal will continue to play a vital role in electricity generation worldwide – while it currently supplies 39% of the world's electricity, this figure will only drop one percentage point over the next three decades.

With the availability of abundant, affordable and geographically disperse reserves, coal has a vital role to play in a world where reliable supplies of affordable energy will be essential to global development.

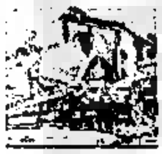
12.3 Coal Consumption

Coal plays a vital role in power generation and this role is set to continue. Coal currently fuels 39% of the world's electricity and this proportion is expected to remain at similar levels over the next 30 years. Consumption of steam coal is projected to grow by 1.5% per year over the period 2002-2030. Lignite, also used in power generation, will grow by 1% per year. Demand for coking coal in iron and steel production is set to increase by 0.9% per year over this period.

12.4 Coal Production

Over 4600 Mt of hard coal is currently produced – a 38% increase over the past 20 years. Coal production has grown fastest in Asia, while Europe has actually seen a decline in production.

Global coal production is expected to reach 7000 Mt in 2030 – with China accounting for around half the increase over this period. Steam coal production is projected to have reached around 5200 Mt; coking coal 624 Mt; and brown coal 1200 Mt.



12.5 Key drivers & future prospects

- Regional Economic growth and continued moderate economic growth in South Africa, combined with the Government's laudable program to deliver electricity to millions of new households, is driving demand for an additional one thousand plus megawatts of electricity per year.
- Increased Energy demand.
- High increase in commodity prices.
- Southern Africa is heading towards a critical regional power shortage as from 2008.
- South Africa is rapidly moving towards a point where it will be unable to meet the electricity demands of its own people. . How do you keep the lights on? The obvious answer is.....Coal

12.6 Achieving our strategy

Our strategy is to develop sustainable mining operations through acquisitions of operating assets and development of green-fields projects with an ultimate objective of raising sufficient cash flows and blue sky for organic growth. The aim of the consolidation strategy is to position Tegeta favourably in the market as:

(1) an anchor "owner operator" exploration and junior mining company in the sector;
(2) to reduce cost of funding by way of organic growth from own balance sheet;
(3) to reduce overall company risk by merging cash-flows with blue sky potential and managing and owning a number of projects in diversified geographies,
(4) generate much-needed critical mass and core competences in order to become a world class company.

13. What Makes Tegeta Different?

- Exciting large exploration projects,
- Passionate Shareholders and committed Management Team.,
- Understanding of doing business in Africa and strong network of contacts in the industry
- Ability to manage exploration and pricing exploration risk.
- Ability to execute feasibility studies timeously
- Independence and being a nimble resources company.

14. Conclusion

Tegeta has potentially world class mineral resources" which we believe, due to the current demand for Energy, could position the company as an, operator, producer of Coal and owner of assets that are of good value. Tegeta provides the vessel upon which to embark on such a voyage. Watch us and support.

15. Corporate Address & Contact Details

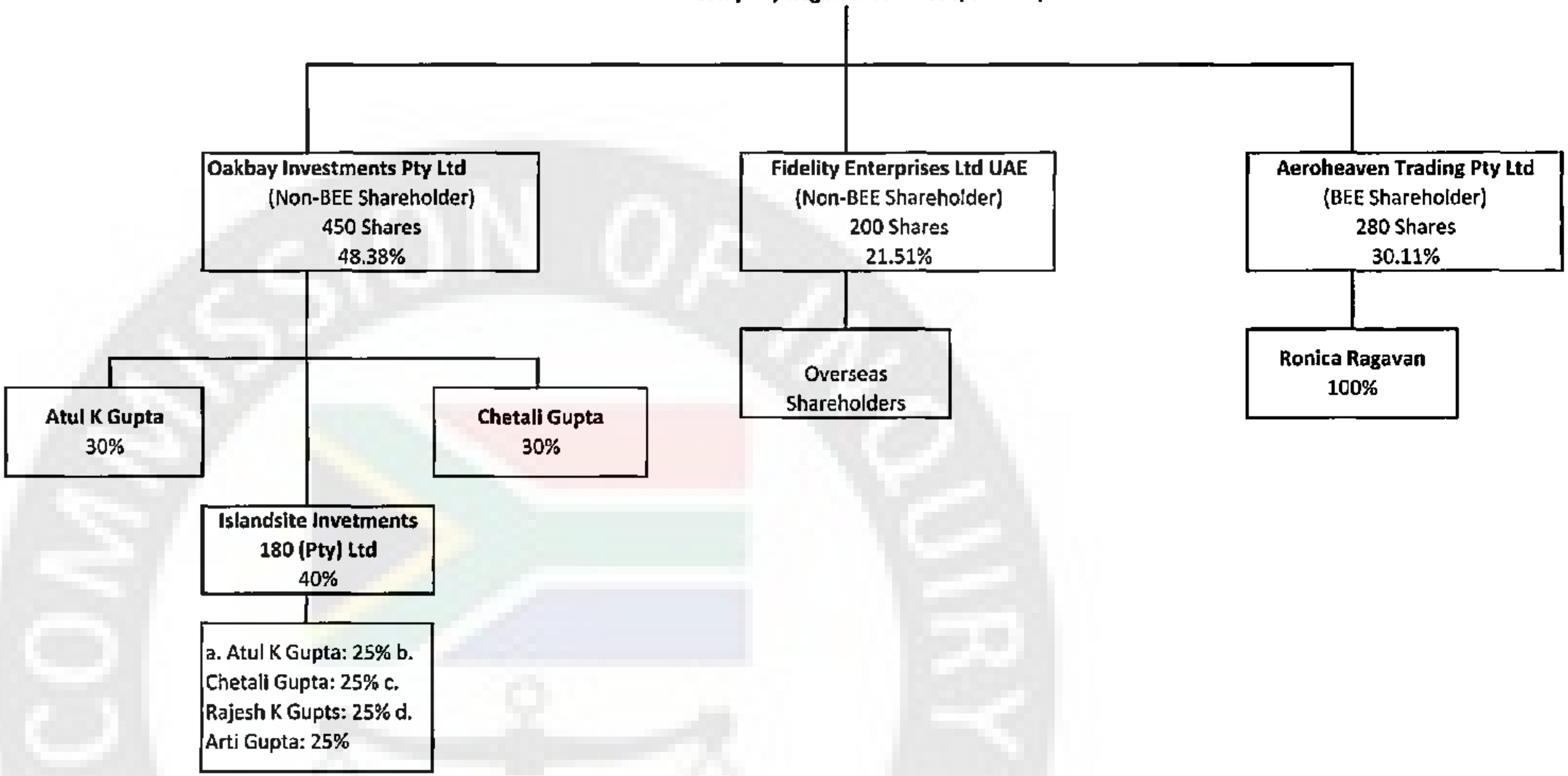
Tegeta Exploration & Resources (Pty) Ltd
Address
Lower Ground Floor,
Grayston Ridge Block A,
144 Katherine Street,
Sandown, Sandton,

Postal Address
Postnet Suite 458,
Private Bag X9,
Benmore, 2010

Contact Numbers
Tel: +27 11 430 7640
Fax: +27 11 783 4260
Web address: www.tegeta.com
Email: info@tegeta.com

Organogram of Tegeta Exploration & Resources Pty Ltd

Company Reg number : 2006/014492/07



Annexure “B”

WITHOUT PREJUDICE

OPTIMUM
COAL
MINE

Eskom Holdings SOC Limited
Primary Energy Division

Fax: +27 11 800-6146

Attention: Pam Pillay
Senior Manager (Acting): Coal Operations

Your ref: 719558

23 April 2013

Dear Sirs

HENDRINA COAL SUPPLY AGREEMENT: SIZING SPECIFICATIONS

1. We refer to your letter dated 22 April 2013 regarding the sizing specifications in clause 3.4.3 of the First Addendum dated 8 April 2008 (**"First Addendum"**) to the Hendrina Coal Supply Agreement (**"CSA"**) between Eskom Holdings SOC Limited (**"Eskom"**), Optimum Coal Holdings (Pty) Ltd (**"OCH"**) and Optimum Coal Mine Pty Ltd (**"OCM"**) dated 4 January 1993 (as amended)

2. Following the discussions in September 2012, OCH has conducted detailed investigations in order to identify the reason for the changes in sizing and to identify possible remedial actions therefor. The results of these investigations have been shared with Eskom.

3. OCH has now reached the conclusion that the sizing specifications set out in clause 3.4.3 of the First Addendum are no longer realistically representative of the coal which OCM can reasonably be expected to achieve from the exploitation of the coal deposits constituting the Optimum Colliery, it being OCM's view that OCM is conducting its operations in a proper manner and in accordance with best industry standards.

2/.....

OPTIMUM
COAL
MINE

Eskom Limited
Primary Energy Division
Megawatt Park
Maxwell Drive
Sunninghill
Sandton

Attention:

Mr D Marokane
Ms K Maharaj
Mr W du Plessis
Ms S Daniels

3 July 2013

Dear Sirs

HENDRINA COAL SUPPLY AGREEMENT : HARDSHIP

1 **INTRODUCTION**

1.1 We refer to the Hendrina Coal Supply Agreement between Eskom Holdings SOC Limited, Optimum Coal Mine (Proprietary) Limited ("**Optimum**") and Optimum Coal Holdings (Proprietary) Limited, as amended from time to time ("**CSA**").

1.2 Capitalised terms not defined herein will, save as otherwise set out herein, have the meanings ascribed to them in the CSA.

1.3 As you are aware, clause 27.1 of the CSA provides that, in entering into the CSA, the Parties declared it to be their intention that the CSA should operate between them with fairness and without undue hardship to any party.

1.4 In recognition of that fundamental principle, the CSA provides that, where relevant circumstances have arisen, the affected party may serve a written notice ("**relevant circumstances notice**") on the other party recording therein that, in its determination, relevant circumstances have arisen, and recording therein the date on which the relevant circumstances commenced ("**relevant circumstances commencement date**").

1.5 As we indicated to you at our recent steering committee meeting, in our determination "relevant circumstances" have arisen, and, accordingly, we are hereby writing to you to advise you of such relevant circumstances.

Optimum Coal Mine (Pty) Ltd
(Registration No: 2007/005308/07)
A wholly owned subsidiary of Optimum Coal Holdings Limited
23 Melrose Boulevard, 1st Floor, Melrose Arch, Melrose North, Johannesburg 2196, South Africa
Mailing address: Suite No. 19, Private Bag X1, Melrose Arch 2076
Tel: +27 11 772 0600 Fax: +27 11 772 0697
Directors: R Cohen, C M Ephron, P Mahanyele, T Ncube

Annexure "C"

OPTIMUM
COAL
HOLDINGS

Delivered by Email

Displayed –

- Registered Office and Principal Place Business of the Company and anywhere where Employees are Employed
- Published on the Website Maintained by the Company and Accessible to Affected Persons

Delivery by Registered Post – Shareholders

---

4 August 2015

Attention: **All Affected Persons**
Optimum Coal Holdings Proprietary Limited (In Business Rescue)

NOTICE OF THE COMMENCEMENT OF BUSINESS RESCUE OF OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED

1. You are hereby notified, in accordance with section 129(3)(a)of the Companies Act 71 of 2008 ("**Companies Act**") that the board of directors of Optimum Coal Holdings Proprietary Limited (registration number 2006/007799/07) ("**Company**") passed a resolution on 31 July 2015 to –

   a. voluntarily commence business rescue proceedings and to place the Company under supervision in terms of Section 129(1) of the Companies Act; and

   b. nominated Piers Marsden ("**Marsden**") and Petrus (Peter) Francois van den Steen ("**Van den Steen**") for appointment as the business rescue practitioners in terms of section 129(3)(b) of the Companies Act.

Optimum Coal Holdings (Pty) Ltd
(Registration No: 2006/007799/07)
A member of the Glencore group of companies
Registered Address: 1st Floor, Nedbank Building, 23 Melrose Boulevard, Melrose Arch, Melrose North, Johannesburg, 2196, South Africa
Mailing Address: Suite No. 19, Private Bag X1, Melrose Arch, Johannesburg, 2076, South Africa
Tel: +27 11 772 0600 Fax: +27 11 772 0697

Annexure "D"

STRICTLY CONFIDENTIAL

Eskom

Revision 3 – November 2007
Annexure A

EXECUTIVE SUMMARY

SUBMISSION TO P-E-T-C	12 AUGUST 2008
SUBMISSION TO EXCO-PS	20 AUGUST 2008
SUBMISSION TO BOD-TC	11 SEPT 2008

1. TITLE OF THE SUBMISSION

To obtain a mandate to negotiate and conclude contracts on a medium term basis for the supply and delivery of coal to various Eskom power stations for the period October 2008 to March 2018.

2. RESOLUTION REQUIRED

The following resolution is requested:

IT IS RESOLVED THAT:

2.1 Approval be and is hereby given to negotiate and conclude contracts on a medium term basis for the supply and delivery of coal to various Eskom power stations for the period October 2008 to March 2018. Contracting period starting from October 2008 and includes the beneficiation of coal by supplier or their contractors.

The required volume of coal will be 490,8 MT.

The maximum value of the contracts will be R164 418 M (excluding CPA, VAT and Quality Price Adjustments) at real base rates of R335/T delivered (R18.21/Gj at an average CV of 18,4 Mj/kg, on an as-received basis) in 2008 money values.

2.2 The Chief Officer (Generation Business) is authorised herewith, 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 therewith.

3. SUMMARY OF FACTS

3.1 Salient Facts

In terms of Corporate and Generation Directives "Procurement & Supply Chain Management Procedure (32-188)" and "Emergency Short Term Coal Sourcing Procedure GGP 1194", the Managing Director (Generation Division) declared an emergency at affected power stations on 09 January 2008.

At the time of declaring emergency, the total coal stock at the affected stations was below the acceptable minimum of 20 days with some stations below 5 days.

A mandate was therefore requested for the procurement and inter-station transfers of up to a maximum of 53,582 MT of coal for Eskom power stations over a minimum two year period, commencing February 2008, with an option to extend for a further period. Approval was granted by the Eskom Holdings Chairman on a round-robin basis in accordance with the recommendation of the Chief Officer (Generation Business), Financial Director and the Chief Executive.

In an effort to mitigate the occurrence of another emergency, the supply and demand for future coal supplies was assessed and a long term strategy developed. To ensure the sustainable supply of electricity, it was determined that a shortfall of coal exists when comparing the burn requirement to the existing and planned long term coal supply contracts. This shortfall must be addressed with medium term supplies.

This submission requests for a new mandate to enter into contracts for the supply of coal from October 2008 until March 2018, at a maximum tonnage of 490,8 MT.

3.2 Key assumptions

- Long term contracts will materialise as per plan
- Companies supplying coal through contracts concluded under the emergency mandate will perform as reported
- The quantities will be delivered as estimated for each contract

3.3 Financial implications

The total monetary value of the proposed coal contract and transport is R164 418 M (Real base) at a total combined tonnage of 490,8 MT at an average cost of R335/T delivered. The prices are based on current prevailing prices, current estimates and future estimated prices. The real and aspiration bases are shown on table 3.

3.4 Human Resource implications
None

3.5 Risks (including Environment, Legal or Contractual risks)

- Delays in suppliers obtaining mining permits,
- Delays in the acquisition of surface rights for mining purposes
- Rail transportation availability,
- Suppliers delivering to their undertaking
- Deteriorating road conditions

4. **OTHER APPROVALS REQUIRED**

None

SIGNED

29/8/2008

BA Dames
CHIEF OFFICER
(GENERATION BUSINESS)

DATE

Who hereby represents that the above Information is correct.

Submission prepared by: Della von Pickartz
Contact Number: 011 800 4840

Eskom

STRICTLY CONFIDENTIAL
Revision 2 – November 2007
Annexure B

CHECKLIST 1

		N/A	Yes	No
1.	**INTERNAL PROCESS**			
1.1	**BUSINESS PLAN** Has the project/issue been included in the business plan?		✓	
1.2	**BUDGET**			
	If financial approval is required, is the project/matter within the approved budget?		✓	
1.3	**HUMAN RESOURCE IMPLICATIONS**			
	Does the project have any HR implications? *(If yes, information/explanation to be highlighted in documentation/presentation/attachment.)*			✓
1.4	**FINANCIAL EVALUATION**			
	- Has the project/issue undergone a financial evaluation? *(Shenaaz Naidoo)*		✓	
	- Has the evaluation been verified?		✓	
	- **Treasury report attached.**			
1.5	**LEGAL/CONTRACTUAL ISSUES**			
	- Are there legal implications? Yes		✓	
	- Has Corporate legal department input been obtained?		✓	
	- If so, is the approval sought consistent with the legal input? **Dave Davies supports this submission.**		✓	
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? **(Corporate Tax → Natasha Singh)**		✓	
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.	✓		

1.8	TECHNICAL EVALUATION	N/A	Yes	No

	- Has the project/issue undergone a technical evaluation? (If yes, by whom) **M Mochubele, PE** - Has the evaluation been verified? - By whom (internally or independent)? - **JH Jordaan, PE** - **AA de Clercq, PE**		✓ ✓	
1.9	**BLACK ECONOMIC EMPOWERMENT IMPLICATIONS**			
	Does the project have any BEE implications?		✓	
1.10	***EMPLOYMENT EQUITY***			
	Was due consideration given to employment equity in terms of the following:			
	- *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.	✓		✓
2.2	**PUBLIC FINANCE MANAGEMENT ACT (PFMA)**			
	- Is any PFMA approval required?			✓
2.3	**ARE THERE ANY OTHER APPROVALS REQUIRED? IN PARTICULAR**			
	- Reserve Bank - Competition Commission - National Treasury			✓ ✓ ✓

SIGNATURE: ______________________ **DATE:** 29/8/2008

BA Dames
CHIEF OFFICER
(GENERATION BUSINESS)

Who hereby confirms that all of the above requirements have been complied with.

Eskom
Generation

CHAIRPERSON
BOARD OF DIRECTORS TENDER COMMITTEE

Date: 27 July 2008
Enquiries: Delia Von Pickartz
+27 (011) 800-4840
Our Ref:

PRIMARY ENERGY DIVISION

TO OBTAIN A MANDATE TO NEGOTIATE AND CONCLUDE CONTRACTS ON A MEDIUM TERM BASIS FOR THE SUPPLY AND DELIVERY OF COAL SUPPLIES OF 490,8 MT TO MEET BURN REQUIREMENTS AT VARIOUS ESKOM POWER STATIONS FOR THE PERIOD : OCTOBER 2008 TO MARCH 2018.

TOTAL COMBINED MONETARY VALUE: R164 418 M

1. INTRODUCTION

After an emergency mandate granted by the Board of Directors in February 2008 to negotiate and conclude contracts with various suppliers for the emergency supply and delivery of 53,582 MT of coal to Eskom power stations for a period commencing February 2008 until March 2010, an assessment was done on the long term strategy of the anticipated coal burn requirement and the current contractual supply to assess the potential shortfall of coal required to ensure that the burn demand can be met.

This submission requests a mandate to conclude contracts for the supply and delivery of 490,8 MT of coal to Eskom various power stations to meet the shortfall and burn requirements from October 2008 to March 2018. Where contractual options to extend contracts with current suppliers exist, such options will be exercised depending on quality, price and the supplier's ability to supply.

The total combined monetary value of the proposed coal contracts (delivered) is R164 418 M (real base, excluding CPA, VAT, fuel price adjustment and quality price adjustments) for the period October 2008 to March 2018.

2. SCOPE OF WORK

In accordance with Eskom's Procurement & Supply Chain Management Procedure (32-188) a mandate is hereby requested to negotiate and conclude contracts for the purchase of coal on a short and medium term basis totaling 490,8 MT.

An assessment was done on the anticipated coal burn requirement and the current contractual supply to assess the potential shortfall of coal required to ensure that the burn demand at coal fired stations can be met. A shortfall exists between the required burn, current contracts and estimated new long term supplies.

2.1 Tonnage requirement

The maximum tonnage required to meet burn requirements during October 2008 to March 2018 is 490,8 MT. This was derived by comparing current coal sources, estimated new long term contracts and high burn as per ISEP 11 plans.

Refer table 1 for the quantities.

2.2 Transportation

Due to the length of the supply period it is endeavored that the transport solution, at the time, will be considered based on the available method of transport. In the event that rail capacity is available that would be the first choice of transport in an attempt to reduce road traffic.

With the current limited rail transport options available this mandate assumes road transport will be used.

Eskom would only negotiate delivered price contracts, where coal is transported by coal suppliers or their appointed transporters.

In the event that rail capacity is available that would be the first choice of transport in an attempt to reduce road traffic.

2. BACKGROUND

In terms of Corporate and Generation Directives "Procurement & Supply Chain Management Procedure (32-188)" and "Emergency Short Term Coal Sourcing Procedure GGP 1194", the Managing Director (Generation Division) declared an emergency at affected power stations on 09 January 2008. At the time of declaring emergency, the total coal stock at the affected stations was below the acceptable minimum of 20 days with some stations below 5 days

A mandate was therefore requested for the procurement and inter-station transfers of up to a maximum of 53,582 MT of coal for Eskom power stations over a minimum two year period, commencing February 2008, with an option to extend for a further period.

Approval was granted by the Eskom Holdings Chairman on a round-robin basis in accordance with the recommendation of the Chief Officer (Generation Business), Financial Director and the Chief Executive.

In order to mitigate risk and to prevent any such emergencies in future, a long term strategy was formulated to assess the impact of future supplies to Eskom. It is proposed that the mandate be approved to extend the short and medium term procurement. The major reasons for this recommendation are the following:

- Security of supply

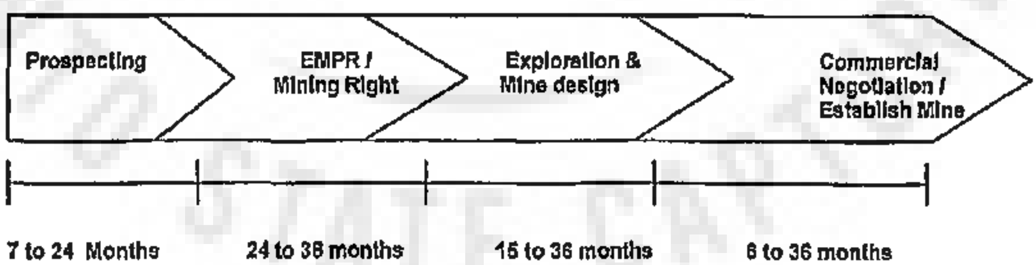
  Historically, emergencies were declared in 2004 and 2006, and now in 2008. Whilst the emergencies may have been precipitated by varying factors, it is evident that an emergency existed every two year cycle over the past 5 years. One common reason in all these situations is that emergency contracts expire prior to the full implementation of an alternative supply solution. This suggests that while two year contracts are long enough to abate the effects of an emergency situation, they do not go far enough to prevent one from materialising shortly afterwards.

  Thus in order to prevent future emergencies and to ensure security of supply it is recommended to enter into supply contracts that will ideally cover the current estimated shortfall volume of coal required until March 2018.

- Long Term Strategy

  Current indications are that the time frame for negotiating a contract and the subsequent establishment of a mine for long term is in excess of 8 years. This is due to the complexity involved in structuring a high risk profile contract and the current rate of delays as experienced by the DME.

  Apart from the lengthy negotiation period, it is experienced that the lead times to open mines have increased. The following illustrates the timelines for establishment of a mine.



Historical delays experienced with the DME vary between 440 to 1040 days which contributes to the lead period of mine establishment to a period of up to 8 years.

Primary Energy division has developed a comprehensive long term coal supply strategy. The strategy addresses the burn requirements by entering into long term contracts. Long term contracts aim to deliver supply for a period from 15 years to 50 years. As part of the long term strategy, assumptions are used. Part of the strategy involves that targeted sources would be available to Eskom. However, this is only to be confirmed in future when the long term strategy is implemented and possible suppliers contacted. The process can therefore be affected by the fact that suppliers do not intend to supply Eskom, mining rights might be delayed and quality parameters of coal might be different from the current estimates.

Due to the timing constraints of the negotiating period and mine establishment, short to medium term procurement will have to be incurred to ensure that the burn requirements are met. Thus this request to enter into new contracts and / or to extend concluded contracts to March 2010 to maintain the acceptable stock pile days and the required burn rate to ensure sustainability of electricity supply.

Refer to graph 1 for an illustration of the current coal supply status and burn requirement. It also illustrates that the current projected supply will ensure burn is met until 2010.

- Risk

    - Long term projects may experience delays;
    - A competitive export market could lead to lower tonnage available for Eskom's use, as majority of coal could be exported;
    - Mining houses may not be in the position to open up all the mines simultaneously, due resource constraints;

- Assumptions

In determining the tonnage requirement the following assumptions were used:

- The latest 5 year burn plan as at 8 February 2008
- ISEP 11 projections on burn used at a high burn rate
- Long term coal supply agreements currently being negotiated will materialize and yield the desired results for Eskom
- High burn requirements will be met, refer graph 2, indicating coal burn was consistently underestimated; resulting in delayed and emergency contracting
- Due to the nature of certain mining operations, some are designed such that they would have to function for a certain period to be economically feasible. To enable some suppliers to supply under the emergency conditions now, contract negotiations were conducted in the spirit of good faith on the express understanding that the team would seek approval for the extension of certain contacts from the mandating authority at a later stage. Therefore in certain cases these options will have to be exercised.

This submission requests a mandate to conclude contracts for the supply and delivery of 490,8 MT of coal to Eskom various power stations commencing October 2008 up to March 2018.

4. OBJECTIVES OF THE MANDATE

4.1 Contract duration

The duration of the contracts would accommodate for the supply of coal to meet the required burn for the period October 2008 to March 2018.

4.2 Quantities

The supply and delivery of up to a maximum of 490,8 MT of coal over the contract period. This includes the processing of coal to the desired quality specifications and inter power station transfers.

4.3 Escalation

For the purposes of price adjustment (escalation), the price base date would be August 2008, and for Diesel July 2008.

The prices would be escalated by appropriate escalation formulae based on published indices. This includes:

- Producer Price Index for Mining and Quarrying as published by Statistics South Africa,
- Producer Price Index, all commodities
- Seifsa labour tables
- Eskom "cost plus" index,
- Diesel prices as published by the DME, current estimates are that 35% to 45% of both FOT and transport components are subject to diesel fluctuations.

In the event that legislation changes are made, the most appropriate escalation formulae will be applied accordingly to accommodate these changes.

4.4 Terms and Conditions

The terms and conditions of the supply contract will be drafted by the Contracts Department within Primary Energy Division and reviewed by Corporate Legal Department.

The terms and conditions of the negotiated extension options in current contracts will lapse if not exercised on or before October 2008.

4.5 **BEE/SMME**

The Eskom BEE requirements and that of the Mining Charter will be taken into account when contracting with relative parties.

4.6 **Coal Qualities**

Coal would be supplied at the existing quality specifications for power stations, or at qualities specifically approved by the power station. Coal will also be beneficiated to the highest quality when required.

4.7 **SARS Certificate and Employment Equity Documents**

Updated employee equity documents and Tax Clearance Certificate(s) from the successful supplier(s) prior to conclusion of the contract will be requested.

4.8 **Insurance**

The coal suppliers would be required to make provision for their own insurance and this would be included in the coal price.

4.9 **Transportation**

Eskom would only negotiate delivered price contracts, where coal is transported by coal suppliers or their appointed transporters.
Coal would be hauled in terms of the relevant coal transportation mandate. Currently approved by the BoD on 30 March 2006, and amended by the BoD on 30 March 2007. In the event that the transport mandate needs to be altered it would be presented to the BoD as and when required. Current estimation is that the mandate will be completed by March 2009 at the current rate.

Coal would also be transported by rail, where possible.

4.10 **Parties to the contract**

Negotiations would be held with the suppliers that have the ability to supply during the required period.

Eskom will not contract with traders of coal but only with the owners of a source or where valid contractual joint ventures between parties exist. This is done in an attempt to ensure that the mining right holders mine and rehabilitate the areas according to law, and that Eskom therefore contract with responsible parties. It is also aspired that broker fees that increase cost can be avoided.

5. **COST COMPARISON ON A COMMON BASE**

Current short to medium term contracts for the supply of coal to various Eskom power stations have been used for purposes of comparison. The proposed average rate is higher that the current average rate for medium term contracts. See Table 2 attached.

The ex-pit head cost comparison was based on the following:

- The export price currently experienced during contracting in the emergency phase
- The current price of high grade coal available experienced during contracting in the emergency phase
- The current price of high strip opencast available
- The estimated price by long term strategy in a high mark up environment
- The estimated price by long term strategy in a low mark up environment
- Prices as estimated by Anglo for new sources for possible long term sources
- Prices on options available on current short term contracts experienced during contracting in the emergency phase, the emergency procurement process allowed for this.
- Prices on dumps and discard purchased for the emergency situation and not expected to be available as a source for future supply
- The current Medupi price as negotiated
- The estimated price as per the Khutala optimization study

Delivered prices are subject to transport distances, and an average of R85 was used for quantification as sources and distances have not been identified and finalised.

Medupi and Khutala do not have any transport components as coal will be transported by conveyor.

RECOMMENDATION

In accordance with Eskom's Procurement & Supply Chain Management Procedure (32-188), it is recommended that a mandate be given:

- To negotiate and conclude medium term coal supply and delivery contracts of 490,8 MT to meet coal burn requirements for the period October 2008 to March 2018.

- The maximum value of the proposed contracts will be R164 418 M (real base, excluding CPA, VAT, fuel price adjustment and quality price adjustments).

- The Chief Officer (Generation Business) is authorised, with the power to delegate further, to take all the necessary steps to give effect to the above, including the signing of any agreements, consents or other documentation necessary or related thereto.

CE Schutte
ACTING MANAGING DIRECTOR
(PRIMARY ENERGY)

STRICTLY CONFIDENTIAL

GENERATION BUSINESS

PRIMARY ENERGY DIVISION

A MANDATE IS REQUESTED TO:

NEGOTIATE AND CONCLUDE CONTRACTS ON A MEDIUM TERM BASIS FOR THE SUPPLY AND DELIVERY OF COAL SUPPLIES OF 490,8 MT TO MEET BURN REQUIREMENTS AT VARIOUS ESKOM POWER STATIONS FOR THE PERIOD OCTOBER 2008 TO MARCH 2018

TOTAL COMBINED MONETARY VALUE: R164 418 M

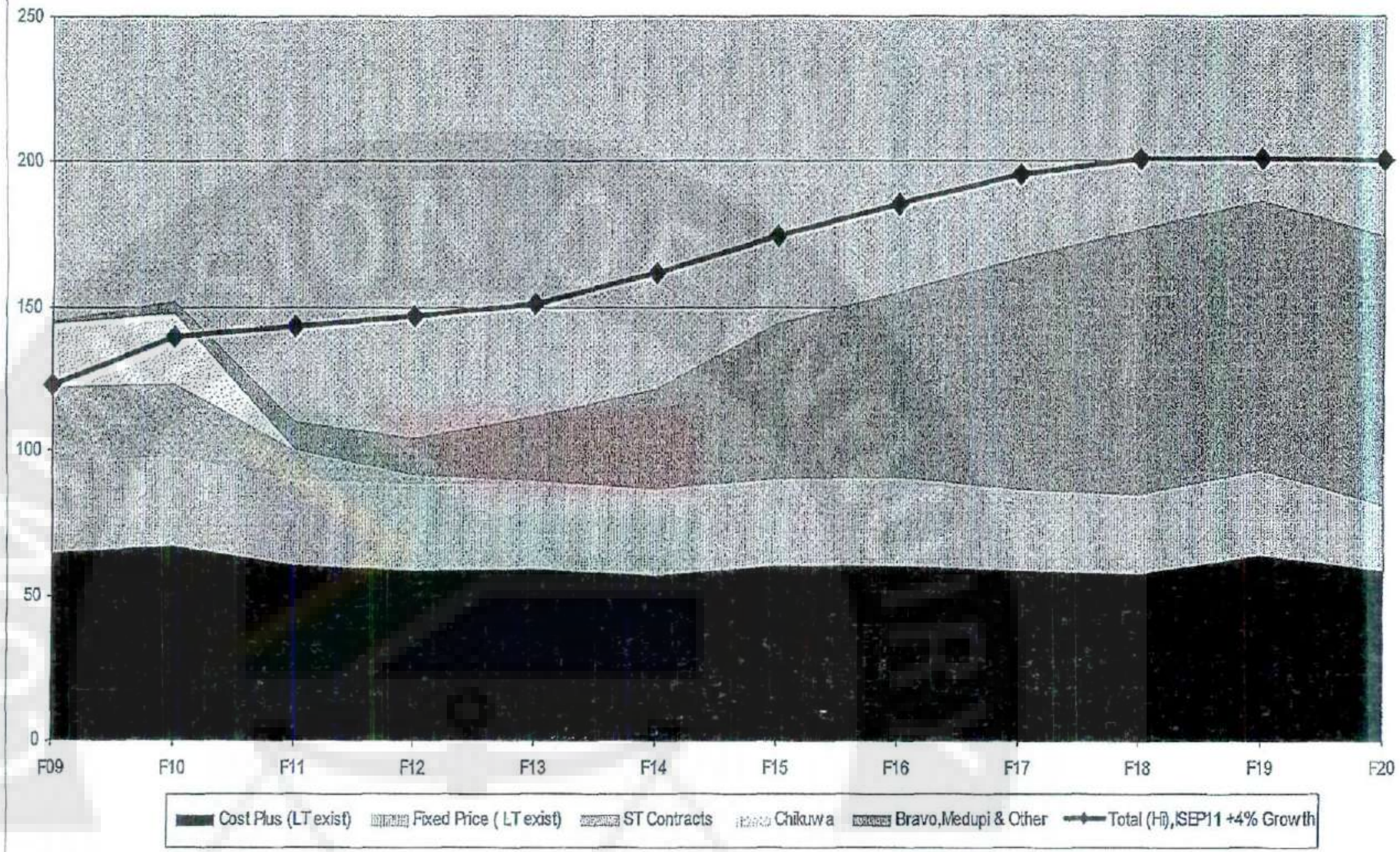
SUPPORTING SIGNATURE

29/8/08

CE Schutte
CHAIRMAN – PRIMARY ENERGY DIVISION TENDER COMMITTEE

DATE

GRAPH 1: SHORTFALL WINDOW APR 2010 – MAR 2018



GRAPH 2: Current budget vs actual burn, indicating coal burn was consistently underestimated; resulting in delayed and emergency contracting

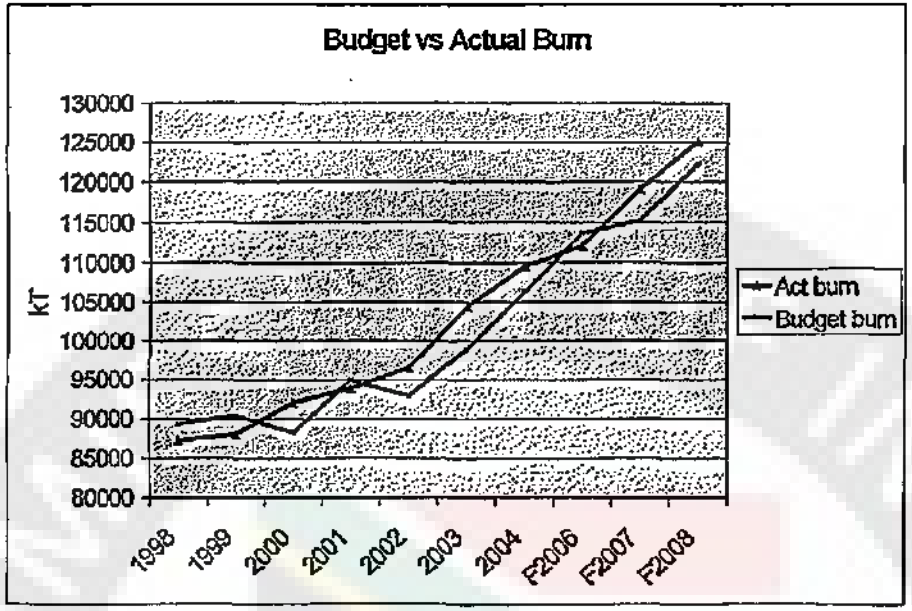


TABLE 1

Required supply for the period October 2008 to March 2018

		M tons per fiscal year									
		F09 - F10	F11	F12	F13	F14	F15	F16	F17	F18	Total
High Burn requirement	(a)		143.3	146.8	151.2	162.1	174.5	185.0	195.4	201.1	1359.3
Coal supply			108.3	98.9	101.1	97.9	107.1	116.1	124.2	127.7	881.2
Short term contracts			10.2	2.8	0.6	0.0	0.0	0.0	0.0	0.0	13.7
Fixed price contracts			31.0	31.0	31.0	31.0	31.0	31.0	28.8	28.8	243.4
Cost - plus contracts			67.1	65.1	66.1	63.5	67.4	67.6	65.6	63.7	526.2
Potential low risk supplies			0.0	0.0	3.4	3.4	8.7	17.5	29.8	35.1	98.0
Short fall in supply			**35.0**	**47.9**	**50.1**	**64.2**	**67.4**	**68.9**	**71.2**	**73.4**	**478.1**
Coal not covered in emergency	(b)	7.3									7.3
Contingency - under performance of contracts		5.4									5.4
		12.7	35.0	47.9	50.1	64.2	67.4	68.9	71.2	73.4	490.8
Shortfall as % of high burn			**24%**	**33%**	**33%**	**40%**	**39%**	**37%**	**36%**	**37%**	**35%**

(a) Assume high burn is likely to be met, refer graph 3 indicating actual burn vs budgeted burn relationship
(b) These stations were not accomodated in the emergency mandate as there was no emergency at the time

TABLE 2: DELIVERED PRICES (Estimated Coal prices (R/t))

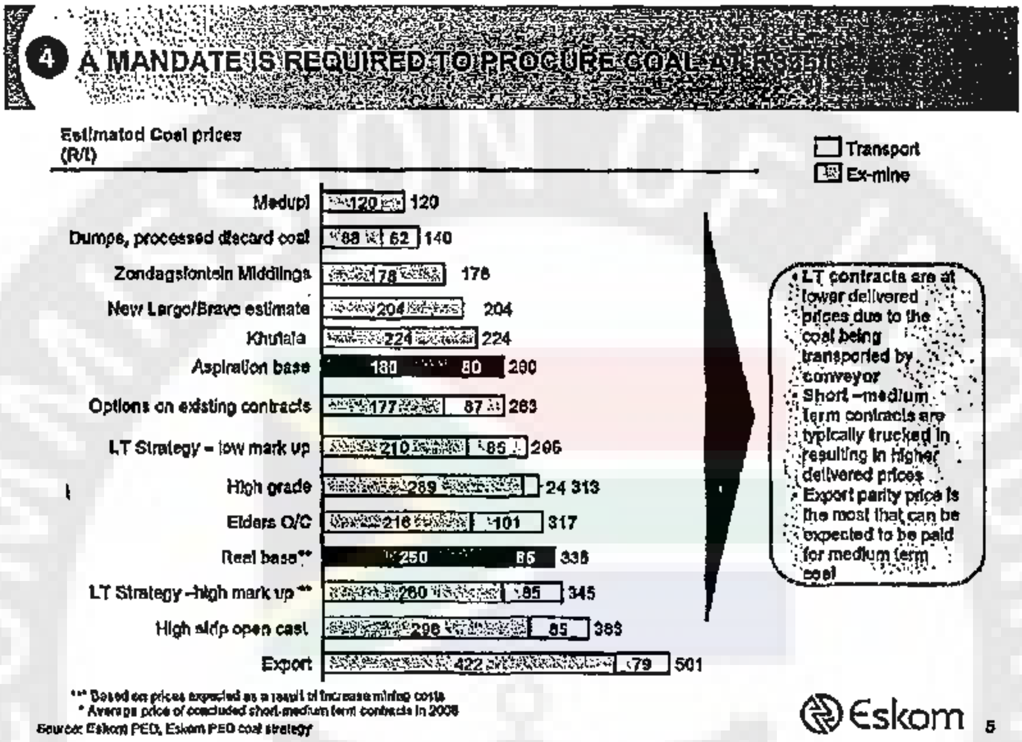


TABLE 3 : COST CALCULATION

		Real base	Aspiration base
Delivered price	R / ton	335.00	260.00
Maximum required tons	Mt	490.8	490.8
	R million	164 418	127 608
FOT Coal cost	R / ton	250.00	180.00
Maximum required tons	Mt	490.8	490.8
	R million	122 700	88 344
Transport	R / ton	85.00	80.00
Maximum required tons	Mt	490.8	490.8
	R million	41 718	39 264
TOTAL MANDATE			
- Delivered coal	R million	164 418	127 608
		164 418	127 608

ANNEXURE D

CHECKLIST 2

DIVISION: Generation

REGION/BU: Primary Energy

DESCRIPTION: A MANDATE TO NEGOTIATE AND CONCLUDE CONTRACTS FOR 490,8 MT OF COAL ON A SHORT AND MEDIUM TERM BASIS FOR THE PERIOD October 2008 TO MARCH 2018

	YES	NO
1. Was the correct purchasing mechanism followed?	Yes	
2. Were the most appropriate contract format, main and secondary options selected?		N/A Note 1
3. Where applicable, is the necessary Delegation of Consent form attached?		N/A
4. If tender mechanism selected: • Has the hierarchy of Procurement been followed? • How many Suppliers approached? • How many responses received?		N/A
5. Is it a Sole supplier, i.e. requests for mandate to negotiate? • Is sufficient motivation provided on the Eskom Sole Source Justification Form? • Is this form attached?		No N/A N/A
6. Were all responses/requests for a mandate evaluated? • Technically, by whom? • Financially, by whom? – Were the calculation sheets verified and, – Are they attached? • Commercially, by whom? • Has the financial analysis of the supplier been done?		No No No No No No Note 2
7. Did all respondents submit: • SARS certificates? • Employment Equity documents?		N/A N/A Note 3
8. Was the enquiry clear on: • SMME/BEE involvement? • Criteria?		

• Set aside portion? • Price matching?		N/A
9. List of Directors 9.1 Recommended Suppliers: • <u>BEE Representations</u> • Shareholding %......... • Management %........ • Directors %........ 9.2 Recommended BEE Subcontractors 9.3 Any apparent conflict of interest?	Yes	No
10. Is the lowest price, technically, commercially and financially acceptable tender recommended? If not, brief reasons to be given in the report:- • Price • Technical • Commercial • Financial		N/A
11. Is the purchase duly budgeted for?		No
12. Health and Safety Requirements Does the recommended supplier fully comply with: 12.1 The Occupational Health and Safety Act 85 of 1993 (as amended)?, 12.2 Eskom's Safety, Health and Environmental Requirements for Contractors?, and 12.3 Eskom's Safety Regulations?		N/A Note 4
13. Shipping (Imported Goods/Costs) 13.1 Will this be arranged by the Supplier? or 13.2 Will this be arranged by the Eskom Generation Shipping Department? and 13.3 Is the cost shown separately in the Calculation Sheet (Attached to Report)? or 13.4 Is the cost shown separately in the report?		N/A
14. Are Forex commitments properly addressed?		N/A
15. National Industrial Participation Programme 15.1 Does the contract value/expenditure with overseas companies (directly or indirectly) fall within the stated criteria? ~~15.2 If Yes, was the Department of Trade and Industry~~		N/A

informed?		

All the above mentioned issues are adequately addressed in the report.

Note 1:

The NEC family of contracts is not suitable for coal purchasing. The contract documents will be prepared by the Contracts Section within GPE, and reviewed by Corporate Legal.

Note 2:

This work will be done on an ongoing basis once negotiations commence.

Note 3:

Tax Clearance Certificates and employment equity documents will be requested once negotiations commence.

Note 4:
This aspect will be dealt with during negotiations.

Signed by:

CE Schutte
ACTING MANAGING DIRECTOR
(PRIMARY ENERGY)

Eskom

TO: THE MANAGING DIRECTOR
GENERATION DIVISION

Date: 18 August 2008

FROM: TREASURY FINANCIAL EVALUATIONS

Enquiries: S Ngcobo
☎(011) 800 4732
Reviewed by: G Molokoane

Date notified: 07/08/2008
Date received: 11/08/2008
Date completed: 18/08/2008

CONFIDENTIAL

FINANCIAL REVIEW

GENERATION DIVISION: PRIMARY ENERGY

SUPPLY AND DELIVERY OF COAL TO VARIOUS POWER STATIONS

REQUEST FOR A MANDATE

The Treasury Department was requested to review the financial aspects of the following, amongst others:

- A request for a mandate to negotiate and conclude contracts on a short term and medium term basis, for the supply and delivery of coal to various Eskom power stations to meet burn requirements during April 2010 until March 2018.
- Approval to make advance payments to the suppliers to the value of R500 M to enable them to increase their plant capacity, thereby enabling them to provide Eskom with the required quantities.
- Approval to make advance payments to the suppliers to the value of R200 M for refurbishment of certain wash plants.

BACKGROUND

Following an emergency of coal supply being declared at affected power stations in January 2008 and an approval to procure 53,582 MT of coal in February 2008, it was determined that a shortfall of coal still exists when comparing the burn requirements to the existing and planned long term contracts which must be addressed with the short and medium term supplies.

MANDATE

The negotiation parameters of the mandate are as follows:

Treasury
Megawatt Park, Maxwell Drive, Sunninghill, P.O. Box 6841, Johannesburg 2000, South Africa
Tel.: +27 (0)11 800 8111 Fax: +27 (0)11 800 2308 Web Address: www.eskom.co.za/treasury

The contracts value

The maximum tonnage required to meet burn requirements during April 2010 to March 2018 is 490.8 MT at a delivered real base of R335 / ton and an average CV of 18.4 MJ / kg, on an as received basis, in 2008 money values. The total delivered real base amount is R164,416 M with an aspiration base of R127,608 M (R260/ton).

The tonnage required is an estimate derived by comparing current coal sources, estimated new long term contracts and high burn as per ISEP 11 plans. The real base and the aspiration base rates were determined based on estimates and assumptions as decided by the Primary Energy Division in conjunction with Anglo and McKinsey consultants

The R500 M and R200 M proposed advance payments to fund increase in plant capacity and refurbishment of wash plants respectively, will enable suppliers to provide Eskom with the increased quantities as well as high quality coal as required. These advance payments are pure estimates by the Primary Energy Division mining engineers.

The total combined monetary value of the proposed contracts is R165,116 M excluding CPA, VAT, fuel price adjustments and quality price adjustments.

Contract Price Adjustment

The base date for CPA purposes is August 2008. Prices will be adjusted based on specified Statistics South Africa, Eskom "cost plus", SEIFSA indices and diesel prices as published by the DME.

Terms and Conditions

The terms and conditions of the supply contract will be drafted by the Contracts Section within Primary Energy Department and reviewed by Corporate Legal Department.

Coal suppliers will be required to make provision for their own insurance and this will be included in their coal price.

COMMENTARY

The calculation of the real base and aspiration base amounts as well as the tonnages required was based on assumptions and estimates as determined by the Primary Energy mining .engineers and long term planning division based on the existing contracts rates as well as the latest high burn per ISEP 11 plans.

We were informed that the proposed advance payments amounts of R500 M and R200 M are pure estimates made by the mining engineer, thus we cannot comment on the validity or the reasonableness of the values.

We have done a limited spot check of the calculations and obtained clarifications where necessary. We have also looked at the principles used to arrive at the negotiation parameters and we do not have any reason to doubt that the calculations are based on sound principles. However, we do not have the necessary expertise to comment on the reasonableness or the validity of these estimates, thus we rely on the work of the Primary Energy Division mining engineers and long term planning division in this regard.

We would also like to highlight our concern regarding the significant advance payments being made to suppliers, even though there's a plan to recover these amounts during the contract period, we believe that adequate guarantees should be obtained from these suppliers to ensure that Eskom is not exposed to unnecessary risks.

Transportation costs are included in the real base amount as the delivered price is negotiated with the suppliers, alternatively where the supplier is unable to deliver, coal will be delivered by Eskom appointed transporters in terms of the relevant coal transportation mandate approved by the BoD on 30 March 2006, and amended by the BoD on 30 March 2007.

CONCLUSION

Based on the information provided to us and the work described in this report, in our opinion, from a purely financial point of view, we have no reason to believe that the request for a mandate to negotiate and conclude contracts, with suitable suppliers, for the supply and delivery of coal to various power stations should not be approved, subject to the following provisos:

- Our reliance on the Primary Energy Division's expertise regarding the validity of the calculations and estimates provided to us by them.
- We cannot comment on the reasonableness or the validity of the proposed advance payments and would like to draw your attention to our concern regarding significant advance payments being made to suppliers with no performance guarantees from them to limit Eskom's exposure to financial loss risks.

Please do not hesitate to contact Sthembile Ngcobo at (011) 800-4732 if you have any queries or comments with regard to this review.

ESKOM TREASURY

15/08/2008
Date

MEDIUM TERM COAL PROCUREMENT MANDATE 2008 – 2018

PRESENTATION TO THE EXCO-PS AUGUST 2008

Eskom

KEY TOPICS FOR DISCUSSION

Shortfall in coal supplies

1. Short term coal purchasing has increased significantly in the last four years
2. Total cost of coal for Eskom has increased over the past years driven primarily by short term contracts
3. Significant medium term buying will be required until the long term strategy comes into effect resulting in longer sustained supplies of coal

Increase in price of coal

1. Higher prices of medium term coal is driven by increase risk due to exports and due to the transport cost for the coal
2. PED would need a mandate to purchase coal for up to a weighted average cost of R305/t

Eskom

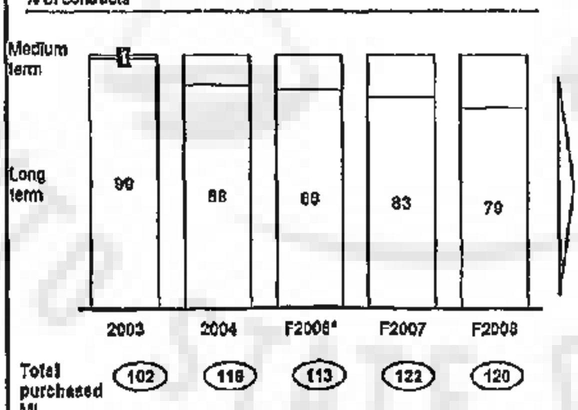
SETTING THE CONTEXT FOR ESKOM'S COAL SUPPLY SITUATION – COAL PURCHASES

- In FY2008, Eskom purchased 119.6 million tons of coal, for a total value of R12.24 Bn
  - Budget allowed for a purchase of 129.6 million tons (value of R13.3 Bn)
  - Actual burn was 125.3 million tons, above the budgeted burn of 122.1 million tons
- In FY2008, Eskom purchased from three types of contracts – in value terms, short term contracts represented 21% (although only 17% in tonnage terms), cost plus contracts and fixed price represented 79%

Eskom 2

MEDIUM TERM COAL PURCHASING HAS INCREASED SIGNIFICANTLY OVER THE LAST FOUR YEARS

Total coal purchased by Eskom
% of contracts



- Initial supply mainly from long-term contracts, which have been increased above contractual maximum
- Long term mines under-delivery has resulted in increased need for short term contracting
- The delay in new capacity had a knock on effect on coal purchases, when existing (swing) power stations had to burn more coal
- Higher than expected burn also resulted in planning for lower volumes than needed
- Short-medium term purchases have also increased due to other unplanned external events

* Reporting period changed in 2005 from calendar year Jan-Dec to the financial year April-March

Source: Eskom Primary Energy Division

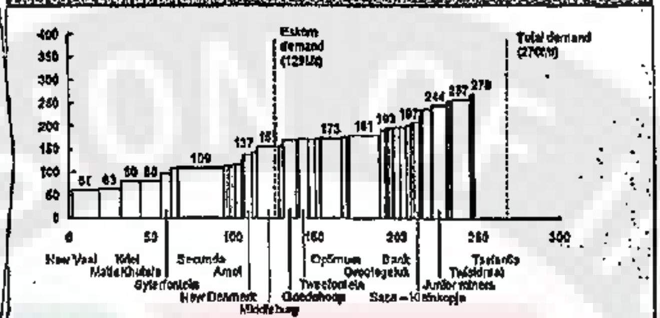
Eskom 3

Most mines in SA are unable to supply coal to Eskom at a profit at the current average price of R112/t that Eskom pays for coal, according to the thermal coal cost curve

Assumptions

- Amortisation*:
  - Mining equipment is amortised over 10 yrs
  - Infrastructure capex is amortised over the LOM
  - IRR is calculated over 10 yrs at 8.5%
- Rehab and closure costs included as component of overheads

South African thermal coal cost curve 2016
R/t FOB cost, EBITA and port charges



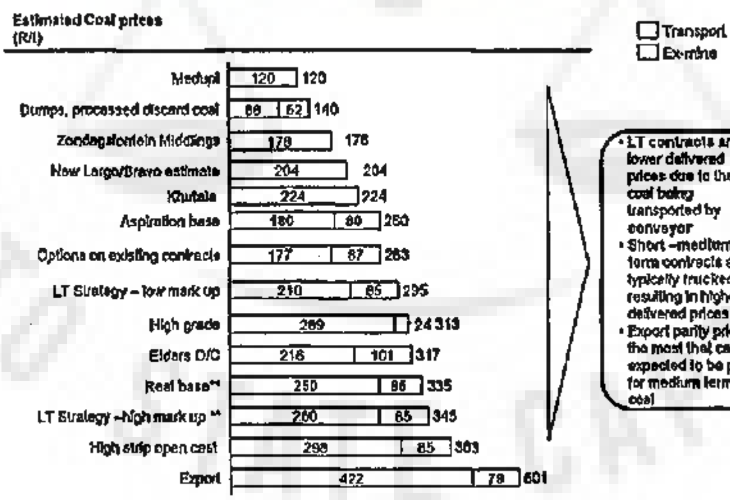
- Most mines in SA are unable to supply coal to Eskom at a profit at the current average price of R112/t that Eskom pays for coal
- Current Eskom average price of R112/t is achieved through cross subsidisation from multi-product mines which recover most of their costs from the high prices of the export market
- Gap between total demand (270Mt) total supply (247Mt) partially as a result of potential high estimates for RBCT exports and partially met through Eskom's use of coal dumps and fines

* Coal plus mines do not bear amortisation costs

Source: ...2006; Eskom ... South African Coal Supply ... 2007; Eskom BPE

Eskom 4

④ A MANDATE IS REQUIRED TO PROCURE COAL AT R335/t



- LT contracts are at lower delivered prices due to the coal being transported by conveyor
- Short – medium term contracts are typically trucked in resulting in higher delivered prices
- Export parity price is the most that can be expected to be paid for medium term coal

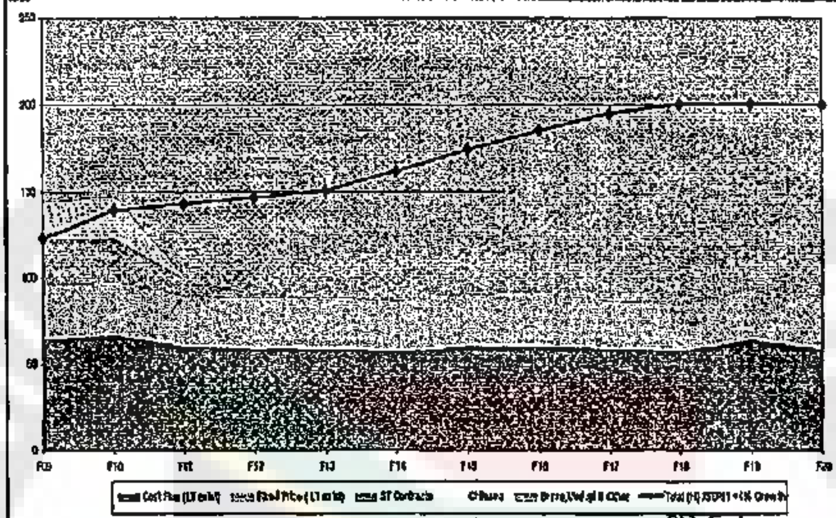
** Based on prices expected as a result of increase mining costs

* Average price of concluded short-medium term contracts in 2008

Source: Eskom PED, Eskom PED coal strategy

Eskom 5

SHORTFALL WINDOW APR 2010 – MAR 2018



Eskom

KEY ASSUMPTIONS

- Short fall to be made up by medium term coal purchases
- Coal will be purchased from small to medium sized coal suppliers
- Coal will be contracted on a delivered basis (not FOT)
- A large portion of the coal will be delivered by road
- Long term contracts will materialise as per plan
- Companies supplying coal through contracts concluded under the emergency mandate will perform as reported
- The quantities will be delivered as estimated for each contract
- ISEP 11 high burn was used to determine the shortfall (4% growth)

Eskom

RESOLUTION REQUIRED

- To negotiate and conclude short and medium term coal supply and delivery contracts of 490,8 MT to meet coal burn requirements for the period OCT 2008 to March 2018
- The maximum value of the contracts will be R164 418 M (excluding CPA, VAT and Quality Price Adjustments) at real base rates of R335/T delivered (R18,20/GJ at an average CV of 18,4 MJ/kg, on an as-received basis) in 2008 money values.
- The Chief Officer (Generation Business) is authorised, with the power to delegate further, to take all the necessary steps to give effect to the above, including the signing of any agreements, consents or other documentation necessary or related thereto.

Eskom

BACK UP

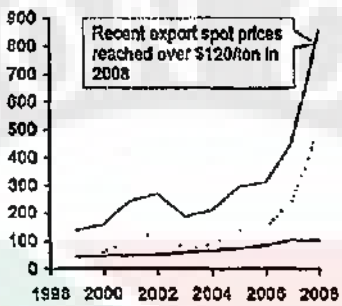
Eskom

PRICE DIFFERENTIAL BETWEEN LOCAL AND EXPORT PRICES HAVE BEEN INCREASING STEADILY

Anomalies leading to current price disparity

- Australian port handling capacity not increasing as expected
- Adverse weather conditions leading to reduced output from Australian (Opencast) operations
- Temporary cap on exports from China
- Low production capacity in India resulting in high imports

Coal price
R/ton, year average, FOB RBCT
(Saleable tonnage)

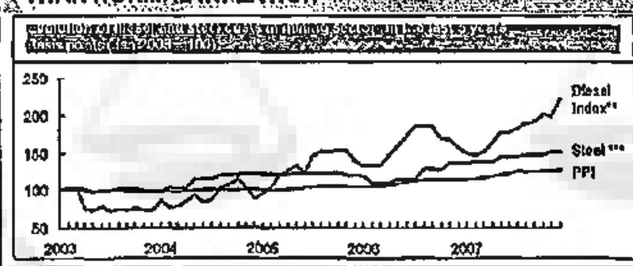


Implications for Eskom

- The disparity between the local price and the export price for thermal coal incentivises the mines to export coal
- Current export prices allows for coal to be washed to lower yields and still be exported profitably
- The spot price has been a good indicator of the evolution of the long-term export price and hence the export parity price can be expected to be higher as the spot prices increase

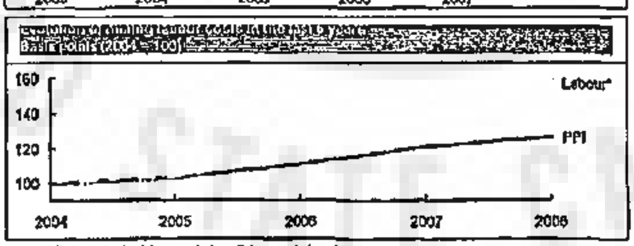
Eskom 10

KEY COMMODITIES THAT CONTRIBUTE TO THE COST OF COAL HAVE BEEN GOING UP SIGNIFICANTLY MORE THAN NORMAL INFLATION



Diesel = 3-8% of total mining cost

Steel = ~15-20% of total mining cost

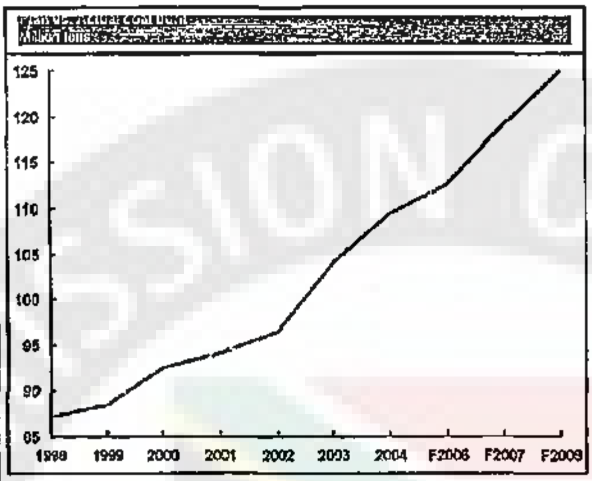


Labour = ~45% of total mining cost

* Estimated using labour costs from Eskom cost-plus mines
** Calculated using the SA Diesel 0.05% suplhur oil price
*** Calculated using the Basis iron and steel prices
Source: Eskom Primary Energy Division; Team Analysis; Statistics South Africa

Eskom 11

ACTUAL COAL BURN HAS BEEN CONSISTENTLY UNDER-ESTIMATED



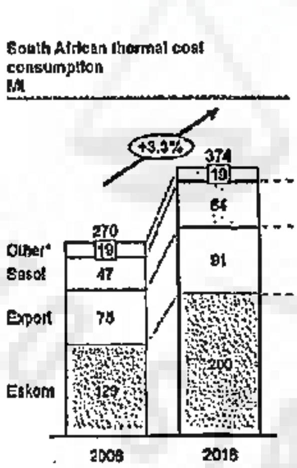
- Coal burn was consistently underestimated; resulting in delayed and emergency contracting
- More power stations now used as base-load stations
- Majuba and Tutuka used heavily as swing stations to:
  - Manage impact of external impacts such as Koeberg incident
  - Manage the higher than expected demand growth
  - Manage planned and unplanned load losses at other power stations

* 2006 figures assume just April 2006 to March 2007. Prior to 2003, figures are for Calendar years. After 2003, figures are for Financial years

Source: Eskom Primary Energy Division; Team Analysis; Statistics South Africa

Eskom 12

GROWTH OF SOUTH AFRICAN ECONOMY IS LINKED TO SIGNIFICANT INCREASE OF COAL CONSUMPTION

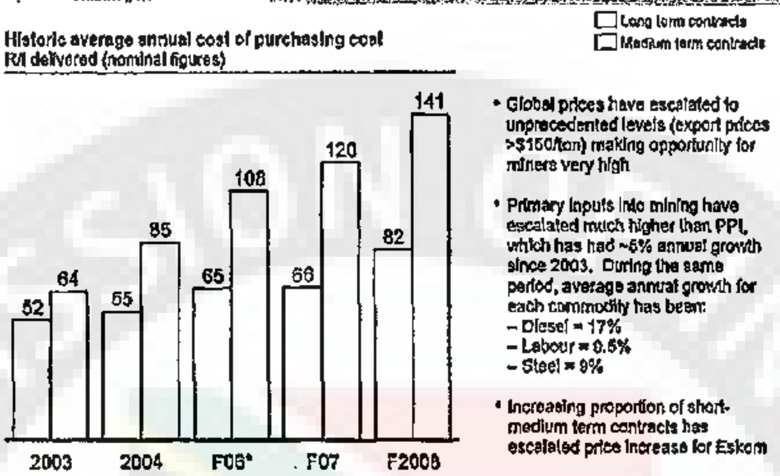


Driver	Link to South African economy
Demand assumed to be constant	Direct link to growth of industries
Opening of Mafutha plant	Represents more than 40% of SA's liquid fuel requirements
Increase of export capacity coupled with increased international demand	GDP and current account contribution
Increase in load factor of current stations; Return to service of three stations (Grootvlei, Camden, Komati); Four new stations (Medupi, Bravo, Coal 3, Coal 4)	Electric power indispensible for growth of most sectors

Eskom 13

② TOTAL COST OF COAL FOR ESKOM HAS ALSO INCREASED, DRIVEN PRIMARILY BY SHORT-TERM CONTRACTS

Historic average annual cost of purchasing coal
R/t delivered (nominal figures)



- Global prices have escalated to unprecedented levels (export prices >$150/ton) making opportunity for miners very high
- Primary inputs into mining have escalated much higher than PPI, which has had ~6% annual growth since 2003. During the same period, average annual growth for each commodity has been:
  - Diesel = 17%
  - Labour = 8.5%
  - Steel = 9%
- Increasing proportion of short-medium term contracts has escalated price increase for Eskom

* Reporting period changed in 2005 from calendar year Jan-Dec to the financial year April-March
Source: Eskom Primary Energy Division

Eskom 14

Annexure "E"

Eskom

FOR COLLECTION

Date: 29 October 2009

Enquiries: N MSOMI

To Whom It May Concern
Eskom Holdings Limited

Dear Sir/Madam

EXTRACT OF MINUTES
The minutes of the BOARD TENDER meeting (5/2008-09) held on 11 September 2008:

"8.8 ***PRIMARY ENERGY DIVISION:***
TO OBTAIN A MANDATE TO NEGOTIATE AND CONCLUDE CONTRACTS ON A MEDIUM TERM BASIS FOR THE SUPPLY AND DELIVERY OF COAL SUPPLIES OF 490.8 MT TO MEET BURN REQUIREMENTS AT VARIOUS ESKOM POWER STATIONS FOR THE PERIOD : OCTOBER 2008 TO MARCH 2018
Reference Document Item 8.8 (a) (b)

A submission, dated 29 August 2008, by the Chief Officer (Generation Business), was considered and discussed.

RESOLVED that:

1. Approval was granted to negotiate and conclude contracts, on a medium term basis, for the supply and delivery of coal to various Eskom power stations for the period October 2008 to March 2018. The contracting period includes the beneficiation of coal by supplier or their contractors.

    - The required volume of coal will be 490.8 million tons.

    - The maximum value of the contracts will be R164 418 million (real base excluding CPA, VAT, fuel price and Quality Price Adjustments) at real base rates of R335/T delivered (R18.21/Gj at an average CV of 18.4 MJ/kg, on an as-received basis) in 2008 money values.

Corporate Services Division
Corporate Governance
Megawatt Park Maxwell Drive Sunninghill Sandton PO Box 1091 Johannesburg 2000 SA
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2. The Chief Officer (Generation Business) be authorised, with the power to delegate further, to take all the necessary steps to give effect to the above, including the signing of any agreements, consents or other documentation necessary or related thereto.

3. That the results of the negotiations must be reported to the mandating authority."

N MSOMI (Ms)
COMPANY SECRETARY

Annex BRAK-225

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Revision 3 – November 2007
Annexure A

EXECUTIVE SUMMARY

SUBMISSION TO P-E-T-C **12 AUGUST 2008**
SUBMISSION TO EXCO-PS **20 AUGUST 2008**
SUBMISSION TO BOD-TC **11 SEPT 2008**

1. TITLE OF THE SUBMISSION

To obtain a mandate to negotiate and conclude contracts on a medium term basis for the supply and delivery of coal to various Eskom power stations for the period October 2008 to March 2018.

2. RESOLUTION REQUIRED

The following resolution is requested:

IT IS RESOLVED THAT:

2.1 Approval be and is hereby given to negotiate and conclude contracts on a medium term basis for the supply and delivery of coal to various Eskom power stations for the period October 2008 to March 2018. Contracting period starting from October 2008 and includes the beneficiation of coal by supplier or their contractors.

The required volume of coal will be 490,8 MT.

The maximum value of the contracts will be R164 418 M (excluding CPA, VAT and Quality Price Adjustments) at real base rates of R335/T delivered (R18.21/Gj at an average CV of 18,4 Mj/kg, on an as-received basis) in 2008 money values.

2.2 The Chief Officer (Generation Business) is authorised herewith, 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 therewith.

3. SUMMARY OF FACTS

3.1 Salient Facts

In terms of Corporate and Generation Directives "Procurement & Supply Chain Management Procedure (32-188)" and "Emergency Short Term Coal Sourcing Procedure GGP 1194", the Managing Director (Generation Division) declared an emergency at affected power stations on 09 January 2008.

At the time of declaring emergency, the total coal stock at the affected stations was below the acceptable minimum of 20 days with some stations below 5 days.

A mandate was therefore requested for the procurement and inter-station transfers of up to a maximum of 53,582 MT of coal for Eskom power stations over a minimum two year period, commencing February 2008, with an option to extend for a further period. Approval was granted by the Eskom Holdings Chairman on a round-robin basis in accordance with the recommendation of the Chief Officer (Generation Business), Financial Director and the Chief Executive.

In an effort to mitigate the occurrence of another emergency, the supply and demand for future coal supplies was assessed and a long term strategy developed. To ensure the sustainable supply of electricity, it was determined that a shortfall of coal exists when comparing the burn requirement to the existing and planned long term coal supply contracts. This shortfall must be addressed with medium term supplies.

This submission requests for a new mandate to enter into contracts for the supply of coal from October 2008 until March 2018, at a maximum tonnage of 490,8 MT.

3.2 Key assumptions

- Long term contracts will materialise as per plan
- Companies supplying coal through contracts concluded under the emergency mandate will perform as reported
- The quantities will be delivered as estimated for each contract

3.3 Financial implications

The total monetary value of the proposed coal contract and transport is R164 418 M (Real base) at a total combined tonnage of 490,8 MT at an average cost of R335/T delivered. The prices are based on current prevailing prices, current estimates and future estimated prices. The real and aspiration bases are shown on table 3.

3.4 Human Resource implications
None

3.5 Risks (Including Environment, Legal or Contractual risks)

- Delays in suppliers obtaining mining permits,
- Delays in the acquisition of surface rights for mining purposes
- Rail transportation availability,
- Suppliers delivering to their undertaking
- Deteriorating road conditions

4. OTHER APPROVALS REQUIRED

None

SIGNED

29/8/2008

BA Dames
CHIEF OFFICER
(GENERATION BUSINESS)

DATE

Who hereby represents that the above Information is correct.

Submission prepared by: Della von Pickartz
Contact Number: 011 800 4840

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Revision 2 – November 2007
Annexure B

CHECKLIST 1

		N/A	Yes	No
1.	INTERNAL PROCESS			
1.1	BUSINESS PLAN Has the project/issue been included in the business plan?		✓	
1.2	BUDGET			
	If financial approval is required, is the project/matter within the approved budget?		✓	
1.3	HUMAN RESOURCE IMPLICATIONS			
	Does the project have any HR implications? *(If yes, information/explanation to be highlighted in documenttation/presentation/attachment.)*			✓
1.4	FINANCIAL EVALUATION			
	- Has the project/issue undergone a financial evaluation? *(Shenaaz Naidoo)* - Has the evaluation been verified? - **Treasury report attached.**		✓ ✓	
1.5	LEGAL/CONTRACTUAL ISSUES			
	- Are there legal implications? Yes - Has Corporate legal department input been obtained? - If so, is the approval sought consistent with the legal input? **Dave Davies supports this submission.**		✓ ✓ ✓	
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? **(Corporate Tax → Natasha Singh)**		✓ ✓ ✓	
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.	✓		
1.8	TECHNICAL EVALUATION	N/A	Yes	No

	- Has the project/issue undergone a technical evaluation? (If yes, by whom) **M Mochubele, PE** - Has the evaluation been verified? - By whom (internally or independent)? - **JH Jordaan, PE** - **AA de Clercq, PE**		✓ ✓	
1.9	**BLACK ECONOMIC EMPOWERMENT IMPLICATIONS**			
	Does the project have any BEE implications?		✓	
1.10	***EMPLOYMENT EQUITY***			
	Was due consideration given to employment equity in terms of the following:			
	- 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.	✓		✓
2.2	**PUBLIC FINANCE MANAGEMENT ACT (PFMA)**			
	- Is any PFMA approval required?			✓
2.3	**ARE THERE ANY OTHER APPROVALS REQUIRED? IN PARTICULAR**			
	- Reserve Bank - Competition Commission - National Treasury			✓ ✓ ✓

SIGNATURE: ______________________ **DATE:** 29/8/2008

BA Dames
CHIEF OFFICER
(GENERATION BUSINESS)

Who hereby confirms that all of the above requirements have been complied with.

Eskom
Generation

CHAIRPERSON
BOARD OF DIRECTORS TENDER COMMITTEE

Date: 27 July 2008
Enquiries: Delia Von Pickartz
+27 (011) 800-4840
Our Ref:

PRIMARY ENERGY DIVISION

TO OBTAIN A MANDATE TO NEGOTIATE AND CONCLUDE CONTRACTS ON A MEDIUM TERM BASIS FOR THE SUPPLY AND DELIVERY OF COAL SUPPLIES OF 490,8 MT TO MEET BURN REQUIREMENTS AT VARIOUS ESKOM POWER STATIONS FOR THE PERIOD : OCTOBER 2008 TO MARCH 2018.

TOTAL COMBINED MONETARY VALUE: R164 418 M

1. INTRODUCTION

After an emergency mandate granted by the Board of Directors in February 2008 to negotiate and conclude contracts with various suppliers for the emergency supply and delivery of 53,582 MT of coal to Eskom power stations for a period commencing February 2008 until March 2010, an assessment was done on the long term strategy of the anticipated coal burn requirement and the current contractual supply to assess the potential shortfall of coal required to ensure that the burn demand can be met.

This submission requests a mandate to conclude contracts for the supply and delivery of 490,8 MT of coal to Eskom various power stations to meet the shortfall and burn requirements from October 2008 to March 2018. Where contractual options to extend contracts with current suppliers exist, such options will be exercised depending on quality, price and the supplier's ability to supply.

The total combined monetary value of the proposed coal contracts (delivered) is R164 418 M (real base, excluding CPA, VAT, fuel price adjustment and quality price adjustments) for the period October 2008 to March 2018.

Primary Energy
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Tel +27 11 800 8111 Fax +27 11 800 5555 www.eskom.co.za

2. SCOPE OF WORK

In accordance with Eskom's Procurement & Supply Chain Management Procedure (32-188) a mandate is hereby requested to negotiate and conclude contracts for the purchase of coal on a short and medium term basis totaling 490,8 MT.

An assessment was done on the anticipated coal burn requirement and the current contractual supply to assess the potential shortfall of coal required to ensure that the burn demand at coal fired stations can be met. A shortfall exists between the required burn, current contracts and estimated new long term supplies.

2.1 Tonnage requirement

The maximum tonnage required to meet burn requirements during October 2008 to March 2018 is 490,8 MT. This was derived by comparing current coal sources, estimated new long term contracts and high burn as per ISEP 11 plans.

Refer table 1 for the quantities.

2.2 Transportation

Due to the length of the supply period it is endeavored that the transport solution, at the time, will be considered based on the available method of transport. In the event that rail capacity is available that would be the first choice of transport in an attempt to reduce road traffic.

With the current limited rail transport options available this mandate assumes road transport will be used.

Eskom would only negotiate delivered price contracts, where coal is transported by coal suppliers or their appointed transporters.

In the event that rail capacity is available that would be the first choice of transport in an attempt to reduce road traffic.

2. BACKGROUND

In terms of Corporate and Generation Directives "Procurement & Supply Chain Management Procedure (32-188)" and "Emergency Short Term Coal Sourcing Procedure GGP 1194", the Managing Director (Generation Division) declared an emergency at affected power stations on 09 January 2008. At the time of declaring emergency, the total coal stock at the affected stations was below the acceptable minimum of 20 days with some stations below 5 days

A mandate was therefore requested for the procurement and inter-station transfers of up to a maximum of 53,582 MT of coal for Eskom power stations over a minimum two year period, commencing February 2008, with an option to extend for a further period.

Approval was granted by the Eskom Holdings Chairman on a round-robin basis in accordance with the recommendation of the Chief Officer (Generation Business), Financial Director and the Chief Executive.

In order to mitigate risk and to prevent any such emergencies in future, a long term strategy was formulated to assess the impact of future supplies to Eskom. It is proposed that the mandate be approved to extend the short and medium term procurement. The major reasons for this recommendation are the following:

- Security of supply

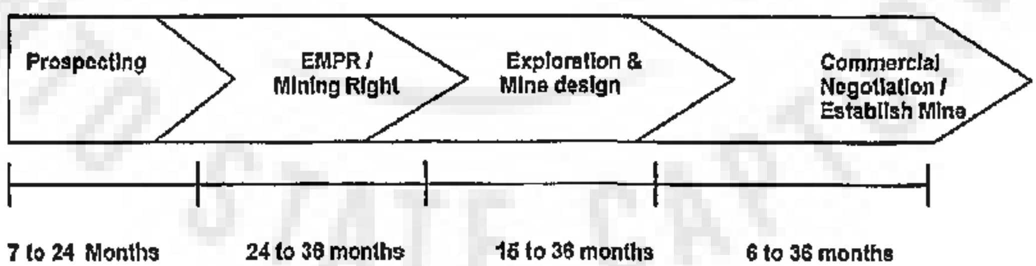
  Historically, emergencies were declared in 2004 and 2006, and now in 2008. Whilst the emergencies may have been precipitated by varying factors, it is evident that an emergency existed every two year cycle over the past 5 years. One common reason in all these situations is that emergency contracts expire prior to the full implementation of an alternative supply solution. This suggests that while two year contracts are long enough to abate the effects of an emergency situation, they do not go far enough to prevent one from materialising shortly afterwards.

  Thus in order to prevent future emergencies and to ensure security of supply it is recommended to enter into supply contracts that will ideally cover the current estimated shortfall volume of coal required until March 2018.

- Long Term Strategy

  Current indications are that the time frame for negotiating a contract and the subsequent establishment of a mine for long term is in excess of 8 years. This is due to the complexity involved in structuring a high risk profile contract and the current rate of delays as experienced by the DME.

  Apart from the lengthy negotiation period, it is experienced that the lead times to open mines have increased. The following illustrates the timelines for establishment of a mine.



Historical delays experienced with the DME vary between 440 to 1040 days which contributes to the lead period of mine establishment to a period of up to 8 years.

Primary Energy division has developed a comprehensive long term coal supply strategy. The strategy addresses the burn requirements by entering into long term contracts. Long term contracts aim to deliver supply for a period from 15 years to 50 years. As part of the long term strategy, assumptions are used. Part of the strategy involves that targeted sources would be available to Eskom. However, this is only to be confirmed in future when the long term strategy is implemented and possible suppliers contacted. The process can therefore be affected by the fact that suppliers do not intend to supply Eskom, mining rights might be delayed and quality parameters of coal might be different from the current estimates.

Due to the timing constraints of the negotiating period and mine establishment, short to medium term procurement will have to be incurred to ensure that the burn requirements are met. Thus this request to enter into new contracts and / or to extend concluded contracts to March 2010 to maintain the acceptable stock pile days and the required burn rate to ensure sustainability of electricity supply.

Refer to graph 1 for an illustration of the current coal supply status and burn requirement. It also illustrates that the current projected supply will ensure burn is met until 2010.

- Risk

  - Long term projects may experience delays;
  - A competitive export market could lead to lower tonnage available for Eskom's use, as majority of coal could be exported;
  - Mining houses may not be in the position to open up all the mines simultaneously, due resource constraints;

- Assumptions

  In determining the tonnage requirement the following assumptions were used:

  - The latest 5 year burn plan as at 8 February 2008
  - ISEP 11 projections on burn used at a high burn rate
  - Long term coal supply agreements currently being negotiated will materialize and yield the desired results for Eskom
  - High burn requirements will be met, refer graph 2, indicating coal burn was consistently underestimated; resulting in delayed and emergency contracting
  - Due to the nature of certain mining operations, some are designed such that they would have to function for a certain period to be economically feasible. To enable some suppliers to supply under the emergency conditions now, contract negotiations were conducted in the spirit of good faith on the express understanding that the team would seek approval for the extension of certain contacts from the mandating authority at a later stage. Therefore in certain cases these options will have to be exercised.

This submission requests a mandate to conclude contracts for the supply and delivery of 490,8 MT of coal to Eskom various power stations commencing October 2008 up to March 2018.

4. OBJECTIVES OF THE MANDATE

4.1 Contract duration

The duration of the contracts would accommodate for the supply of coal to meet the required burn for the period October 2008 to March 2018.

4.2 Quantities

The supply and delivery of up to a maximum of 490,8 MT of coal over the contract period. This includes the processing of coal to the desired quality specifications and inter power station transfers.

4.3 Escalation

For the purposes of price adjustment (escalation), the price base date would be August 2008, and for Diesel July 2008.

The prices would be escalated by appropriate escalation formulae based on published indices. This includes:

- Producer Price Index for Mining and Quarrying as published by Statistics South Africa,
- Producer Price Index, all commodities
- Seifsa labour tables
- Eskom "cost plus" index,
- Diesel prices as published by the DME, current estimates are that 35% to 45% of both FOT and transport components are subject to diesel fluctuations.

In the event that legislation changes are made, the most appropriate escalation formulae will be applied accordingly to accommodate these changes.

4.4 Terms and Conditions

The terms and conditions of the supply contract will be drafted by the Contracts Department within Primary Energy Division and reviewed by Corporate Legal Department.

The terms and conditions of the negotiated extension options in current contracts will lapse if not exercised on or before October 2008.

4.5 **BEE/SMME**

The Eskom BEE requirements and that of the Mining Charter will be taken into account when contracting with relative parties.

4.6 **Coal Qualities**

Coal would be supplied at the existing quality specifications for power stations, or at qualities specifically approved by the power station. Coal will also be beneficiated to the highest quality when required.

4.7 **SARS Certificate and Employment Equity Documents**

Updated employee equity documents and Tax Clearance Certificate(s) from the successful supplier(s) prior to conclusion of the contract will be requested.

4.8 **Insurance**

The coal suppliers would be required to make provision for their own insurance and this would be included in the coal price.

4.9 **Transportation**

Eskom would only negotiate delivered price contracts, where coal is transported by coal suppliers or their appointed transporters.
Coal would be hauled in terms of the relevant coal transportation mandate. Currently approved by the BoD on 30 March 2006, and amended by the BoD on 30 March 2007. In the event that the transport mandate needs to be altered it would be presented to the BoD as and when required. Current estimation is that the mandate will be completed by March 2009 at the current rate.

Coal would also be transported by rail, where possible.

4.10 **Parties to the contract**

Negotiations would be held with the suppliers that have the ability to supply during the required period.

Eskom will not contract with traders of coal but only with the owners of a source or where valid contractual joint ventures between parties exist. This is done in an attempt to ensure that the mining right holders mine and rehabilitate the areas according to law, and that Eskom therefore contract with responsible parties. It is also aspired that broker fees that increase cost can be avoided.

5. COST COMPARISON ON A COMMON BASE

Current short to medium term contracts for the supply of coal to various Eskom power stations have been used for purposes of comparison. The proposed average rate is higher that the current average rate for medium term contracts. See Table 2 attached.

The ex-pit head cost comparison was based on the following:

- The export price currently experienced during contracting in the emergency phase
- The current price of high grade coal available experienced during contracting in the emergency phase
- The current price of high strip opencast available
- The estimated price by long term strategy in a high mark up environment
- The estimated price by long term strategy in a low mark up environment
- Prices as estimated by Anglo for new sources for possible long term sources
- Prices on options available on current short term contracts experienced during contracting in the emergency phase, the emergency procurement process allowed for this.
- Prices on dumps and discard purchased for the emergency situation and not expected to be available as a source for future supply
- The current Medupi price as negotiated
- The estimated price as per the Khutala optimization study

Delivered prices are subject to transport distances, and an average of R85 was used for quantification as sources and distances have not been identified and finalised.

Medupi and Khutala do not have any transport components as coal will be transported by conveyor.

RECOMMENDATION

In accordance with Eskom's Procurement & Supply Chain Management Procedure (32-188), it is recommended that a mandate be given:

- To negotiate and conclude medium term coal supply and delivery contracts of 490,8 MT to meet coal burn requirements for the period October 2008 to March 2018.
- The maximum value of the proposed contracts will be R164 418 M (real base, excluding CPA, VAT, fuel price adjustment and quality price adjustments).
- The Chief Officer (Generation Business) is authorised, with the power to delegate further, to take all the necessary steps to give effect to the above, including the signing of any agreements, consents or other documentation necessary or related thereto.

CE Schutte
ACTING MANAGING DIRECTOR
(PRIMARY ENERGY)

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GENERATION BUSINESS

PRIMARY ENERGY DIVISION

A MANDATE IS REQUESTED TO:

NEGOTIATE AND CONCLUDE CONTRACTS ON A MEDIUM TERM BASIS FOR THE SUPPLY AND DELIVERY OF COAL SUPPLIES OF 490,8 MT TO MEET BURN REQUIREMENTS AT VARIOUS ESKOM POWER STATIONS FOR THE PERIOD OCTOBER 2008 TO MARCH 2018

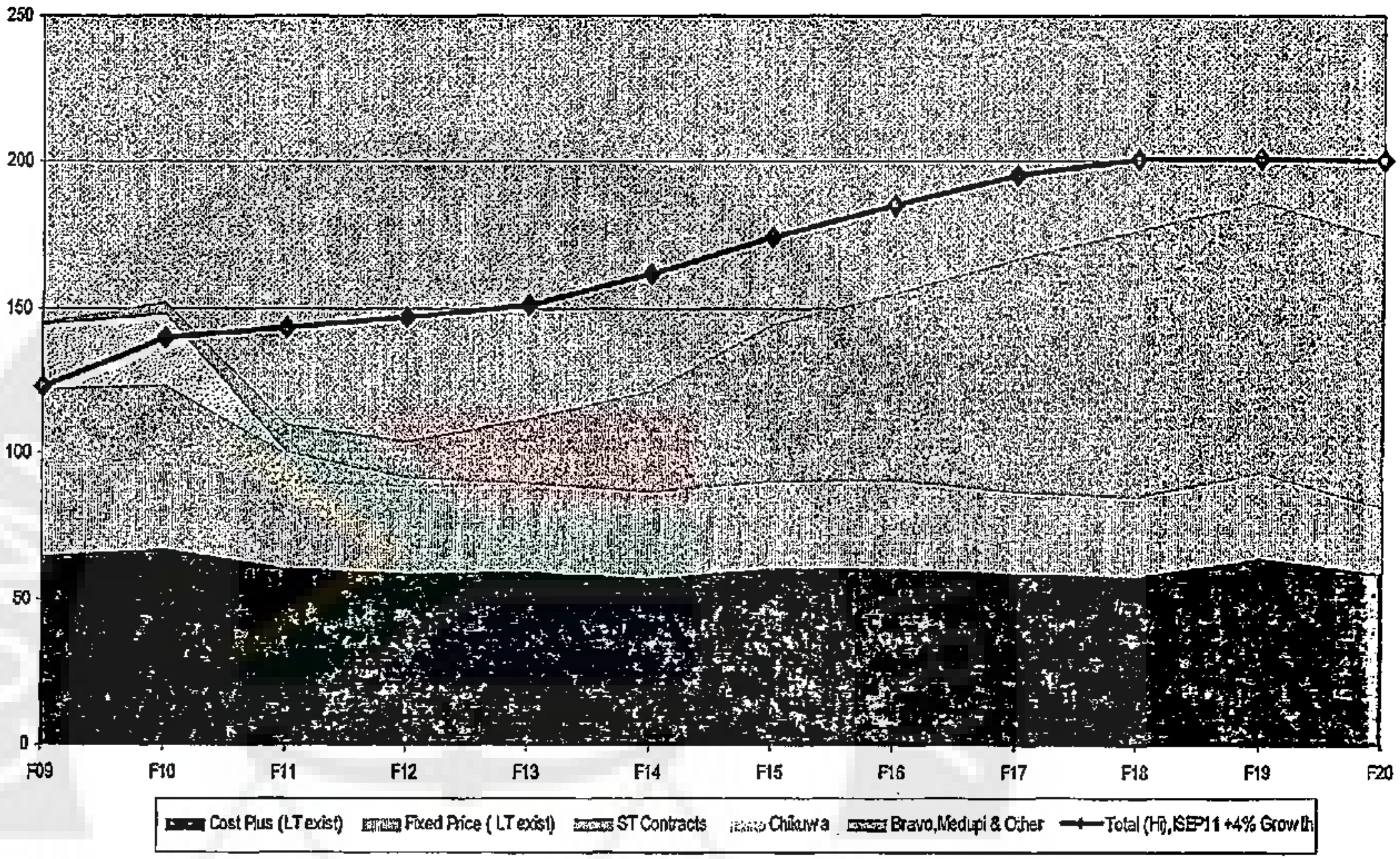
TOTAL COMBINED MONETARY VALUE: R164 418 M

SUPPORTING SIGNATURE

CE Schutte
CHAIRMAN – PRIMARY ENERGY DIVISION TENDER COMMITTEE

29/8/08
DATE

GRAPH 1: SHORTFALL WINDOW APR 2010 – MAR 2018



GRAPH 2: Current budget vs actual burn, indicating coal burn was consistently underestimated; resulting in delayed and emergency contracting

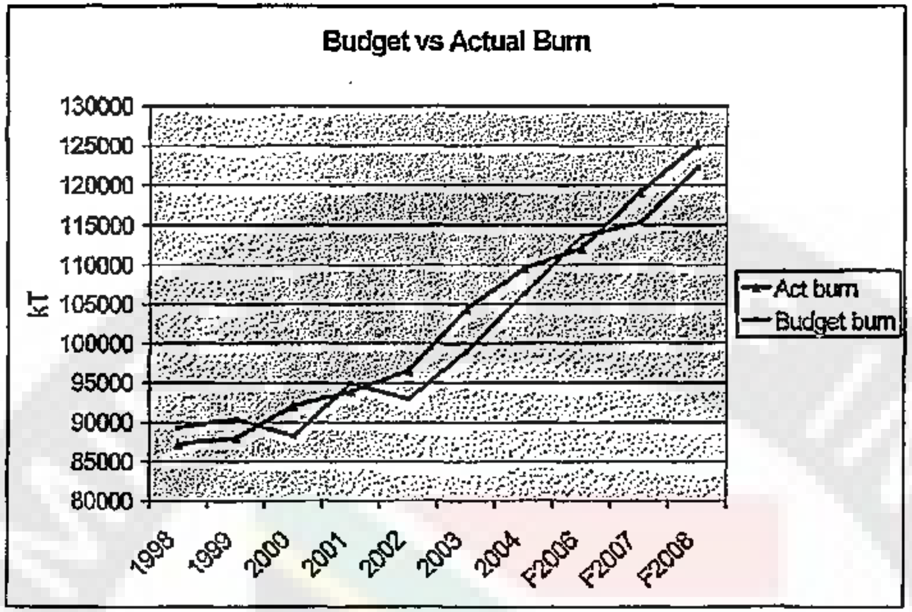


TABLE 1

Required supply for the period October 2008 to March 2018

		M tons per fiscal year									
		F09 - F10	F11	F12	F13	F14	F15	F16	F17	F18	Total
High Burn requirement	(a)		143.3	146.8	151.2	162.1	174.5	185.0	195.4	201.1	1359.3
Coal supply			108.3	98.9	101.1	97.9	107.1	116.1	124.2	127.7	881.2
Short term contracts			10.2	2.8	0.6	0.0	0.0	0.0	0.0	0.0	13.7
Fixed price contracts			31.0	31.0	31.0	31.0	31.0	31.0	28.8	28.8	243.4
Cost - plus contracts			67.1	65.1	66.1	63.5	67.4	67.6	65.6	63.7	526.2
Potential low risk supplies			0.0	0.0	3.4	3.4	8.7	17.5	29.8	35.1	98.0
Short fall in supply			**35.0**	**47.9**	**50.1**	**64.2**	**67.4**	**68.9**	**71.2**	**73.4**	**478.1**
Coal not covered in emergency	(b)	7.3									7.3
Contingency - under performance of contracts		5.4									5.4
		12.7	35.0	47.9	50.1	64.2	67.4	68.9	71.2	73.4	490.8
Shortfall as % of high burn			**24%**	**33%**	**33%**	**40%**	**39%**	**37%**	**36%**	**37%**	**35%**

(a) Assume high burn is likely to be met, refer graph 3 indicating actual burn vs budgeted burn relationship
(b) These stations were not accomodated in the emergency mandate as there was no emergency at the time

TABLE 2: DELIVERED PRICES (Estimated Coal prices (R/t))

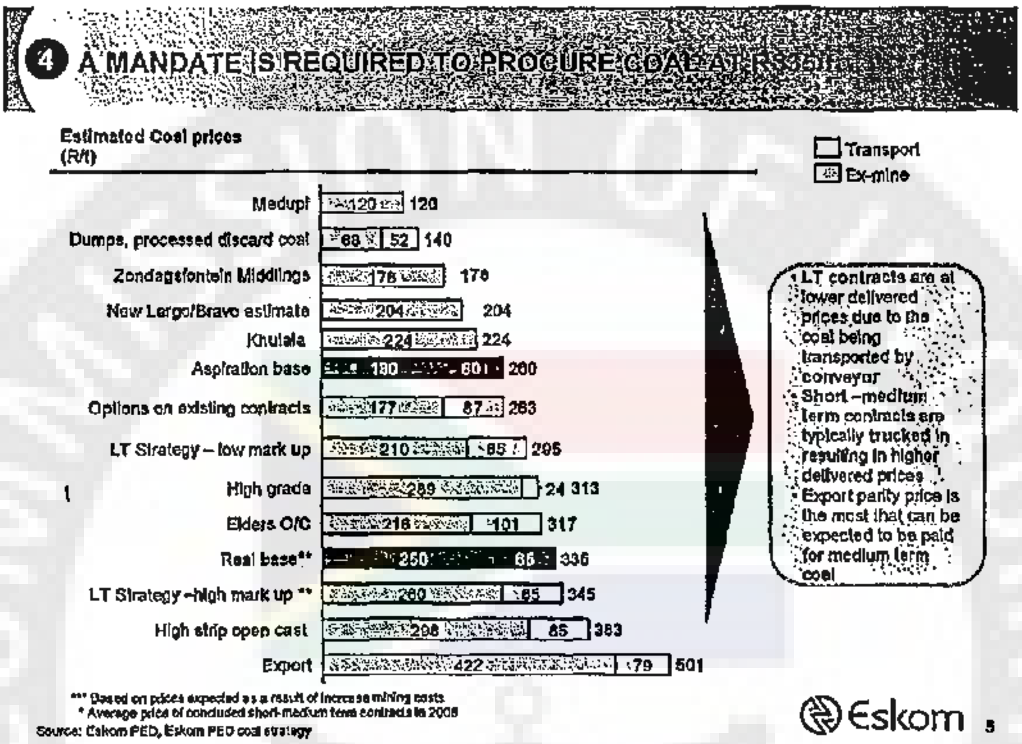


TABLE 3 : COST CALCULATION

		Real base	Aspiration base
Delivered price	R / ton	335.00	260.00
Maximum required tons	Mt	490.8	490.8
	R million	164 418	127 608
FOT Coal cost	R / ton	250.00	180.00
Maximum required tons	Mt	490.8	490.8
	R million	122 700	88 344
Transport	R / ton	85.00	80.00
Maximum required tons	Mt	490.8	490.8
	R million	41 718	39 264
TOTAL MANDATE			
- Delivered coal	R million	164 418	127 608
		164 418	127 608

ANNEXURE D

CHECKLIST 2

DIVISION: Generation

REGION/BU: Primary Energy

DESCRIPTION: **A MANDATE TO NEGOTIATE AND CONCLUDE CONTRACTS FOR 490,8 MT OF COAL ON A SHORT AND MEDIUM TERM BASIS FOR THE PERIOD October 2008 TO MARCH 2018**

	YES	NO
1. Was the correct purchasing mechanism followed?	Yes	
2. Were the most appropriate contract format, main and secondary options selected?		N/A Note 1
3. Where applicable, is the necessary Delegation of Consent form attached?		N/A
4. If tender mechanism selected: • Has the hierarchy of Procurement been followed? • How many Suppliers approached? • How many responses received?		N/A
5. Is it a Sole supplier, i.e. requests for mandate to negotiate? • Is sufficient motivation provided on the Eskom Sole Source Justification Form? • Is this form attached?		No N/A N/A
6. Were all responses/requests for a mandate evaluated? • Technically, by whom? • Financially, by whom? – Were the calculation sheets verified and, – Are they attached? • Commercially, by whom? • Has the financial analysis of the supplier been done?		No No No No No No Note 2
7. Did all respondents submit: • SARS certificates? • Employment Equity documents?		N/A N/A Note 3
8. Was the enquiry clear on: • SMME/BEE involvement? • Criteria?		

• Set aside portion? • Price matching?		N/A
9. List of Directors 9.1 Recommended Suppliers: • <u>BEE Representations</u> • Shareholding %......... • Management %........ • Directors %........ 9.2 Recommended BEE Subcontractors 9.3 Any apparent conflict of interest?	Yes	No
10. Is the lowest price, technically, commercially and financially acceptable tender recommended? If not, brief reasons to be given in the report:- • Price • Technical • Commercial • Financial		N/A
11. Is the purchase duly budgeted for?		No
12. Health and Safety Requirements Does the recommended supplier fully comply with: 12.1 The Occupational Health and Safety Act 85 of 1993 (as amended)?, 12.2 Eskom's Safety, Health and Environmental Requirements for Contractors?, and 12.3 Eskom's Safety Regulations?		N/A Note 4
13. Shipping (Imported Goods/Costs) 13.1 Will this be arranged by the Supplier? or 13.2 Will this be arranged by the Eskom Generation Shipping Department? and 13.3 Is the cost shown separately in the Calculation Sheet (Attached to Report)? or 13.4 Is the cost shown separately in the report?		N/A
14. Are Forex commitments properly addressed?		N/A
15. National Industrial Participation Programme 15.1 Does the contract value/expenditure with overseas companies (directly or indirectly) fall within the stated criteria? ~~15.2 If Yes, was the Department of Trade and Industry~~		N/A

informed?		

All the above mentioned issues are adequately addressed in the report.

Note 1:

The NEC family of contracts is not suitable for coal purchasing. The contract documents will be prepared by the Contracts Section within GPE, and reviewed by Corporate Legal.

Note 2:

This work will be done on an ongoing basis once negotiations commence.

Note 3:

Tax Clearance Certificates and employment equity documents will be requested once negotiations commence.

Note 4:
This aspect will be dealt with during negotiations.

Signed by:

CE Schutte
ACTING MANAGING DIRECTOR
(PRIMARY ENERGY)

Eskom

TO: THE MANAGING DIRECTOR
GENERATION DIVISION

Date: 18 August 2008

FROM: TREASURY FINANCIAL EVALUATIONS

Enquiries: S Ngcobo
☎(011) 800 4732
Reviewed by: G Molokoane

Date notified: 07/08/2008
Date received: 11/08/2008
Date completed: 18/08/2008

CONFIDENTIAL

FINANCIAL REVIEW

GENERATION DIVISION: PRIMARY ENERGY

SUPPLY AND DELIVERY OF COAL TO VARIOUS POWER STATIONS

REQUEST FOR A MANDATE

The Treasury Department was requested to review the financial aspects of the following, amongst others:

- A request for a mandate to negotiate and conclude contracts on a short term and medium term basis, for the supply and delivery of coal to various Eskom power stations to meet burn requirements during April 2010 until March 2018.
- Approval to make advance payments to the suppliers to the value of R500 M to enable them to increase their plant capacity, thereby enabling them to provide Eskom with the required quantities.
- Approval to make advance payments to the suppliers to the value of R200 M for refurbishment of certain wash plants.

BACKGROUND

Following an emergency of coal supply being declared at affected power stations in January 2008 and an approval to procure 53,582 MT of coal in February 2008, it was determined that a shortfall of coal still exists when comparing the burn requirements to the existing and planned long term contracts which must be addressed with the short and medium term supplies.

MANDATE

The negotiation parameters of the mandate are as follows:

Treasury
Megawatt Park, Maxwell Drive, Sunninghill, P.O. Box 6841, Johannesburg 2000, South Africa
Tel.: +27 (0)11 800 8111 Fax: +27 (0)11 800 2308 Web Address: www.eskom.co.za/treasury

The contracts value

The maximum tonnage required to meet burn requirements during April 2010 to March 2018 is 490.8 MT at a delivered real base of R335 / ton and an average CV of 18.4 Mj / kg, on an as received basis, in 2008 money values. The total delivered real base amount is R164,418 M with an aspiration base of R127,608 M (R260/ton).

The tonnage required is an estimate derived by comparing current coal sources, estimated new long term contracts and high burn as per ISEP 11 plans. The real base and the aspiration base rates were determined based on estimates and assumptions as decided by the Primary Energy Division in conjunction with Anglo and McKinsey consultants

The R500 M and R200 M proposed advance payments to fund increase in plant capacity and refurbishment of wash plants respectively, will enable suppliers to provide Eskom with the increased quantities as well as high quality coal as required. These advance payments are pure estimates by the Primary Energy Division mining engineers.

The total combined monetary value of the proposed contracts is R165,118 M excluding CPA, VAT, fuel price adjustments and quality price adjustments.

Contract Price Adjustment

The base date for CPA purposes is August 2008. Prices will be adjusted based on specified Statistics South Africa, Eskom "cost plus", SEIFSA indices and diesel prices as published by the DME.

Terms and Conditions

The terms and conditions of the supply contract will be drafted by the Contracts Section within Primary Energy Department and reviewed by Corporate Legal Department.

Coal suppliers will be required to make provision for their own insurance and this will be included in their coal price.

COMMENTARY

The calculation of the real base and aspiration base amounts as well as the tonnages required was based on assumptions and estimates as determined by the Primary Energy mining engineers and long term planning division based on the existing contracts rates as well as the latest high burn per ISEP 11 plans.

We were informed that the proposed advance payments amounts of R500 M and R200 M are pure estimates made by the mining engineer, thus we cannot comment on the validity or the reasonableness of the values.

We have done a limited spot check of the calculations and obtained clarifications where necessary. We have also looked at the principles used to arrive at the negotiation parameters and we do not have any reason to doubt that the calculations are based on sound principles. However, we do not have the necessary expertise to comment on the reasonableness or the validity of these estimates, thus we rely on the work of the Primary Energy Division mining engineers and long term planning division in this regard.

We would also like to highlight our concern regarding the significant advance payments being made to suppliers, even though there's a plan to recover these amounts during the contract period, we believe that adequate guarantees should be obtained from these suppliers to ensure that Eskom is not exposed to unnecessary risks.

Transportation costs are included in the real base amount as the delivered price is negotiated with the suppliers, alternatively where the supplier is unable to deliver, coal will be delivered by Eskom appointed transporters in terms of the relevant coal transportation mandate approved by the BoD on 30 March 2006, and amended by the BoD on 30 March 2007.

CONCLUSION

Based on the information provided to us and the work described in this report, in our opinion, from a purely financial point of view, we have no reason to believe that the request for a mandate to negotiate and conclude contracts, with suitable suppliers, for the supply and delivery of coal to various power stations should not be approved, subject to the following provisos:

- Our reliance on the Primary Energy Division's expertise regarding the validity of the calculations and estimates provided to us by them.
- We cannot comment on the reasonableness or the validity of the proposed advance payments and would like to draw your attention to our concern regarding significant advance payments being made to suppliers with no performance guarantees from them to limit Eskom's exposure to financial loss risks.

Please do not hesitate to contact Sthembile Ngcobo at (011) 800-4732 if you have any queries or comments with regard to this review.

ESKOM TREASURY

18/08/2008
Date

MEDIUM TERM COAL PROCUREMENT MANDATE 2008 – 2018

PRESENTATION TO THE EXCO-PS AUGUST 2008

Eskom

KEY TOPICS FOR DISCUSSION

Shortfall in coal supplies

1. Short term coal purchasing has increased significantly in the last four years
2. Total cost of coal for Eskom has increased over the past years driven primarily by short term contracts
3. Significant medium term buying will be required until the long term strategy comes into effect resulting in longer sustained supplies of coal

Increase in price of coal

1. Higher prices of medium term coal is driven by increase risk due to exports and due to the transport cost for the coal
2. PED would need a mandate to purchase coal for up to a weighted average cost of R335/t

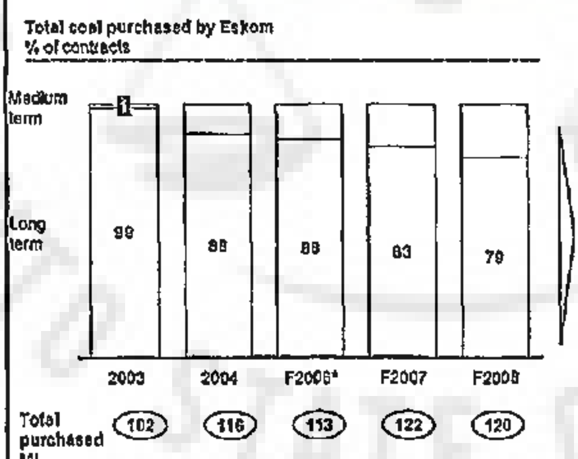
Eskom

SETTING THE CONTEXT FOR ESKOM'S COAL SUPPLY SITUATION – COAL PURCHASES

- In FY2008, Eskom purchased 119.6 million tons of coal, for a total value of R12.24 Bn
  - Budget allowed for a purchase of 129.6 million tons (value of R13.3 Bn)
  - Actual burn was 125.3 million tons, above the budgeted burn of 122.1 million tons
- In FY2008, Eskom purchased from three types of contracts – In value terms, short term contracts represented 21% (although only 17% in tonnage terms), cost plus contracts and fixed price represented 79%

Eskom 2

MEDIUM TERM COAL PURCHASING HAS INCREASED SIGNIFICANTLY OVER THE LAST FOUR YEARS

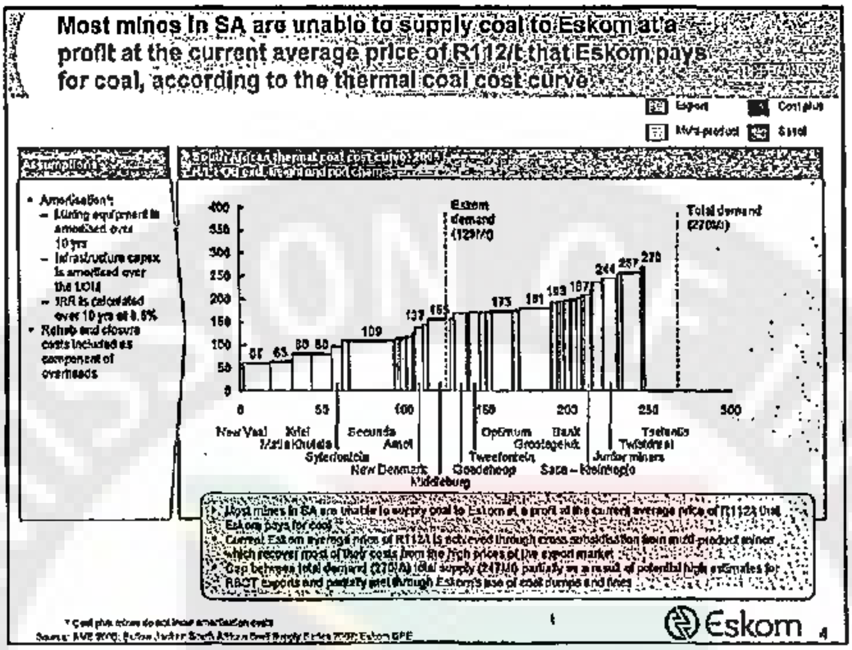


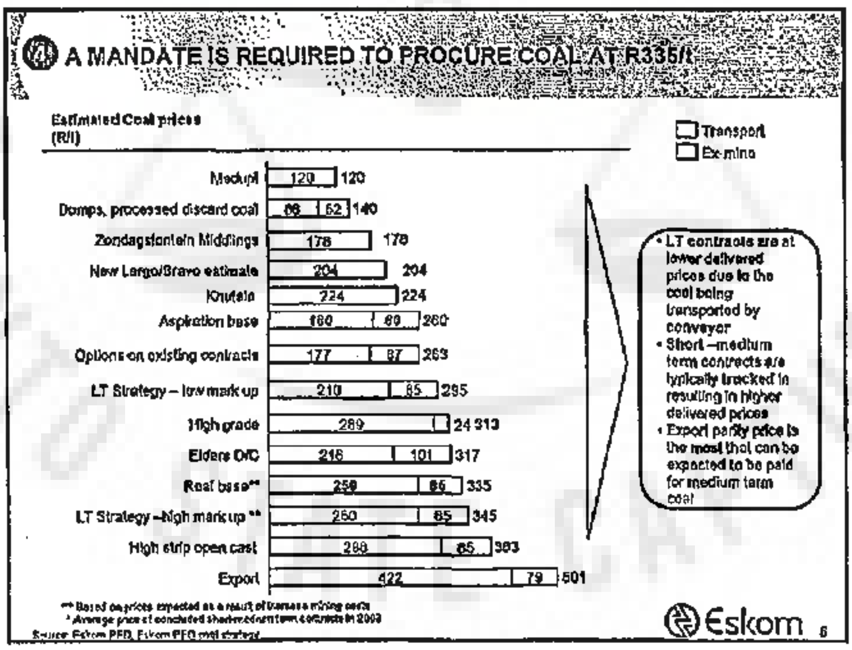
- Initial supply mainly from long-term contracts, which have been increased above contractual maximum
- Long term mines under-delivery has resulted in increased need for short term contracting
- The delay in new capacity had a knock on effect on coal purchases, when existing (swing) power stations had to burn more coal
- Higher than expected burn also resulted in planning for lower volumes than needed
- Short-medium term purchases have also increased due to other unplanned external events

* Reporting period changed in 2005 from calendar year Jan-Dec to the financial year April-March

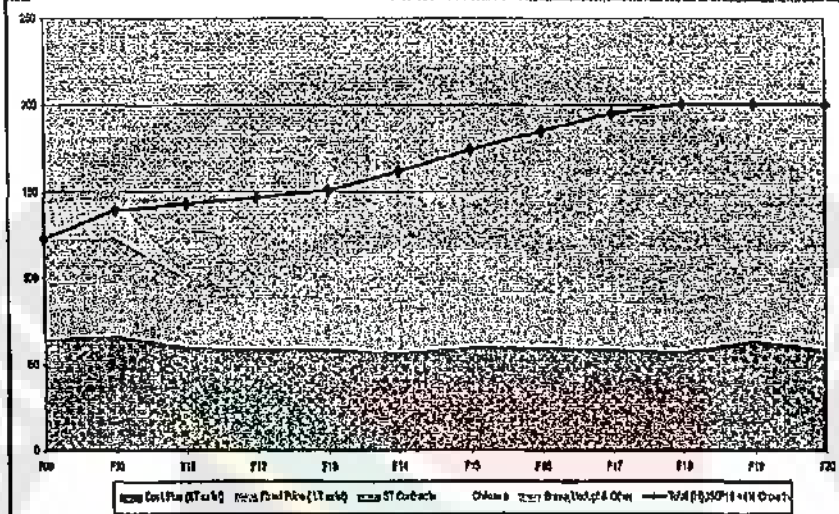
Source: Eskom Primary Energy Division

Eskom 3


Most minos In SA are unablo to supply coal to Eskom at a profit at the current average price of R112/t that Eskom pays for coal, according to the thermal coal cost curve
Export
Cost plus
Multi-product
Assumptions
• Amortisation:
– Mining equipment is amortised over 10 yrs
– Infrastructure capex is amortised over the LOM
– IRR is calculated over 10 yrs at 8.5%
• Rehab and closure costs included as component of overheads
Eskom demand (129Mt)
Total demand (270Mt)
400
350
300
250
200
150
100
50
0
61 63 80 80 109 137 155 173 181 193 197 244 257 270
0 50 100 150 200 250 300
New Vaal
Kriel
Matla Khutala
Syferfontein
Secunda
Arnot
New Denmark
Middelburg
Goedehoop
Tweefontein
Optimum
Bank
Grootegeluk
Sasa – Kleinkopje
Junior miners
Twistdraai
Tselentis
Most mines in SA are unable to supply coal to Eskom at a profit at the current average price of R112/t that Eskom pays for coal
Current Eskom average price of R112/t is achieved through cross subsidisation from multi-product mines which recover most of their costs from the high prices of the export market
Gap between total demand (270Mt) total supply (247Mt) partially as a result of potential high estimates for RBCT exports and partially met through Eskom's use of coal dumps and fines
* Cost plus mines do not bear amortisation costs
Eskom
4


A MANDATE IS REQUIRED TO PROCURE COAL AT R335/t
Estimated Coal prices (R/t)
Transport
Ex-mine
Medupi 120 120
Domps, processed discard coal 86 52 140
Zondagsfontein Middlings 178 178
New Largo/Bravo estimate 204 204
Khutala 224 224
Aspiration base 180 80 260
Options on existing contracts 177 87 263
LT Strategy – low mark up 210 85 295
High grade 289 24 313
Elders O/C 216 101 317
Real base** 250 85 335
LT Strategy – high mark up ** 260 85 345
High strip open cast 288 85 383
Export 422 79 501
• LT contracts are at lower delivered prices due to the coal being transported by conveyor
• Short – medium term contracts are typically trucked in resulting in higher delivered prices
• Export parity price is the most that can be expected to be paid for medium term coal
** Based on prices expected as a result of increasing mining costs
* Average price of concluded short-medium term contracts in 2008
Source: Eskom PFD, Eskom PFD coal strategy
Eskom
6

SHORTFALL WINDOW APR 2010 – MAR 2018



Eskom

KEY ASSUMPTIONS

- Short fall to be made up by medium term coal purchases
- Coal will be purchased from small to medium sized coal suppliers
- Coal will be contracted on a delivered basis (not FOT)
- A large portion of the coal will be delivered by road
- Long term contracts will materialise as per plan
- Companies supplying coal through contracts concluded under the emergency mandate will perform as reported
- The quantities will be delivered as estimated for each contract
- ISEP 11 high burn was used to determine the shortfall (4% growth)

Eskom

RESOLUTION REQUIRED

- To negotiate and conclude short and medium term coal supply and delivery contracts of 490,8 MT to meet coal burn requirements for the period OCT 2008 to March 2018
- The maximum value of the contracts will be R164 418 M (excluding CPA, VAT and Quality Price Adjustments) at real base rates of R335/T delivered (R18.20/GJ at an average CV of 18,4 MJ/kg, on an as-received basis) in 2008 money values.
- The Chief Officer (Generation Business) is authorised, with the power to delegate further, to take all the necessary steps to give effect to the above, including the signing of any agreements, consents or other documentation necessary or related thereto.

Eskom

BACK UP

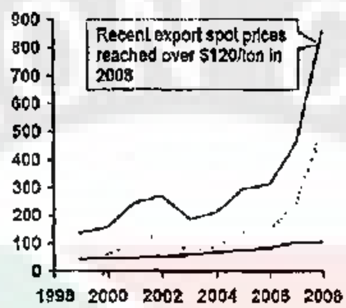
Eskom 9

PRICE DIFFERENTIAL BETWEEN LOCAL AND EXPORT PRICES HAVE BEEN INCREASING STEADILY

Anomalies leading to current price disparity

- Australian port handling capacity not increasing as expected
- Adverse weather conditions leading to reduced output from Australian (Opencast) operations
- Temporary cap on exports from China
- Low production capacity in India resulting in high imports

Coal price
R/ton, year average, FOB RBCT (Saleable tonnage)

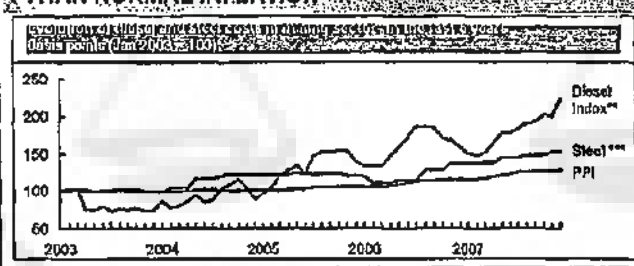


Implications for Eskom

- The disparity between the local price and the export price for thermal coal incentivises the mines to export coal
- Current export prices allows for coal to be washed to lower yields and still be exported profitably
- *The spot price has been a good indicator of the evolution of the long-term export price and hence the export parity price can be expected to be higher as the spot prices increase*

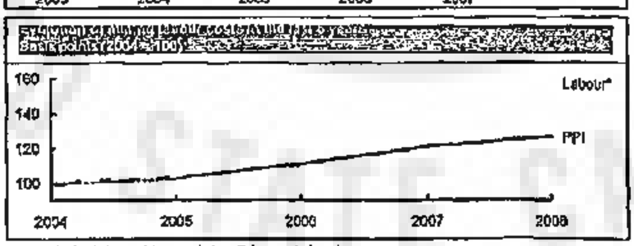
Eskom 10

KEY COMMODITIES THAT CONTRIBUTE TO THE COST OF COAL HAVE BEEN GOING UP SIGNIFICANTLY MORE THAN NORMAL INFLATION



Diesel = 3-8% of total mining cost

Steel = ~15-20% of total mining cost

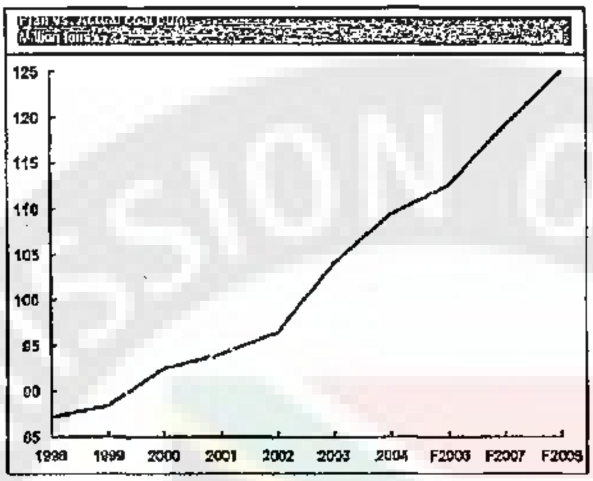


Labour = ~45% of total mining cost

* Estimated using labour costs from Eskom cost-plus mines
** Calculated using the SA Diesel 0.05% sulphur c.i price
*** Calculated using the Basic iron and steel prices
Source: Eskom Primary Energy Division; Team Analysis; Statistics South Africa

Eskom 11

ACTUAL COAL BURN HAS BEEN CONSISTENTLY UNDER ESTIMATED



- Coal burn was consistently underestimated; resulting in delayed and emergency contracting
- More power stations now used as base-load stations
- Majuba and Tutuka used heavily as swing stations to:
  - Manage impact of external impacts such as Koeberg incident
  - Manage the higher than expected demand growth
  - Manage planned and unplanned load losses at other power stations

* 2006 figures assume just April 2006 to March 2007. Prior to 2006, figures are for Calendar year. After 2006, figures are for Financial years

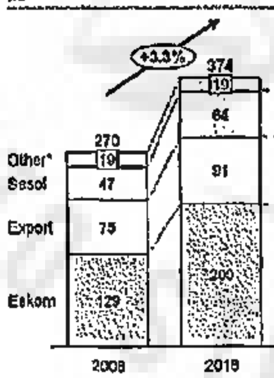
Source: Eskom Primary Energy Division; Team Analysis; Statistics South Africa

Eskom 12

GROWTH OF SOUTH AFRICAN ECONOMY IS LINKED TO SIGNIFICANT INCREASE OF COAL CONSUMPTION

CAGR

South African thermal coal consumption
Mt



Driver	Link to South African economy
• Demand assumed to be constant	• Direct link to growth of industries
• Opening of Mafutha plant	• Represents more than 40% of SA's liquid fuel requirements
• Increase of export capacity coupled with increased international demand	• GDP and current account contribution
• Increase in load factor of current stations • Return to service of three stations (Grootvlei, Camden, Komati) • Four new stations (Medupi, Bravo, Coal 3, Coal 4)	• Electric power indispensible for growth of most sectors

* Other electricity producers [illegible]

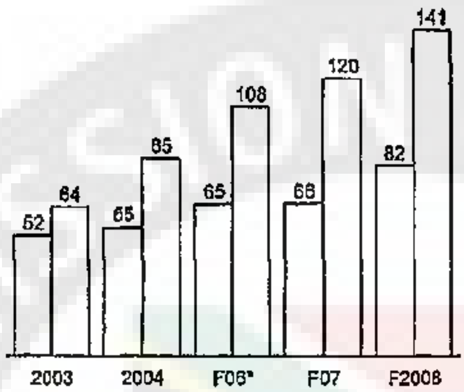
Source: [illegible] – South African Coal [illegible] 2007; Eskom PED, team analyses

Eskom 13

② TOTAL COST OF COAL FOR ESKOM HAS ALSO INCREASED, DRIVEN PRIMARILY BY SHORT-TERM CONTRACTS

Long term contracts
Medium term contracts

Historic average annual cost of purchasing coal
R/t delivered (nominal figures)



- Global prices have escalated to unprecedented levels (export prices >$150/ton) making opportunity for miners very high
- Primary inputs into mining have escalated much higher than PPI, which has had ~5% annual growth since 2003. During the same period, average annual growth for each commodity has been:
  - Diesel = 17%
  - Labour = 6.5%
  - Steel = 9%
- Increasing proportion of short-medium term contracts has escalated price increase for Eskom

* Reporting period changed in 2005 from calendar year Jan-Dec to the financial year April-March
Source: Eskom Primary Energy Division

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Annexure "F"

GOBODO
Chartered Accountants(SA)

Gobodo Incorporated
1st Floor, Block B
Empire Park
55 Empire Road
Parktown
Johannesburg
2001

Mrs Phuti Mfete

Eskom Holdings Limited,
Megawatt Park,
Sunninghill,
Sandton

01 June 2010

Dear Mrs Mfete,

Report: Procurement Process Review on the Medium Term Coal Procurement Programme

In accordance with the terms of our engagement letter dated 16 March 2010, we have performed a factual findings review of the procurement process undertaken for the Medium Term Coal Procurement Programme.

We understand that the findings of our review will be used solely for the purposes of assisting Eskom, management in deliberations on how to proceed with this matter. This report details the factual findings of our review, the approach used to perform this review and our opinion based on the information that was made available to us. Eskom's Management is solely responsible for the data, information and explanations provided.

Subject to our obligation to conduct our work with reasonable skill and care, we shall have no liability for any loss or damage, of whatsoever nature arising from information material to our work being withheld or concealed from us or misrepresented to us by the directors, employees or agents of Eskom or any other person of whom we made enquiries in the course of carrying out our work for this assignment.

This report should not be disclosed to, or discussed with, any other party without our prior agreement in writing. Should you have any questions or require further discussion, please do not hesitate to contact me, on 082 493 5967. We appreciate the opportunity afforded to Gobodo Inc by Eskom.

Yours sincerely

Bill Cinnamond
Director

Independent Procurement Process Review on the Medium Term Coal Procurement Programme

Tender Number: RFP Gen 3031

01 June 2010

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List of Abbreviations

Abbreviation	Description
ASGI-SA	Accelerated and Shared Growth Initiative for South Africa
Board TC	Board of Directors – Tender Committee
EXCO-PS	Executive Committee Procurement Sub-Committee
IFC	Investment and Finance Committee
MTCS	Medium Term Coal Supply
PED	Primary Energy Division
PFMA	Public Finance Management Act
RFI	Request for Information
RFP	Request for Proposal
P&SCM 32-188	Procurement and Supply Chain Management Procedure: 32-188

Comment [E1]: Medium Term Coal Sourcing

Glossary of Terms

Term	Description
P&SCM 32-188	Eskom's procurement and supply chain management procedure, no 32-188, that outlines the processes and activities required to fulfil procurement requirements.
PFMA	The objective of the PFMA is to ensure that public participants have a procurement system that is fair, equitable, transparent, competitive and cost-effective.
MTCS	Eskom's Medium Term Coal Sourcing Programme

1 Executive Summary

The review covers the procurement process from September 2009 to March 2010. This report indicates where the applicable commercial and financial processes and activities within Eskom's Procurement Procedure (32-188) were consulted and the level of conformance thereto as is mandated by Eskom for all supply chain activities.

The procurement process was measured to determine if it was:

- **fair** – vendors were treated in an unbiased manner
- **transparent** – the procurement process is open and honest
- **lawful** – the procurement process adheres to applicable policies and legislation
- **competitive** – vendors were provided with equal opportunity to compete in the selection process
- **equitable** – all vendors were treated equally and there is not undue bias towards any one party
- **cost effective** – the most cost effective options were explored but within the correct scope

While our review has uncovered some findings, no significant process deviations from applicable policies were identified during the review of the MTCS procurement process. All tenders received were evaluated against the evaluation criteria published in the Request for Proposal. We detected no bias either for or against any particular bidder in the application of the evaluation criteria. Evaluation criteria were applied objectively based on the RFP.

All parties involved during the tender process were required to declare their interests. No conflicts of interest were declared.

The non-financial due diligence results reflected that no direct links existed between the Eskom directors, EXCO, Board and Board tender committee members and evaluation team members and the MTCS vendor entities. The identified indirect links established between the Eskom directors, EXCO, Board and Board tender committee members and evaluation team members and the MTCS vendor entities are depicted in the non-financial due diligence report, refer to 'ESKOM – MTCS Non Financial Due Diligence Report'.

2 Introduction

In an effort to mitigate the occurrence of coal shortages similar to those experienced at the beginning of 2008, the supply and demand for future coal supplies was assessed and a long-term strategy developed. To ensure the sustainable supply of electricity, it was determined that a shortfall of coal exists when comparing the burn requirement to the existing and planned long-term coal supply contracts. This shortfall was to be addressed with medium term supplies. The MTCS team was given a new mandate to enter into contracts for the supply of coal from October 2008 until March 2018, at a maximum tonnage of 490,8 MT.

Gobodo Incorporated was requested to perform an independent review of the procurement process for the Medium Term Coal Supply programme. This report details our findings, covered in the review which was conducted between 22 March 2010 and 9 April 2010.

In terms of Corporate and Generation Directives "Procurement & Supply Chain Management Procedure (32-188)" and "Emergency Short Term Coal Sourcing Procedure GGP 1194", the Managing Director (Generation Division) declared an emergency at affected power stations on 09 January 2008.

At the time of declaring emergency, the total coal stock at the affected stations was below the acceptable minimum of 20 days with some stations below 5 days.

A mandate was therefore requested for the procurement and inter-station transfers of up to a maximum of 53,582 MT of coal for Eskom power stations over a minimum two-year period, commencing in February 2008, with an option to extend for a further period. The Eskom Holdings Chairman on a round-robin basis in accordance with the recommendation of the Chief Officer (Generation Business), Financial Director and the Chief Executive granted approval for this.

In an effort to mitigate the occurrence of another emergency, the supply and demand for future coal supplies was assessed and a long-term strategy developed. To ensure the sustainable supply of electricity, it was determined that a shortfall of coal exists when comparing the burn requirement to the existing and planned long-term coal supply contracts. This shortfall was to be addressed with medium term supplies. The MTCS team was given a new mandate to enter into contracts for the supply of coal from October 2008 until March 2018, at a maximum tonnage of 490,8 MT.

To ensure that the transaction complies fully with Eskom's procurement policies and procedures (P&SCM Procedure 32-188), Eskom has requested Gobodo Incorporated to act as its independent reviewer for this procurement process, and to report their findings. Eskom has provided Gobodo Incorporated a list of 14-points, which Eskom requested should form the basis for the scope of Gobodo Incorporated engagement.

2.1 Background

A mandate was granted by the Eskom Board of Directors –Tender Committee on 11th September 2008 for the Primary Energy Division to negotiate and conclude contracts on a medium term basis for the supply and *delivery of coal to various Eskom power stations for the period October 2008 to March 2018. The contracting* period starting from October 2008 includes the beneficiation of coal by suppliers or their contractors where required.

The mandate approved the following procurement parameters:

Parameter	Description
Volume	490,8 Mt
Value	R164 418 M (excl CPA, VAT and quality price adjustments) at 2008 money values
Real Base	Weighted average cost of R335/t delivered: • The weighted average FOT component - R250/t • The weighted average transportation cost – R85/t
Period	October 2008 to March 2018

Table 1: Mandate parameters as approved by the Board

The PED sourcing strategy to fulfil the procurement requirements involved:

- extending current cost effective contracts up to 2018 depending on the availability of coal or the life of the resource,
- re-negotiating current contracts as they come up for renewal, and
- Sourcing new coal sources with current and other suppliers where appropriate.

Pursuant to this, an RFI and RFP were issued to the market to make up for the difference in volumes that still remained after options on existing contracts were exhausted, based on an assessment of anticipated coal burn requirements to March 2018.

2.1.1 Request for Proposal Compilation Team

A multi-skilled team was put together to compile the RFP, with a number of staff seconded from other Eskom divisions to the MTCS team within PED (Refer Appendix B).

2.1.2 Proposal Vendor Registration

Vendors (Refer Appendix C) then registered their interest in attending the clarification session and an interest in submitting a response to the tender (RFP Gen 3031).

The vendor clarification session took place on 28 September 2009, at Megawatt Park. A record of minutes was generated and circulated among all the attendees at the session.

2.1.3 RFP Evaluation Criteria

The evaluation criteria developed were based on the Medium Term Coal Sourcing Charter, whose main aim is to secure supply for future, medium and short term coal requirement at lowest possible total cost of ownership (TCO).

The Key success factors for the charter are that:

- Required volumes must be proportional to energy demand any time. Therefore flexibility of the suppliers is important.
- Legislative compliance in terms of environment, mining, ASGI-SA are key strategic implementing objectives for Eskom.
- Building long term relationships with suppliers ensures that medium term coal sustainability in terms of negotiated price and frequency of supply is properly managed.

Criterion	Description
Security of supply	Minimal risks associated with collaborative information sharing between the supplier and Eskom. This includes coal demand forecast and optimised production planning
Economies of scale and competitive pricing	Eskom will benefit from competitive prices through long term agreements with efficient operations at minimal risks
Price predictability	Long term off- take agreements directly affect price modelling in terms of future coal price.
ASGI-SA	Tenderers are requested to submit their B-BBEE compliance certificate and other relevant documents to facilitate ASGI-SA scoring.
Legislative compliance	The legislative requirements and sound business practises are binding to all who want to tender to Eskom

Table 2: Medium term sourcing strategy criteria

The evaluation criteria as developed by the evaluation team were in line with Eskom's medium term sourcing strategy. The tender process looked at a two leg approach evaluation criteria which are commercial and technical. Table 9 below breaks down the criteria into key variables.

Criterion		Weighting
Commercial		55%
	Price	35%
	B-BBEE Status	10%
	Skills Development	10%
Technical		45%
	Legislative requirements	10%
	Delivery	5%
	Capacity	5%
	Quality	25%
TOTAL		100%

Table 3: MTCS tender evaluation criteria and weighting

Therefore the Request for Proposal (RFP) for supply of coal to Eskom is therefore congruent with the Medium Term Coal Sourcing Charter in that key implementable variable are all aligned to the sourcing charter.

2.1.4 Eskom's Evaluation Process

The evaluation process took the form of two distinct stages of evaluation:

- A desktop evaluation exercise where responses to the tender were evaluated based on the submissions in their files.
- Site visits and negotiations (detailed in section 13.10 of this document).

2.1.4.1 Stage 1 – Desktop Evaluation

Responses to the RFP as submitted by bidders were received and separated into technical and commercial submissions. These submissions were then evaluated by two evaluation teams (technical and commercial), each with a score as illustrated above. Tender returnable documents were also checked by the respective evaluation teams. The sub total scores for technical and commercial evaluation were weighted accordingly and a final score arrived at to reflect both evaluation processes. The diagram below depicts the evaluation process as undertaken.

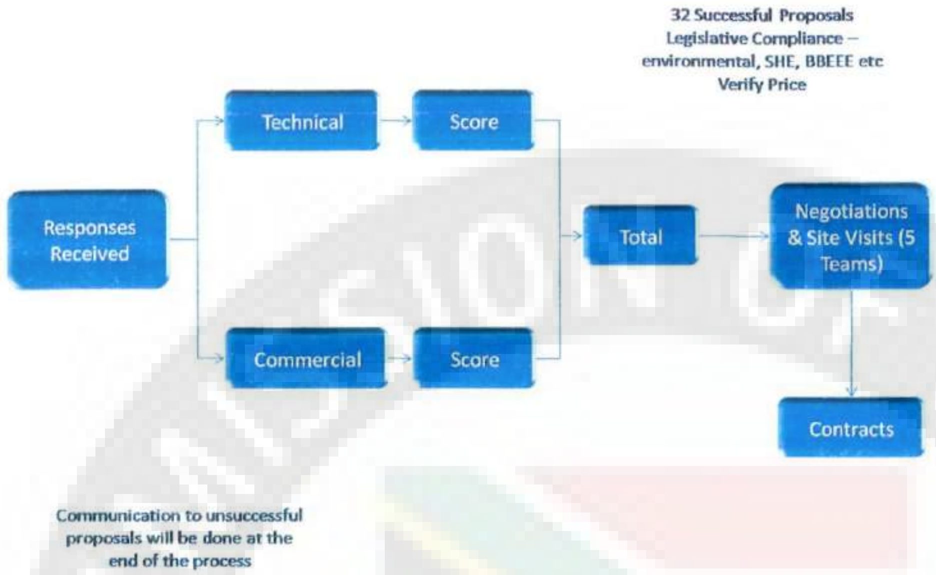

Figure 1: High Level Evaluation Process

Fifty-nine (59) vendors (Refer Appendix E) responded to the RFP process on or before the tender closing deadline.

After evaluation against the technical and commercial criteria, a combined score of at least 50% was required for vendors to proceed into the site visits and negotiations stage of the evaluation process. The vendors' bids that were deemed as non-compliant by Eskom (Refer Appendix F) according to the results of the evaluation process.

Comment [E2]: This sentence seems incomplete SC

Vendors' bids were evaluated by Eskom, and those (Refer Appendix G) that scored a total of 50% or greater, were recommended for proceeding to the site visits and negotiation stage of the evaluation process. These vendors proceeded into the site visits and negotiations stage of the evaluation process.

2.1.4.2 Stage 2 - Site Visits and Negotiations

This stage in the evaluation process involved undertaking site visits and initiating contract negotiations as illustrated in figure 2. The objective of this stage of evaluation is to verify the coal quality and technical specifications as per the RFP submissions. Eskom Geologists and Metallurgists undertake the technical evaluation, while Eskom Corporate Finance professionals calculate the indicative pricing based on the mine's coal quality, technology, expected life and other key variables. The indicative pricing and geological information form the basis of Eskom's tailored negotiation strategy with each bidder.

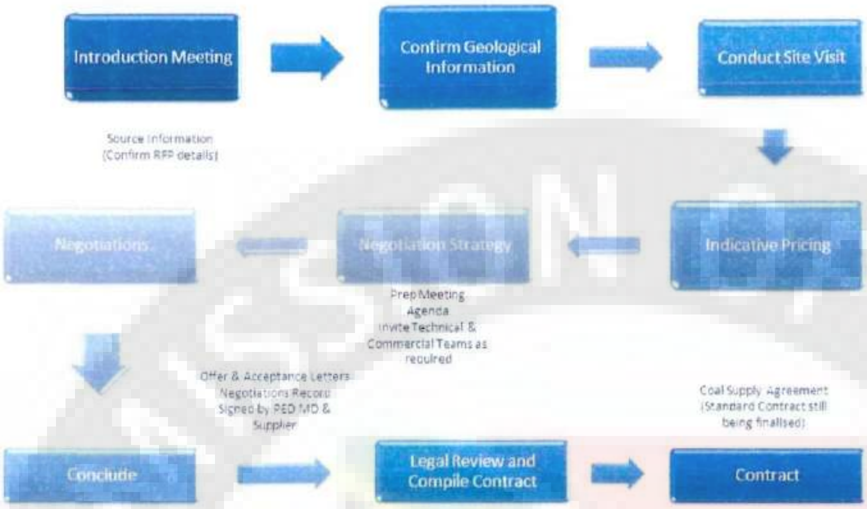

Figure 2: Negotiations and site visits illustrative process

A set of contracting protocols were developed to give guidance to the negotiating teams, including the following key issues:

- Pricing principle – costs are to be based on a cost plus a risk adjusted fair return;
- Escalations – the most appropriate indices are used to determine the year-on-year escalation of prices;
- Quantity – volume flexibility will be contracted at reasonable cost;
- Quality – will be measured at the source and pre-qualified. Eskom will only take delivery of coal that is pre-qualified to meet the specifications; and
- Legislative requirements – contracts will only be entered into when all legislative requirements are met including environmental legislation, there will be no suspensive conditions.

On successful negotiations, an offer and acceptance letter is generated prior to drawing up the Coal Supply contact. The Offer and Acceptance Letter gives the Supplier leave to start supplying coal to Eskom. The price, price escalation, quality, power station, coal source and transportation points are fixed at this stage and will not be changed in the final Coal Supply contract. During the time of our review, Eskom's legal department was in the process of finalising the standard Coal Supply contract; as a result some vendors had started supplying coal to Eskom based solely on the Offer and Acceptance Letters.

During negotiations, if it is found that the quality of coal has any technical deviations from the specification supplied by the relevant power station, an agreement may still be entered into as long as the Coal Supply Manager (CSM), technical representative, geologist, and Power Station Manager all sign-off on the coal to be supplied.

The negotiations process cannot proceed to any agreement or contract if the supplier cannot produce the required legal documentations and required certifications as laid out in P&SCM 32-188 and the RFP. These documents include, but are not limited to:

- Valid Original Tax Certificate;

- Mining Rights Authorisation;
- Environmental Management Protection Report;
- B-BBEE certification; and
- Compliance with the Employment Equity Act, where applicable.

As at 31 March 2010, Eskom had successfully concluded negotiations with Nine (9) vendors (Refer Appendix H).

3 Scope of Review

The purpose of the review was to provide Eskom with an independent opinion that the Medium Term Coal Procurement process at the time of our review has been:

- competitive,
- cost effective,
- fair and transparent,
- unbiased towards a predetermined outcome,
- compliant with relevant internal policies and other relevant legislation,
- that no conflicts of interest existed and
- that a fair basis for the evaluation of tenders existed

Our review covers the procurement process from September 2009 to March 2010.

In line with the engagement letter, our scope included:

- The performance of a review of the procurement process using Eskom's 14-point Terms of Reference as the primary document against which to evaluate the process.
- Evaluation of the procurement process currently outlined and applied for the project against best practice, Eskom's internal policies (32-188) and relevant legislation (such as PFMA).
- Evaluation of parties and structures involved in the procurement process by reviewing items such as the procurement process chain of command structures, project team members, competencies, third parties involved access to knowledge and best practices, confidentiality agreements and possible conflicts of interest.
- Perform a probity check, against the ceiling price shortlisted bidders and:
  - The project management team
  - The evaluation team
  - Evaluation team advisors
  - Tender board
  - EXCO-PS
  - Eskom directors
  - Eskom board
  - Vendor directors
- The identifying of any risks or issues related to the process, analysing justifications for deviation from best practice and providing recommendations for improvement, based on the outcome of the abovementioned points.

4 Objectives

The objective of the review was to assess whether the procurement process, in respect of the representations, was:

- Fair – vendors were treated in an unbiased manner
- Transparent – the procurement process is open and honest
- Lawful – the procurement process adheres to applicable policies and legislation
- Competitive – vendors were provided with equal opportunity to compete in the selection process
- Equitable – all vendors were treated equally and there is not undue bias towards any one party
- Cost effective – the most cost effective options were explored but within the correct scope

5 Approach

5.1 Execution of review

The procurement process review was initiated by conducting a review of the process documentation. This was augmented by meetings with key personnel who were involved in the Medium Term Coal Procurement Programme (MTCP) process as identified by Eskom management. All reviews are based on the documentation and information provided during our meetings with key personnel from the Primary Energy Division.

The RFP tender process commenced during September 2009 and the final tender evaluation report is expected to be completed during May 2010. Gobodo was engaged in March 2010, during this time Eskom was finalising the negotiations stage of the tender evaluation process. The results of the evaluation are expected to be presented to the Eskom EXCO-PS and the Board of Directors Tender Committee in May 2010.

Comment [E3]: This date will now be September. SC

Comment [E4]: Sept. SC

5.2 Key personnel interviewed

In carrying out our review, we consulted employees and agents of Eskom and performed desktop reviews of documentation provided to us. Oral interviews were conducted with the following employees to establish the factual basis for our review:

Focus Area	Name	Date
Procurement Process	Sagie Chetty	18 March 2009
Commercial	Vuyisile Ncube	24 March 2009
Commercial	Kwanele Mtembu	25 March 2009
Pre-Qualification Database	Andy van der Spuy	24 March 2009
Negotiation Team	Melody McCurrach	25 March 2009
MTCS Team Lead	Kieran Maharaj	TBC

Table 4: Key Staff Interviewed

5.3 Key documentation reviewed

Pursuant to the oral interviews and information uncovered in these interviews, the following key documentation was made available to us for review.

Documentation Reviewed	
Board Mandate submissions, presentations and minutes	Primary Energy Division Sourcing Strategy
Minutes of key meetings and documentary evidence of approval of key decisions	Team non-disclosure agreements
Clarification meeting documentation	RFI summary documentation
RFP Evaluation guidelines	RFP and supporting documents
RFP Responses from bidders	RFP Evaluation worksheets
Negotiations documentation *	Coal supply contracts

Table 5: List of documents reviewed

* Negotiations were still being conducted with the vendors during our review, hence there were no negotiation files.

5.4 Assumptions

- The data, documentation and information provided, supplemented by oral interviews with the afore-mentioned Eskom employees formed the basis of our factual understanding of this matter and our findings are therefore based entirely on this information.
- All documents and minutes provided to us were deemed as final versions.
- Gobodo Incorporated was not required to evaluate or comment on the technical content of the bids and Eskom's requirements thereto.

5.5 Impact and Level of Risk

In order to assist management with the allocation of resources to address the weaknesses and improve control, we have assigned subjective ratings to each of our findings. These ratings are for guidance purposes only and management must evaluate them in light of their own experience and risk appetite.

	Significant	Significant weaknesses and/or instances of non-compliance with internal procurement process, 14 point terms of reference and legislation.
	Minor	Isolated areas of weaknesses and/or instances of non-compliance with internal procurement process, 14 point terms of reference and legislation.
	Acceptable	No weaknesses or instances of non-compliance with internal procurement process, 14 point terms of reference and legislation.

Table 6: Level of Impact classification

6

GOBODO
Chartered Accountants(SA)

6 Findings and Observations

This section details the findings and observations from our review, guided by the 14-point Terms of Reference. Each point covers the following:

- Impact – the level of impact the finding has on the process. See table 3 for classification of impact.
- Finding – the outcome of the review
- Description – description of the finding and potential risk
- Recommendation – recommendation to remedy the situation or mitigate risk

Comment [E5]: Can you please insert some headings in this table. SC

	Lack of clearly demarcated gatekeeper criteria in the evaluation process	The evaluation process did not have clearly demarcated and enforced gatekeeper criteria. A number of required documents and submissions as marked on the RFP were either not submitted or invalid for the majority of respondents. This resulted in portions of the desktop evaluation being completed in the site visits and negotiation stages of evaluation.	We would recommend that gatekeeper criteria are clearly demarcated before evaluation; and all evaluation teams are to enforce these criteria in their evaluation. Furthermore, we would recommend that in future, evaluation is purposely broken down into two distinct exercises (desktop evaluation and site visits) to eliminate the parallel execution of these steps.	Gatekeepers are used to streamline the process by reducing the number of suppliers that move to the evaluation stage of the process. We expected the responses to come from "Junior Miners" who in most instances are at various stages of the long application process at the Department of Mineral Resources (DME).Making such documentation gatekeepers would have significantly reduced our supplier base to an extent that it could have compromised the bids' competitiveness.
	Communication during the RFP process (prior to the tender closing date).	Communication during the RFP process deviated slightly from the stipulations of P&SCM 32-188. The policy states that where information which may affect the tendering or supply process is given to any one supplier, the same information should be given to all other interested suppliers, giving them all enough time to include their response to such new information in their tenders. While communication was managed centrally during this process, responses to questions were sent only to those who posed such questions; potentially prejudicing other interested parties.	We would recommend that the buyer maintains an accurate register of all respondents and uses this to disseminate information as widely as possible.	Noted. Questions that were asked before and during the clarification session were shared with all respondents together with the answers. After the clarification meeting only questions and answers that were deemed material to the tender were shared with the respondents.
	Communication of evaluation results to unsuccessful vendors.	Evaluation results from the desktop exercise were finalised in November 2009, prior to commencing with the site visits and negotiations; yet no formal communication had been released to unsuccessful respondents by the end of April 2010.	We recommend that official and duly signed letters be sent to all unsuccessful respondents communicating the outcome of the evaluation process.	Under normal circumstances the unsuccessful tenderers are notified after the award of contracts because they have a right to know the tenderers who were awarded the contracts.

Comment [E6]: DMR?

	No evaluation report	The MTCS team had not compiled an evaluation report as required by P&SCM 32-188 as at the end of April 2010.	We recommend that an evaluation report and recommendation is compiled in the prescribed format and submitted to the approval authority immediately.	The evaluation report will form part of the feedback report to the Board Tender Committee.
	Lack of standard contract	The PED division had not finalised its update of the standard coal supply contract as at the end of April 2010. This necessitated that some suppliers start supplying coal to Eskom power stations without a valid and legally binding contract.	We recommend that a standard contract is finalised and signed-off immediately. Contracts should then be signed with all suppliers who have commenced supplying without a valid contract.	The standard contract was finalised in April 2010 and is in use.
	Shareholding issues with respondents	A disproportionately high number of respondents 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.	We recommend that the commercial evaluation process make an allowance for checking and detecting unordinary shareholding structures. We would further recommend that Eskom undertake a detailed investigation into shareholding commonalities as uncovered in our non-financial due diligence process.	The MTCS team consulted Webber Wentzel Attorneys for an opinion on cross-directorships and their effect on the competitiveness of the bids. Their advice/report is available on request.

7 Additional Recommendations

A number of recommendations are presented below, which if implemented, would improve the procurement process:

- Evaluation teams had to separate tender responses into technical and commercial submissions to enable simultaneous evaluation. We recommend that in future procurement processes, a two (2) envelope system is implemented where vendors submit separate envelopes clearly marked as "technical" and "commercial". This would preserve the tender submissions as received, facilitate simultaneous evaluation and lead to improved document control throughout the process.
- Formal written communication to non-responsive bidders following the evaluation exercise had still not taken place at the end of April 2010, six (6) months after the submission deadline. We recommend that in future procurement processes, communication to non-responsive bidders is undertaken within a reasonable timeframe after tender evaluation.
- In our review of the procurement process, we did not come across evidence of clearly identified and subsequently enforced gatekeeper criteria. Consequently, a number of required tender returnable documents were still being collected during the negotiations stage. We recommend that in future procurement processes, gatekeeper criteria that are measurable are clearly spelled out and all evaluation teams apply these in their evaluations.
- An evaluation report had not yet been drafted by the end of April 2010. We recommend that in future procurement processes, an evaluation report be prepared specifically following the desktop evaluation exercise. This report would document the evaluation process, status and steps to completion; while also marking the conclusion of the first stage of evaluation.
- Given the amount of time that has lapsed since the closing date for tender submissions, some respondents have not had any formal communication from Eskom since submitting their tenders. We recommend that in future for procurement processes that stretch over the stipulated 90 day bid validity period; a generalised progress letter be sent to all respondents to increase the transparency of the process. Such a letter should communicate the progress of the evaluation process and give an indication of the likely finalisation dates.
- We recommend that PED to put in place effective contract management processes and protocols to manage suppliers in the medium term with a view of preventing future coal shortages. High on the list of these protocols and processes is a standardised contract to be applied to all MTCS vendors and older contracts must be migrated to the new standard contract.

8 Risks

In our review, we have come across a number of risks, which we believe may impact the integrity of the procurement process if not mitigated. In order to assist management with the allocation of resources to address these risks, we have assigned subjective ratings to each risk. These ratings are for guidance purposes only and management must evaluate them thoroughly in order to determine the appropriate cause of action.

Description of Risk	Potential Impact
A number of MTCS suppliers have commenced supplying coal on 1 April 2010 without a current contract.	While the vendors are supplying based on a 3 page offer and acceptance letter, it is not an enforceable contract and does not contain standard legal clauses associated with Eskom contracts. These "contracts" may not adequately protect Eskom or the suppliers and have no dispute resolution stipulations or limitations.
The inclusion of coal supply database vendors in the MTCS process might compromise the perceived equity of the procurement process	Unsuccessful tenderers in the MTCS process might feel aggrieved that not all suppliers who were awarded contacts participated in the RFP process.
Two (2) of the vendors awarded contracts have been evaluated as either not financially sound or needing to obtain guarantees from their holding companies as a pre-condition to their contract awards.	Vendors who may run into financial distress may not be able to fulfil their contractual obligations to Eskom.

Table 7: Risks to the MTPPP programme

9 Probity Findings

The non-financial due diligence results reflected that no direct links existed between the Eskom directors, EXCO, Board and Board tender committee members and evaluation team members and the MTCS vendor entities. The identified indirect links established between the Eskom directors, EXCO, Board and Board tender committee members and evaluation team members and the MTCS vendor entities are depicted in the non-financial due diligence report, refer to 'ESKOM – MTCS Non Financial Due Diligence Report'.

10 Positive Elements of the Procurement Process

A positive element identified during the procurement process review was that detailed evaluation criteria and a scoring toolkit were developed as a guideline. Evaluation workshops were held with all evaluation teams, enabling the teams to collaborate and transfer knowledge and skills from senior team members to junior team members.

During the site visits and contract negotiation stage of the evaluation, negotiators were paired up to balance the negotiation teams and to create continuity in the negotiation process. All negotiations were minuted, with key agreement information summarised into an offer and acceptance letter which was duly signed by the acting managing director of the division.

11 Conclusion

Based on the review we conducted, we believe the tender process was:

- Fair – bidders were treated in an unbiased manner.
    - Conclusion: Bidders were largely treated in an unbiased manner.
- Transparent – the procurement process was open and honest.
    - Conclusion: With the exception of some communication processes, the tender process was mostly open allowing for a broad reach of respondents.
- Lawful – the procurement process adhered to applicable policies and legislation.
    - Conclusion: With the exception of the findings raised in this report, applicable policies and legislation were followed.
- Competitive – bidders were provided an equal opportunity to compete in the selection process.
    - Conclusion: All bidders were provided an equal opportunity to tender.
- Equitable – all vendors were treated equally and there was no undue bias towards any one party
    - Conclusion: All parties were treated fairly and no bias behaviour was identified.
- Cost effective – the most cost effective options were explored but within the correct scope.
    - Conclusion: The most cost effective options within the correct scope were evaluated with no bias behaviour identified.

In summary, based on the review conducted, we are satisfied that the MTCS RFP procurement process has been conducted in a procedurally fair, open and transparent manner. The most significant of our findings related to contract management, and is thus not entirely in the control of the MTCS team. All tenders were evaluated against the evaluation criteria published in the RFP. We did not detect any bias either for or against any particular bidder in the application of the evaluation criteria. Evaluation criteria were applied objectively based on the RFP.

Appendix A - Chronology of Events

The following table depicts the summary of our understanding of the chronology of events that have led up to our review.

	Event	Date
RFI Process	Approval of Board Mandate for MTCS	11 September 2008
	Request of Information (RFI) issued	August 2009
	RFI Closing Date	18 August 2009
	53 Responses received	19 August 2009
	Scoring of responses (70% technical, 30% commercial). Responses categorised to further engage respondents.	August 2009
	Coal source details added to the Eskom Coal Supplier Database	August 2009
	Development of Sourcing Strategy	26 August 2009
RFP Process	Request for Proposal (RFP) Compilation	August to September 2009
	Release of RFP	13 September 2009
	Evaluation Criteria established and signed-off	22 September 2009
	Clarification Session	28 September 2009
	Closing date for RFP's	14 October 2009 (10:00am)
	Evaluation of responses (Desktop exercise)	October to December 2009
	Approval of Sourcing Strategy	11 November 2009
	Site Visits and Contract Negotiations (ongoing)	November 2009 to April 2010

Comment [E7]: Development and approval

Comment [E8]: Sign-off of Approved Sourcing Strategy

11.1

Appendix B – Proposal Compilation Team

Name	Function
A Van Heerden	Coal Supply Manager
Sagie Chetty	Commercial
S Khumalo	Contracts Advisor
Esther Appleyard	Environmental Management
Shenaaz Naidoo	Finance
Ian Bird	Logistics
M Duma	Logistics
Kwanele Mthembu	Procurement Practitioner
Meisie Sindane	Safety Risk Management
Denis Hegarty	Strategic Sourcing
Vuyisile Ncube	Strategic Sourcing
Sunjay Andhee	Technical
Gert Prinsloo	Technical (Quality)

11.2

Appendix C - Proposal Vendor Registration

African Exploration Mining & Finance Corporation

Argonex (Pty) Ltd t/a Argonex Mining

Blue Sands Trading 581 CC

Exlone Distributors

Eyesizwe Coal Proprietory Ltd / Exxaro Coal

HCI Khusela Coal

Herbert Agencies (Pty) Ltd

Keaton Energy / Keaton Mining (Pty) Ltd

King Bhekuzulu projects / Ubunye Plant Hire

Metabica Coal / Namane JV

Muhanga Mines (Pty) Ltd

OSHO SA Coal Resources

Phenko Transport CC

Resource Generation Limited

Samvu worldwide coal JV

Sekoko Coal

Umcebo Mining

Yam-Yam Investments (Pty) Ltd

Yellow Beak Marketing

11.3

Appendix D - RFP Evaluation Team

Name	Focus Area
Andre Riekstins	Commercial
Kwanele Mtembu	Commercial
Sagie Chetty	Commercial
Thabani Mashego	Commercial
Vuyisile Ncube	Commercial
Esther Appleyard	Environmental Management
Mirenda Moremedi	Environmental Management
Shenaaz Naidoo	Financial
Simone Billson	Financial
Gert Prinsloo	Quality
Sunjay Andhee	Quality
Meisie Sindane	Safety
Mothusi Mochubele	Technical

11.4

Appendix E - RFP Submissions

Fifty-nine (59) vendors responded to the RFP process before the tender closing deadline:

Vendor	Source of Coal
African Exploration Mining & Finance Corporation	Vlakfontein
Argonex (Pty) Ltd t/a Argonex Mining	Homelands
Bellesida Civil Works CC	No source provided to Eskom by vendor
BEP African Consulting	Witbank, Belfast, Standerton
Black Gold Coal Estates (Pty) Ltd	Lusthof 60IT
Blue Nightingale Trading 871 (Pty) Ltd	Haasfontein 85IS (PORTION 6)
Blue Sands Trading 561 CC	Hwange Colliery
BMAK Communication & Transport Service	No source provided to Eskom by vendor
Collen's Plumbing & Projects CC	Sudor Coal
Continental Coal Ltd on behalf of Ntshovelo	Vlakvarkfontein
Diphago Capital (Pty) Ltd	No source provided to Eskom by vendor
Elansfontein Colliery (Pty) Ltd	Elansfontein Colliery (Pty) Ltd Anker Coal
Emlomo Mining (Pty) Ltd	Kalabasfontein (323is) resource complex
Exlone Distributors	Grootegeluk Mine
Expressway Cargo (Pty) Ltd	No source provided to Eskom by vendor
Eyesizwe Coal Proprietary Ltd / Exxaro Coal	Grootegeluk Mine, New Clydesdale Colliery, North Block complex, Belfast
Golfview Mining (Pty) Ltd	Golfview Mining
Guster Malinga / Valentina Trading Enterprise	No source provided to Eskom by vendor
HCI Khusela Coal	Palesa Mine
Herbert Agencies (Pty) Ltd	Vischkuil 274IR (PTN 18&20)
Horizon Minerals & Energy	No source provided to Eskom by vendor
Ingcambu Investment (Pty) Ltd / Thutsi Colliery	Uitgevallen 134IT (Adjacent to Golfview mine)
Kangra Coal	Maquasa West
Keaton Energy / Keaton Mining (Pty) Ltd	Vanggatfontein
King Bhekuzulu projects / Ubunye Plant Hire	No source provided to Eskom by vendor
Kuka Mining Logistics	No source provided to Eskom by vendor

Vendor	Source of Coal
Liketh Investments (Pty) Ltd	Rietkuil 249IR ptn 1&2
MAH Logistics	Vereeniging Coal Company
Mashala Resources (Pty) Ltd	De Witterkrans
Mesa Trading Enterprise	No source provided to Eskom by vendor
Metabica Coal / Namane JV	Geodgemeend 519 IR
Metago / Keaton Energy	No source provided to Eskom by vendor
MM African Technology	Morupule Colliery, Waterplus
Morupule Colliery Limited	Morupule Colliery
Motswasele Group (Pty) Ltd	Morupule Colliery
Muhanga Mines (Pty) Ltd	Langkloof
Murray Roberts	No source provided to Eskom by vendor
Optimum Colliery	Optimum Colliery
OSHO SA Coal Resources	Various Mines
Phenko Transport CC	No source provided to Eskom by vendor
Re ya kgona development & projects	Middleburg and Kendal mines (In Negotiations)
Resource Generation Limited	Waterberg (Koert Louw Zyn Pan) Ledjadja Coal (Witkopje, Draii Om, Kalkpan, Kruispaad, Zeekoevley, Kruishout and Vischpan)
SAF Coal (Pty) Ltd	(Botswana)
Samvu worldwide coal JV	Imbani Coal
Sekoko Coal	Waterberg Smitspan 306 LQ
Silver Unicorn Trading 33 (Pty) Ltd	Van Oudshoormstroom 216 IT (Portions 20,23,32,33,51), Secured coal from another coal mine
Siyanda Coal (Pty) Ltd t/a Koornfontein Mines	Koornfontein Mine
Sizisa Trading (Pty) Ltd	Elandslaagte Dump, Elands Colliery – Underground
South African Coal Mine Operations	Umlabu Colliery
Sudor Coal (Pty) Ltd	Weltevreden Colliery
Tanaka Projects	Breslau 2MS, Goedgenoegd 7MS and Orion 561 MS - Limpopo Coal Field
Temo Coal Mine (Pty) Ltd	Verloren Valey 246LQ, Duikerpan 249LQ and Kleinberg 252LQ
Tutuka Transport Holding (Pty) Ltd	No source provided to Eskom by vendor
Umbono Capital Partners	Grootehoek and Eendracht

Vendor	Source of Coal
Umcebo Mining	Wonderfontein, TNC, Springboklaagte, Leslie, Jicama, Hendrina, Belfast, Middelkraal, Klippan, Kleinfontein
Umnyama Africa Mining Group	Elandsfontein 309JS 9 (Zonneblom)
Universal Coal Development (Pty) Ltd	Wolvenfontein
Uthingo Mndeni Projects	Morupule Colliery
Yam-Yam Investments (Pty) Ltd	Endulwini Resources
Yellow Beak Marketing	Vandu, Uithoek, Burnside

11.5

Appendix F - Non-compliant bids

Vendor	Reason	
	Commercial (55%)	Technical (45%)
Bellesida Civil Works CC	0%	0%
BEP African Consulting	21%	8%
Blue Sands Trading 561 CC	6%	34%
BMAK Communication & Transport Service	0%	0%
Collen's Plumbing & Projects CC	7%	3%
Continental Coal Ltd on behalf of Ntshovelo	6%	32%
Diphago Capital (Pty) Ltd	0%	0%
Elansfontein Colliery (Pty) Ltd	21%	9%
Exlone Distributors	10%	32%
Expressway Cargo (Pty) Ltd	16%	29%
Golfview Mining (Pty) Ltd	21%	19%
Guster Malinga / Valentina Trading Enterprise	6%	0%
Horizon Minerals & Energy	6%	0%
King Bhekuzulu projects / Ubunye Plant Hire	6%	4%
Kuka Mining Logistics	0%	0%
MAH Logistics	6%	9%
Mashala Resources (Pty) Ltd	0%	22%
Metabica Coal / Namane JV	16%	28%
Metago / Keaton Energy	0%	0%
Murray Roberts	0%	0%
Phenko Transport CC	0%	0%
Re ya kgona development & projects	6%	0%
SAF Coal (Pty) Ltd	0%	30%
Siyanda Coal (Pty) Ltd t/a Koornfontein Mines	2%	24%
Tanaka Projects	6%	31%
Temo Coal Mine (Pty) Ltd	16%	0%
Umnyama Africa Mining Group	27%	17%

Vendor	Reason	
	Commercial (55%)	Technical (45%)
Uthingo Mndeni Projects	6%	5%

Appendix G - Evaluation Results

The following vendors' bids were evaluated to have scored a total of 50% or greater, and were recommended for proceeding to the site visits and negotiation stage of the evaluation process:

African Exploration Mining & Finance Corporation

Argonex (Pty) Ltd t/a Argonex Mining

Black Gold Coal Estates (Pty) Ltd

Blue Nightingale Trading 871 (Pty) Ltd

Emlomo Mining (Pty) Ltd

Eyesizwe Coal Proprietary Ltd / Exxaro Coal

HCI Khusela Coal

Herbert Agencies (Pty) Ltd

Ingcambu Investment (Pty) Ltd / Thutsi Colliery

Kangra Coal

Keaton Energy / Keaton Mining (Pty) Ltd

Liketh Investments (Pty) Ltd

Mesa Trading Enterprise

MM African Technology

Morupule Colliery Limited

Motswasele Group (Pty) Ltd

Muhanga Mines (Pty) Ltd

Optimum Colliery

OSHO SA Coal Resources

Resource Generation Limited

Samvu worldwide coal JV

Sekoko Coal

Silver Unicorn Trading 33 (Pty) Ltd

Sizisa Trading (Pty) Ltd

South African Coal Mine Operations

Sudor Coal (Pty) Ltd

Tutuka Transport Holding (Pty) Ltd

Umbono Capital Partners

Umcebo Mining

Universal Coal Development (Pty) Ltd

Yam-Yam Investments (Pty) Ltd

Yellow Beak Marketing

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11.6

Appendix H - Successfully concluded negotiations with vendors:

Vendor	Source	Tonnage	Average Price	Contract Start Date	Contract End D
Argonex (Pty) Ltd t/a Argonex Mining	Homelands	26.21 Mt	•	1 Jul 2010	31 Mar 2018
Exxaro Coal Pty (Ltd)	Leeuwpan	20.99 Mt		1 Jan 2010	31 Mar 2018
Exxaro Coal Pty (Ltd)	New Block Complex / Belfast	23.04 Mt		1 April 2010	31 Mar 2018
Exxaro Coal Pty (Ltd)	Grootgeluk	1 Mt		1 Jan 2010	31 Dec 2010
HCI Khusela Coal (Pty) Ltd	Palesa	15.84 Mt		1 April 2010	31 Mar 2018
Ingcambu Investments (PTY) LTD	Thutsi Colliery	4.80 Mt		1 April 2010	31 Mar 2018
Keaton Energy / Keaton Mining (Pty) Ltd	Vangaatfontein	17Mt		1 April 2011	31 Mar 2018
Liketh Investments (Pty) Ltd	KK Pit 5 West	28.8 Mt	•	1 April 2010	31 Mar 2018
Liketh Investments (Pty) Ltd	KK Roof	28.8 Mt	•	1 April 2010	31 Mar 2018
Sudor Coal (Pty) Ltd	Halfgewonen / Elandsfontein	5.07 Mt		1 April 2010	31 Mar 2012
Umcebo Mining (Pty) Ltd	Middelkraal Colliery	24 Mt		1 April 2010	31 Mar 2015
Yellow Beak Minerals CC	Khanyisa	3.76 Mt		1 April 2010	28 Feb 2014

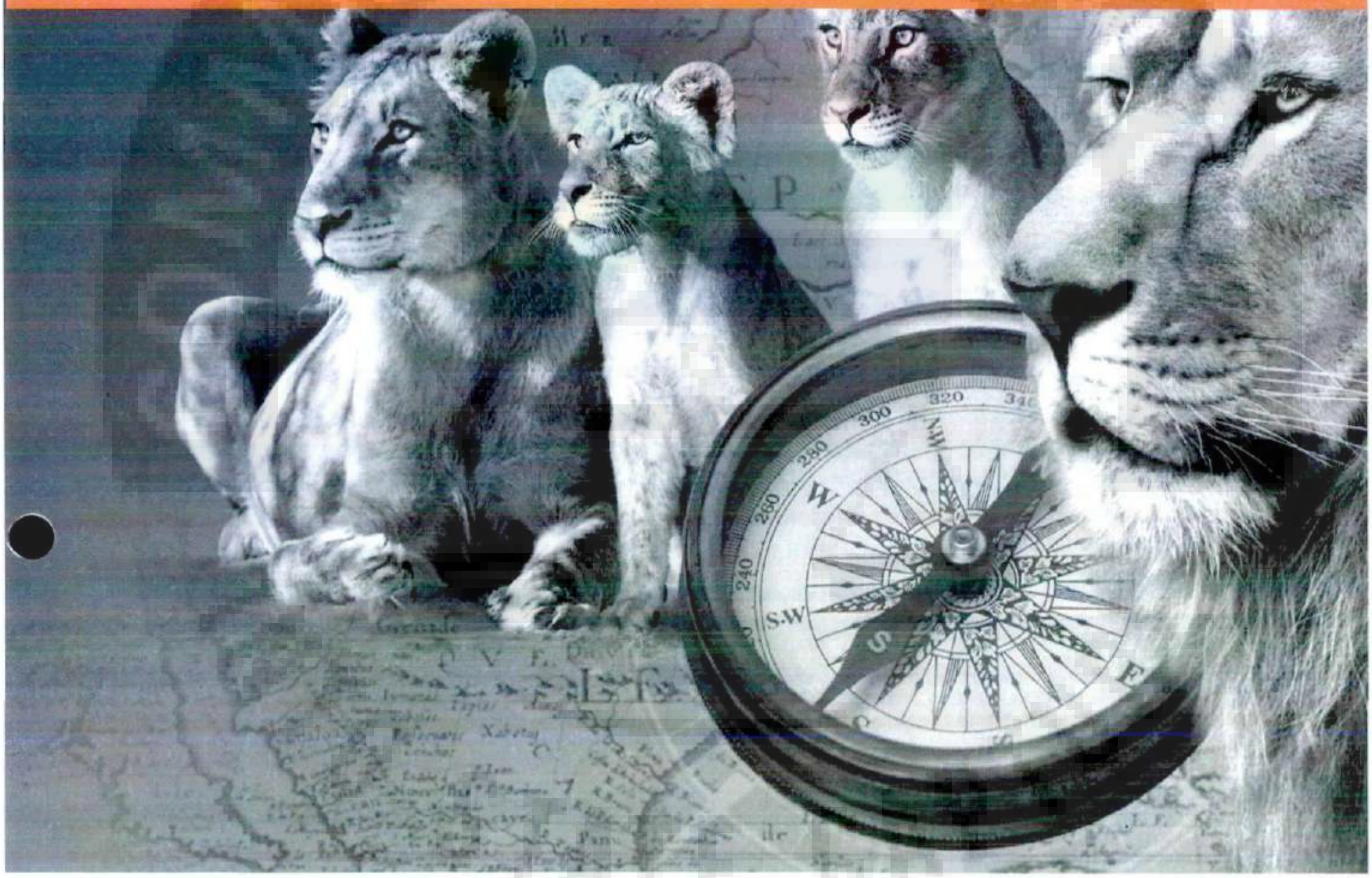
Comment [E9]: Because of the sensitivity of this info, I suggest you remove this column.

Annexure "G"

BRAK-295

SekelaXabiso

REPORT ON THE RESULTS OF THE AUDIT OF THE PROCESS FOLLOWED TO PROCURE COAL UNDER THE MEDIUM TERM MANDATE FROM SUPPLIERS AS PER THE LETTER REFERENCE 724540



Eskom

SkX

Senior General Manager: Primary Energy
Eskom SOC Holdings Limited
Megawatt Park
No 1 Maxwell Drive
Sunninghill

23 January 2016

Dear Mr Mboweni

REPORT ON THE RESULTS OF THE AUDIT OF THE PROCESS FOLLOWED TO PROCURE COAL UNDER THE MEDIUM TERM MANDATE FROM SUPPLIERS AS PER THE LETTER REFERENCE 724540

In accordance with the terms of our engagement letter, dated 29 October 2015, we have performed the audit of the process pursued in relation to the above mentioned transaction under consideration.

We value the opportunity to work with you and sincerely appreciate the cooperation and assistance provided to us during the course of the review.

We would be pleased to further discuss any aspect of the content of this report with you or other members of management at your convenience. If you have any questions, please contact Kevin Naidoo on (011) 802 4155 or knaidoo@sekelaxabiso.co.za.

Yours faithfully,

DD Naidoo
Director
SekelaXabiso (Pty) Ltd

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Restrictions and limitations

This report is strictly private and confidential, and is intended solely for the information and use of the Board, Eskom's Management and its Internal Audit Function. This report may not be disclosed to any third parties without our prior written consent. SkX therefore assumes no responsibility to any user of the report other than Eskom SOC Limited. Any other persons who choose to rely on our report do so entirely at their own risk. It remains the responsibility of Eskom's Management to ensure adherence to good corporate governance practices, to assess potential risks within their operations and to implement an appropriate system of internal control to address such risks. Furthermore, it is the responsibility of Eskom's management to ensure that there is an effective control system in place to prevent, detect and correct fraudulent activities within the organisation.

By relying or using this report, the third parties agree to indemnify and hold harmless SkX and its personnel from any claim by any other third party to the extent that such claim arises as a result of SkX permitting access to its report in connection with this review.

The report is based on documentation, information and explanations supplied to us, and from discussions with management and personnel of Eskom. We have relied upon the documentation, information and explanations made available to us in good faith to conclude on the information included therein albeit that we determine such to be reasonable in the circumstances in which such was received.

1. TRANSACTION UNDER REVIEW

The table below depicts the key Eskom milestones for the project:

No	Milestones	Date of completion
1.	Mandate to consider modification/new contracts	16 April 2014
2.	Evaluation completed	23 October 2015
3.	EXCOPS Meeting Date	18 November 2015

The Primary Energy Division (PED) has an existing mandate to procure coal for the "life of mine". PED has been negotiating with various suppliers, some current and some new, for the supply of coal for the various Eskom power stations.

There are currently 3 contracts that are being considered for extension/modification whilst 11 are new contracts. Hence PED requires a review of the procurement process that was followed for the modification of existing contracts, and new contracts.

2. BRIEF FROM ASSURANCE AND FORENSIC

We were requested to provide an independent opinion on whether the PED procurement processes that were followed in relation to this transaction were:

- Fair;
- Transparent;
- Unbiased towards a predetermined outcome;
- Competitive;
- Cost effective;
- Compliant with relevant internal policies and external legislation/regulations; and
- Free of conflicts of interest.

3. SCOPE OF THE REVIEW

The scope of this assurance review encompassed the following processes:

- Phase 1: Planning
  - Discussion with Eskom officials to clarify and understand the PED process that was followed in the appointment of coal suppliers (both old and new);
  - Request of relevant source documentation for the following key aspects, amongst others:
    - Eskom procurement documentation for the appointment of coal suppliers:
      - Legislative documents;
      - Tender returnables;
      - Coal quality requirements;
      - Valid water licenses and other relevant legislative requirements;
      - Regular coal quality evaluation reports for suppliers with expired contracts;
      - Quality verification reports for new suppliers; and

- Procedures for coal pricing.

- Phase 2: Execution – review of source documents in the supplier files against PED's procurement process.

Our audit is performed with due care and skill and in accordance with the International Standards for the Professional Practice of Internal Auditing that are issued by the Institute of Internal Auditors (IIA).

4. SCOPE EXCLUSIONS

The scope of our review excluded the following:

- Review of submission to Excops;
- Quality testing of coal;
- Performance of probity checks;
- Audit of evaluation results;
- Completeness and/or validity of source documents;
- Adequacy of PED's process;
- Conducting fraud or forensic investigations into any suspected irregularity; and
- Any management decisions.

5. SOURCES OF INFORMATION

- We highlight that our findings are based on information provided to us by Eskom management/employees during the course of the review;

- Eskom (PED) policies were referred to for the purposes of gauging the compliance levels of the commercial processes undertaken in relation to the transaction under review.

6. CONDITIONS EXPERIENCED DURING THE AUDIT

- At the commencement of the audit (28 October 2015), relevant supplier files, with corresponding source documents, were not readily available for the audit. All supplier files were subsequently submitted, by 6 November 2015, but most of them did not contain all relevant source documents;

- The deadline to submit outstanding source documents was subsequently extended to 12 November 2015. Documents which were submitted by the revised deadline were reviewed and the report was updated accordingly;

- The scope of work was also amended to reflect that the primary reference point is the PED procurement process and no longer Eskom's 32 – 1034 policy and procedure as initially planned.

- Subsequent to the second deadline that was set of 12 November 2015, PED went on to gather more information which was submitted for our review on 15 December 2015. This report was subsequently updated with the results of our review of the latest information.

7. MANAGEMENT COMMENTS

PED's Commercial management have noted the audit findings and have been actively engaged with Internal Audit to clearly define corresponding management actions, responsible persons as well as target dates to address the identified shortcomings. Management has committed to implement Internal Audit's recommendations, for example

- Consider alignment with and/or implementation of Eskom's procurement policy 32-1034;
- Improve/entrench document management;
- Review the concept of "intellectual property" as mentioned by suppliers who have not submitted ***mandatory*** documents and the potential impact on the manner in which Eskom contracts with them or not;
- Ensure that all relevant source documents are timeously received from suppliers to enable proper and complete evaluations;
- Include existing suppliers as part of the comprehensive evaluation process; and
- Revisit decision to modify/renew existing contracts and/or appointment of new suppliers, where necessary.

8. DETAILED AUDIT FINDINGS

8.1 NON SUBMISSION OF MANDATORY DOCUMENTS

PED's Potential Coal Supplier Evaluation and Registration Process (Short/ Medium Term) - stage 2 – pre-qualification and evaluations document states that:

- If not successful, a supplier is advised and may resubmit after satisfying the requirement.
- If evaluation is successful, proceed to negotiations and contracting stage.

Observation

Our discussion with PED management and our review of supplier files revealed that not all mandatory documents as prescribed by PED's pre-qualification checklist was submitted by suppliers, as indicated in the table of documents below:

Eskom	RESULTS OF THE AUDIT OF THE PROCESS FOLLOWED TO PROCURE COAL UNDER THE MEDIUM TERM MANDATE FROM SUPPLIERS AS PER THE LETTER REFERENCE 724540	Unique Identifier	240-59385559
		Revision	Rev. 0
		Revision Date	Nov-2015
		Group Technology & Commercial	

Supplier Documentation Checklist	Silver lakes	Koornfontein Mines	Ntshovelo Mining Resources	Welgemeend Mines	Exxaro	HCI - Imbali	Lurco Mining VDD	Lurco Coal	Iyanga Coal	Sudor	Wescoal	Umsimbiti	Universal Coal	Kusile Mining
Commercial and Financial Documents														
Valid original Tax Clearance Certificate issued by SARS	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Valid B-BBEE verification/rating certificate	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Certificate of Compliance with Employment Equity Act (If > 50 employees)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Shareholding and Directors	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Financial evaluation report	✓	①	✓	✓	✓	✓	✓	✓	✓	①	✓	✓	✓	✓
Supplier Development and Localisation														
Supplier Development and Localisation Initiatives	✓	①	✓	✓	✓	✓	✓	✓	✓	①	✓	✓	✓	✓
Environmental and Legal Documents														
Water Use License/Permits (IWULA)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
National Environmental Management Act 98 (NEMA) authorisations	✓	①	✓	✓	✓	✓	✓	✓	✓	①	✓	✓	✓	✓
Environmental due diligence report	✓	①	✓	✓	✓	✓	✓	✓	✓	①	✓	✓	✓	✓
Technical Documents														
Resource Statement as well as Competent Persons report	✓	①	✓	✓	✓	✓	✓	②	✓	①	✓	✓	✓	✓
Borehole Information	✓	①	✓	✓	X	✓	✓	②	✓	①	✓	✓	✓	✓
Qualities information	✓	①	✓	✓	✓	✓	✓	✓	✓	①	✓	✓	✓	✓
Geological Model	✓	①	✓	✓	X	✓	✓	✓	✓	①	✓	✓	✓	✓
Proposed Coal Specifications	✓	①	✓	✓	✓	✓	✓	✓	✓	①	✓	✓	✓	✓

Eskom	RESULTS OF THE AUDIT OF THE PROCESS FOLLOWED TO PROCURE COAL UNDER THE MEDIUM TERM MANDATE FROM SUPPLIERS AS PER THE LETTER REFERENCE 724540	Unique Identifier	240-59385559
		Revision	Rev. 0
		Revision Date	Nov-2015
		Group Technology & Commercial	

Supplier Documentation Checklist	Silver lakes	Koornfontein Mines	Ntshovelo Mining Resources	Welgemeend Mines	Exxaro	HCI - Imbali	Lurco Mining VDD	Lurco Coal	Iyanga Coal	Sudor	Wescoal	Umsimbiti	Universal Coal	Kusile Mining
Coal testing/Combustion report	✓	①	✓	✓	✓	✓	✓	✓	✓	①	✓	✓	✓	✓
Technical evaluation report	✓	①	✓	✓	✓	✓	✓	②	✓	①	✓	✓	✓	✓
Health and Safety Requirements														
Safety Health and Environment Policy	✓	①	✓	✓	✓	✓	✓	②	✓	①	✓	✓	✓	✓
A copy of the legal appointments and related qualifications where applicable Record of Legal Appointments	✓	①	✓	✓	✓	✓	✓	③	✓	①	✓	✓	③	✓
Baseline Safety Health and Environment (SHE) Risk Assessment	✓	①	✓	✓	X	✓	✓	③	✓	①	✓	✓	③	✓
Safety Health and Environment (SHE) Scoresheet	✓	①	✓	✓	✓	✓	✓	✓	✓	①	✓	✓	✓	✓

Notes:

① Koornfontein is a modification for quantity and price, whilst Sudor is a modification for term only. No technical, financial and SHE evaluations were performed for Koornfontein as reliance was placed on existing contract obligations. For Sudor, Safety, Health and Environment (SHE) and technical evaluations were not done as reliance was placed on existing contract obligations.

② Lurco Coal has submitted email correspondence to Eskom to indicate that they are no longer pursuing this opportunity under "Lurco Coal".

③ N1 - new mine and hence source documents not available until contract award.

X – mandatory documents not submitted (IP).

Impact

- Consideration of bids that do not pass the mandatory evaluation criteria will compromise the entire procurement process which may result in irregular contract award;
- Potential for fraud;
- Irregular expenditure;
- Financial losses due to litigation; and
- Lack of audit trail to substantiate contract award.

Root Cause

- Inadequate document management processes.
- Lack of alignment by PED with Eskom procurement policy.
- PED's criteria is not adequately crafted and finalised as there is no distinction between mandatory and optional documentation for evaluation and contracting.

Recommendation

Management should:

- Clarify what documents are mandatory for evaluating and contract award;
- Update the procurement process accordingly;
- Increase document management controls;
- Investigate the reason(s) why the supplier files are incomplete;
- Institute corresponding rectification action to ensure that all files are complete;
- Consider the impact on the procurement process; and
- Review the recommendation as to whether the supplier's contract should be modified or renewed.

Management comments

The supplier checklist will be reviewed to address the difference between documents that are mandatory for evaluation versus mandatory for contract award. This will be done in line with the above recommendations.

Responsible Person

Mudzielwana Marageni / Ayanda Nteta

Date: 31 March 2016

8.2 LACK OF A FORMALLY APPROVED WRITTEN OPERATING PROCEDURES FOR COAL PRICE EVALUATION AND NEGOTIATIONS

Criteria / Standard

In order to ensure an effective and efficient internal control system, standard operating procedures should be developed, implemented and communicated to all people involved in price evaluation and negotiations.

Observation

There is currently no formally approved written operating procedure for coal price evaluation and negotiations at PED.

Our review of the supplier prices revealed that the informal processes used to review the prices were inconsistently applied by various negotiators within the PED division, as indicated below:

- The use of different cost models (Eskom vs supplier's model);
- Independent calculations were not consistently done for all suppliers; and
- Inconsistent documentation of price determination and negotiations.

Impact

Possible errors and inconsistencies on coal price evaluation and negotiations amongst the contracts.

Root Cause

PED utilises its own processes and not Eskom's existing procurement policy and procedure 32-1034 as well as the PCM.

Recommendation

Management should implement Eskom's existing procurement policy and procedure 32-1034. In addition PED may also consider compiling relevant flow charts of the processes in line with its functions, where applicable.

Management comments

The recommendations indicated above are currently in process and will be implemented.

Responsible Person

Ayanda Nteta

Date: 31 March 2016

8.3 FINAL EXCEL SPREADSHEETS (MODELS) USED FOR COST ACCUMULATION AND PRICE DETERMINATION ARE NOT PASSWORD PROTECTED

Criteria / Standard

In order to ensure that the excel spreadsheets are protected against unauthorised and accidental changes, passwords and cell protection should be used to lock the spreadsheets.

Observation

We noted that none of the excel spreadsheets/models used for the final price determination and negotiations are password protected, nor do they contain cell protection.

Impact

- Unauthorised changes made to the pricing model.
- Incorrect decisions on pricing.
- Loss of critical information or incorrect information kept.

Root Cause

Lack of formalised processes within PED.

Recommendation

Management should review the pricing model to:

- implement cell protection on all formulas and information that should not be changed – (only input cells should be unprotected);
- implement password protection;
- determine if unauthorised changes have been made to current prices and the potential impact on the procurement process; and
- determine whether the recommendation to modify or renew the supplier's contract is impacted or not.

Management comments

The recommendations as indicated above will be implemented.

Responsible Person

Mudzielwana Marageni / Ayanda Nteta

Date: February 2016

8.4 INADEQUATE DOCUMENT MANAGEMENT PROCESSES

Criteria / Standard

Section 55 of the PFMA requires that: "The accounting officer for the public entities –

(a) must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards".

Observation

During the course of the audit we noted the following:

- At the commencement of the audit, supplier files were incomplete as most supporting documents were not on file and hence could not be timeously submitted for auditing purposes. Despite the deadline to submit source documents to Internal Audit being extended from the 5th November 2015 to 12th November 2015, not all source documents could be presented for auditing purposes until 15 December 2015.
- There is no centralised filing system at PED to securely safeguard documentation. Some documents were kept on Eskom employees' laptops/computers whilst others were kept in the supplier files; and
- Internal Audit was unable to open some source documents as they required specific software (Eskom was able to provide hard copies later in the process).

Impact

- Consideration of bids that do not pass the mandatory evaluation criteria will compromise the entire procurement process which may result in incorrect contract awards.
- Potential for fraud.
- Lack of audit trail to substantiate contract award.

Root Cause

- Lack of centralised filing system.
- PED utilises its own informal processes and not Eskom's procurement policy.

Recommendation

Management should implement a centralised document management system.

Management comments

The document management process is currently being improved and implemented.

Responsible Person

Ayanda Nteta

Date: 31 March 2016

8.5 EVALUATIONS NOT DONE FOR SUPPLIER CONTRACTS UNDER MODIFICATION

Criteria / Standard

From a best practise perspective, all contracts, including existing contracts that are considered for modification (term, price and quantity), should be subject to a comprehensive and consistent evaluation process.

Observation

During the course of the audit we noted that partial evaluations were performed for the following mines whose contracts were under consideration for modification:

- Koornfontein;
- Exxaro; and
- Sudor.

Impact

- Suppliers may not comply with Eskom's current evaluation criteria which may disqualify them from supplying product to Eskom.
- Possible bias towards certain suppliers.
- Emerging risks for the existing suppliers can go unnoticed and unattended to.

Root Cause

There is no explicit expectation at PED to subject existing suppliers to a comprehensive and consistent evaluation process. This is also a consequence of not applying Eskom's 32 – 1034 policy and procedure.

Recommendation

Management should consider subjecting all suppliers to a consistent and comprehensive evaluation process to assess their suitability to supply products and services to Eskom at current conditions.

Management comments

Going forward all modifications for the existing supply will be subject to the evaluation process as stipulated in the new shortfall coal strategy that is to be presented at Board Tender Committee in February 2016.

Responsible Person

Ayanda Nteta

Eskom	RESULTS OF THE AUDIT OF THE PROCESS FOLLOWED TO PROCURE COAL UNDER THE MEDIUM TERM MANDATE FROM SUPPLIERS AS PER THE LETTER REFERENCE 724540	Unique Identifier	240-59385559
		Revision	Rev. 0
		Revision Date	Nov-2015
		Group Technology & Commercial	

Date: 1 March 2016

9. WAY FORWARD

Management should consider:

- Implementing Eskom policy and procedure 32-1034;
- Updating flow charts for resulting processes for PED, where applicable;
- Whether to contract with suppliers who are unwilling to submit mandatory documents in compliance with Eskom's policies;
- Subjecting existing suppliers to a comprehensive and consistent evaluation process;
- Implementing a sound, centralised document management system;
- Complete probity verification on relevant Eskom and supplier officials; and
- Reviewing the decision to contract or not based on the above.

10. RESULTS OF OUR REVIEW

Based on the review conducted to date, our conclusions per coal supplier are as follows:

	Name of bidder	Description of contract	Availability of documents	Eskom Evaluation Results
1	Lurco Mining VDD	New supply and delivery agreement for the supply of coal to Komati Power Station	All required documents in place	Favourable evaluation results
2	Umsimbiti	New supply and delivery agreement for the supply of coal to Camden and Arnot Power Stations	All required documents in place	Financial viability to be tested on contract award
3	Wescoal (Pty) Ltd	New supply and delivery agreement for the supply of coal to various Eskom power stations	All required documents in place	Financial viability to be tested on contract award
4	Sudor (Pty) Ltd	Modification of supply and delivery agreement for the supply of coal to various Eskom power stations	Technical, Financial and SHE evaluations not done as Eskom places reliance on the existing contract being modified.	Partial evaluation done as this was a modification of an existing contract
5	Koornfontein Mines (Pty) Ltd	Modification of supply and off-take agreement for the supply of coal to Komati Power Station	Technical, Financial and SHE evaluations not done as Eskom places reliance on the existing contract being modified.	Partial evaluation done as this was a modification of an existing contract

	Name of bidder	Description of contract	Availability of documents	Eskom Evaluation Results
6	Silver Lakes Trading (Pty) Ltd	New supply and delivery agreement for the supply of coal to various Eskom power stations	All required documents in place	Financial viability to be tested on contract award
7	HCI Imbali Colliery (Pty) Ltd	New supply and delivery agreement for the supply of coal to Matla Power Station	All required documents in place	Financial viability to be tested on contract award
8	Universal Coal (Pty) Ltd	New supply and delivery agreement for coal from the New Clydesdale Complex to various Eskom power stations	All required documents in place	Financial viability to be tested on contract award
9	Welgemeend Colliery (Pty) Ltd	New supply and delivery agreement for the supply of coal to various Eskom power stations	All required documents in place	Financial viability to be tested on contract award
10	Ntshovelo Mining Resources (Pty) Ltd	New supply and delivery agreement for the supply of coal to Majuba Power Station	All required documents in place	Financial viability to be tested on contract award
11	Lurco Coal	New supply and delivery agreement for the supply of coal to Matla Power Station	Lurco Coal has submitted email correspondence to Eskom to indicate that they are no longer pursuing this opportunity under "Lurco Coal".	
12	Iyanga Coal	New supply and delivery agreement for the supply of coal to Matla and Tutuka Power Stations	All required documents in place	Financial viability to be tested on contract award
13	Kusile Mining	New supply and delivery agreement for the supply of coal to Kriel Power Station	All required documents in place	Financial viability to be tested on contract award
14	Exxaro	Modification of supply and delivery agreement for the supply of coal to Majuba Power Station	SHE evaluation is incomplete as supplier did not submit mandatory documents (IP related). Technical evaluation was done on supplier site as supplier did not submit mandatory documents (IP related).	Financial viability to be tested on contract award

....
Mr DD Naidoo
Director: SekelaXabiso

Date: 23 January 2016

....
Mr I Bhowani
Senior Manager: Assurance & Forensic

Date:

....
Mr Mboweni
Senior General Manager: Primary Energy

Date:

11. ANNEXURE A: ASPECTS RESOLVED BY MANAGEMENT

#	Aspect	Management Remedial Action
1.	PED engaged several bidders in negotiations despite the fact that they did not submit mandatory documents as prescribed by PED's pre-qualification checklist.	By 15 December 2015, PED had gathered the necessary documentation which was availed for audit purposes.
2.	Incomplete supplier evaluations	Evaluations were completed by 15 December 2015.
3.	Inconclusive evaluation reports	Evaluations were concluded on by 15 December 2015.
4.	i. No evidence of technical evaluations for Welgemeend Colliery (Pty) Ltd and Ntshovelo Mining (Pty) Ltd. ii. Discrepancies in SHE evaluation criteria for Welgemeend Colliery (Pty) Ltd and Ntshovelo Mining (Pty) Ltd, and Universal Coal.	i. Evaluation reports on file by 15 December for Welgemeend Colliery (Pty) Ltd and Ntshovelo Mining (Pty) Ltd. ii. Consistent SHE evaluation on file by 15 December for Welgemeend Colliery (Pty) Ltd and Ntshovelo Mining (Pty) Ltd, and Universal Coal.
5.	Lack of evaluation report	A signed copy of the evaluation report was submitted to Internal Audit.

12. ANNEXURE B: HIGH LEVEL GAPS BETWEEN ESKOM PROCEDURE 32-1034 AND PED PROCESS

Below are some high level observations of gaps identified between 32-1034 and the PED process. Kindly note that this is not intended to be an exhaustive list.

	PED Process Gap	Risk
1	Comprehensive procurement strategy	Lack of approved basis to procure services/products
2	Inadequate process to manage unsolicited bids	Lack of audit trail to substantiate contract award
3	Probities not conducted on cross-functional team/evaluation team prior to evaluation	Unfair and biased influence on the procurement process
4	No documented procedure on disqualified bids	Lack of audit trail to substantiate contract award
5	Cross-functional team not formally appointed	Unfair and biased evaluation outcomes due to unsuitable evaluation teams
6	Inconsistent completion of Non-Disclosure Agreements (NDA) and Declarations of Interest (DOI)	Unfair and biased influence on the procurement process

13. ANNEXURE C – EVALUATION RESULTS

The following table is a summary of the conclusions of Eskom's evaluation results:

Evaluation results	Koornfontein Mines	Ntshovelo Mining Resources	Universal Coal	Welgemeend Mines	Exxaro	HCI Imbali	Lurco Mining	Lurco Coal	Iyanga Coal	Sudor	Silverlakes	Kusile Mining	Wes Coal	Umsimbithi
Evaluation documents														
Independent Combustion Report (Coal testing)	n/a	✓	✓	✓	✓	✓	✓	✓	✓	n/a	✓	✓	✓	✓
PED Internal Technical services evaluation report	n/a	✓	✓	✓	✓	✓	✓	③	✓	n/a	✓	✓	✓	✓
Safety & Health Evaluation	n/a	✓	✓	✓	✓	✓	②	✓	✓	n/a	✓	✓	✓	✓
Financial viability evaluation	n/a	①	①	①	①	①	②	①	①	①	①	①	①	①

✓ - Evaluation results favourable

① - Adverse conclusion from financial evaluation. However, Fuel Sourcing GM communicated in his letter dated 28 July 2015, that due diligence would be conducted before contracting. Eskom would prefer to accommodate emerging miners.

② - Recommended with conditions

③ - Lurco Coal has submitted email correspondence to Eskom to indicate that they are no longer pursuing this opportunity under "Lurco Coal".

n/a - Not applicable as this was a modification of an existing contract which Eskom did not evaluate.

14. ANNEXURE D: RATING CLASSIFICATIONS

The following table provides a legend with respect to the severity and impact of identified risks. The deployment and use of mitigating steps will be informed by the rating given to the identified risk. Thus management is given an indication and guidance as to what we consider to be risks, in their relevant categories, and can then apply their minds in relation to their experience and business objectives.

Rating	Rating description
1	• Isolated/negligible instances of ineffectiveness in relation to internal controls tested (effectiveness testing). • Gaps in internal controls have a negligible impact on the control environment (adequacy testing). • Findings do not necessarily need to be formally remediated. Relative ease to remediate findings in terms of time, effort and cost.
2	• Multiple immaterial instances of ineffectiveness in relation to internal controls tested (effectiveness testing). • Gaps in internal controls have a minor/immaterial negative impact on the control environment (adequacy testing). • Findings may require slightly more time, effort and cost to remediate. Findings must be remediated within 12 months.
3	• Isolated or multiple material instances of ineffectiveness in relation to internal controls tested (effectiveness testing). • Gaps in internal controls have a material negative impact on the control environment (adequacy testing). • Findings are serious, and significant time, effort and cost may be required to remediate. Findings must be remediated within 3-6 months.
4	• Pervasive instances of ineffectiveness in relation to internal controls tested (effectiveness testing). • Gaps in internal controls have a material pervasive impact on the control environment (adequacy testing). • Findings are critical, and significant time, effort and cost may be required to remediate. Findings must be remediated within 0-3 months.

Annexure "H"

Eskom	Financial Evaluation Report of TEGETA EXPLORATION AND RESOURCES (PTY) LTD	Unique Identifier	322-20
		Revision	0
		Corporate Reporting	

Please note that this financial analysis was performed solely for the purpose of deciding whether TEGETA EXPLORATION AND RESOURCES (PTY) LTD is financially sound enough to be awarded a contract to the value of R4,3 billion for the Supply of Coal to Majuba Power Station over a period of 10 years, per reference number Medium Term Mandate.

1. Background to the company

TEGETA EXPLORATION AND RESOURCES (PTY) LTD

TEGETA EXPLORATION AND RESOURCES (PTY) LTD is involved in mining and exploration activities.

2. Comments on financial statements

TEGETA EXPLORATION AND RESOURCES (PTY) LTD

Approved financial statements for the 12 months ended 28 February 2014 and 2013 comparative figures were obtained and analysed.

A signed Independent Auditor's Report issued by KPMG Inc., Chartered Accountants (S.A), Registered Auditors, accompanied the financial statements.

3. Analysis (refer to Appendix)

TEGETA EXPLORATION AND RESOURCES (PTY) LTD

Current Ratio: The ratio of current assets to current liabilities indicates that the company might be in a position to meet its short-term obligations if creditors request payment on demand.

Debt / Equity: The debt to equity ratio indicates that the company might have difficulty raising long-term finance, if required. The negative ratio of 2.21 results from the negative equity the company recorded for the period under review.

Profit Ratios: The profitability ratios were unfavourable during the period under review.

Return Ratios: The asset return ratio was unfavourable and the return on equity ratio was favourable during the period under review which resulted from the accumulated loss of R20.8 million that the company recorded.

Interest Cover: The negative interest cover ratio of 0.33 indicates that the company is not generating enough revenue to cover its interest commitments.

4. Other Considerations

TEGETA EXPLORATION AND RESOURCES (PTY) LTD

The contract value is R4.3 billion over a period of 10 years which is equivalent to R432.6 million. The company's 2014 turnover of R5.9 million indicates that, given the information at our disposal, the company might have difficulty to deliver on this contract.

At the time of this financial analysis, the company did not have any outstanding contracts with Eskom.

The company had negative cash generated from operations of R4.3 million and cash on hand at the end of the year of R7.4 million. These cash reserves might not be sufficient to enable TEGETA EXPLORATION AND RESOURCES (PTY) LTD to finance incremental working capital requirements to deliver on this contract.

5. Area of concern

The following are areas of concern:

- **Accumulated Loss and Loss for the year**
  The company recorded an accumulated loss of R20.8 million and loss for the year of R17.7 million.

- **Negative Debt to Equity Ratio**
  The company recorded negative debt to equity ratio for the period under review. This indicates that this company might find it difficult to raise additional finance, if required.

- **Profit ratios**
  The profitability ratios were unfavourable at the end of the year. This poses a risk that the company might not be operating efficiently, and that the fixed costs might be too high for its operations.

- **Return on Assets ratio**
  The return on assets ratio was unfavourable at the end of the year. This poses a risk that the company might not be effectively utilising its assets to generate profit.

- **Negative Interest Cover ratio**
  The recorded negative interest cover ratio indicates that the company is not generating enough revenue to cover interest commitments.

- **Negative Cash generated from operations**
  The company recorded negative cash generated from operations of R4.3 million. This means that this company cannot cover operations solely from running its business. The negative cash flows indicate a collections problem or poor debt structure.

- **Contract size vs. Cash flow**
  Based on the company's working capital, it may face cash flow challenges as a result of the magnitude of this contract. This contract award will require additional financial resources in terms of, amongst other things, it's direct employees and will also increase its operational gearing.

Recommendation

We are of the opinion, based on the above-mentioned concerns, that TEGETA EXPLORATION AND RESOURCES (PTY) LTD might face difficulty in financing the incremental working capital requirements that will result from this contract.

It is therefore recommended that the company provide the following:

- A funding model that indicates how it will finance the incremental working capital requirements associated with this contract, or

- Guarantees from its financiers or parent company to cover the incremental cash flows associated with this contract, and

- A written undertaking that, should this contract be awarded, the company will be able to honour this contract and all other existing contracts

Furthermore, in order to reduce Eskom's risk, payments should only be made as work is performed and approved in terms of the contract.

Eskom	Financial Evaluation Report of TEGETA EXPLORATION AND RESOURCES (PTY) LTD	Unique Identifier	322-20
		Revision	0
		Corporate Reporting	

6. Conclusion

In our opinion, based on the issues raised under Note 5 above TEGETA EXPLORATION AND RESOURCES (PTY) LTD is relatively NOT sound enough financially to be awarded a contract to the value of R4.3 billion for the Supply of Coal to Majuba Power Station over a period of 10 years, per reference number Medium Term Mandate.

However, subject to the satisfactory resolution of the issues raised under Note 5 above, the company might be considered should this contract be awarded.

NB! If a contract is to be awarded, the above-mentioned recommendation needs to be enforced.

Compiled by	Reviewed by	Approved by
Sibusisiwe Dube	Arthur Sebudi	Berniece Tzanakakis
011 800 4303	011 800 4411	011 800 2191
Finance Project Services	Finance Project Services	Finance Project Services
Date: 29/04/2015	Date: 30/4/2015.	Date: 30/4/2015.

Project number: 2864

Eskom	Financial Evaluation	Unique Identifier:	322-19
		Revision:	0
		Corporate Reporting	

TEGETA EXPLORATION AND RESOURCES (PTY) LTD

Estimated contract Value: R4.3 billion
Contract Period: 10 Years
Year-end : 28-Feb-14
Reference number: MEDIUM TERM MANDATE

STATEMENT OF FINANCIAL POSITION	2014	2013
Assets	R	R
Non-current assets	18 026 806	127 926 028
Current assets	12 645 879	32 375 813
Cash and Cash equivalents	7 427 514	1 636 043
Other current assets	5 218 365	30 739 770
Total assets	30 672 685	160 301 841
Equity and liabilities		
Equity	(20 327 306)	(2 652 044)
Non-current liabilities	44 858 397	160 463 913
Current liabilities	6 141 594	2 489 972
Total equity & liabilities	30 672 685	160 301 841
STATEMENT OF CASHFLOWS		
Cash generated from operations	(4 299 000)	(4 998 213)
Cash flows at the end of the year	7 397 323	1 636 043
STATEMENT OF COMPREHENSIVE INCOME		
Turnover	5 949 000	420 000
Operating (loss)/ profit	(8 133 592)	(5 322 521)
Investment Revenue	9 672 511	10 311 566
Financial cost	(24 618 601)	(29 386 781)
Taxation	5 404 420	8 170 826
Profit for the year	(17 675 262)	(16 226 910)
Ratio Analysis		
Current ratio	2.06	13.00
Debt / Equity	-2.21	-60.51
EBIT / Turnover	-136.72%	-1267.27%
EAIT / Turnover	-297.11%	-3863.55%
Return on Assets	-26.52%	-3.32%
Return on Equity	86.95%	611.86%
Interest cover	-0.33	-0.18

Project number: 2864

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Eskom

Bernlece Tzanakakis
SENIOR MANAGER: FINANCE PROJECTS SERVICES

Date:
11 September 2015

Enquiries:
Phiwa Makhoba
+27 (0) 11 800 2216
Our Ref: 724526

Dear Berniece

FINANCIAL EVALUATION OF POTENTIAL COAL SUPPLIERS

The objective of this letter as requested by your department is to outline the key components of the Eskom's Coal Supply Strategy, specifically the component of the Black Emerging Miners (BEMs) strategy development.

The Eskom Primary Energy Division developed a Long Term Coal Supply Strategy in 2008 and it was approved by Board Tender Committee (BTC). In response to the changing Primary Energy environment and to align with Government and Eskom's transformation imperatives, this Coal Supply Strategy was updated and enhanced to address among other things the following:

- Making the Supplier Development and Localisation (SD&L) a cornerstone for developing BEM by setting a target of 64% of Eskom coal to be sourced from BEM by 2017.
- To enter into discussion with Cost-plus mines to increase black ownership.
- Eskom to investigate the feasibility of creating an Eskom led Resource Development fund to meet the project development needs of BEM to the bankable stage.

The strategy was approved in 2012 as follows:

- BTC - subject to updates as per the committee request: 06 Sept 2012
- BTC – resubmission with the changes addressing the BEM: 06 Oct 2012
- Board of Directors (Board Break-away): 26 Oct 2012

The extract of the minutes from BTC is attached to this letter for your ease of reference.

It has been our experience that BEMs may not be financially sound at the start of the process, however, on the strength of the contract to be awarded, with due consideration to other risk mitigating factors, these BEMs have the ability to become financially sustainable. This process of assisting and developing BEMs is conducted within the ambit of legislative requirements and without compromising Eskom processes.

It is on the basis of these that Primary Energy therefore requests that the recommendations of the financial evaluation be reviewed to align with Eskom's transformational imperatives as approved by the BTC, to allow contracting with these BEMs.

Yours sincerely

Ms Ayanda Nteta
ACTING GENERAL MANAGER: FUEL SOURCING

Primary Energy Division
Megawatt Park Maxwell Drive Sunninghill Sandton
PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 3729 Fax +27 11 800 5555 www.eskom.co.za

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

Annexure "IA"

OPTIMUM COAL HOLDINGS

Delivered by Email

Displayed –

- Registered Office and Principal Place Business of the Company and anywhere where Employees are Employed
- Published on the Website Maintained by the Company and Accessible to Affected Persons

Delivery by Registered Post – Shareholders

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4 August 2015

Attention: **All Affected Persons**
Optimum Coal Holdings Proprietary Limited (In Business Rescue)

NOTICE OF THE COMMENCEMENT OF BUSINESS RESCUE OF OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED

1. You are hereby notified, in accordance with section 129(3)(a)of the Companies Act 71 of 2008 (**"Companies Act"**) that the board of directors of Optimum Coal Holdings Proprietary Limited (registration number 2006/007799/07) (**"Company"**) passed a resolution on 31 July 2015 to –

   a. voluntarily commence business rescue proceedings and to place the Company under supervision in terms of Section 129(1) of the Companies Act; and

   b. nominated Piers Marsden (**"Marsden"**) and Petrus (Peter) Francois van den Steen (**"Van den Steen"**) for appointment as the business rescue practitioners in terms of section 129(3)(b) of the Companies Act.

Optimum Coal Holdings (Pty) Ltd
(Registration No: 2006/007799/07)
A member of the Glencore group of companies
Registered Address: 1st Floor, Nedbank Building, 23 Melrose Boulevard, Melrose Arch, Melrose North, Johannesburg, 2196, South Africa
Mailing Address: Suite No. 19, Private Bag X1, Melrose Arch, Johannesburg, 2076, South Africa
Tel: +27 11 772 0600 Fax: +27 11 772 0697

Directors: CM Ephron, R Cohen, P Mahanyele, T Ncube

2. For the commencement of business rescue proceedings, Form CoR 123.1 (being a Notice of Beginning of Business Rescue) together with, among others documents as set out below, a sworn statement deposed to by a director of the Company, was filed with the Companies and Intellectual Property Commission ("CIPC") on 4 August 2015.

3. In accordance with the requirements of section 129(3)(a) of the Companies Act, copies of the following documents are enclosed with this notice –

   a. the notice to commence business rescue proceedings (Form CoR 123.1) as filed with the CIPC;

   b. the resolution passed by the board of directors of the Company;

   c. the sworn statement deposed to by a director of the Company;

   d. the letter from the Company to the CIPC motivating the appointment of the business rescue practitioners and recording the public interest score of the Company; and

   e. the letter of acceptance of appointment by the business rescue practitioners.

4. In terms of section 147(1) and 148(1) of the Companies Act the business rescue practitioners must convene the first meeting of creditors and the first meeting of employees' representatives within 10 business days of their appointment. A meeting of shareholders will be convened in due course. Further details about these meetings will be provided in due course.

5. You will be kept apprised of any and all developments in respect of this business rescue from the business rescue practitioners.

6. If you have any requests or queries, you are welcome to direct them to optimumcoal@matusonassociates.co.za

Yours faithfully,

Richard Cohen
Optimum Coal Holdings Proprietary Limited

Annexure “IB”

OPTIMUM COAL MINE

WITHOUT PREJUDICE

SUBJECT TO CONTRACT

CONFIDENTIAL

Eskom Holdings SOC Limited
Megawatt Park
Maxwell Drive
Sunninghill

Attention: Brian Molefe: Acting Chief Executive Officer
E-mail: MolefeB@eskom.co.za

Matshela Koko : Group Executive – Technology and Commercial
E-mail matshela.koko@eskom.co.za

Cliffe Dekker Hofmeyer
Attention: Rishaban Moodley
E-mail: rishaban.moodley@dlacdh.com

17 September 2015

Dear Sirs

OPTIMUM COAL MINE (PTY) LTD (IN BUSINESS RESCUE) : SETTLEMENT PROPOSAL

We refer to our recent discussions regarding a resolution of the current disputes between Optimum Coal Mine (Pty) Ltd (**"OCM"**) and Eskom SOC Limited (**"Eskom"**) relating to the coal supply agreement between OCM and Eskom (**"CSA"**). As we have advised previously, Eskom is a key stakeholder in the business rescue proceedings of OCM and no rescue of OCM is possible unless there is a resolution of the outstanding disputes between OCM and Eskom including the hardship and penalty disputes. We do, however, appreciate Eskom's position that it has a binding agreement with OCM with certain accrued rights and that it cannot simply forego all of these rights in order to rescue OCM.

Accordingly, we have, together with the management of OCM, sought to develop a proposal which meets Eskom's key requirements while at the same time ensures that OCM is able to emerge from business rescue as a sustainable long-term supplier to Eskom.

This proposal consists of three components:

- an extension of the CSA which is designed to secure a long-term source of supply for Eskom and allow for a price averaging which will provide some short-term relief for OCM until 2019;
- a reasonable settlement of the alleged penalties which Eskom believes it has accrued against OCM; and
- the implementation of a new black economic empowerment transaction to make OCM a majority black owned company.

1. **Extension of the CSA**

   We trust that Eskom and its advisers have now had sufficient time to consider the substantial financial information that was delivered to Eskom's attorneys on the 1st and 2nd of September 2015 and that it is clear to Eskom that OCM is suffering severe financial hardship as a result of the Eskom contract. We fully appreciate that even if Eskom accepts that OCM is suffering financial hardship, this is not necessarily a justification for Eskom to agree to any amendments to the CSA as Eskom believes that it has a binding contract that it is entitled to enforce.

   We do, however, believe that Eskom cannot ignore the fact that the contract has a hardship clause which provides in its opening clause that it was the parties' intention that the agreement shall operate between them with fairness and without undue hardship to any party. While we accept that some level of subsidy from OCM's export operations was contemplated in the CSA, it could never have been contemplated that OCM would suffer such an extreme level of hardship or that the agreement would result in OCM suffering billions of Rands of losses over the term of the agreement.

   Accordingly, Eskom would be acting in accordance with the principles set out in the CSA if it agrees to an accommodation in favour of OCM in order to ensure that OCM can emerge from business rescue and remain a long-term sustainable supplier to Eskom. Obviously, any such accommodation should insofar as possible also be in Eskom's standalone interests. Accordingly, after discussions with management and the shareholders of OCM, we wish to make the following indivisible proposal to Eskom which we believe meets these requirements:

   - the duration of the CSA will be extended until 2023 to match the remaining useful life of the Hendrina power station;
   - the tonnage to be delivered during such extension will be 27.5 million tons (i.e. 5.5 million tonnes per annum);
   - the price for the coal delivered during the extension will be R630 per ton at a CV of 23 Mj/kg (moisture free) (subject to agreed inflationary adjustments with effect from 1 October 2015). We believe that this price is consistent with what Eskom could expect to achieve in a standalone new negotiation with OCM for this quantity of coal at this quality in 2019;
   - the price for the coal for the period from 1 October 2015 to 31 December 2018 will remain unchanged, however, in order to provide some relief to OCM during the period until 2019, the price for the remainder of the CSA will be averaged out so that Eskom will pay a weighted average price of R443 per ton at a CV of 23 Mj/kg (moisture free) (subject to agreed inflationary adjustments with effect from 1 October 2015) for the

remainder of the CSA from 1 October 2015 to 31 December 2023. This average has been calculated on R156 per ton for the remaining 3.25 years (i.e. 17 875 000 tons) and then R630 for the next 5 years (i.e. 27 500 000 tons). The weighted average price of R443 per ton would still be less than OCM's average cash cost of production over the remainder of the extended CSA; and

- the specifications and price adjustment regime for the remaining coal to be delivered under the CSA will be amended to be consistent with the penalties and price adjustment regime agreed during the previous settlement discussions between OCM, the Eskom negotiating team and the Hendrina power station. These are set out in Annexure A for your ease of reference.

2. Penalties

Eskom has instituted claims against OCM for alleged non-compliance with the specifications set out in the CSA (and the addenda thereto), in amounts aggregating to approximately R2.2 billion. As you are aware, OCM disputes this amount and we believe that there is no reasonable basis to justify a penalty of this amount having regard to the history and background circumstances surrounding the imposition of penalties arising out of the CSA and that Eskom has no reasonable prospect of recovering this amount in an arbitration (this is separate from the issue as to whether OCM would, in fact, be able to settle such penalties if an award was made against it). In this regard, we note the following:

- the CSA includes a renegotiation clause in terms of which if at any time either party is of the view that the specifications in the CSA are no longer properly and/or realistically representative of the coal which OCM could reasonably expect to produce from its resource, it could request a renegotiation of the specification following which the parties would be required to enter into discussions and negotiations in good faith regarding the amended specification;
- in April 2013, OCM advised Eskom that the mine could no longer produce coal meeting the specifications and triggered the renegotiation clause;
- following the service of such notice, OCM and Eskom engaged in a process whereby OCM sought to demonstrate to Eskom that it was unable to meet the specification. This process endured until January 2014 during which time OCM provided significant information to Eskom regarding the difficulties it was having. Eskom has never disputed the technical reasoning put forward by OCM as to why it cannot meet the sizing specification. Eskom explicitly refrained from imposing any penalties regarding sizing during these negotiations in recognition of the fact that OCM had triggered the renegotiation clause;
- this renegotiation process was eventually subsumed into the broader settlement discussions which culminated in the signing of the Co-Operation Agreement in May 2014 which suspended all penalties. During the settlement discussions, there were extensive negotiations on the specifications with primary energy and the Hendrina power station and ultimately a specification was agreed in relation to sizing which matches that which OCM delivered during the period from 2012 to 2015. If this is a specification that the power station was capable of accepting, then clearly the delivery of coal meeting that sizing specification during most of 2012 to 2015 could not have caused any meaningful damage to the power station;
- if the Co-Operation Agreement had not been signed, and Eskom had not agreed to amend the specification, it is very likely that the dispute regarding the sizing specification would have, at that time, been referred to arbitration for dispute

resolution. If that had happened, Eskom would not have been able to impose the historical penalties for sizing;

- if the sizing penalty is excluded, then the sole basis for imposing a penalty would be in relation to ash and CV. As the Eskom negotiating team is aware, there is significant disagreement between Eskom and OCM regarding the imposition of the ash and CV penalties and the wording of the agreement does not support the penalties imposed by Eskom; and
- the factors set out above would present compelling defences in relation to any claim for penalties together with other defences such as the Conventional Penalties Act, waiver, estoppel etc.

In summary, we do not believe that any penalty is justifiable, but as part of an overall settlement, OCM would be willing, on a without prejudice basis, to pay a reasonable amount in full and final settlement of all penalties and/or damages alleged to be owing by OCM and/or its affiliated entities under or in connection with the CSA as at the date of signature of the amended CSA (including any alleged damages arising during the business rescue proceedings). We propose that once we have agreement on the balance of the proposal set out in this letter, we have a discussion regarding an appropriate settlement figure. As part of this discussion, we would also like to discuss the amounts withheld by Eskom for coal delivered during July and August 2015.

Obviously, OCM will not be in a position to settle any agreed settlement amount in cash, and therefore we would like to propose two options to Eskom as a method of settling such settlement amount.

- **Issue of equity**

  The first option is that Eskom be issued an equity stake in OCM in order to settle the agreed settlement amount. The exact percentage will need to be discussed and agreed after agreement on the settlement amount. We believe that this would be a reasonable solution for Eskom in that it provides significant upside if export prices rally and it recognises that requiring OCM to settle the penalties in cash will impair OCM's ability to become a sustainable supplier to Eskom.

  We understand that Eskom has expressed a reluctance to hold equity interests in mines, but Eskom would in due course be able to dispose of such stake or it could nominate a third party to acquire such shares, subject to OCM's agreement.

- **Reduction of price**

  The second option is that Eskom be afforded a reduction in price on the coal purchased for the remainder of the term of the CSA in order to settle such penalties. This reduced price would obviously provide more certainty to Eskom but would not allow Eskom to participate in any upside in OCM.

3. Black Economic Empowerment transaction

The indirect major shareholders of OCM, Pembani Group Pty Ltd (which merged with Shanduka Resources Pty Ltd) ("Pembani") and Glencore Plc, have agreed a new BEE transaction in order to increase the black ownership of OCM to above 50% in line with Eskom's stated policy of sourcing coal from majority black-owned suppliers.

We note that as Pembani will be increasing its existing stake in OCM, they have requested to be directly involved in the negotiations of the proposal. They therefore have requested to participate in all future meetings in relation to this proposal.

Conclusion

We believe that this proposal represents a compelling offer for Eskom which allows Eskom to:

- secure a long-term sustainable supply of high quality coal for the remainder of the useful life of the Hendrina power station from a majority black supplier;
- ensure that Eskom continues to obtain the benefit of its existing low price CSA by using such price to reduce the price payable for the coal for the post 2018 period; and
- be compensated at a fair level for the penalties which it believes it has accrued.

This proposal will obviously also ensure the long-term sustainability of the OCM business and prevent the negative consequences that would arise for all stakeholders from a liquidation of OCM.

As you will appreciate, we have significant time constraints during the business rescue proceedings and if we are to finalise this proposal before the deadline for the publication of the business rescue plan (i.e. 30 October 2015), we need to receive Eskom's feedback as soon as possible. Accordingly, we request that Eskom respond to this proposal by Friday, 25 September 2015. If Eskom is willing to accept this proposal, we and the management of OCM are prepared to dedicate all necessary resources to ensure that the proposal is implemented as soon as possible.

Please contact us if you have any queries.

We look forward to hearing from you.

Yours faithfully

Piers Marsden

Peter Van den Steen

Joint Business Rescue Practitioners for Optimum Coal Mine (Pty) Ltd (In Business Rescue)

Clinton Ephron

Chief Executive Officer

Optimum Coal Mine (Pty) Ltd (In Business Rescue)

Annexure A – Specifications and Price adjustments

Quality Parameter	Unit	Expected Quality Parameter	Quality Parameter Limit	Measurement basis	Measurement	Rejection and Penalties
Calorific Value	MJ/kg	23	<21.65	Moisture Free	Monthly Weighted Average	Adjustment through price (i.e. through the fact that the price is calculated based on the GJ delivered) and ultimate rejection for < 21.65 – no other adjustment
Ash	%	27.5	>31.5	Moisture Free	Monthly Weighted Average	Adjustment through price (i.e. through the fact that the price is calculated based on the GJ delivered) and ultimate rejection for > 31.5 – no other adjustment
Moisture	%	9%	>12%	As Received	Monthly weighted Average	There will be no adjustment or rejection but Eskom will have the right to request Optimum to stop supplies as per below
Abrasive Index (Eskom Mining House Method)	mgFe/4kg	700	> 700	Moisture Free	Monthly weighted average	Penalty for > 700 as per below No rejection
Sulphur	%	1.5 %	> 1.6%	Moisture Free	None	Rejection No penalty
Volatiles	%	22.4%	< 20.5%	Moisture Free	None	Rejection No penalty
AFT (Initial deformation)	ºC	1,300≥	None	N / A	None	None
Sizing				N / A	Monthly weighted	Penalty for >20% - 0.81mm only as per

Quality Parameter	Unit	Expected Quality Parameter	Quality Parameter Limit	Measurement basis	Measurement	Rejection and Penalties
< 6mm	%	≤ 55%	None		average	below
<2.38mm	%	≤ 35%	None			
<0.81mm	%	≤20%	>20%			No rejection
	%					

1 The Parties agree that in respect of AFT (initial deformation), the Expected Quality Parameter sets out the quality which OCM expects to deliver. However, if OCM does not meet the Expected Quality Parameter, there will be no rejection, penalty or adjustment and OCM shall not be liable for any claim and/or damage.

2 If a consignment of coal on a particular day is rejected due to the weighted daily average not meeting the CV, Ash, Sulphur or Volatiles Quality Parameter Limit, then -

2.1 Eskom shall not pay for such consignment of coal and such consignment of coal will not reduce the Total Contract Quantity; and

2.2 such consignment of coal shall not be included in the calculation of the monthly weighted average for Abrasive Index and Sizing (i.e. the relevant weighted average shall be calculated in respect of the coal delivered over the balance of the days in the relevant month).

3 In the event that monthly weighted average Abrasive Index level of coal delivered by OCM in a month is > 700 mgFe/4kg, OCM will be liable to pay a penalty to Eskom in respect of each ton of coal delivered during that month, calculated on the following basis:

> 700-800 R 4.92 per ton

> 800-850 R 6.15 per ton

> 850-900 R7.38 per ton

> 900 R11.07 per ton

4 In the event that the monthly weighted average size distribution of coal delivered by OCM in a month contains more than 20% of coal with a size of 0.81mm, OCM shall be liable to pay Eskom a penalty as follows:

$A = B \times (C - 20\%) * D$

where:

A = the sizing penalty to be calculated;

B = the total number of tons of coal delivered by OCM during the relevant month;

C = the weighted average percentage of coal delivered during the month with a sizing of less than 0.81mm;

D = 50% of the price per ton paid by Eskom for the coal delivered during the month.

5 OCM shall notify Eskom if the coal being delivered is above the Quality Parameter Limit for moisture and shall stop delivering such coal and request Eskom if they want OCM to continue delivering such coal which does not meet the Quality Parameter Limit in respect of moisture. Eskom shall then within one hour advise OCM whether it wishes to accept delivery of such coal. If Eskom elects to receive such coal, then, notwithstanding the moisture parameters of such coal being above the Quality Parameter Limit, the price of such coal shall be paid by Eskom and such coal shall be deemed delivered and reduce the total contract quantity.

Annexure "J"

CONFIDENTIAL

AGREEMENT BETWEEN ESKOM HOLDINGS SOC LIMITED AND OPTIMUM COAL MINE PROPRIETARY LIMITED AND OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED REGARDING A PROCESS TO ENGAGE ON THE ISSUES BETWEEN THE PARTIES AND FOR THE REVIEW AND FUTURE EXTENSION OF THE COAL SUPPLY AGREEMENT FOR THE HENDRINA POWER STATION

1 Eskom Holdings SOC Limited ("**Eskom**") and Optimum Coal Mine Proprietary Limited ("**Optimum Mine**") and Optimum Coal Holdings Limited ("**Optimum Holdings**") (jointly referred to as the "**Parties**") 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.

2 A number of impasses and/or issues ("Issues") have arisen between the Parties relating to the interpretation, implementation and execution of the CSA over an extended period. These Issues are:

2.1 the interpretation, implementation and execution of the penalty provisions of the CSA;

2.2 the interpretation, implementation and execution of the sampling process contemplated by the CSA;

2.3 the quality of the coal supplied to Eskom and the price adjustment Eskom is entitled to impose in respect thereof;

2.4 issues relating to the availability and utilisation of the supply infrastructure;

2.5 the escalation mechanism in the CSA;

2.6 the hardship arbitration initiated by Optimum Mine and Optimum Holdings against Eskom, in terms of which Optimum Mine and Optimum Holdings invoked the hardship provisions of the CSA; and

2.7 the supply from Optimum Mine to Eskom after 31 December 2018.

The Parties reserve the right to supplement and refine the Issues through the Settlement Process (as defined below).

3 The Parties each believe that they have various accrued rights and claims arising out of the Issues (including in respect of Optimum Mine, an accrued right of cancellation in respect of the CSA). The Parties, however, recognise that that they have a mutual interest in ensuring that their commercial relationship is sustained for the duration of the CSA and potentially extended beyond the duration of the CSA. Accordingly, without waiving or compromising such rights and claims in any way and without acknowledging any liability or wrongdoing relating to any of the Issues, the Parties would like to engage in a negotiated process ("Settlement Process") in order to attempt to reach a composite

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4 agreement which attempts to address each of the Issues and results in the extension of the supply relationship between Eskom and Optimum Mine.

5 The Parties agree that the Settlement Process shall be conducted on the following terms and conditions:

5.1 The discussions will be conducted on a without prejudice basis and each Party fully reserves all of its rights in respect of all accrued rights and claims as at the date of this agreement on the basis that if the Settlement Process terminates at any time, then each Party shall be fully entitled to exercise any of its accrued rights and bring any of its accrued claims.

5.2 The Parties will instruct their attorneys to suspend the hardship arbitration on the following basis by no later than 23 May 2014:

5.2.1 the suspension of the arbitration will be entirely without prejudice to the claim;

5.2.2 notwithstanding the suspension of the arbitration, the Parties will arrange with the arbitrator and the Party's counsel to reserve the dates required for a hearing in March 2015 on the basis that if the Parties agree the Terms of Reference on or prior to the Validation Date (as defined below) then such dates can be released;

5.2.3 if the Settlement Process is terminated on or before the Validation Date, then Optimum Mine may by notice in writing to Eskom immediately reinstate the hardship arbitration and the Parties will within two weeks meet to agree a revised timetable for the hardship arbitration with a March 2015 hearing date; and

5.2.4 If the Settlement Process is terminated at any other time, then Optimum may by notice in writing to Eskom immediately reinstate the hardship arbitration on the basis that the Parties will as soon as possible thereafter meet in order to agree a new timetable and hearing date for the hardship arbitration.

5.3 Eskom will, with retrospective effect to 1 May 2014 until the termination of the Settlement Process suspend the implementation of all penalties (including AI, CV, ash, sizing and short supply) in relation to the CSA, on the condition that Optimum Mine continues delivering coal in accordance with the specification to be agreed in the Terms of Reference.

5.4 The Parties will establish negotiation teams who will be responsible for representing the Parties in the Settlement Process. The Eskom team will comprise Kiren Maharaj, Johann Bester, Andrea Williams, Gert Opperman and Ayanda Ntshanga. The Optimum team will comprise Clinton Ephron, Shaun Teichner, Riaan du Plooy and Dimitri Yiotopoulos. The Parties may supplement their teams from time to time.

5.5 The Parties will, before 13 June 2014 ("Validation Date") meet for two days in order to agree Terms of Reference which shall contain, inter alia:

5.5.1 a detailed description of each of the Issues to be negotiated (Technical, Commercial and Contractual), it being agreed that the Terms of Reference will include as an issue for negotiation the refund to Optimum Mine of penalties deducted by Eskom in respect of the period from 1 September 2013 to 30 April 2014 as well as Eskom's

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historic claims in relation to qualities which includes amongst others sizing.

5.5.2 The parameters for the negotiation in respect of each of the Issues (including, in respect of price for the remainder of the term of the CSA and any supply thereafter, the pricing philosophy that will be utilised to agree such prices); and

5.5.3 The time period within which the negotiated process should be completed in respect of each of the Issues.

5.6 If the Parties are unable by the Validation Date to agree and execute the Terms of Reference, each of the Parties shall be entitled to advise the other that it no longer wishes to participate in the Settlement Process in which case the Settlement Process shall terminate.

5.7 If the Parties reach agreement on the Terms of Reference by the Validation date, then:

5.7.1 Eskom will commence its internal process in order to obtain the necessary mandate to reach agreement with Optimum Mine and Optimum Holdings pursuant to the Terms of Reference; and

5.7.2 The Parties shall negotiate in good faith to reach agreement on all issues in accordance with the Terms of Reference, with the intention of executing a binding term sheet ("Term Sheet") or, if possible, a coal supply agreement reflecting such agreement by 31 December 2014.

5.8 The Parties agree that it is their current intention to conclude a new coal supply agreement which will govern the supply from Optimum Mine to Eskom from 1 January 2015.

5.9 If by 31 December 2014, a Term Sheet or new coal supply agreement has not been executed then (unless the Parties agree otherwise in writing) each of the Parties shall be entitled to advise the other that it no longer wishes to participate in the Settlement Process in which case the Settlement Process shall terminate.

5.10 If a Term Sheet is executed by 31 December 2014 but the new coal supply agreement is not ready for signature, then the Parties shall execute the coal supply agreement as soon as possible thereafter (but by no later than 31 March 2015).

5.11 The Parties acknowledge and agree that:

5.12 Any revised terms or conditions negotiated and agreed to, included but not limited to a new coal supply agreement shall be subject to any requisite Board approval of the Parties.

5.13 The implication for Eskom in terms of the Public Finance Management Act No. 1 of 1999 ("**the PFMA**") must be considered, specifically should it be required that Eskom must reach a compromise relating to any potential claim it has against Optimum Mine and Optimum Holdings.

6. The following is a summary of the proposed process

NO	PROCESS	DEADLINE
1	Agreement between the attorneys regarding the suspension of the hardship arbitration	23 May 2014
2	Agree Terms of Reference	13 June 2014
3	Each Party to obtain relevant governance and regulatory approvals	31 Dec 2014
4	Agree Term Sheet or new coal supply agreement	31 Dec 2014
5	Agree new coal supply arrangement	31 Mar 2015
6	Frequency of meetings to be held bi-monthly or as agreed with respect to addressing specific Issues	

7 The existence, contents and terms of this agreement are confidential and, save as may be required by law, no Party shall disclose same to any third party, other than its affiliates and their respective directors, employees, officers and advisors.

8 This agreement constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof. No Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. No addition to, variation, novation or agreed cancellation of any provision of this agreement shall be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties.

9 No indulgence or extension of time which any Party may grant to any other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.

10 All provisions of this agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this agreement which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions of this agreement shall remain of full force and effect. The Parties declare that it is their intention that this agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

11 Each Party shall bear and pay the costs incurred by it in respect of the negotiation, drafting, preparation and execution of this agreement.

12 The signature by any Party of a counterpart of this agreement shall be as effective as if that Party had signed the same document as all of the other Parties.

SIGNED at SUNNINGHILL on 23 MAY 2014.

As witnesses:

For: **ESKOM HOLDINGS SOC LIMITED**

1 A. NTSHANGA

2 V. NCUBE

Signatory: KIREN MAHARAJ
Capacity: DIVISIONAL EXECUTIVE
Authority: PRIMARY ENERGY

SIGNED at MELROSE on 23 MAY 2014.

As witnesses:

For: **OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED**

1 S. BANKHILL

2

Signatory: CLINTON EPHRON
Capacity: DIRECTOR
Authority:

SIGNED at MELROSE on 23 MAY 2014.

As witnesses:

For: **OPTIMUM COAL MINE PROPRIETARY LIMITED**

1 S. van Hinlof

2

Signatory: CLINTON CARTER

Capacity: DIRECTOR

Authority:

Annexure "K"

Eskom

CONTROLLED DISCLOSURE

Mr Clinton Ephron
Optimum Coal Mine (Pty) Ltd
23 Melrose Boulevard 3rd Floor
MELROSE NORTH
2196

Dear Mr Ephron

ACKNOWLDGEMENT OF RECEIPT: HENDRINA COAL SUPPLY AGREEMENT (CSA)

We acknowledge receipt of your letter dated 22 May 2015 and the issues you raise in it. However, considering Eskom's current financial position, which is public knowledge, we unfortunately cannot afford to reset the contract price, to that proposed by Optimum Coal Mine.

It remains a priority for Eskom, to ensure the security of the coal supply to Hendrina Power Station not only for the remainder of the current coal supply agreement but also for the remaining life of Hendrina Power Station. Therefore it remains critical to all stakeholders that Optimum Coal Mine continues to deliver coal as per the current contract.

Eskom, to the extent that the Co-Operation Agreement still regulates the settlement process hereby notifies Optimum Coal Mine in terms of clause 5.6 of the Agreement, that it no longer wishes to participate in the settlement process. Eskom accordingly hereby terminates the settlement process and confirms that the provisions of the CSA and addenda are forthwith applicable in respect of, *inter alia*, coal qualities and quantity requirements of the Hendrina Power Station.

However, the negotiation teams should continue to negotiate a new CSA for after 2018, in respect of the remaining life of Hendrina Power Station.

Eskom's rights remain strictly reserved.

Yours sincerely

Brian Molefe
CHIEF EXECUTIVE (ACTING)
Date: 10.6.15.

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Tel +27 11 800 8111 Fax +27 11 800 5803 www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/015527/30

Annexure "L"

Annexure "M"

OPTIMUM COAL MINE

Eskom Limited
Primary Energy Division
Megawatt Park
Maxwell Drive
Sunninghill
Sandton

Attention:

Mr D Marokane
Ms K Maharaj
Mr W du Plessis
Ms S Daniels

3 July 2013

Dear Sirs

HENDRINA COAL SUPPLY AGREEMENT : HARDSHIP

1 INTRODUCTION

1.1 We refer to the Hendrina Coal Supply Agreement between Eskom Holdings SOC Limited, Optimum Coal Mine (Proprietary) Limited ("**Optimum**") and Optimum Coal Holdings (Proprietary) Limited, as amended from time to time ("**CSA**").

1.2 Capitalised terms not defined herein will, save as otherwise set out herein, have the meanings ascribed to them in the CSA.

1.3 As you are aware, clause 27.1 of the CSA provides that, in entering into the CSA, the Parties declared it to be their intention that the CSA should operate between them with fairness and without undue hardship to any party.

1.4 In recognition of that fundamental principle, the CSA provides that, where relevant circumstances have arisen, the affected party may serve a written notice ("**relevant circumstances notice**") on the other party recording therein that, in its determination, relevant circumstances have arisen, and recording therein the date on which the relevant circumstances commenced ("**relevant circumstances commencement date**").

1.5 As we indicated to you at our recent steering committee meeting, in our determination "relevant circumstances" have arisen, and, accordingly, we are hereby writing to you to advise you of such relevant circumstances.

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(Registration No: 2007/005308/07)
A wholly owned subsidiary of Optimum Coal Holdings Limited
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Tel: +27 11 772 0600 Fax: +27 11 772 0697
Directors: R Cohen, C M Ephron, P Mahanyele, T Ncube.

2 HARDSHIP AND RELEVANT CIRCUMSTANCES

2.1 As per clause 27.2 of the CSA, the provisions of clause 27 will apply where any new situation or circumstances arise ("**relevant circumstances**") which -

2.1.1 are outside the control of the affected party;

2.1.2 could not reasonably have been anticipated by the affected party at the time of entering into the CSA; and

2.1.3 result in a major material disadvantage to the affected party and a corresponding major material advantage to the other party or in severe hardship to the affected party without any advantage to the other party.

2.2 At present, Optimum is required to sell each ton of coal to Eskom for less than the amount that is required to produce such ton of coal. Based on its May 2013 invoice prices, the difference between the May year-to-date average production cost of a ton of coal and the selling price to Eskom of a ton of coal is approximately R166.40. In the period from January 2013 to May 2013, Optimum lost approximately R382 million pursuant to the sale of coal to Eskom in terms of the CSA, and it expects to lose approximately R881 million throughout 2013 pursuant to the sale of coal to Eskom in terms of the CSA. Based on current cost escalations, the expected losses to be incurred by Optimum over the balance of the term of the CSA are substantial. It is therefore clear that Optimum is suffering severe hardship, or at least a major material disadvantage, under the existing provisions of the CSA.

2.3 Moreover, the price that Eskom pays for coal under the CSA, being R6.70 per GJ, is substantially lower than the market price for such coal. In this regard, Optimum notes that one of its affiliates has received a price from Eskom of R18.60 per GJ for coal with similar specifications, with the result that Eskom receives an advantage over Optimum in the region of R11.90 per GJ. Eskom is therefore clearly benefitting from the hardship suffered by Optimum.

2.4 We have investigated the pricing of coal sold to Eskom in terms of the CSA in order to understand how this hardship has arisen.

2.5 The price at which coal is sold to Eskom in terms of the CSA is determined by multiplying a monthly base price by an escalation factor that takes into account 3 elements:

2.5.1 the growth in the PPI since November 1991, which accounts for 60% of the total escalation;

2.5.2 the growth in the CCI since November 1991, which accounts for 30% of the total escalation; and

2.5.3 a fixed element, which accounts for 10% of the total escalation.

2.6 On a rebased basis, the contract price has escalated from 100 in June 1993 to 471 as at 31 December 2012. This is reflected in the following table:

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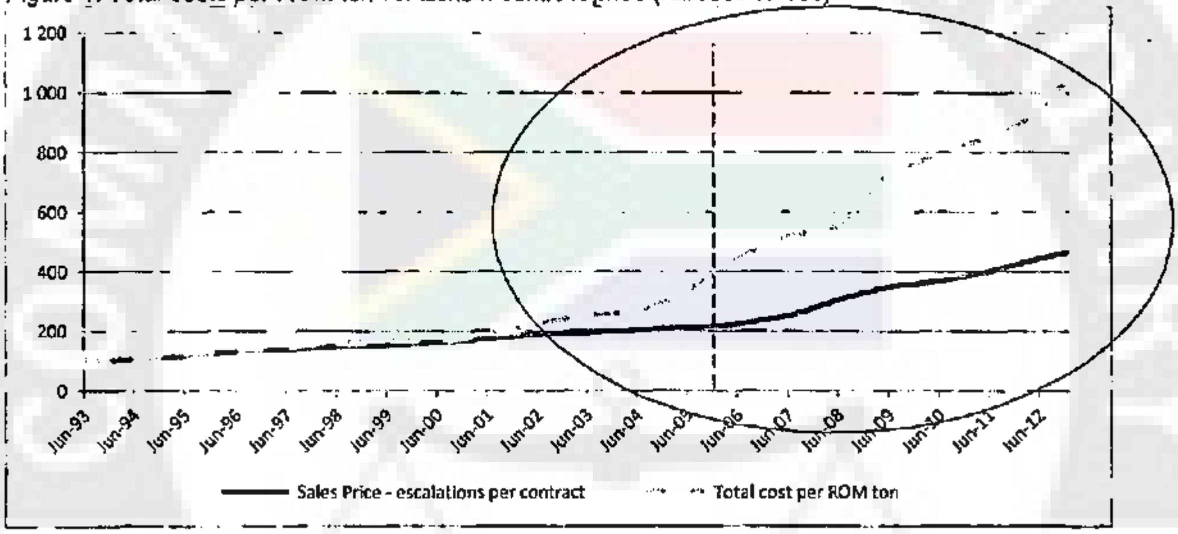
Table 1: Escalation of sales price and underlying factors from inception of the CSA (1993 = base of 100)[1]

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Sales price	100	104	115	131	135	145	150	158	172	188	193
	2004	2005	2006	2007	2008	2009	2010	2011	2012	31 Dec 12	
Sales price	202	209	222	251	308	354	372	406	450	471	

2.7 The figure below compares the monthly contract price (as adjusted by the escalation factor) to Optimum's total costs per ROM ton of coal from 1993 to 2013. The costs of production closely tracked the escalated contract price for the first 8 years of the CSA, after which the growth in production costs per ROM ton has far exceeded the contract price. Accordingly, it would appear the escalation factor was reflective of the increase in Optimum's production costs for the first 8 years of the CSA, with a slight increase following that, but from about 2006 a significant and substantial divergence between the contract price and Optimum's costs of production started to develop.

Figure 1: Total costs per ROM ton vs. Eskom contract price (rebased to 100)



As mentioned previously, the contract price of coal in the CSA is determined primarily with reference to the change in the PPI. The PPI that is used in the CSA is the "PPI for all commodities". This measure of PPI looks at price levels across numerous areas of industrial and commercial activity, and not just mining. From 1993 to date, "mining and quarrying" has constituted between 5.45% and 19.41% of the index. The mining of coal has constituted between 1.59% and 4.97% of the index. Accordingly, even though the costs of mining (and mining of coal, in particular) have increased at a significant rate, this is not reflected in the PPI because the increases in the costs of mining have been averaged with the slower growth in other industries. This is demonstrated in the figure below, which shows that the mining-related components in the PPI escalated at a much higher rate than the PPI.

1 These calculations are done at June of each year, except for the final period, which has been performed at 31 December 2012

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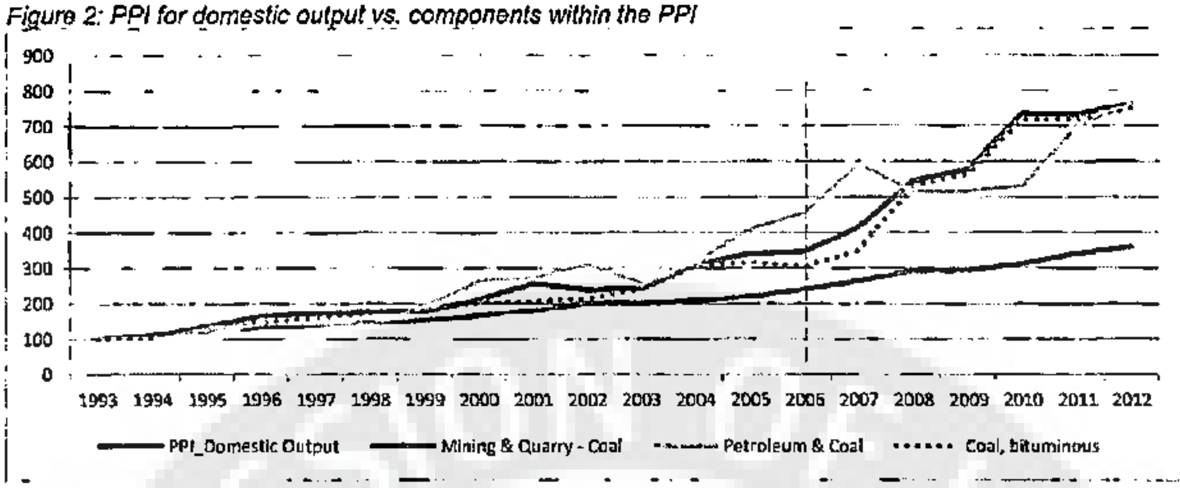
Figure 2: PPI for domestic output vs. components within the PPI



2.8 We note in this regard that Eskom has itself publically acknowledged that the costs of mining coal have increased significantly over the last 10 years. In a presentation to a junior miner conference on 6 November 2012, Ms Kiren Maharaj, the then Eskom Divisional Executive for Primary Energy, stated that operating costs within the coal mining industry **have been much higher than CPI in the last decade** and that higher input costs puts pressure on domestic coal prices. She stated that costs are driven by: (i) **cyclical commodity based inputs**; (ii) **rising labour costs**; and (iii) declining yields and strip ratios. Moreover, on page 16 of Eskom's presentation in support of its MYPD3 Application 2014 - 2018, Eskom stated that coal cost increases have been double digit due to greater use of expensive short-term trucked-in coal supplies, **increased cost of mining**, ageing mines and growing competition for South African coal from, for example, India.

2.9 The effect of the divergence in escalation between the costs of mining and the PPI is that the escalation factor set out in the CSA, which was intended to track the increase in Optimum's costs (and generally preserve Optimum's margin throughout the life of the CSA), has ceased to be reflective of the cost increases in the coal mining industry.

2.10 We have determined that this divergence, which is the essence of the hardship that Optimum is suffering, has been caused by the commodities boom that began in the mid-2000s. The commodities boom and the divergence in production costs was an unforeseeable economic and social phenomenon that reflected the rise in global investment in commodities, as well as the insatiable appetite for resources from rapid growth economies like China and India. The high demand for commodities, as well as the resources required to produce the amount of commodities necessary to meet this demand, caused the cost of labour, the equipment and materials used to mine and produce the commodities and other inputs to increase significantly, both globally and in South Africa.

2.11 We have used industry data to test our hypotheses that the commodities boom increased the key inputs of mining so significantly that it rendered the PPI an ineffective proxy for growth in mining costs. We have identified seven of the primary cost components with respect to the production of coal and, using public information (with the exception of labour), have been able to demonstrate that, in all cases, the increase in the PPI did not reflect the increases in the cost components. The seven components and the various increases in each cost component are set out in Table 2 below.[2]

Table 2: The seven primary cost components in respect of the production of a ton of coal; and the comparison of each such cost component to the PPI and the CCI

Cost component	Base - 1993	Proxy index as at 31 Dec 2012	Increase of proxy cost over the PPI	Increase of proxy cost over the CCI
PPI	100	368		
CCI	100	801		
Labour	100	1,060	188%	32%
Explosives & Accessories	100	1,023	178%	28%
Repairs & Maintenance	100	747	103%	-7%
Mining & washing contractor	100	696	89%	-13%
Diesel	100	789	114%	-1%
Electricity	100	657	78%	-18%
Amortisation	100	728	98%	-9%

2.11.1 <u>Labour</u>

2.11.1.1 In order to determine how labour costs have escalated, Optimum has calculated actual labour cost per employee. This takes into account basic salaries, bonuses, employee share schemes, effects of collective bargaining initiatives and other employment-related costs. Optimum has not been able to identify any third-party data that captures the increase in total cost per employee, as opposed to just salaries. In any event, Optimum has no reason to believe that its costs do not reflect the labour cost increases that have been experienced by other South African coal miners.

2.11.1.2 The figure below shows labour costs, rebased to 100, against the PPI and the CCI. It shows that Optimum's labour costs have escalated by approximately 188% more than the PPI and 32% more than the CCI.

2 In order to identify the increases in the cost components, we used third party indices. If no specific index was available for a cost component, Optimum had determined the various components of that cost and has escalated each component using an appropriate index. If no clear index was available for a particular component, the component has been conservatively escalated by the PPI.

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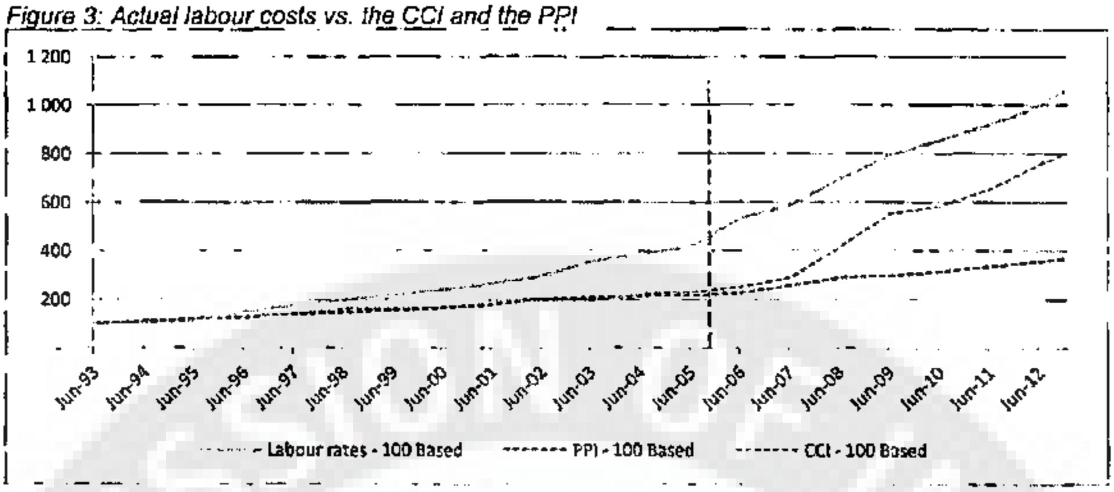
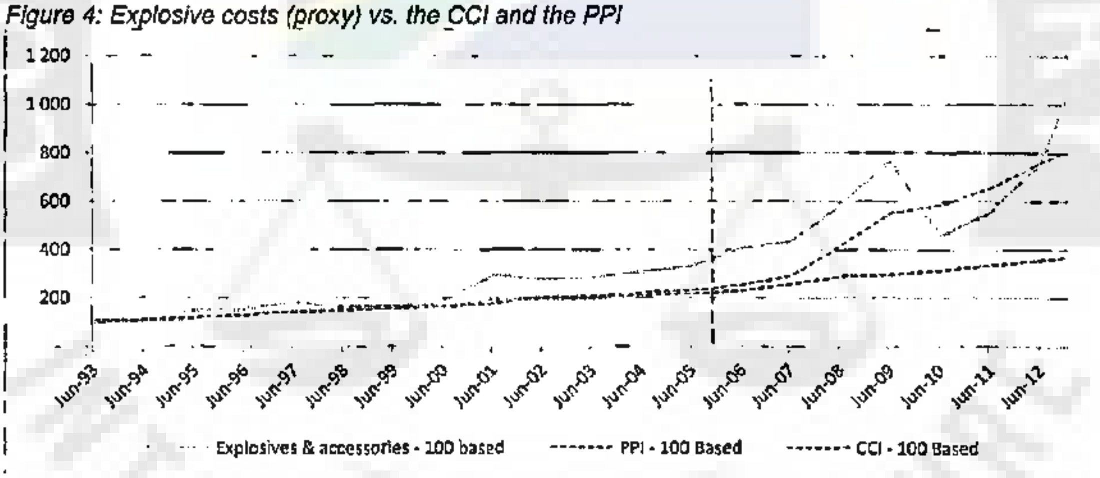
Figure 3: Actual labour costs vs. the CCI and the PPI



2.11.2 Explosives

The cost of explosives comprises approximately 94% ammonia and 6% diesel. Ammonia is quoted in USD and purchased in ZAR. A reconstituted cost curve has been calculated to take into account the ZAR ammonia price and the diesel contribution. The figure below shows explosive costs, rebased to 100, against the PPI and the CCI and shows that explosive costs have increased by approximately 178% more than the PPI and approximately 28% more than the CCI.

Figure 4: Explosive costs (proxy) vs. the CCI and the PPI



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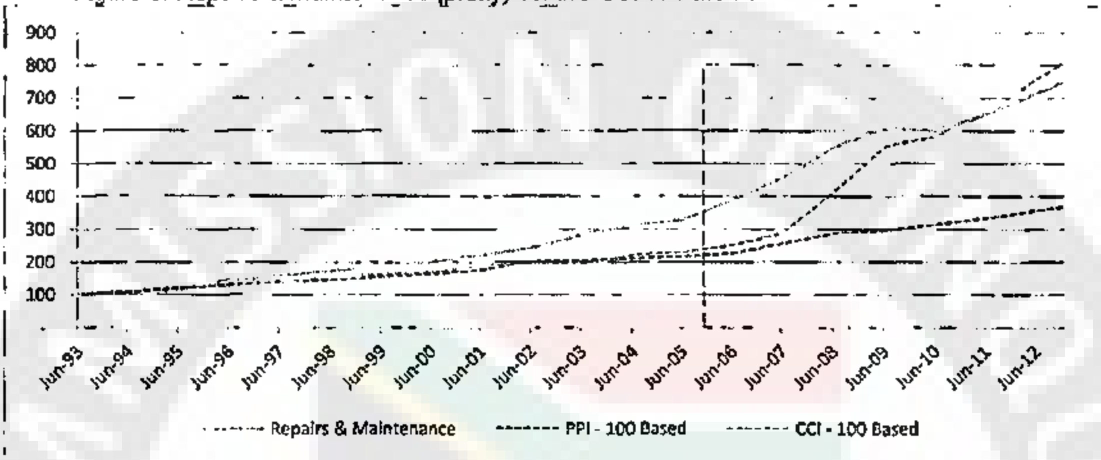
2.11.3 Repairs and maintenance

Optimum's mining engineers have estimated a 50%/28%/22% split between labour, steel and the PPI for repairs and maintenance. The figure below shows repairs and maintenance costs, rebased to 100, against the PPI and the CCI. It shows that the costs of repairs and maintenance have increased by approximately 103% more than the PPI and approximately 7% less than the CCI.

Figure 5: Repairs & maintenance (proxy) vs. the CCI and the PPI[3]



2.11.4 Mining and washing contractor

Optimum has, based on quotes received from mining and washing contractors, determined that the costs of such services are split into the following components: equipment at 41% (proxy: steel); materials at 8% (proxy: the PPI); fuel & oil at 24% (proxy: diesel); labour at 14% and drill & blast at 13% (proxy: ammonia and diesel). Optimum has therefore determined a blended mining and washing contractor cost, which is prudent in its constitution. The figure below shows mining and washing costs, rebased to 100, against the PPI and the CCI. It demonstrates that the mining and washing costs have increased by approximately 89% more than the PPI and approximately 13% less than the CCI.

[3] In calculating the growth in the cost of steel, European rebar prices converted into ZAR have been used as a proxy for the steel price from 2003 (due to a lack of reliable data prior to that time). For the sake of prudence, the PPI has been used as the escalation factor from 1993 to 2003. The graph is therefore likely to be more conservative than the actual prices.

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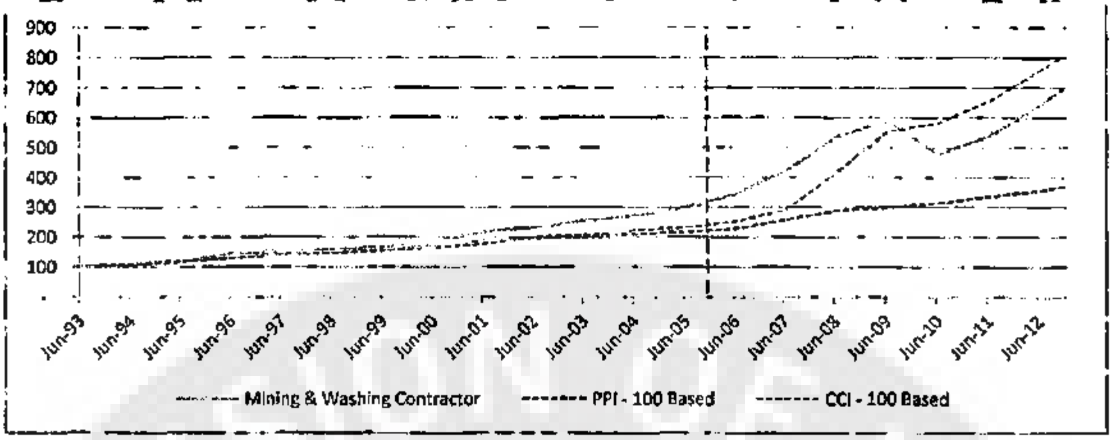
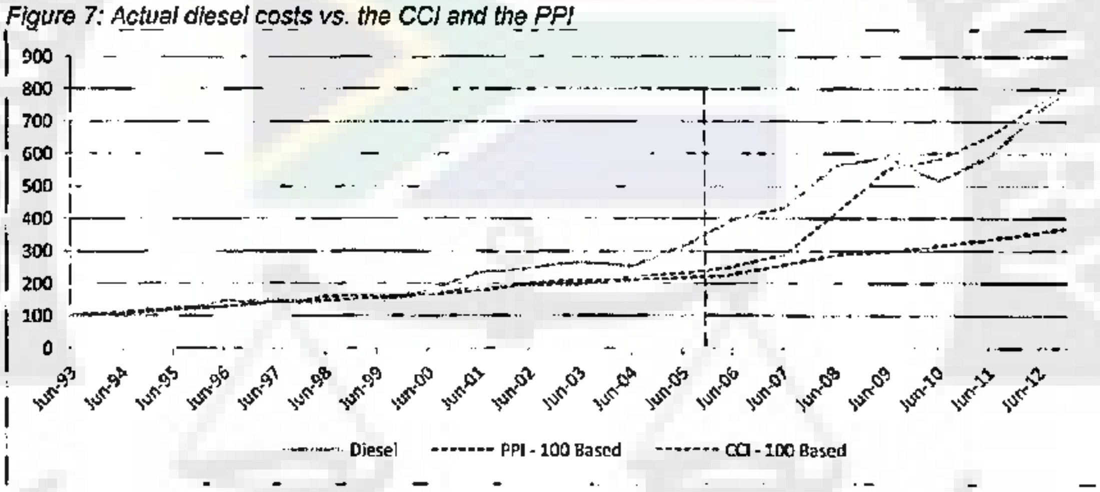
Figure 6: Mining and washing contractor costs vs. the CCI and the PPI



2.11.5 Diesel

The figure below shows diesel costs, rebased to 100, against the PPI and the CCI. It demonstrates that diesel costs have increased by approximately **114%** more than the PPI and approximately 1% less than the CCI.

Figure 7: Actual diesel costs vs. the CCI and the PPI



2.11.6 Electricity

The figure below shows electricity costs, rebased to 100, against the PPI and the CCI. It demonstrates that electricity costs have increased by approximately 78% more than the PPI and approximately 18% less than the CCI. This figure also demonstrates that electricity is the one cost input that grew at a lower rate than both the PPI and the CPI for the first