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COAL SUPPLY AGREEMENT

in respect of coal from

BRAKFONTEIN COLLLIERY AND BRAKFONTEIN COLLIERY EXTENSION

entered into by and between

ESKOM HOLDINGS SOC Ltd

registration number 2002/015527/30, a company incorporated in terms of the laws of the Republic of South Africa with its registered office at Megawatt Park, Maxwell Drive, Sunninghill

("Eskom")

and

TEGETA EXPLORATION AND RESOURCES (PROPRIETARY) LIMITED

registration number 2006/014492/07, a company incorporated in terms of the laws of the Republic of South Africa with its registered office at Grayston Ridge Office Park Block A, Lower Ground Floor, 144 Katherine Street, Sandton 2146

("the Supplier")

Eskom Vendor Number: 0011082687

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SECTION 1: INTRODUCTION, DEFINITIONS AND INTERPRETATION

1. Introduction

- 1.1 The Supplier is the holder of the Mining Right in respect of the Coal Resource and wishes, to sell to Eskom, Contract Coal produced from coal mined pursuant to the Mining Right in the quantities and qualities for the duration and for the purposes mentioned in this Agreement.
- 1.2 Eskorn requires Contract Coal in the quantities, for the duration and for the purposes mentioned in this Agreement.
- 1.3 The Parties wish to enter into a coal supply and off take agreement on the terms and conditions recorded below.

2. Definitions and Interpretation

2.1	In this Agreement, the following words and expressions shall, unless otherwise
	stated or inconsistent with the context in which they appear, bear the following
	meanings and other words derived from the same origins as such words (that is,
	cognate words and expressions) shall bear corresponding meanings:

	cognate words and expression	ns) shall bear corresponding meanings:
2.1.1	"Agreement"	means this coal supply agreement and shall include all Annexes hereto, as amended from time to time;
2.1.2	"Air Dried"	means the physical condition of coal that has been dried at ambient temperature or at a temperature not exceeding 40 (forty) degrees Celsius to remove surface moisture until a constant mass is achieved;
2.1.3	"Annexe"	means an annexe attached to the Agreement, as amended or replaced from time to time;
2.1.4	"Annual Quantity"	means the quantity of Contract Coal, measured in GJ, which Parties target Supplying during each Year, as set out in the second column of Table 1;

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2.1.5	"API#4 Price"	rneans the past month's average of API#4 index price of RB1 grade coal, Free on Board (FOB) Richards Bay and in US Dollars per ton as published by Argus/McCloskey;
2.1.6	"As Received"	means the physical condition of coal including both surface and residual moisture contents as received at the Delivery Point;
2.1.7	"Base Date"	means in respect of each cost component set out in Table 2, the base date set out in the fifth column of Table 2;
2.1.8	"Base Date Index Value (B)"	means in respect of each cost component set out in the first column of Table 2, the value of the relevant index on the Base Date of such cost component set out in the fourth column of Table 2;
2.1.9	"Base Price"	shall have the meaning ascribed to it in clause 15;
2.1.10	"Business Day"	means a day other than a Saturday, Sunday or gazetted public holiday in the Republic of South Africa;
2.1.11	"Calorific Value (CV)"	means the quantity of heat produced by the complete combustion of a given mass of coal, measured in MJ/kg;
2.1,12	"CV Adjustment Factor (CVAF)"	means the factor used to adjust the Calorific Value of coal from an Air Dried to an As Received basis and as set out more fully in clause 23;
2.1.13	"Coal Haulage Rates Model"	means the economic model used by Eskom to determine tariffs applicable to the road transportation of coal as amended from time to time;

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2.1.14	"Coal Line Tariff"	means per Ton, being the indicative average
		tariff charged by TFR for main line services
		from Mpumalanga to Richards Bay inclusive of
		the port charges levied by the Richards Bay
		Coal Terminal as at which shall be escalated
		annually by PPI on 01 April of each
		subsequent year;
2.1.15	"Coal Quality Management Procedure	means the sampling analysis principles and
	(CQMP)"	procedures set out in Annexe A, as well as the
		procedures referred in clauses 20.4 and 22;
2.1.16	"Coal Reserve"	
2.1.10	Coal Nesel ve	means, at any time during the currency of this
		Agreement, so much of the Coal Resource
		from which a quantity of Contract Coal can be
		produced for Supply to Eskom in terms of this
		Agreement equal to at least the difference
		between 275 855 450 MGJ (being
		approximately 13 950 000 Tons (As Received)
		and the quantity of Contract Coal in the Coal
		Resource (expressed as an energy quantity)
		then actually Supplied to Eskorn in terms of
		this Agreement;
2.1.17	"Coal Resource"	means all in-situ coal occurring naturally in, on
		and under the land to which the Mining Right
		relates;
2.1.18	"Commonant Data"	
2.1.10	"Commencement Date"	shall have the meaning ascribed to it in
		clause 7;
2.1.19	"Consignment"	means:
2.1,19,1		in respect of Rail Coal, a train load;
2.1.19.2		in respect of Road Coal, the approximate
		quantity Delivered in 1 (one) day;







2.1.20	"Container Trains"	means trains typically consisting of 50 (fifty) wagon ISO-type 6 (six) meter open top containers on flat bed rail cars;
2.1.21	"Contract Coal"	means the coal originating from Pre-Certified Stockpiles made up of a blend of the seam 4 upper and the seam 4 lower in respect of which the measurements of all coal quality parameters comply with the Quality Specifications and none of which is Reject Coal;
2.1.22	"Contract Period"	means the period described in clause 7;
2.1.23	"Deliver"	means the provision, and where applicable, the loading of Contract Coal by the Supplier at the respective Delivery Points, and "Delivery" shall have a corresponding meaning;
2.1.24	"Delivery Points"	means:
2.1.24,1		in respect of Rail Coal, the weighbridge or the handover/departure point situated at the Rail Siding;
2.1.24.2		in respect of Road Coal, where the Supplier is responsible for road transportation, the weighbridge situated at the Power Station; and
2.1.24.3		in respect of Road Coal, where Eskom is responsible for the road transportation, the weighbridge situated at the Mine;
2.1.25	"Drawdown Order"	means a written order issued by Eskom to the Supplier for the Delivery of Contract Coal as further described in clause 11.4;





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2.1.26	"Equilibrium Moisture"	means the total moisture content which is reached by the coal that has naturally drained until a relatively constant moisture has been reached;
2.1.27	"Eskom Trains"	means trains operated by TFR or any other rail operator as may be appointed during the operation of this Agreement, for the purposes of transporting coal for Eskom, and shall include Jumbo Trains, Small Trains and/or Container Trains;
2.1.28	"FCA"	means free carrier as defined in Incoterms at the Delivery Point;
2.1.29	"GigaJoule (GJ)"	one thousand million Joules (being the derived unit of energy in the International System of Units) and being the metric terms used for measuring energy;
2.1.30	"Incoterms"	means the standard trade definitions used in sales contracts published by the International Chamber of Commerce as at 2000, as amended or replaced from time to time;
2.1.31	"Jumbo Trains"	means trains capable of being operated on TFR's heavy haul rail system and typically consisting of 100 (one hundred) wagons having a rated payload of 83 (eighty three) Tons per wagon and an axle load of no more than 26 (twenty six) Tons per axle;
2.1.32	"Latest Index Value (L)"	means, in relation to each cost component in Table 2, the latest available value for the relevant index for such cost component, as set out in the third column of Table 2 and at the time of calculating any price adjustment, which shall be:





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2.1.32.1		for Monthly price adjustments, the value of the relevant index for each cost component published for the Month prior to the most recent annual Price Adjustment Date except for diesel, which shall be the value of the diesel index published for the current Month; and
2.1.32.2		for annual price adjustments, the value of the relevant index for each cost component published for the Month prior to the relevant Price Adjustment Date except for diesel which shall be the value of the diesel index published for the current Month;
2.1.33	"Maximum Annual Quantity"	means the maximum quantity of Contract Coal, in GJ, which Eskom is entitled to Take Off and which the Supplier required to Deliver during each Year, being 110% (one hundred and ten percent) of the Annual Quantity;
2.1.34	"Maximum Monthly Quantity"	means the maximum quantity of Contract Coal, in Tons, which Eskom is entitled to Take Off and which the Supplier is required to Deliver during each Month, being 120% (one hundred and twenty percent) of the Monthly Quantity;
2.1.35	"Maximum Quarterly Quantity"	means the maximum quantity of Contract Coal, in Tons, which the Supplier is required to Deliver and which Eskom is required to Take Off during each Quarter, being 115% (one hundred and fifteen percent) of the Quarterly Quantity;

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means a million GigaJoules;





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2.1.37 "Mine"

means the Brakfontein Colliery and Brakfontein Colliery Extension coal mine(s) established to exploit the Coal Resource;

2.1.38 "Mining Right"

means the mining right F/2009/07/30/001] granted to TEGETA EXPLORATION AND RESOURCES (PTY) LTD relating to coal in respect of various portions of the farm BRAKFONTEIN 264 IR PORTIONS 17 AND 27 (as more fully indicated on the sketch plan attached thereto), Registration Division IS, in the Magisterial District of DELMAS, in the province of MPUMALANGA, measuring 95.7972 hectares and registered in the Titles Office on 26 OCTOBER 2010 under registration number 200601449207;

and

TEGETA EXPLORATION AND RESOURCES (PTY) LTD relating to coal in respect of various portions of the farm BRAKFONTEIN 264 IR PORTIONS 2,3,4,5,16,22,24,25,28 remaining extent of portion 29 (as more fully indicated on the sketch plan attached thereto), Registration Division IS, in the Magisterial District of DELMAS, in the province of MPUMALANGA, 1.283.709 measuring hectares and registered in the Titles Office on MARCH 2014 under registration number 2010/10/19/001;

2.1.39 "Minimum Annual Quantity"

means the minimum quantity of Contract Coal, in GJ, which Eskom is entitled to Take Off and which the Supplier is required to Deliver during each Year, being 90% (ninety percent) of the Annual Quantity;







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2.1.40	"Minimum Monthly Quantity"	means the minimum quantity of Contract Coal, in Tons, which Eskom is entitled to Take Off and which the Supplier is required to Deliver during each Month, being 80% (eighty percent) of the Monthly Quantity;
2.1.41	"Minimum Quarterly Quantity"	means the minimum quantity of Contract Coal, in Tons, which the Supplier is required to Deliver and which Eskom is required to Take Off during each Quarter, being 85% (eighty five percent) of the Quarterly Quantity;
2.1.42	"M7\Kā"	means MegaJoules (being 1,000,000 (one million) Joules) per kilogram;
2.1.43	"Month"	means a calendar month;
2.1.44	"Monthly Quantity"	means the quantity, in Tons, of Contract Coal which Parties target Supplying during each Month, as set out in the fifth column of Table 1;
2.1.45	"MPRDA"	means the Mineral and Petroleum Resources Development Act, No. 28 of 2002, as amended or replaced from time to time, including all regulations promulgated in terms thereof;
2.1.46	"Nominated Laboratory"	means the independent laboratory appointed by Eskom for the purpose of analysing coal samples in terms of this Agreement;
2.1.47	"Party"	means Eskom or the Supplier, as the context in which the word appears requires and "Parties" means both Eskom and the Supplier;

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2.1.48	"Power Station"	means Majuba Power Station or any other Eskom owned or operated power station within the Republic of South Africa and which has been designated by Eskom as the destination of Contract Coal;
2.1.49	"PPI"	means the producer price index for domestic output in South Africa, Table 1A (which is, at the Signature Date contained in Statistical Release P0142.1) as published by Statistics South Africa. In the event that the above producer price index ceases to be published or is replaced during the currency of this Agreement, then PPI shall mean an alternative index measuring substantially the same elements as that measured by the above mentioned producer price index;
2.1.50	"Pre-Certified Stockpile"	means stockpile(s) of Contract Coal, approximately equivalent to a Day's delivery, unless otherwise agreed which have been sampled, analysed and certified, in accordance with this Agreement and Annexe A: The Coal Quality Management Procedure as meeting the Quality Specifications, or otherwise as accepted by Eskom;
2.1.51	"Price"	shall have the meaning ascribed to it in clause 16.2;
2.1.52	"Price Adjustment Date"	shall have the meaning ascribed to it in clause 16.1;
2.1.53	"Price Adjustment Factor (PAF)"	means 1 (one) plus [the sum of (L-B)/B for each applicable index in Table 2 multiplied by the corresponding proportion for that index as set out in the second column of Table 2], where 'L' is the Latest Index Value and 'B' is the Base Date Index Value;





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2.1.54	"Quality Rejection Limit"	means in respect of each coal quality parameter, the limit set out in the fifth column of Table 3;
2.1.55	"Quality Specification"	means in respect of each coal quality parameter set out in the first column of Table 3, the specification stipulated in the fourth column of Table 3, which coal Delivered by the Supplier to Eskom in terms of this Agreement must comply with;
2.1.56	"Quarter"	means a period which consists of 3 (three) consecutive Months, the first of such period to commence on 1 APRIL of each Year;
2.1.57	"Quarterly Quantity"	means the quantity, in Tons, of Contract Coal specified in the Drawdown Order for that Quarter, determined as set out in clause 11
2.1.58	"Rail Coal"	means Contract Coal which Eskom requires to be Taken Off by rail transport:
2.1.59	"Rail Siding"	means the railway siding identified by number 766186 (Hawerklip Station);
2.1.60	"Reject Coal"	means coal in respect of which one or more quality parameters does not meet the Quality Specification;
2.1.61	"Road Coal"	means Contract Coal which Eskom requires to be Taken Off by road transport;





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2.1.62	"SAMREC Code"	means the 2007 edition of the South African Code for Reporting of Exploration Results, Mineral Resources and Mineral Reserves prepared by the South African Mineral Resources Committee Working Group under the joint auspices of the South African Institute of Mining and Metallurgy and the Geological Society of South Africa, as amended or replaced from time to time;
2.1.63	"Signature Date"	means the date on which this Agreement has been signed by both Parties hereto and if signed on different dates, the date of signature of the Party signing last in time;
2.1.64	"Small Trains"	means trains which shall operate primarily on TFR's general freight business rail system and which shall typically consist of 75(seventy five) wagons having a rated payload of no more than 58 (fifty eight) Tons and an axle load of no more than 20 (twenty) Tons per axle;
2.1.65	"Stockpile Retention Time"	means the period that a specific stockpile must be allowed to drain in order to reach Equilibrium Moisture as determined in clause 23.2.1;
2.1.66	"Supply"	means both when used as a noun and a verb, means the completed process of Delivery and Off Take which will take place more or less simultaneously, and "Supplied" shall have a corresponding meaning;
2.1.67	"Take Off"	when used as a verb, in respect of all Contract Coal Delivered, means the removal of such coal from the respective Delivery Points by Eskom in such quantities and at such rates as set out in this Agreement and the noun "Off Take", shall bear a corresponding meaning;



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2.1.68	"Technical Liaison Meeting"	means the meeting to be held between the Parties as set out in clause 28;
2.1.69	"TFR"	means Transnet Freight Rail, a division of Transnet Limited, registered in terms of the company laws of the Republic of South Africa under registration number 1990/000900/06 and having its registered office at 47th floor, Carlton Centre, 150 Commissioner Street, Johannesburg, 2001;
2.1.70	"Titles Office"	means the Mineral and Petroleum Titles Registration Office of South Africa;
2.1.71	"Ton"	means a metric ton of 1 000 (one thousand) kilograms;
2.1.72	"Tonnage Adjustment Factor"	means the factor used to adjust the tonnage of any Contract Coal that exceeds the maximum total moisture content, but which is accepted for Delivery in terms of clauses 23.3 and 23.4, for the moisture in excess of the Equilibrium Moisture;
2.1.73	"Total Energy Quantity"	shall have the meaning ascribed to it in clause 10.4;
2.1.74	"Ultrafines"	means material below 100 (one hundred) microns resulting from the thicker underflow process recovered either as filter cake, arising from the filter press process or harvested from slimes dams;
2.1.75	"Under Delivery"	means Under Supply caused by the Supplier's faiture to Deliver Contract Coal for any reason other than Force Majeure;
2.1.76	"Under Off Take"	means Under Supply caused by Eskom's failure to Take Off Contract Coal Delivered for any reason other than force majeure;





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2.1.77	"Under Supply"	means:
2.1.77.1		in respect of any Month, Supply of less than the Minimum Monthly Quantity applicable to that Month;
2.1.77.2		in respect of any Quarter, Supply of less than the Minimum Quarterly Quantity; or
2.1.77.3		in respect of any Year, Supply of less than the Minimum Yearly Quantity applicable to that Year,
		as a result of either Under Delivery and/or
		Under Off Take for any reason other than force
		majeure;
2.1.78	"USD:ZAR Exchange Rate"	means at any point during each Month, the
		latest exchange rate for United States dollars
		and South African Rands ruling at financial
		close of the preceding Month as published by
		the South African Reserve Bank;
2.1.79	"VAT"	means value added tax levied from time to
		time in terms of the Value Added Tax Act,
		No. 89 of 1991 or any similar tax levied on the
		supply of goods imposed in terms of any law
		passed in substitution of the Value Added Tax
		Act, No. 89 of 1991 and for which tax a
		purchaser of such goods will be liable in terms
		of such substituting law; and
2.1.80	"Year"	means a 12 (twelve) Month period beginning
		on the Commencement Date and thereafter,
		each subsequent period of 12 (twelve)
		consecutive Months.





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2.2	In this Agreement:
2.2.1	references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
2.2.2	notwithstanding anything to the contrary contained herein, all reference to legislation shall include a reference to such legislation as amended or replaced from time to time;
2.2.3	words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa;
2.2.4	references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
2.2.5	a range of values indicated by the words "betweenand" or "fromto" shall include both values that demarcate the range;
2.2.6	any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears. If there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of the Agreement or paragraph of any Annexe, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in the Agreement;
2.2.7	where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day and shall refer to calendar days unless specifically stated otherwise;
2.2.8	any provision in this Agreement which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. pro non scripto) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement;
2.2.9	references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;

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- 2.2.10 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the eiusdem generis rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given; and
- 2.2.11 each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of the Agreement (i.e. the contrapreferentem rule), shall not apply.

SECTION 2: WARRANTIES, UNDERTAKINGS, LEGAL COMPLIANCE AND REVIEW

General

- 3.1 The warranties contained in this Agreement shall be deemed to be representations and undertakings, material to the entering into of this Agreement, by the Supplier in favour of Eskom and by Eskom in favour of the Supplier where applicable;
- 3.2 Each warranty shall be a separate warranty and in no way limited or restricted by reference to, or inference from, the terms of any other warranty;
- 3.3 Each warranty is given as at the Commencement Date and shall endure for the duration of this Agreement; and
- 3.4 Insofar as any of the warranties are promissory or relate to a future event, they shall be deemed to have been given as at the due date for fulfilment of the promise or the happening of the event, as the case may be.
- 3.5 Where any warranty is qualified by the expression "the Supplier and/or Eskom is not aware", "to the best of the Supplier's and/or Eskom's knowledge and belief" or any similar expression, that expression shall be deemed to include an additional statement that it has been made after due enquiry.
- 3.6 Nothing contained in this Agreement shall relieve a Party from its obligations to make those disclosures which it is in law obliged to make but which are not recorded in this Agreement.

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4. Warranties Applicable to both Parties

Each Party hereby warrants unto and in favour of the other Party:

- 4.1 the Party and its representative(s), as applicable, have the requisite power, right and authority to enter into and perform the obligations to be assumed or performed by it in accordance with this Agreement and any other documents to be executed in accordance with this Agreement;
- 4.2 to the best of the Party's knowledge and belief, all facts and circumstances material to this transaction, or which would be material or would be reasonably likely to be material and which may affect the willingness of the Parties to enter into this Agreement or which may affect the Base Price and which are known to the Party, have been disclosed by the Party to the other Party; and
- 4.3 as at the Commencement Date, no legal proceedings of any kind or administrative proceedings in terms of any law, and which shall prevent either Party from fulfilling its obligations in terms of this Agreement, have been instituted against such Party, and at all times during the currency of this Agreement neither Party has any obligations/duties to third parties which, if discharged, shall prevent the Party from fulfilling its obligations in terms of this Agreement.

5. Warranties by the Supplier

The Supplier hereby warrants unto and in favour of Eskom that:

- 5.1 the Supplier is the holder of the Mining Right and has the un-encumbered right to dispose of the Contract Coal to Eskorn in accordance with the provisions of this Agreement;
- 5.2 upon Delivery of the Contact Coal, Eskom will become the owner of the Contract Coal free of any encumbrances, liens, rights of pre-emption or similar rights in favour of any third party;
- 5.3 as at the Signature Date the Supplier has complied with all material terms, conditions and obligations, contractual and statutory, which apply to all rights, titles, permits and other authorisations held by it, or applicable to any of its operations;

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- 5.4 the Supplier has and shall not pledge, mortgage, cede or grant any other security rights over the Mining Right or any coal produced pursuant thereto;
- 5.5 the Supplier is able to prove title to all rights held by it, including the Mining Right;
- the Supplier is not aware of any facts or circumstances which may result in the withdrawal, suspension, cancellation, material alteration or non-renewal of any rights, titles, permits and other authorisations held by it, or applicable to any of its operations, as such matters relate to this agreement and/or the Coal Resource, as the case may be;
- 5.7 the Coal Resource has sufficient Coal Reserves to satisfy its Delivery obligations in terms of this Agreement;
- 5.8 to the best of its knowledge and belief, the Supplier has disclosed to Eskom all legal, environmental matters and rehabilitation obligations relating to the Coal Resource and the Mining Rights; and
- 5.9 The Supplier shall notify Eskom of any changes made to the documentation supplied to Eskom in terms of this Agreement, where such changes have an impact on the warranties provided by the Supplier in terms of this Agreement.
- 5.10 The supplier warrants that they shall comply with the Black Ownership targets as stipulated in Annexe G, at no cost to Eskom. This Annexe G is regarded as a material provision for purposes of this Agreement and any non-compliance to the Black Ownership targets as stipulated will result in a material breach and dealt with according to the provisions made in this Agreement.

6. Legal Compliance and Review

The Supplier warrants that it is complying and will continue to comply with all its obligations under all current and future applicable laws including but not limited to the Mining Right, including the environmental management plan, the social labour plan and the mining work programme relating thereto, the National Water Act, No. 36 of 1998 ("NWA"); the National Environmental Management Act, No. 107 of 1998 ("NEMA"); the Environment Conservation Act, No. 73 of 1989; the National Environmental Air Quality Act, No. 39 of 2004; the Water Services Act, No. 100 of 1989; the Hazardous Substances Act, No. 15 of 1973; the National Heritage Resources Act, No. 25 of 1999; the World Heritage Convention Act, No. 49 of 1999; the MPRDA and the Mine Health and Safety

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Act, No. 29 of 1996, all statutory instruments, provincial ordinances and statutes, municipal government by-laws relating to the environment, government notices, circulars, codes of practice, guidelines, decisions, regulations, orders, demands, and criteria, injunctions or judgements of any court, administrative or regulatory authorities, central government, provincial government, municipal or any other body with responsibility for the protection of the environment (including but not limited to the health of the public, employees, flora and fauna).

- Eskom shall be entitled to conduct reviews in respect of the provisions of this clause 6 to ensure the Supplier's compliance herewith and the Supplier agrees to co-operate with Eskom in this regard. To that end, Eskom and its designated representatives, including without limitation, its attorneys, auditors, environmental representatives engineers and geologists shall at all reasonable times, with reasonable prior notice to the Supplier, have access to the Mine and facilities utilised for the production and supply of coal under this Agreement and to all records, wherever located, pertaining to the supply of Coal in terms of this Agreement, which access will be at Eskom's expense and risk.
- 6.3 Eskom will provide feedback on risks identified from the reviews conducted in 6.2 above. The parties shall mutually agree how the risks will be addressed. Should the parties be unable to agree the risks that shall be addressed then the dispute will be resolved in terms of Section 9 of this Agreement.
- The Supplier shall address the agreed risks as indicated in 6.3 and shall report on progress of addressing such risks during the scheduled technical meetings.
 - In the event that Eskom is approached by the State or any regulatory authority under NEMA and NWA with a view to remedying pollution relating to or resulting from the Parties' respective rights and obligations under this Agreement, the Supplier shall assist Eskom by making appropriate representations and taking appropriate steps to mitigate any statutory liability which Eskom may have under that legislation.
- Eskom shall not at any time or for any reason be liable for any rehabilitation and/or closure costs incurred in connection with the Mine, save where Eskom caused the pollution, nor the possible cost of remedying pollution under the NEMA and the NWA. To the extent that, after taking the steps referred to in clauses 6.1 and 6.5, Eskom incurs any such costs, for which Eskom is not responsible, then the Supplier shall compensate Eskom for all reasonable costs

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and expenses incurred by it, provided that Eskom shall take all reasonable steps to mitigate its loss and shall be obliged to prove such loss.

- 6.7 Where either Party's employees, agents and/ or its representatives enter the premises of the other Party, they shall comply with any of the applicable legislation set out in clause 6.1 above.
- 6.8 The Supplier shall comply with the provisions detailed in Annexe B: Environmental Legal Requirements.
- In the event of material changes to the legislation referred to in clause 6.1 or the introduction of new legislation which results in an increase or reduction of the direct cost of producing and Delivering Contract Coal at the Delivery Point ("the Cost Differential"), the then applicable Price shall (subject to clause 6.11 below) be increased or reduced as the case may be, by a pro rata portion of the Cost Differential.
- 6.10 The pro rata portion shall be equal to the proportion which the value (expressed in Rand) of the sales to Eskorn in terms of this Agreement bears to the aggregate of all sales from the Mines.
- Eskom shall at any time, upon reasonable notice to the Supplier, be entitled to audit the Supplier's costs related to the producing and delivering of such coal at the Delivery Point and financial information relating to the Supplier's income as a result of sales of coal. In the event that Eskom, as a result of its audit, disputes the Cost Differential, Eskom and the Supplier shall attempt to resolve the dispute amicably within 20 (twenty) days after a dispute being declared by either of them in this regard. Where Eskom and the Supplier are unable to resolve the dispute, either Eskom or the Supplier may then refer the dispute to an independent expert for determination in accordance with clause 32.
- Where either Party's employees, agents and/ or its representatives enter the premises of the other Party they shall be required to comply, and each Party shall procure that they comply, with the relevant legislation set out in clause 6.1 above and other health and safety rules applicable to the premises of the other Party. Both Parties hereby agree, in terms of section 37(2) of the Occupational Health and Safety Act no, 85 of 1993 ("OHSA") (if applicable) that the other Party is relieved of any of its liabilities in terms of section 37(1) of the OHSA in respect of any act or omissions of either Party's employees, agents and/or its representatives to the extent permitted by the OHSA.



SECTION 3: COMMENCEMENT OF DELIVERIES, DURATION, RISK AND OWNERSHIP OF COAL, SUSPENSIVE CONDITIONS

7. Commencement of Deliveries

Subject to clause 10 below, the Supply of Contract Coal shall commence on 1 April 2015 ("the Commencement Date") in accordance with clause 11 and subject to the coal meeting all of Eskom's technical and coal supply requirements.

8. Duration

The term of this Agreement shall be for a period commencing on the Commencement Date and expiring, unless extended or earlier terminated in accordance with the terms of this Agreement until the Total Energy Quantity has been Delivered.

9. Risk and Ownership of Contract Coal

- 9.1 The risk in, and ownership of, the Contract Coal Delivered in terms of this Agreement shall pass to Eskom upon Delivery, notwithstanding the provisions of clause 19.
- 9.2 Eskom shall be entitled to use all Contract Coal Supplied to it in terms of this Agreement for consumption at any power station owned and/or operated by Eskom from time to time and Eskom shall be entitled to use the Contract Coal in accordance with its sole requirements including selling or disposing of such coal to any third party.
- 9.3 The Supplier shall Deliver Contract Coal to the designated Delivery Point in the quantities and at the rates set out in this Agreement for Off Take by Eskom.

Conditions Precedent

- 10.1 The Parties agree that this Agreement will be subject to the fulfilment or waiver of the following Conditions Precedent:
- 10.2 in respect of the Supplier:
- 10.2.1 by no later than 16h00 on 31 March 2015, the Supplier had completed and reported a successful combustion test for coal supply to Majuba Power Station.
- 10.3 It is specifically recorded that if the Conditions Precedent are not fulfilled or waived on or prior to the applicable date referred to in clause 10.2.1 the remaining provisions of this Agreement

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shall never become effective. In such event, neither Party shall have any claim of any nature against the other.

SECTION 4: QUANTITIES, DELIVERY, OFF TAKE AND SUPPLY OF COAL

10. Coal Quantities

- 10.1 The Supplier shall at all times throughout the duration of this Agreement ensure that the Coal Resource remains sufficient to enable the Supplier to compty with all its obligations in terms of this Agreement.
- The Supplier shall Deliver and Eskom will Take Off in each Month, a quantity of Contract Coal between the Minimum Monthly Quantity and the Maximum Monthly Quantity in accordance with clause 11 at an expected CV of 20.15 MJ/kg on an As Received basis.
- 10.3 The Supplier shall Deliver and Eskom will Take Off in each Year, a quantity of Contract Coal between the Minimum Annual Quantity and the Maximum Annual Quantity in accordance with clause 11, at an expected CV of 20.15 MJ/kg on an As Received basis.
- The total quantity of Contract Coal to be supplied under this Agreement shall equal an energy quantity of 275 855 450 MGJ ("the Total Energy Quantity"), being approximately 13 950 000 Tons (As Received) at an expected CV of 20.15 MJ/kg on an As Received basis.

Table 1 Contract Coal Supply Schedule

Year	Annual Quantity	Minimum Annual Quantity	Maximum Annual Quantity	Monthly Quantity	Minimum Monthly Quantity	Maximum Monthly Quantity
April 2015 – Sep 2015 (Tons)	390 000	351 000	429 000	65 000	52 000	78 000
Energy (MGJ)	7 858 500	7 072 650	B 644 350	1 309 750	1 047 800	1 571 700
Oct 2015 - Sep 2020 (Tons)	1 356 000	1 220 400	1 491 600	113 000	90 400	135 600
Energy (MGJ)	27 323 400	24 591 060	30 055 740	2 276 950	1 821 560	2 732 340
Oct 2020 - Sep 2025(Tons)	1 356 000	1 220 400	1 491 600	113 000	90 400	135 600
Energy (MGJ)	27 323 400	24 591 060	30 055 740	2 276 950	1 821 560	2 732 340
Total Contract Quantity (Tons)	13 950 000					
Energy (MGJ)	275 855 450					





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10.5 Any quantities of Contract Coal not be Delivered in a Year and for which the Supplier has paid a penalty in terms of clause 12.3, shall not be carried over to the next Year.

11. Planning and Supply of Contract Coal

- 11.1 The Parties shall use their reasonable endeavours to ensure that all Delivery and Off Take of Contract Coal is spread evenly across each day and Month and so as to comply with the limits stipulated in clauses 10.1 to 10.4.
- 11.2 Eskom shall, before the end of the second week of the last Month of each Quarter specify, in the Technical Liaison Meeting, the quantity of Contract Coal that shall be Supplied for each Month of the subsequent Quarter such that:
- 11.2.1 the quantity specified in respect of each Month will not be:
- 11.2.1.1 less than the Minimum Monthly Quantity; and
- 11.2.1.2 not more than the Maximum Monthly Quantity; and
- 11.2.2 the quantity to be Supplied each Year will not be:
- 11.2.2.1 less than the Minimum Annual Quantity stipulated in Table 1; and
- 11.2.2.2 more than the Maximum Annual Quantity stipulated in Table 1; and
- 11.2.3 it takes into account the provisions of any Rectification Plans agreed to by the Parties.
 - Either Party may request at the Technical Liaison Meeting to Deliver or Take Off less than the Minimum Monthly Quantity and/or Minimum Annual Quantity or in excess of the Maximum Monthly Quantity and/or the Maximum Annual Quantity applicable to any Month or Year, provided that the other Party shall not be obliged to agree to such quantity below the minimum quantities or above the maximum quantities as set out in Table 1, save in order to make up an Under Supply in terms of a Rectification Plan approved by the other Party. Should the Parties not agree the Monthly Quantity and/or Annual Quantity shall apply.
 - 11.4 Once the Monthly Quantity for each month of the subsequent Quarter has been determined in terms of clause 11.2, Eskom shall issue written order for the Delivery of Contract Coal for each Month in the subsequent Quarter ("the



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Drawdown Order") in respect of the quantities so determined. The Supplier shall Deliver and Eskom shall Take Off:

- 11.4.1 not less than the Minimum Monthly Quantity and not more than the Maximum Monthly Quantity during each Month of the subsequent Quarter; and
- 11.4.2 not less than the Minimum Quarterly Quantity and not more than the Maximum Quarterly during the subsequent Quarter;
 - 11.5 For avoidance of doubt, the quantities set out in each Drawdown Order shall expressly exclude any quantities planned for Supply under any agreed Rectification Plan. Where applicable, such quantities shall be noted separately in the Drawdown Order.

12. Under Delivery

- 12.1 In the event of an actual or expected Under Delivery:
- 12.1.1 the Supplier shall, within 7 (seven) days, submit a rectification plan to Eskom, which plan shall set out a schedule of how the Supplier shall make up the actual or expected shortfall in the shortest time reasonably possible, but in any event before the end of the Quarter;
- the Supplier shall consult with Eskom on the rectification plan and, Eskom undertakes, within 7 (seven) days after submission to it of the rectification plan, to advise whether the plan is acceptable, which acceptance will not be unreasonably withheld or delayed; and
- on Eskom's acceptance, the Supplier shall implement the rectification plan in the form and on the terms acceptable to Eskom and make up the actual or expected shortfall in accordance with the rectification plan.
 - 12.2 Where, as a result of the Under Delivery, Eskom takes coal from its own stockpiles to manage the shortfall, Eskom shall be entitled to recover from the Supplier its reasonably incurred and demonstrable costs for additional direct handling and stockpiling.
 - 12.3 In the event of:
- 12.3.1 the Supplier failing to submit and implement the rectification plan in terms of clause 12.1; or

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12.3.2 Eskom's rejection of the rectification plan; or

12.3.3 the Supplier's failure to make up the Under Delivery,

Eskom shall be entitled to purchase coal to make up for the shortfall, and to recover from the Supplier its proven costs for purchasing such coal. Where Eskom is unable to purchase coal to make up the shortfall within 1 month the conditions in clauses 12.3.1, 12.3.2 and 12.3.3 occurring, Eskom shall be entitled to recover from the Supplier a financial penalty calculated as:

$$P = \left[\left(API\#4 \times ZAR - CLT \right) \times 0.77 \times \frac{[x]}{23} \right] - CP$$

where:

P: is the effective penalty in Rand per ton;

API#4: is the API#4 Price:

ZAR: is the USD:ZAR Exchange Rate;

CLT: is the Coal Line Tariff;

0.77: represents a yield factor that accounts for the combined

yield of the primary and secondary washes, and for any

lost earnings on middlings product;

21.10: is the expected Calorific Value of Contract Coal in MJ/kg

on an Air Dried basis;

23.0: is a typical Calorific Value of run-of-mine export coal in

MJ/kg on an Air Dried basis;

CP: is the Price of Contract Coal in Rand per ton assuming a

Calorific Value of 21.10 on an Air Dried basis.

- 12.4 The quantity of any Under Delivery shall be measured:
- in any Month, as the Minimum Monthly Quantity in respect of that Month less the quantity of Contract Coal actually Delivered in that Month;
- in any Quarter, as the difference between the Minimum Quarterly Quantity in respect of that Quarter and the quantity of Contract Coal actually Delivered in that Quarter; and
- in any Year, as the difference between the Minimum Annual Quantity applicable to that Year and the quantity of Contract Coal actually Delivered in that Year.

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- 12.4.4 For avoidance of doubt, when calculating the quantity of an Under Delivery, the Supplier must first meet the Minimum Quarterly Quantity each Quarter before any quantity of Contract Coal Delivered in terms of a Supplier Rectification Plan is credited against that Rectification Plan.
 - 12.5 Any Under Delivery shall, unless otherwise agreed to in writing between the Parties, only constitute a material breach of a material term for purposes of clause 33 if such Under Delivery;
- 12.5.1 occurred more than 3 (three) times during any rolling 12 (twelve) Months; and
- 12.5.1.1 in any Month, is less than 50% (fifty percent) of the Monthly Quantity in respect of that Month; or
- 12.5.1.2 in any Quarter, is less than 60% (sixty percent) of the Minimum Quarterly

 Quantity in respect of that Quarter; or
- 12.5.1.3 in any Year, is in excess of 70% (seventy percent) of the Minimum Annual

 Quantity in respect of that Year.
 - 12.6 Where Eskom is responsible for the transportation of Contract Coal from the Mine to the Power Station, Eskom shall be entitled, but not obliged to recover from the Supplier any penalties for the cancellation and/or underutilisation of rail and road transport resulting from any rectification plan accepted by Eskom or any Under Delivery, determined in accordance with Annexe C1: The Rules of Road Transportation for FCA Contracts and Annexe D: The Rules of Rail Transportation, as the case may be.

13. Under Off Take

In the event of an actual or expected Under Off Take, Eskom shall, within 3 (three) Business Days thereof submit a rectification plan to the Supplier, consult with the Supplier thereon and obtain the Supplier's reasonable acceptance of the rectification plan (which may not be unreasonably withheld or delayed), implement the rectification plan and make up the Under Off Take in accordance with the rectification plan by Taking Off additional Contract Coal in order to make up the Under Off Take within the shortest time reasonably possible, but in any event within 3 (three) Months after the date on which the Under Off Take arose.

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- 13.2 Should Eskom fail to submit a rectification plan to the Supplier's reasonable satisfaction, fail to implement such rectification plan, fail to make up the Under Off Take within a reasonable period pursuant to any of the aforesaid effort, Eskom shall make full payment of any Under Off Take not made up within 3 (three) Months after the date on which the Under Off Take arose without applying premiums or penalties to the Price.
- Eskom shall remain entitled to Take Off the Contract Coal so paid for within the applicable quantity limitations, unless otherwise agreed. When Taken Off, appropriate adjustments to the Price paid shall be made for quality premiums and/or penalties in accordance with the qualities of the Contract Coal actually Taken Off.
- 13.4 Eskom shall further be liable for the payment of any reasonable demonstrable additional direct handling and stockpilling costs incurred by the Supplier occasioned by any Under Off Take subsequently made up, provided that the Supplier shall notify Eskom in writing before incurring any additional costs and shall seek Eskom's involvement in minimising such additional costs.
- 13.5 The quantity of any Under Off Take shall be measured:
- in any Month, as the Minimum Monthly Quantity less the quantity of Contract
 Coal actually Taken Off in that Month;
- 13.5.2 in any Quarter, as the difference between the Minimum Quarterly Quantity in respect of that Quarter and the quantity of Contract Coal actually Taken Off in that Quarter; and
- 13.5.3 in any Year, as the difference between the Minimum Annual Quantity in respect of that Quarter and the quantity of Contract Coal actually taken Off in that Year.
- 13.5.4 For avoidance of doubt, when calculating the quantity of an Under Off Take, Eskom must first meet the Minimum Quarterly Quantity each Quarter before any quantity of Contract Coal Taken Off in terms of an Eskom Rectification Plan is credited against that Rectification Plan.
 - Any Under Off Take shall, unless otherwise agreed to in writing between the Parties, and unless paid for in terms of clause 13.2, only constitute a material breach of a material term for purposes of clause 33 of this Agreement if such Under Off Take:



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has not been made up as set out in clause 13.1 above within 90 calendar days

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after the Under Off Take first occurred; occurred more than 3 (three) times during any rolling 12 (twelve) Months; and 13.6.2 13.6.3 in any Month, is less than 50% (fifty percent) of the Monthly Quantity; or 13.6.4 in any Quarter, is less than 60% (sixty percent) of the Minimum Quarterly Quantity; or 13.6.5 in any Year, is less than 70% (seventy percent) of the Minimum Annual Quantity. 13.7 Where the Supplier is responsible for the transportation of Contract Coal from the Mine to the Power Station, the Supplier shall be entitled to recover from Eskom any penalties it incurs for the cancellation and/or underutilisation of road transport resulting from any rectification plan accepted by the Supplier or any Under Off Take, determined in accordance with Annexe C2: The Rules of Road Transportation for Delivered Contracts.

14. Eskom Technical Compliance

The Contract Coal to be supplied from both Brakfontein and Brakfontein Colliery Extension must at all times comply with Eskom's technical and coal supply requirements. For the avoidance of any doubt if these requirements do not render compliance for supply to Majuba Power Station, Eskom reserves the sole and exclusive right to call upon a material breach as more fully provided for in this Agreement and exercise its rights accordingly. SECTION 5: PRICE, ADJUSTMENTS, INVOICING AND PAYMENTS.

15. Base Price

- 15.t The price for Contract Coal on the Base Date ("the Base Price") shall be R
 13.50 (thirteen rands and fifty cents) excluding VAT per GJ, Free Carrier (FCA)
 at the Delivery Point for Rail Coal and Road Coal
- 15.2 For the avoidance of doubt, the Base Price excludes any consideration due to the Supplier by Eskom for Road Transportation where the Supplier is responsible for road transportation. Such consideration shall be determined in accordance with clause 26.
- 15.3 The Base Price and Price adjustments have been negotiated on an arms length basis and the Supplier accepts all risks of cost elements, cost increases other than provided for in clauses 16 and 17.

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16. Annual Adjustment

- 16.1 The Base Price stipulated in clause 15, shall be adjusted upwards or downwards as the case may be on the 1st of April and annually thereafter on the 1st of April of each subsequent Year ("the Price Adjustment Date"), by the Price Adjustment Factor.
- The Base Price as adjusted in terms of clause 16.1 on the 1st of April of each Year shall be the price ("the Price") of Contract Coal applicable until the 31st of March of that Year, subject to any Monthly price adjustments determined in accordance with clause 17.
- 16.3 If the published value of any index in the third column of Table 2 is changed after it has been used in calculating a Price Adjustment Factor, the calculation shall be repeated and a correction included in the Supplier's next invoice.
- If the value of any index in the third column of Table 2 for the applicable Month is not yet published and available for the calculation of the Price Adjustment Factor in any Year, the most recent published index shall be used. The calculation of the Price Adjustment Factor shall then be repeated when the applicable index is published and made available, and a correction shall be included in the Supplier's next invoice.
- In the event that any index in the third column of Table 2 is no longer published and the Parties are unable to agree on a replacement index, the matter shall be referred for expert determination in accordance with clause 32.1.
- In the event that the matters referred to in clauses 16.3 to 16.5 are disputed by any Party, the matter shall, notwithstanding the provisions of clause 31, be referred to an independent expert for determination in accordance with clause 32.1 at least 6 (six) Months before the commencement of the next Year.
- 16.7 Should Parties have not resolved any dispute as set out in clause 16.6 above before the commencement of the next Year, the escalation sources in use before the dispute was declared shall be applied on a provisional basis until the dispute has been resolved, where after the determination of the independent expert as referred to in clause 16.6 shall be applied retrospectively and any necessary adjustment payments shall be made.

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Table 2: Contract Price Adjustment Indices

Cost Component	Proportion	Index and Source Table	Base Date Index (B)	Base Date	Frequency of Adjustments
Labour	26%	SEIFSA Labour Index		March 2015	Annually
Diesel	8%	DME 0.05% Sulphur		March 2015	Monthly
Electricity	4%	Electricity PPI		March 2015	Annually
Mining Supplies	15%	20% Mechanical engineering index 40% PPI Mining Machinery 20% Imported Rubber index 20% Structural and fabricated metal products index		March 2015	Annually
Overheads	15%	50% CPI headline items 50% PPI		March 2015	Annually
Profit & Capital Recovery	22%	50% CPI headline items 50% PPI Coal and Gas		March 2015	Annually
Fixed	10%	Fixed			Not applicable
Total	100%				

- 16.8 For the avoidance of doubt, the Parties note that the calculation of the Price Adjustment Factor each Year automatically adjusts the proportions set out in the second column Table 2 in tine with the changes in the values of the indices.
- 16.9 For the avoidance of doubt, the annual price adjustment each Year shall be based on the Base Price and disregarding the monthly Price adjustments.

17. Monthly Adjustment for Diesel Price Changes

17.1 The Price determined in accordance with clause 16.1 shall be adjusted upwards or downwards on the first Business Day of each Month to reflect the change in





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the price of diesel only, during the previous Month, by multiplying the Base Price by the Price Adjustment Factor.

17.2 The provisions of clause 16.3 and 16.4 shall apply *mutatis mutandis* to this clause 17.

18. Adjustments of Other Monetary Amounts

Unless specified otherwise, any other monetary amount used in this Agreement and which is expressed in South African Rand shall also be adjusted annually, by the Price Adjustment Factor, on the Price Adjustment Date.

19. Invoicing and Payment

- 19.1 The Supplier shall render a tax invoice to Eskom on or before the third Business Day of each Month together with a statement reflecting the Delivery dates; the mass of the coal on an As Received basis; the mass of the coal on an Air Dried basis; the As Received CV; the Price in respect of each Consignment and the total Contract Coal Supplied during the immediately preceding Month.
- 19.2 Subject to clause 19.3, the amount payable in respect of each invoice shall, in the absence of manifest error and without set off, and provided that it has been timeously rendered, be payable within 30 (thirty) days of receipt of the invoice by Eskom, provided that disputed items or amounts on an invoice shall only be payable when the dispute has been resolved.
- 19.3 In terms of clause 13.7 of this Agreement, Eskom shall be entitled, but not obliged to recover from the Supplier any penalties for the cancellation and/or underutilisation of rail and road transport resulting from any Rectification Plan accepted by Eskom or any Under Delivery. In the event that Eskom elects to recover any such penalties, Eskom shall be entitled to set-off the said penalties against any invoice rendered by the Supplier.
- 19.4 Without prejudice to any other of its remedies in law and/or this Agreement, the Supplier shall be entitled to recover interest on any amount payable by Eskom in terms of this Agreement which is overdue, at the prime overdraft lending rate charged from time to time by First National Bank of Southern Africa Limited. The amount of such prime rate shall prima facile be proved by a certificate signed by any manager or accountant (whose appointment need not be proved) of any branch of such bank.





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SECTION 6: QUALITY OF COAL

20. Contract Coal Quality

20.1 The Supplier shall ensure that each quality parameter of the Contract Coal Delivered to Eskom in terms of this Agreement shall comply with the Quality Specifications for Contract Coal set out in Table 3 hereunder.

Table 3: Coal Quality Specifications and Rejection Limits

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	%	<5.0	>5.0	
-3mm (cumulative)	%	<30.0	>35.0	N/A
-1mm	%	<10.0	>15.0	

All parameters are measured to 1 (one) decimal place, except Al and AFT, which shall be measured to the nearest integer.

*Hard grove Index should be within Eskom acceptable limit of <55 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.

******mathematical blending limits to be advised by Eskom

- 20.2 The Supplier shall ensure that no Ultrafines are blended into the coal to be Delivered to Eskom and that each Consignment of Contract Coal is substantially free from impurities and extraneous materials related to the proper mining and processing of coal.
- 20.3 Where the Supplier wishes to Deliver coal of a higher quality than the Quality Specifications, the Supplier shall make a written request to Eskom and the acceptance of such request shall be at Eskom's sole discretion. For the





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purposes of determining the energy delivered for payment purposes, unless otherwise agreed, the CV of such coal shall be the maximum CV as set out in the Quality Specification.

- 20.4 In the event that coal is Supplied which does not meet the Quality Specifications, Eskom shall treat such coal as Reject Coal, and such Reject Coal will be burned or disposed of, and
- 20.4.1 If the relevant quality parameter is within 10% (ten percent) of the applicable reject level for that parameter, Eskom shall pay the Supplier an amount of R30.00 (thirty Rand) per Ton for such coal; or
- 20.4.2 If the relevant quality parameter deviates from the applicable reject level by more than 10% (ten percent), Eskom shall not be liable to pay the Supplier for such coal.
 - 20.5 Where Eskom decides, at its sole discretion, to dispose of the Reject Coal, the Supplier shall be fiable for any demonstrable and reasonable additional costs occasioned by the disposal of such coal, including the cost of transporting the coal to the Power Station.
 - 20.6 Reject Coal supplied shall not constitute Supply or Delivery and shall not reduce the Monthly, Yearly or Total Energy Quantity to be supplied in terms of this Agreement.
 - 20.7 Coal Delivered from a Pre-Certified stockpile cannot be Reject Coal, provided that the Supplier has complied with the provisions of the Coal Quality Management Procedure.
 - 20.8 The following clauses, to ensure assurance on the quality precertification process, shall be applicable:
- 20.8.1 Mix / Blending Process
- 20.8.1.1 The Supplier shall install/have adequate mechanical mixing/blending capacity to ensure blending and consistency within the product consignment.
- 20.8.1.2 The Supplier shall be required to provide Eskom with a schematic flow diagram/procedure diagram outlining the mix/blending process that shall be adhered to for the duration of the Agreement. The flow diagram shall be agreed to between the Parties and shall form part of the final Agreement.





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Variability tests will be performed to determine the sampling implement frequency.

21. Pre-Certification of Coal

In order to ensure compliance with the provisions of clause 20:

- Prior to Delivery to Eskom, the Supplier shall ensure that coal contained in each separate stockpile is sampled and pre-certified to meet the Quality Specifications for Contract Coal and is identified as such in accordance with the processes and procedures set out in Annexe A: The Coal Quality Management Procedure;
- Only coal that has been sampled, pre-certified and identified in accordance with the provisions of clause 21.1, may be placed on the Pre-Certified Stockpile. The Supplier shall only Deliver Contract Coal to Eskom from Pre-Certified Stockpiles allocated for Delivery to Eskom in terms of this Agreement; and
- 21.3 Where the pre-certification process indicates that a product stockpile does not meet the Quality Specifications set out in Table 3, the Supplier shall blend/reprocess and re-sample such stockpile to meet the Quality Specification at the Supplier's own cost and risk.
- 21.4 The Supplier shall be required to provide Eskorn with a flow diagram//procedure indicating the auto- mechanical sampling process that shall be adhered to for the duration of the Agreement. The flow diagram shall be agreed to between the Parties and shall form part of the final Agreement.
- 21.5 For assurance purposes the following is required:

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21.5.1 Eskom will observe whether the existing dome cameras provide enough coverage and may require a different camera system covering the auto-sampler, sample collection, preparation and sampling and placement in the lockable bin. 21.5.2 Eskorn would like camera coverage of the sample from the point of the cross belt sampler to splitting in the laboratory. Eskom shall require the Supplier to provide a solution within the first month of signing of the short term contract. No manual resampling of stockpiles shall be allowed -21.5.3 including reprocessed/out of specification stockpiles. 21.6 The Supplier shall be required to provide Eskom with a flow diagram/procedure indicating the load out control process that shall be adhered to for the duration of the Agreement. The flow diagram shall be agreed to between the Parties and shall form part of the final Agreement. 21.7 The Supplier shall be required to implement the following: 21.7.1 A traffic management system. There shall be clear separation of in and outgoing traffic. Strict adherence to the prescribed consignment size, which shall be equal to the agreed consignment size. Mini "transit" stockpiles shall not be allowed. 21.7.2 A weighbridge identity system must be implemented. The approved system shall be required to include the stockpile identity on the weighbridge certificate. A vehicle tracking system. For Delivered Agreements the vehicle tracking system shall be required to be compatible to Eskom's DX250 vehicle tracking system. Eskom may, on an ad-hoc basis, request information from the vehicle tracking system. The Supplier shall make such information available to Eskom by the requested date. 21.7.3 The existing dome camera covering the stockpile load-out area. Eskom with observe whether the dome carneras provide enough coverage and may require a different camera system and Eskom shall have access to the information as and when required. 21.7.4 Supply Eskom with a daily stockpile status report showing a reconciliation of pre certified tonnages. (Tons closing stock = Tons Opening stock + Tons Added - Tons Despatched). The format of the status report shall be agreed to by the parties and included in the agreement. The Supplier will provide survey reports on request, for audit purposes.



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21.7.5 Adequate supervision shall be demonstrated. The Supplier shall be required to provide a signed supervisory structure to Eskom, such structure shall form part of the Agreement. 21.8 Eskom shall be entitled to: 21.8.1 At any time, with reasonable notice, audit the site in terms of adherence to the above requirements relating to precertification. 21.8.2 Request the Supplier to provide pre-qualification analysis of the individual sources that make up the blend for the Contract Coal. 21.8.3 At Eskom's cost, conduct verification sampling at the source (as loaded) and at the Power Station. 21.8.4 Eskorn shall have the right to view and access the footage of the dome camera observing the automatic sampler, the auto sampler, sample collection, preparation and sampling placement in the lockable bin, as and when required. 21.9 The Supplier shall be entitled to: 21.9.1 Have access to the verification results. All verification sampling results will be supplied to the Supplier 24 hours after the analysis results have been issued to Eskom 21.9.2 The supplier shall be notified of any precertification sampling and will witness the

22. Determination of Coal Quality

precertification sampling.

- 22.1 The Parties shall implement the provisions of Annexe B: The Coal Quality Management Procedure, for the purpose of sampling, analysis, reporting and resolution of disputes relating to the qualities and quantities of coal Supplied in terms of this Agreement.
- The Supplier shall be responsible for the sampling of coal and associated costs.

 In this regard, the Supplier shall ensure that acceptable auto-mechanical sampling equipment is available for sampling of coal and shall be responsible for the maintenance thereof.



- 22.3 Eskom shall, at its cost and including the cost of transport, procure the analysis of such samples by the laboratory defined as the "Nominated Laboratory" in **Annexe A**.
- The Supplier shall submit a daily report to Eskom in the format set out in Annexe A. Eskom reserves the right to amend Annexe A from time to time in order to align same with its operational arrangements and shall notify the Supplier in writing of any such amendments within 7 (seven) days of the amendments being effected.
- 22.5 Eskom shall procure that the Nominated Laboratory shall submit a daily report simultaneously to Eskom and the Supplier of the analysis results.
- 22.6 Eskom may provide on-site representatives for the verification of the sampling and pre-certification processes. The Supplier consents that Eskom's on-site representatives shall have full access to verify the sampling and the pre-certification process.
- 22.7 The Supplier undertakes to grant to Eskom and its representatives, on request, access to all available geological information relating to the Coal Reserve and the Coal Resource.
- Eskom shall further be entitled to conduct pit visits on reasonable notice to the Supplier, to monitor the Supplier's application of effective grade and contamination controls.
- Disputes in respect the analytical results shall, notwithstanding the provisions of clause 30, be dealt with in terms of the dispute resolution procedure included in Annexe A: The Coal Quality Management Procedure.

23. Adjustment for Moisture Content

22.10 Eskom and the Supplier shall jointly and in consultation with each other and no later than 30 (thirty) days after first Delivery of Contract Coal, conduct drainage tests to determine the Equilibrium Moisture content and the stockpite drainage period required for coal to attain such Equilibrium Moisture, which Stockpile Retention Time will then be reduced to writing and signed off by duly authorised representatives of both Parties to be used for evidentiary purposes. The Supplier shall bear the cost of sampling and Eskom shall bear the cost of the analysis;



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- 23.1.1 upon completion of the drainage tests to determine the Equilibrium Moisture and the Stockpile Retention Time in accordance with clause 23.1 above, the Supplier shall procure that all coal stockpiled for the purposes of this Agreement, with Total Moisture content that exceeds the Rejection Limit set out in the fifth column of Table 3, is drained for a period of at least the Stockpile Retention Time before Delivery and the Equilibrium Moisture value shall be used in the CV Adjustment Factor (CVAF) applicable to this Agreement; and
- 23.1.2 until such time as the results of the drainage tests become available and have been provided by Eskom to the Supplier, and until the Equilibrium Moisture and the Stockpile Retention Time have been determined, the Supplier shall procure that all coal stockpiled for the purposes of this Agreement, with Total Moisture content that exceeds the Rejection Limit set out in the fifth column of Table 3, is drained for a period of at least 24 (twenty four) hours prior to Delivery, and a deemed Equilibrium Moisture value of 10% (ten percent) shall be used in the CV Adjustment Factor (CVAF) applicable to this Agreement. Examples and the formulae used for this calculation are provided in Annexe E: Example Calculations for Adjustments for Moisture Content.
- 23.2 For invoicing purposes, the mass of any Contract Coal accepted by Eskom and Delivered in terms of clause 23.3 shall be adjusted by multiplying the mass of such coal, as determined in accordance with clause 27, by the Tonnage Adjustment Factor. The Total Moisture content as stated in the Supplier's request in terms of clause 23.3 shall be used in the calculation of the Tonnage Adjustment Factor. Examples and the formulae used for this calculation are provided in Annexe E: Example Calculations for Adjustments for Moisture Content.
- 23.3 In the event of high rainfall at the Mine, such that only the Total Moisture content of the coal exceeds the Rejection Limit set out in the fifth column of Table 3, the Supplier must make a formal request in writing for approval to Deliver such coal. The Supplier's request must state the quantity (in millimetres per 24 (twenty four) hour period) of rain that has fallen as well as the Total Moisture content of the coal at the time of the request being made. Eskom may, at its sole discretion, give the Supplier such approval and coal so accepted shall not be classified as Reject Coal and accordingly the provisions of clauses 20.4 to 20.6 of this Agreement shall not apply to such coal, but will be subject to the moisture adjustment in terms of clause 23.2. Eskom's acceptance or rejection of such request must be in writing and provided no later than the day following such request from the Supplier.
- 23.4 For the purposes of converting the Calorific Value (CV) of coal from an Air Dried to an As Received Basis in order to determine the energy Delivered for invoicing purposes, the





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Calorific Value (CV) of coat measured on an Air Dried basis by the Nominated Laboratory shall be adjusted by multiplying the Air Dried Calorific Value (CV) by the CV Adjustment Factor (CVAF). Examples and the formulae used for this calculation are provided in Annexe E: Example Calculations for Adjustments for Moisture Content.

SECTION 7: MODES OF TAKE OFF OF COAL

24. Modes of Take Off of Coal

- 24.1 Eskom shall use [1 (one)/2 (two)] modes of Take Off of Contract Coal, namely [rail and/or road].
- Eskom shall, not less than 30 (thirty) calendar days before each anniversary of the Commencement Date for the currency of this Agreement, notify the Supplier in writing of the provisional estimates of the relevant portions of the Annual Quantity which it requires to be Delivered for Take Off by rail and road respectively during each Month of the following Year.
- 24.3 The Supplier shall Deliver the quantities stipulated by Eskom in the notice contemplated in clause 24.2 at the Delivery Points for Road Coal and Rail Coal respectively, provided that the Parties shall liaise with each other:
- 24.3.1 on a Monthly basis at the Technical Liaison Meetings to confirm the quantities

 Eskom requires to be Delivered for Take Off by [rail and/or by road]; and
- 24.3.2 in order to be responsive to Eskom's operational needs which may arise from time to time, Eskom may request a variation to the mode of transport previously agreed to by requesting a change to the Delivery Point. The additional reasonable and demonstrable direct costs which the Supplier may incur to comply with such variation request from Eskom will be borne by Eskom.

25. Road Coal Transportation [FCA Contract]

- 25.1 Where Eskom is responsible for the transportation of Road Coal (i.e. an FCA Contract), Eskom will ensure that sufficient road trucks are available at the Delivery Point to Take Off Road Coal.
- The Supplier shall, at its own cost, provide, maintain and operate Pre-Certified Stockpiles with a total capacity of no less than 3 ("three") days Consignment, an access road, equipped with a weighbridge, terminating on the R50 road, and truck loading equipment such that a maximum of 1 491 600 Tons of coal per

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annum can be uniformly loaded into trucks and transported to the Power Station by road.

- 25.3 The Supplier shall ensure that Contract Coal sufficient for a minimum of 3 (three) days' Delivery is available at all times on Pre-Certified Stockpiles.
- 25.4 The Supplier shall comply with Eskom's Rules of Road Transportation pertaining to coal loading operations, as amended or replaced from time to time, and which, in their present form, are contained in Annexe C1: Eskom's Rules of Road Transportation for FCA Contracts.

26. Road Coal Transportation [Delivered Contract]

- 26.1 Where the Supplier is responsible for the transportation of Contract Coal by Road (ie a Delivered Contract) to a designated Power Station, the Supplier shall ensure that sufficient road trucks are available to transport coal from the Mine to the Delivery Point.
- 26.2 The Supplier shall be responsible for ensuring that all road transportation under its control complies with the provisions of Annexe C2: Eskom's Rules of Road Transportation for Delivered Contracts.
- Where the Supplier is responsible for the transportation of Road Coal from the Mine to any Eskom Power Station, the transport tariff per Ton payable by Eskom to the Supplier (and which shall be in addition of the Price payable for the Contract Coal so Delivered) shall be determined using the Coal Haulage Rates Model. For the avoidance of doubt, the transport tariff payable in terms of the Coal Haulage Rates Model shall be reviewed each Month and the Price adjustment provisions as set out in clause 16 and 17 shall not apply to the said tariff.
- Eskom reserves the right to require the Supplier to Deliver Contract Coal to any alternative Power Station, and the Supplier shall co-operate with Eskom in relation to such alternatives. Unless otherwise provided elsewhere in this Agreement, Eskom shall be liable for any reasonable and demonstrable additional costs incurred by the Supplier as a result of an Eskom request in terms of this clause 26.4 and shall be entitled to any reasonable and demonstrable additional savings resulting from such request.

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27. Mass Determination

27.1 general responsibilities

27.1.1 Each Party shall ensure that its mass measuring equipment is inspected assized and certified every 12 (twelve) Months or more regularly if necessary in the case of recurring discrepancies, by a company certified to assize mass measuring equipment in accordance with the Trade Metrology Act, No. 77 of 1973, as amended or replaced from time to time and prevailing South African Bureau of Standards specifications. Each Party shall procure that a certificate signed by the assizing company which is no more than 12 (twelve) Months old is available for inspection by the other Party at all times.

In the event that the Supplier's mass measuring equipment is not operational, the Supplier must inform Eskom within 24 (twenty four) hours of becoming aware of any such problems and Eskom's mass measurements shall be used for invoicing purposes until such time as the Supplier's mass measuring equipment has been repaired. Where Eskom does not have mass measuring equipment installed for rail transportation, Parties shall estimate the mass based on the number of rail wagons and the nominal carrying capacity of each rail wagon.

27.2 mass determination of Road Coal

27.2.1

27.2.2

The Supplier shall measure the mass of Road Coal Delivered by weighing same at the Mine. Each truck transporting the Road Coal shall be weighed full and empty at the relevant weighbridge located at the Delivery Point, and the mass thereof shall be recorded on a waybill issued in triplicate.

The Supplier shall deliver the original waybill to Eskom with every truck load, retain 1 (one) copy, and forward 1 (one) copy to the transport contractor. The Supplier shall on a daily basis, forward to Eskom, a schedule depicting the waybills, the waybill number, vehicle registration number, dispatch and delivery time, total number of trucks loaded and the mass of each truck, and stockpile reference number (as further detailed in the CQMP), together with the said waybill.

27.2.3 Eskom shall weigh each truck received on a full and empty basis and the Parties shall reconcile their respective mass measurements on a weekly basis or no later than the date of the next Technical Liaison Meeting and the following shall apply:



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- 27.2.3.1 where Eskom is responsible for the transportation of Coal from the Delivery Point, then, in the event of a discrepancy of less than 2% (two percent) between the Supplier's mass determination and that of Eskom, the mass recorded on the waybill and/or the tonnage information supplied by the Supplier in terms of clause 27.2.2, as the case may be, will be accepted as final and binding;
- where the Supplier is responsible for the transportation of Coal to a Power Station, then, in the event of a discrepancy of less than 2% (two percent) between the Supplier's mass determination and that of Eskom, the mass recorded on the waybill and/or the tonnage information supplied by Eskom in terms of clause 27.2.2, as the case may be, will be accepted as final and binding, subject to clause 27.4; and
- in the event of a discrepancy of 2% (two percent) or more, and if the Parties agree that such discrepancy is due to a mass determination fault of either Party, the lesser of the two masses will temporarily be used for the purposes of this Agreement, until the source of the fault has been identified and corrective measures implemented, which shall, in any event, not be for a period of more than 30 (thirty) days, subject to clause 27.4.
 - 27.3 mass determination of Rail Coal
- 27.3.1 The Supplier shall measure the mass of Rail Coal Delivered at the load out flask situated at the Rail Siding.
- 27.3.2 The mass of each rail wagon load of Rail Coal shall be determined by the Supplier's load out flask, and the mass thereof shall be recorded on a waybill issued in triplicate, which recorded mass shall be applicable to this Agreement.
- 27.3.3 The Supplier shall deliver the original waybill to Eskom with every train load, retain one copy, and forward one copy to TFR. The Supplier shall on a daily basis, forward to Eskom, a schedule depicting the waybills, the train number, dispatch and delivery time, total number of rail wagons loaded and the mass of each rail wagon and where applicable, the stockpile reference number (as further detailed in the CQMP), together with the said waybill.
- 27.3.4 The Supplier shall on a daily basis, forward to Eskom a schedule depicting the waybills for that day.



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- 27.3.5 Eskom shall be entitled to weigh each rail wagon received on a full and empty basis and the Parties shall reconcile their respective mass measurements on a weekly basis or no later than the date of the next Technical Liaison Meeting and the following shall apply:
- 27.3.5.1 in the event of a discrepancy of less than 2% (two percent) between the Supplier's mass determination and that of Eskom, the mass recorded on the waybill and/or the tonnage information supplied by the Supplier in terms of clause 27.3.3, shall be accepted as final and binding.
- 27.3.5.2 in the event of a discrepancy of 2% (two percent) or more, and if the Parties agree that such discrepancy is due to a mass determination fault of either Party, the lesser the two masses shall temporarily be used for the purposes of this Agreement, until the source of the fault has been identified and corrective measures implemented, which shall not be for a period of more than 30 (thirty) days, subject to clause 27.4.

27.4 disputes regarding mass measurement

- 27.4.1 Where there are persistent discrepancies or other disputes regarding mass or the mass measurement of Contract Coal, the Parties shall ensure that they use their best efforts to reach agreement within 20 (twenty) days after a dispute being declared by either Party in this regard.
- Where the Parties are unable to reach agreement within the time period set out in clause 27.4.1 above either Party may then refer the dispute for an independent expert determination in terms of clause 32 of this Agreement.
- 27.4.3 The Parties shall retain records of all printouts in respect of mass measurement for a period of at least 3 (three) years after the date of Delivery, or any legislated period, whichever is the greater. In the event that there is an unresolved dispute between the Parties, such records shall be retained until such time as the dispute has been resolved.

SECTION 8: REPORTING REQUIREMENTS AND PROVISION OF INFORMATION

28. Technical Liaison Meetings

At least once per Month during the currency of this Agreement, a Technical Liaison Meeting shall be held and be attended by authorised representatives of Eskom and the Supplier to report on, *inter alia*:

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28.1	the Delivery and Take Off of Contract Coal (including Under Delivery/Under Off
	Take and planning of the Monthly Quantity, Quarterly Quantity and Yearly
	Quantity);
28.2	any incident where Delivery or Off Take deviated from the Drawdown Order
	and/or from the quantities set out in clause 11;
20.2	
28.3 quality issues;	
28.4 any weight/mass determination issues;	
28.5	transport and mode of transport of Contract Coal;
20.3	transport and mode of transport of Contract Coal,
28.6	safety;
28.7	environmental and water related matters;
20.7	Oliviolimental and water related matters,
28.8	general information sharing; and
28.9	any other material matter not referred to herein and/or referred to in Annexe F:
	The Technical Liaison Meeting Agenda.
29. Reports	
29.1	The Supplier shall within 3 (three) days of the end of each Month, provide
	Eskom on a Monthly basis with a summary of the qualities, quantities and dates
	of dispatch of each Consignment of coal Delivered in the previous Month.
29.2	The Supplier shall supply Eskom with the following information on an annual
	basis, within 30 (thirty) days after publication of the Suppliers annual report:
29.2.1	summary of the qualities, quantities and dates of dispatch of Contract Coal
	Delivered during the previous Year;
29.2.2	the reserve and resource statements, in accordance with the SAMREC Code,
	relating to the remaining coal to be mined at the Mine;
29.2.3	progress on long term issues dealt with in this Agreement;
20,2,0	pregration on long term issued dealt with in this regretificity,
29.2.4	latest tax clearance certificates;
29.2.5	its broad based black economic empowerment status;
29.2.6	its employment equity status; and
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29.2.7 its latest audited financial statements.

30. Legislative Submissions associated with Compliance

The Supplier will provide Eskom, upon Eskom's request, with copies of all legislated submissions submitted to all competent authorities required pursuant to legislation aimed at protecting the environment and water resources, and regulating health and safety, prospecting and mining and black economic empowerment, including but not limited to, the Mining Right and the related the Mining Work Program, Environmental Management Programme, compliance submissions in respect of the said programmes and legislative black economic empowerment compliance.

SECTION 9: DISPUTE RESOLUTION AND BREACH

31. Dispute Resolution

31.1	This clause is a separate, divisible agreement from the rest of this Agreement
	and shall:

31.1.1	not be or become void, voidable or unenforceable by reason only of any alleged
	misrepresentation, mistake, duress, undue influence, impossibility (initial or
	supervening), illegality, immorality, absence of consensus, tack of authority or
	other cause relating in substance to the rest of the Agreement and not to this
	clause. The Parties intend that any such issue shall at all times be and remain
	subject to arbitration in terms of this clause:

31.1.2	remain in effect even if this Agreement terminates or is cancelled.
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31.2	If a dispute (hereinafter collectively referred to as a "Dispute") has arisen
	between the Parties out of, in relation to, or in connection, with this Agreement,
	or in regard to:

31.2.1	 the interpretation and meaning 	of;

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31.2.2	the effect of:

31.2.3 the respective rights or obligations of the Parties under;

31.2.4 the termination of; and/or

31.2.5 any matter arising out of or following the termination of,





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this Agreement then and in such event the Dispute will be settled in accordance with the following procedures:

31.3 step one

The Disputing Party must give a written notice ("the Dispute Notice") to the other Party ("the Receiving Party") recording the nature of the Dispute as perceived by the Disputing Party, the performance required by the Disputing Party from the Receiving Party in order to resolve the Dispute and/or the manner in which the Disputing Party believes the Dispute must be resolved, and the time period within which such performance is required. The time period, which may not be shorter than seven days and not longer than 14 days, is referred to herein as the "first period".

31.4 step two

In the event of the Receiving Party not performing in a manner demanded in the Dispute Notice or the Dispute not being resolved within the first period (or such further period as may be agreed to in writing by the Parties), then authorised representatives of the Parties will meet within a period ("the Second Period") of no more than seven days after the end of the first period to attempt to settle such dispute in an amicable manner, the outcome of which meeting will be reduced to writing.

31.5 step three

If, irrespective of whether the Parties have met or concluded any meeting, no written agreement recording the resolution of the Dispute is signed by the Parties within the Second Period, then the Dispute shall within a period of seven days calculated from the end of such Second Period, be referred in writing by the Disputing Party to each of the Chief Executive Officers of the Supplier and Eskom.

31.6 step four

31.6.1 If, irrespective of whether the senior

If, irrespective of whether the senior executives (or their appointed nominee) have met or concluded any meeting, no written agreement is signed by the Parties resolving the Dispute within a period of 30 (thirty) days calculated from the day upon which the Dispute was referred to the senior executives, or within such an extended period as may be agreed to in writing by the Parties, then:

31.6.1.1

either Party may refer the Dispute to be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") or its successor body by an arbitrator appointed by AFSA. "Refer" in this sub-

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clause means delivering or transmitting electronically a written notice to AFSA requesting the appointment of an arbitrator to determine the Dispute. Referral of the Dispute shall be completed on delivery to and acknowledgement of receipt by AFSA of the notice. The Party referring the Dispute shall thereafter deliver or electronically transmit a copy of the referral notice to the other Party;

- 31.6.1.2 the arbitration will be held in Johannesburg in private at a venue as determined by the AFSA Rules or the arbitrator appointed as envisaged in clause 31.6.1.1;
- 31.6.1.3 the arbitrator will have regard to the desire of the Parties to dispose of such
 Dispute expeditiously, economically and confidentially and shall be obliged
 to provide written reasons for his/her decision, together with reasons for
 such decision which shall be delivered in writing to the Parties within
 21 (twenty one) days after the conclusion of the arbitration hearing:
- 31.6.1.4 the arbitrator will determine the liability for his/her charges and the costs of the arbitration will be paid accordingly by the Parties;
- 31.6.1.5 subject to the provisions of clause 31.6.2, the Parties irrevocably agree that the decision in any such arbitration proceedings will be final and binding on them, will forthwith be put into effect and may be made an order of any court of competent jurisdiction.
- Either Party has the right to appeal against the decision of the arbitrator appointed in terms of clause 31.6.1.1 provided that this is done within 30 (thirty) days of receipt by the Parties of the arbitrator's award. The appeal shall be heard by three arbitrators, in accordance with a procedure determined by them, who shall be appointed as follows:
- 31.6.2.1 the Party appealing will appoint 1 (one) arbitrator from the ranks of retired
 High Court Judges or Senior Advocates;
- 31.6.2.2 the other Party will nominate 1 (one) arbitrator from the ranks of retired

 High Court Judges or Senior Advocates; and
- 31.6.2.3 the 2 (two) arbitrators so nominated must nominate a third arbitrator from the ranks of retired High Court Judges or Senior Advocates.

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- 31.6.3 Nothing contained in this clause 31 will preclude any Party from applying for, or obtaining, interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator on the merits of the Dispute.
- 31.6.4 The provisions of this clause 31 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Coal Supply Agreement.
- 31.6.5 Notwithstanding the provisions of clauses 31.3, 31.4, 31.5 and 31.6, a Disputing Party shall be entitled to refer any Dispute to be finally resolved by an arbitrator as contemplated in clause 31.6 above, without having commenced, or completed, the procedures prescribed in clauses 31.3, 31.4, 31.5 and 31.6 when in the view of the Disputing Party the prescribed procedures may not have been completed before any claim of the Disputing Party may have become prescribed. In this case the other Party shall be precluded from raising in the arbitration and/or any other forum a special plea or defence to the effect that the Disputing Party is precluded from proceeding immediately to arbitration because of the provisions of clauses 31.3, 31.4, 31.5 and 31.6.
- 31.6.6 The provisions of this clause 31 shall not apply in regard to the matters to be determined by an independent expert in terms of clause 32.

32. Determination by an Independent Expert

32.1 applicability of indices to measure changes in cost factors

The resolution of any Dispute between the Parties arising from this Agreement and relating to the applicability of the indices stipulated in Table 2 as actual measurement of the actual cost movement in respect of that cost element in the South African coal mining industry and if necessary an appropriate replacement index, must be determined by an independent expert who must:

- 32.1.1 have at least a bachelors degree in statistics, economics or equivalent qualifications; and
- have proper practical knowledge and at least 10 (ten) years' experience of statistics, indexing, finance and economics and application in South African Mining Industry.

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32.2 quality and quantity disputes

The resolution of any Dispute between the Parties arising from this Agreement and which is of a technical nature relating to coal qualities and quantities, must be determined by an independent expert who must:

- 32.2.1 have a bachelors degree in metallurgy or equivalent qualifications; and
- 32.2.2 have proper practical knowledge and at least 10 (ten) years' experience of coal mining, coal processing, quality and quantity determination and the use of coal in heat generation applications.

32.3 mining related disputes

The resolution of any Dispute between the Parties arising from this Agreement and which is of a technical nature relating to coal mining and the coal resources in terms of the Mining Right, including the information furnished by the Supplier in respect of the coal resources, all warranties furnished by the Supplier and a replacement code for reporting reserves if the SAMREC Code no longer exists, must be determined by an independent expert who must:

- 32.3.1 have a bachelors degree in Geology and/or Mining Engineering; and
- 32.3.2 have proper practical knowledge and at least 10 (ten) years' experience of coal geology, reserve determination and coal mining.
 - 32.4 disputes relating to nature of dispute

Should the Parties be unable to reach agreement on the nature of a Dispute in terms of this clause 32 the Chairperson for the time being of the South African Institute of Mining and Metallurgy, or its successor body, may, at the request of either of the Parties, determine in his/her absolute discretion the nature of the Dispute for purposes of this paragraph 32.

32.5 appointment of expert

If the Parties are unable to agree upon an acceptable independent expert pursuant to this clause 32 within 15 (fifteen) Business Days after a request by a Party for the appointment of such expert then, within 5 (five) Business Days after the lapse of such period, the Parties shall jointly request the head of the relevant professional body under which the independent expert falls, or if such professional body does not exist, the President for the time being of AFSA or its successor body to appoint an

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independent person, who satisfies the requirements an expert, to act as an independent expert to make the relevant expert determination in terms of this clause 32.10, provided, however, that if one party fails or refuses to join the other in making such request, then the latter may apply for such appointment.

32.6 procedure

The independent expert shall determine the procedures to be followed, including the manner in which the expert shall receive written, and if so required by the expert, oral submissions on behalf of each Party. The independent expert shall likewise determine the place where the expert shall meet the Parties, provided that such place must be in Johannesburg or Pretoria. The independent expert may, if the expert deems this necessary, conduct an inspection of any plant, mine, facilities and/or other area that is the subject of the Dispute. The independent expert shall act as an expert and not as an arbitrator or mediator.

32.7 costs

The Parties shall share any costs of AFSA and the costs of the independent expert equally, unless otherwise directed by the expert.

32.8 reasons

The independent expert shall in each case be obliged to give written reasons and motivation for his/her determination.

32.9 binding effect

In the absence of grounds for review, the relevant expert's determination shall be binding on both Parties.

32.10 review

32.10.1 Subject to the provisions of clause 32.9, any Party may take the independent expert's determination on review.

In the event that any Party wishes to take the independent expert's determination on review in terms of clause 32.10.1 above, the said Party must notify the other Parties and the independent expert thereof in writing within 60 (sixty) days after receipt of the independent expert's determination and reasons failing which the right to review shall lapse.

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- 32.10.3 In the event of a review, the independent expert's determination shall be suspended, pending finalisation of the review procedure.
- 32.10.4 Any review as envisaged must be conducted by a practising senior counsel with not less than ten years standing or a retired High Court Judge agreed between the Parties.
- 32.10.5 If the Parties cannot agree upon a particular person to conduct the review within 7 (seven) Business Days after notice has been given in terms of clause 32.10.1, then either Party may request, within seven Business Days after the Parties have so failed to agree, the Chairperson of the Johannesburg Bar Council (or any replacement body) to appoint a person to conduct the review.
- 32.10.6 The person conducting the review shall determine the procedures to be followed, provided that such proceedings must be held in Johannesburg or Pretoria. The powers of the person conducting the review shall be those of the High Court conducting a review as envisaged in Rufe 53 of the High Court rules, as amended or replaced from time to time.

33. Breach

33.1 breach of a warranty

If a Party breaches a warranty under clauses 3, 4 or 5 of this Agreement, and remains in breach of such warranty for 30 (thirty) Business Days after written notice to that Party requiring that Party to rectify that breach of warranty, the aggrieved Party shall be entitled, without derogating from any of its other specific rights or remedies provided for under this Agreement or which it is entitled to in law, at its option:

- 33.1.1 to sue for immediate specific performance of any of the defaulting Party's obligations under this Agreement; or
- 33.1.2 to cancel this Agreement in which case written notice of the cancellation must be given to the defaulting Party, and the cancellation shall take effect on the giving of the notice.

33.2 breach of other material provisions

If a Party breaches any other material provision of this Agreement and remains in breach of such material provision for 30 (thirty) Business Days after written notice to that Party requiring that Party to rectify that breach, the aggrieved Party shall be

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entitled, without derogating from any of its other specific rights or remedies provided for under this Agreement, at its option:

- 33.2.1 to sue for immediate specific performance of any of the Defaulting Party's obligations under this Agreement; or
- 33.2.2 to cancel this Agreement in which case written notice of the cancellation must be given to the defaulting Party, and the cancellation shall take effect from the date of the notice.

33.3 breach of general provisions

If a Party breaches any other general provision of this Agreement and remains in breach of such material provision for 30 (thirty) Business Days after written notice to that Party requiring that Party to rectify that breach, the aggrieved Party shall be entitled, without derogating from any of its other specific rights or remedies provided for under this Agreement to sue for immediate specific performance of any of the Defaulting Party's obligations under this Agreement.

SECTION 10: FORCE MAJEURE MATTERS

of this Agreement.

34. Force Majeure

34.1	general
34.1.1	For the purposes of this Agreement, an exceptional event or circumstance:
34.1.1.1	which prevents or restricts either Party directly or indirectly from performing all or any of that Party's ("the Affected Party") obligations in terms of this Agreement;
34.1.1.2	beyond the reasonable control of the Affected Party;
34.1.1.3	not the direct or indirect result of a breach by the Affected Party of any of its obligations under this Agreement; and
34.1.1.4	could not have been (including by reasonable anticipation) avoided or overcome by the Affected Party, acting reasonably and prudently,
	subject to clause 34.1.2 shall constitute a "Force Majeure Event" for the purposes

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A "Force Majeure Event" shall, subject to the conditions in clauses 34.1.1 to 34.1.2 34.1.1.4 being satisfied, include, without limitation: 34,1,2.1 war, hostilities (whether war to be declared or not), invasion, act of foreign enemies; 34.1.2.2 rebellion, terrorism, revolution, insurrection, military or usurped power or civil war; 34.1.2.3 riot, commotion, disorder, any blockade or embargo, strikes or lock outs that are on a national scale and directly affects the construction, energy and coal mining industry of South Africa, but shall not include any such action that is solely by the Supplier's personnel and other employees of the Supplier or its subcontractors; 34.1.2.4 natural catastrophes such as earthquake, hurricane, typhoon, volcanic activity floods (other than heavy rains), fire, 'Acts of God', or explosions." 34.1.3 An event which satisfies the requirements of clause 34.1, but is the direct or indirect result of any third party fulfilling contractual, statutory or other obligations to the Affected Party (for reasons which would not in themselves constitute a "Force Majeure Event") shall not constitute a "Force Majeure Event" for purposes of this Agreement. 34.1.4 The Affected Party shall be relieved of performance of its obligations in terms of this Agreement during the period that a Force Majeure Event occurs and its consequences continue (but only to the extent it is so delayed or prevented from performing partially or at all by the Force Majeure Event), and, provided that notice has been given in terms of clause 34.1.5, shall not be liable for any delay or failure in the performance of any of its obligations in terms of this Agreement or losses or damages whether general, special or consequential which the other Party ("the Unaffected Party") may suffer due to or resulting from any such delay or failure. 34.1.5 The Affected Party shall give written notice to the Unaffected Party at the earliest possible opportunity in writing of the occurrence of the event constituting the Force Majeure Event, together with details thereof and a good faith estimate of the period of time for which it shall endure.

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34.2 proportionate reduction

Should a Force Majeure Event affect the production capacity of the Mine and/or the Supplier's ability to Deliver coal for Supply to Eskom in terms hereof or should such Force Majeure Event affect Eskom's ability to Take Off coal in terms of this Agreement, each of the Parties' respective obligations to Deliver and to Take Off coal in terms hereof shall be reduced in proportion to the reduction in the capacity to Deliver or capacity to Take Off as the case may be.

34.3 consequences

At all times whilst a Force Majeure Event continues, the Parties shall meet at regular intervals to discuss and investigate, and if possible, to implement other practical ways and means to overcome the consequences of such a Force Majeure Event, with the objective of achieving the import and intent of this Agreement without unreasonable delay. In this regard the Parties shall explore the possibility of concluding alternative arrangements for the supply or purchase of coal as the case may be. These alternative arrangements may include but are not limited to quantity, quality and penalty amendments; and supply from any source for such periods of time as may be reasonable under the circumstances with due regard to the nature and anticipated duration of the Force Majeure Event.

34.4 termination of Force Majeure Event

The Affected Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event on its ability to perform under this Agreement and to terminate the circumstances giving rise to a Force Majeure Event as soon as reasonably possible (provided that nothing in this clause shall require the Affected Party to settle any strike, lock-out or other industrial or labour dispute, whether it is a party thereto or not) and upon termination of the event giving rise thereto, shall forthwith give written notice thereof to the Unaffected Party.

34.5 extension of this Agreement

In the event that a Force Majeure Event occurs as contemplated herein, the Parties shall, on cessation of the Force Majeure Event, or prior thereto, agree on the period, if any, by which the duration of this Agreement should be extended to take account of interruptions caused by such Force Majeure Event. The price payable for Contract Coal during such extension, shall be the Price determined under this Agreement as being that applicable for the period in which Contract





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Coal is actually Supplied, taking into account all adjustments as set out in this Agreement.

- In the event of a Force Majeure Event affecting Eskom in terms of this Agreement which is expected to endure for a period of more than 30 (thirty) days, the Supplier may sell Contract Coal, to third Parties for as long as such Force Majeure Event continues. In this event the Agreement shall be extended in terms of clause 34.5.1 above.
- In the event of that the Supplier is prevented by a Force Majeure Event from Delivering Contract Coal to Eskom in terms of this Agreement and for as long as such Force Majeure Event continues, Eskom shall not be under any obligation pursuant to this Agreement to purchase coal for use from the Supplier exclusively. Without derogating from that principle, Eskom shall be entitled to source all coal or any shortfall of coal from other sources.

34.6 termination of this Agreement due to Force Majeure Events

Unless otherwise unanimously agreed to in writing between the Parties, this Agreement shall be terminable by either Party if either Party is wholly prevented by a Force Majeure Event from fulfilling its obligations in terms of the agreement and where such prevention endures for a continuous period of at least 24 (twenty four) Months. Neither Party shall have any claim against the other for any loss suffered as a result of such termination.

SECTION 11: GENERAL PROVISIONS

35. Insolvency

Should either Party commit an act of insolvency, make an offer of compromise or composition, become the subject of a liquidation or business rescue proceedings then the other Party shall be entitled, but not obliged, without prejudice to any other rights which it may have, to terminate this Agreement.

36. Limitation of Liability

Notwithstanding any other provision in this Agreement, neither Party shall be liable in contract or in law or otherwise for any indirect, consequential, punitive and/or special damages or loss of profits or anticipated savings, whether foreseeable or not, and even if a Party has been advised of the possibility of such damages arising, incurred by the other Party arising out of or in connection with this Agreement.

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37. Insurance

In order for it to fully comply with its obligations under this Agreement, for the duration of the Contract Period, the Supplier shall:

- adequately insure, and keep insured, itself and, inter alia, the Mine (including the equipment acquired, and to be acquired, and the infrastructure established and to be established to enable the Supplier to comply with its obligations in terms of this Agreement) against the risks which are in line with, and on terms which are in line with, common mining practice in South Africa;
- forthwith apply the proceeds of any insurance policy to replace or repair, as is reasonable in the circumstances, the Mine (including the equipment acquired, and to be acquired, and the infrastructure established and to be established to enable the Supplier to comply with its obligations in terms of this Agreement) in the event of an insurable incident which may cause it to be damaged, lost or destroyed; and
- 37.3 to provide written proof of such insurance at the written request of Eskom.

38. Cession and Delegation

- This Agreement shall be binding upon and shall be for the benefit of the Parties and, to the extent permitted by the provisions of this clause, their respective successors and assigns.
- Neither Party may delegate this Agreement including to its holding company, an affiliated company, another company wholly and or partially owned by the Parties, to an entity acquiring all or substantially all of the assets of that Party, or for purposes of securing indebtedness and no such assignment shall release the delegating Party from the obligation to perform in terms of this Agreement unless the other Party consents thereto in writing. A Party requesting such consent shall provide the other Party with all the necessary information to conduct a reasonable assessment of the request.

39. Confidentiality

39.1 The Parties acknowledge that any information supplied in connection with this Agreement or in connection with each other's technical, industrial or business affairs which has or may in any way whatsoever be transferred or come into the possession or knowledge of any other of them ("the Receiving Party") may

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consist of confidential or proprietary data, disclosure of which to or use by third parties might be damaging to the Party concerned.

- The Receiving Party therefore agrees to hold such material and information in the strictest confidence, to prevent any copying thereof by whatever means and not to make use thereof than for the purposes of this Agreement and to release it only to such properly authorised directors, employees or third parties requiring such information for the purposes of this Agreement and agree not to release or disclose it to any other Party who has not signed an agreement expressly binding himself not to use or disclose it other than for the purposes of this Agreement.
- 39.3 The undertaking and obligations contained in this clause do not apply to information which is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than the Parties.
- The Receiving Party demonstrates that if was already in its possession prior to its receipt by or disclosure to such Receiving Party; is required by law or any regulatory authority to be disclosed after being disclosed to the Receiving Party is disclosed by any other person to the Receiving Party otherwise than in breach of any obligation of confidentiality.
- The Parties shall take such precautions as may be necessary to maintain the secrecy and confidentiality of such material and information in respect of its directors, employees, agents, and/or director or employees or agents of any assignee, sub-contractor or distributor or any other person to whom any such confidential or proprietary data may have been or shall be disclosed.
- 39.6 Save as may be required by law or any regulatory authority, no announcement or publicity of the existence of this Agreement or its content or transaction embodied in this Agreement shall be made or issued by or on behalf of any Party without the prior written agreement of the other Party.

40. Alienation or Disposal of an Interest

Where any proposed transaction shall result in a change in control of the holder of the Mining Right, Eskom shall forthwith be notified in writing within 7 (seven) days of such decision and provided with a copy of the application to amend the Mining Right, in terms of the provisions of the MPRDA and written confirmation that the intended transaction shall not affect the Supplier's ability to carry out and comply with the obligations of this Agreement and the terms and conditions of the right as conferred.



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41. Entire Agreement

This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement and supersedes and novates in its entirety any previous understandings or agreements between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.

42. No Stipulation for the Benefit of a Third Person

Save as expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (i.e. a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.

43. No Representations

A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

44. Variation, Cancellation and Waiver

No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of all the Parties.

45. Indulgences

The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

46. Applicable Law

This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.

47. Jurisdiction of South African Courts

The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, South Gauteng High Court, Johannesburg for any proceedings arising out of or in connection with this Agreement.

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48. Service of Documents

48.1 The Parties choose the following addresses at which documents and notices in legal proceedings in connection with this Agreement shall be served (i.e. their domicilia citandi et executandi) and at which notices shall be received:

in the case of Eskom to: The Divisional Executive - Primary Energy 48.1.1

> physical address Eskom Holdings SOC Limited

Megawatt Park Maxwell Drive Sunninghill

postal address PO Box 1091

Johannesburg 2000

fax no +27 11 800 5555

48.1.2 in the case of the Supplier to: The Chief Executive Officer

> physical address: Grayston Ridge Office Park

> > Block A, Lower Ground Floor144 Katherine

Street

Sandton, 2146

POSTNET SULTE 458

PRIVATE BAG X9

BENMORE 2010

086 3770457

48.2 The Parties choose the following address at which invoices and Drawdown

Order may be received:

postal address

48.2.1 in the case of Eskom, invoices shall be submitted to: Finance Manager -

Primary Energy

fax no

physical address Eskom Holdings SOC Limited

Megawatt Park Maxwell Drive

Sunninghill Fax no:

011 800 5555

e-mail address:

snehal.nagar@eskom.co.za



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48.2.2 in the case of the Supplier, Drawdown Orders shall be submitted to:

The Chief Executive

physical address:

Grayston Ridge Office Park

Block A, Lower Ground Floor

144 Katherine Street

Sandton, 2146

Fax no:

086 3770457

1

e-mail address:

nath@oakbay.co.za

- 48.3 Any legal or other notice shall be deemed to have been duly given:
- 48.3.1 on the fifth Business Days after posting (14 (fourteen) Business Days if the address is not in the Republic of South Africa), if posted by registered post (airmail, if available) to the Party's address in terms of this clause 48:
- 48.3.2 on delivery, if delivered to the Party's physical address in terms of this clause 48 between 08h30 and 17h00 on a Business Day (or on the first Business Day after that if delivered outside such hours);
- 48.3.3 on despatch, if sent to the Party's then fax number or e-mail address between 08h30 and 17h00 on a Business Day (or on the first Business Day after that if despatched outside such hours) in terms of this clause 48;
- 48.3.4 unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.
 - A Party may change that Party's address or fax number or e-mail address for this purpose by notice in writing to the other Party, such change to be effective only on and with effect from the seventh Business Day after the giving of such notice.
 - 48.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate service of



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such written notice or communication to that Party notwithstanding that it was not sent to or delivered or served at that Party's chosen domicilium citandi et executandi.

49. Costs

- 49.1 Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.
- 49.2 Any costs, including all legal costs on an attorney and own client basis and VAT, incurred by a Party arising out of or in connection with a breach by another Party shall be borne by the Party in breach.

50. Signature in Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

51. Independent Advice

Each of the Parties hereby respectively agrees and acknowledges that:

- 51.1 it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and
- each provision of this Agreement (and each provision of the Annexes) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

52. Good Faith and Co-Operation

- The Parties shall, at all times, act in good faith towards each other and shall not bring any of the other Parties into disrepute.
- Each of the Parties undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

Contract Number [46
<u> </u>
SIGNED AT SUNNINGHILL ON THIS 10 DAY OF March 2015
11/1000
For and on Wehalf of ESKOM HOLDINGS SOC LIMITED
(who warrants that he is duly authorized hereto)
Name: VIVIBOUEN
Capacity: DE(PED) Acture
Capacity: DE (1997) Freme
AS WITNESSES:
1. ABertes
2
SIGNED AT SUNNINGHILL ON THIS 10TH DAY OF MARCH 2015
Tro 1k
For and on behalf of Tegeta Exploration and Resources (Pty) Ltd (who warrants that he is duly authorized hereto)
Daviero da Alami
Name: RAVINDRA NATH
Capacity: DIRECTOR.
AS WITNESSES: 1. SABLEACE 1.
1.
2.



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LIST OF ANNEXES

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- ii. Annexe B: Environmental Legal Requirements
- iii. Annexe C1: The Rules of Road Transportation (FCA)
- iv. Annexe C2: The Rules of Road Transportation (Delivered Contract)
- v. Annexe D: The Rules of Rail Transportation
- vi. Annexe E: Example Calculations for Adjustments for Moisture Content
- vii. Annexe F: Technical Liaison Meeting Agenda
- viii. Annexe G: Black Ownership Plan



Standard Operating Procedure

PED Technical Services

Title:

TEGETA EXPLORATION

AND RESOURCES Coal

Quality Management

Procedure

Unique Identifier:

240-44511970

Reference Number:

722504

Area of Applicability:

PED - Technical

Services

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Compiled by

Khulekani Dladla

Senior Engineer - Metallurgy

Date: 30/09/2015

Functional Responsibility

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Acting Coal Quality & Quantity

Assurance Manager

Date: 30 09/2015

Authorized by

Kwenzokuhle Magwaza

Acting Senior Manager

Technical Services

Date: 3-0/09/2015



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Annexe A

COAL QUALITY MANAGEMENT PROCEDURE

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1 PURPOSE

The purpose of this document is to ensure that the quality results of Contract Coal dispatched, received and paid for in terms of the Agreement are measured and recorded, in accordance with the standards set out in this document and to ensure that coal is correctly pre-certified prior to dispatch to Eskom as well as responsibilities of Supplier, Principal Contractors, Roving Supervisor and Observer.

2 SCOPE

This document describes the procedures to be followed with respect to the preparation, sampling, analysis and pre-certification of Contract Coal stockpiles prior to dispatch to Eskom.

3 DEFINITIONS

Save as defined in this clause 3, the words and expressions defined in the Agreement, shall bear the same meanings herein. Unless the context indicates a contrary intention, the following words and expressions shall bear the meanings assigned to them below, and cognate expressions bear corresponding meanings:

3.1.	"Agreement"	means the agreement between the parties to which this
		document is annexed to;
3.2.	"Air-Dried"	means the physical condition of coal that has been dried at ambient temperature or at a temperature not
		exceeding 40°C (forty degrees Celsius) to remove surface moisture until constant mass is achieved;
3.3.	"As Received"	means the physical condition of the coal including both surface and residual moisture contents;
3,4.	"Bulk Sample"	means the aggregate of samples taken as a stockpile is created and composited to make a representative sample of such stockpile.
3.5.	"Consignment"	means the quantity of Contract Coal delivered in 1 (one) day;
3.6.	"General Analysis"	means the determination of calorific value, ash content, volatile matter content, inherent moisture content, ash



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fusion temperatures and total sulphur content;

3.7. "Indicative Sampling"

means the sampling in the case of uncrushed coal, using front-end loader or equivalent to extract increments around a stockplie or from loads deposited by trucks from a specific source. Indicative Sampling shall also include channel sampling and borehole sampling for underground operations.

3.8. "Moisture Free"

means the physical condition of the coal that has been dried at 105-110°C (between one hundred and five and one hundred and ten degrees Celsius) to remove both surface and residual moisture;

3.9. "Nominated Laboratory"

means a 17025 accredited laboratory that is appointed by Eskom, and approved by both parties.

3.10. "Payment Sampler"

means the auto-mechanical sampling device that will be used to extract the sample of the product during the production process or stockpile creation;

3.11, "Physical Analysis"

means the determination of total moisture content, abrasiveness index and particle size grading;

3.12. "Pre-certified Stockpiles"

means stockpile(s) of Contract Coal, approximately equivalent to a day's delivery, unless otherwise agreed, which have been sampled, tested and certified, in accordance with this **Annexe A**: The Coal Quality Management Procedure and the Agreement, as meeting the Quality Specification;

3.13. "Repeatability"

means the results of duplicate determinations (carried out over a short period of time, but not simultaneously) in the same laboratory by the same operator with the same apparatus on 2 (two) representative portions taken from the same analysis sample

3.14. "Reproducibility"

means the results of duplicate determinations in each of two laboratories, on representative portions taken from the same analysis sample;



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3.15. "Source"

means the Mine or colliery or site at which the Precertified Stockpiles are produced prior to delivery to Eskom; and

3.16. "Verification Process"

means sampling of a stockpile either at the Mine during creation or loading or at the Power Station during offloading to confirm the Pre-certified Stockpile results.

4 CONTRACTUAL APPLICATION OF ANALYTICAL RESULTS

The Nominated Laboratory's analytical results shall be used for payment purposes, subject to the dispute resolution procedure outlined in this document. Any deviation from the sampling process as specified hereunder shall mean that the stockpile has not been pre-certified.

5 Sampling

5.1 General Sampling

- 5.1.1 Within 3 (three) months of the Commencement Date of the Agreement, the Supplier shall ensure that the Payment sampling plant is available for sampling of coal.
- 5.1.2 The contractual sampling of coal shall be conducted in accordance with the latest relevant ISO Standards as tabulated in Table 1 below:

Table 1: ISO Standards for sampling coal

ISO STANDARD	DESCRIPTION
ISO 13909 Part 1	Hard coal and coke- Definitions
ISO 13909 Part 2	Hard coal and coke- Mechanical
	Sampling (Sampling from moving streams)
ISO 13909 Part 4	Hard coal and coke- Mechanical
	Sampling (Preparation of test samples)



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Hard coal and coke- Mechanical
Sampling (Methods for determining the precision of sampling, sample preparation and testing)
Hard coal and coke- Mechanical
Sampling (Methods of testing for bias)
Hard coal and coke — Manual sampling
Hard coal and coke- Guidance to the inspection of mechanical sampling systems

5.2 Auto mechanical sampling

- 5.2.1 The Payment sampling plant shall be owned, operated and maintained by the Supplier.
- 5.2.2 The Payment sampling plant shall be located at the final product conveyor that transports coal to the product loading surge bin or the stockpile area and shall be interlocked with the final product conveyor. The general location of the Payment Sampling Plant in relation to the stockyard layout is set out in Addendum AA.
- 5.2.3 The GPRS co-ordinates of the Payment sampling plant are: (\$26*13.2691' E28-50.8162)

5.3 Payment Sampling Plant Specifications

5.3.1 The Payment sampling plant shall be optimized to sample the material as shown in Table 2 below:



Table 2: [Tegeta Exploration and Resources Mine] Material Characteristics

Parameter	Units	Results
Material type	-	Coal
Washed or un washed	-	unwashed
Maximum moisture	Wt%	10
Nominal top size	mm	50

- 5.3.2 The process flow diagram of the Payment sampling plant is set out in Addendum AB
- 5.3.3 The Payment sampling plant t shall be designed for 2% precision on Ash.
- 5.3.4 The Payment sampling plant specifications are shown in Table 3 below.

Table 3: [Tegeta Exploration and Resources Mine] Summary of Sampling Plant Specifications

Plant unit	Description	Units	Specification
	Cutter type		
Primary cutter	Cutter width	mm	
Filmary Culter	Cutter speed	m/s	
	Sampling interval	minutes	
	Cutter type	-	
Secondary cutter	Cutter width	mm	
Secondary cutter	Cutter speed	m/s	
100	Sampling interval	minutes	
	Crusher type		
Sample crusher	Feed grading	95% passing	
1//	Product grading	95% passing	4.7
	Cutter type		
Tertiary cutter	Cutter width	mm	
remary cutter	Cutter speed	m/s	
	Sampling interval	minutes	
Onnels stancers	Storage type	_	
Sample storage bins	number of bins	number	
5110	Bin capacity	Litres	



5.3.5 In the absence of the auto mechanical sampler being installed as per Clause 5.2, a sampler with specification to meet the sampling requirement on a conveyor specified in Table 4 below shall be installed within a period as specified in clause 5.1.1

Table 4: [Tegeta Exploration and Resources Mine] Summary of Conveyor Specifications

Process Specification	_ Units	Measurement
Belt Identification	MC1050	MC1050
Belt Speed	m/s	1.8
Belt Width	mm	1080
Through put (Max)	tph	500
Through put (Ave)	tph	500
Washed (16) or unwashed (32)	no	32
Top Size	mm	50
Lot determination		
Lot Period	Hrs	10
Lot Size	tons	5000
Primary Sampling		
Number of Primary Increments	number	72
Cutter Width	mm	150
Primary Increment (max tph)	kg/cut	11.5741
Sample Interval	min or tons	8.4
Primary Sample Size (total lot)	kg	828.2





- 5.3.6 The Payment sampling plant operation regime shall be evaluated annually to take into account changes in the variability of the coal.
- 5.3.7 The sample storage facility shall incorporate lockable sample bins. Both Supplier and Eskom representatives shall be present during the sample removal from the sampling plant.
- 5.3.8 Representatives from both Parties (the Supplier and Eskom) shall verify the Payment sampling plant specification shown in Table 3 above on a monthly basis. Each of the Parties' representatives will validate and sign a copy of the specification sheet. Deviations detected must be actioned by the Supplier and resolved timeously. Copies of specification sheets shall be kept by both Parties (the Supplier and Eskom).
- 5.3.9 No physical modifications or alterations in the operation of the Payment Sampling Plant shall be made without prior mutual agreement between both Parties (the Supplier and Eskom). The Supplier shall notify Eskom of the details of such modifications or alterations before they commence and Eskom shall be entitled to be present during the modifications or alterations.

5.4 Payment sampling plant availability

- 5.4.1 The Payment Sampling Plant shall have a target of 95% Availability. This Availability shall be reported on a monthly basis by the Supplier at the Technical Lialson meeting.
- 5.4.2 In the event of Unavailability of the Payment sampling plant, the reason and duration shall be recorded by the Supplier on a breakdown sheet and made available to Eskom if requested
- 5.4.3 Should the Payment sampling plant be out of operation, then permission shall be obtained from Eskom to perform manual sampling as described in clause1.6 hereunder until such time as the Payment Sampler is back in operation.
- 5.4.4 If the Payment sampling plant is out of operation for 3 (three) consecutive days and more, then Eskom shall do verification sampling at the delivery point until such time when the Payment sampling plant is back in service
- 5.4.5 If manual sampling cannot be performed, Eskom shall be notified and both Parties shall agree to implement an alternative sampling procedure until the Payment sampling plant is back in operation.



5.5 Bias testing of auto mechanical sampling plant

- 5.5.1 Blas tests shall be carried out after commissioning the Payment sampling plant and then annually thereafter. The bias tests shall be conducted after any physical changes to the Payment sampling plant as detailed in clause 1.36 within a period of two (2) months from the completion of such changes.
- 5.5.2 The bias test programme shall be initiated by the Supplier. The bias tests shall be carried out according to the procedures laid down in the relevant ISO Standards. The scope of the bias test programme shall be governed by the design and operation of the Payment sampling plant. The methodology for such tests shall be drawn up and agreed upon by both Parties (the Supplier and Eskom)
- 5.5.3 The Supplier shall carry the costs of sampling, transport and analysis of bias test samples.
- 5.5.4 Eskom operational personnel shall oversee the sampling process during all tests. Eskom (Primary Energy Division) shall be responsible for issuing a final Bias Test report.

5.6 Manual sampling

- 5.6.1 Manual sampling shall be carried out during the process of building each product stockpile in the event that the Payment sampling plant is not available as detailed in clause 1.4 above.
- 5.6.2 Manual sampling shall be conducted in a safe manner.
- 5.6.3 Sampling directly from the front-end-loader bucket is strictly prohibited.
- 5.6.4 An increment or scoop shall be taken representing each load of the front-end-loader bucket after the front-end-loader places the heap of coal on the base of the final product stockpile thereafter it shall be pushed into the main stockpile. The increment (2 scoops) shall be extracted from every 4th dumper truck (approximately 10m³).
- 5.6,5 A manual scoop shall be used to extract the increment. The aperture of the manual scoop shall be at least 3 (three) times the nominal top size of the coal being sampled.



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5.7 Handling of samples

Each increment (scoop) of coal shall be placed as quickly as possible into suitable containers and the sample shall be sealed immediately after each increment has been inserted. All increments collected for a specific stockpile shall be combined.

5.8 Minimum Mass of Bulk Sample

The minimum mass of the final Bulk Sample ready for delivery to the Nominated laboratory shall be in accordance with Table 2 above for the top size specified in the Agreement of the contract. The Supplier is required to have a calibrated bulk scale on site to weigh the sample as they build the stockpile to ensure that it complies with minimum mass requirement before the stockpile is closed. If the minimum sample mass requirements as per Table 2 are not met, then the sample shall not be picked up by the nominated transporter from the site.

In the event that the final bulk composite sample is below the minimum as per Table 2 and it can be verified that this relates to tonnage of coal produced, then that day's sample shall be retained and combined with the next day's sample of coal stacked on the same stockpile.

Table 2: Minimum requirements of Bulk Sample masses

Nominal top size of coal sampled (mm).	Minimum mass of bulk laboratory sample (kg)
50	470
40	355
10	90

5.9 Coal Quality and Quantity Monitoring and Control processes

The Supplier is required to implement quality monitoring and control processes before and while building a stockpile to ensure that the final product stockpile is homogenous. Samples of each blend constituent should be taken before the material goes through the plant to ensure that the quality of each blend is known to optimise mixing ratios. The Supplier shall make the daily quality control results available to Eskom.

The online mass meter shall be installed on the final product conveyor. The mass meter should be zeroed at the beginning of a new stockpile, and the total reading of the stockpile tonnage produced should be taken when the stockpile is closed. The stockpile tonnage should be recorded as part of the stockpile name and included on the last bag to be taken from the Payment Sampler when the stockpile is closed. The tonnage shall be recorded on



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the delivery note and observer sheets. The laboratory shall record the stockpile tonnage on the final analytical report.

5.10 Sample Identification, Labelling and Storage

The sample container(s) shall be identified with waterproof tags, each marked by means of waterproof ink with adequate identifying information, as follows: PI 01/05/07A, where PI is the source abbreviation followed by the date that the stockpile was created and A represents the stockpile number for that day. Each sample container shall have 2 (two) tags one being placed on the outside of the container and the other one being placed inside the container.

The composite sample for each consignment shall be kept in a designated area and stored in lockable bins. The sample shall be protected from direct sunlight and precipitation during storage until collected by the Nominated Laboratory to preserve sample integrity.

5.11 Responsibilities

5.11.1 Mine

The Supplier shall be responsible at its own cost for all aspects of sampling as described in clause 5 above. Eskom may provide on-site representation. The Supplier shall ensure that Eskom's on-site representatives have access to verify the sampling and pre-certification process and that auditing personnel are allowed on site.

The Mine shall inform the nominated transporter to transport the contractual sample to the Nominated Laboratory within one hour of closing a stockpile.

The Supplier's on-site representative and the driver collecting the final bulk sample for delivery to the Nominated Laboratory shall sign off the sample prior to leaving site.

5.11.2 Nominated Transporter

The nominated transporter shall ensure all required information in the delivery note is accurately completed.

The Nominated Transporter shall collect samples from the Mine and deliver to the nominated laboratory within 2 hours.

All Eskom representatives shall comply with the Supplier's requirements in terms of the Mine Health and Safety Act and the Supplier's policies and procedures.

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5.11.3 Nominated laboratory

The Laboratory representative and the driver delivering the samples at the Nominated Laboratory shall verify the sample against the delivery note and sign-off.

The nominated laboratory shall prepare and analyse samples according to the procedures set-out in this document and report the results within 24 hours.

6 TRANSPORT OF BULK SAMPLE TO THE NOMINATED LABORATORY

Eskom is responsible for the transportation of the contractual bulk sample from the Mine to the Nominated Laboratory. The bulk sample shall be collected from the Mine under Eskom's oversight, transported to the Eskom Nominated Laboratory where the sample shall be prepared and analysed according to the procedures set out hereunder.

7 SAMPLE PREPARATION

Preparation and analysis of Eskom contractual samples shall only be performed at the Nominated Laboratory. The bulk sample shall be prepared for contractual analysis as described in this clause 7 hereunder in accordance with the guidelines set out in the relevant ISO 18283 and ISO 13909 part 4. The sample preparation shall be performed in line with the minimum requirements as indicated in Table 3 below.

Table 3: Minimum requirements of sample masses for specific analysis

Normal Top Size (mm)	Sample	Sub-	Sub-sample		Minimum Sub-sample "C-b (kg)	
50	470	65	170	30	35	170
40	355	50	125	30	25	125
10	90	2	6	30	5	45

Each sub-sample as listed in Table 3 above shall be prepared as follows

- SUB-SAMPLE A: SIEVE ANALYSIS, shall be carried out in accordance with the procedure outlined in ISO 1953:1994. The precision for the assumed nominal top size and sample mass indicated will be in 2% (two percent) as shown in Table 1 of ISO 13909 part 4.
- SUB-SAMPLE B: GENERAL ANALYSIS, shall be prepared according to ISO 13909-4
 and ISO 18283 for general analyses. The final prepared sample should be grounded for

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all particles to pass through a sieve of 212µm, the sample shall then be divided into three 60g sub-samples. One 60g sample shall be conditioned at the Nominated Laboratory and analysed for calorific value, ash, volatile matter content, inherent moisture content (moisture content for general analysis), ash fusion temperatures (AFTs) and total sulphur. The second 60g (duplicate pulverised sample) is retained for the Supplier, the third sample is retained for reference purposes.

- SUB-SAMPLE C-a: ABRASIVENESS INDEX SAMPLE shall be prepared in accordance with the Eskom/Mining House Abrasiveness Index Procedure. The second 9kg sample may be analysed by the Supplier.
- SUB-SAMPLE C-b: TOTAL MOISTURE SAMPLE shall be prepared according to ISO 13909-4 or ISO 18283 procedures and analysed according to ISO 589 procedure.
- SUB-SAMPLE D: BULK REFERENCE SAMPLE shall be retained at the Nominated Laboratory for 14 (fourteen) working days. This sample shall be used to resolve disputes.

7.1 Sample Preparation Flow Sheet

Sample preparation flow sheets for -40mm and -50mm products in clauses 23 and 24 respectively are to be used at the Nominated Laboratory.

8 ANALYTICAL DETERMINATIONS

8.1 Standard Methods

The contractual analysis of the prepared sample will be performed at the Nominated Laboratory or any other approved Laboratory performing part of the contractual analysis in accordance with the latest ISO standards. The current standards are outlined in Table 4 hereunder.

Table 4: Standard Methods for Analysis

Heat Value (Gross Calorific Value)	SABS-ISO 1928 DDS Standard Operating Procedure
Ash	ISO 1171, SANS 131
Volatile Matter	ISO 562, SANS 50, SANS ISO 562
Ash Fusion Temperature (Initial Deformation)	ISO 540 (Reducing Atmosphere)
Total Moisture content	ISO 589, SANS 589, SABS 0135 part 2 (one or two step).
Moisture content in the Analysis Sample	ISO 331, SABS-ISO11722



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Hardgrove Grindability Index	ISO 5074
Abrasiveness Index	Eskom/Mining Industry Methodology and Addendum 4.3
Bulk Density	ISO 567
Size Determination (dry method)	ISO 1963
Total Sulphur	ASTM D4239

9 Turnaround Time

The Nominated Laboratory shall ensure that the turnaround time from the time of collecting the bulk sample at the colliery to the reporting of the contractual analytical results, does not exceed 28 (twenty eight) hours. (a maximum of 2 (two) hours is allocated for transport of bulk sample from the Mine to the Nominated Laboratory. A contingency of 2 hours has been allocated to cover for cases of road delays in transport of bulk sample due to unforeseen circumstances as well as delayed call out by the Mine. 24 (twenty four) hours is allocated for analyses and reporting of results).

10 ANALYTICAL DIFFERENCES AND RESOLUTION

The nominated laboratory shall make available the duplicate PF sample within 24 (twenty four) hours of collection from source on request from Supplier. The Supplier shall at its own cost transport and analyse the duplicate PF sample for analysis at own laboratory that subscribes to the methods in this procedure.

10.1 Conditions for Declaring Disputes

Either party may declare a dispute under the following conditions:

- 1. The reproducibility limits as set out in Table 5 of this document are exceeded.
- if reasonable grounds exist to suspect that the procedures and requirements as set out in this document were not adhered to, as per findings arising from a recent (conducted within a month) audit.

in the case of size grading where no reproducibility limits apply either party may declare a dispute. In such case the bulk reference sample shall be the referee sample and not the Supplier's sample for process and quality control.

10.2Procedure to be followed when declaring a dispute

A dispute shall be declared in writing to the either party, using an agreed template.

The dispute shall be declared within five working days of the contractual and verification analytical results becoming available to both parties including supporting information.

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After receipt of the dispute the other party should review if any condition in 31.1 is met and forward feedback to the original party.

The party raising the dispute shall organise transport of a bulk reference sample by as specified in clause 7 of this document to be submitted to a mutually agreed independent approved laboratory.

10.3 Analysis of the dispute sample

The analysis of the dispute sample shall be done as follows:

- Should a dispute be declared on any of the quality parameters in the case of the
 general analysis, then all such parameters (ash, volatile matter content, moisture in
 the analysis sample and Calorific Value) shall be re-analysed and reported for
 contractual purposes.
- If there is a dispute on total sulphur, the parameters to be analysed on the bulk reference sample shall be total sulphur and moisture content in volatile matter content and calorific value.
- If there is a dispute on abrasiveness index then only abrasiveness index shall be done on the bulk reference sample.
- If there is a dispute on ash fusion temperatures then only ash fusion temperatures shall be done on the bulk reference sample.
- Analytical results shall be reported to all parties concerned simultaneously.

The results of all the parameters analysed at the independent laboratory shall be final and binding.

10.4 Limits for Analytical Differences

The limits for Repeatability (intra-laboratory) and Reproducibility (inter-laboratory) as specified in the respective methods listed in clause 8.1 of this document are summarised in Table 5 below.

Table 5: Limits for Analytical Differences

CONTRACTUAL	LIM	ITS
Quality Parameter	Repeatability	Reproducibility
Total moisture content	0.5%	1.5%
Abrasiveness Index	7.5% of mean	15% of mean
Ash	> 10% : 2% of mean	3% of the mean
Volatile Matter	> 10% : 3% of mean	0.5% (absolute)
Moisture content in analysis sample	< 5% : 0,1% abs > 5% : 0,2% abs	N/A N/A



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CONTRACTUAL	LII	VITS: ' -
Calorific Value	0.12 MJ/kg (absolute)	0.3 MJ/kg (absolute)
AFT Initial Deformation in Reducing Atmosphere	30°C (absolute)	80°C (absolute)
Total Sulphur	0.05% (absolute)	0.1% (absolute)

11 COAL QUALITY REPORTING

The Nominated Laboratory shall, within 24 (twenty four) hours, simultaneously forward all daily coal quality results directly to Eskom's responsible Geologist, Quality Assurance Auditor, the power station representative and the Supplier. The results must be declared to all parties simultaneously in writing (e-mail or fax).

12 TECHNICAL AUDITS

12.1 Laboratory Audits

Audits of the Nominated Laboratory shall be carried out on at least a quarterly basis. Laboratory systems shall comply with ISO 17025 and all conditions in the Contract with either Supplier or Eskom. Eskom is responsible for issuing a summary report, a copy of which shall be forwarded to the Supplier.

12.2 Sampling Audits

The sampling procedure and / or pre-certification process shall be jointly audited at least on a monthly basis on 24 (twenty four) hour notice by Eskom. A copy of the report shall be forwarded to the Supplier and the Principal Roving and Observing Company.

13 PRE-CERTIFIED STOCKPILE MANAGEMENT

Prior to Delivery to Eskom, the Supplier shall ensure that coal contained in each separate stockpile is sampled and pre-certified to meet the Quality Specifications for Contract Coal and is identified as such in accordance with the processes and procedures set out in this document.

The capacity of each Pre-certified Stockpile shall be approximately x 000 (xxxx thousand) tons. The capacity of the Pre-certified Stockpiles may be increased subject to Eskom's agreement as specified in the Agreement.

The stockpile numbers shall be recorded on the weigh bill slips at the Mine and the Power Station.

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All stockpiles shall be identified with a fixed signboard indicating the stockpile status as follows:

Green - In specification -- suitable to load

Yellow - Awaiting results -- do not load

Red - Out of specification -- not suitable to load (Discard or reprocess)

The Supplier shall ensure that the identification of stockpiles remain as agreed with Eskom, any deviation shall mean that the stockpile has not been pre-certified.

No stockpile that has qualities below the contractual specification, as tabled in the Agreement, or has violated the sampling and stockpile management processes as described in this document shall be dispatched to Eskom.

The control sheet linking the Pre-certified Stockpile qualities and the weighbridge tonnages shall be signed off by both parties for involce verification.

14 TREATMENT OF COAL STOCKPILES

Where the sampling and stockpile management processes as set in this document are violated or where the product stockpile does not meet the quality specifications as set out in the Agreement, the stockpile shall be completely removed from Eskom designated stockpiling area.

15 STOCKPILE MOISTURE MANAGEMENT

If the product stockpile is out of specification for total moisture and in the event of rain after a stockpile is pre-certified, the stockpile shall be allowed to drain for a pre-determined drying time after creation of the stockpile to allow the total moisture to achieve equilibrium moisture prior to loading.

Where the drainage test is not conducted to determine the drainage period and the Equilibrium Moisture level then grab samples shall be taken by digging twice with a front end loader bucket covering all sides of the stockpile. The areas exposed by the front end loader shall be sampled by taking 4 (four) manual scoop increments. The samples from different sides of stockpiles shall be combined and labelled to maintain the original stockpile identity.

The total moisture content results shall be communicated to Eskom's responsible geologist for the tonnage adjustment. Eskom reserves the right, at its own discretion, to accept





stockpiles for which the moisture content is out of specification, regardless of rain. The delivered tons shall be adjusted as described in the Agreement.

16 VERIFICATION SAMPLING

Eskom reserves the right to perform verification sampling of pre-certified stockpiles either during building of stockpile or during loading of coal from the Pre-certified Stockpile or as Delivered at the designated Delivery Point. The verification sampling procedure shall form part of the sampling procedure. At its own discretion and cost Eskom may request the Supplier to install truck auger/on-line analyser unit to sample/verify pre-certified coal leaving the Supplier's site to the designated Delivery Point.

17 VARIABILITY TESTS

The procedure is based on ISO 18283 guidelines. On each 30 (thirty) ton truck off load for a day's consignment/lot from the Supplier, sub-lot samples of 3kg representing each truck shall be sampled. Each sub-lot sample shall be split into pairs and analysed for ash %, CV MJ/kg, Inherent Moisture content %, Volatile Matter content % and Total Sulphur % following the latest ISO standard outlined in Table 4. The results obtained shall be used to implement sampling methodology and control measures to produce consistent Contract Coal to Eskom. Eskom is entitled to request the Supplier to install adequate mechanical mixing/blending capacity to ensure consistency within the product consignment and provide analyses of the individual sources making up the mix/blend.

18 AMENDMENTS

Any amendments to this document shall be proposed in writing and mutually agreed by both Parties and thereafter ratified in a meeting before implementation.

19 COMPROMISE

Both Parties understand and agree that the ISO standards prescribe that splitting of a bulk sample shall be preceded by crushing. However, in this procedure it is a compromised allowance that the bulk sample is split prior to crushing as it is not practical and is a bigger risk to take a separate sample for general analysis, size grading and total moisture content.

It must be noted that the sample preparation flow sheet is an interpretation of the ISO standards and therefore the ISO standards supersedes this CQMP.





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- 20 APPENDIX 1: SCHEMATIC DIAGRAM SHOWING THE GENERAL ARRANGEMENT OF THE PROCESS FLOW.
- 21 APPENDIX 2: AUTO SAMPLER SPECIFICATIONS.
- 22 APPENDIX 3: MANUAL SAMPLING PROCEDURE,



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23 APPENDIX 4: COAL QUALITY REPORT

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Coal Supply and Off-Take Agreement between ESKOM HOLDINGS SOC Ltd and TEGETA EXPLORATION AND RESOURCES (Pty) Ltd executed at MEGAWATT PARK. Reference Number: Contract. Number 4600056841



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24 APPENDIX 5: Dispute Declaration Form

® €skom	PRIMARY ENERGY	Unique Identifier Revision	0
(4) ESKOM	QUALITY ASSURANCE DISPUTE DECLARATION REQUEST FORM		
	REQUEST FORM	Effective Date	March 2012

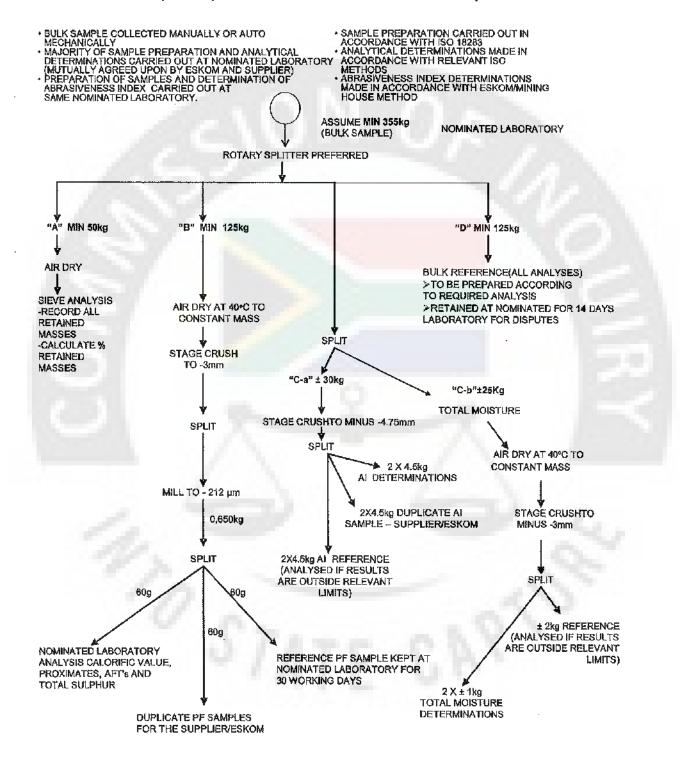
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declaring Dispute Name of originating lab;	PARAMETER/S DISPUTI	ED;
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25 SAMPLE PREPARATION FLOWSHEET

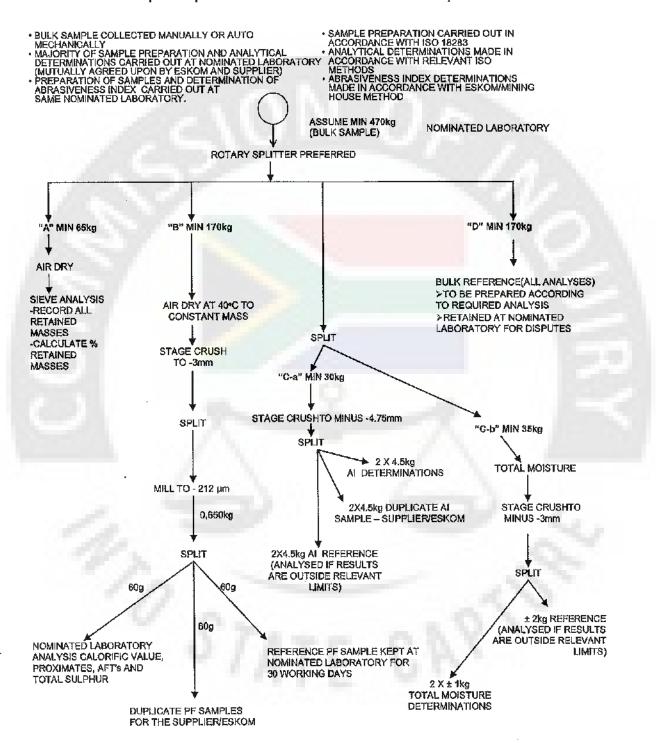
Sample Preparation: Coal with 40mm Nominal Top Size





26 SAMPLE PREPARATION FLOWSHEET

Sample Preparation: Coal with 50mm Nominal Top Size





27 ROLES AND RESPONSIBILITIES: SUPPLIER, PRINCIPAL CONTRACTORS, ROVING SUPERVISOR AND OBSERVER.

27.1 26.1. Introduction

In terms of the Agreement between Eskom and the Supplier, stockpiles shall be precertified prior to delivery and Eskom shall provide on-site oversight of the sampling and pre-certification process.

27.2 26.2. Responsibilities

27.3 26.2.1 The Supplier

- The Roving Supervisor and Observers must be inducted according to the Mine Health and Safety regulations, and the Supplier's policies and procedures relating to the Colliery.
- To provide the necessary site specific documentation relating to safe working procedures.
- Clearly define the area of responsibility without compromising the roles as specified in Clause 4 of this document.
- Provide access to the defined area of responsibility.
- Ensure that the Roving Supervisor and Observers are not obstructed or prevented from performing their task as specified, unless they are performing such tasks in contravention of the Mine Health and Safety regulations and the Supplier's policies and procedures relating to the Colliery.
- Supply adequate shelter and ablution facilities.
- Ensure that the weighbridge certificate reflects the pre-certified stockpile from which the coal was loaded.

27.4 26.2.2 Eskom Contracted Roving and Observing Company

- 27.5 The appointed Eskom representatives shall ensure that:
 - Ensure that necessary equipment (personal protective equipment (PPE), raincoats,
 thermal overalls for winter, stationary, etc) required by the Roving Supervisor and the
 Observer to perform duties are provided.
 - All personnel are competent to perform the relevant tasks
 - Relevant medical certification is provided, a copy to be given to the Supplier.
 - Their personnel have access to the Mine Health and safety regulations and relevant standards as well as the relevant Supplier's policies and procedures.

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 Where a supplier does not provide shelter, the Company shall provide a site office in the form of a cost effective mini-container. The location of such office to be agreed with the Supplier.

27.6 26.4. Roles

27.7 26.4.1 The Roving Supervisor

- To ensure that all Observers per shift are on duty at all times.
- b) Ensures that all Observers wear applicable personal protective equipment and work safely.
- To receive all daily log-sheets and summarises the information.
- d) To provide guidance to Observers and maintain discipline.
- e) To prepare a daily reports and submit to Primary Energy Division (PED) representatives.
- f) To report gross deviations to relevant senior Mine and PED representatives immediately.
- g) Ensures the authenticity of the contractual sample, i.e. that the contractual sample is certified as per checklists.
- h) Ensure that the weighbridge certificate reflects the pre-certified stockpile from which the coal was loaded.

27.8 26.4.2 The Observer

The Observer shall oversee and record the following activities:

Signposting of product stockpiles according to clause 12 of this document

- a) Stockpile pre-certification process:
 - Stockpile creation, demarcation and proper labelling.
 - Stockpile retention time for equilibrium moisture attainment.
 - Placing of pre-certification signboards on stockpiles.
- b) Manual sampling, where no auto-sampler is installed:
 - Manual scoop sampling adheres to applicable standards / procedures: check scoop increments and scoop size.
 - Sample reduction and removal: quantity, labelling and sealing
- c) Loading of stockpiles:
 - Record of loaded stockpile/s
 - Number of truckloads from specific stockpile
 - Ensure that the weighbridge certificate reflects the pre-certified stockpile from which the coal was loaded.





- d) Treating of stockpiles not meeting specifications
 - Check compliance to applicable procedure
 - Comments on the process followed.
- e) Sampling for Total Moisture:
 - Record sample quantity or the number of bags.
 - Record final moisture before loading.
- f) Keeping of daily log-sheets
 - Update daily log-sheets

27.9 24.4.3 The Sample transport

The transporter of the contractual sample shall maintain a delivery note that indicates;

- The name of the transporting company
- the stockpile number, failing which the laboratory shall not accept the sample
- ensure that the sample is labelled correctly, note condition and number of bags, mass of sample.
- · note the date and time of receipt of the sample
- have the delivery note/receipt signed by the Supplier and issue a copy to the Supplier
- have the laboratory sign the delivery note as evidence of sample receipt
- Issue the laboratory with a copy of the delivery note as supporting documentation

27.10 6.5. Indemnity / Third Party Insurance

Although the Supplier is the appointed and responsible manager with respect to liability in terms of the Mine Health and Safety Act, Eskom shall ensure that they provide adequate 3rd (third) party cover (insurance and workman's compensation) for the on-site representatives. The necessary documentation shall be provided to Eskom and the Supplier to demonstrate compliance.



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28 REVISIONS

Date	Rev.	Compiler	Remarks
2014 June 11	0	C Ramavhona	Initial



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ADDENDUM A: ESKOM REPRESENTATIVE / AUTO-MECHANICAL AND MANUAL SAMPLING LOG-SHEET CONTINUED

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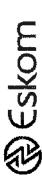


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ADDENDUM B: Supplier Checklist to be completed weekly

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Revision: 0



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ADDENDUM C: PRE-CERTIFICATION STOCKPILE APPROVAL LOG SHEET

PRECERTIFICATION APPROVAL SHEET

			COMMENTS
ID OF STOCKPILE			
PRODUCED:			
STOCKPILE START DATE			
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REPRESENTATIVE			
SIGNATURE OF ESKOM			

Coal Supply and Off-Take Agreement between ESKOM HOLDINGS SOC Ltd and TEGETA EXPLORATION AND RESOURCES (Pty) Ltd executed at MEGAWATT PARK. Reference Number: Contract Number 4600056841 N

Reference Number: 240-44511970

Revision: 0

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ADDENDUM D: ROVER CHECKLIST to be completed daily

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			Did the observer adequately fill in the stockpile log sheet, sampling log sheet and observer checklist and sign off reports.
			Report gross deviations to relevant PED representatives immediately.
			Report gross deviations to relevant senior mine representatives inmediately.
			Did the Rover submit the daily/ weekly/ monthly report to Eskom and submit to PED representatives.
		Ihave	Did the rover provide the daily contractual stockpile qualities to on-site observers. Should have e-mail access to download such data supplied by the lab or responsible Eskom geologist.
			I Rover provide guidance (on the job training) to Observers and maintain discipline.
1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		rked).	Did the Rover randomly rotate his weekly shifts (morning, afternoon and night shifts worked)
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			Were major findings reported telephonically then via e-mail to PED CQA.
		<u>v</u>	Dit the tover receive an dany log-sneeds and summarises the information and report to the relevant QA's.
			Did the Rover sign the observer report.
		fice to	Provide a site office in the form of a cost effective mini-container. The location of such office to be agreed with the Supplier.
		h and	Did the contractor supply their personnel (observers and rovers) access to the Mine Health and safety regulations and relevant standards as well as the relevant Supplier's policies and procedures.
			Is the Observer/Rover authorised to be onsite.
			Are relevant memoal, red nokers, mononous, access cards and other required cerunoauon provided are valid and a copy is given to the Supplier.
			Does the Observer/ Rover have hatch reflective vests, sakely suces, salety suggest, calplugs.
			All Observers wear applicable personal protective equipment and work safely.
			Did the Rover sign the attendance register.
			Did each shift observer sign the attendance register.
			All Observers per shift are on duty at all times.
			The Roving Supervisor must check the following:
			Checklist (The Roving Supervisor)
	Doc.		



Revision: 0

(例 Eskom

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ADDENDUM E: LABORATORY CHECKLIST to be completed weekly

Checklist (Laboratory)	
The Laboratory must check the following	
The laboratory receives the sample and signs the delivery note as evidence of receipt of sample.	
The delivery note states the condition of the sample received	
The laboratory keeps a copy of the delivery note for audit purposes.	
The noninated laboratory shall make available the duplicate of sample within 24 hours of collection	
The bulk sample shall be prepared for the contractual analysis at the Nominated Laboratory as per the COMP.	
Check that the sample preparation regime shall be in accordance with the guidelines set out in the relevant ISO 18282 OR ISO 18299-4 and CQMP.	
Sample preparation is performed in line with the minimum mass requirements as specified in the COMP.	
alytical Determinations	
All contractual analysis is performed in accordance with the standards as indicated in the CQMP by an accredited laboratory.	
B) Turaround Time	
The turnaround time from the time of collecting the bulk sample at the colliery to the reporting of the	
C) Analytical Differences and Resolution	
Should a dispute be declared on any of the quality parameters in the case of the general analysis, then all such parameters (Ash, volatiles, moisture in the analyses sample, and Calorific value) shall be re-	
analysed and reported for contractual purposes. If there is a dispute on Total Sulphur, the parameters	
to be analysed on the bulk reference sample shall be total sulphur and moisture in the analyses, ash,	
volatiles and calonno value, it mere is a dispute our abrasivement much cure, buy an abrasivement is all be done on the bulk reference sample. If there is a dispute on ash fusion temperatures then only	
ash fusion temperatures shall be done on the bulk reference sample.	
D) Limits for Analytical Differences	
The limits for analytical differences are based on table 4 limits of the CQMP.	
E) Coal Quality Reporting	
The Nominated Laboratory shall within 24 hours, simultaneously forward all daily coal quality results	,
Gurecity to Eston's responsible Geologists and CVA.	
eo I	
(G) Sampling Audits	
A joint audit may be carried out on a bi-monthly basis.	
Eslom issues a summary report which is forwarded to the Supplier and laboratory.	
Major laboratory non-conformances are rectified within 24 hours.	
Minor laboratory non-conformances are rectified within 72 hours.	
Comply to relevant COMP, ISO standards, including ISO 17025.	
11s 150 1/025 accremand value.	

Coal Supply and Off-Take Agreement between ESKOM HOLDINGS SOC Ltd and TEGETA EXPLORATION AND RESOURCES (Pty) Ltd executed at MEGAWATT PARK. Reference Number: Contract Number 4600056841





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ADDENDUM F: DELIVERY NOTE FOR SAMPLE TRANSPORT

Name of Transport Company:			
Name of Source/Colliery:			
	Collecte	d from Mine	Delivered at laborator
Date			
Time			
Stockpile ID			
Sample ID			
Number of bags			OF THE PERSONS ASSESSMENT
Sample Mass			
Sample Mass adequate (tick)	470kg (5 355kg(4		470kg (50mm)/ 355kg(40mm)
SAMPLE INTEGRITY: 0	Condition	of bags conta	aining sample
		YES	NO
Are bags sealed			
Are bags clearly labelled			
Are bags torn			
Are waterproof labels used			
All of the above requirements	met		
Sample transported			
Sample returned to supplier TRANSPORTING REPRESENT NAME		GNATURE	
Sample returned to supplier TRANSPORTING REPRESEN	s	GNATURE	
Sample returned to supplier TRANSPORTING REPRESENTATIVE MINE REPRESENTATIVE	s		
Sample returned to supplier TRANSPORTING REPRESENTATIVE MINE REPRESENTATIVE NAME	s		
Sample returned to supplier TRANSPORTING REPRESENTATIVE MINE REPRESENTATIVE NAME DESIGNATION:	S		NO []
Sample returned to supplier TRANSPORTING REPRESENTATIVE MINE REPRESENTATIVE NAME DESIGNATION: LABORATORY REPRESENTA	S	GNATURE YES	
Sample returned to supplier TRANSPORTING REPRESENTATIVE NAME MINE REPRESENTATIVE NAME DESIGNATION: LABORATORY REPRESENTATIVE Is the sample labelled Is the sample linked to Is the sample mass ad YES NO	SIATIVE correctly a stockplequate (4)	YES	NO [] m & 355kg for 40 mm)
Sample returned to supplier TRANSPORTING REPRESENTATIVE NAME MINE REPRESENTATIVE NAME DESIGNATION: LABORATORY REPRESENTATIVE Is the sample labelled Is the sample linked to Is the sample mass ad YES NO	Since	YES	MO NO Market No
Sample returned to supplier TRANSPORTING REPRESENT NAME MINE REPRESENTATIVE NAME DESIGNATION: LABORATORY REPRESENTA Is the sample labelled Is the sample linked to Is the sample mass ad YES NO 1 Is the lab being issued sample supporting doc	Single Si	YES	MO NO Market No



Page 35 of 30

ADDENDUM G: OBSERVERS AND ROVERS TIME SHEETS

ipany					
e/Colllery name					
ame +Surname	workir	g time		Signatures	
Employee	date & Time in	Date & Time out	Employee	Shisa representative	Mine representative
			·		
			Englishment of the second	. National Committee Committee	



Page 36 of 30

ADDENDUM H: DAILY STOCKPILE STATUS REPORT

DATE						1
SUPPLIER AND COLLIERY						1
SHIFT						†
NAME OF ROVER						1
NAME OF OBSERVER						1
				,		
STOCKPILE STATUS	Stockpile 1	Stockpile 2	Stockpile 3	Stockpile 4	Stockpile 5	Stockpile 6
Number of stockpiles on site						
Number of Stockpiles being built	-,-					
ID of stockpiles awalting results						
ID of stockpiles precertified and capacity						
ID of stockpiles rejected and capacity						
ID of stockpiles being loaded						
Dout of spec stockpile being processed ID of stockpiles with						
lumps, rocks, stones, fine coal						
1						
Signatures Observer		Rover			Mine represent	tative



Page 37 of 30

ADDENDUM 1: DAILY STOCKPILE LOADING TRACKING REPORT

PLIER AND COLLIERY									
FT									
ME OF ROVER									
ME OF OBSERVER									
·									
		OCKPILE LOADING			In			SIGNATURE	\$
20.00	Date and time stockpile results	loaded stockpile status		ding, date and me	Stockpite	Power Station	Channan	Davasa	Line.
Stockpile iD	re ceived	yellow/red/	Start	Finish	Capacity		Observer	Hover	Mine
		green							
					<u> </u>		,		
								-	
							.		
								<u> </u>	
	1							 	
							ļ <u></u>		

Tegeta Exploration & Resources Pty Ltd.

Lower Ground Floor, Grayston Ridge Block A, 144 Katherine Street, Sandown, Sandton, South Africa, www.tegeta.com

Postal Address: Posinet Suite 458, Private Bag X9, Benmore, 2010

Tel: +27 11 262 3870

Email: infor@tegla.com; joym@tegeta.com

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



COAL, COPPER & PGM

Date: 24th February 2015

B-BBEE PLAN TO INCREASE PRESENT BEE SHAREHOLDING OF 30.1% TO 50.05%

Aerohaven Trading (Pty) Ltd is the Company's BEE shareholder with 30.1% shareholding. The Company has agreed to give an option to Aerohaven to subscribe fresh shares to increase the shareholding of Aerohaven to 50.05% over a period of 3 (three) years. The option may be exercised by Aerohaven as under:

SI. No.	Financia l Year	Option Percentage Available	Amount Payable (ZAR)	Aerohaven Shareholding
1	2015-16	4%	20,000,000	34.1%
2	2016-17	7%	Market value of shares or 35,000,000 whichever is higher	41.1%
3	2017-18	8.95%	Market value of shares or 45,000,000 whichever is higher	50.05%

The funds shall be arranged by Aerohaven either from the dividend or from its own sources. In case Aerohaven failed to exercise the option fully or partially then the prorata shares shall be issued against the amount paid. The remaining will be offered to other BEE entities at the similar or higher price. However, the Company undertakes to ensure that the BEE shareholding in the Company shall be 50.05% by end of 2017-18.

(Ravindra Nath) Director

195°

A LEGEL WENT CHANGE ON THE	ND RESOURCE	ES CHEC	KLIST	Production Supplier Na	Call Six-1	
Commercial and Financial do	<u> </u>	1	Schmillad	Supplier Na	前庭设计 "阿尔特" 一直,"阿尔特" 12. 50 元	VIEW CREATE STATE OF THE PARTY
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Certificate of Compliance with E.	(if > 50 amplumes				Mame (IN PRINT)	
Valid 8-38EE verification/rating certificate	In - on employees	-				Signature.
Audited and Signed 3 years Financial Statements Shareholding and Directors			V -		4.01200	Λ ο
Supplier Complement					ALMOR	
Supplier Development and Loc Supplier Development and Localisation (miljalyes)	ellegilon · · ·	100 (100)	(Early built on the Arrange	A SECTION AND MARKET	NIGIA	
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Valid Mining Flight/Permit and Off-take agreement whe	menis able	HI DA HI - H		CH 95 S 6 W SH - W-	Trends of the Control	
reproved Environmental Management Programme Re-	port					
Latest detailed Closure Cost assessment reports		_	V			
Water Use Licensw/Permits (IWULA)			V		(\auxxxxx	I
National Environmental Management Act 98 (NEMA) at	uthorisations				Shunoni	L.
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Technical Documents	ATTENDED	NO SANCES				147 6
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dorehola information					CARDILLARONDO DO DESCRIPTION DE LA CONTRACTOR DE LA CONTR	THE DUIGHS NO. 1 ST.
Qualities Information			1/		A	()
Seciogical Model					N bibalho	
Proposizi Coal Specifications	1 4	T			Mathalpo Mathalpo	30/6/2015
2009 Seec	Yes	No.			Methor	
240 Botc	11/	X				K rith
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Recommended By:	
Authoritant Pro	



10 28 13 344	2		1	+50mm	
17	4	24%	5- (Ai, Ash, TS)	103420.7502	
32	13	41%	3	180616.3902	
41	15	37%	4- (Ash, CV, TS)	108595.66 102680.8202 Ash CV,TS, 50mm, 1mm	
38	5	13%	0	108595.66 Ash CV TS 50m	
27	8	11%		78022.08 Ash CV TS	Lames I Lames I
18	-	%9	0	78875.61 Ash	0 - 40
		18%	1 - (CV)	47830.94 Ash CV TS	STATE CAY

Brakfontein Claim

 $P = [(API#4 \times ZAR - CLT) \times 0.77 \times ^{x}/23.0] - CP$

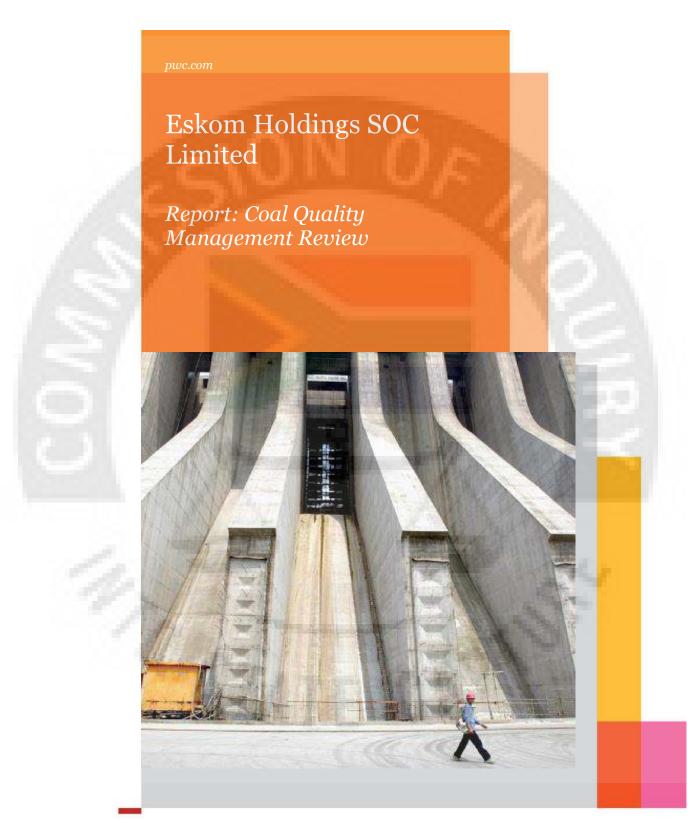
							Price of				
		Exchange	Exchange Coal Line	Yield	Expected	CV Export Contract	Contract		Shortfall		
Month	API#4	Rate	Tariff (CLT) Fac	Factor	CV (AD)	Coal (AD) Coal (CP)		Rpt	Tons	Total Penalty	Total Incl VAT
Feb 18	97.31	11.88	165.64	0.77	21.10	23.00	326.63	372.66	7,296	2,719,026.41	
Mar 18	94.53	11.77	165.64	0.77	21.10	23.00	325.57	343.59	74,014	25,430,971.94	
Apr 18	91.40	11.81	172.93	0.77	21.10	23.00	340.98	299.55	104,000	31,153,122.99	
May 18	94.14	12.37	172.93	0.77	21.10	23.00	342.24	357.87	104,000	37,218,984.35	
June 18	102.29	12.48	172.93	0.77	21.10	23.00	344.14	435.50	104,000	45,292,131.37	
July 18	104.46	13.74	172.93	0.77	21.10	23.00	344.77	547.17	104,000	56,906,034.57	
Aug 18	107.89	13.16	172.93	0.77	21.10	23.00	344.56	536.17	104,000	55,761,405.26	
Sept 18	98.76	14.65	172.93	0.77	21.10	23.00	344.56	555.62	104,000	57,784,852.27	
Oct 18	98.25	14.16	172.93	0.77	21.10	23.00	347.52	512.94	104,000	53,345,607.48	
Nov 18	99.45	14.65	172.93	0.77	21.10	23.00	348.57	558.48	104,000	58,082,268.60	
Dec 18	92.39	13.71	172.93	0.77	21.10	23.00	345.20	427.71	90,400	38,665,427.93	
											531,432,308.16

Please note that the April 18 - Dec 18 GJ rate applied does not include the annual escalation on the replacement indices (Mechanical Engineering Index, PPI Mining Machinery and Imported Rubber Index).

			Matla Quality 2 % Variance <u>Credit nore</u> issued		Majuba Road quality 2% Variance	
	Variance	Paid Paid Paid Paid	Paid Paid Paid Paid Paid Paid	Variance - Paid	Variance - Paid 0.01 Paid 0.01 Paid -0.11 Paid -0.11 Paid - Paid	843,943.90
	Eskom	Payment 15,013,465.97 25,106,429.49 25,362,131.60 35,325,955.88	33,205,563.78 42,551,067.07 61,703,068.81 58,663,007.06 46,040,272.71 48,039,191.18 38,488,667.57 36,881,351.25	466,380,17.237 Payment 32,148,533.86 51,455,612.59 26,746,697.27 37,265,363.83 37,265,363.83 32,003,592.57 38,093,592.57 38,093,592.57 38,113,826.61 32,333,445.28	408,625,956,25 Eskom V Payment 31,565,969,28 32,850,719,43 86,567,032,90 33,882,165,91 23,893,025,52 32,593,093,55 32,774,100,74 4,031,040,61 26,833,375,70 4,633,375,70 10,598,827,96 385,016,468,13	1,260,022,596.75
Including Vat	Supplier	Invoice 15,013,465.97 25,106,429.49 25,362,131.60 35,325,955.88	33,206,000.69 42,596,010.60 61,703,068.81 58,663,007.07 46,040,273.64 48,039,191.18 38,488,667.57 36,881,351.25	466,425,353.75 Invoice 32,146,533.86 51,155,612.59 26,746,697.27 37,265,363.83 37,265,363.83 32,003,592.56 28,652,200,70 30,629,578.27 31,113,826.61 32,331,445.28 37,490,777,00	Supplier F 13.565,956.28 3.540,000 4.000,000 4	3,545,774,46 75,748,989.60 1,260,866,540.68 1,260,022,596.75
	Supplier	GJ 966,229.42 1,615,787.51 1,626,278.02 2,265,181.33		28,675,891.88 Supplier GJ 1,972,060.72 3,137,996.11 1,617,596.03 2,265,344.12 1,477,048.06 2,866.029.88 1,966,427.85 1,746,595.51 1,744,593.77 1,966,776,49	1197,059.76 25,038,431.25 Supplier GJ Supplier 61 88,179.46 1,848,921.39 84,557.00 1,871,196.14 96,485.76 2,120,770.02 103,199.74 2,227,770.02 103,199.74 2,227,770.02 103,199.74 2,227,770.02 112,862.10 2,441,560.60 72,45,80 1,561,862.99 112,403.24 2,699,137,77 26,791.82 6,402,108.39 124,703.24 2,699,137,77 26,791.82 6,402,108.39	75,748,989.60
	Supplier	Tons 47,830.94 78,875.61 78022.08 108,595.66	102,680.82 124,680.82 124,680.82 180,616.39 180,415.54 66,224.74 141,620.78 111,214.88	Supplier Supplier Tons 89.398.64 150,134.17 79,130.18 110,882.46 69,070.76 13,864.40 99,541.08 99,641.63.52 99,641.63 99,947.02	Supplier Tons 84,577,048,76 84,577,64 84,577,64 86,648,76 103,197,4 66,689,54 80,984,86 80,584,86 112,545,80 124,703,24 66,543,16 66,543,16	3,545,774.46
	Comment	79 Shortfall 32 Over Supply 11 Over Supply 83 Over Supply		377,349.79 Over Supply 224,920.56 Shortfall 408,006.18 Shortfall 56,923.38 Over Supply -91,293.35 Shortfall	-289,321.80 -474,671.74 Shortfall -263,292.51 Shortfall -373,150.16 Shortfall -355,938.16 Shortfall	
0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	Shortfall/Surpl ser us (10% Variation included)	00 -91,977.79 00 14,721.32 00 11,538.11 00 680,013.83	ਜੇਜੇਜੇ'	E C 4	1. 2.	
Legend 1047800 1571700 1821560	GJ required per CSA	1,309,750.00 2 1,309,750.00 1 1,309,750.00 13 1,309,750.00		5. 2.276,550,00 7. 2.776,550,00 7. 2.776,550,00	4 2,276,550,00 15 2,276,550,00 17 2,276,550,00 17 2,276,550,00 17 2,276,550,00 18 2,276,550,00 19 2,276,550,00 10 2,276,50 10 2,276,50	
	Eskom	GJ 955,822.21 1,586,421.32 1,583,238.11 2,251,713.83	2,695,382,05 2,695,382,05 3,953,892,05 3,772,327,69 1,472,152,20 3,038,764,90 2,531,842,60 2,531,842,60	Eskom GJ 1,946,532.95 1,946,532.95 1,046,320.927.61 1,43,538.82 2,242,112.99 1,430,927.61 1,530,927.61 1,930,927.61 1,930,928.68.24 1,930,618.86 1,835,668.24 1,930,618.86	Estom GJ 1,873,609.74 1,8873,609.74 1,288,1973,149.14 2,242,118.11 1,245,688.88 1,045,817.54 2,392,703.16 1,588,876 2,392,703.16 1,588,876 2,594,112.88 1,688,876 1,68	75,165,430.03
	Comment	Shortfall Over Supply Over Supply	over Supply Over Supply Over Supply Shortfall Over Supply	Shortfall Over Supply Shortfall Shortfall Shortfall	Shortfall Shortfall Shortfall Shortfall Shortfall Shortfall Shortfall	
	Shortfall/Surplus (10% Variation included)	-4,711.18 674.04 29,839.24	24,643.32 43,670.48 43,284.93 44,113.15 -24,575.06 2,388.56	159,327,48 -2,147.87 Shorffall 13,285.72 Over Sup -12,902.6 Shorffall -21,967.16 Shorffall	-30,976,41 -4,087,36 -6,898,68 -27,295,23 -6,107,62 -16,013,88 -25,794,50 -63,541,28 -149,738,55	
	Tons required per CSA (10% variance allowed)	65,000.00 65,000.00 65,000.00 65,000.00	65,000.00 65,000.00 113,000.00 113,000.00 113,000.00 113,000.00 113,000.00	113,000.00 113,000.00 113,000.00 113,000.00 113,000.00 113,000.00 113,000.00 113,000.00	1,356,000.00 113,000.00 113,000.00 113,000.00 113,000.00 113,000.00 113,000.00 113,000.00 113,000.00 113,000.00	
Brakfontein Legend 52,000 78,000 90,400	Eskom	Tons 47,288.82 77605.72 78,674.04 107,839.24	10,643.32 121,670.48 178,884.93 179,713.15 65,824.94 137,988.56 112,195.43 115,346.38	Eskom Tons 82.22.1 148.885.72 7.429.74 109.853.64 86.422.84 11.182.75 91,877.87 93,559.86 94,28.32 109,447.94	Ekom Tons 88.372.64 113.000.00 88.372.64 113.000.00 93.704.99 113.000.00 93.704.99 113.000.00 94.701.80 110.493.81 113.000.00 124.465.08 113.000.00 124.465.08 113.000.00 124.465.08 113.000.00 124.465.08 113.000.00 124.465.08 113.000.00 124.465.08 113.000.00 126.465.08 113.000.00 126.465.08 113.000.00 126.465.08 113.000.00 126.465.08 113.000.00 126.465.08 113.000.00 126.465.08 113.000.00 126.465.08 113.000.00 126.465.08 113.000.00 126.465.08 113.000.00 126.465.08 113.000.00 126.465.08 113.000.00 126.465.08 113.000.00 126.465.08 113.000.00 126.868.72 113.000.00 126.868.72 113.000.00	3,525,130.51
Tegeta F2016 F2016 April 2015 - Sep 2015 Minum Monthly Quantity Anil 2015 - Sep 2015 Mazimum Monthly Quantity Oct 2015 - Sep 2020 Minimum Monthly Quantity Oct 2015 - Sep 2020 Mazimum Monthly Quantity Mazimum Monthly Quantity		Apr-15 May-15 Jun-15 Juh-15	Aug.15 Sept-15 Sept-15 Oct-15 Nov-15 Jan-16 Feb-16	F2017 Apr-16 May-16 July 16 July 16 Sept-16 Oct-16 Oct-16 Jan-17 Feb-17 Mar-17	F2018 Apr. 17 May- 17 Jun. 17 Jul. 17 Sep. 17 May- 17 May- 18 May- 18 May- 18	TOTAL







pwc



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We will reimburse any costs you incur in notifying us and returning the document to us.

Our telephone number in Johannesburg is +27-11-797 4000



Strictly private and confidential

26 November 2015

Molefi Nkhabu Eskom Holdings SOC Limited Assurance and Forensics Megawatt Park Sunninghill 2157

Dear Mr Nkhabu

Report: Coal Quality Management review

- PricewaterhouseCoopers Advisory Services (Pty) Ltd was recently appointed to assist
 Eskom Holdings SOC Limited with an independent "Coal Quality Management Review"
 In accordance with our Proposal and the scope of work detailed therein, we have
 pleasure in presenting our report.
- 2. This Report has been prepared solely for the use of Eskom Holdings SOC Limited and should be used for information purposes only. As such, it should not be disclosed to any other party without our prior written consent. It shall be a condition of such consent, if given, that PricewaterhouseCoopers Advisory Services (Pty) Ltd. accepts no responsibility to that third party and that any such third party will hold PricewaterhouseCoopers Advisory Services (Pty) Ltd. harmless in respect of any consequences of such disclosure. Whether or not we have given our consent, we will not accept liability or responsibility to any other party who may gain access to this document.
- 3. Should you have any comments, please do not hesitate to me at +27 (11) 797 5526 or +27 (79) 599 4677.

Yours sincerely

Trevor Hills Director

trevor.hills@za.pwc.com

PricewaterhouseCoopers Advisory Services (Pty) Ltd, Reg. no. 1999/024417/07 2 Eglin Road, Sunninghill 2157, Private Bag X36, Sunninghill 2157, South Africa T: +27 (11) 797 4000, F: +27 (11) 797 5800, www.pwc.co.za



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Section	Title	Pages
	List of appendices	5
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I	Background and mandate	9
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IV	Sources of documentation and information	14
V	Findings: Mines	16
VI	Findings: Labs	44
VII	Conclusions	77
VIII	Recommendations	80



List of appendices

Appendix	Description
Appendix 1	Signed Proposal dated 7 September 2015
Appendix 2	March, April and June 2014 combustion test reports for Brakfontein Colliery
Appendix 3	Brakfontein Colliery combustion test report dated 12 March 2014
Appendix 4	Coal Supply Agreement concluded with Tegeta dated 10 March 2014
Appendix 5 Appendix 6	Combustion test report dated 18 June 2015 report by Dr Van Alphen Technical evaluation report dated 10 April 2015 in respect of the Brakfontein Colliery
Appendix 7	'Addendum' to the Brakfontein Coal Supply Agreement in the form of a letter signed by "Mr Johan Bester" on 11 May 2015
Appendix 8	"2008 Medium Term coal procurement mandate"
Appendix 9	The Board of Directors Tender Committee resolution pertaining to the extension of the Medium Term mandate for Coal Supply
Appendix 10	Manungu Colliery Coal Supply Agreement signed in November 2014
Appendix 11	Financial evaluation report of Tshedza Mining Resources (Pty) Ltd performed by "Ms Malebo Segwai" of Eskom dated 20 October 2014
Appendix 12	Letter signed by Ms Ramavhona as Acting Quality and Quantity Manager on 14 July 2015 to amend clauses in the Tshedza Mining Resources (Pty) Ltd Coal Supply Agreement
Appendix 13	Coal Supply Agreement concluded with Keaton Mining on 25 March 2011
Appendix 14	Technical memo dated 21 July 2011 compiled by Mr Nyangwa on Keating Mining
Appendix 15	Eskom's Financial Evaluation Report dated 24 February 2010 on Keating Mining
Appendix 16	Coal Supply Agreement concluded on 26 March 2013 with Universal Coal
Appendix 17	List of Tenders received and signed off by "Vuyisile Ncube" on 10 October 2009 and date stamped 14 October 2009
Appendix 18	Technical Evaluation report for the Kangala Mine
Appendix 19	Eskom's Procurement and Supply Chain Management Procedure (32-1034) dated 12 August 2011
Appendix 20	Minutes of a Strategy Pre Alignment Meeting held on 15 October 2013
Appendix 21	A printout of the approved Purchase Requisition in respect of the tender for the appointment of Labs and Roving companies
Appendix 22	Contracting Strategy in respect of the procurement of Lab and Coal Sampling services
Appendix 23	Invitation to Tender dated 26 November 2013
Appendix 24	Copy of Eskom's Tender Bulletin reflecting the advertised tender from 26 November 2013 to 14 January 2014



Appendix	Description
Appendix 25	Attendance Register for a clarification meeting held on 12 December 2013
Appendix 26	Tender Evaluation Report
Appendix 27	Health and Safety Score Sheets in respect of the Lab services tender
Appendix 28	Quality Evaluation Score Sheet / Report in respect of the Lab services tender
Appendix 29	Evaluation Report to the Procurement Tender Committee dated 7 March 2014
Appendix 30	Feedback Report to the Procurement Tender Committee dated 28 March 2014
Appendix 31	Copies of contracts concluded with the 9 service providers (5 Labs and 4 Sampling, Roving and Observation companies)
Appendix 32	Ms Ramavhona (Contract Manager's) Training Record
Appendix 33	Esk <mark>om Lab Audit Procedure dated 4 Februar</mark> y 2014
Appendix 34	Summary of the "Blind Sampling" sample analysis results
Appendix 35	Non-conformance, Adequacy Assessment and Blueprint Development



Definitions and abbreviations

Throughout this document, unless otherwise stated, the words in the first column have the meanings stated opposite them in the second column:

Definitions

GM	General Manager
Lab/Labs	Laboratory/Laboratories
LIMS	Laboratory Information Management System
NDA	Non-Disclosure Agreement
PED	Primary Energy Division
PTC	Procurement Tender Committee
PTC	Procurement Tender Committee
QA	Quality Assurance
QA	Quality Assurance
SD&L	Supplier Development and Localisation
SHEQ	Safety, Health and Quality
SLA	Service Level Agreement

Entities

Entities	
Eskom	Eskom Holdings SOC Limited
Keaton	Keaton Mining (Vanggatfontein Colliery)
Mining/Vanggatfontein	
Noko	Noko Analytical Services CC
Oakbay Resources	Oakbay Resources (Pty) Ltd
PwC	PricewaterhouseCoopers Advisory Services (Pty) Ltd.
SABS	SABS SOC Limited
SGS	SGS South Africa (Pty) Ltd
Sibonisiwe	Sibonisiwe Coal Laboratory Services CC
Siza	Siza Coal Services CC
Tegeta/Brakfontein	Tegeta Exploration and Resources (Pty) Ltd (Brakfontein
	Colliery)
Tshedza Mining/Manungu	Tshedza Mining (Manungu Colliery)
Universal Coal/Kangala	Universal Coal (Kangala Colliery)

Individuals

marviduais	
Dr van Alphen	Dr Chris van Alphen, Chief Advisor Eskom Research, Testing and Development Division, Eskom
Mr Chauke	Mr Kalafo Chauke, Acting Senior Manager Commercial, Eskom
Mr Chetty	Mr Saggie Chetty, Senior Manager, Fuel Sourcing, Primary Energy Division
Ms Maharaj	Ms Kiren Maharaj, Previous Senior General Manager, Primary Energy Division
Mr Marageni	Mr Mudzielwana Marageni, Senior Manager Fuel Sourcing, Primary Energy Division, Eskom
Mr Mavuso	Mr Jabu Mavuso, Plant Manager, Brakfontein Colliery



Mr Mudalier	Mr Sateesh Mudalier, General Manager, Brakfontein Colliery
Mr Nematswerani	Mr Fulufhelo Nematswerani, Fuel Sourcing, PED
Mr Opperman	Mr Gert Opperman, Coal Supply Unit Manager, Eskom
Mr Phetla	Mr Sam Phetla, QA Senior Advisor, Eskom
Mr Roux	Mr Jacques Roux, Advisor, Brakfontein Colliery
Mr Sabelo	Mr Martin Sabelo, Senior Advisor, Supplier Development and Localisation, Eskom
Ms Bahula	Ms Julia Bahula, Senior Advisor Internal Control, Eskom
Ms Gobeni	Ms Siphumelele Gobeni; Senior Geologist, Primary Energy Division
Ms Kgaphola	Ms Maria Kgaphola, QA Senior Advisor, Eskom
Ms Mabika	Ms Shirley Mabika, Human Resources, Eskom
Ms Malgas	Ms Bonani Malgas, Procurement Division, Eskom
Ms Moodley	Ms Viloshnee Moodley, Acting Quality Manager, Eskom
Ms Moola	Ms rehana Moola, Financial Evaluator, Eskom
Ms Mothapo	Ms Mabatho Mothapo, Geologist, Technical analyst, Eskom
Ms Ndabula	Ms Phinda Ndabula, SD&L Strategist, Eskom
Ms Nteta	Mrs Ayanda Nteta, Acting General Manager, Primary Energy Division
Ms Ramavhona	Ms Charlotte Ramavhona, Quality Assurance Manager, Eskom
Ms Ramuhulu	Ms Lufuno Ramuhulu, Senior Advisor Procurement, Eskom
Ms Raophale	Mr Pulane Raophale, Health & Safety Analyst, Eskom
Ms Von Pickartz	Ms Delia Von Pickartz, Acting Procurement Manager (Tactical Procurement), Eskom



I. BACKGROUND AND MANDATE

- 1.1 We were appointed by Eskom to conduct a Review of the Coal quality management of certain coal suppliers (Mines") and Eskom's Contracted Laboratories ("Labs") following aspects pursuant to the allegations discussed in the clarification meeting held in September 2015. Our signed Proposal details our Approach (**Appendix 1**).
- 1.2 The Findings have been discussed under two main work streams, namely "Mines" and "Labs", and the following headings have been used:
 - a) Procurement;
 - b) Contracting;
 - c) Contract Management; and
 - d) Quality & Assurance.
- 1.3 We have also been requested to perform a review of the following in relation to the above:
 - a) Non-conformance (to existing protocols and guidelines);
 - b) Adequacy (assessment) of existing protocols and guidelines; and The "Blue Print Development", which includes suggested areas for improvements to existing controls to enhance the effectiveness of processes.



II. SCOPE AND NATURE OF THE REVIEW

- 2.1 The scope of our review was limited to the information obtained from Eskom, the relevant Mines and Labs and interviews with Eskom officials and other external parties deemed relevant.
- 2.2 The nature of the assignment included the inspection of electronic and hardcopy records and other related supporting documentation deemed necessary to comply with the mandate. We relied on records provided by Eskom, the relevant Mines and Labs.
- 2.3 We were not appointed to, and did not conduct an audit in terms of International Standards on Auditing. The findings herein do not constitute an external audit opinion and the information included in this report does not form part of any external audit report.
- 2.4 The findings contained herein are based on the work performed to date of this report. We have taken reasonable steps to ensure that the information obtained is authentic and complete but we cannot guarantee the authenticity and completeness of the information. As a consequence, we cannot conclude that the outcome of our investigation to date has been exhaustive and we reserve the right to withdraw this report or amend our findings should subsequent information come to our attention that warrants amendments to these findings.
- 2.5 We were not required to, nor do we express any legal opinion in this document, nor should anything stated herein be regarded as such.
- 2.6 This report contains evidence based on interviews conducted, information reviewed and documents perused. We deem the aforementioned evidence to be appropriate to gain an understanding of the issues to be reviewed.



III. PROCEDURES PERFORMED

- 3.1 For ease of reference, we segmented our procedures performed as follows:
 - A. <u>Coal Supply pertaining to 4 Mines (Sources); and</u>
 - B. <u>Laboratory</u>, Roving, Observation and Sampling services.

Coal Supply relating to the 4 Mines (Sources)

- 3.2 We performed the following procedures:
 - 3.2.1 Consulted with the following Eskom officials to identify the Mines to be reviewed;
 - a) Ms Mthimunye;
 - b) Mr Nkhabu; and
 - c) Dr van Alphen.
 - 3.2.2 We interviewed the following Eskom Fuel Sourcing officials to understand the process followed in the procurement of the Mines:
 - a) Ms Nteta;
 - b) Mr Marageni; and
 - c) Mr Nematswerani.
 - 3.2.3 We interviewed the following persons involved with the procurement of the Brakfontein Mine to understand their involvement;
 - a) Ms Mothapo;
 - b) Dr Van Alphen;
 - c) Ms Gobeni;
 - d) Mr Opperman;
 - e) Ms Ndabula;
 - f) Ms Nteta; and
 - g) Ms Raophale.
 - 3.2.4 We obtained and reviewed the following;
 - a) The Eskom Procurement and Supply Management Procedure (32-1034) (signed as at 19/08/2011);
 - b) Governance documentation relating to Eskom's Coal Procurement;
 - c) Primary Energy Division's Potential Coal Supplier Evaluation and Registration Process (Short/Medium Term);
 - d) Coal Quality Specifications for Eskom Power Stations;
 - e) Various technical memorandums;
 - f) Internal documents and other Eskom records relating to the procurement of the Coal Supply from the four Mines;
 - g) Pre-qualification Document requirements as per Primary Energy Division checklist;
 - h) Coal Supply Agreements;



- i) Various evaluation reports;
- j) Minutes of meetings; and
- k) Various supplier documentation and information.
- 3.2.5 We performed a site visit at the Brakfontein and Kangala Mine.

Laboratory, Roving, Observation and Sampling services

- 3.2.6 We reviewed the relevant Eskom Supply Chain Management policy to understand the prescribed procurement process;
- 3.2.7 We interviewed the following Eskom officials to understand the process followed in the appointment of the Labs;
 - a) Ms Moodley;
 - b) Ms Pickartz;
 - c) Ms Ramavhona
 - d) Ms Ramuhulu;
 - e) Mr Chauke;
 - f) Ms Bahula;
 - g) Ms Raophale; and
 - h) Mr Sabelo.
- 3.2.8 We obtained and reviewed the following:
 - a) Eskom Procurement and Supply Management Procedure (32-1034), signed as at 19 August 2011;
 - b) Procurement related information which included the following:
 - i. The approved Contracting Strategy;
 - ii. Purchase Requisition;
 - iii. Invitation to tender;
 - iv. Responses from prospective services providers;
 - v. Evaluation reports by the respective evaluation teams, particularly, reports for technical, quality and health and safety;
 - vi. Evaluation report submitted to the tender board;
 - vii. Contracts entered into with the respective service providers (Labs);
 - viii. Invoices from inception of all contracts until August 2015;
 - ix. Audit reports pertaining to the Labs; and
 - x. List of payments made to the Labs.
- 3.2.9 Performed site visits at two Labs (Sibonisiwe Coal Laboratory Services and SABS SOC Limted).
- 3.2.10 Interviewed the following representatives at the Labs;
 - a) Mr Masuku (Sibonisiwe Coal Laboratory Services); and
 - b) Mr Molatudi (SABS SOC Limited).



- 3.2.11 We interviewed the following Quality Assurance team members:
 - a) Ms Moodley;
 - b) Ms Ramavhona
 - c) Ms Kgaphola; and
 - d) Mr Phetla.
- 3.2.12 Reviewed the Lab audits results from April 2014 to September 2015, performed by the Quality & Assurance team at the various Eskom contracted Labs.
- 3.2.13 We observed "special audits" commissioned by Eskom at the Eskom contracted Labs and reviewed the audit results.
- 3.2.14 Observed a "blind sampling" process at Eskom in Witbank and the Lab where these samples were analysed.





IV. SOURCES OF DOCUMENTATION AND INFORMATION

4.1 We summarised documentation and information obtained as follows:

Table 1: Sources of documentation and information relating to the Coal

Supply

Supp	Ly	
Ref	Description	Source
1	Medium Term Sourcing Strategy dated 29 August 2009	Mr Chetty
2	Submission: Mandate Request to Negotiate and Conclude Contracts for the Supply and Delivery of Coal for the period October 2008 to March 2018 dated July and August 2008	Mr Chetty
3	Process Control Manual (PCM) for Source Internal and State Owned Suppliers dated 4 December 2014	Mr Chetty
4	Process Control Manual (PCM) for Source External Suppliers dated 04 December 2014	Mr Chetty
5	Process Control Manual (PCM) for Procurement Management	Mr Chetty
5	Extract of minutes of special Board Tender Committee meeting held on 3 December 2010	Mr Chetty
6	Submission: Interim Feedback on Negotiations and Contracts concluded with Suppliers for the Supply and Delivery of Coal for the period October 2008 to March 2018	Mr Chetty
7	Request for Proposal (RFP) - Gen 3031 for the Supply of Coal to Eskom Power Stations dated 14 September 2009	Mr Chetty
8	MTCS Evaluation of Request for Proposal (RFP) - Gen 3031 – Spreadsheet dated 3 December 2009	Mr Chetty

Table 2: Sources of documentation and information relating to the Labs

Ref	Document description	Source
1	The Eskom Procurement and Supply Management	Ms Moodley
	Procedure (32-1034) (signed as at 19/08/2011)	
2	Purchase Requisition in respect of the tender for the	Ms Mthimunye
	procurement of Lab services	
3	Contracting Strategy: Tactical Sourcing compiled the	Ms Mthimunye
	QA team (End User)	
4	Invitation to Tender	Ms Mthimunye
5	Lab Kick off Meeting register	Ms Mthimunye
6	Lab negotiation meeting registers	Ms Mthimunye
7	Clarification meeting Registers and Minutes	Ms Mthimunye



Ref	Document description	Source
8	Strategy alignment meeting Minutes	Ms Mthimunye
9	Revised tender prices	Ms Mthimunye
10	Feedback report to PTC after price negotiations	Ms Mthimunye
11	Quality scoresheet compiled by Marga Kruger	Ms Mthimunye
12	Evaluation report to the PTC	Ms Mthimunye
13	Letters of acceptance and regret to the unsuccessful service providers	Ms Mthimunye
14	Value contracts concluded with the 9 Service Providers	Ms Mthimunye
15	Non-Disclosure Agreements signed by the 9 Service Providers	Ms Mthimunye
16	Declarations of Interest signed by the 9 Service Providers and the Evaluation and Negotiation Team Members	Ms Mthimunye
17	Invoices submitted by the 9 Service Providers for the period March 2014 to August 2015	Ms Mthimunye / Ms Moodley
18	Tender documents submitted by the 9 successful Service Providers	Ms Ramuhulu/ Ms Malgas
19	Technical Evaluation score sheets	Ms Bahula / Ms Kgaphola
20	Safety Evaluation Score Sheets and relevant coresponence	Pulane Raophale
21	Qualifications and Experience records of the Lab Procurement Team	Ms Mabika
22	Financial Evaluation Score Sheets	Ms Moola
23	The Eskom Procurement and Supply Management Procedure (32-1034) signed as at 19/05/2014	Ms Bahula
25	Sibonisiwe Coal Laboratory Services Quality Manual	Ms Mthimunye
26	Technical Evaluation Site Visit Score Sheets	Ms Malgas
27	Blind Sampling Analysis results	Mr Bergh



V. FINDINGS: MINES

Procurement process followed in contracting with the Mines

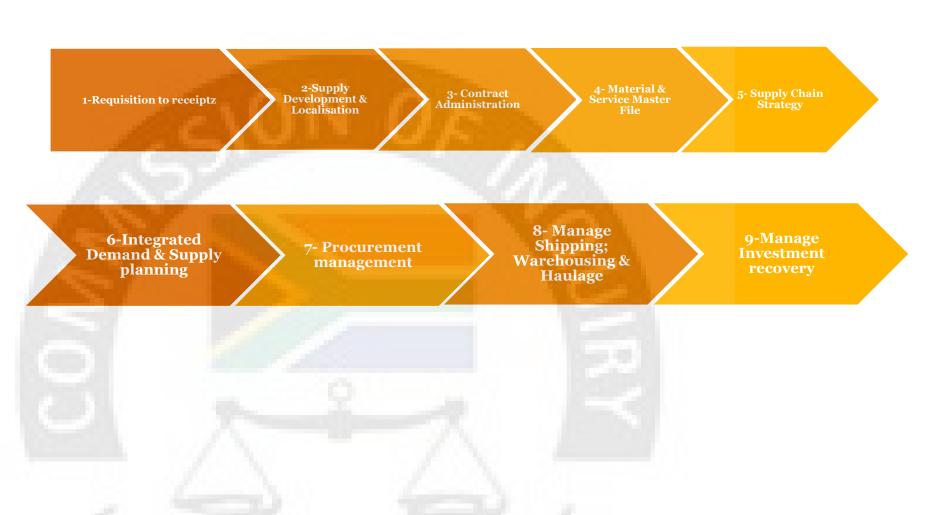
- 5.1. The Eskom Procurement and Supply Management Procedure (32-1034) (signed as at 19/08/2011) is largely dedicated to the Procurement of suppliers through a request for proposal (RFP) or a formal tender process.
- 5.2. Section 2.6 of this procedure deals with the Process for Monitoring and contains the following elements particularly relevant to the review:
 - a) the requirements to conform to the PMFA requirement that Eskom is represented by accountable persons at every level (Cost Centre Managers), who must "prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity";
 - b) All Procurement Practitioners are obliged to attend training on both the Conflict of Interest Policy (32-173), the Eskom Code of Ethics (Standard 32-527), and the Eskom Cardinal Rules for Safety (32-421) in order to ensure that all commercial activities are conducted in an ethical and safe manner as prescribed therein; and
 - c) Managers within the Group Commercial Division must review all declarations of conflicts of interests made by their employees, and ensure that appropriate measures are put into place to eliminate any perceived, potential or actual conflicts of interest within the procurement and supply chain environment. A formal declaration of interest must be signed by all members of evaluation / negotiation teams prior to the commencement of formal competitive tender evaluations and mandated negotiations estimated at R500,000 or more. It is the responsibility of the Buyer / Commodity Manager to ensure that such declarations of interests are completed and filed for audit purposes.
- 5.3. Section 3.1 of the procedure deals with Delegation of Authority to approve procurement Strategies and Award Orders / Contracts. It sets out the delegation of authority framework for procurement and in particularly states that "Sole adjudication (sole signature) authorities (i.e. execution and approvals of procurement / disposals by individual Procurement Practitioners or delegates, without reference to any other delegate, Procurement Practitioner, or to a PTC), are no longer permitted, at any level of delegation."
- 5.4. The procurement of the coal supply from Brakfontein and Manungu Collieries was secured by means of an unsolicited offer and was thus received outside a competitive tender / enquiry process. Section 3.7.3.9 of the Eskom Procurement and Supply Management Procedure; distinguishes between two types of unsolicited offers: "The first type is an offer that is made by a supplier when there is no procurement process, while the second type is made during a closed commercial process (tender or competitive negotiations) where an "uninvited" supplier has approached an Eskom employee / director before the closing date requesting to submit an offer."



- 5.5. Through various interviews conducted with the Acting General manager for the Primary Energy Division, Ms Nteta, it was clear that the procurement of the Brakfontein Coal Supply was conducted as one in which there was no formal procurement process.
- 5.6. Albeit that there is no defined 'procurement initiation process' for this type of offer, section 3.7.3.9 does however require that:
 - a) "This type of unsolicited offer be referred to the SD & L Department for supplier pre-qualification and registration, as per 3.2 of the Procedure. Only once evaluated and pre-qualified after application, the supplier may then be given a vendor number confirming registration on the Eskom supplier database, and may be considered for any future tenders / enquiries."; and
 - b) It further states that "Eskom employees that are approached with this type of unsolicited offer should immediately refer the supplier to the SD & L Department within the Group Commercial Division to engage in this registration process without further representation, engagement or commitment."
- 5.7. The Eskom Process Control Manual for Procurement (32-1223) (signed as at 8/12/2014) provides a conceptual framework for the elements in the Eskom procurement management process and highlights *inter alia* the requirements for a Supply chain Strategy and Integrated Demand and Supply Planning to precede and inform the Procurement Management process.
- 5.8. Eskom's Process Control Manual for Source External Suppliers (240-7891684) (signed as at 4/12/2014) provides the requirements and key process steps in the procurement process. It indicates how the process of dealing with unsolicited offers integrates with the more formal RFP process.
- 5.9. With the above in mind, and through the interviews conducted with the Team Leader of the Brakfontein Colliery Procurement process, Ms Nteta, and having sight of the draft Primary Energy Division's Potential Coal Supplier Evaluation and Registration Process (Short/ Medium Term- March 2015) we were able to compile the standard process followed in the Primary Energy Department.



Eskom supply chain Management Model (Eskom PCM for Procurement Management 32-1223)





PED Coal Supply Procurement Process (Draft PED checklist and PCM for Source External Suppliers 240-7891684:

1-Develop Procurement Strategy

2-Issue Supplier Enquiry 2-Facilitate Unsolicited Offers

3- Enquiry or receipt of offer

4- Pre-qualification

5- Evaluation

6- Negotiation 7- Contract

- i. Offer is received telephonically; via e-mail or letter
- ii. As at January 2015- all unsolicited offers are directed to a helpdesk (as per PED process)
- tii. Supplier is to be referred to SD & L for supplier pre-qualification and supplier registration (as per 3.2 of the procedure)
- iv. Proceed to Stage 4

- i. A 3 ton sample of the coal is requested from the Supplier
- ii. The Sample is sent to the Eskom's Research, Testing and Development (RT&D) Sustainability Division for quality testing
- iii. If found to be within the Coal 240 Specifications proceed with pre-qualification requirements
- iv. A cross-functional team i.e. Environment, Technical, Safety, and Commercial is selected by the Fuel Sourcing Manager
- v. Proposal with 4 copies submitted to team lead
- vi. The team lead disseminates packs to cross functional team
- vii. The supplier is informed of the status of their submission
- viii. Proceed to Stage 5

- i. Documents listed in 3.1.3 below are evaluated:
- ii. Evaluation completed by cross-functional team based on documents received and on-site visits where applicable
- iii. Cross functional team meets to discuss the proposal and any findings
- iv. If suppliers meet
 requirements evaluation
 reports are sent to Fuel
 Sourcing
- v. Once evaluated and prequalified, supplier may then be given a vendor number confirming registration on the Eskom supplier database and may be considered for future tenders/enquiries.
- vi. Proceed to Stage 6

- i. Negotiate terms and conditions (SRN) with supplier
- ii. Plan and negotiate SD & L strategy
- iii. Agree on contract terms and conditions
- i. Conduct Squad Check (CSA) discussions (contract peer review and internal signoff)
- ii. Load contract into SAP Conduct mine and station readiness tests
- iii. Deliveries commence



Salient Strategic and Commercial risk management requirements

- 5.10. In addition to the processes and requirements highlighted above, we have also paid attention to the following in the review:
 - a) It was reported that all four of the coal supply procurement processes was conducted under 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 (dated 11th September 2008) (The 2008 MT Mandate) and the interim feedback on negotiations and contracts concluded with suppliers for the supply of coal delivered to various Eskom power stations for the period 1 October 2008 to 31 March 2018 to the BoD-TC on 3 December 2010, where the mandate was extended and expanded to contract for life of mine; to extend current contracts, and; powers with sub delegation was granted to the Divisional Executive, Primary Energy Division to execute (The 2010 MT Mandate Extension);
 - b) The MT Coal Supply Strategy and the 2010 MT Mandate Extension specifies Contracting Principles and Standards for the negotiation teams and coal supply agreements and standards for the process and contracts in the areas of:
 - Legislative Compliance: The key principles listed here are that Eskom will
 not contract with suppliers who do not operate legally, contracts with the
 owners of mining resources or value-adding agents and the standards
 include a list of laws and statutory instruments pertaining to the mining
 industry;
 - ii. Coal Quantities: This section list as principles inter alia that suppliers should give warranties that they have sufficient coal reserves to meet contractual quantities; Eskom should contract for energy rather than coal mass; volume flexibility should be built in and it should come at no extra cost; and penalty principles for under performance that would put the non-defaulting party in the same financial position it otherwise would have been in. The standards defined include the following; the reserves and resources must be SAMREC Code compliant in the reporting; that the base CV must be the geologically assessed average for the contracted reserve; and lists the monthly, annual and full contract volume flexibility standards. It further sets standards for dealing with supply shortfall and under off-take;
 - iii. <u>Coal Qualities:</u> The specified contracting principles list the requirements for pre-certification of stockpiles; Eskom's rights to monitor and audit; compliance to a Coal Quality Management Procedure (CQMP) and that the coal quality requirements will be power station specific and based on a Coal Quality Effects Model that seeks to optimize the cola qualities to the economic impact on the power station. The standards set include but is not limited to; Suppliers have to commit to the CQMP, PED's technical services department must audit the CQMP compliance monthly; and an Eskom appointed independent laboratory, will do analysis of the contractual



samples;

- iv. <u>Price</u>: Contracting principles for pricing include; price will be based on efficient cost plus risk adjusted fair return; mine technical information will be used as inputs to PED's techno-economic models to do a cost estimate of the mining operation; prices will be based on energy; and price choices should be on total cost of ownership of the power station. The required standards identified for pricing include the use of a supplier data as well as industry benchmark information in the techno-economic modelling; and WACC plus a benchmarked return for the type of investment is mentioned while recognising that other methods do exist;
- v. <u>Contract Price Adjustments:</u> Contract Price adjustments or escalation clauses are meant to cater for the movement of cost components over the duration of the contract. The principles set include; that the base price should be clearly stated and a base date set before contracting; a basket of cost categories and associated indices should be used that represent the different cost drivers of the mining operation; at least 10% of the price will be fixed and free of escalation in order to build in efficiency gains; the profit component of the price should escalate at most with CPI; and the Contract Price Adjustments should be analyzed annually to determine whether there have been material shifts. Standards set include; prices should escalate annually except for diesel escalation, upwards or downwards, that is done monthly; and a standard cost basket with relative weights is specified; and
- vi. <u>Logistics (Transport and related issues):</u> The principles stipulate that; conveyor is the preferred mode, followed by rail and then road; contracts should be flexible in order to allow switching between road and rail and free on truck and delivered mode.

Mine 1: Tegeta Mining & Exploration: Brakfontein Colliery (Unsolicited, CSA Signed 10 March 2015) ("Tegeta"/ "Brakfontein")

5.11. Our findings regarding the Brakfontein Mine are discussed below:

Background

- 5.12. The procurement process that led to the signing of the Brakfontein Colliery CSA was treated by PED as an unsolicited offer outside of any procurement process.
- 5.13. The supplier offered two resources, Brakfontein and Vierfontein, the latter was withdrawn later due to environmental challenges. Various Eskom Coal Sourcing managers interacted with the supplier over time. The mine started production in 2013 (not for Eskom) but stopped for a period and started production again in February 2015, a month *before* concluding the CSA with Eskom.
- 5.14. Ms Nteta led negotiations of which the first was formally "minuted" on 9 May 2014, which led to a formal letter of offer from Tegeta in September 2014.



5.15. The General Manager, Fuel Sourcing, Johann Bester took over negotiation as demonstrated by the 20th January 2015 meeting with the Tegeta and the contract was signed on 10 March 2015.

Procurement

Receipt of offer/proposal

- 5.16. Previous offers from the supplier were reportedly received from 15 May 2012 *via* a phone call and followed by an e-mail sent to Eskom executive, Mr Kieran Maharaj. Ms Nteta received a letter of offer on 23 September 2014 from Tegeta.
- 5.17. The supplier was not referred to SD & L for supplier pre-qualification and supplier registration as per Section 3.7.3.9 of the Eskom Procurement and Supply Management Procedure.
- 5.18. An email request for vendor registration was sent by Ms Nteta on 23 February 2015 to "Ms Modiehi Mapela" stating that Eskom intended to award a contract to Tegeta on 1 April 2015.

Selection of evaluation team

- 5.19. The evaluation team selected did not complete declaration of interest forms prior to the pre-qualification stage as required by the Eskom Supply Chain Management procedure 32-1043.
- 5.20. No evidence was provided that the team underwent the required training on the Conflict of Interest Policy (32-173), the Eskom Code of Ethics (Standard 32-527) and the Eskom Cardinal Rules for Safety (32-421).

Sample Quality Testing

- 5.21. We were not provided with the June and August 2014 sample test results.
- 5.22. We were provided with the March, April and June 2014 reports for review. The reports indicated that the June 2014 and the March 2015 test samples were similar in most characteristics and thus within the acceptable range for Kendal and Kriel power stations but marginal for the Majuba power station due to ash that was at the limit of rejection range (**Appendix 2**).
- 5.23. The 12 March 2014 Report clearly stated that the 'mixed Brakfontein seam 4 upper (S4U) and Seam 4 lower (S4L) blend is not recommended for the Majuba power station as there is a high probability that the blend will frequently exceed Majuba's 240 rejection specification because of the poorer quality of the S4U which exceeds the Majuba 240 rejection specifications. The report recommended that if S4U was destoned and blended with S4L the qualities could be acceptable, if de-stoning is not feasible then supplying only S4L to Majuba was an option' (**Appendix 3**).



- 5.24. The contract was signed on 10 March 2014 which was 2 days prior to the 12 March 2014 report being published (**Appendix 4**).
- 5.25. The S4L resource estimate (on the original mining right tenement offered which did not include Brakfontein Extension) was insufficient to sustain the quantity required for the Majuba Power Station over the life of the contract. The revised report submitted by Mr Nyangwa, the Fuels and Combustion Manager, confirmed this finding and recommendation. The 18 June 2015 report by Dr Van Alphen confirmed the same as the above and added that the high sulphur content of Brakfontein was also a concern (**Appendix 5**).

Environmental & Legal Requirements

5.26. We were not provided with the detailed Closure Cost Assessment reports and therefore could not confirm that these were received at pre-qualification stage. We however found that an on-site environmental evaluation was performed on 11 March 2014. The Water Use Licence was granted to the Mine on 22 December 2014.

Health and Safety Requirements

- 5.27. The first evaluation was conducted on 18 March 2015 which was 8 days after the contract was signed.
- 5.28. The on-site visit was conducted on 26 March 2015 which was 2 and a half months after the contract was signed.
- 5.29. Some of the required pre-qualification documents were not received but the Health and Safety Evaluator Ms Raophale confirmed that she had sight of them during the on-site assessment and never made copies for Eskom's records.
- **5.30.** Ms Raophale confirmed the evaluation dates were correct and stated that she was not aware that the contract had been signed on 10 March 2015

Technical and Quality Requirements

- 5.31. During the technical evaluation process, we found that consistent and multiple burn tests were performed, 3 in particular. The last two tests were dated after the contract was signed, as is evident from the e-mail correspondence between Mr Nyangwa and Ms Mothapo from 23 March to 14 April 2015 Re: feedback on Full Combustion Test-Brakfontein Colliery.
- 5.32. The 10 April 2015 report stated that "When Hardgrove is considered in the overall assessment, based only on the laboratory analysis then the March 2015 sample is not suitable for all power stations as the required mill throughput to meet full load will not be achieved" (**Appendix 6**).



Commercial and Financial Requirements

5.33. We were not provided with any documents pertaining to commercial evaluations. We were however informed that financial evaluations were performed. We also could not find any evidence that a financial modeling and evaluation process was followed, or a clear commercial motivation for entering into the contract on the commercial terms provided.

Negotiation

- 5.34. Minutes of meetings provided shows that meetings were held on:
 - a) 9 May 2014;
 - b) 10 July 2014;
 - c) 23 September 2014;
 - d) 23 January 2015; and
 - e) 30 January 2015.
- 5.35. The first three meetings took place prior to the pre-qualification requirements being met. The Health and Safety function was not represented at any of the above meetings. SD&L were also not included during the meetings as required by the Eskom Supply Chain Management procedure. The PED General Manager, Fuel Sourcing at the time, "Mr Johann Bester", led the meeting which took place on 20 January 2015.

Contracting

- 5.36. The Coal Supply Agreement, herein referred to as 'the Contract', was signed as at 10 March 2015. An 'Addendum' to the contract in the form of a letter was signed by "Mr Johan Bester" on 11 May 2015 (**Appendix** 7).
- 5.37. Our review of the contract showed the following:
 - a) The contract was poorly formatted in that it contains numbering errors, e.g. paragraph 10 was duplicated;
 - b) The contract contains irrelevant or unreferenced information, these include: the second paragraph of 20.8.1.2 has irrelevant paragraphs or factually incorrect clauses (reference to "existing dome cameras" in clauses 21.5.1 and 21.7.4, also reference to short term contract in 21.5.2);
 - c) The contract contains ambiguities (clause 20.8.1.2 refers to a flow diagram that shall form part of the final Agreement);
 - d) The Coal Quality Management Procedure ("CQMP"), containing obligatory requirements referred to in the body of the contract is in draft, incomplete and not yet agreed or implemented;
 - e) An 'Addendum' to the contract dealing with a change to coal quality parameter is in the form of a letter addressed to the Chief Executive of Tegeta. Ms Nteta confirmed that this 'Addendum' has not been signed by the Tegeta and thus



- cannot be legally in force as per section 44 of the contract. The parties however have implemented this change;
- f) Addendum E of the contract dealing with the BEE ownership undertaking is in the form of a letter from the supplier. Legal drafting of the agreed terms and undertakings is considered a more appropriate way in order to avoid misinterpretation and ambiguity; and
- g) The contract appears to have been compiled hastily by copying and pasting sections from other contracts. Ms Nteta stated that it had been put together by "Ms Andrea Williams" in Legal Services, who has since left Eskom.

Procurement Mandate

- h) We were informed that the procurement of coal supply from Tegeta was performed under the "2008 Medium Term coal procurement mandate" set up originally for emergency coal procurement. During an update to the Board of Directors Tender Committee in 2010, the mandate was extended and expanded to include contracting for "life of mine", to extend current contracts, and granted sub-delegation powers to the Divisional Executive Primary Energy Division for execution (Appendix 8);
- i) We did not receive evidence of compliance to some of the specified criteria, e.g. financial evaluation. The 2010 mandate motivates that the financial justification will be performed on a cost *plus* a risk adjusted fair return. Further that it should comply with the long term coal sourcing strategy;
- j) On 14 April 2014, PED provided an update to the Board of Directors Tender Committee on the Medium Term Procurement and motivated that the mandate be kept open and that the Divisional Executive be granted authority with powers to delegate to give effect to the Mandate. The Board of Directors Tender Committee resolution provided however only reflects that "feedback on the results of negotiations and Coal Supply Agreements is noted." It is therefore unclear if the Board of Directors Tender Committee approved the continuation of the 2010 revised mandate that authorised the Divisional Executive as a sole signatory authority which is specifically prohibited by the Eskom Procurement Management Policy (32-1034) effective 20 September 2011 (Appendix 9);
- k) Although it was reported that an updated Coal Procurement Strategy exists, this was not provided for review, nor was any evidence found that demonstrates that the procurement was in accordance with this approved strategy;
- Mr Marageni confirmed that PED has a Coal Supply Optimization Model and that an integrated demand and supply planning process exists, but that it is not generally used to confirm that a supply contract fits with the optimised plan;



- m) We found no evidence that a financial evaluation was performed; and
- n) The relative percentages in the price escalation basket differs from the prescribed basket (Mandate standards). Together with qualities and price per energy unit, price adjustments are critical financial parameters in multi-year contracts and justifies tight oversight and consideration. No rationale for the deviation from the standard was provided.

Contract Management

- 5.38. Our reviews relating to contract management showed the following:
- 5.39. It is unclear if the condition precedent in clause 10.2.1 of the contract which states that "by no later than 16:00 on 31 March 2015, the supplier had completed and reported a successful combustion test for coal supply to Majuba power station" was fulfilled or waived by Eskom, as no documentation was provided to us to verify this.
- 5.40. The Coal Quality Management Procedure ("CQMP"), containing obligatory requirements referred to in the body of the contract, is in draft, incomplete and not yet agreed or implemented.
- 5.41. The coal specification was amended in a letter from "Mr Johan Bester" to Tegeta. The letter amended the quality criteria as allegedly discussed with Tegeta. This amendment could be unenforceable as the contract specifies that both contracting parties should agree to any amendment in writing, and no evidence to this effect was supplied.

Implementation

5.42. A formal hand over process between the Coal Sourcing Manager (Contracting) and the Coal Supply Unit Manager could not be demonstrated. As such, key elements like the outstanding quality testing and confirmation (Condition Precedent), potential risks identified by the Bulk Sample test results and the finalisation of the outstanding CQMP were not identified by the team managing the implementation of the contract.

Quality Assurance

5.43. It is evident from our findings above that Coal Supply from the Brakfontein Colliery was contracted prior to the receipt of some of the required evaluation documents and requirements. The contract was signed on 10 March 2015, despite the supplier having failed pre-qualification technical requirements for the supply of coal to Majuba Power Station. It further appears that the condition precedent (Clause 10.2.1 of the contract) of a successful combustion test was not met. Notwithstanding this, Eskom continued to implement the agreement with Tegeta.



Mine 2: Tshedza Mining: Manungu Colliery (Unsolicited, CSA Signed November 2014) ("Tshedza"/"Manungu")

5.44. Our reviews relating to the above Mine showed the following:

Background

- 5.45. The Tshedza Mining's coal resource identified as "Eloff", has been registered on Eskom's coal resource database and was identified as a strategic block of coal as part of Eskom's identified long-term coal supply sources in the Coal Supply Strategy.
- 5.46. In 2012, Mr Marageni engaged with the holders of the mineral rights to Eloff block 1 which at that stage were Mbuyelo Coal (Pty) Ltd. and an Indian company styled "Homelands". Mbuyelo Coal bought out Homelands at the end of 2012.
- 5.47. Mbuyelo Coal made a formal proposal to Eskom early in 2014 and the procurement process was taken over by Mr Nematswerani (Fuel Sourcing).
- 5.48. The procurement process was considered by PED as an unsolicited bid and dealt with under the 2010 amendment of the "2008 Medium Term Mandate". Mr Nematswarani provided the supplier with a full set of pre-qualification documentation requirements and used it as a basis to evaluate and negotiate with the supplier.
- 5.49. Negotiations were concluded in October 2014 and the Manungu Colliery CSA was signed in November 2014 (**Appendix 10**).

Procurement

Receipt of offer/proposal

5.50. Eskom initiated discussions with the owners of the mining rights to certain coal blocks it had on its coal resources database. The "Eloff" reserve was a targeted reserve in Eskom's Long Term Coal Supply Strategy.

Selection of Evaluation Team

- 5.51. At the time when a formal proposal was made by the supplier in respect of Eloff block 1, the designated Coal Sourcing lead, Mr Nematswerani, selected the team in consultation with the departmental heads.
- 5.52. The evaluation team selected did not complete 'declaration of interest' forms prior to the pre-qualification stage as required by Eskom Supply Chain Management procedure 32-1043.
- 5.53. No evidence was provided that the team underwent the required training on the Eskom's Conflict of Interest Policy (32-173), the Eskom Code of Ethics (Standard 32-527) and the Eskom Cardinal Rules for Safety (32-421).



Sample Quality Testing

5.54. Coal qualities were provided as part of pre-qualification information supplied to Eskom.

Environmental and Legal requirements

- 5.55. NEMA and IWULA were outstanding at the time of pre-qualification. However it was reflected as in place on the PED supplier documentation checklist. The following were supplied:
 - a) Mining Right granted on 24 February 2011;
 - b) Approved Environmental Management Program Report; and
 - c) A Tax clearance certificate dated 4 June2014.
- 5.56. An Environmental report prepared by "Ms Mirenda Moremedi" of Eskom dated 03 July 2014 was provided.
- 5.57. A site evaluation was undertaken on 4 June 2014.
- 5.58. A Water use licence was applied for but not issued at the time of contracting.

Health and Safety Requirements

5.59. An internal Health and Safety report was signed by an Eskom Safety Officer on 27 October 2014.

Technical Requirements

- 5.60. The following reports were supplied:
 - a) Homelands Internal Geological report dated 30 March 2009;
 - b) Independent Geological report dated 31 March 2011; and
 - c) Homelands feasibility report dated August 2012.

Commercial and Financial Requirements

- 5.61. Financial status evaluation of Tshedza Mining Resources (Pty) Ltd was performed by "Ms Malebo Segwai" of Eskom on 20 October 2014. Concerns were raised by the financial status reviewer that the company may not have the required cash reserves to cover the increased working capital requirements and that funding for expansions was not secured (**Appendix 11**).
- 5.62. An internally developed technical cost model was used during the evaluation process. A financial evaluation model was developed to determine a "fair price" and 16% was assumed as a "fair return" on investment.
- 5.63. No evidence was supplied to demonstrate that coal quality options we performed taking a Total Cost of Ownership of the targeted Power Stations into account.



5.64. The standard escalation clause as required by the mandate was implemented.

Logistics

5.65. Route Assessment reports were produced on 20 March 2014 for Kusile Power Station and again on 07 July 2015 for Kendal and Kusile Power Stations.

Supplier Development and Localisation

- 5.66. A BBBEE certificate dated 7 November 2014 was supplied.
- 5.67. No documentation was provided to indicate that SD&L were involved as per normal procedure, however it is noted that the supplier is 52.13% black owned from company records supplied during the pre-qualification stage and further supported by a B-BBEE certificate dated 7 November 2014.

Negotiation

- 5.68. Minutes of seven meetings held between 18 April 2012 and 30 July 2014 were supplied. A summary report of results of negotiations for contract drafting was signed by both parties on 23 October 2014.
- 5.69. Term sheet/record of negotiations was signed on 23 October 2014.

Contracting

- 5.70. A Coal Supply Agreement, herein referred to as 'the Contract' was signed in November but the date of the month was not recorded.
- 5.71. Prior to signing the contract, the draft contract was reviewed by Legal Risk and assessed by "Ms Andrea Williams" of Corporate Legal on 24 November 2014.
- 5.72. At the time of signature, the vendor number was not captured on the contract. However, a vendor number was issued for the supplier on 27 November 2014 by Eskom.
- 5.73. Although it was reported that an updated Coal Procurement Strategy exists, this was not provided for review, nor was any evidence found that demonstrates that the procurement was in line with this approved strategy.
- 5.74. Mr Marageni confirmed that PED has a Coal Supply Optimization Model and an integrated demand and supply planning process, but that it is not generally used to confirm if a supply contract fits with the optimised plan.
- 5.75. A financial model was used to perform a price determination in accordance with the mandate requirements.



Contract Management

5.76. Clause 17 and Appendices 1, 2 and 3 of the CQMP were amended *via* a letter signed by Ms Ramavhona as Acting Quality and Quantity Manager on 14 July 2015. Although we did not review the delegated authority of the official, amendments to contracts of this nature should be dealt with by Senior Management (**Appendix 12**).

Mine 3: Keaton Mining, ("Vanggatfontein") (RFP, Signed 25 March 2011)

5.77. Our reviews relating to the above Mine showed the following:

Background

- 5.78. The procurement of the Vanggatfontein coal supply was the result of a formal RFP process, which closed on 14 October 2009, following the 2008 MT Coal Supply Strategy and mandate as approved by the Board of Directors Tender Committee.
- 5.79. A formal team under the leadership of a Senior Manager, Ms Maharaj was established to manage the procurement process. Tenders were evaluated, ranked and formal negotiations initiated with all the qualifying suppliers.
- 5.80. Mr Ncube was appointed lead negotiator for this supplier. Negotiations started in December 2009 and continued until the parties signed a formal offer and acceptance form dated 10 June 2010. The final version of the CSA was signed on 25 March 2011 (Appendix 13).

Receipt of offer/proposal

- 5.81. The RFP was issued in 2009.
- 5.82. List of tenders received and signed off by "Vuyisile Ncube" on 10 October 2009 and date stamped 14 October 2009.

Selection of evaluation team

- 5.83. The formal evaluation team was appointed under the Medium Term Coal procurement Strategy. Mr Ncube was appointed as the Lead.
- 5.84. No evidence was provided to indicate that the team completed 'declaration of interest' forms prior to the pre-qualification stage.
- 5.85. We could not find any evidence to show that the team underwent the required training on the Eskom Conflict of Interest Policy (32-173), the Eskom Code of Ethics (Standard 32-527) and the Eskom Cardinal Rules for Safety (32-421).



Sample quality testing

5.86. We were not provided with the relevant documentation.

Environmental and Legal Requirements

- 5.87. An Environmental assessment and due diligence on regulatory documents was performed. An Environmental Evaluation scoresheet dated 17 September 2010 was supplied. The scoresheet does not indicate who compiled it and is not signed off.
- 5.88. The Mining Right was granted on 23 February 2010.

Technical Requirements

- 5.89. A Technical memo dated 21 July 2011 was compiled by Mr Nyangwa four months after the contract was signed (**Appendix 14**).
- 5.90. No formal internal PED technical evaluation report was supplied for review.
- 5.91. Bulk test for characterisation and mineralogy was performed and the report dated three months after signature of the CSA indicated that the 4lower seam for Vlakfontein and Vanggatfontein met requirements for Tutuka and Majuba PS.

Health and Safety Requirements

5.92. No proof of assessment provided.

Commercial and Financial Requirements

- 5.93. A Financial Evaluation Report dated 24 February 2010 was supplied. The report expressed concern over the ability of Keaton Mining (Pty) Ltd to be able to fund a project of this size and recommended that a guarantee from the parent company Keaton Energy Holdings Limited be obtained. No evidence could be found that the recommendations of the report have been addressed (**Appendix 15**).
- 5.94. No evidence was supplied to indicate a modelling and financial analysis of the supply was performed. However the supplier returnable cost spreadsheets supplied as part of the RFP were used instead and contracted costs are in line with this.
- 5.95. The relative percentages in the price escalation basket differs from the prescribed basket (Mandate standards). Together with qualities and price per energy unit, price adjustments are critical financial parameters in multiyear contracts and justifies tight oversight and consideration. No rationale for the deviation from the standard was provided at the time of contracting.



Logistics

5.96. A Route Assessment Form was completed on 2 July 2010 and route option evaluations were also performed.

Supplier Development and Localisation

5.97. This was not a requirement at the time of contracting with the Mine.

<u>Negotiation</u>

- 5.98. We found evidence (minutes and agenda packs) of the following negotiation meetings:
 - a) 9 December 2009;
 - b) 15 February 2010;
 - c) 18 May 2010;
 - d) 10 August 2010;
 - e) 16 February 2011 and
 - f) 4 July 2012,

Contracting

- 5.99. An Offer and Acceptance Form dated 22 June 2010 was signed by both parties.
- 5.100. A Briefing Note dated 24 March 2011 was signed by the GM: Fuel Sourcing.
- 5.101. A Coal Supply Agreement herein referred to as 'the Contract' was signed on 25 March 2011.
- 5.102. A Modification to the contract was signed on 15 November 2012.
- 5.103. Although it was reported that an updated Coal Procurement Strategy exists, this was not provided for review, nor was any evidence found that demonstrates that the procurement was in line with this approved strategy.
- 5.104. Mr Marageni confirmed that PED has a Coal Supply Optimization Model and an integrated demand and supply planning process exists, but that it is not generally used to confirm a supply contract fits the optimized plan.



<u>Mine 4: Universal Coal, Kangala Colliery ("Universal Coal"/"Kangala")</u> (RFP, Signed 26 March 2013)

Background

- 5.105. Universal Coal offered this resource under the 2009 RFP process, which closed on 14 October 2009, following the 2008 Medium Term Coal Supply Strategy and mandate as approved by the Board of Directors Tender Committee.
- 5.106. A formal team under the leadership of a Senior Manager, Ms Maharaj was established to manage the procurement process. Tenders were evaluated, ranked and formal negotiations initiated with all the qualifying suppliers.
- 5.107. A Lead negotiator for this supplier was appointed and negotiations continued for an extended time as the mine feasibility studies continued and regulatory approvals were sought. A CSA was signed on 26 March 2013 under the revised 2010 Medium Term Mandate (**Appendix 16**).

Receipt of offer/proposal

5.108. A List of Tenders was received and signed off by "Vuyisile Ncube" on 10 October 2009 and date stamped 14 October 2009 (**Appendix 17**).

Selection of Evaluation Team

5.109. No information regarding the appointment of the team, team lead, or declaration of interest or training was provided.

Sample quality testing

5.110. No information was provided.

Environmental and Legal Requirements

- 5.111. The following reports were supplied:
 - a) National Environmental Management Act 98 (NEMA) Authorisation dated 31 January 2012;
 - b) Mining Right granted on 3 May 2012;
 - c) Approved Environmental Management Program Report dated 3 May 2012;
 - d) Water Use Licence issued on 25 May 2012; and
 - e) Amended Water Use Licence issued on 8 April 2013.
- 5.112. An Environmental Report dated 28 February 2013 was prepared by "Thabang Motsoaboli".



Health and Safety Requirements

5.113. No information was provided.

Technical Requirements

5.114. The Technical Evaluation report for Kangala Mine deals with general geological and technical data. It makes no reference to the normal Eskom chemical and mineralisation characterisation analysis and burn rate trials. Furthermore, the report does not indicate who the author is and neither is it dated or signed (**Appendix 18**).

Commercial and Financial Requirements

- 5.115. No evidence of any costing or financial analysis was provided.
- 5.116. The relative percentages in the price escalation basket differs from the prescribed basket (Mandate standards). Together with qualities and price per energy unit, price adjustments are critical financial parameters in multi-year contracts and justifies tight oversight and consideration. No rationale for the deviation from the standard was provided.

Logistics

5.117. No information was provided.

Supplier Development and Localisation

5.118. Not a requirement at the time, however the supplier complied with the Mining Charter.

Negotiation

5.119. We found minutes of a negotiation meeting which took place on 22 July 2011.

Contracting

- 5.120. A Coal Supply Agreement herein referred to as 'the Contract' was signed on 26 March 2013.
- 5.121. Although Universal Coal was a successful correspondent to the 2009 RFP and ranked 6th out of 32 respondents based on technical and commercial valuation criteria, they were not contracted in the first round of the process, but contracted under the revised MT mandate obtained in 2010.
- 5.122. It was reported that an updated Coal Procurement Strategy exists, this was not provided for review, nor was any evidence found that demonstrates that the procurement was in line with this approved strategy.



5.123. Mr Marageni confirmed that PED has a Coal Supply Optimization Model and an integrated demand and supply planning process exists, but that it is not generally used to confirm a supply contract fits the optimized plan.

Contract Management

- 5.124. The contract Modification dated 4 September 2014: For the upgrading of coal to meet the Kendal Specifications was accepted by Eskom on 4 September 2014. However, the modification was signed but not dated by the Supplier.
- 5.125. During a visit to the Mine, the following was observed:
 - a) Sampling plant bias tests are not done and signed off as per the contractual requirements;
 - b) Sampling plant splitter boxes, sample bins and samples are not tamper proof;
 - c) The mine plant supervisor was unaware of the requirements that adjustments to the sampling plant can only happen with Eskom's consent; and
 - d) Sampling operators and supervisors, including observers are not properly trained about the sampling process and critical parameters.

General observations/comparisons between the four CSAs

- 5.126. The Vanggatfontein CSA (signed 25 March 2011) and the Kangala CSA (signed 26 March 2013) resulted from a 2009 Coal Procurement RFP process. The former was concluded under the 2008 MT Mandate, while the latter was concluded under the 2010 MT Mandate Extension.
- 5.127. The Brakfontein CSA (signed 10 March 2015) and the Manungu CSA (signed November 2014) resulted from unsolicited bids, was deemed to be medium term contracts and concluded under 2010 MT Mandate Extension.
- 5.128. The Manungu CSA procurement process was the only one of the four reviewed that could provide a techno-financial model compiled by Eskom to calculate mining costs and determine a price estimate based on the principle of 'efficient cost plus a fair return'. It was also the only contract where the escalation basket corresponds exactly to the original mandate basket.
- 5.129. Documentation management and recordkeeping appears to be a common shortcoming.
- 5.130. The absence of any reference to the Coal Supply Optimization Plan or demonstration that the planned supply to the relevant power station fits the optimized demand and supply plans during the contracting decisions and motivations, as well as the lack of focus on the techno-financial evaluations could indicate a significant financial risk to Eskom.



- 5.131. The contract structure, form and commercial principles of all four contracts appear to originate form a template and standard terms and conditions developed as a result of the Medium Term Coal Sourcing Strategy and the Contracting Principles as set out in the 2010 MT Mandate Extension.
- 5.132. The wording in some of the corresponding clauses of the four CSA's are slightly different, for example the formula to calculate the financial penalty, general warranties, requirements of surveillance cameras in the sampling, precertification process and the Alienation or Disposal of an Interest. This appears to be as a result of "evolution" of the "standard contract terms" over time.
- 5.133. Some corresponding clauses contain variations in order to cater for specifics relevant to the specific agreement, for example in the introduction, conditions precedent clauses and the escalation table elements and weights.
- 5.134. In contrast to the Vanggatfontein, Kangala and Manungu contracts, the Brakfontein contract is poorly formatted, contains numbering errors (paragraph 10 is duplicated), contains irrelevant or unreferenced information (some of the references below table 3, the second paragraph of 20.8.1.2, has irrelevant paragraphs or factual incorrect clauses (reference to "existing dome cameras" in clauses 21.5.1 and 21.7.4, also reference to short term contract in 21.5.2), contains ambiguities (clause 20.8.1.2 refers to a flow diagram that shall form part of the final Agreement). The CQMP, acritical addendum is incomplete and not signed by the parties.
- 5.135. The above could indicate that the Tegeta contract, or at least the execution copy was not prepared or reviewed by legal Counsel of the parties. It is standard practice in industry for a contract of this value and duration to have undergone a legal drafting risk review. It appears to have been hastily put together through a process of cutting and pasting from various drafts or standard templates. It is considered irregular for the executives of the parties who have signed this contract to have done so without ensuring legal review or at least a detailed proof read by themselves.

General observations on Mine Management

- **5.136.** From site visits to Kangala, Vanggatfontein and Brakfontein mines the following was observed:
 - a) Kangala and Vanggatfontein mines are well-established mines with experienced mining engineers and geologists on site, while Brakfontein is in construction or development phase and make use of a mining contractor (subsidiary of Tegeta) with limited coal mining experience;
 - b) Brakfontein has no coal beneficiation facilities, the Mine crushes and screens various ROM stockpiles from different coal seams from the pit and sells or blends from these stockpiles for the different markets. According to the GM of the Mine, they supply to Eskom only "4 Seam Lower" coal and the rest to



- various other coal mines or vendors with washing facilities that blends or "washes" into other quality specification products for Eskom; and
- c) Kangala and Vanggatfontein Collieries mine the same coal seams as that of Brakfontein in the Delmas coalfields. The former two mines have well controlled grade control practices that start in the pit and continue with selective mining and selective beneficiation, and crushing and screening schedules in order to make the required Eskom grade coal. Both considers that Sulphur as a critical parameter to manage constantly as pockets of coal can have an extraordinary high sulphur content due to the frequency of pyrite intrusions.
- 5.137. We summarised and discussed our findings with management to obtain their input. Management provided the following comments in relation to the findings below:

Table 3: Mine 1 (Tegeta Mining & Exploration: Brakfontein Colliery)

Ref	Findings	Management Comments	
1	The supplier was not referred to SD & L for supplier pre-qualification and supplier registration as per Section 3.7.3.9 of the Eskom Procurement and Supply Management Procedure.	This was an oversight	
2	The evaluation team selected did not complete 'declaration of interest' forms prior to the prequalification stage as required by Eskom Supply Chain Management procedure 32-1043.	A formal Declaration of Interest process is now being implemented.	
3	No evidence was provided that the team underwent the required training on the Conflict of Interest Policy (32-173), the Eskom Code of Ethics (Standard 32-527) and the Eskom Cardinal Rules for Safety (32-421).	Some PED staff members have undergone Ethics training. The rest of the staff have been given a December 2015 deadline.	
4	The March, April and June Reports however mention that the June 2014 and the March 2015 samples were similar in most characteristics and thus within the acceptable range for Kendal and Kriel but marginal for Majuba due to ash that is at the limit of rejection range. The 12 th March Report clearly stated that the 'mixed Brakfontein seam 4 upper (S4U) and Seam 4 lower (S4L) blend is not recommended for the Majuba Power Station as there is a high probability that the blend will frequently exceed Majuba's 240 rejection specification, and because of the poorer quality of the S4U which exceeds the Majuba Power Station's 240 rejection specifications'.	Management does not interpret "marginal" in the Technology & Research division reports as unsuitable for the Power Stations indicated. Management was unaware that the reports indicate that it was not recommended for Majuba for which it is contracted. Management will review the reports and act accordingly.	



Ref	Findings	Management Comments
	The report recommended that if S4U was de-stoned and blended with S4L the qualities could be acceptable and if de-stoning was not feasible, then supplying only S4L to Majuba Power Station was an option'.	
5	We were not provided with the latest detailed Closure Cost Assessment reports.	The environmental assessment was performed in 2014. Management cannot however confirm the exact date. The environmental team should have the report. If they cannot produce the report, the finding should stand.
6	Color State Color	
7	During the technical evaluation process, we found that consistent and multiple burn tests were performed, 3 in particular. The last two tests were dated after the contract was signed.	Management is certain that combustion tests had been conducted before the contract was signed and the results were communicated to the team. The signed combustion report was probably signed afterwards.
8	There appears to be a discrepancy in the dates of the Environmental and Legal report. The first page of the report shows the effective date as April 2014 while the second and third pages show the effective date as March. The report was signed by "Shumani Mavhungu", the Environment Senior Advisor on 15 April 2014, supported by "Thabang Matsoaboli", Environment Senior Advisor, who signed on 16 April 2015 and then wrote a number "4" over the "5" on the year 2015. This could indicate that the report was backdated.	These were mistakes. All reports were signed in 2014.
9	The Health and Safety Report was finalised 2 and 1/2 months after the contract was signed.	Health and Safety checks could not be performed as the mine was not operating at the time. The checks could only be performed at least 6 weeks after the mine became operational.
10	The Technical Report was finalised after the contract was signed.	The technical evaluator was present during evaluations and negotiations and all his views were noted. He only signed the report later as he was not available at the time.



Ref	Findings	Management Comments	
11	Although requested, the Commercial and Financial evaluation report was not provided to us. We also could not find any evidence that a financial modeling and evaluation process was followed, or a clear commercial motivation for entering into the contract on the commercial terms provided.	Two meetings were held with the supplier in which a comprehensive financial discussion was performed, including financial models. A spreadsheet was compiled and projected on the screen for all to comment.	
12	Three negotiation meetings took place prior to the pre-qualification requirements being met. The Health and Safety function was not represented at any of these meetings. SD&L were also not included during the negotiation meetings as required by the Eskom Supply Chain Management procedure.	SD&L plays an oversight role during negotiations and they do not always attend the meetings. Health and Safety checks could not be performed as the mine was not operational at the time.	
13	 We noted the following discrepancies in the Brakfontein CSA: The contract is poorly formatted and contains numbering errors (paragraph 10 is duplicated); It contains irrelevant or unreferenced information such as the second paragraph of 20.8.1.2 has irrelevant paragraphs or factually incorrect clauses (reference to "existing dome cameras" in clauses 21.5.1 and 21.7.4, also reference to short term contract in paragraph 21.5.2; The contract contains ambiguities (clause 20.8.1.2 refers to a flow diagram that shall form part of the final Agreement); The Coal Quality Management Procedure ("CQMP"), containing obligatory requirements referred to in the body of the contract is in draft, incomplete and not yet agreed or implemented; An 'addendum' to the contract dealing with a change to coal quality parameter is in the form of a letter addressed to the Chief Executive of Tegeta. Ms Nteta confirmed that this 'Addendum' has not been signed by the Supplier and thus cannot be legally in force as per section 44 of the contract. The parties however have implemented this change; Addendum E of the contract dealing with the BEE ownership undertaking is in the form of a letter from the supplier. Legal drafting of the agreed terms and undertakings is considered a more appropriate way in order to avoid misinterpretation and ambiguity; and The contract appears to have been put together hastily by copying and pasting sections from other contracts. 	The contract was compiled by "Ms Andrea Williams" of Corporate Legal with input from PED. PED is in the process of developing revised standard conditions of contract and that could be the reason for the inconsistencies in the Brakfontein CSA.	





Ref	Findings	Management Comments	
	The relative percentages in the price escalation basket differs from the prescribed basket (Mandate standards). Together with qualities and price per energy unit, price adjustments are critical financial parameters in multiyear contracts and justifies tight oversight and consideration. No rationale for the deviation from the standard was provided.		
15	It is unclear if the condition precedent in clause 10.2.1 of the Brakfontein CSA which states "by no later than 16:00 on 31 March 2015, the supplier had completed and reported a successful combustion test for coal supply to Majuba power station" was fulfilled or waived by Eskom, as no documentation was provided to verify this. The Coal Quality Management Procedure ("CQMP"), containing obligatory requirements referred to in the body of the contract, is in draft incomplete and not yet agreed or implemented.	The CQMP was not signed as some of the conditions in it, such as the fact that the Mine had to have an automatic sampler, could not be fulfilled as the supplier did not have one yet. Management is considering the recommendation that the Brakfontein CSA be redrafted and re-signed by the parties.	
Š	The coal specification was amended in a letter from "Mr Johan Bester" to Tegeta. The letter amended the quality criteria as allegedly discussed with Tegeta. This amendment could be unenforceable as the contract specifies that both contracting parties should agree to any amendment in writing, and no evidence to this effect was supplied.		
16	A formal hand over process between the Coal Sourcing Manager (Contracting) and the Coal Supply Unit Manager could not be demonstrated.	PED and Coal Ops have recently developed an official Contracts Management handover checklist. Management will however expand on the checklist to address loopholes. Furthermore, Coal Ops will, from now on, be involved in negotiations.	

Table 4: Mine 2 (Tshedza Mining: Manungu Colliery)

Ref	Findings	Management Comments
1	NEMA and IWULA were outstanding at the time of pre-qualification. However it was indicated as in place on the PED supplier documentation checklist.	Due to time delays at the Department of Environmental Affairs, the practice was adopted to proceed as long as formal applications for the licences were made.
2	We found no proof that the Coal Operations division was involved.	This could be due to poor handover processes between negotiators.
3	Water use licence was applied for but not issued at	Due to time delays at the Department



Ref	Findings	Management Comments	
	the time of contracting.	of Environmental Affairs, the contract could be awarded if proof of application was provided.	
4	The PED technical report provided is not dated and unsigned.	The PED technical evaluator was present during evaluations and the negotiations and all his views were noted. He only signed the report later as he was not available at the time.	
5	A financial evaluation model was developed to determine a "fair price". 16% was assumed as a "fair return" on investment.	PED is considering a new standard that will be taken through the required governance processes.	
	The internally developed technical cost model used was used in the evaluation process.	***//ZA	
	No evidence was supplied to demonstrate that coal quality options were performed taking a Total Cost of Ownership of the targeted Power Stations into account.	169	
38	The standard escalation clause as required by the mandate was implemented.	1000	
6	The CSA was signed in November but the date of the month was not recorded. At the time of signature the vendor number was not captured on the contract but a vendor number was issued to the supplier on 27 November 2014 by Eskom.	The contract was compiled by "Ms Andrea Williams" of Corporate Legal with input from PED. PED is in the process of developing revised standard conditions of contract and that could be the reason for the inconsistencies in the CSA.	
7	No proof of Health and Safety Assessment was provided.	This could be lost due to poor handover between negotiators.	
8	No formal internal PED technical evaluation report was supplied for review.	At the time of contracting, an internal PED evaluation was not a requirement.	
9	Although it was reported that an updated Coal Procurement Strategy exists, this was not provided for review, nor was any evidence found that demonstrates that the procurement was in line with this approved strategy. Mr Marageni confirmed that PED has a Coal Supply Optimization Model and an integrated demand and supply planning process exists, but that it is not generally used to confirm a supply contract fits the optimized plan.	Management is considering implementing a formal process which includes sign off by the planning manager that the negotiated contract is in line with the best alternatives for coal supply to the Power Station at that time and prior to contracting.	



Table 5: Mine 3 (Keaton Mining: "Vanggatfontein")

Ref	Findings	Management Comments	
1	No information regarding the appointment of the evaluation team, team lead, or declaration of interest and training was provided.	It was not a requirement at the time of this procurement.	
2	There was no information relating to Health and Safety Assessments provided.	This could be because of poor handover processes.	
		This was not a requirement at the time. Suppliers had to comply with the Mining Charter.	
4	We found no evidence that the Coal Operations division was involved.	This was not a requirement at the time.	

Table 6: Mine 4 (Universal Coal: "Kangala Colliery")

Ref	Findings	Management Comments	
1	No information regarding the appointment of the evaluation team, team lead, or declaration of interest and training was provided.	It was not a requirement at the time o this procurement.	
2	There was no information relating to Health and Safety Assessments provided.	This could be because of poor handover processes.	
3	We found no evidence that the Supplier Development and Localisation team were involved.	This was not a requirement at the time. Suppliers had to comply with thr Mining Charter.	
4	We found no evidence that the Coal Operations division was involved.	This was not a requirement at the time.	



VI. FINDINGS: LABS

Eskom Procurement and Supply Chain Management procedure

6.1 We detail below, the procurement process as explained in Eskom's Procurement and Supply Chain Management Procedure (32-1034) (**Appendix 19**):

Introduction

- 6.2 The policy states that all procurement practices must be performed within the Approved Procurement Framework as set out in the following polices and guidelines:
 - a) The approved Delegation of Authority Framework;
 - b) Eskom's Procurement and Supply Chain Management Policy (32-1033);
 - c) Eskom's Procurement and Supply Chain Management Procedure (32-1034);
 - d) Approved internal Process Control Manuals governing the procure-to-pay processes within Eskom; and
 - e) Any other mandatory legislative and policy frameworks that govern and have a direct impact on Eskom's procurement and supply chain management operations.
- 6.3 This framework ensures that the procurement of any goods and services within Eskom is conducted in a manner that is fair, equitable, transparent, competitive and cost effective. To this end, all stakeholders involved must ensure that all procured goods and services are commercially, financially and technically sound.
- 6.4 Eskom's Procurement and Supply Chain Management Procedure further provides guidance regarding how procured service providers should be handled post procurement. This includes the management of the contracts as well as quality assurance requirements to ensure that all service providers perform as per the contracts concluded. Our review also focused on this requirement to determine the extent to which such requirements are compliant.
- As part of the review, we tested compliance to this Framework specifically regarding the procurement of services from laboratories and roving, observation and sampling service providers.
 - Summary of the Tender Process (As per Eskom Supply Chain Management Procedure (32-1034))
- According to Eskom's Procurement and Supply Chain Management Procedure (32-1034), the following process must be followed when procuring services by means of a tender process:
 - a) The End User should conduct a "Needs Analysis" by considering whether the need could be met by Eskom sources or existing contracts;



- b) Where applicable, a pre-qualification enquiry is sent out to suppliers with all required information after which applications are verified and pre-qualified by a Supplier Verification Officer;
- c) The End User loads a Purchase Requisition ("PR") on SAP, which is received by the Buyer and approved by the Cost Centre manager;
- d) The End User is responsible for formulating the Scope of Work required;
- e) The Buyer/cross-functional team, SD&L Functionary and/or technical experts conduct a formalised and structured market analysis, in the form of a Contracting Strategy, before sending out a competitive enquiry to determine sourcing method, evaluation criteria and the evaluation methodology;
- f) The Contracting Strategy is signed off by the cross functional team as well as a senior Eskom Official as set out in the Delegation of Authority Framework;
- g) Evaluation criteria for each discipline is determined and signed off by the Buyer / Commodity Manager and the End User / Cross Functional Team for incorporation in the tender document;
- h) The Evaluation Team covering all disciplines is selected. It is however unclear from the procedure, who must choose the Evaluation Team and what criteria such a person must adopt in selecting the team;
- i) A clarification meeting is held with potential suppliers to clarify the requirements of the contract;
- j) The invitation to tender document is populated, including in the document, all information approved in the Contracting Strategy;
- k) The tender is advertised in the Eskom Tender Bulletin for a minimum of 20 working days;
- Tender submissions are received, date stamped and initialed by at least 2
 Eskom Officials on each page, upon receipt;
- m) All members of the Evaluation and Negotiation Team should sign declarations of interest;
- n) A pre-evaluation of tender submissions is conducted by Commercial procurement division, with the assistance of the End User, wherein tenders that do not meet the gatekeeper's mandatory requirements, are disqualified;
- o) The remaining tenders are evaluated by the evaluation teams in the different disciplines based on documents received and on-site visits, where applicable;
- p) The evaluation outcomes per discipline are consolidated into an evaluation report, specifying recommended suppliers;



- q) The evaluation report is presented to and signed off by the Procurement Tender Committee ("PTC");
- r) Where mandated, the Buyer together with a suitably represented team, negotiates with suppliers post tender, on price and other terms such as a an SD&L strategy;
- s) The tenders are awarded and contracts signed as per the approved Eskom Standard Contracts;
- t) The results of the tender evaluation is advertised in the Eskom Tender Bulletin;
- u) A contract file is opened for each supplier/contractor;
- v) Delivery as per the contract commences; and
- w) The contracts manager manages the contracts by, amongst others, ensuring compliance by the supplier to the conditions of the contract, ensuring suppliers remedy any non conformance and dealing with supplier queries and disputes.

Summary of the Tender Process followed in the procurement of the Labs

- 6.7 We discuss in this section, the processes followed in procuring the services of the Labs and the roving, observation and sampling service providers and assess compliance of the process to the Eskom Supply Chain Management procedure discussed above. We summarised the process as follows:
 - a) Ms Ramavhona, who was the End User at the time, conducted a needs analysis as set out in the Strategy Pre Alignment meeting minutes. The meeting was held on 15 October 2013 (**Appendix 20**). It is however unclear from the procurement file, who attended this meeting;
 - b) We found no evidence that a pre-qualification process was followed. According to Ms Von Pickartz, Acting Procurement Manager, Tactical Procurement, this step was not applicable as the procurement was conducted *via* an "open tender";
 - c) A PR appears to have been approved by the Cost Centre Manager as per the SAP printout provided to us. It is however unclear when it was approved as the purchase requisition printout does not indicate the date of approval (Appendix 21);
 - d) A Contracting Strategy was compiled and addressed, amongst others, the scope of work, sourcing method; evaluation methodology and budget. According to the Contracting Strategy, the required services were to be procured by means of an open tender. The estimated budget amounted to R213 million (**Appendix 22**);



- e) The above Contracting Strategy was signed by representatives from Technical, Health and Safety, SD&L, Commercial and Environmental. The strategy appears to have been approved by the Project Manager, being Mr Mostert, the Procurement Middle Manager, Mr Chauke and the General Manager Commercial (Mr Fantas Mobu);
- f) The Contracting Strategy listed the evaluation criteria and minimum scores as follows:
 - i. Health and Safety: 70%; and
 - ii. Engineering: 70%.
- g) Ms Ramuhulu (Commercial Buyer) compiled the invitation to tender document. The document invited potential service providers to tender for provision of Coal Sampling, Sampling oversight, Analysis of Eskom Coal imports and technical audits of the sampling plant (**Appendix 23**);
- h) We noted that the minimum scores were amended in the Invitation to Tender document with a further evaluation criteria being added. We summarized the new evaluation criteria as per the Invitation to Tender document as follows:
 - i. Health and Safety 80%;
 - ii. Engineering -70%; and
 - iii. Quality 60%.
- i) An ISO 17025 Certification (for Labs only) and a Quality Manual were set as minimum Gatekeepers (mandatory requirements). Failure to comply with the Gatekeepers would result in disqualification;
- j) The attendance of a clarification meeting was compulsory and failure to attend same would result in disqualification;
- k) The tender was advertised in Eskom Tender Bulletin from 26 November 2013 to 14 January 2014, which exceeded the required 20 days (**Appendix 24**)
- l) A clarification meeting was held on 12 December 2013 and according to the attendance register, it was attended by 16 service providers (**Appendix 25**);
- m) Tender submissions were received on 14 January 2014 and date stamped accordingly. 14 service providers responded to the invitation to tender, namely:
 - i. Rockom Transport and Projects;
 - ii. Mpumamanzi Group CC;
 - iii. MBMCF Management Resources;
 - iv. Natural Sampling Services CC;
 - v. SGS South Africa (Pty) Ltd;
 - vi. Sibonisiwe Coal Laboratory Services;
 - vii. Siza Coal Services CC;
 - viii. SABS (SOC) Ltd;



- ix. Noko Analytical Services;
- x. Hape Coal Services;
- xi. IMS Laboratory (Pty) Ltd;
- xii. Bureau Veritas Inspectorate Laboratories;
- xiii. Umzamo Analytical Services; and
- xiv. Midlab CC.
- n) The tenders were however not initialed by any Eskom official as required by the Supply Chain Management Procedure;
- o) Ms Ramuhulu stated that she performed the pre-evaluation of the 14 tenders against the two gatekeepers as set out in the Invitation to Tender (ISO 17025 Certification (Labs only) and a Quality Manual). She was assisted by Ms Ramavhona. We found no evidence of the date upon which the pre-evaluation was performed;
- p) Ms Ramuhulu further stated that she relied on Ms Ramavhona's assistance for the pre-evaluation phase as she was not familiar with the gatekeepers and as such, was not be able to recognize them;
- q) Following the pre-evaluation phase against the two gatekeepers (ISO 17025 Certification and Quality Manual), 4 service providers where disqualified, namely:
 - i. Hape Coal Services;
 - ii. IMS Laboratory (Pty) Ltd;
 - iii. Bureau Veritas Inspectorate Laboratories; and
 - iv. Umzamo Analytical Services.
- r) The 5th service provider, being Midlab, was disqualified as they had failed to attend the compulsory clarification meeting. This was verified on the attendance register;
- s) We reviewed tenders submitted by the disqualified service providers to ascertain if they were properly disqualified during the pre-evaluation phase and noted the following:
 - i. Hape Coal Services submitted another entity's ISO 17025 Certification and were therefore duly disqualified;
 - ii. IMS Laboratory (Pty) Ltd submitted a Quality Manual only and did not submit an ISO Certificate. The ISO Certificate was however not necessary as they had tendered only for roving, observing and sampling services. IMS Laboratory (Pty) Ltd should therefore not have been disgualified;
 - iii. Bureau Veritas Inspectorate Laboratories submitted both an ISO 17025
 Certificate and a Quality Manual and should therefore not have been disqualified; and
 - iv. Umzamo Analytical Services submitted a Quality Manual only and did not submit an ISO Certificate. The ISO Certificate was however not necessary as they tendered only for roving, observing and sampling services.

 Umzamo Analytical Services should therefore not have been disqualified.



- t) After the pre-evaluation phase, the remaining 9 tenders were evaluated further by the cross functional evaluation team, excluding SD&L. Based on the declarations of interest on file, the evaluations were conducted between 21 January 2014 and 29 January 2014;
- u) Ms Ramavhona stated that she formulated the technical evaluation criteria on her own and also selected the Technical Evaluation Team (From Quality Assurance). She further stated that the evaluation score sheets were provided to her by the various cross functional team members;
- v) The Cross Functional Evaluation Team comprised of the following officials:
 - i. Technical evaluation by Ms Ramavhona, Ms Bahula, Mr Kgaphola and Mr Phetla;
 - ii. Health and Safety evaluation by Ms Raophale (Senior Advisor, Health and Safety);
 - iii. Quality evaluation by Marga Kruger (Senior Advisor, PQA); and
 - iv. Financial evaluation Ms Moola.
- w) The score sheets and recommendations were consolidated and provided to Ms Ramuhulu for inclusion in the Evaluation Report;
- x) Based on the evaluation report addressed to the Procurement Tender Committee, the service providers obtained the following scores (**Appendix 26**):

Table 7: Functionality

Ref	Service Provider	Health and Safety (%)	Engineering (%)	Quality (%)	Average Total (%)
1	Rockom Transport and Projects	100	88.5	20.5	70
2	Mpumamanzi Group CC	93	100	85.42	93
3	MBMCF Management Resources	93	100	81.11	91
4	Natural Sampling Services CC	100	83.6	8.64	64
5	Noko Analytical Services	100	94.6	46.33	80
6	SGS South Africa (Pty) Ltd	100	96.5	78.42	92
7	Sibonisiwe Coal Laboratory Services	93	97.3	16.58	69
8	Siza Coal Services CC	79	96.1	18.25	64
9	SABS (SOC) Ltd	100	96.1	24.03	73

y) The evaluation report stated that the minimum average qualifying score for functionality (threshold) is 60%. All tenders that fail to achieve the minimum qualifying score on functionality shall not be considered for further



- evaluation on Price and BEE. This was however incorrect as the minimum score of 60% was for the Quality threshold as set out in the Invitation to Tender. The above table shows that only 3 service providers attained the minimum required score for Quality.
- z) The evaluation report also reflected scores for Price which together with the BEE scores, were used to rank the service providers according to the total combined scores attained. The entity with the highest score was ranked 1st with the entity that attained the lowest score occupying the last ranking on the list. Although we requested same, we were not provided with the Price scoring sheets. It is also unclear who performed the Price scoring. According to Ms Moola, who performed the financial evaluation, the Price scores were not provided by her.
- aa) The above Health and Safety and Quality scores were verified to the actual score sheets (**Appendix 27**). We were not provided with the Technical score sheets by Mr Phetla and therefore could not verify the Technical scores reflected in the evaluation report.
- bb) We noted that the following service providers did not attain the minimum score of 60% for Quality. In her report after Quality evaluations, Ms Marga Kruger stated service providers who attained below 60% for Quality should not be contracted (**Appendix 28**):
 - i. Rockom Transport and Projects;
 - ii. Natural Sampling Services CC;
 - iii. Noko Analytical Services;
 - iv. Sibonisiwe Coal Laboratory Services;
 - v. Siza Coal Services; and
 - vi. SABS SOC Ltd.
- cc) Ms Ramuhulu advised during an interview that she aggregated the scores and made the recommendations to the PTC based on the aggregated scores. She admitted that aggregating the scores was an oversight on her part and did not enquire whether or not the aggregated or individual scores had to be used for recommendation purposes;
- dd) In the evaluation report dated 7 March 2014, it was recommended that contracts should be awarded to the service providers as follows (**Appendix 29**):

Package A (Laboratory Services):

i. Noko Analytical Services;



- ii. Sibonisiwe Coal Lab Services;
- iii. Siza Coal Services;
- iv. SGS SA (Pty) Ltd; and
- v. SABS (SOC) Ltd.

Package B (Roving, Observing and Sampling Services):

- i. MBMCF Management Services;
- ii. Mpumamanzi Group CC;
- iii. Natural Sampling Services CC; and
- iv. Rockom Transport and Projects.
- ce) Contracts with the 9 service providers were signed by Mr Chauke on behalf of Eskom on 22 April 2014 except SGS SA (Pty) Ltd which was signed on 23 April 2014. The contracts were signed by representatives of the service providers as follows:
 - i. Noko Analytical Services: 7 April 2014;
 - ii. Sibonisiwe Coal Laboratory Services: 26 March 2014;
 - iii. Siza Coal Services: 28 March 2014;
 - iv. SGS SA (Pty) Ltd: 7 April 2014;
 - v. SABS SOC Limited: 8 April 2014;
 - vi. MBMCF Management Services: 26 March 2014;
 - vii. Mpumamanzi Group CC: 27 March 2014;
 - viii. Natural Sampling Services CC: 5 August 2014; and
 - ix. Rockom Transport and Projects: 31 March 2014.
- ff) The above evaluation report was signed by the Chairperson of the PTC on 15 October 2015, which was after the contracts were concluded. Mr Ramuhulu stated that the Procurement Tender Committee had granted them the mandate to "negotiate the prices and conclude". As such, the agreements were concluded before feedback to the PTC. We requested evidence of such mandate and it has not been provided to us as yet.
- gg) A feedback report dated 28 March 2014 was sent to the PTC Chairperson. The report indicated the new negotiated prices with the services providers



- and also confirmed that contracts were awarded to the 9 service providers. This report was not signed by the PTC Chairperson (**Appendix 30**).
- hh) We could not find any evidence that the tender results were advertised in the Eskom Tender Bulletin;
- ii) We found no evidence that contract files for each service provider were opened and maintained;
- jj) The appointed service providers commenced rendering services as per the agreements in April 2014; and
- kk) The End User (Ms Ramavhona) was appointed as the Contracts Manager for the 9 contracts concluded.

Contracting

- 6.8 We reviewed the contracts concluded with the 9 service providers (**Appendix 31**). During the procurement process, Eskom's NEC3 Term Service Contract was selected as the suitable contract.
- 6.9 We summarise below, the contract conclusion dates and the relevant signatories:

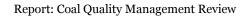
Table: 8

Ref	Service Provider	Signatory (Service Provider)	Date Signed	Signatory (Service Provider)	Date Signed
1	Noko Analytical Services	Rether Pienaar : Director	7 April 2014	Kalafu Chauke	22 April 2014
2	Sibonisiwe Coal Laboratory Services	Happing Masuku : Managing Director	26 March 2014	Kalafu Chauke	22 April 2014
3	Siza Coal Services	Alexander Masondo : Managing Director	28 March 2014	Kalafu Chauke	22 April 2014
4	SGS SA (Pty) Ltd	J.P O'Connell : Business Manager Minerals	07 April 2014	Kalafu Chauke	23 April 2014
5	SABS (SOC) Ltd	Elis Lefteris : Chief Financial Officer	08 April 2014	Kalafu Chauke	22 April 2014
6	MBMCF Management	L. Lelaka : Business Development	26 March 2014	Kalafu Chauke	22 April 2014



Ref	Service Provider	Signatory (Service Provider)	Date Signed	Signatory (Service Provider)	Date Signed
	Services	Executive			
7	Mpumamanzi Group CC	Wadzanai Matowanyika : Lab Manager	27 March 2014	Kalafu Chauke	22 April 2014
8	Natural Sampling Services CC	Ridwaan Asmal : Director	05 August 2014	Kalafu Chauke	22 April 2014
9	Rockom Transport and Projects	Sipho Robert Masina : Managing Director	31 March 2014	Kalafu Chauke	22 April 2014

6.10 We summarized the contract pricing as follows:



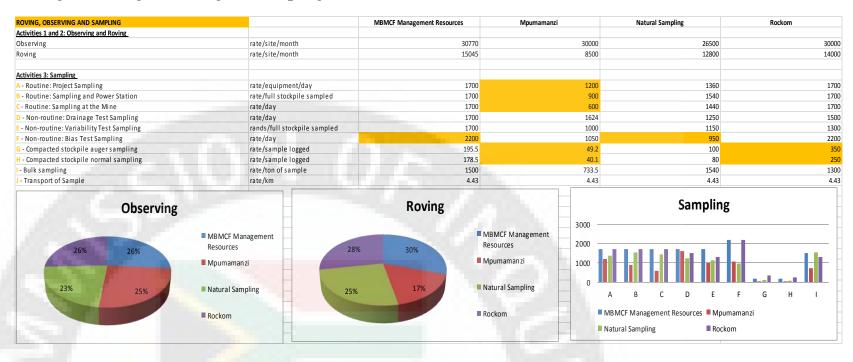


Package A: Laboratory Services

LABORATORY		Noko Analytical Services	Sibonisiwe Coal Lab Services	Siza Coal Services	SGS SA Pty Ltd	SABS Comm SOC Ltd
Activities 1: Analysis of all Eskom Samples						
Contractual Analysis	rate/sample	1171.13	1220	1203.28	1288.79	1248.58
Sampling Preparation	rate/sample	61.95	100	156.03	456.67	85.55
Total Moisture	rate/sample	58.07	100	61.27	67.8	91.03
Moisture in Analysis Sample	rate/sample	30.8	40	37.77	27.06	40.11
Ash Content	rate/sample	30.8	40	37.23	27.06	40.11
Calorific Value	rate/sample	61.59	65	78.52	66.76	85.55
Volatile Value	rate/sample	30.8	40	49.44	27.06	40.11
Total Sulphur	rate/sample	61.59	65	95.51	63.46	74.08
Abrasive Index	rate/sample	387.15	380	225.25	211	300
Ash Fusiom Temperature	rate/sample	158.37	250	222.17	184.6	232.04
Size Grading (7 Fractions)	rate/sample	290.37	140	240.1	157.31	260
Hardgrove Grindability Index	rate/sample	174.83	220	176.7	171.58	210
Activity 2: Transaport of Samples						
Fixed Drivers rate	rate/site/month	6075	5525	6715.8	N/A	7300
Transport of Contractual samples to Laboratory	rate/km	4.43	4.43	4.43	N/A	4.43



Package B: Roving, Observing and Sampling



- 6.11 The contracts addressed the scope of work, payment terms, parties involved and included the following key conditions, amongst others:
 - Sampling, Observing, Roving and Analysis services are to be performed in line with applicable ISO standards and Eskom CQMPs;



- b) The Service Providers are expected to provide Eskom with specific deliverables such as sampling reports, signed delivery notes, timesheets, site reports, analyst reports and risk reports;
- c) Monthly meetings are to be held with each service providers and ad hoc meetings if and when required;
- d) The service providers are to maintain a quality management system that is ISO 9001:2008 compliant and will be audited regularly by Eskom in this regard. The Service Providers are also required to conduct internal audits on operations at regular intervals;
- e) Service Providers are required to submit a valid BBBEE certificate annually and each supplier was given and requested to achieve specific developmental and localization goals;
- f) Observers, Rovers and Sampling Personnel are required to a minimum have a Grade 12 certificate, a driver's license (rovers) and the ability to communicate in English. Laboratories are required have a senior analyst with a National Diploma or Degree in Chemistry or related qualification; and
- a) All Laboratories are required to have all equipment (balances and analytical instruments) linked to Laboratory Information Management System (LIMS).

Accreditation Requirements of the Laboratories

- 6.12 The contracts further specified that Laboratories contracted to analyse Eskom samples shall have accreditation in the following methods:
 - a) ISO 17025 Certificate: General requirements for the competence of testing and calibration:
 - b) ISO 1928 Certificate: Determination of gross calorific values by the bomb calorimetric method and calculation of net calorific value;
 - c) ISO 1171 or SANS 131: Determination of Ash content;
 - d) ISO 562: Determination of volatile matter or equivalent method;
 - e) ISO 540: Determination of fusibility of Ash high temperature tube method in reducing atmosphere or equivalent method;
 - f) ISO 589 or SANS 589: Determination of total moisture or equivalent method;
 - g) ISO 331 or ISO 11722: Determination of moisture in analysis samples / general analysis test sample by drying in nitrogen;
 - h) ISO 13909-4 or ISO 18283: Preparation of test samples or hard coal and coke manual sampling;



- i) ISO 3310-1 or ISO 1953: Test sieves technical requirements and testing / size determination by dry method or equivalent method;
- j) ISO 567: Bulk density is equivalent method;
- k) ASTM D4239: Total Sulphur or equivalent method, and
- l) ISO 5074: Determination of hard grove grindability index or equivalent method.
- 6.13 Our review of the tenders submitted by the Labs showed that they complied with the above accreditation requirements as follows:

Table: 9

Ref	Accreditation Standard	Noko Analytical Services	Sibonisiwe Coal Lab Services	Siza Coal Services	SGS SA Pty Ltd	SABS SOC Ltd
1	ISO 17025	Yes	Yes	Yes	Yes	Yes
2	ISO 1928	Yes	Yes	No	No	Yes
				indication in file	indication in file	
3	ISO 1171 or SANS	Yes	Yes	No	No	Yes
	131			indication in file	indication in file	
4	ISO 562	Yes	Yes	No	No	Yes
				indication in file	indication in file	
5	ISO 540	No indication	No	No	No	No
		in file	indication in file	indication in file	indication in file	indication in file
6	ISO 589 or SANS	Yes	Yes	No	No	Yes
	589			indication in file	indication in file	
7	ISO 331 or ISO	Yes	Yes	No	No	Yes
	11722			indication in file	indication in file	
8	ISO 13909-4 or	Yes	Yes	No	No	Yes
	ISO 18283	TCS	105	indication	indication	103
	150 10203			in file	in file	
9	ISO 3310-1 or ISO	Yes	No	No	No	Yes
	1953	-	indication in file	indication in file	indication in file	
10	ISO 567	No indication	No	No	No	No
		in file	indication in	indication	indication	indication
			file	in file	in file	in file
11	ASTM D4239	Yes	Yes	No	No	Yes
				indication	indication	
				in file	in file	
12	ISO 5074	No indication	No	No	No	No
		in file	indication in	indication	indication	indication
			file	in file	in file	in file



Quality Management Protocols, Minimum Specifications and Methodologies

- 6.14 According to Ms Ramavhona, the Technical Evaluation Team (From Quality Assurance) as part of their evaluation, were required to ensure that the Labs adhered to required Quality Management Protocols, Minimum Specifications and Methodologies as set out in applicable standards.
- 6.15 The technical evaluation was conducted by reviewing the service providers' Quality Manuals and site visits focusing specifically on whether resources were adequately trained, existence and efficiency of equipment used (focusing specifically on calibration certificates) and documented sampling and testing procedures in line with the different ISO standards.
- 6.16 Ms Ramavhona further advised that a detailed review of the service provider's quality management protocols and methodologies could not be conducted due to time constraints. She stated that a normal review would require 2 to 3 days to complete. She said that the evaluation team therefore focused on the above mentioned areas only, as these were critical to the performance of the Eskom contracts.
- 6.17 She stated that the technical evaluation team however did not compile detailed site visit reports outlining their specific findings. She said the service providers had the above areas in order at the time of procurement.

Contract Management

- 6.18 In this section of our report, we address the training requirements of a contracts
 Manager and relevant Contract Management protocols.
- 6.19 Section 3.13 of the Eskom Procurement and Supply Chain Management procedure (32-1034) relating to Contract Management stipulates the mandatory training requires for Contract Managers as follows:
 - a) The Approved Procurement Framework;
 - b) Process Control Manual on Contract Management and other related Process Control Manual;
 - c) The New Engineering Contracts and other approved contracts;
 - d) SAP; and
 - e) Foreign Exchange and Commodity Exposures policies and procedures.
- 6.20 We reviewed Ms Ramavhona's Training record provided by Ms Mabika of Human Resources (**Appendix 32**). According to her training record, Ms Ramavhona has undergone the following training:
 - a) Coal Quality Management;
 - b) SAP QIM Incident Investigate & Action Management;
 - c) Eskom Financial Management;
 - d) Coal Fired Power Station Overview;
 - e) Making document offline and online;
 - f) Eskom Hyperwave Contributor;



- g) Combustion;
- h) Thermodynamics;
- i) Eskom Personal Finance Videos;
- j) Navigating with Hyperwave explorer;
- k) Eskom Hyperwave;
- 1) Eskom Hyperwave Document Management Overview;
- m) Draught Groups;
- n) Milling Plant, and
- o) Ethics at Eskom.
- 6.21 Her training record further shows that she has the following academic qualifications;
 - a) BTech Engineering Degree; and
 - b) Certificate in Management Development Program.
- 6.22 Based on her training record, it appears that Ms Ramavhona has not undergone training in the following areas as required the Procurement policy:
 - a) The Procurement Framework;
 - b) Foreign Exchange and commodity exposures policies and procedures; and
 - c) New Engineering Contracts.
- 6.23 Section 3.13 of the Eskom Procurement and Supply Chain Management procedure (32-1034) further states that it is a requirement for all Contract Managers to maintain a contract file which will as a minimum contain the Contracting strategy, the Contract, the Contract manager's letter of appointment, Delegations of Authority, all correspondence with the supplier including an assessment of amounts due and a final completion certificate, where relevant.
- 6.24 We requested the above contract files as prescribed by the Policy from Ms Ramavhona but these were not provided to us. She however provided us with an electronic folder titled "2017 Lab Contracts" which contained some information pertaining to the Labs. The file does not meet the requirements of a Contract file as envisaged by the Policy.

Quality Assurance

- 6.25 We interviewed relevant Quality Assurance officials at Eskom to understand the applicable processes and procedures. We were informed of the following:
 - a) Labs are audited on a regular basis to assess their compliance with the relevant ISO standards;
 - b) During the audits, the Labs' procedure manuals are assessed for compliance with the relevant ISO standards;
 - c) When a Lab is found to be in contravention of the relevant standards, a nonconformance notice is issued to the Lab;
 - d) The non-conformance notices are acknowledged by the Labs in writing;



- e) Where the nature of the non-conformance is found to be "major" (Major non-conformance), the Lab is given 24 hours to remedy the non-conformance;
- f) For minor non-conformances, the Labs are given 7 days to remedy the non-conformance;
- g) It is the Lab's responsibility to provide evidence within 24 hours that the non-conformance has been remedied/resolved;
- h) Follow up audits/Close out audits are also performed to establish how/if the nonconformances have been resolved. There is however no set time period within which such follow up audits are to be performed;
- i) The relevant Quality Assurance auditor also follows up with the Lab to ascertain whether a non-conformance has been resolved;
- j) Reports in respect of each Lab audit are produced; and
- k) At the commencement of each audit, the previous audit findings are followed up to ascertain if the pertinent issues (non-conformances) were resolved.
- 6.26 Ms Bahula provided us with Eskom's Laboratory Audits procedure (**Appendix 33**) signed 4 February 2014. The procedure specified the following:
 - a) The Coal Quality Team must determine identify the lead auditor;
 - b) On the day of the audit, the lead auditor must conduct an opening meeting, introduce the audit team, discuss the audit outcomes with the Lab and conduct a closing meeting;
 - The Lab audit must then be conducted against requirements set out in ISO 17025, the CQMP and the Lab contract;
 - d) All non-conformances must be recorded on the CAR (Corrective Action Request) form and acknowledged by the Lab;
 - e) Audit findings must be registered on the Achiever Plus System;
 - f) The audit report must be compiled within 7 days of conducting the audit and findings must be circulated to other Eskom auditors for comment;
 - g) Where audit findings exist, a follow up audit must be conducted within 14 working days;
 - h) The Coal Quality team must send out a close out report within 7 days of conducting the follow up audit;
 - i) All audit reports must be stored on the "H/Drive" in "pdf" format.



6.27 The Quality Assurance team further informed us that they did not have access to the current Lab Contracts and as such, did not audit the Labs for compliance with the Terms and Conditions of the contract.

Review of Lab Audit Reports (April 2014 to August 2015)

6.28 We obtained and reviewed the Lab audit reports to understand how many audits were carried out at each Lab, the number of non-conformances identified and the resolution of such non-conformances. The period covered by the audits was April 2014 to August 2015. We summarised our findings as follows:

Table: 10

Table: 10					
Service Provider	Number of Audits	Major non conformances	Minor non conformances	Non Conformances Closed	Non Conformances not addressed
Siza Coal Services CC	7	46	14	16	44
Noko Analytical Services	8	10	7	8	9
SGS SA (Pty) Ltd	16	46	20	24	42
SABS (SOC) Ltd	8	8	11	4	15
Sibonisiwe Coal Laboratory Services	10	38	14	31	21
Total	49	148	66	83	131

- 6.29 The above table shows that a total of 49 audits were carried at the 5 Labs from April 2014 to August 2015. During these audits, 214 non-conformances were identified (148 major and 66 minor). Of the total non-conformances, 83 were resolved. We could not find any evidence that the remaining 131 non-conformances were addressed. We were not provided with all the close-out audit reports and as such, we could not determine, of the 131 unresolved non-conformances, which were major or minor.
- 6.30 We discuss below, our findings relating to the Lab audit reports:
 - a) We were not provided with the close out reports in respect of the 44 non conformances at Siza Coal Services. We therefore could not confirm whether the Lab remedied these non-conformances. We noted that a critical non-conformance relating to the Lab having only one qualified technical signatory, was labelled as pending. No reference to staff competency was made in the subsequent audit report. We could therefore not confirm if this finding was addressed;
 - b) We were not provided with the close out reports in respect of 9 non-conformances at Noko Analytical Services. We therefore could not confirm if the Lab had remedied these non-conformances. Based on one of the follow up reports, it



- appears there were audits conducted at the Lab on 10 October 2014 and 5 December 2014. We were not provided with these audit reports;
- SGS SA (Pty) Ltd and thus cannot confirm if the Lab had remedied the non-conformances. Based on one of the follow up reports, it appears there was an audit performed on 7 August 2014. We were not provided with this audit report. We were also not provided with close out reports for 5 lab audits performed from March to July 2015;
- d) We were not provided with close out reports for 15 non-conformances at SABS, it is therefore unclear if the non-conformances were resolved; and
- e) We did not receive close out reports for 21 non-conformances at Sibonisiwe Coal Laboratory Services and it is therefore unclear if the non-conformances were resolved.
- 6.31 Based on our review of the Lab audit reports, we noted that in certain instances, some of the non-conformances were recurring. We discuss the recurring non-conformances below:

Table: 11

Service Provider	Recurring non-conformances
	Account in 8 nove control in the con
SGS SA (Pty) Ltd	Not all Lab equipment is linked to the LIMS as required by the contract;
9	Several deficiencies were identified at most QA review with regard to the Lab's procedures. This included the Lab failing to adhere to its own procedures, obsolete standards being used, and procedures not encompassing all required information as per the relevant standards;
//	Quality charts evaluated on air dry basis instead of dry basis; and
, 4	Samples were analyzed several times and analyst decided which results to report.
Sibonisiwe Coal Laboratory Services	Not all Lab equipment is linked to the LIMS as required by the contract; and
# A A	Several issues were reported on regarding the recording and verification of blades.
Siza Coal Services CC	Not all Lab equipment is linked to the LIMS as required by the contract;
	The calibration of equipment is not controlled leading to constant finings regarding the calibration dates having passed;
	Procedures are not detailed enough, missing some clauses required by the applicable standards;



Service Provider	Recurring non-conformances
	Positive Bias on CV and AFT were not addressed speedily; and
	Training records were not kept for some personnel.
SABS (SOC) Ltd	The calibration of equipment is not controlled leading to constant finings regarding the calibration dates having passed;
182	Training records were not kept for some personnel;
12 200	Poor maintenance of records were noted across various disciplines; and
	Requirements required by the different ISO standards are not adequately addressed in the procedures.
Noko Analytical Services	Not all Lab equipment is linked to the LIMS as required by the contract.

6.32 We reviewed the Lab audit reports including follow up reports to assess whether the QA team complied with the provisions of Eskom's Lab Audit procedure provided to us, i.e, all audit reports were compiled within 7 days and where non-conformances were found, follow up audits were conducted within 14 days to ensure that the Labs resolving all non-conformances. We summarise our findings as follows:



Table: 12

Ref	Lab	Date of Audit	QA Team Member	Date Signed Off	Report Compiled within 7 days	Date Follow up Audit	QA Team Member	Audit followed up within 14 days?	Date of close out report	Report Compiled within 7 days?
1	Siza Coal Services CC	19-Jun-14	Julia Bahula	25-Jun-14	Yes	01/07/2014 (1st Follow Up) 09 July 2014(2nd Follow Up)	Maria Kgaphola	Yes Yes	16/07/2014 15/07/2014	No Yes
2		01-Oct-14	Sam Phetla	08-Oct-14	Yes	16-Oct-14	Julia Bahula	Yes	17-Oct-14	Yes
3	Noko Analytical Services	10-Oct-14	Unknown - Report not received	Unknown - Report not received	Unknown - Report not received	16-Oct-14	Tsholo Sigodi	Yes	17-Oct-14	Yes
4	A.	05-Dec-14	Unknown - Report not received	Unknown - Report not received	Unknown - Report not received	21-Jan-15	Charlotte Ramavhona	No	12-Feb-15	No
5	SGS SA (Pty) Ltd	10-Jun-14	Maria Kgaphola	25-Jun-14	No	15-Jul-15	Tsholo Sigodi	Yes	18-Jul-14	Yes
6		16-Jul	Sam Phetla	29-Jul-14	No	30-Jul-14	Sam Phetla	Yes	01-Aug-14	Yes
7		07-Aug	Unknown - Report not received	Unknown - Report not received	Unknown - Report not received	14-Oct-14	Julia Bahula	No	27-Oct-14	No
8		09-Sep	Julia Bahula	19-Sep-14	No	16-Sep-14	Maria Kgaphola	Yes	22-Sep-14	Yes
9		24-Feb	Charlotte Ramavhona	20-Mar-15	No	12-Mar-15	Charlotte Ramavhona	No	30-Mar-15	No
10	SABS	23-Sep-14	Maria	29-Sep-14	Yes	01-Oct-14	Tsholo Sigodi	Yes	02-Oct-14	Yes

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Ref	Lab	Date of Audit	QA Team Member	Date Signed Off	Report Compiled within 7 days	Date Follow up Audit	QA Team Member	Audit followed up within 14 days?	Date of close out report	Report Compiled within 7 days?
	(SOC) Ltd		Kgaphola							
11	Sibonisiwe Coal Lab Services	25-Apr-14	Sam Phetla	06-May- 14	No	06-May-14	Tsholo Sigodi	Yes	19-Jun-14	No
12	A	10-Oct-14	Unknown - Report not received	Unknown - Report not received	Unknown - Report not received	16-Oct	Tsholo Sigodi	Yes	17-Oct	Yes
13	49.3	17-Feb-15	Charlotte Ramavhona	06-Mar-15	No	12-Mar-15	Charlotte Ramavhona	No	26-Mar-15	No
14		16-Apr-15	Maria Kgaphola	25-May-15	No	12-May-15	Maria Kgaphola	No	27-Jul-15	No

6.33 The above table shows that:

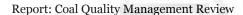
- a) Of the 14 audits conducted, 7 Lab audit reports were signed off after the required time limit of 7 days;
 b) 15 follow up audits were conducted, of which 7 audit reports were signed off after the required time limit of 7 days;
- 5 of the above follow up audits were conducted after the 14 day time limit.
- 6.34 Our summary was based on the available Lab audit reports and subsequent follow up audit reports. We were not provided with follow up reports for some of the Lab audits undertaken.



"Special Lab Audits commissioned by Eskom"

- 6.35 We were requested by Eskom to observe the performance of Lab audits by the Quality Assurance team from 12 October 2015 to 16 October 2015. The audits took place at the Lab premises in the areas of Middelburg and Witbank. The following Quality Assurance advisors performed the audits:

 - Ms Maria Kgaphola; Ms Nonhlanhla Msibi; and b)
 - Ms Viloshnee Moodley. c)





6.36 The objective of the reviews was to evaluate the Laboratory's Quality Management Systems and compliance to the relevant ISO standards. Reports were produced for each Lab audited. We summarised the Lab audit results as follows:

Table: 13	
Lab	Detail of non-conformances
SABS (SOC) Ltd	Overall implementation and maintenance of the Lab's quality management system was found to be satisfactory. 5 major and 6 minor non-conformances were identified, namely
	Major Non-Conformances:
	Critical steps in the screening of Ash were omitted, impacting results;
	The volatile matter crucible and lid exceeded the required weight specifications, affecting the validity of results;
	Sulphur calibration was dome using the incorrect standard;
	Balances used for preparation and analysis were past their calibration dates; and
	The table used for the Top Pan Balance for the Total Moisture was unstable.
	Minor Non-Conformance:
	The CO2 sensor in the AFT instrument area was not functional, posing a safety hazard as the instrument flushes with CO2 and the instrument produces CO;
	Internal Temperature verification on the ash furnace was not done using calibrated temperature probe;
	There were concerns regarding the simultaneous performance of Ash and Volatiles analysis;
	The method used to declare staff competent was not clear from the procedure;
	The humidity in the Lab is not controlled; and
	The Total Moisture procedure does not indicate when single stage and 2 stage moisture analyses should be conducted.
SGS SA (Pty) Ltd	Overall implementation and maintenance of the Lab's quality management system was found to be satisfactory. 3 major and 2 minor non-conformances were identified, namely



Lab	Detail of non-conformances
	Major Non-Conformances:
	The Lab's AFT instrument was not linked to the Laboratory Information Management System (LIMS) as required by the contract;
	The general analysis sample was not evenly spread by the operator as per the Labs procedure; and
	Annual training of some of the personnel was not conducted as per the Lab's training procedure.
18720	Minor Non-Conformances:
all the	One of the sample delivery notes was not adequately marked; and
	Some of the screening equipment was not labelled.
Noko Analytical Services	The Lab's quality management system was found to be unsatisfactory. 10 major and 3 minor non-conformances were identified, namely
	Major Non-Conformances:
7	Eskom reference samples were stored outside the lab area and were exposed to sunlight and rain;
(Humidity and temperature monitoring for Sulphur and CV was not done according to the lab procedure;
	Calibration of some volatile furnaces were not done according to the lab equipment schedule;
	Many of the Lab procedures were past their review dates;
1 "	The Sulphur instrument was not linked to the (LIMS), all the Sulphur data was captured manually;
42	Not all the samples were split using the rotary splitter as required by Eskom; and
117	Many of the Labs procedures were not adequately detailed.
	Minor Non-Conformances:
	The Lab failed to produce training records for one of the Lab analysts;
	The unique Id of the ash equipment were not captured on the certificate and the next calibration date for the Volatile furnace sticker did not correspond on the certificate; and



Lab	Detail of non-conformances
	The Lab failed to produce the procedure for monitoring / changing desiccant.
Sibonisiwe Coal Laboratory Services	The Labs quality management system was found to be unsatisfactory. 11 major and 2 minor non-conformances were identified, namely
	Major Non-Conformances:
	Concerns were raised about the efficiency of the Lab's 3mm crusher;
4	Verified temperature for the inherent moisture oven was higher (124oC) than the expected limits of 105±10oC as per ISO requirement. An incorrect probe was used for verifying the oven. The values captured on the inherent moisture verification form were questionable as they do not reflect the actual probe value of 395.8oC;
9)	The hygrometer used for measuring temperature and humidity at the conditioning room produced/yields incorrect readings;
	The oven used for drying total moisture samples had passed it calibration date;
	The CV and AFT equipment as well as the total moisture balance were not linked to LIMS as required by Eskom;
	One of the samples did not meet the minimum sample mass requirement of 170kg as stipulated in the CQMP;
	The procedure for determination of AFT was silent on the frequency of analysis. Analysts used their own discretion;
1 /	Lab personnel were not trained on the mass required after crushing the sample to 3mm;
12.	Lab personnel were further unaware of the documented procedures for CV and Sulphur; and
11 1	The Lab failed to produce evidence of lab personnel qualifications.
10	Minor Non-Conformances:
	Some of the calibration certificates were not uniquely identified;
	Room temperature and humidity in the conditioning room were not recorded on the correct form as required by the Lab's procedure;
	The maintenance of equipment is not prioritized as expected; and



Lab	Detail of non-conformances
	No refresher training is provided to Lab personnel.
Siza Coal Services CC	The Labs quality management system was found to be satisfactory. However, 3 minor non-conformances were identified, namely:
	Minor Non-Conformances:
1	Positive bias on CV analysis was detected and the root cause, being one of the instruments used, was found. The Lab however carried on using this instrument;
13	The verification of crusher and pulveriser equipment was performed. However, the acceptance criteria were not determined through statistical analysis; and
T.D.	Not all sample delivery notes were signed off by Lab personnel indicating what the conditions of the bags received were.
3/	It was further noted that the Lab's AFT instruments and weighing scales were not linked to LIMS. The Lab has however purchased an AFT instrument with software that can be linked to LIMS and is awaiting connection

- 6.37 The Lab audit reports raised concerns about the training and competency of the Lab staff. We summarized some of the concerns raised as follows:
 - a) SABS SOC Limited does not have a method to declare competency of their staff;
 - b) SGS SA (Pty) Ltd had failed to adhere to their schedule of training;
 - Most of the staff at Noko Analytical Services only had a Grade 12 certificate, supplemented by experience; and
 - d) Most of the Sibonisiwe Lab staff only had a Grade 12 certificate, supplemented by experience.
- 6.38 Following the above Lab staff competency concerns, we reviewed the Lab contracts to establish the academic requirements as per the contracts. We noted that the contracts require each Lab to at least have a Senior Analyst with a National Diploma or Degree in Chemistry. We therefore requested the Labs to provide us with a list of all technical signatories and their qualifications. We summarized our findings as follows:
 - a) Sibonisiwe Coal Laboratory Services has 3 technical signatories with the following qualifications:
 - i. Evelyn Sepeng: National Diploma in Engineering;
 - ii. Nosipho Maseko: National Diploma in Analytical Chemistry; and



- iii. Nokulunga Nkosi: Grade 12 Certificate.
- b) Noko Analytical Services has 2 technical signatories with the following qualifications:
 - i. Ettiene Wadlow: Grade 12 with on the job experience; and
 - ii. Elsie Margaretha Pienaar: Grade 10 with "on the job" experience.
- c) SABS (SOC) Limited: Did not provide the requested information;
- d) SGS SA (Pty) Ltd: Did not provide the requested information; and
- e) Siza Coal Services: Did not provide the requested information.
- 6.39 Based on the information provided, it appears that Noko Analytical Services does not comply with the contract requirements pertaining to the academic qualifications of staff. We did not receive any information pertaining to qualifications from the 3 Labs as indicated above.

Blind sampling

- 6.40 We requested by Eskom to observe a "Blind Sampling" process at Eskom premises in Witbank. During this process, we observed the receipt of 47 samples from various sources. The samples were relabelled in order conceal the identity of the sources and relevant stockpiles. The labels from the sources were removed (all visible labels on the inside and outside of each bag) and new labels (with a unique numbers) were assigned to each sample. The label numbers were recorded on the register next to the source they came from, i.e. 47 new label numbers were generated. The bags were sealed with cable ties and the new labels were attached on the outside of each bag.
- 6.41 We noted that some of the bags contained labels from the source on the inside which revealed the identity of the source and the stockpile.
- 6.42 We escorted the 47 samples to the designated laboratory (SABS in Middelburg) and noted the flowing:
 - a) 1 x bag was damaged and the coal was leaking; and
 - b) A tag on one of the samples was missing.
- 6.43 The samples were analysed at the SABS Laboratory in Middelburg. The analysis results were provided to Eskom. The sample results were reconciled back to the original sources by Eskom and summarised in a spreadsheet which was provided to us (**Appendix 34**).
- 6.44 We reviewed the summarised sample results and noted the following:
 - a) Siza Coal Services provided only 7 samples instead of the requested 10; and
 - b) The rest of the laboratories (four) provided the requested 10 samples.
- 6.45 The summarised results provided to us by Eskom compared the initial sample results to the blind sample results (both pulverised and bulk) and also provided an acceptable variance range.



- 6.46 The pulverised sample results showed the following:
 - a) SABS Laboratory had 5 failures out of 40 tests performed (variance fell outside of the acceptable range). This represents a failure of 12.5%;
 - b) Noko Analytical Services had 7 failures out of 40 tests performed which represents a 17.5% failure;
 - c) Siza Coal Services had a failure of 9 out of 28 tests performed, which represents a 32% failure;
 - d) Sibonisiwe Coal Laboratory Services had 23 failures out of 40 tests performed, which represents a failure of 57.5%; and
 - e) SGS South Africa had 25 failures out of 40 tests performed, which represents a 62.5% failure.
- 6.47 We summarised and discussed our findings with management to obtain their input.

 Management provided the following comments in relation to the findings below:

Table: 14

Ref	Findings	Management Comments
(There is no evidence to show that the End User consulted any stakeholders or received approval of her Scope of Work. It seems like she formulated and concluded on the Scope of Work on her own.	Management agrees. However, the Scope of Work was carried over from the expired contracts and while it had been updated, it did not differ much from the previous scope. The Technical Services Manager should have had sight of the Scope before inclusion in the Contracting Strategy.
2	Although evidence of a Contracting Strategy was provided, the contracting strategy was not dated. The Contracting Strategy was signed off by the General Manager: Commercial.	The General Manager: Commercial signs off on the Contracting Strategy because the commercial department is responsible for the procurement process. The General Manager Commercial signs to confirm that all the necessary competencies were consulted in the formulation of the Contracting Strategy.
3	The technical evaluation criteria was compiled by the End User, without input from other technical experts. As a result, the technical evaluation team members indicated, during interviews, that the criteria did not enable them to adequately evaluate the technical competence of the labs and items which in their opinion, should have been included in the criteria, were excluded.	The entire technical evaluation team should have been consulted. However, the evaluation criteria appears to be sufficient as it covers critical areas such as accreditation, resource competence and adherence to applicable ISO standards.



Ref	Findings	Management Comments
4	The technical evaluation team was selected solely by the End User, without input or approval from other independent stakeholders.	This is an exception and it was the first time that the technical evaluation team was pre-selected. The evaluation of tenders is normally conducted by the entire QA team.
5	Besides a register of tenders submitted on the closing date, there is no audit trail of how these documents were handled throughout the process by the different evaluation disciplines.	The Buyer should take custody of the tender documents and keep them in a secure place. Evaluations are performed after the Buyer has acquired a secure room. The evaluation team should only access and evaluate the tender documents in a secure room. The tender documents should be locked away when evaluations are complete and the Buyer should have evidence of this.
6	There was no indication in the tender submissions that 2 Eskom officials initialed each page as required by the tender process.	The tenders are submitted in duplicate and the original tender documents might have been initialed as required. Management will make follow ups.
7	The Buyer, during an interview on 7 October 2015, indicated that she was not suitably qualified to identify the 2 gatekeepers and the End User had to, therefore, conduct the pre – evaluation of the Labs on her own. The disqualification of the 5 service providers was therefore essentially done by one person, with no review or approval.	The finding was accepted. Evaluation against the gatekeepers should ideally be performed by the same team which performs the technical evaluation of the tenders. The results of the disqualified tenders should be reviewed and approved by a senior official.
8	An analysis of the disqualified tender submissions revealed the following: Two of the disqualified tenderers appear to have submitted the mandatory gatekeepers, contrary to what the End User and Buyer advised. Furthermore, disqualified tenderers were not given adequate reasons for disqualification. The regret letters sent to the suppliers only indicated that they were "unsuccessful", not necessarily that they were "disqualified" and the reasons provided in the evaluation report were not specific, that is, the report only says the tenders were disqualified because they "Did not submit the qualifying mandatory requirement"	Reasons for disqualification are normally provided on request by the supplier. However, where tenders are disqualified based on failure to submit mandatory gatekeepers, they should be advised accordingly. The finding is therefore accepted.



Ref	Findings	Management Comments
9	Technical evaluation sheets used by the different members of the technical evaluation team were electronic, not dated and no names were depicted on the sheet, predisposing them to manipulation. Furthermore, the technical evaluation team members did not compile a detailed site visit report of the site visit performed as part of the technical evaluation. We only received score sheets in respect of the site visits. These did not include any detail on them.	The technical evaluation team normally sits together in one room and scores the tenderers. Their scores are then consolidated by the End User who then copies all evaluation team members on the mail to the Buyer for inclusion in the Evaluation Report. With regard to the site visit report, the evaluation team members are required to fill in a detailed checklist which contains all requirements observed.
10	Evaluation team members do not have sight of the consolidated scores presented to the Procurement Tender Committee and there is also no 4 eye review of the consolidated scores to ensure accuracy.	It is adequate for the QA Manager to sign off the evaluation report. This indicates that he has reviewed it and that its contents are satisfactory.
11	There is no audit trail, including PTC minutes of what transpired during the presentation to the PTC. It is therefore not clear what the PTC reviewed and questioned.	There should be a mandate in place. Management will make follow ups.
12	There is no evidence in the documents provided that the SD & L team was consulted before going out on Tender as required by the Procurement Procedure. SD&L Objectives where referred to following an instruction from the PTC.	Management will look into formulating a checklist encompassing all disciplines to be consulted before going out on tender.
13	There were disparities and no commercial reasoning in the pricing accepted between the 9 service providers, considering that these service providers were providing exactly the same services. It appears Eskom does not perform price benchmarking prior to going out on tender.	A comparison on pricing is not done per service that is rendered but rather on the overall tendered price per service provider. The overall cost per package should be comparable.
14	The feedback Report showing negotiation outcomes to the PTC is dated 28 March 2014. However, some of the contracts were signed as early as 26 March 2014. The Buyer has indicated that they received a mandate to negotiate and conclude the contract. We have requested minutes of the PTC meeting to confirm this.	This is a normal process. The feedback report is compiled after conclusion of the contracts.
	The Feedback report does refer to the mandate, but there is no signature and date from the PTC	



Ref	Findings	Management Comments
	chairperson.	
15	No indication of contract files for each Lab was provided and the Contracts Manager could not produce any when requested.	There could be some of the information stored on Eskom data warehouse. Especially correspondence with the Labs but management accepts the finding.
16	There are several concerning disparities in the payments made to some of the Labs indicating that there might be preference in the allocation of work.	Previously, Eskom followed a percentage allocation of work to each service provider. This however did not work as some of the allocations were not aligned to the service providers' capacity. Allocations are therefore done by the contracts manager and should be fair. Management however agrees with the finding.
17	The SABS Secunda Lab failed to obtain the minimum score of 70% for technical competence. The contract signed by SABS is however quiet on this and does not specifically prohibit the use of this Lab.	Management agrees. However, the Lab is required to obtain permission from Eskom should they want to use the Lab.
ä	The End User has confirmed that there are no controls currently in place to ensure that SABS does not use the Secunda Lab.	53
18	The contracts manager failed to keep a detailed contract file for each service provider as required by the procedure. Records of contracts management provided were inadequate.	Management agrees. However, some correspondence with service providers may have been stored on Hyperwave, Eskom's shared drive.
19	We could not find evidence that non- conformances were remedied for some of the Labs as close out reports for some of the audits were not provided.	Management agrees, however this may be due to system constraints.
20	4 of the 5 Labs were found to be in breach of their contractual agreements in that some of their Lab equipment was not linked to LIMS. There is no indication that the Labs are being reproached by Eskom for such nonconformances.	Management agrees. However it was only discovered recently that this was a contractual requirement as the contract manager did not provide the contracts to the QA team. The Labs are also experiencing difficulties with LIMS linkages and suspending them would impact on Eskom coal quality management process.
21	The Lab contracts require each Lab to at least have a Senior Analyst with a National Diploma or Degree in Chemistry. We have not seen any	The QA team only recently found out about this requirement. It will be monitored going forward.



Ref	Findings	Management Comments
	evidence that the Labs are complying with this requirement.	

Non-conformance, Adequacy Assessment and Blueprint Development

6.48 We performed an assessment of the adequacy of existing protocols, policies and guidelines as part of our review. Subsequently, we made recommendations for potential enhancements to the existing protocols and for relevant "Blueprint" development based on the identified inadequacies. A summary of the identified inadequacies, recommendations and a "Blueprint" development is attached to the report as **Appendix 35**.





VII. CONCLUSIONS

Mines

- 7.1 We reviewed the procurement of coal supply from 4 Mines. The procurement was conducted *via* an unsolicited tender process on two of the Mines and *via* an RFP on the remaining two.
- 7.2 Despite the gaps in supporting documentation provided, which was largely as a result of poor record keeping and document management, the coal supply procurement from the two mines that were part of the RFP process followed a structured process of documentation submission, evaluation and negotiation with a commercial governance system set out in requirements and standards as listed in the MT Coal Supply Strategy and the subsequent BoD Mandate.
- 7.3 The two contracts concluded outside a formal RFP process shared similar shortcomings in non-conformance to registration and prequalification. However the contrast in quality of documentation, compliance to contracting standards and financial evaluation is obvious. Due to the fact that the two contracts were concluded recently and were overseen by the same leadership (SGM and GM), the reason for the obvious difference in standards can only be ascribed to competence of the individual team leaders and team members and/or external factors. The quality of the Brakfontein contract document and its 'addendums' were found to be concerning in that it contained numerous typographical errors.
- 7.4 It is evident that although Section 3.7.3.9 of the Eskom Procurement and Supply Management Procedure provides certain requirements for these types of unsolicited offers, and the Eskom Process Control Manual for Source External Suppliers (240-7891684) provide direction for how it integrates into the normal procedures, PED have not integrated this into a concise and robust enough internal process to constitute a formal control process and procedure, nor has it stream lined and controlled the rest of the required practices and procedures.
- 7.5 Very few of the interviewees seemed familiar with the requirements of Section 3.7.3.9 of the Eskom Procurement and Supply Management Procedure. Interviewees could not link the procurement decisions to a commodity (coal) supply strategy and also not to a contracting strategy, furthermore, the commercial or financial rational for entering into the contracts at the negotiated terms and conditions were generally week or absent on at least two of the four procurement events reviewed. This is surprising given the fact that primary energy is the predominant cost driver of Eskom, and reported to be one of the significant areas of above inflation cost increases recently.
- 7.6 Negotiation Team Leaders evidently are in full control of the process from beginning to end. There was no evidence to indicate that there was any oversight from the PED General Manager during the processes of the unsolicited offers, although he attended some of the meetings with suppliers and led the final negotiation meeting on one of the contracts. Further, despite Eskom's procurement policy prohibiting single adjudication, PED continued, seemingly with a mandate from the BoD TC to enter into contracts in excess of R3bn each committing Eskom for 10 years or more with single signing authority. Despite having properly constituted tender committees at various levels in the organisation, and the



- fact that these negotiations were lengthy (6 to 24 months), no evidence was provided that tender committees were consulted.
- 7.7 It is questionable if similar coal market conditions and Eskom's urgent procurement needs of 2009 still exists today that might justify perpetuating the coal price aspirations and governance systems proposed originally. The 2010 MT Mandate outlived most if not all senior executives and BoD members and it is quite conceivable that the current senior executives and BoD does not have sight of the original intent, strategy and tactics. BoD TC should review the Coal Supply Strategy, contracting strategy and the associated procurement mandates as soon as possible.

Labs

- 7.8 The Lab, roving, observation and sampling services were procured *via* an open tender. The tender process commenced during October 2013 and the contracts were concluded between March and August 2014 to the value of R213 million over three years;
- 7.9 A total of 14 service providers responded to the tender, 4 service providers were disqualified at pre evaluation stage for failing to comply with the mandatory requirements and 1 service provider was disqualified for failing to attend a compulsory clarification meeting;
- 7.10 We found that of the 5 disqualified service providers, 3 were unfairly disqualified as they had submitted the mandatory requirements;
- 7.11 All disqualified service providers were not notified as to the reasons why they were disqualified. The letters sent to them simply stated that they were unsuccessful. As such, the disqualified service providers were not afforded an opportunity to challenge their disqualification;
- 7.12 No contract files were opened for the suppliers and such, we could not assess the extent of contact management;
- 7.13 The Contract Manager appears to have not completed all mandatory training required for the position of Contract Manager;
- 7.14 We could not find any evidence that the non-conformances are followed up and remedied. In this regard, we identified 131 non-conformances in respect of the 5 Labs which were not remedied:
- 7.15 Lab audit reports were not produced on time and in certain instances, there is evidence that the follow up audits were performed where major non-conformances had been identified; and
- 7.16 Some of the major non-conformances identified posed a potential threat of manipulation of coal sample analysis results, especially Labs failing to connect their equipment to LIMS which resulted in the manual input of results;
- 7.17 There is no evidence that the Labs are compliant with the contractual requirements pertaining to qualifications of staff; and



7.18 During our observation of Lab audits during October 2015, we verified the existence of some of the non-conformances.





VIII. RECOMMENDATIONS

8.1 We recommend the following pertaining to the Mines:

Key area identified	Observation	Recommendations
Process	• It is evident that although Section 3.7.3.9 of the Eskom Procurement and Supply Management Procedure provides certain requirements for these types of unsolicited offers, and the Eskom Process Control Manual for Source External Suppliers (240-7891684) provide direction for how it integrates into the normal procedures, PED have not integrated this into a concise and robust enough internal process to constitute a formal control process and procedure.	 We recommend that the draft Primary Energy Division's Potential Coal Supplier Evaluation and Registration Process (Short/ Medium Term- March 2015) should be enhanced to include all relevant steps in the process e.g. obtaining prior approval from the relevant delegation authority for and the process of engaging the potential supplier and on-site assessments. Once a final process and procedure has been agreed to, it should be formally documented, assented as an official Eskom procedure and communicated to all affected staff. The requirements of the latest Coal Supply Strategy, the Coal Contracting Strategy and Coal Supply Optimisation Modelling and Planning should be built into the formal PED business processes. The draft CSA Sign—off Checklist should be amended to include: All steps agreed to (from start to finish) in the formal procedure; all relevant documents, records and decisions dated i.e. so as to ensure an audit trail can be established; minimum standards to adhere to i.e. to ensure the appropriate level of detail and quality of the work to be performed; and Sign-off by senior management/oversight at the end of critical stages of the process. The final checklist should form part of the formal procedure and be annexed thereto.



Key area identified	Observation	Recommendations
Staffing and Training	 Very few of the interviewees seemed familiar with the requirements of Section 3.7.3.9 of the Eskom Procurement and Supply Management Procedure. Interviewees could not link the procurement decisions to a commodity (coal) supply strategy and also not to a contracting strategy. The commercial or financial rational for entering into the contracts at the negotiated terms and conditions are week or absent on two of the four procurement events reviewed 	 We recommend that once a formal procedure has been implemented, the relevant affected staff be trained to ensure that they understand the process and the steps that are required to be followed. A record of this training should be maintained. The complexity, duration, uncertainty and risk involved in these kind of contracts results invariably into a situation where Eskom negotiating teams face senior mining executives and experienced advisors as counterparties. Eskom will do well to increase the level of seniority, techno-financial and contract competency level of its negotiating teams. Given the varying risk and complexity, formal appointment and mandating of teams with regular executive oversight is strongly advised.
Oversight and Sign-off	Negotiation Team Leaders evidently are in full control of the process from beginning to end. There was no evidence to indicate that there was any oversight from the PED General Manager during the process, although he attended some of the meetings with suppliers and led the final negotiation meeting on one of the contracts.	 Oversight and sign-off by senior management must be embedded in all relevant process steps, starting with formal appointment and mandating of the teams to ensure that the documented process is followed throughout the procurement life-cycle. Departmental routine business processes must be formalised to include the supply and demand situation, progress and forcasting relating to the coal supply procurement process and performance tracking. BoD TC should review the Coal Supply Strategy, contracting strategy and the associated procurement mandates as soon as possible.



Key area identified	Observation	Recommendations
Risk Management	 The team leader and team members selected for the procurement of the coal supplies did not complete declaration of interest, Ayanda Nteta stated that all unsolicited offers made by suppliers are considered due to the demand of coal supply. No evidence were provided that due consideration has been given to needs analysis, alternatives considered, negotiating and or contracting strategy. Financial and commercial evaluations or analysis was only evident in two of the contracts reviewed. 	 A mandatory 'declaration of interest' should be implemented as part of the procedure to ensure that there are no conflicts of interest between procurement staff and potential suppliers. All suppliers and their beneficial owners should be screened to ensure that Eskom does not conduct business with individuals and companies that can potentially affect Eskom's reputation. Eskom is by far the dominant buyer in the domestic coal market. Strong competition for its higher quality coal requirements has developed over time in the export market. Furthermore, coal procurement Eskom need to carefully consider and execute both a coal sourcing strategy and a contracting strategy.
Document Quality Control	The quality of the Brakfontein contract document and its 'addendums' were found to be concerning in that it contained numerous typographical errors.	 We recommend that formal sign-off by a contracts lawyer of the execution copy of an agreement be implemented as a mandatory requirement. It is recommended that the current contract and its addenda be cleaned-up and redrafted where necessary by a competent contract lawyer.



Key area identified	Observation	Recommendations
Records Management	 It was difficult to establish a timeline and audit trail of the process as many of the documents that were reviewed were not dated. Document management and retention is concerning as there is no central repository for all documents received related to the supplier. Different people have different documents stored on their computers. Not all required documents were made available. Some of the required safety related documents were not obtained and retained. The Safety team reportedly had sight of them during their on-site visit 	 Formal Records Management Policy and Procedures should be drafted to ensure that all relevant procurement documents be dated and filed correctly We recommend that a central repository be established for all supplier documents to be stored. The Records Management Policy should follow a detailed filing convention and retention discipline to ensure that all documents in the process (including supplier correspondence) can be retrieved when required.



Key area identified	Observation	Recommendations
Mandate and Delegation of Authority	 The procurement was done under the 2008 Medium Term coal procurement mandate set up originally for emergency coal procurement. During an update to the BoD-TC in 2010 the mandate was extended and expanded to contract for life of mine, to extend current contracts and powers with sub delegation was granted to the Divisional Executive Primary Energy Division to execute. PED in a feedback note to the BoD-TC in 2014 gave feedback of procurement action against the MT mandate and requested continuation of the same. The BoD-TC minutes only reflect that the feedback was noted. It was the interpretation of this mandate that allowed the DE PED to commit Eskom to 10 year CSA with nominal values in excess of R3nb each without having to refer to any committee or other oversight process. 	 It is questionable if the conditions still exist that justifies extraordinary or emergency procurement as envisaged by the MT strategy and motivation for the 2008 MT mandate and the subsequent 2010 modification. It is recommended that in future, in addition to value and volume requirements, other conditions be used to limit the duration and scope of extraordinary practices. In this case a time limit of say 12 months could have been used.
Validity of the contract	• The combustion tests done to date on the Brakfontein coal supply are inconclusive and it is unclear if the condition precedent of clause 10.2.1 of the contract has been met. Clause 10.3 of the agreement specifically stipulates that if 10.2.1 is not fulfilled or waived, the contract shall never become effective.	 A technical and legal review of the Brakfontein CSA is urgently required to inform Eskom's actions relating to the further implementation and management of the relationship with the supplier. This situation could well provide Eskom with leverage in finalising a range on unresolved issues like the insisting on only 4lower seam coal, insisting on the supplier implementing a coal washing plant if coal seams are going to be blended and finalisation of the CQMP.



Key area identified	Observation	Recommendations
Contracts management	Neither the Coal Sourcing Manager (contracting process) and the Coal Supply Unit Manager (implementation and operational management) were clear on key outstanding elements of the contract like the quality testing and confirmation (Condition Precedent), potential risks identified by the Bulk Sample test results and the finalisation of the outstanding CQMP.	Functional roles and responsibilities need to be clearly documented and formal handover processes and procedures implemented.

8.2 We recommend the following pertaining to the Labs:

Table: 16

Key area identified	Observation	Recommendations
Records Management	• Contract Management files pertaining to the Labs were not opened as requirement the Eskom Procurement policy.	Lab contract management files should be maintained as required by the Procurement policy and all relevant records maintained.
Systems improvement	 Several inadequacies were identified in the Procurement, Contracting, Contract Management and Quality Assurance systems. 	Eskom should consider implementing enhancements recommended in our report to address the inadequacies identified in the system.



Key area identified	Observation	Recommendations
Contract enforcement	Instances of major non-conformance pertaining to connection of Lab equipment to LIMS and non-compliance to contractual terms relating to staff qualifications were identified.	Measures should be put in place to ensure all Labs comply with the contractual requirements, particularly around staff qualifications and connection of equipment to LIMS.
Quality Assurance	All contractual Labs were found to have a high number to recurring major non-conformances during the Audits.	Labs should be encouraged to limit the number of major non-conformances identified during audits. The Labs should be encouraged to perform their own internal audits as per their contracts to identify these weaknesses and remedy them in time.

8.3 We recommend the following pertaining to further Forensic Work:

Table: 17

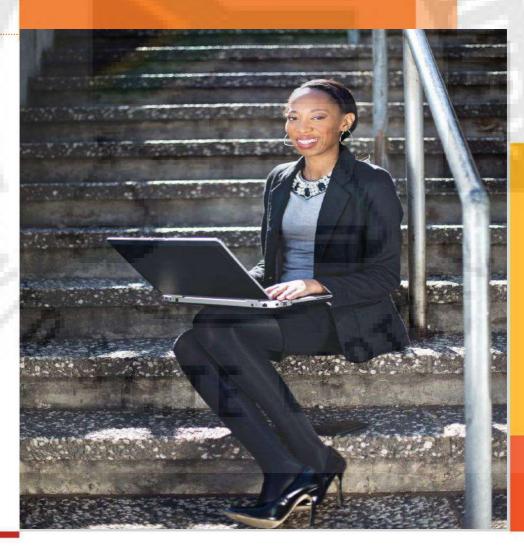
Period	Areas of focus	Areas to be covered by the investigation/scope
2013 to 2015	ProcurementWork Allocation to Labs and	The "raw data" extracted from the Labs in comparison to what was sent to the Mines and Eskom, to establish the extent of any manipulation and/or irregular conduct;
	Roving companies	• The role played by certain staff members during the procurement process;
	 Payments to Labs and Roving 	 Payments made to a roving company for services not allegedly rendered
	companies	 Payments to one service provider for waste removal. This service was not provided for in the contract;
	A	 Unusually high payments made to one particular Lab, in relation to the other Labs and
	0 -	Potential conflict of interest involving certain staff members.

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Eskom Holdings SOC Ltd

Coal Quality Management Review – Effectiveness of Controls Assessment of Management's implementation of actions

November 2016







Strictly Private and Confidential

Mr Anoj Singh Chief Financial Officer Eskom Holdings SOC Ltd Megawatt Park Sunninghill 2157

10 November 2016

Dear Mr Singh

Report: Coal Quality Management Review – Effectiveness of Controls Assessment of Management's implementation of actions

PricewaterhouseCoopers Advisory Services (Pty) Ltd ("PwC") was appointed to assist Eskom Holdings SOC Limited ("Eskom") with an independent "Coal Quality Management Review – Effectiveness of Controls Assessment of Management's implementation of actions".

This Report has been prepared solely for the use of Eskom and should be used for information purposes only. As such, it should not be disclosed to any other party without our prior written consent. It shall be a condition of such consent, if given, that PwC accepts no responsibility to that third party will hold PwC harmless in respect of any consequences of such disclosure. Whether or not we have given our consent, we will not accept liability or responsibility to any other party who may gain access to this document.

Should you have any comments, please do not hesitate to contact me on +27(11)7975526 or +27(79)5994677.

Yours sincerely

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1. INTRODUCTION

Acceding to the Group Chief Financial Officer's request, PwC was requested to assess management's implementation of actions insofar as they relate to the findings extracted from the PwC "Coal Quality Management Review" Report (PwC Report) dated 26 November 2015.

2. BACKGROUND

On 26 November 2015, PwC issued a report on the Coal Quality Management Review of certain coal suppliers and Eskom's contracted laboratories (Labs) following aspects pursuant to the allegations raised.

The review related to the appointment of four Mines as suppliers of coal to Eskom and the nine Laboratories, namely:

Mines:

- Mine 1: Tegeta Mining & Exploration: Brakfontein Colliery ("Tegeta/Brakfontein")
- Mine 2: Tshedza Mining Manungu Colliery ("Tshedza/Manungu")
- Mine 3: Keaton Mining ("Vanggatfontein")
- Mine 4: Universal Coal Kangala Colliery ("Universal Coal/Kangala")

Laboratories:

- Noko Analytical Services
- SGS South Africa (Pty) Ltd
- Sibonisiwe Coal Laboratory Services
- Siza Coal Services CC
- SABS (SOC) Ltd
- Rockom Transport and Projects
- Mpumamanzi Group CC
- MBMCF Management Resources
- Natural Sampling Services CC

PwC was further requested to extract findings from the PwC Report for purposes of incorporating finding ratings, criteria, root cause and effect. The root causes, impact and ratings are informed by the Eskom's Assurance and Forensic Department's audit findings rating system and have been reported in the A&F report format. This findings report has been issued separately.

PwC was requested to conduct an effectiveness of controls assessment of management's implementation of actions that were agreed to be put in place, and we report on our findings pertaining to our assessment in this report.

3. OBJECTIVE, SCOPE AND APPROACH

3.1 Objective

The purpose of this assessment is to ascertain the implementation status of the agreed management action(s) and where there is an alternative action an evaluation of the effectiveness of the action(s) and progress of actions taken.

3.2 Scope

The scope of the assessment was limited to the management action(s) relating to the findings raised in the "Coal Quality Management Review" Report.

3.3 Approach

The engagement was to review and assess evidence that previously agreed management actions have been implemented.

We reviewed and analysed management's evidence of implementation of the management actions by:

- Interviewing the staff members responsible for applying recommendations;
- Reviewing various supporting documentation; and
- Conducting tests to determine the effectiveness of controls confirming management's implementation of actions taken.

3.4 Responsibilities of Management

The management of Eskom is responsible for establishing and maintaining an appropriate system of internal control and for the prevention and detection of irregularities and fraud. In fulfilling this responsibility, estimates and judgements by management are required to assess the expected benefits and related costs of control procedures. The objectives of systems of internal control are to provide management with reasonable, but not absolute, assurance that the business is conducted in an orderly and efficient manner, that there is adherence to management policies and laws and regulation, that assets are safeguarded against loss or unauthorised use and that transactions are executed in accordance with management's authorisation and are accurately and completely recorded to permit, inter alia, the preparation of financial statements.

It is agreed that responsibility for the implementation of actions identified in the course of this assignment rests with Eskom, its management and employees.

3.5 Fraud, defalcations and other irregularities

We endeavour to plan our work so that we have a reasonable expectation of detecting significant control weaknesses and, if detected, we shall carry out additional work directed towards identification of consequent fraud or other irregularities. The discovery of any fraud, defalcation or other irregularity will be reported to you. However, internal audit procedures alone, even when carried out with due professional care, do not guarantee that fraud will be detected. Accordingly, our examinations as internal auditors should not be relied upon solely to disclose fraud, defalcations or other irregularities which may exist, unless we are requested to carry out a special investigation for such activities in a particular area.

3.6 Third parties

Our work was carried out as directed by Eskom for specific purposes. Should we be required to issue any reports, we cannot accept responsibility or liability to third parties who may be shown our reports or into whose hands they may come. We accept no responsibility to the external auditors with regard to the extent they choose to utilise our work as evidence for the purpose of their audit of financial statements.

4. CONCLUSION AND OVERVIEW OF THE EFFECTIVENESS OF MANAGEMENT ACTION (S)

The table below summarises the levels of implementation of management action (s).

Table A – Mines (Coal Supply)

			St	atus		Assessment
#	Finding title	Implemented	Partly Implemented	Implementation date pending	Actions not Implemented	Overdue finding
1	Non-compliance to Eskom's Procurement and Supply Chain Management Procedure 32-1034	9/10	1/10		1. BTC Minutes for 10/2/2016 outstanding	
2	Inadequate handover process between fuel sourcing and coal operations	3/4	, iv	1/4	1. Brakfontein CSA not sent to Eskom Legal	
3	Coal procurement strategy/governance	1/2	1/2		1. BTC Minutes for 10/2/2016 outstanding	
4	Inadequate training and appropriate oversight for key staff	4/4				
5	Inadequate document management	6/6				
6	Coal procurement strategy	1/2	1/2		1. BTC Minutes for 10/2/2016 outstanding	

Table B – Laboratories

			St	atus		Assessment
#	Finding title	Implemented	Partly implemented	Implementatio n date pending	Actions not implemented	Overdue finding
7	Non-compliance to Eskom's Procurement and Supply Chain Management Procedure 32-1034	5/7	d T S	2/7	1. RFP process for Labs not started as current contracts will end 31/3/2017. 2. Technical returnables to include accreditation status, once new RFP process begins for contracts ending 31/3/2017.	3
8	Non-compliance to the Laboratory Audit Procedures	7/8	1/8		PED is liaising with HR for a Legal person to assist on Contracts, once the new RFP process commences for Lab contracts ending 31/3/20-17.	

			Status					
#	Finding title	Implemented	Partly implemented	Implementatio n date pending	Actions not implemented	Overdue finding		
9	Mandatory training not completed	1/2	1/2		IDP has not been done	√		
10	Inadequate document management	2/3		1/3	RFP process for Labs not started, as current contracts are only ending 31/3/2017.			

5. ASSESSMENT OPINION

Based on the assessment conducted to date, including interviews held, documentation reviewed, walk-throughs performed, as well as testing of certain controls within the specific sub-processes noted in the table below, the controls were considered to be **adequate** and no material gaps were identified. However, this is based on the management implementation plan that has been implemented to address initial control weaknesses. Further, management still needs to address the following:

- PED still needs to appoint a Legal person to assist on Contracts, once the new RFP process starts for Lab contracts ending 31/3/2017.
- The Individual Development Plans (IDP) that is supposed to be used for skills gap analysis and identification of relevant training interventions have not been done.

There are some matters where the implementation date is a future date, and as such certain controls or actions have not yet been implemented or actioned. For example:

Mines:

• The Brakfontein Coal Supply Agreement will be sent to Eskom Legal to be reviewed by 31 March 2017.

Laboratories:

• Since the next RFP process for Laboratories have not commenced, as these contracts are only expiring 31/3/2017, accreditation status forming part of the technical due diligence checklist could not be assessed and this will be done during the new RFP process.

The table below summarises the sub-processes reviewed against process objectives:

Sub-process	Process objectives	Control Adequate	Control Effective
Commercial Process for coal contracting	All Commercial processes for coal contracting must be compliant with Procedure 32-1034.	Yes	Yes
Handover of contracted mines to contract manager	All completed contracts must follow a documented handover process.	Yes	Yes
Coal Procurement strategy/governance	All Coal Supply processes to adhere to the Coal Procurement strategy/governance requirements.	Yes	No, refer to Finding 3
Training	All PED staff to attend mandatory training.	Yes	Yes
Technical Evaluations	All Technical Evaluations must be performed in line with the RFP and Procedure 32-1034.	Yes	Yes
Safeguarding of documentation	Adequate safeguarding of documentation processes	Yes	Yes
Non-conformances regarding laboratories	Adequate monitoring and reporting of non-conformances at Laboratories.	Yes	Yes

Based on the results, we rate the above assessment as **satisfactory** given there is evidence of progress and operating effectiveness for controls implemented or actions taken, with reference to implementation dates. For actions that are future dated, we have noted the deficiency and the implementation date. Refer to Appendix B for Eskom's opinion rating and respective definition.





The table below indicates the status of the assessment on the Management Implementation Action (s) arising from the Coal Quality Management Review report dated 7 October 2016.

MINES

Finding title ration per Rej	itial ng as PwC port	nding Detail	Root Cause	Management Implementation Action (s)	Assessment of Management Implementation Action (s)	Management Action (s) not Implemented	Revised Assessment rating	Revised Management Action (s) & due date
Non-compliance to coal procurement process		It is evident that although Section 3.4.5.8 of Eskom's Procurement and Supply Management Procedure 32-1034 (Procedure 32-1034) provides certain requirements for these types of unsolicited offers, and the Eskom Process Control Manual for Source External Suppliers (240-7891684) provide direction for how it integrates into the normal procedures, Primary Energy Department (PED) have not integrated this into a	 The procurement was done under the 2008 Medium Term coal procurement mandate set up originally for emergency coal procurement. Proper evaluations were not performed and due process was not followed regarding documentation to be obtained and retained. No end to end process documented in the form of a checklist to ensure that all steps are completed. Inadequate documentation controls in place to ensure the completeness of files and adequate audit trail. 	PED is in the process of developing revised standard conditions of contract. Short Term Mandate 2016 was approved at the Board Tender Committee (BTC) on 10 February 2016. This indicates a new procurement process for coal that is in line with Procedure 32-1034. PED have introduced a checklist for every transaction, further pro-active assurance reviews will ensure that all documents are in place and adequately and timeously updated. Buyers have been allocated a responsibility to review every file they are involved in for completeness in line with the checklist, and	• PED has developed the Master Coal Supply Agreement (MCSA). We obtained a copy and reviewed the MCSA. This MCSA document is then tailored based on the conditions and needs of that particular work and supplier to suit its specification. Once the document is tailored, it is sent to Eskom's Legal Department for review and sign-off as a final contract. The contract for "Koornfontein Mining" was reviewed and we confirmed that this process was followed. The communication with Eskom Legal was also reviewed to confirm the sign-off of this contract. No exceptions noted. Control is adequate and is operating effectively.	We were unable to review BTC meeting minutes for the 10 February 2016 to confirm that the Short Term Mandate 2016 was approved, as there is a backlog at Secretariat.	Partly Implemented	Not applicable

Finding title Fi	Finding Detail	Root Cause	Management Implementation Action (s)	Assessment of Management Implementation Action (s)	Management Action (s) not Implemented	Revised Assessment rating	Revised Management Action (s) & due date
	concise and sufficiently robust internal process to constitute a formal control process and procedure. Contracts were awarded to the four mines despite the mines not having qualified in each of the evaluation requirements in terms of Health & Safety, Environmental , Legal & Commercial, Financial, Technical and Quality. Various deficiencies were noted.	It was acceptable to contract a supplier prior to obtaining their Water Use Licence after confirmation of their application. Management does not interpret "marginal" in the Technology & Research division reports as unsuitable for the Power Stations indicated. The Coal Quality Management Procedure (CQMP) was not finalised and/or signed off.	adequacy of documentation. The Power Stations required coal quality specifications is the quality upon which the coal contract is based. The precertification process ensures that the Power Station does not receive coal that is below the minimum quality requirements. The key controls of the CQMP is to ensure adequate processing, certification and dispatch of the right quality coal as per the coal contract. The Procedure 32-1034 will be amended to reflect the current practice that SD&L supplier pre-qualification and supplier registration is conducted post all technical and commercial negotiations. Further, SD&L targets included in the Master Coal Supply Contract. Some PED staff members have undergone Ethics training. The rest of the staff were given a December 2015 deadline.	PED has adopted the Procedure 32-1034 for all tenders going forward. We confirmed this by placing reliance on Proactive assurance Reports issued by other Audit Firms. We reviewed the requests for Proactive Assurance review completed by other Audit Firms and confirmed through review of the reports provided to us that 3 out of 6 tenders were completed and submitted to BTC. Minor findings were raised during the Proactive Assurance reviews, but these were cleared before submission to BTC. No findings were raised on Declaration of Interests. PED has implemented a checklist and we confirm that Buyers are completing these checklists. We selected one file (Lucro Mining Resourcing) and reviewed this against the checklist was completed satisfactorily by the Buyer for the file. All			

Finding title	Initial rating as per PwC Report	Finding Detail	Root Cause	Management Implementation Action (s)	Assessment of Management Implementation Action (s)	Management Action (s) not Implemented	Revised Assessment rating	Revised Management Action (s) & due date
000				There is a plan in place to monitor Ethics training for PED. The PED Administrator is responsible for this plan and regularly advises of outstanding ethics training. A formal Declaration of Interest process is now being implemented and Proactive Assurance reviews will be conducted during open Request for Proposal (RFP). Effective date: 30 April 2016	returnables were checked and we confirm that they are on the file as per the checklist. Based on a discussion with the General Manager: Fuel Sourcing, it is not a requirement to have the files reviewed post Buyer's reviews, however, an Eskom Assurance and Forensic (A&F) auditor randomly reviews these files for completeness. We therefore confirm that the control is adequate and is operating effectively regarding file reviews and maintaining of required documentation. • We confirmed through review of the quarterly reviews performed by the Quality Assurers that the pre-certification process is reviewed to ensure that the Power Station does not receive coal that is below the minimum quality requirements. We therefore confirm that the control is adequate and is operating effectively regarding the monitoring of the pre-certification			

Finding title	Initial rating as per PwC Report	Finding Detail	Root Cause	Management Implementation Action (s)	Assessment of Management Implementation Action (s)	Management Action (s) not Implemented	Revised Assessment rating	Revised Management Action (s) & due date
0.00					 We confirmed through inspection that the CQMP has been developed and approved to ensure adequate processing, certification and dispatch of the right quality coal as per the coal contract. We therefore confirm that the control is adequate and is operating effectively, as each Contract has its own CQMP which is monitored on a monthly basis. We confirm through inspection of Procedure 32-1034 that SD&L can form part of the functionality criteria or maybe included as separate objective criteria, therefore it is not necessary to amend Procedure 32-1034. We reviewed the Plan that is used to monitor Ethics training and we confirm that all Fuel Sourcing staff members have undergone Ethics training. 			
2. Inadequate handover process between fuel sourcing and coal operations.	3	Proper handover procedures need to be in place between Fuel Sourcing	No documente d handover processes from those involved	There has been implementation of a hand over process between Fuel Sourcing and Coal Operations.	We confirm through inspection of training slides, completed handover forms and attendance registers	The Brakfontein Coal Supply Agreement was not sent to the Eskom Legal department for	Implementation date pending	Not applicable

Finding title Initial rating as per PwC Report	Finding Detail	Root Cause	Management Implementation Action (s)	Assessment of Management Implementation Action (s)	Management Action (s) not Implemented	Revised Assessment rating	Revised Management Action (s) & due date
	and the Coal Contract Manager (Coal Operations) to ensure that the Contact Manager understands the detail structure and functioning of the contract terms, which includes knowledge of all exposures and opportunities. • Neither the Coal Sourcing Manager (contracting process) and the Coal Supply Unit Manager (implementati on and operational management) were clear on key outstanding elements of the contract like the quality testing and confirmation (Condition Precedent), potential risks identified by the Bulk Sample test results and the finalisation of the	with the negotiation and drafting of the Coal Supply Agreement (CSA) to the eventual Contract Manager(s) Process design – Inadequate level of involveme nt of Coal Operations (Contracts Managers) in the procureme nt process.	Contracts Management training was conducted and this included a section on contracts handover requirements. We will ensure that the Brakfontein CSA is sent to Eskom Legal for review as suggested. We will draft a Master Coal Supply Agreement which will be reviewed by Eskom Legal. Effective date: 31 March 2017	that Fuel Sourcing held training to ensure a proper handover process has been implemented and is taking place. Further, following discussions held with Coal Supply Management, we confirm that management is putting together a "Noddy Guide" that will include a documented handover process. We therefore confirm that the control is adequate and is operating effectively for the Handover process. • We confirm that all staff have undergone the Contracts Management training by either reviewing the attendance registers and the notification letters confirming attendance of the Contracts Management course. No exceptions noted, as CSA training control is operating effectively. • We confirm that PED has compiled a MCSA and Eskom Legal has reviewed these Agreements tailored for each coal supplier. We	review, as combustion test results and approval for the modification were required. Post this review, the CSA will be sent to Eskom Legal department and thereafter will be signed.		

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		outstanding CQMP. The combustion tests done to date on the Brakfontein coal supply are inconclusive and it is unclear if the condition precedent of clause 10.2.1 of the contract has been met. Clause 10.3 of the agreement specifically stipulates that if 10.2.1 is not fulfilled or waived, the contract shall never become effective We found no proof that the Coal Operations division was involved in coal contracting process.			therefore confirm that the control is adequate and is operating effectively for Coal Supply Agreements.		Particles	Not onvliceble
3. Coal procurement strategy/governa nee.	3	• The procurement was done under the 2008 Medium Term coal procurement mandate set up originally for emergency coal procurement.	PED had adopted the Medium Term mandate approved for the period 2008 - 2018 which did not specify the procurement strategy. Interpretation	Short Term Mandate 2016 was approved at the BTC on 10 February 2016. This indicates a new procurement process for coal that is in line with Procedure 32-1034. This will be phased in whilst the 2008	We reviewed the Short Term Mandate 2016 and confirm that the mandate is aligned to Procedure 32-1034. We therefore confirm that the coal procurement strategy is adequate but we are unable to confirm operational	We were unable to review BTC meeting minutes for the 10 February 2016 to confirm that the Short Term Mandate 2016 was approved, as there is a backlog at	Partially Implemented	Not applicable

Finding title ration per	itial ing as PwC port	Finding Detail	Root Cause	Management Implementation Action (s)	Assessment of Management Implementation Action (s)	Management Action (s) not Implemented	Revised Assessment rating	Revised Management Action (s) & due date
	44 BB	During an update to the Board Tender Committee (BTC) in 2010 the mandate was extended and expanded to contract for life of mine, to extend current contracts and powers with sub delegation was granted to the Divisional Executive (DE) PED to execute. PED in a feedback note to the BTC in 2014 gave feedback of procurement action against the Medium Term (MT) Mandate and requested continuation of the same. The BTC minutes only reflect that the feedback was noted. It was the interpretation of this mandate that allowed the DE PED to commit Eskom to 10 year CSA with nominal values in	of the BTC feedback which resulted in committing Eskom for 10 years or more with single signing authority. PED not ensuring the Coal Procurement Strategy is signed off appropriately.	Medium Term Procurement Mandate is phased out. Effective date: 30 April 2016	effective on controls as the Mandate has not been phased in as yet. • The 2008 Medium term Procurement Mandate is still in use and will be replaced once all coal quantity requirements have been met. We therefore confirm that the 2008 Mandate is still in use and the controls are adequate and operating effectively for the procurement process.	Secretariat.		

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		excess of R3bn each without having to refer to any committee or other oversight process. This is despite Eskom's procurement policy prohibiting single adjudication. Although it was reported that an updated Coal Procurement Strategy exists, this was not provided for review, nor was any evidence found that demonstrates that the procurement was in line with this approved strategy. It was also confirmed that while PED has a Coal Supply Optimization Model and an integrated demand and supply planning process exists, this is not generally used to confirm a						

Finding title	Initial rating as per PwC Report	Finding Detail	Root Cause	Management Implementation Action (s)	Assessment of Management Implementation Action (s)	Management Action (s) not Implemented	Revised Assessment rating	Revised Management Action (s) & due date
4. Inadequate training and appropriate oversight for key staff.	per PwC	supply contract fits the optimised plan. During the interviews with Fuel Sourcing personnel the following observations were made: • Very few of the interviewees seemed familiar with the requirements of Section 3.4.5.8 of the Procedure 32-	Time pressures from Head of Fuel Sourcing, thus unable to oversee/attend every negotiation meeting. High staff turnover with insufficient on boarding and skills development. Limited	We will train our teams in understanding section 3.4.5.8 of the Procedure 32-1034. We will also send the relevant staff on a negotiation course, as well as ensure they attend training on the Conflict of Interest Policy, the Eskom Code of Ethics and the	We confirmed through inspection of an email confirmation and attendance registers that all Fuel Sourcing staff attended the Procurement in Eskom (PiE) training and the CSA training. We therefore confirm that the monitoring of training control is			Action (s) & due
000		• Interviewees could not link the procurement decisions to a commodity (coal) supply strategy and also not to a contracting strategy; and • The commercial or financial rationale for entering into the contracts at the negotiated terms and conditions are week or absent on two of the four procurement events reviewed.	exposure to different negotiation styles/strategies .	Eskom Cardinal Rules for Safety. Regarding the inadequate oversight of team leaders, we now follow an RFP process and as such there will now be adequate oversight throughout the process. We will reinforce the criteria and requirements at the Mines and relevant training will be provided. All relevant staff will attend CSA training. Effective date: 30 April 2016	operating effectively. PED has adopted the Procedure 32-1034 for all tenders going forward. We confirmed this by placing reliance on Proactive Assurance Reports issued by other Audit Firms. We reviewed the requests for Proactive Assurance review completed by other Audit Firms and confirmed through review of the reports provided to us that 3 out of 6 tenders were completed and submitted to the BTC. Minor findings were raised during the Proactive Assurance reviews, but these were cleared before			

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000		In addition the following were identified during the review: Negotiation Team Leaders evidently are in full control of the process from beginning to end. There was no evidence to indicate that there was any oversight from the PED General Manager during the process, although he attended some of the meetings with suppliers and led the final negotiation meeting on one of the contracts. No evidence was provided that the team underwent the required training on the Conflict of Interest Policy (32-173), the Eskom Code of Ethics (Standard 32-527) and the Eskom Cardinal Rules			submission to BTC. No findings were raised on Declaration of Interests. We therefore confirm that the controls are operating effectively regarding the procurement process.			

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		for Safety (32-421). During a visit to one of the Mines, the following was observed: The Mine plan supervisor was unaware of the requirements that adjustments to the sampling plant can only happen with Eskom's consent; and Sampling operators and supervisors, including observers are not properly trained about the sampling process and critical parameters.	N (
5. Inadequate document management.	3	• Various discrepancies were noted relating to pre- qualification documents not available / not filed such as Closure Cost Assessment report, NEMA, IWULA, commercial documents, declaration of interest forms, inter alia. Contract files were also not	Inadequate document control in place and inadequate discipline by all parties involved in ensuring that required documents are obtained, completed with due care and filed appropriately. Lack of a checklist to ensure completeness of	We have introduced a checklist for every transaction, further pro-active reviews will ensure that all documents are in place and adequately and timeously updated. Further buyers have been allocated a responsibility to review every file they are involved in for completeness in line with the checklist, and adequacy of	We confirm that PED management have implemented a checklist, which is used by Buyers. We selected one file (Lucro Mining Resourcing) and confirm that the file was satisfactorily reviewed using the checklist. All returnables were checked and are filed as per the checklist. Based on the discussion with the General Manager: Fuel Sourcing, it is	Not applicable	Implemented	Not applicable

Finding title rat	nitial ting as r PwC eport	Finding Detail	Root Cause	Management Implementation Action (s)	Assessment of Management Implementation Action (s)	Management Action (s) not Implemented	Revised Assessment rating	Revised Management Action (s) & due date
		opened for all service providers, and maintained. There is no evidence provided that any of the suppliers were referred to SD&L for supplier prequalification and supplier registration as required by section 3.4.5.8 of Procedure 32-1034. The Coal Quality Management Procedure ("CQMP"), containing obligatory requirements referred to in the body of the contract is in draft, incomplete and not yet agreed or implemented. A Coal Supply Agreement was signed in November but the date of the month was not recorded.	individual files. Procurement (Buyer) did not adequately fulfil their role of active facilitation with SD&L for this transaction Due process was not followed in ensuring that appropriate steps were followed in the correct order.	documentation. New Master Coal Supply Agreement has been developed for utilisation on new contracts. We will make use of the Eskom Group Commercial Document Management Procedure going forward and communicate this to all relevant PED staff. We would also like to have a Proactive Assurance review conducted before 1 December 2016 to ensure compliance. We have a central document repository – Hyperwave. Effective date: 1 December 2016	not a requirement to have the files reviewed post buyer's reviews. However, an A&F auditor randomly reviews these files for completeness. We therefore confirm that the control is adequate and is operating effectively in terms of compliance with Procedure 32-1034. • We confirm through inspection that a new Master Coal Supply Agreement has been complied. This MCSA document is then tailored based on the conditions and needs of that particular work and supplier to suit its specification. Once the document is tailored, it is sent to Eskom's Legal department for review and sign-off as a final contract. The contract for "Koornfontein Mining" was reviewed and we confirmed that this process was followed. The communication with Eskom Legal was also reviewed to confirm the sign-off of this contract. No exceptions noted, therefore we confirm			

Finding title rati	nitial ting as er PwC teport	Finding Detail	Root Cause	Management Implementation Action (s)	Assessment of Management Implementation Action (s)	Management Action (s) not Implemented	Revised Assessment rating	Revised Management Action (s) & due date
					that the control is adequate and is operating effectively. PED has adopted the Procedure 32-1034 for all tenders going forward. We confirmed this by placing reliance on Proactive assurance Reports issued by other Audit Firms. We reviewed the requests for Proactive Assurance review completed by other Audit Firms and confirmed through review of the reports provided to us that 3 out of 6 tenders were completed and submitted to Board Tender Committee. Minor findings were raised during the Proactive Assurance reviews, but these were cleared before submission to Board Tender Committee. No findings were raised on Declaration of Interests. We therefore confirm that the controls are operating effectively for the procurement process. We confirm that PED staff have undergone awareness training on Hyperwave and relevant staff that			

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6. Coal procurement strategy not finalized and implemented.		The following anomalies were noted: • Although it was reported that an updated Coal Procurement Strategy exists,	The focus was on meeting urgent coal shortfalls/requir ements by contracting with potential suppliers who meet quality	• The Short Term Mandate 2016 was approved at the BTC on 10 February 2016. This indicates a new procurement process for coal that is in line with Procedure 32-1034.		We were unable to review BTC meeting minutes for the 10 February 2016 to confirm that the Short Term Mandate 2016 was approved, as there is a backlog at Secretariat.	Partially implemented	
		this was not provided for review, nor was any evidence found that demonstrates that the procurement was in line with this approved strategy; and PED has a Coal Supply Optimization Model and an integrated demand and supply planning process exists, but that it is	requirements for a Power Station under the 2008 Medium Term Mandate.	This further requires the involvement of an assurance provider in all PED coal transactions. Effective date: 1 December 2016	process, however, operational effectiveness could not be tested, as this mandate has not been phased in as yet. • PED has adopted the Procedure 32-1034 for all tenders going forward. We confirmed this by placing reliance on Proactive assurance Reports issued by other Audit Firms. We reviewed the requests for Proactive Assurance review completed by other Audit Firms and confirmed through review of			

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		confirm a			tenders were			
		supply			completed and			
		contract fits			submitted to Board			
		the optimised			Tender Committee.			
		plan.			Minor findings were			
					raised during the			
					Proactive Assurance			
					reviews, but these			
					were cleared before			
					submission to Board			
					Tender Committee.			
					No findings were			
					raised on			
					Declaration of			
					Interests, therefore			
					the controls are			
					adequate and			
					operating effectively			
					for the procurement			
					process.			

LABORATORIES

Finding title	Initial rating as per PwC Report	Finding Detail	Root Cause	Management Implementation Action (s)	Assessment of Management Implementation Action (s)	Management Action (s) not Implemented	Revised Assessment rating	Revised Management Action (s) & due date
7. Non-compliance to Eskom's procurement and supply chain management procedure 32-1034		Several inadequacies were identified in the Procurement, Contracting, Contract Management and Quality Assurance systems. The following anomalies were noted: Tender Process A Contracting Strategy was	 The End-User managed the procurement process without adequately engaging all relevant stakeholders. The Buyer did not adequately fulfil the role of active facilitation for this transaction, by ensuring the requirement of the procedure adhere to Procedure 32-1034. Evaluations were 	The irregularities relating to the procurement process resulted in a suspension and a disciplinary hearing was held for the involved colleague. PED are awaiting results thereof. For the upcoming RFP all reviews will be afforded sufficient time to be completed and they will include other stakeholders for	Following discussions held with management, we confirm that no results have been communicated to PED on the outcome of the disciplinary hearing. PED has fully adopted Procedure 32-1034 to address every procurement/outsourcin g related transaction. This has been evidenced through review of the requests for Proactive Assurance reviews	Since the next RFP process for Laboratories have not commenced, accreditation status forming part of the technical due diligence checklist could not be assessed.	Implementation date pending	Not applicable

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		provided, which was signed off by the General Manager: Commercial, however it was not dated. The Scope of Work was formulated by the End-User only, as no evidence exists to confirm that the End-User consulted any stakeholders or received approval of the Scope of Work. Similarly, the Technical evaluation criteria was also compiled by the End-User, without input from other technical experts. As a result, the technical evaluation team members indicated that the criteria did not enable them to adequately evaluate the technical competence of the Laboratories as items that should have been included in the criteria, was excluded.	performed in some instances by one individual only, without adequate review and approval. Coal quality tests may not be done in accordance with testing requirements/standards, impacting the integrity of the coal test results. Lack of supervision by the Commercial Manager.	transparency. The contracts in question commenced in April 2014 and are expiring on 31 March 2017. To prevent a reoccurrence, Procedure 32-1034 has been fully adopted to address every procurement/sourcing related transaction. We are currently using Noko, SABS, SGS and Siza Laboratories and they are all fully compliant to accreditation requirements. This is confirmed through Quarterly Proactive Assurance conducted by the Technical Services Department personnel. The delegated Service Managers (per Service Provider) monitor compliance on a monthly basis and a standard agenda item is included to track any changes of expiry of certification. For the next RFP process accreditation status will form part of the technical due diligence checklist. Tenderers that do not comply with the accreditation status will be disqualified. The governance requirements /process	completed by other Audit Firms. We placed reliance on the Reports provided to us for tenders within Fuel Sourcing, where adequate stakeholder engagement was afforded. We therefore confirm that the controls are operating effectively for the procurement process. • We confirmed through inspection of the quarterly Proactive assurance reviews performed by the Technical Services team for Noko, SABS, SGS and Siza Laboratories that they are all fully compliant to accreditation requirements. We therefore confirm that the monitoring controls for compliance to accreditation is operating effectively.			

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		The technical evaluation team was selected solely by the End-User, without input or approval from other independent stakeholders. There was a difference between the evaluation criteria on the Contracting Strategy and the Invitation to Tender, where an additional criteria (Quality) was added to the Invitation to Tender. There was however, no evidence of approval of these changes. On the closing date of the tender, a register of tenders were submitted, however, there was no audit trail of how these documents were handled throughout the process by the different evaluation disciplines. Further, there was no indication in the		have been defined and will be followed regarding each transaction. This will be communicated to each Buyer before any transaction resumes. • All procurement transactions will be subjected to Proactive Assurance reviews. O1 April 2017 (to be addressed during upcoming RFP)				

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	Report	tender submission, that two (2) Eskom Officials initialled each page as required by the tender process. Following an interview with the Buyer, she indicated that she was not suitably qualified to identify the 2 gatekeepers, resulting in the End-User performing the pre-evaluation of the Laboratories. The disqualification of the 5 service providers was therefore performed by one person, with no review or approval. An analysis of the disqualified tender submissions revealed that three (3) of the disqualified tenderers submitted the mandatory gatekeepers,						uate
100	44	contrary to what the End-User and Buyer advised. Furthermore,		7				

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		disqualified tenderers were not given adequate reasons for disqualification. The regret letters sent to the suppliers only indicated that they were "unsuccessful", not necessarily that they were "disqualified" and the reasons provided in the Evaluation Report were not specific, as the report stated that the tenders were disqualified because they "Did not submit the qualifying mandatory requirement". Technical evaluation sheets used by the different members of the technical evaluation team were electronic, not dated and no names were depicted on the sheet, predisposing them to manipulation. Furthermore, the technical evaluation team						

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		members did not compile a detailed site visit report of the site visit report of the site visit performed as part of the technical evaluation. Score sheets were only provided in respect of the site visits. These did not include any detail on them. The Evaluation Report stated that the minimum average qualifying score for Functionality (threshold) was 60%. All tenders that fail to achieve the minimum qualifying score on Functionality should not be considered for further evaluation on Price and BEE. This was however incorrect, as the minimum score of 60% related to the Quality threshold as set out in the Invitation to Tender. The Quality Expert						
		stated in her report that						

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		service providers who attained below 60% for Quality should not be contracted, and that only 3 service providers attained the minimum required score for Quality. The Commercial Buyer confirmed during an interview, that she aggregated the scores and made the recommendation s to the PTC based on the aggregated scores. Further, she admitted that aggregating the scores was an oversight on her part and did not enquire whether or not the aggregated or individual scores had to be used for recommendation purposes. The Evaluation Report also reflected scores for Price which together with the BEE scores, were used to rank the service providers according to the						

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		total combined scores attained. The service provider with the highest score was ranked 1st whilst the service provider that scored the lowest occupied the last ranking on the list. Price scoring sheets could not be provided and it is also unclear who performed the Price scoring. The Health and Safety and Quality scores were verified to the actual score sheets, however, Technical score sheets could not be provided and therefore could not verify the Technical scores reflected in the evaluation report. The evaluation team members did not have sight of the consolidated scores presented to the Procurement Tender Committee and there was no "four eye" review of the consolidated						

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		scores to ensure accuracy. There was no audit trail, including PTC minutes of what transpired during the presentation to the PTC. It is therefore not clear what the PTC reviewed and questioned. There was no evidence in the documents provided that the SD & L team was consulted before going out on Tender as required by the Procurement Procedure. SD&L objectives were referred to following an instruction from the PTC. The SABS Secunda Lab failed to obtain the minimum score of 70% for technical competence. The contract signed by SABS is however silent on this and does not specifically prohibit the use of this Lab. The End-User has confirmed that						

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		there are no controls currently in place to ensure that Eskom does not use the SABS Secunda Lab.						
		Contracting The End-User advised that a detailed review of the service provider's quality management protocols and methodologies could not be conducted due to time constraints, as a normal review would require 2 to 3 days to complete. The evaluation team therefore focused on accreditation certificates, as these were critical to the performance of the Eskom contracts. There were disparities and no commercial reasoning in the pricing accepted between the 9 service providers, considering that these service providers were providing exactly						

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		the same services. No price benchmarking was performed prior to going out on tender. The Feedback Report showing negotiation outcomes to the PTC was dated 28 March 2014. However, two contracts were signed as early as 26 March 2014. The Buyer indicated that they received a mandate to negotiate and conclude the contract. The Feedback report referred to the mandate, but there was no signature and date from the PTC chairperson. The Evaluation Report was only signed by the Chairperson of the PTC on 15 October 2015, which was after the contracts were concluded.						
8. Non- compliance to the laboratory audit procedures	3	Upon review of the Lab audit procedures, the following was noted: • Following	Non-compliance to the Coal Quality Management Procedure (CQMP). No appropriate contractual remedy to ensure full and	All Laboratories comply with the competency requirement and this is confirmed by proactive assurance on a quarterly basis by PED	We confirm that quarterly Proactive Assurance takes place at each Laboratory. We further, reviewed the Quarterly Laboratory Compliance Audit	We reviewed meeting minutes and noted that management is liaising with HR to get a	Partly Implemented	The Quality Assurance team is drafting reports to indicating that the 131 non- conformances relating to the 4 labs

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		interviews held with the Quality Assurance team, we were informed that they did not have access to the current Lab Contracts and as such, did not audit the Laboratories for compliance with the Terms and Conditions of the contract. Through review and scrutiny of the Laboratory non-conformance report we identified that a total of 49 audits were carried out at the 5 Laboratories between April 2014 and August 2015. During these audits, 214 non-conformances were identified (148 major and 66 minor). Of the total non-conformances, 83 non-conformances were resolved. However, no evidence was obtained to determine whether the	continuous compliance to the required standards. Inadequate contracts management in ensuring compliance to the Eskom Laboratory Audit Procedure. Inadequate management oversight over the contract management of laboratories. Inadequate skills levels and/or competence of Lab staff.	 Personnel. This finding has been addressed by the recording of nonconformances on SAPQIM for tracking and monitoring. If non-conformances remain open or are recurring, an early warning meeting is held to warn the lab/observer that it is in breach of its contract. This is a step before a suspension of a contract. PED has also requested a Legal opinion on how they may terminate contracts without incurring financial losses. All Laboratories equipment is linked to the Laboratory Information Management System (LIMS) as per contractual requirements. Furthermore, Laboratories have to submit results generated by the LIMS system as opposed to manually generated spreadsheets. Proactive Assurance is conducted on a quarterly basis to ensure compliance. Long term plan – Eskom IT is assisting the Technical Services 	Reports for Noko, SABS, SGS and Siza for three quarters and confirm that non-conformances are included in the reports, as well as the accreditation certification. We therefore confirm that the monitoring controls for compliance to accreditation is operating effectively. • We confirm that the SAP Quality Issue Management system (SAPQIM) is used for tracking and monitoring non-conformances. This system has only been used for all non-conformances reported on since 1 January 2016. The system is able to extract results showing open and closed non-conformances. We therefore confirm that the SAPQIM tracking and monitoring control for non-conformances is operating effectively. • We confirmed that all lab equipment was linked to the Laboratory Information Management System (LIMS), through the inspection of linkage screenshots and a video recording showing the linkage of equipment at Noko, SABS, SGS and Siza. We therefore confirm that the monitoring control of	Legal person to assist on the Contracts matter.		currently being used have been closed. In addition to capturing and monitoring on SAPQIM, non-conformances will be presented at meetings with the service providers, at the Technical Services Departmental meeting and at Primary Energy EXCO (PEXCO) meetings. These are monthly meetings and minutes will be kept on Hyperwave. Responsible Officer: Kwenzokuhle Magwaza (Senior Manager: Technical Services – Acting) Effective Date: 30 November 2016

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		remaining 131 non- conformances were addressed. Also, we were not provided with all Close- out audit reports and as such, we could not determine if the 131 unresolved non- conformances were major or minor. Further, we noted that in certain instances, some of the non- conformances were recurring. In addition, we reviewed the Follow-up Lab Audit Reports to assess whether the QA team complied with the provisions of Eskom's Lab Audit procedure, and noted the following: Of the 14 audits conducted, 7 Lab audit reports were		Department with a VeriLIMS Software Project, which will allow Eskom remote access to contracted Laboratories' results by 2018. • Where non- conformances remain open or are recurring, early warning meetings are held to drive the point home. • Contract Management has also been included as a KPI for individual Service Managers, weighing 30% of KPA 4. Effective date: 31 August 2016	linking equipment is operating effectively. We confirmed through inspection of appraisals that Contract Management has also been included as a KPI for individual Service Managers, weighing 30% of KPA 4. We therefore confirm that the monitoring control of Contract Management is operating effectively. With regards to the 131 non-conformances outstanding as per previously reported, we reviewed Follow up reports and confirm that all 131 non-conformances were closed. Adequate monitoring is occurring regarding early warning for non-conformances, as all non-conformances are monitored on the SAPQIM system. Further, management has updated Eskom's Laboratory Audit Procedures 240-44512454 on 19/9/2016, which includes monthly monitoring and reporting of non-conformances. This control will be measured going forward regarding reporting of results of non-conformances as well as monitoring of early warnings.			

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		signed off after						
		the required						
		time limit of 7						
		days.						
		• 15 follow up						
		audits were						
		conducted, of						
		which 7 audit						
		reports were						
		signed off after						
		the required						
		time limit of 7	Th. 10.1	A THE RESIDENCE				
		days; and the						
		follow up	W A D. 1981.					
		audits were						
		conducted						
		after the 14 day		7900.45				
		time limit. During our		795.477	_00000			
	100	observation of		-	Provide a series			
		the Lab audits			C.400 TUB.			
		performed between 12			- ALC: 1			
100		October 2015			L SECTION AND ADDRESS OF THE PARTY OF THE PA			
		and 16 October			100			
		2015, we noted various			10.007.30			
		discrepancies			The state of the s			
		(refer to detailed						
		report) which raised concerns						
		about the			The second second			
		training and						
		competency of the Lab staff.						
		Further we						
		conducted a						
		"blind" sampling process (refer to						
		detailed report).						

Finding title	Initial rating as per PwC Report	Finding Detail	Root Cause	Management Implementation Action (s)	Assessment of Management Implementation Action (s)	Management Action (s) not Implemented	Revised Assessment rating	Revised Management Action (s) & due date
9. Mandatory	3	The results showed that 5 service providers had failure rates. • We reviewed the	The End-User had	IDP will be used for	We confirmed that six	The Individual	Partly Implemented	Individual
training not completed		Contracts Manager (End– User) training records, provided by the Middle Manager HR Operations (HR Business Partner). Based on her training records, it appears that the Contracts Manager has not undergone training in the following areas as required per the Procurement policy: The Procurement Framework; Foreign Exchange and commodity exposures policies and procedures; and New Engineering Contracts.	been recently appointed at the time of the procurement transaction.	skill gap analysis and identification of relevant training interventions. • Eight Services Managers reporting to a Term Services Contract Manager (TSC) have been trained on contract management. Each one has been handed a contract to manage and this includes the keeping of hard copy files in cabinets and soft copy files in cabinets and soft copy files on Hyperwave. The TSC Manager conducts inspections for compliance using a checklist. The TSC Manager has received all necessary training except for Foreign Exchange and Commodity Exposure Policies and Procedures, which is not applicable to these contracts. Effective date: 22 February 2016	Services Managers reporting to a Term Services Contract Manager (TSC) have been trained on contract management. Each one has been handed a contract to manage and this includes the keeping of hard copy files in cabinets and soft copy files on Hyperwave. The TSC Manager conducts inspections for compliance using a checklist. Confirmed through inspection of the checklist that this process is in place. No exceptions noted. We therefore confirm that the monitoring control is operating effectively for contract management. We confirmed through inspection of documentation that the TSC Manager has received all necessary training except for Foreign Exchange and Commodity Exposure Policies and Procedures, which is not applicable to these contracts. We therefore confirm that the monitoring control for training is operating effectively.	Development Plans (IDP) that is supposed to be used for skill gap analysis and identification of relevant training interventions have not been done.		Development Plans (IDP) will follow the Talent Management Board process which is currently under way. The intention is to use the IDP to highlight gaps that may exist in one's training requirements, including contract management. Responsible Officer: Kwenzokuhle Magwaza (Senior Manager: Technical Services – Acting) Effective Date: 31 March 2017
10. Inadequate document	3	A Purchase	Lack of oversight	The contracts in	PED has fully adopted	Since the next RFP process for	Implementation date pending	Not applicable

Finding title	Initial rating as per PwC Report	Finding Detail	Root Cause	Management Implementation Action (s)	Assessment of Management Implementation Action (s)	Management Action (s) not Implemented	Revised Assessment rating	Revised Management Action (s) & due date
management		Requisition appears to have been approved by the Cost Centre Manager as per the SAP printout provided to us. It is however unclear when it was approved as the purchase requisition printout does not indicate the date of approval. The tender was advertised in Eskom Tender Bulletin from 26 November 2013 to 14 January 2014, which exceeded the required 20 days. We could not find any evidence that the tender results were advertised in the Eskom Tender Bulletin. We found no evidence that contract files for each service provider were opened and maintained. We requested the above contract files as prescribed by the Policy from the End-User but	and care regarding documentation management. No document management system exists, including checklists, review of documents for completeness. The Buyer did not adequately fulfil its role of active facilitation for this transaction, by ensuring the requirements of the Procedure 32-1034 was complied with.	question started in April 2014 and are expiring on 31 March 2017. To prevent a reoccurrence, the Supply Procedure 32-1034 has been fully adopted to address every procurement/sourcing related transaction. Compliance will be confirmed using a checklist and the process will be subjected to proactive assurance. PTC minutes will be kept as part of the contract file. We will make use of a central repository to store all documents and will migrate toward using the Group Commercial Document Management Procedure. Effective date: 1 April 2017	Procedure 32-1034 to address every procurement/outsourcin g related transaction. This has been evidenced through review of the requests for Proactive Assurance reviews completed by other Audit Firms. We placed reliance on the Reports provided to us for tenders within Fuel Sourcing, where adequate stakeholder engagement was afforded. We therefore confirm that the controls are operating effectively for the procurement process. • We have reviewed the checklist that Buyers are using and confirm that no exceptions were noted. We therefore confirm that the monitoring control is operating effectively for the procurement process. • We confirmed through inspection that PED staff are using Hyperwave to store documents, therefore we confirm that the document management system is operating effectively.	Laboratories have not commenced, no further assessment could be completed.		

Finding title	Initial rating as per PwC Report	Finding Detail	Root Cause	Management Implementation Action (s)	Assessment of Management Implementation Action (s)	Management Action (s) not Implemented	Revised Assessment rating	Revised Management Action (s) & due date
		these were not provided to us.						
		She however						
		provided us with						
		an electronic folder titled						
		"2017 Lab						
		Contracts" which						
		contained some information						
		pertaining to the						
		Laboratories.						
		The file does not						
		meet the						
		requirements of a Contract file as						
		envisaged by the						
		Policy.						



APPENDIX B - ESKOM'S DEFINITIONS

The definitions of the individual finding(s) are as follows:

The ratings and definitions as included in the table was used to rate the adequacy and effectiveness of the controls tested:

Status	Description
Implemented	Indicates that the agreed management action has been implemented and confirmed through a follow-up review.
Partly Implemented	Indicates, that in relation to the agreed management action plan, some evidence was provided but not all of the elements of the recommendation were addressed.
Not Implemented	Indicates that the evidence did not support meaningful movement towards implementation; where no evidence was provided, there is nothing that can be measured.
Implementation date pending	Indicates that the agreed management action date has not arrived and there is nothing that can be measured.

The definitions of classification of findings:

Classification	Description
Overdue	Management has implemented some actions to address the risk; however, the risk exposure still exists.
Repeat	The Follow-up review identified that none of the management actions have been actioned to address the exposure.

Eskom's overall opinion rating definitions are as follows:

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



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1. INTRODUCTION

- 1.1 This report contains the findings of National Treasury's review of the processes followed leading to the appointment of Tegeta Exploration and Resources (Pty) Ltd.
- 1.2 Tegeta Exploration and Resources (Pty) Ltd was appointed to supply coal from Brakfontein and Brakfontein Extension to Majuba Power Station.
- 1.3 National Treasury has reviewed the documents provided by your entity as well as other documents relevant to the tender, and would like to bring the issues identified during the review to your attention as indicated below.

2. ADVERTISEMENT OF THE TENDER

- 2.1 Eskom did not advertise a competitive bid to supply Majuba Power Station with coal.
- 2.2 Eskom allowed the supplier to make an offer outside the competitive bid process.
- 2.3 The process followed was allowed by Eskom policy.

3. BACKGROUND

- 3.1 Idwala Coal Crypts (Pty) Ltd submitted a proposal to supply coal to be mined and processed from Brakfontein Colliery.
- 3.2 Eskom indicated that the initial proposal was submitted by Idwala Coal Crypts (Pty) Ltd in 2012. The subsequent offer was submitted by Tegeta Exploration and Resources (Pty) Ltd on 23rd September 2014.

4. MEETINGS (EVALUATION OF THE RELEVANT DOCUMENTS)

Meeting dated 09th May 2014 between Goldridge and Eskom (See Annexure A)

- 4.1 Goldridge proposed supplying coal out of two sources, namely Brakfontein and Vierfontein.
- 4.2 The meeting was informed that the environmental report of Brakfontein is finalized whereas the Vierfontein was to be finalized.
- 4.3 Goldridge indicated that they are the owners of the Brakfontein mine through Tegeta Exploration and Resources (Pty) Ltd. It was indicated that the mine has a stockpile of 150 000 tons place very close to a stream and that it was fined for contravening environmental laws. Tegeta Exploration and Resources (Pty) Ltd clarified in its response dated 14 September 2016 that Goldridge was not the owner but a contractor at Brakfontein who had access to coal.
- 4.4 Goldridge agreed to revert back to Eskom with volumes and price proposals for Brakfontein based on different quality parameter. Tegeta Exploration and Resources (Pty) Ltd issued 930 shares, 280 shares owned by Arrowhead Trading

which is a black women owned company; 200 shares owned by an overseas entity; and 450 shares owned by South African companies.

Meeting dated 10th July 2014 between Goldridge/Tegeta and Eskom (See Annexure B)

- 4.5 Eskom revealed that the mining was taking place very close to a stream which was a sensitive environmental area. It further indicated that a wall that was constructed upstream to prevent water has collapsed leading to flooding of the mine works.
- 4.6 Eskom requested Tegeta Exploration and Resources (Pty) Ltd to provide an authorization from the relevant authorities allowing mining through a wetland and diversion of a stream.
- 4.7 Tegeta Exploration and Resources (Pty) Ltd acknowledged that mining is taking place very close to a stream. It further indicated that the entity was fined for contravening environmental regulations. Tegeta Exploration and Resources (Pty) Ltd clarified in its response dated 14 September 2016 that the colliery referred to was not Brakfoentein but Vierfontein.
- 4.8 Eskom indicated that the diversion of a stream requires authorization in terms of National Water Act.
- 4.9 It was stated in the meeting that a sample of the Seam 4 Upper, Seam 4 Lower and a blend of two was collected on 13 June 2014 to perform chemical analysis.
- 4.10 The results indicated that only Seam 4 Lower was within Eskom specifications. However, Seam 4 Lower could only be considered for further assessment if the Hard Grove Index can meet Eskom's threshold of a minimum of 50 and the analysis of S4L came back at 28.
- 4.11 Eskom further requested a recently mined sample.
- 4.12 Tegeta Exploration and Resources (Pty) Ltd indicated that mining was suspended in order to sell the existing stock pile before re-commencing any mining. The size of the stockpile was between 70 000 75 000 tons.

Meeting dated 23rd September 2014 between Tegeta /Idwala and Eskom (See Annexure C)

- 4.13 Eskom raised concerns around the Hard Grove Index ("**HGI**") on the initial sample that was tested.
- 4.14 Eskom expressed concerns that the second sample revealed higher Iron and Calcium, Low burn out time and low side CV (calorific value).
- 4.15 Eskom indicated that the combustion test results shows that coal from Brakfontein was potentially suitable for use at Kendal, Kriel units 4-6, Lethabo and Matimba Power Stations.

- 4.16 Eskom further indicated that it will consider the seam 4 Lower of Brakfontein as the 4 Upper seam did not meet Eskom's requirements.
- 4.17 Tegeta Exploration and Resources (Pty) Ltd indicated the possibility of blending 4 seam with higher quality seam 2. Eskom stated that the blending will be problematic and also the fact that a new offer would have to be submitted.
- 4.18 Eskom raised a concern of contamination to seam 4 lower with seam 4 upper. Tegeta Exploration and Resources (Pty) Ltd was requested to present a plan on how it will prevent the contamination of coal.
- 4.19 Tegeta Exploration and Resources (Pty) Ltd was requested to submit a revised proposal for supplying the 4 seam lower only.
- 4.20 Tegeta Exploration and Resources (Pty) Ltd clarified in its response dated 14 September 2016 that a plan to avoid contamination and revised proposal were submitted.

Meeting dated 23rd January 2015 between Tegeta /Idwala and Eskom (See Annexure D)

- 4.21 Eskom provided feedback about test results that have been conducted on the seam 4 Lower, the seam 4 Upper and a blend of both the seam 4 Upper and seam 4 Lower.
- 4.22 The test results showed that seam 4 Lower was suitable for Eskom use at certain stations, the seam 4 Upper and the blended product were unsuitable for Eskom use because of the high Abrasive Index (AI) and marginal Hard Grove Index.
- 4.23 It was further indicated that the in-seam partings which is predominantly sandstone in seam 4 Upper is responsible for the high AI.
- 4.24 Tegeta Exploration and Resources (Pty) Ltd will selectively mine the seam, use a grader to remove the major in-seam partings, avoid over drilling and blasting to address the high AI.
- 4.25 Eskom indicated that the price offered by Tegeta Exploration and Resources (Pty) Ltd was too high. The prices offered were R17/GJ for the seam 4 Lower and R15/GJ for the blended product (seam 4 Upper and seam 4 Lower).
- 4.26 Eskom negotiated a price for both seam 4 Lower and blended product (seam 4 Upper and seam 4 Lower) even though the blended product was not suitable for Eskom.
- 4.27 It was agreed that Tegeta Exploration and Resources (Pty) Ltd will submit its revised pricing to Eskom. It will also present its technical plans to address the seam 4 upper qualities.

Meeting dated 30th January 2015 between Tegeta /Idwala and Eskom (See Annexure E)

- 4.28 Tegeta Exploration and Resources (Pty) Ltd offered a revised price of R13.50/GJ for a five year contract supplying 65,000 tons per month from the Brakfontein Resource.
- 4.29 Eskom accepted the price on condition it has the first right of refusal for additional coal resources at Brakfonein extension. Furthermore, the coal must meet the technical and combustion requirements of Majuba Power Station.
- 4.30 Tegeta Exploration and Resources (Pty) Ltd presented its proposed technical plan to mitigate the high abrasive (AI). A plan was that the entity will selectively mine the seam, use a grader to remove the major inseam partings and avoid over drilling and blasting.
- 4.31 Eskom was satisfied with the plan presented by Tegeta Exploration and Resources (Pty) Ltd.
- 4.32 The meeting agreed that a newly mined sample of the blended product will be collected for testing.
- 4.33 Tegeta Exploration and Resources (Pty) Ltd proposed to supply 65kT/month of the blended product (seam 4 Upper and seam 4 Lower). The proposed start date was the 1st of April 2015 subject to a successful combustion test.
- 4.34 Tegeta Exploration and Resources (Pty) Ltd was requested to provide a proposed ramp up plan.

5. WATER USE LICENSE

- According to Section 151(1)(a) of the National Water Act, it is an offence to use water without the required water use license. Any person convicted of this offence is liable on first conviction for a fine or imprisonment for up to five years or both. Upon second conviction, the offender is liable for a fine or imprisonment for up to 10 years, or both.
- Tegeta Exploration and Resources (Pty) Ltd submitted its proposal to supply coal before it was granted a Water Use License.
- 5.3 Eskom and Tegeta Exploration and Resources (Pty) Ltd discussed the proposal before Water Use License was issued.
- Tegeta Exploration and Resources (Pty) Ltd.'s license was issued on 22 December 2014. (See Annexure F)
- 5.5 The Water Use License required Tegeta Exploration and Resources (Pty) Ltd to comply with certain requirements. Some of the requirements were as follows:
- 5.5.1 An annual internal audit on compliance (to be submitted within one month of the finalization);

- 5.5.2 An external annual audit on compliance (to be submitted within one month of the finalization);
- 5.5.3 Flood lines determination for both rivers and surrounding the project area (to be submitted within six month of the issuance of license);
- 5.5.4 Final groundwater monitoring program to be submitted within six months of the issuance of license;
- 5.5.5 Geochemical studies, numerical groundwater flow and contaminant transport models for the proposed mine (within twelve months of the issuance of license);
- 5.5.6 Acceptance groundwater monitoring network (within six (6) months of the issuance of license); and
- 5.5.7 The Integrated Water and Waste Management Plan (IWWMP and updated Rehabilitation Strategy and Implementation Programme (RSIP) (within one year of the issuance of license).
- Tegeta Exploration and Resources (Pty) Ltd undertook to complying to comply with all its obligations under current and future applicable laws including but not limited to the mining right when signing the coal supply agreement (clause 6.1) on 10 March 2015.
- 5.7 Tegeta Exploration and Resources (Pty) Ltd confirmed that it complied with all Water License requirements in its response dated 14 September 2016 (See Annexure G).
- 5.8 Eskom in its response dated 30 August 2016 stated that it is satisfied that Brakfontein Colliery complies with the requirements of the Coal Supply Agreement (clause 6.1).
- 5.9 Eskom failed to enforce clause 22.10 of the Coal Supply Agreement which requires drainage tests to be conducted by not later than 30 days after the first delivery of contract coal. The minutes of the monthly technical liaison meeting dated 13 May 2015 reveals that drainage tests were not done as required by the Coal Supply Agreement.
- 5.10 The compliance audit conducted by the Department of Water and Sanitation from the 20th to the 22nd of July 2016 identified non-compliance with the water use license conditions. (See Annexure H) The following non-compliance were identified:
- 5.10.1 Final groundwater monitoring program was not submitted within six months of the issuance of license:
- 5.10.2 The mine is using potable water for washing machineries which is not its intended purpose;
- 5.10.3 Some monitoring points have been changed without notification and approval by the Provincial Head;

- 5.10.4 An acceptable ground water monitoring network was not established within six (6) months of the issuance of the license:
- 5.10.5 The mine did geochemical report after 12 months of the issuance of the license and did not submit the report to the Department;
- 5.10.6 Material with pollution generating potential was used in construction activities; and
- 5.10.7 The Pollution Control Dam protection layer of sand on the geo-textile of the wall was not removed.

6. COAL SUPPLY AGREEMENT

6.4

- 6.1 A Coal Supply Agreement between Eskom and Tegeta Exploration and Resources (Pty) Ltd was signed on 10 March 2015 with the commencement date of 1st April 2015. (See Annexure I)
- The Coal Supply Agreement is for supplying coal to Majuba Power Station which was not initially identified as a suitable power station.
- The Coal Supply Agreement signed was for a period of 10 years instead of the 5 years stated on offer submitted on 30 January 2015(price of R13.50/GJ for a five year contract supplying 65,000 tons per month from the Brakfontein Resource). It is not clear why Eskom signed an agreement which expires in 2025 knowing that the mining license will expire in 2020. (See Annexure W)
 - Tegeta Exploration and Resources (Pty) Ltd undertook in clause 6.1 of the Coal Supply Agreement that it is complying and will continue to comply with all its obligations under all current and future applicable laws including but not limited to the mining right, including the environmental management plan, the social labour plan and the mining work programme relating thereto, the National Water Act, No. 36 of 1998 ("NWA");the National Environmental Management Act, No. 107 of 1998 ("NEMA"); the Environment Conservation Act, No. 73 of 1989; the National Environmental Air Quality Act, No. 39 of 2004; the Water Services Act, No 100 of 1989; the Hazardous Substances Act, No. 15 of 1973; the National Heritage Resources Act, No. 25 of 1999; the World Heritage Convention Act, No. 49 of 1999; the MPRDA(Mineral and Petroleum Resources and Development Act No. 28 of and the mine Health and Safety Act, No.29 of 1996, all statutory instruments, provincial ordinances and statutes, municipal government by-laws relating to the environment, government notices, circulars, codes of practice, guidelines, decisions, regulations, orders, demands, and criteria, injunctions or judgments of any court, administrative or regulatory authorities, central government, provincial government, municipal or any other body with responsibility for the protection of the environment(including but not limited to the health of the public, employees, flora and fauna).
- In clause 10.2.1 (Conditions Precedent), the Supplier had to have completed and reported a successful combustion test by not later than 31 March 2015. Clause 10.3 (Conditions Precedent) states that "It is specifically recorded that if the Conditions Precedent are not fulfilled or waived on or prior to the applicable date

referred to in Clause 10.2.1, the remaining provisions of this Agreement shall never become effective. It is not clear why Eskom accepted delivery of coal from Brakfontein Colliery before full combustion tests were conducted. Eskom may have acted negligently by not enforcing this clause.

- Clause 10.3(Coal Quantities) states that "The Supplier shall Deliver and Eskom will Take off in each year a quantity of Contract Coal at an expected CV of 20.15 MJ/kg on an 'as received' basis". This is unusual as the specifications require CV and other parameters to be reported on an "air dry" basis. Furthermore, this is likely to cause confusion should the coal be exposed to wide ranges of weather such as rain, humidity or exceptionally dry seasons. As received values will fluctuate accordingly and not permit a standardised value such as can be achieved by "air dry" or "dry" bases.
- 6.7 Clause 10.4 provides a table of the Contract Coal Supply Schedule for the next 10 years. This indicates tonnage and energy (GJs) in two lots: April 2015 to September 2015, October 2015 to September 2020 (the 5-year contract) and October 2020 to September 2025 (10-year contract) at an expected CV of 20.15 MJ/kg on an 'as received' basis".
- 6.8 Clause 14 states that "The Contract Coal to be supplied from both Brakfontein and Brakfontein Colliery Extension must at all times comply with Eskom's technical and coal supply agreements. For the avoidance of any doubt, if these requirements do not render compliance for supply to Majuba Power Station, Eskom reserves the sole and exclusive right to call upon a material breach as provided for in this Agreement..." Eskom had every right to call upon a material breach when non-compliant coal shipments were delivered to Majuba Power Station at least during the months of July to September 2015.
- 6.9 Clause 20.2 states that ".......... each Consignment of Contract Coal is substantially free from impurities and extraneous materials related to the proper mining and processing of coal". In this case, given the highly fluctuating qualities of coal seen in the July to September 2015 reports, it is clear that the impurities (in-seam rock contaminants and high pyrite-total Sulphur) have not been excluded in many instances, e.g. 19 out of 39 samples (48%) of the samples sent to Eskom in July to August 2015, and 8 samples out of 19 (42%) in the SABS sampled coals in September 2015.
- 6.10 Clause 20.4 states that "In the event that coal supplied does not meet the Quality Specifications, Eskom shall treat such coal as Reject coal". This would be burnt or disposed of. It is unclear what steps Eskom took when non-compliant out of specification coals were delivered to Majuba Power Station in July- August 2015.
- Clause 20.8.1 and its various sub-sections including 21.4 state that "The Supplier shall be required to provide Eskom with a Schematic flow diagram outlining the mix/blending process that shall be adhered to for the duration of the Agreement. This shall form part of the final Agreement. Variability tests will be performed to determine the sampling implement frequency". There is no evidence that any variability tests were undertaken by Eskom.

- 6.12 Clause 21.5.3 states that "No manual sampling of stockpiles shall be allowed". Auto-sampling is required and that observation by camera is necessary to ensure compliance from point of cross bed sampler to splitting in the laboratory. The Supplier was requested to supply (i) a sampling solution within the first month of signing the short-term contract and (ii) a flow diagram procedure indicating the load out control process. The auto sampling equipment was not available for a period of more than 12 months from 1 April 2015. This area of the sampling and analytical regime is of crucial importance and relates directly to the contractual issues in any Agreement. Eskom may have acted negligently by not enforcing this clause.
- 6.13 Clause 22.2 read together with clause 20.8.1.1 of the Coal Supply Agreement requires the supplier to have acceptable auto mechanical sampling equipment for sampling of coal. The auto sampling equipment was not available for a period of more than 12 months from 1 April 2015. This area of the sampling and analytical regime is of crucial importance and relates directly to the contractual issues in any Agreement. Eskom may have acted negligently by not enforcing this clause.
- Clause 29.2 of the Coal Supply Agreement states that the supplier shall supply Eskom with the prescribed information on an annual basis, within 30 (thirty) days after publication of the Supplier's annual report. Tegeta Exploration and Resources (Pty) Ltd indicated in its response dated 14 September 2016 that it complied with clause 29.2 of the Coal Supply Agreement which require the submission of prescribed information to Eskom within 30 days after the publication of the annual report. Eskom indicated in its response dated 30 August 2016 that it is satisfied that Brakfontein Colliery complies with the requirements of the Coal Supply Agreement(clause 29.2)
- Mr. Brian Molefe(Chief Executive Officer) in his response dated 30 August 2016 stated that at the outset it must be recorded that Eskom has managed and continues to manage its risk relating to coal supply from Tegeta and other suppliers prudently and within the framework provided in terms of the Coal Supply Agreements. Eskom shall take such necessary steps against suppliers who breach the terms of such Coal Supply Agreements and expose Eskom to risk. (See Annexure K)
- 6.16 Eskom knew or should have been aware when responding through its CEO on 30 August 2016 that:
- 6.16.1 Eskom allowed the Coal Supply Agreement to commence before the supplier had completed and reported a successful combustion test for coal supply to Majuba Power Station. This irregularity was reported in a PriceWaterhouseCoopers report dated 10 November 2015;
- 6.16.2 Eskom failed to enforce clause 22.10 of the Coal Supply Agreement which required drainage tests to be conducted by not later than 30 days after the first delivery of contract coal. The minutes of the monthly technical liaison meeting dated 13 May 2015 indicates that drainage tests were not done as required by the Coal Supply Agreement:
- 6.16.3 Eskom failed to enforce clause 22.2 read together with clause 20.8.1.1 of the Coal Supply Agreement which requires the supplier to have acceptable auto mechanical

sampling equipment for sampling of coal. The minutes of the monthly technical liaison meeting dated 10 February 2016 indicates that Tegeta Exploration and Resources (Pty) Ltd was advised to write a letter to Eskom stating reasons for failing to install the auto sampler by 01 July 2015 and to provide a date when it will be installed;

- 6.16.4 Eskom failed to enforce clause 21.5.3 of the Coal Supply Agreement which does not allow manual resampling of stockpiles including re-processed/out of specifications stockpiles;
- 6.16.5 Dr. Chris van Alphen's report dated 5 October 2015 concluded that variations in dry base ash between laboratories and samples are probably attributed to change in coal characteristics, poor blending, poor sampling and possibly poor sample preparation (splitting and crushing);
- 6.16.6 Dr. Chris van Alphen's report dated 5 October 2015 concluded that the frequency of high total Sulphur coals increased significantly during September 2015 even though the contract laboratory has changed from Sibonisiwe to SABS. Changing the contract laboratory did not influence the result and the coal technically should have been rejected and a sample submitted to the dispute laboratory to confirm if the elevated total Sulphur was correct;
- 6.16.7 Brakfontein Colliery did not meet its monthly targets for January and February 2016 (62 000 and 87 000 tons shortfall respectively);
- 6.16.8 Brakfontein Colliery requested Eskom to avail trucks at short notice when coal is available because it was always experiencing ROM(run of mine);
- 6.16.9 Brakfontein Colliery was supplying coal with oversize material; and
- 6.16.10 Mining license for Brakfontein and Brakfontein Extension was expiring in 2020 whereas the Coal Supply Agreement will expire in 2025.
- 6.17 It is not clear on what basis did the Chief Executive Officer gave an assurance that Brakfontein Colliery supplied and continues to supply coal that conforms to the Coal Supply Agreement.

7. SUSPENSION OF COAL SUPPLY

- 7.1 Tegeta Exploration and Resources (Pty) Ltd was notified of the decision to suspend the supply of coal on a letter dated 31 August 2015 (See Annexure L)
- 7.2 Eskom raised concern that there is a significant increase in the number of out of specification coal stockpiles from July to August 2015 and inconsistency in the laboratory results.
- 7.3 The suspension of coal supply from Tegeta Exploration and Resources (Pty) Ltd was lifted on a letter dated 5th September 2015. (See Annexure M)
- 7.4 Eskom indicated that the suspension is lifted whilst it continues its investigation into the inconsistency in the coal quality management process.

- 7.5 It is not clear why the Group Executive (Mr. Koko) lifted the suspension without first establishing the reasons for the serious and repeated non-compliant deliveries of coal during July and August 2016.
- Mr. Koko (Group Executive) also suspended the services of which are both accredited laboratories. There is no evidence that they were given the opportunity to defend themselves before they were suspended. The two laboratories were not given the benefit of doubt like Tegeta Exploration and Resources (Pty) Ltd whose suspension was lifted pending the investigation. It is not clear why Mr. Koko treated Tegeta Exploration and Resources (Pty) Ltd fairly and treated the two laboratories unfairly.
- 7.7 Dr Chris van Alphen's report dated 5 October 2015 concluded that the frequency of high total Sulphur coals increased significantly during September 2015 even though the contract laboratory has changed from Sibonisiwe to SABS. Changing the contract laboratory did not influence the result and the coal technically should have been rejected and a sample submitted to the dispute laboratory to confirm if the elevated total Sulphur was correct. He further concluded that the suspension of coal from Brakfontein Colliery was justified. He recommended amongst others that a detailed review of the geological data is required so that the distribution of Sulphur is determined and that Brakfontein Colliery should be approached to discuss the management of Sulphur. (See Annexure T) He also raised the following issues:
- 7.7.1 Producing a blend of raw S4L and raw S4U is not recommended for Majuba, Tutuka or Matla power station as there is a high probability that the resultant "mixed" pre-certified sample will periodically exceed Majuba, Tutuka and Matla rejection specifications;
- 7.7.2 A blend of washed S4U and raw S4L or sending only S4L is preferable for Majuba, Tutuka and Matla power stations;
- 7.7.3 The difference in ash implies that the samples analyzed are not the same. This implies that there were sampling and probably preparation errors. The impact of sampling error is also noted when the calculated ash is compared to the measured ash for the dispute samples;
- 7.7.4 The discrepancy between Sibonisiwe and SGS is an indication of sampling errors and the two samples analyzed were not the same. Sampling errors could have occurred during the cone and quartering stage or during sample preparation (crushing). This is expected if the sample is a "blend" of two sources with significantly different dry base ash content. The previous Brakfontein technical assessments predicted that this will occur;
- 7.7.5 If the initial contract laboratory and dispute laboratory results differs significantly, but the calculated ash is comparable to the measured ash then this is indicative of poor sampling, poor blending and/or poor sample preparation;
- 7.7.6 Variations in dry base ash between laboratories and samples are probably attributed to change in coal characteristics, poor blending, poor sampling and possibly poor sample preparation (splitting and crushing);

- 7.7.7 The variation in total Sulphur is a characteristic of the coal and will remain a problem if not effectively managed. It can be managed by understanding the pyrite distribution in the deposit and by paying extra attention to sampling and sample preparation.
- 7.8 Mr. Koko(Group Executive) knew or should have been aware when suspending coal from Brakfontein Colliery that:
- 7.8.1 Eskom allowed the Coal Supply Agreement to commence before the supplier had completed and reported a successful combustion test for coal supply to Majuba Power Station. This irregularity was confirmed in a PriceWaterhouseCoopers report dated 10 November 2015; (See Annexure U)
- 7.8.2 Eskom failed to enforce clause 22.10 of the Coal Supply Agreement which required drainage tests to be conducted by not later than 30 days after the first delivery of contract coal. The minutes of the monthly technical liaison meeting dated 13 May 2015 indicates that drainage tests were not done as required by the Coal Supply Agreement;
- 7.8.3 Eskom failed to enforce clause 22.2 read together with clause 20.8.1.1 of the Coal Supply Agreement which requires the supplier to have acceptable auto mechanical sampling equipment for sampling of coal. The minutes of the monthly technical liaison meeting dated 10 February 2016 indicates that Tegeta was advised to write a letter to Eskom stating reasons for failing to install the auto sampler by 01 July 2015 and to provide a date when it will be installed;
- 7.8.4 Eskom failed to enforce clause 21.5.3 of the Coal Supply Agreement which does not allow manual resampling of stockpiles including re-processed/out of specifications stockpiles.
- 7.9 It is not clear why the Group Executive (Mr. Koko) and other members of senior management did not enforce some of the conditions of the Coal Supply Agreement.
- 7.10 It is not clear whether Eskom officials who were dismissed for querying the supply of poor quality coal by Brakfontein Colliery were re-instated after receiving the report from Dr. Alphen.
- 7.11 It is not clear whether the recommendations made by Dr. Alphen were brought to the attention of the Accounting Authority and whether senior management implemented remedial actions.

8. SABS TEST RESULTS

- 8.1 Eskom requested SABS to test the coal from Tegeta Exploration and Resources (Pty) Ltd on a letter dated 31 August 2015. (See Annexure N)
- 8.2 SABS performed the test from the 06th September 2015 and issued the results on 18 September 2015. (See Annexure O)

- 8.3 The results from SABS highlighted non-compliance to the coal quality specifications, mainly in Volatile, Sulphur, Ash and Inherent moisture.
- 8.4 SABS results further revealed that eight samples that were tested contained Sulphur that was higher than the rejection limit of 1.3% and the worst sample contained more than 2% of Sulphur content.
- 8.5 These results suggest that there was an on-going practice of supplying non-compliant coals to Majuba Power Station and not, as was alluded to by Mr. Koko that it was due to incompetent analyses by the SGS and Sibonisiwe) laboratories.
- 8.6 Eskom confirmed in its response dated 30 August 2016 that no payment was made on stockpiles that exceeded the Sulphur quality limit.
- 8.7 Eskom's silence on July-August 2015 samples where 19 out of 39 samples (48%) were out of specification and the subsequent tests conducted by SABS gives little confidence that the practice of ensuring compliance with coal quality standards was/is implemented.

9. PAYMENTS MADE TO TEGETA EXPLORATION AND RESOURCES (PTY) LTD

- 9.1 The final price agreed by Eskom and Tegeta Exploration and Resources (Pty) Ltd was R13.50 per gigajoule.
- 9.2 Clause 16.1 of the Coal Supply Agreement clearly states that "the base price stipulated in clause 15 [R13.50/GJ] shall be adjusted upward or downward as the case may be on 1 April and annually thereafter on 1 April of each subsequent vear."
- 9.3 Clause 16.2 of the Coal Supply Agreement states that the "Base Price as adjusted on 1 April of each year shall be the price of Contract Coal applicable until the 31 March of that year".
- 9.4 It is not clear why the price suddenly increased from R13:50 per GJ to R13.63 per GJ one month after signing the Coal Supply Agreement, and, in July 2015, the cost of coal per GJ rose again to R13.68 per GJ.
- 9.5 It is not clear which clauses of the Coal Supply Agreement were used to justify the fluctuation of the rate because transportation was provided by Eskom.
- 9.6 In the absence of any valid explanation, any cent paid above R13.50 should be regarded as fruitless and wasteful expenditure and be recovered from the relevant Eskom officials or supplier. The table below indicates amounts paid to the supplier for Majuba Power Station:

Month	Average Monthly Price	E CA	Monthly Charge
	(Rand/GJ)	Quantity (Gj)	(Rand) excl vat
Apr-15	R13.63	987 430.08	13 458 671.99

Month	Average Monthly Price		Monthly Charge
	(Rand/GJ)	Quantity (Gj)	(Rand) excl vat
May-15	R13.63	1 615 787.51	22 023 183.76
Jun-15	R13.63	1 285 984.69	17 527 971.32
Jul-15	R13.68	1 258 984.69	17 222 910.56
Aug-15	R13.68	18 927.70	258 930.94
Sep-15	R13.60	1 432 465.71	19 481 533.66
Oct-15	R13.54	2 607 083.81	35 299 914.79
Nov-15	R13.54	2 911.68	39 424.15
Nov-15	R13.60	3 486 123.98	47 411 286.13
Dec-15	R13.59	3 280 282.62	44 579 040.81
Dec-15	R13.59	1 165 229.83	15 835 473.39
Jan-16	R13.51	2 568 671.95	34 702 758.04
Feb-16	R13.44	21 009 978.93	282 374 116.82
Mar-16	R13.45	245 896.06	3 307 302.01
TOTAL		-	553 522 518.36

10. MONTHLY TECHNICAL LIAISON MEETINGS

Meeting dated 13th May 2015 between Tegeta and Eskom (See Annexure P)

- Majuba Power Station received 48 000 tons in April 2015 instead of 65 000 tons per month agreed in the Coal Supply Agreement. The shortfall was 17 000 tons.
- 10.2 Brakfontein to confirm the date of the sampler installation where after the bias test date need to be scheduled.
- The initial phase of the contract is until September 2015 where after the Brakfontein extension will commence supplying coal which will take the contract until September 2025.

Meeting dated 10th February 2016 between Tegeta and Eskom (See Annexure Q)

- Majuba Power Station received 113 607 tons in January 2016 instead of the agreed 140 000 tons. The shortfall was 26 393 tons.
- Hawerklip Power Station received 13 607 tons in January 2016 instead of the agreed 60 000 tons. The shortfall was 46 081 tons.
- The reason for under delivery in Majuba Power Station and Hawerklip Power Station was due to lack of ROM resulting from mining operation, the improved sequencing in the pit and community unrest in Delmas resulted in manpower shortage.

- 10.7 There were no planned deliveries for Arnot PS in January 2016 but actual deliveries were 10 463 tons.
- Tegeta Exploration and Resources (Pty) Ltd advised to write a letter to Eskom stating the reasons for failing to install the auto sampler by 01 July 2015 and to provide a date when it will be installed.
- 10.9 Foreign materials continue to be delivered at Majuba Power Station and Coals were returned due to contamination.

Record of decisions

- 10.10 Should foreign material be delivered at Majuba PS and identified to come from Brakfontein, the mine will be contacted to witness and put measures in place to rectify. Only thereafter will deliveries again commence.
- 10.11 Should a high volume of contamination be evident, deliveries will be stopped and truck will be returned to Brakfontein. The return cost will be for the mine account.
- 10.12 Brakfontein requested Eskom to assist in availing trucks at short notice when coal becomes available. This should lapse once plant is commissioned.

Meeting dated 09th March 2016 between Tegeta and Eskom (See Annexure R)

- Majuba Power Station received 94 585 tons in February 2016 instead of the 120 000 tons planned. The shortfall was 25 415 tons.
- 10.14 Hawerklip Power Station received 17 610 tons in February 2016 instead of the 80 000 tons planned. The shortfall was 62 390 tons.
- 10.15 The reasons for under delivery was due to a lack of ROM resulting from mining operation, the improved sequencing in the pit and community unrest in Delmas resulted in manpower shortage.
- 10.16 Eskom sent a letter on 8 February 2016 on the installation of the auto sampler and awaits Tegeta Exploration and Resources (Pty) Ltd's response.
- 10.17 Foreign materials continue to be delivered at Majuba Power Station.
- 10.18 Majuba Power Station is still receiving oversize material, instances of high% of fines are supplied on rail and sometimes even conglomerated pieces. Extended efforts have been put in place to resolve this, including a permanent representative from technical services to be full time on site. Spotters are now on 24hours shift to assist with the identification of the above. Once the source has been identified, supply will be stopped until such time that Eskom has assurance that the root cause was addressed.

Record of decisions

- 10.19 Should foreign material be delivered at Majuba Power Station and identified to come from Brakfontein, the mine will be contacted to witness and put measures in place to rectify. Only thereafter will deliveries again commence.
- 10.20 Should a high volume of contamination be evident, deliveries will be stopped and truck will be returned to Brakfontein. The return cost will be for the mine account.
- 10.21 Brakfontein requested Eskom to assist in availing trucks at short notice when coal becomes available. This should lapse once plant is commissioned.

Meeting dated 24th May 2016 between Tegeta and Eskom (See Annexure S)

- 10.22 Planned deliveries for Majuba Power Station in May 2016 were 13 000 tons but actual deliveries were 68 155 tons, over deliveries was 55 155 tons.
- 10.23 Planned deliveries for Hawerklip in May 2016 were 100 000 tons but actual deliveries were 80 731 tons. The shortfall was 19 269 tons.
- The auto sampler will be installed in the first week of June and bias test to be scheduled for the last week in June.
- 10.25 Foreign materials continue to be delivered at Majuba Power Station.

Summary of main issues from the minutes

- 10.26 It is clear from the Minutes summarised above that a number of major unacceptable issues were raised. The following were noted:
- 10.26.1 No control on size and quality of coal;
- 10.26.2 No guarantee of tonnages;
- 10.26.3 No sampler to ensure correct representative samples in the 13 months prior to June 2016 to ensure quality control; and
- 10.26.4 No combustion test of coal (Brakfontein Extension) up to June 2016 despite the contract having commenced in April 2015.

11. ADVANCE PAYMENT TO TEGETA EXPLORATION AND RESOURCES (PTY) LTD

Minutes of the special board tender committee 1 -2016/17 held by teleconference on the 11 April 2016 at 21h00.

11.1 The special board tender committee resolved that Addenda to the Short Term Coal Supply Agreements between various suppliers and Eskom be concluded to extend the supply of coal from various sources to Arnot Power Station for up to a further five (5) Months and / or such period as may be requested by the supplier but no later than 30 September 2016.

- 11.2 The special board tender committee also resolved that the Chief Financial Officer is hereby authorized to approve the basis for prepayment to secure the fixed coal price for the period of extension provided that there is a discount in the price, the supplier offers a guarantee in favour of Eskom and that the Chief Financial Officer can provide assurance to the committee that the transactions are economically viable for Eskom:
- 11.3 The special board tender committee further resolved that the group Executive (Generation) is hereby authorized to take all the necessary steps to give effect to the above, including the signing of any consents, or any other documentation necessary or related thereto.
- 11.4 The special board tender committee did not approve a deviation to conclude new contracts with various suppliers but approved the extension of the existing short term coal supply agreements.
- The special board tender committee authorized the Chief Financial Officer to approve the basis for prepayment on condition that there is a discount in the price, the supplier offers a guarantee in favor of Eskom and that the Chief Financial Officer can provide assurance to the committee that the transactions are economically viable for Eskom.
- 11.6 The conditions relating to the discount and the assurance to the committee that the transactions are economically viable were not met because Eskom paid R19.69 per GJ for the coal that should have cost it R18. 68 per GJ.
- 11.7 There is no evidence that the Chief Financial Officer submitted any assurance report to the board tender committee assuring the committee that the transactions are economically viable.
- There is no evidence that the Chief Financial Officer conducted any due diligence to establish whether Tegeta Exploration and Resources (Pty) Ltd or Optimum Coal Mine required any equipment to increase the volume or further process the coal to be suitable for Arnot Power Station.
- 11.9 There is no evidence that the Chief Financial Officer conducted any due diligence to establish whether it would be economical to procure coal direct from Optimum Coal Mine or from Tegeta Exploration and Resources (Pty) Ltd.
- 11.10 There is no evidence that the Chief Financial Officer conducted any due diligence to establish whether Tegeta Exploration and Resources (Pty) Ltd was meeting its monthly targets from the Brakfontein Colliery.
- 11.11 There was no sufficient time for the Chief Financial Officer to conduct any proper due diligence because the decision was taken during the evening on 11 April 2016 and the agreement was signed on 13 April 2016.
- 11.12 The difference between R19.69 and R18.68 per GJ (R1.01 per GJ) should be regarded as fruitless and wasteful expenditure and be recovered from the relevant Eskom Officials or supplier.

- 11.13 The advance payment of R659 558 079 should be regarded as a loan because there is no evidence that Optimum Coal Mine or Tegeta Exploration and Resources (Pty) Ltd used the funds to procure any equipment.
- 11.14 The interest due and payable on the capital amount of R659 558 079 should be recovered from the relevant Eskom Officials or supplier.
- 11.15 The conclusion of the agreement before any due diligence was done and before the Board Tender Committee was given assurance is irregular, it is a non-compliance with Eskom policy and standards prescribed by the Board Tender Committee.
- 11.16 Non compliance with prescribed standards of the procurement and SCM policy results in the expenditure being regarded as irregular.
- 11.17 Eskom should recognize R659 558 079 as irregular expenditure.
- 11.18 The Chief Financial Officer and the Group Executive(Mr. Koko) knew or should have been aware before implementing the resolutions of the Board Tender Committee that:
- 11.18.1 Brakfontein Colliery delivered coal to Arnot Power Station at a cheaper price in January 2016;
- 11.18.2 Brakfontein Colliery did not meet its monthly targets for January and February 2016(62 000 and 87 000 tons respectively); and
- 11.18.3 Brakfontein Colliery requested Eskom to avail trucks at short notice when coal is available because it was always experiencing ROM (run of mine).
- There is no evidence that the Chief Financial Officer and Mr. Koko advised the Board Tender Committee that Tegeta Exploration and Resources (Pty) Ltd had a shortfall of more than 150 000 tons for only two months.
- There is no evidence that the Chief Financial Officer and Mr. Koko advised the Board Tender Committee that it would be economical for Tegeta Exploration and Resources (Pty) Ltd to supply its short fall coal for the period April 2015 to March 2016.
- 11.21 Eskom should have requested Tegeta Exploration and Resources (Pty) Ltd to supply its short fall coal for the period April 2015 to March 2016 at R13.50 per GJ.
- The delivery of the shortfall coal by Tegeta Exploration and Resources (Pty) Ltd would have reduced the additional 250 000 tons required per month and would have been economical to Eskom.

12. CONCLUSION

Water Use License

- 12.1 The Water Use License for Tegeta Exploration and Resources (Pty) Ltd was issued on 22nd December 2014 with additional conditions to be complied with by the supplier.
- 12.2 Eskom failed to enforce clause 22.10 of the Coal Supply Agreement which requires drainage tests to be conducted by not later than 30 days after the first delivery of contract coal.
- 12.3 The compliance audit conducted by the Department of Water and Sanitation from the 20th to the 22nd of July 2016 identified non-compliance with the water use license conditions. The following non-compliance were identified:
- 12.3.1 Final groundwater monitoring program was not submitted within six months of the issuance of license:
- 12.3.2 The mine is using potable water for washing machineries which is not its intended purpose;
- 12.3.3 Some monitoring points have been changed without notification and approval by the Provincial Head:
- 12.3.4 An acceptable ground water monitoring network was not established within six (6) months of the issuance of the license;
- 12.3.5 The mine did the geochemical report after 12 months of the issuance of the license and did not submit it to the Department;
- 12.3.6 Material with pollution generating potential was used in construction activities; and
- 12.3.7 The Pollution Control Dam protection layer of sand on the geo-textile of the wall was not removed.

Coal Supply agreement

- 12.4 Eskom allowed the Coal Supply Agreement to commence before the supplier had completed and reported a successful combustion test for coal supply to Majuba Power Station. This irregularity was also reported in a PriceWaterhouseCoopers report dated 10 November 2015. Eskom may have acted negligently by not enforcing this requirement.
- 12.5 Eskom failed to enforce clause 22.10 of the Coal Supply Agreement which required drainage tests to be conducted by not later than 30 days after the first delivery of contract coal. The minutes of the monthly technical liaison meeting dated 13 May 2015 confirmed the non-compliance with the Coal Supply Agreement. Eskom may have acted negligently by not enforcing this requirement.

- 12.6 Eskom failed to enforce clause 22.2 read together with clause 20.8.1.1 of the Coal Supply Agreement which requires the supplier to have acceptable auto mechanical sampling equipment for sampling of coal. The minutes of the monthly technical liaison meeting dated 10 February 2016 confirmed the non-compliance with the Coal Supply Agreement. Eskom may have acted negligently by not enforcing this requirement.
- 12.7 Eskom failed to enforce clause 21.5.3 of the Coal Supply Agreement which does not allow manual resampling of stockpiles including re-processed/out of specifications stockpiles. Eskom may have acted negligently by not enforcing this requirement.
- There is no evidence that Eskom took appropriate steps after receiving the report from Dr Alphen dated 5 October 2015 which concluded that variations in dry base ash between laboratories and samples are probably attributed to change in coal characteristics, poor blending, poor sampling and possibly poor sample preparation (splitting and crushing).
- There is no evidence that Eskom took appropriate steps after receiving the report from Dr Alphen dated 5 October 2015 which concluded that the frequency of high total Sulphur coals increased significantly during September 2015 even though the contract laboratory has changed from Sibonisiwe to SABS. Changing the contract laboratory did not influence the result and the coal technically should have been rejected and a sample submitted to the dispute laboratory to confirm if the elevated total Sulphur was correct;
- 12.10 Eskom signed a 10 year Coal Supply Agreement expiring in 2025 knowing that the mining license of Brakfontein and Brakfontein Extension will expire in 2020. Eskom may have acted negligently by disregarding the condition of the mine license.
- 12.11 The CEO gave an assurance that Brakfontein Colliery supplied and continues to supply coal that conforms to the Coal Supply Agreement despite ample evidence available to Eskom that there was non-compliance.
- 12.12 Eskom made payments to Tegeta Exploration and Resources (Pty) Ltd before correcting the non-compliance with conditions of the Coal Supply Agreement.
- 12.13 Payments made to Tegeta Exploration and Resources (Pty) Ltd for Brakfontein coal should be regarded as irregular expenditure.
- The base price of coal increased from R13:50 per GJ to R13.63 per GJ one month after signing the Coal Supply Agreement, and, in July 2015, the cost of coal per GJ rose again to R13.68 per GJ.
- 12.15 In the absence of any valid explanation, any cent paid above R13.50 should be regarded as fruitless and wasteful expenditure and be recovered from the relevant Eskom officials or Tegeta Exploration and Resources (Pty) Ltd.

Advance Payment Tegeta Exploration and Resources (Pty) Ltd

- 12.16 The conditions relating to the discount and the assurance to the Board Tender Committee that the transactions are economically viable were not met because Eskom paid R19.69 per GJ for the coal that should have cost it R18. 68 and R13.50 per GJ.
- 12.17 There is no evidence that the Chief Financial Officer submitted any assurance report to the board tender committee assuring the committee that the transactions are economically viable.
- 12.18 There is no evidence that the Chief Financial Officer conducted any due diligence to establish whether it would be economical to procure coal direct from Optimum Coal Mine or from Tegeta Exploration and Resources (Pty) Ltd.
- 12.19 There is no evidence that the Chief Financial Officer conducted any due diligence to establish whether Tegeta Exploration and Resources (Pty) Ltd was meeting its monthly targets from the Brakfontein Colliery.
- 12.20 The difference between R19.69 and R18.68 per GJ (R1.01 per GJ) should be regarded as fruitless and wasteful expenditure and be recovered from the relevant Eskom Officials or Tegeta Exploration and Resources (Pty) Ltd.
- The advance payment of R659 558 079 should be regarded as a loan because there is no evidence that Optimum Coal Mine or Tegeta Exploration and Resources (Pty) Ltd used the funds to procure any equipment for increasing the volume of the coal or further processing the coal.
- The interest due and payable on the loan amount of R659 558 079 should be recovered from the relevant Eskom Officials or Tegeta Exploration and Resources (Pty) Ltd.
- There is no evidence that the Chief Financial Officer and the Acting CEO advised the Board Tender Committee that Tegeta Exploration and Resources (Pty) Ltd had a shortfall of more than 150 000 tons for only two months.
- There is no evidence that the Chief Financial Officer and the Acting CEO advised the Board Tender Committee that it would be economical for Tegeta Exploration and Resources (Pty) Ltd to supply its shortfall coal for the period April 2015 to March 2016.
- 12.25 Eskom would have benefited if it requested Tegeta Exploration and Resources (Pty) Ltd to supply its shortfall coal for the period April 2015 to March 2016 at R13.50 per GJ.
- The delivery of the shortfall coal by Tegeta Exploration and Resources (Pty) Ltd would have reduced the additional 250 000 tons required per month and would have been economical to Eskom.

13. REMEDIAL ACTIONS

- The Accounting Authority investigates reasons why Eskom gave and continues to give preferential treatment to Tegeta Exploration and Resources (Pty) Ltd by not enforcing key conditions of the Coal Supply Agreement;
- The Accounting Authority investigates whether Eskom acted negligently by not enforcing key conditions of the Coal Supply Agreement particularly the Conditions Precedence of the Agreement;
- The Accounting Authority investigates why Eskom concluded a 10 year contract expiring in 2025 disregarding that the mining license given to Tegeta Exploration and Resources (Pty) Ltd will expire in 2020;
- 13.4 The Accounting Authority investigates why Eskom through its former CEO gave an assurance that Brakfontein Colliery supplied and continues to supply coal that conforms to the Coal Supply Agreement despite ample evidence that there was non-compliance;
- The Accounting Authority investigates whether the Chief Financial Officer and the Acting CEO acted negligently when implementing the directives of the Board Tender Committee:
- The Accounting Authority determines fruitless and wasteful expenditure arising out of payments made to Tegeta Exploration and Resources (Pty) Ltd for coal from Brakfontein and Brakfontein Extension.
- The Accounting Authority determines fruitless and wasteful expenditure arising out of payments made to Tegeta Exploration and Resources (Pty) Ltd for coal from Optimum Coal Mine.
- The Accounting Authority determines interest due and payable arising out of loan given to Tegeta Exploration and Resources (Pty) Ltd for coal from Optimum Coal Mine
- The Accounting Authority recognizes payments made to Tegeta Exploration and Resources (Pty) Ltd for coal from Brakfontein and Brakfontein extension as irregular expenditure.

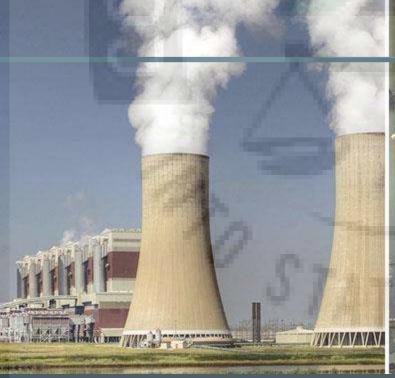


NATIONAL TREASURY

Final Report: Forensic Investigation into Various Allegations at Transnet And Eskom: Tender Number NT 022-2016 RFQ 026-2017

CHAPTER III: REPORT RELATING TO ESKOM INVESTIGATIONS

NOVEMBER 2018





PUBLIC ENTITIES CAPTURED AS A RESULT OF DYSFUNCTIONAL GOVERNANCE STRUCTURES

CHAPTER III OF THE INVESTIGATIONS: ESKOM

EXECUTIVE SUMMARY

1. THE CSA BETWEEN TEGETA AND ESKOM

- 1.1. Mboweni, Koko, Nteta and Mabelane contravened the provisions of the Medium Term Mandate and section 57(c) of the PFMA in that they concluded or caused to be concluded, a CSA with an entity which was not 50%+ 1 at the time of conclusion.
- 1.2. Samples collected by Eskom on June 2014 showed that only Seam 4 lower from Brakfontein complied with the requirements Eskom's specifications for the Majuba Power Stations. Seam 4 upper from Brakfontein did not comply with Eskom's specifications

Adjustment of CSA duration

- 1.3. Eskom officials increased the duration of the CSA from five (5) years to ten (10) years, without consultations with legal and the Senior General Manager, Primary Energy Division, Mboweni.
- 1.4. There is no evidence that the Eskom Executives who concluded the coal supply agreement between Eskom and Tegeta obtained approval to procure beyond the lifespan of the Medium-Term Mandate from the Board.
- 1.5. Nteta gave preferential treatment to Tegeta by emailing an editable template of a CSA for inputs.
- 1.6. The conclusion of the CSA with Tegeta prior to conducting successful combustion tests was irregular;
- 1.7. Eskom continued with blended tests even after various coal analysis results in respect of the blended coal samples, indicated that the blended coal was not suitable for Majuba power station.
- 1.8. Nteta, Bester and any role player may have contravened section 34 of Prevention and Combating of Corrupt Activities Act.

SABS - testing of new samples

- 1.9. Koko's conduct in preventing Eskom's employees from observing the resampling and retesting processes compromised the transparency of the said processes as none of the Eskom officials observed the sampling process.
- 1.10. The coal samples of 29 August 2015 that passed the SABS analysis was transported from Brakfontein mine by Mpumamanzi.

- 1.11. The samples tested by SABS on 29 August 2015 were not from Brakfontein mine due to the significant difference in the samples tested on 29 September 2015 and 6 September 2015
- 1.12. The integrity of SABS tests results of 30 August 2015 are brought to question in that there are discrepancies in the number of sample bags recorded in Mpumamanzi's report and the SABS delivery notes.
- 1.13. By allowing Brakfontein parties to observe the analysis of the coal samples, SABS contravened their own policies and procedures.
- 1.14. Koko suspended the Tegeta CSA on 31 August a day after he received the SABS's results on the Brakfontein Coal quality testing which was done on 29 August 2015 and the results thereof provided to Eskom on 30 August 2015.

Coal Deliveries from Brakfontein Mine

- 1.15. Eskom officials gave Tegeta preferential treatment in that they were allowed to commence coal deliveries without any confirmation by Eskom that Tegeta's coal was compliant with CSA's coal quality requirements;
- 1.16. Tegeta failed to meet their quarterly planned quantity requirements, during 2015.

2. OPTIMUM COAL HOLDINGS

- 2.1. Eskom management prejudiced Glencore by refusing to sign the negotiated CSA, giving advantage to Tegeta to acquire all assets in OCH and which amounted to the abuse of a position of authority, a breach of trust, and a violation of a legal duty or a set of rules in terms of the Prevention and Combating of Criminal Activities Act.
- 2.2. Eskom management prejudiced Glencore by fining OCM R2.1 billion for supplying allegedly poor-quality coal, which prejudice which amounted to the abuse of a position of authority, a breach of trust, and a violation of a legal duty or a set of rules in terms of the Prevention and Combating of Criminal Activities Act.
- 2.3. Eskom was prejudiced by the reduction of R2,1 billion penalty imposed for supplying allegedly poor coal quality which amounted to the abuse of a position of authority, a breach of trust, and a violation of a legal duty or a set of rules in terms of the Prevention and Combating of Criminal Activities Act.
- 2.4. Eskom acted in bad faith when the Company, represented by Koko, refused to waiver the historical penalties levied against OCM which led to OCM going

into business rescue, but reduced the said penalties through arbitration after Tegeta purchased the assets in OCH.

3. PREPAYMENT OF R659 558 079

- 3.1. Tegeta and Eskom officials (Nteta, Koko, Mabelane, Daniels and Mboweni) discussed the prepayment of R659 558 079.00 well before 11 April 2016;
 - Nteta engaged Tegeta about the prepayment through discussions, telephone calls and emails from at least 8 April 2016;
- 3.2. Nteta sent an e-mail relating to the Tegeta prepayment to inter alia Koko, on Monday 11 April 2016 at 07:22. It is improbable that the said e-mail was the first time that Koko learnt about the Tegeta prepayment.
- 3.3. Eskom's Special Board Tender Committee ("SBTC") meeting of 11 April 2016 rubber stamped the conditions and terms of the prepayment that were agreed by Eskom and Tegeta officials.
- 3.4. The SBTC approved the Tegeta prepayment request on 11 April 2016 in a meeting held by teleconference at 21:00;
- 3.5. The SBTC approved the prepayment before the Tegeta shareholders took a resolution to request the prepayment and provide guarantee, which resolution was taken on 13 April 2016;
- 3.6. Nteta drafted the letter that was used by Tegeta on 11 April 2016 as an offer to supply additional coal to Eskom;
- 3.7. Singh and or Eskom did not negotiate the 3.5% discount as the said discount was offered by Tegeta prior to the BTC's approval of the prepayment;
- 3.8. Singh misrepresented facts to the Parliamentary Portfolio Committee on Public Enterprises when he indicated that he negotiated the 3.5 % discount as the documents indicate that he did not do so.
- 3.9. Koko misrepresented facts to the Parliamentary Portfolio Committee on Public Enterprises (refer paragraph 114 of his statement to the Committee) when he indicated that Eskom negotiated the 3.5 % discount as the documents indicate that it was Tegeta that offered the said discount..
- 3.10. Eskom suffered a loss because it paid R19.68 per gigajoule for six months and later offered R15,50 per gigajoule for the same coal.
- 3.11. Eskom's SBTC gave Tegeta preferential treatment in that an urgent SBTC was scheduled and took place at 21:00, with the sole purpose of approving the R659 million prepayment to Tegeta.

3.12. Eskom and Tegeta officials contravened section 34(1) of the Prevention and Combating of Corrupt Activities Act

4. ANALYSIS OF SINGH'S FNB BANK ACCOUNTS

- 4.1. Singh indicated in his response that all the funds received in his bank account were received in lieu of his employment at Transnet and/or Eskom;
- 4.2. Singh may have received funds from other sources to service his personal lifestyle as there were minimal transactions in his bank account.

5. VARIOUS REQUESTS TO SINGH TO TRANSFER MONEY OR MAKE PAYMENTS

5.1. Singh claims that the emails were fake and he requested SAPS to investigate the perpetrators who hacked his emails.

6. THE LEAKING OF CONFIDENTIAL INFORMATION AT ESKOM

6.1. One of the allegations which we were required to investigate was the Eskom Executives may have leaked confidential information to third parties through an email styled inforportal1@zoho.com.

Koko

6.2. Koko stated that the infoportal1@zoho.com e-mail address was given to him by Daniels on the basis that he (Koko) had to use it for purposes of assisting her to provide information on a day to day to the Chairman (Dr Ngubane?) regarding topical operational aspects of Eskom business.

Ngubane

6.3. Ngubane denied any knowledge of an e-mail address styled infoportal1@zoho.com. This regardless of the fact that he forwarded several e-mails, including Eskom confidential information, to the said e-mail address.

Daniels

6.4. Daniels indicated that <u>infoportal1@zoho.com</u> belongs to Seleke.

Seleke

6.5. Seleke indicated that he does not have a relationship with the infoportal1@zoho.com email address.

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ROLE PLAYERS IDENTIFIED

Name	Description
Daniels	Susan Daniels: Former Head of Legal, Eskom
Fanucchi	MA Fanucchi: Former Board Member, Transnet
Forbes	Y Forbes: Former Board Member, Transnet
Foster	Tarryn Foster: Commercial Specialist, Transnet
Gama	Siyabonga Gama, Group Chief Executive, Transnet
Gazendam	HD Gezendam: Former Board Member, Transnet
Harris	Frikkie Harris: Electrical Engineer, Transnet
Howa	Nazeem Howa: Director, Oakbay Investments
Essa	Salim Essa: Director Elgasolve (Pty) Ltd

Name	Description
Khoza	Zethembe Khoza: former Chairperson of the Board; Eskom
Koko	Matshela Koko: former Group Executive Generation, Eskom
M Moola	Mohammed Moola: Senior Manager, Finance
Mabelane	Edwin Mabelane: former Acting Chief Procurement Officer; Group Commercial, Eskom
Mboweni	Vusi Mboweni: Senior General Manager; Primary Energy Division, Eskom
Minister Gigaba	Minister Malusi Gigaba: Former Minister, Department of Public Enterprises
Minister Gordhan	Minister Pravin Gordhan in his capacity as the then Minister of Finance
Molefe	Brian Molefe: Former Group Chief Executive, Transnet and Eskom
Moodley	Viloshnee Moodley: Chief Advisor, Coal Quality and Quantity, Eskom
Naidoo	Vironshini Naidoo: former Board Member, Eskom
Ngubane	Ben Ngubane : former Chairman, Eskom
Nteta	Ayanda Nteta: former Acting Head Fuel Sourcing, Eskom
Nyangwa	Bonny Nyangwa: Middle Manager Risk and Sustainability, Eskom
Ragavan	Ronica Ragavan: Director, Tegeta
Ramavhona	Charlotte Ramavhona: former Senior Manager Quality and Quantity, Eskom
Ravindra	Nath Ravindra: Oakbay CEO
Singh	Anoj Singh: Former Group Chief Financial Officer, Transnet and Eskom
van Alphen	Dr Chris van Alphen: Chief Advisor, Fuel, Eskom
Zingitwa	Lwanda Zingitwa: Chief of Staff, Eskom
Molatuli	Tumo Molatuli: SABS
Sebola	Tim Sebola: Acting GM: Commercial

Name	Description
Wolters	Frans Wolters: SABS
Madela	Wiseman Madela: SABS
Brown	Lynne Brown: Former Minster DPE

TERMINOLOGY USED

Term	Description
BBBEE	Broad-Based Black Economic Empowerment
BIS	Business Intelligent Searches
BOD	Board of Directors
CE	Chief Executive
CEO	Chief Executive Officer
CFO	Chief Financial Officer
COS	Chief of Staff
СРО	Chief Procurement Officer
DAF	Delegation of Authority Framework
DG	Director- General
DPCI	Directorate of Priority Crime Investigations
EXCO	Executive Committee
GCE	Group Chief Executive
GCSCO	Group Chief Supply Chain officer
GM	General Manager
JV	Joint Venture
NT	National Treasury
OD	Operational Division

Term	Description
PFMA	Public Finance Management Act, 1999 (Act 1 of 1999)
PED	Primary Energy Division
PPPFA	Preferential Procurement Policy Framework Act
RFP	Request for Proposal
SAPS	South African Police Service
SBTC	Eskom Special Board Tender Committee
SCS	Supply Chain Services
Mpumamanzi	Mpumamanzi: Coal Transportation
Sibonisiwe	Sibonisiwe (Pty) Ltd
SGS	SGS (Pty) Ltd
SOC	State Owned Company
VAT	Value Added Tax

EXHIBIT LISTS

Annexure No.	Description
E1	Copy of a unsolicited bid to supply coal to Eskom submitted by Goldridge in May 2014
E2	Copy of paragraph 3.4.5.8 and 2.5.6 of the Procurement and Supply Chain Management Policy
E3	Copy of the minutes of the meeting between Eskom and Goldridge held 9 May 2014
E4	Copy of the minutes of the meeting between Tegeta and Eskom held on 10 June 2014
E5	Copy of Tegeta response to Eskom dated 14 September 2016 "Tegeta acknowledging that mining was taking place very close to a stream"

Annexure No.	Description
E6	Copy of an email from Nyangwa to Mothapo dated 25 June 2014 "titled Brakfontein Technical Assessment"
E7	Copy of a report dated June 2014, addressed by Nyangwa to PED, Titled " <i>Tegeta, Brakfontein blend technical assessment</i> "
E8	Copy of an updated report dated 2 July 20114 addressed Mothapo to Ntshanga and copied to Thozama Gangi, Titled " <i>Brakfontein (Tegeta) Technical Evaluation Update"</i>
E9	Copy of a Technical Assessment report for evaluation purpose dated August 2014 addressed by Nyangwa to the PED titled, <i>Tegeta, Brakfontein S4L technical Assessment</i> '
E10	Copy of the minutes of the meeting between Eskom and Tegeta dated 23 September 2014
E11	Copy of a submission of Tegeta's commercial offer via an email dated 23 September 2014 addressed by Mudaliar to Nteta
E12	Copy of a letter dated 23 September 2014 addressed by Tegeta to Eskom titled " Commercial offer for supply of coal to Eskom"
E13	Copy of an email dated 6 October 2014 addressed to Nteta by Nath and copied to Mashego, Mudaliar, Mothapo and Mishra titled "RE: Commercial Offer – 4 upper Seam – Tegeta Exploration.
E14	Copy of an email dated 9 October 2014 addressed to Nath by Nteta and copied to Mashego, Mothapo and Mishra titled "Template Cost Breakdown Sample"
E15	Copy of an email dated 6 November 2014 addressed by Nath and Nteta and copied to Mudaliar, Mashego, Mothapo and Adity, titled " <i>RE: Template cost breakdown and Sample</i> "
E16	Copy an email dated 7 November 2014 responding to the email dated 6 November 2014
E17	Copy of a CSA template attached to the email dated 7 November 2014

Annexure No.	Description
E18	Copy of an email dated 27 November 2014 addressed by Mothapo to Nyangwa and copied Gangi, Nteta and Dr Van Alphen, titled "Brakfontein S4U and Blend Analysis feedback"
E19	Copy of an email dated 13 January 2015 from by Mothapo to Nteta and copied to Gangi, Nyangwa and Dr Van Alphen titled "RE: Brakfontein S4U and Blend analysis feedback"
E20	Copy of an email dated 14 January 2015 from Dr Van Alphen to Mothapo
E21	Copy of an email dated 15 January 2015 addressed by Nteta to Mothapo and where Gangi was copied, titled "RE: Brakfontein S4U and Blend analysis feedback"
E22	Copy of an email dated 16 January 2015 from Mothapo to Nteta
E23	Copy of the minutes of the t between Eskom and Tegeta held on 23 January 2015
E24	Copy of minutes of a meeting held between Eskom and Tegeta on 30 January 2015
E25	Copy RT & D's Technical Memorandum titled "Technical Evaluation of Brakfontein Contract" dated 28 June 2018, authored by Dr Van Alphen and reviewed by Nyangwa
E26	Copy of Tegeta water use licence Number: 04/B20E/ABCGIJ/2994
E27	Copy of a compliance Audit report dated 20 September 2016
E28	Copy of Tegeta response to Fundudzi second draft report
E29	Copy of Eskom's email response to Fundudzi's request on clarity relating to the audits
E30	copy of a letter dated 30 January 2015 addressed to Nath by Bester titled "Coal Supply Offer - Tegeta (Brakfontein Colliery)"
E31	Copy of an email dated 3 February 2015 addressed by Nteta to Mhlophe and copied to Nath, Mashego, Portia Ndlovu ("Ndlovu"), Mudaliar titled "Vendor Registration"

Annexure No.	Description
E32	Copy of an email sent on 3 February 2015, from Nteta to Luyanda Mlonzi (Mlonzi") an Eskom official requesting her to do a vendor registration for Tegeta
E33	Copy of an email dated 5 February 2015 addressed by Mlonzi to Nteta titled "Re: Vendor Registration"
E34	Copy of an email by Nteta responding to the above enquiry, through an email dated 5 February 2015 titled "Re: <i>Vendor Registration</i> ",
E35	Copy of an email dated 9 February 2015 addressed by Nath to Mlonzi and copied to Nteta and Mudaliar, titled "RE: Vendor Registration – Tegeta Exploration".
E36	Copy of an email dated 10 March 2015 addressed by Modiehi Mapela ("Mapela") to Nath and copied to Nteta, titled " <i>Tegeta Exploration And Resources</i> "
E37	Copy of a letter, attached to Nath's email, dated 3 February 2015 addressed to Bester titled "Coal Supply Offer - Tegeta (Brakfontein Colliery"
E38	Copy of a letter dated 12 February 2015 addressed to Nath by Bester titled "Coal Supply Offer – Tegeta (Brakfontein Colliery And Extension)"
E39	Copy of Tegeta response to Eskom's letter of 12 February 2015 through an email dated 13 February 2015 addressed to Nteta by Nath titled "Re: 722983 Coal Supply Offer - Tegeta (Brakfontein Colliery And Extension)
E40	Copy of an email dated 13 February 2015 addressed by Nteta to Nath, responding to the above email, titled "Re: 722983 Coal Supply Offer - Tegeta (Brakfontein Colliery And Extension)"
E41	Copy of Nteta responded to Nath's email of 13 February 2015, through an email dated 16 February 2015 titled "Re: 722983 Coal Supply Offer - Tegeta (Brakfontein Colliery And Extension)
E42	Copy of a briefing note dated 10 March 2015adressed by Bester to Mboweni "CSA with Tegeta Exploration and Resources".
E43	Coy of an email sent by Nath and Mudaliar and copied Mashego sent 9 march 2015 at 19:08pm

Annexure No.	Description
E44	Copy of a Technical Memorandum dated 12 March 2015 addressed by Dr. van Alphen to the PED referenced "RT&D FM 209-21 Rev.1" and titled "Brakfontein S4L Coal Assessment"
E45	Copy of an email dated 23 March 2015 addressed by Nteta to Mothapo and copied to Mashego, titled "Feedback on Full Combustion Test - Brakfontein Colliery".
E46	Copy of CSA between Tegeta and Eskom concluded on 10 March 2015
E47	Copy of an email from Nyangwa to the PED "Tegeta, Brakfontein March 2015 Blend Technical Assessment", attached to it a Technical Assessment Report dated April 2015.
E48	Copy of RT &D's Technical Memorandum in respect of Tegeta Coal dated 17 April 2015 addressed by Dr Van Alphen to PED
E49	Copy of a Technical Memorandum dated 18 June 2015 addressed by Dr Van Alphen to the PED referenced "RT&D FM 209-21 Rev.1" and titled "Brakfontein Borehole Assessment"
E50	Copy of Coal Offloading Reconciliation document prepared by Majuba that the first delivery from Brakfontein Colliery was made on 7 April 2015.
E51	Copies of minutes of the monthly Technical Liaison Meetings held between 13 May 2015 and 21 September 2016.
E52	Copy of Majuba Power Station's coal analysis report in respect of coal analysis results performed on 30 May 2015, titled "Coal Analysis From Unit One Mill Feeders"
E53	Unsigned copy of Sibonisiwe's coal analysis report dated 28 August 2015 titled "Test Report - Coal Analysis" with reference "1509-153"
E54	Copy of an undated and unsigned SGS's coal analysis report titled "TEST REPORT" and referenced "2015/15-8"
E55	Copy of M Koko's response to Fundudzi questions
E56	Copy of Van der Riet's response

Annexure No.	Description
E57	Copy of an email dated 26 August 2015 from Ramavhona to Molatuli and copied to Ridwaan Asmal ("Asmal") titled "Samples to be delivered by Morne from Natural sampling"
E58	Copy of an email from Riet to Koko sent on 26 August 2015
E59	Copy of an email from Riet to Koko and Copied Mboweni, Dan Mashigo, Petros Mazibuko, van der Riet and Ramavhona with attached letter to Brakfontein Colliery
E60	Copy of Mpumamanzi observers report
E61	Copy of Mpumamanzi's response
E62	Three copies of delivery notes dated 29 August 2015 prepared by Mahlangu on behalf of Mpumamanzi
E63	Copy of a signed SABS's coal analysis report dated 30 August 2015, titled "Coal Analysis"
E64	Copy of an email dated 30 August 2015 addressed to Koko by Van Der Riet
E65	Copy of a letter of suspension dated 31 August 2015 issued by Koko to Tegeta
E66	Copy of a letter dated 5 September 2015 from Koko notifying Tegeta of the upliftment of the suspension
E67	Copy of a letter addressed from Nath to Nteta dated 28 August 2015, titled <i>Coal Supply Offer</i> "
E68	Copy of a letter dated 31 August 2015 addressed by Ramavhona to Frans Wolters ("Wolters") titled "Transport And Analysis Services Contract Between The Sabs And Eskom: Transport And Analysis Of Eskom Contractual Samples From Tegeta Brakfontein Colliery – Ref: 724828"
E69	Copy of Nteta's e-mail sent on 14 September 2016 at 9:30, attached was a document titled, <i>NT - Reply clean doc</i> " and contains a list of responses to National Treasury's investigation at Eskom at the time

Annexure No.	Description		
E70	Copy of letter from Nteta addressed to Business Rescue Practitioners Marsden and Van Den Steen, dated 30 March 2016.		
E71	Copy of CSA between OCH and Eskom with effective date of 1993 and expiring December 2018		
E72	Copy of a submission e-mailed to Bester and Nteta by Jithin Mohan"		
E73	Copy of Nteta's response to Marsden's meeting request on 14 August 2015		
E72	Copy of an e-mail sent to Molefe by Bronwyn de Villiers on 16 October 2015 and its attached letter		
E73	Copy of an E-mail communication between Nteta and Mohan dated 13 April 2016		
E74	Copy of the minutes of Sustainable Hendrina Coal Supply meeting dated 24 November 2015		
E75	Copy of an agreement signed between Eskom and Tegeta regarding the pre- purchase of coal from Optimum Coal Pty Ltd		
E76	Copy of Daniels' email sent to Zethembe Khoza on 8 April 2016 at 16:37		
E77	Copy of an email sent on 11 April 2016 at 16:27 by Ravindra Nath ("Nath") sent to Nteta with the subject matter reflected as draft		
E78	Copy of an email from Nteta on 11 April 2016 at 07:22 to Koko, Mabelane and Mboweni		
E79	Copy of Extract of the minutes of the Special Board tender Committee meeting held by teleconference on 11 April 2016 at 21:00		
E80	Copy of an email by Nteta to agesan_rajagopaul@mckinsey.com sent at 18:04		
E81	Copy of a pro forma Invoice issued by Tegeta to Eskom relating to prepayment of R659 558 079.00		

Annexure No.	Description		
E82	Copy of an email by Ronica Ragavan, one of Tegeta Directors sent an e-mail to Anoj Singh and Nath with the subject reflected as "Tegeta shareholders resolution"		
E83	Copy of an email sent to Singh's email from an e-mail address reflected as <u>Brian</u> <u>Molefe mdprivate-mail@gmail.com on 3 November 2015 at 13:54</u>		
E84	Copy of email sent by Koko to the e-mail address <u>infoportal1@zoho.com</u> . on 20 July 2015 at 09:47		
E85	Copy of Ngubane's response		



1. INTRODUCTION

- 1.1. National Treasury issued a request for quotation with reference number RFQ 026-2017, for the appointment of a forensic audit firm to investigate issues raised on Eskom-Tegeta Exploration and Resources (Pty) Ltd ("Tegeta") report as well as the National Treasury's preliminary investigations at Transnet.
- 1.2. National Treasury conducted a preliminary investigation into various allegations at both Eskom and Transnet. Based on National Treasury's preliminary findings, they sought to appoint a forensic audit investigation firm to conduct a thorough and detailed investigation into the issues raised at the two state owned companies.
- 1.3. Fundudzi Forensic Services was appointed to conduct investigations into allegations at Transnet and Eskom regarding the Locomotives tender and Tegeta, respectively.
- 1.4. We have issued four reports (four chapters) of our investigations as follows:
 - 1.4.1. Chapter 1: Acquisition of 95, 100 and 1064 locomotives for Transnet Freight Rail;
 - 1.4.2. Chapter 2: Appointment of McKinsey, Regiments and Trillian at Eskom and Transnet
 - 1.4.3. Chapter 3: Investigations relating to Tegeta
- 1.5. This report (Chapter three of our investigation) is privileged and confidential and was prepared solely for purpose of reporting our findings to National Treasury and should therefore not be utilised for any other purpose without our prior written consent.

BACKGROUND TO THE INVESTIGATION

- 1.6. It is our understanding based on National Treasury report that during 2013, there were negotiations with Eskom regarding the supply of coal to Eskom. We further understand that after the negotiations, Tegeta subsequently submitted a proposal to Eskom during September 2014. We further understand that after the proposal was submitted Eskom entered into a Coal Supply Agreement ("CSA") with Tegeta.
- 1.7. The issues raised on the Eskom-Tegeta contract relate to Eskom's processes followed in the appointment of Tegeta for the supply of coal for a period of ten years.
- 1.8. National Treasury further indicated that there could be issues of fruitless and wasteful expenditure relating to the CSA which may include *inter alia* the advance payment of funds to Tegeta. Linked to the advance payment, issues were raised whether there were possibilities of corruption on the Eskom officials involved in the said payment. In this regard,

- it was indicated that two of Eskom's Officials, Anoj Singh, Chief Financial Officer ("Singh") and Matshela Koko, Executive Director of Generation ("Koko") undertook trips to Dubai, which trips were allegedly paid for by the Gupta Family.
- 1.9. National Treasury further indicated that the investigation should establish the role played by the former Chief Executive Officer of Eskom, Mr Brain Molefe ("Molefe") regarding CSA entered into between Eskom and Tegeta.

DETAILED ALLEGATIONS RELATING TO ESKOM

- 1.10. We understand that the scope of our investigation will be to independently investigate the following:
 - 1.10.1. Investigate why Eskom gave and continued to give preferential treatment to Tegeta Exploration and Resources (Pty) Ltd ("Tegeta") by not enforcing key conditions of the CSA and whether it amounted to the abuse of position of authority, a breach of trust; or a violation of a legal duty or a set of rules in terms of the Prevention an Combating of Corrupt Activities Act;
 - 1.10.2. Investigate whether Eskom acted negligently by not enforcing key conditions of the CSA particularly the Conditions Precedence of the Agreement and whether it amounted to the abuse of a position of authority, a breach of trust; or the violation of legal duty or a set of rules in terms of PRECCA;
 - 1.10.3. Investigate why Eskom failed to take effective and appropriate steps to prevent fruitless and wasteful expenditure;
 - 1.10.4. Investigate why Eskom concluded a 10 year contract expiring in 2025 disregarding the terms and conditions of the offer agreed on 30 January 2015 and without the approval of the Board Tender Committee and whether it amounted to the abuse of a position of authority, a breach of trust; or the violation of a legal duty or a set of rules in terms of PRECCA;
 - 1.10.5. Investigate why Eskom through its former CEO gave an assurance that Brakfontein Colliery supplied and continues to supply coal that conforms to the CSA despite ample evidence that there was non-compliance and whether it amounted to the abuse of a position of authority, a breach of trust; or the violation of a legal duty or a set of rules in terms of the Prevention and Combating of Corrupt Activities Act ("PRECCA");
 - 1.10.6. Investigate whether the Chief Financial Officer, Anoj Singh ("Singh") and Matshela Koko ("Koko") acted negligently when implementing the directives of the Board

- Tender Committee and whether it amounted to the abuse of a position of authority, a breach of trust; or the violation of a legal duty or a set of rules in terms of the PRECCA, analyse and identify the employee funding sources;
- 1.10.7. Investigate whether the directives of the Eskom Board Tender Committee ("BTC") relating to advance payment were unlawful and whether it amounted to the abuse of a position of authority, a breach of trust or violation of legal duty or set of rules in terms of PRECCA;
- 1.10.8. Investigate whether the Singh and Koko accepted Dubai trips paid by the Guptas as alleged by the #GupaLeaks and whether it amounted to the abuse of a position of authority, a breach of trust or violation of legal duty or set of rules in terms of PRECCA;
- 1.10.9. Investigate whether Koko leaked any confidential information as alleged by the #GupaLeaks and whether it amounts to abuse of a position of authority, a breach of trust or violation of legal duty or set of rules in terms of PRECCA;
- 1.10.10. Investigate whether Singh facilitated the appointment of suppliers for the locomotive tender in Transnet and whether such facilitation amount to abuse of a position of authority, a breach of trust or violation of legal duty or set of rules in terms of PRECCA;
- 1.10.11. Investigate whether Ayanda Nteta ("Nteta") or any other Eskom changed the terms and conditions of the CSA as alleged by the #GupaLeaks and whether their action amounted to the abuse of a position of authority, a breach of trust, or the violation of a legal duty or a set of rules in terms of PRECCA;
- 1.10.12. Determine fruitless and wasteful expenditure arising out of payment made to Tegeta for coal from Brakfontein and Brakfontein Extension;
- 1.10.13. Determine fruitless and wasteful expenditure arising out of payments made to Tegeta for coal from OCM;
- 1.10.14. Determine interest due and payable arising out of a loan given to Tegeta for coal from OCM;
- 1.10.15. Establish whether Eskom management prejudiced Glencore by refusing to sign the negotiated CSA giving advantage to Tegeta the abuse of position of authority, a breach of trust, or the violation of a legal duty or a set of rules in terms of PRECCA;

- 1.10.16. Establish whether Eskom management prejudiced Glencore by fining OCM R2,1 billion for supplying poor quality coal and whether it amounted to the abuse of a position of authority, a breach of trust, or the violation of a legal duty or a set of rules in terms of PRECCA;
- 1.10.17. Establish whether the OCM trust funds were utilised for other purposes after the Tegeta acquired OCM and whether it amounted to the abuse of a position of authority, a breach of trust, or the violation of a legal duty or a set of rules in terms of PRECCA;
- 1.10.18. Establish whether Eskom was not prejudiced by the reduction of R2,1 billion penalty imposed for supplying poor quality coal and whether it amounted to the abuse of a position of authority, a breach of trust, or the violation of a legal duty or a set of rules in terms of PRECCA;
- 1.10.19. Investigate whether modifications of Coal Supply Agreements with Tegeta Exploration and Resources (Pty) Ltd prejudiced Eskom and whether it amounted to the abuse of a position of authority, a breach of trust, or the violation of a legal duty or a set of rules in terms of PRECCA;
- 1.10.20. Establish circumstances leading to Singh giving R1,68 billion guarantee to Tegeta through Absa to buy OCM from Glencore;
- 1.10.21. Establish the circumstances leading to the Guptas paying for Singh and Koko's Dubai's trips and whether it amounted to the abuse of a position of authority, a breach of trust, or the violation of a legal duty or set of rules in terms of PRECCA;
- 1.10.22. Establish whether Tegeta or its associates influenced Singh, Koko or any other person in any organ of state to improperly influence certain decisions and whether it amounted to the abuse of a position of authority, a breach of trust, or the violation of a legal duty or set of rules in terms of PRECCA; and
- 1.10.23. Establish whether Tegeta or its associates received any confidential information from Singh, Koko or any other person in any organ of state to improperly influence certain decisions and whether it amounted to the abuse of a position of authority, a breach of trust, or the violation of a legal duty or set of rules in terms of PRECCA.

2. LIMITATIONS

2.1. Our mandate was limited to investigations relating to compliance issues at both Transnet and Eskom. Issues relating to any criminal investigations, where identified, will be highlighted and referred to the relevant state organs for further investigations.

- 2.2. The majority of the critical role players at both State Owned Companies either resigned or were suspended or dismissed prior to or during our investigations. Where possible, we consulted with some of the said individuals and their versions are contained in the report.
- 2.3. This is a final report based on documentation provided to us and consultation conducted to date.
- 2.4. There may be documentation that was not made available to us at the time of submission of this report. Fundudzi Forensic Services reserves the right to consider the said documentation if and when it becomes available as such documentation may have an impact on our findings and we therefore reserve our right to amend our report accordingly.
- 2.5. We issued questions to various individuals, who in our view may have information relevant to the investigation. As at date of this report we had not received responses from some of the individuals. Where relevant, we have included responses from the individuals referred to in the report. The questions and the relevant responses are attached in this final report.

3. SCOPE AND METHODOLOGY

3.1. The scope and methodology performed during the course of our investigation is discussed below.

SCOPE

- 3.2. The objective of our appointment was to conduct investigations into alleged transgressions identified by National Treasury.
- 3.3. Based on the terms of reference provided to us by National Treasury, we understand that the scope of the forensic investigation will include *inter alia* the following:
 - 3.3.1. Assess and conduct an objective and independent investigation of all allegations involving Tegeta and three locomotive tenders at Eskom and Transnet, respectively;
 - 3.3.2. Investigate allegations of irregularities in the appointment and management of work done by the following companies both at Eskom and Transnet:
 - 3.3.2.1. McKinsey and Company South Africa;
 - 3.3.2.2. Regiments; and
 - 3.3.2.3. Trillian.
 - 3.3.3. Enable the process of conducting further investigations, detection and prosecution, in terms of prevailing legislation and procedures;

- 3.3.4. Refer any matter to the National Treasury if it is assessed and found not to be a forensic matter;
- 3.3.5. Safeguard evidence uplifted and/or confiscated, through any processes including evidence collected from any computers and/or IT systems;
- 3.3.6. Issue reports arising from the forensic investigation to enable the Shareholder to effectively manage incidents and take appropriate steps to prevent recurrences thereof;
- 3.3.7. Refer matters of a criminal nature, after consultation with the National Treasury, to the South African Police Services (SAPS) for further investigation;
- 3.3.8. Identify weaknesses and gaps within the internal control environment;
- 3.3.9. Communicate risks identified during the investigation to National Treasury;
- 3.3.10. Conduct investigation/s and/or review of any other issues that may be pertinent, relevant and/or critical to the forensic investigation; and
- 3.3.11. Provide National Treasury with a report on our factual findings which will include our conclusions and recommendations.

METHODOLOGY

3.4. The nature of the assignment included consultation with various parties, review of documentation, background intelligence services and other investigative procedures deemed necessary to address the scope of our mandate as reflected in paragraph 3 above.

General procedures performed

3.5. In order to address the objectives mentioned above, we conducted the following procedures:

Consultations conducted

3.6. The investigation team consulted with the following role players:

Eskom

- 3.6.1. Andrew Dick;
- 3.6.2. Ayanda Nteta;
- 3.6.3. Bonny Nyangwa;
- 3.6.4. Buyisiwe Maseko;
- 3.6.5. Charlotte Ramavhona;

- 3.6.6. Dr Chris van Alphen;
- 3.6.7. Frans Wolters;
- 3.6.8. Gert Opperman;
- 3.6.9. Happing Masuku;
- 3.6.10. Joseph Leotlela;
- 3.6.11. Kwenzokuhle Magwaza;
- 3.6.12. Laurence Greyvenstein;
- 3.6.13. Leonard Chotte;
- 3.6.14. Linda Makhubela;
- 3.6.15. Lwanda Zingitwa;
- 3.6.16. Mabatho Mothapo;
- 3.6.17. Mark Van Der Riet;
- 3.6.18. Markus Jonker;
- 3.6.19. Mike Kgapola;
- 3.6.20. Mlungisi Mahlangu;
- 3.6.21. Molefi Nkhabu;
- 3.6.22. Piers Marsden;
- 3.6.23. Thusi Motsepe;
- 3.6.24. Tony Bowers;
- 3.6.25. Tshediso Matona;
- 3.6.26. Tshwaro Petso;
- 3.6.27. Tumo Molatuli;
- 3.6.28. Viloshnee Moodley;
- 3.6.29. Vusi Mboweni;
- 3.6.30. Tim Sebola;
- 3.6.31. Wadzanai Matowanyika;
- 3.6.32. Willem Pieterse from SGS; and

3.6.33. Wiseman Madela.

Review of documentation

3.7. We reviewed, *inter alia* the following documentation provided to us by individuals we consulted with and members of staff at Eskom:

Media searches

3.8. We conducted and reviewed media searches on the following individuals and entities

Individuals relating to Eskom:

- 3.8.1. Anoj Singh;
- 3.8.2. Brian Molefe;
- 3.8.3. Ben Ngubane;
- 3.8.4. Matshela Koko;
- 3.8.5. Ayanda Nteta;
- 3.8.6. Susan Daniels.

Entities relating to Eskom:

- 3.8.7. Glencore;
- 3.8.8. McKinsey and Company South Africa;
- 3.8.9. Optimum Coal Holding;
- 3.8.10. Optimum Coal Mine;
- 3.8.11. Oakbay;
- 3.8.12. Tegeta exploration and Resources (Pty) Ltd;
- 3.8.13. Trillian Management Consulting (Pty) Ltd.

Computer Imaging

- 3.9. We imaged computers and apple devices belonging to the following Eskom individuals:
 - 3.9.1. Anoj Singh Eskom only;
 - 3.9.2. Ayanda Nteta;
 - 3.9.3. Brian Molefe Eskom only;
 - 3.9.4. Matshela Koko; and

3.9.5. Susan Daniels.

4. LEGISLATION, POLICIES AND PROCEDURES

4.1. We received and reviewed the policies and prescripts reflected below for the purpose of our investigation.

4.2. The Constitution of the Republic of South Africa Act 108 of 1996 ("The Constitution")

In terms of section 217 of Act 108 of 1996 ("The Constitution"), "when an organ of state in the national or local sphere of government or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective".

4.3. Public Finance Management Act

4.3.1. Section 51 - General responsibilities of accounting authorities, provides that:

ss(1) (b) (ii) An accounting authority for a public entity must take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity.

4.3.2. Section 54 Information to be submitted by accounting authorities , provides that"

"An official in a public entity —

- ss(2) (d) Before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in writing inform the relevant treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction:
 - (e) acquisition or disposal of a significant asset"

4.3.3. Section 57 Responsibility of other officials

(c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;

4.3.4. Section 83 Financial misconduct by accounting authorities and officials of public entities

ss (1) The accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or

Negligently:

- (a) fails to comply with a requirement of section 50, 51, 52, 53, 54 or 55; or
- (b) makes or permits an irregular expenditure or a fruitless and wasteful expenditure.
- ss (2) If the accounting authority is a board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority.
- ss(3) An official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.
- ss(4) Financial misconduct is a ground for dismissal or suspension of, or other sanction against, a member or person referred to in subsection (2) or (3) despite any other legislation.

4.3.5. Section 84 - Applicable legal regime for disciplinary proceedings

A charge of financial misconduct against an accounting officer or official referred to in section 81 or 83, or an accounting authority or a member of an accounting authority or an official referred to in section 82, must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that accounting officer or authority, or member or official, and any regulations prescribed by the Minister in terms of section 85.

4.3.6. Section 86 Offences and penalties

- (1) An accounting officer is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting officer wilfully or in a grossly negligent way fails to comply with a provision of section 38, 39 or 40.
- (2) An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section 50, 51 or 55.

4.4. Transnet Group Limits of Authority

Section 5.1 Capital Expenditure

Capital expenditure may only be authorised if the project has been so approved by CAPIC or the relevant divisional CAPIC in accordance with the limits set out in this Delegation of Authority Framework and capital funds have been allocated in the annual Budget of the Company"

Section 5.1.1 CAPEX in approved budget/Corporate Plan: To commence projects

"If the set limit (currently 1% of total assets) is exceeded then the Board to consider and recommend to Shareholder Minister for approval. Approval limits are per individual project, reported on a monthly basis to Group Financial Planning".

Section 5.1.3 Increase in Estimate Total Cost (ETC) of Existing/Approved Projects

"Increase in Estimated Total Cost (ETC) of Existing/Approved Projects...up to but not exceeding R500m" must be approved by Group EXCO/GCE".

4.5. Transnet Delegation of Authority Framework approved by the Board on 29 August 2012 effective from 1 September 2012

Section 5.1.3 Increase in Total Estimated Cost (ETC) of Existing/Approved Projects

"Increase in ETC of projects already approved by the Shareholder Minister must be reported to the Shareholder Minister if the increase is in excess of 15%"

4.6. National Treasury Instruction and Practice Notes

Instruction Note

"Only bids that achieve the minimum stipulated threshold for local production and content may be evaluated further. The evaluation must be done in accordance with 80/20 or 90/10 preference point system prescribed in Preferred Procurement Regulations, 2011."

4.7. PRECCA

Section 3 of PRECCA provides that any person who, directly or indirectly:

- "(a) Accepts or agree or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
- (a) Gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person,

In order to act, personally or by influencing another person so to act, in a manner-

- (i) That amounts to the -
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
 - (bb) misuse or selling of information or material acquired in the course of the,

Exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

- (ii) That amounts to-
 - (aa) the abuse of a position of authority;
 - (bb) a breach of trust; or
 - (cc) the violation of a legal duty or a set of rules;
- (iii) Designed to achieve an unjustified result; or
- (iv) That amounts to any other unauthorised or improper inducement to or not to do anything,
- (v) is guilty of the offence of corruption.

Section 34 (1) (b) of PRECCA provides that any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000.00 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official.

Section 34 (2) of PRECCA, subject to the provisions of section 37(2), any person who fails to comply with subsection (1), is guilty of an offence.

Basic Value and principles governing public administration".

4.8. National Water Act

- 4.8.1. In terms of section 4 (4) (b) and section 4 (4) (f) of the NWA: Any entitlement granted to a person by or under the NWA replaces any right to use water which that person might otherwise have been able to enjoy or enforces under any other law to obstruct or divert a flow of water and to construct, operate any water work.
- 4.8.2. Section 21 (a) and 21 (c) of the NWA, provide that water use includes taking water from a water resource and impeding or diverting the flow of water in a watercourse.
- 4.8.3. According to section 151 (1) (a) of the NWA "No person may use water otherwise than as permitted under this Act"
- 4.8.4. Section 151 (2) provides that any person who uses water without a required water use licence is guilty of an offence and liable, on the 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 ten years or to both a fine and such imprisonment.

4.9. ESKOM AND TEGETA COAL QUALITY MANAGEMENT PROCEDURE

PARAGRAPH 13 OF THE PROCEDURE - PRE-CERTIFIED STOCKPILE MANAGEMENT

- 4.9.1. Prior to delivery to Eskom, the supplier shall ensure that coal contained in each separate stockpile is sampled and pre-certified to meet the quality specification for contract coal and is identified as such in accordance with the processes and procedures set out in this document.
- 4.9.2. The capacity of each Pre-certified Stockpile shall be approximately x 1000 (xxx thousand) tons. The capacity of the pre-certified stockpile may be increased subject to Eskom's agreement as specified in the Agreement.
- 4.9.3. The stockpile numbers shall be recorded on the weigh bill slips at the mine and the Power Station.
- 4.9.4. All stockpiles shall be identified with a fixed signboard indicating the stockpile status as follows:

Green		In Specification	Suitable
Yellow	1	Awaiting Results	Do not Load
Red		Out of Specification	Not Suitable to load (discard)

- 4.9.5. The Supplier shall ensure that the identification of stockpiles remain as agreed with Eskom, any deviation shall mean that the stockpile has not been pre-certified.
- 4.9.6. No stockpile that has qualities below the contractual specification, as tabled in the Agreement, or has violated the sampling and stockpile management processes as described in this document shall be dispatched to Eskom.
- 4.9.7. The control sheet linking the pre-certified stockpile qualities and the weighbridge tonnages shall be signed off by both parties for invoices verification.

5. FINDINGS

5.1. The findings discussed below are based on various consultations and review of documentation made available to us during the course of our investigation.

- 5.2. In line with Fundudzi Forensic Services practice, due care was taken to confirm the factual accuracy of the findings in this report. This includes consultations with individuals who in our opinion had information relevant for our investigation.
- 5.3. The findings in this report should be addressed decisively by National Treasury. We believe that corrective action limited to the specific individual findings alone would likely address symptoms but not the underlying causes. The approach carries the risk of deficiencies recurring in the future. It is therefore imperative that the underlying causes contributing to the deficiencies be properly understood and addressed as part of the corrective actions to be taken in response to our report.

5.4. Background

- 5.4.1. It is our understanding that following allegations of irregularities levelled against certain companies and individuals relating to contracts at Eskom and Transnet, National Treasury conducted an investigation to determine the veracity of the said allegations. We further understand that National Treasury produced a report of their factual findings at the end of the said investigations.
- 5.4.2. Part of the recommendations of National Treasury's report was that a forensic investigation company be appointed to conduct a full investigation on the said allegations.
- 5.4.3. The investigations which National Treasury sought to be conducted related to the following:

6. ESKOM RELATED INVESTIGATIONS

- 6.1. CSA between Eskom and Tegeta;
- 6.2. Tegeta Prepayment;
- 6.3. Analysis of Singh's bank accounts;
- 6.4. Various requests for Singh to transfer money or make payment;
- 6.5. Leaking of confidential information at Eskom
- 6.6. Allegations of fruitless and wasteful expenditure relating to the CSA;

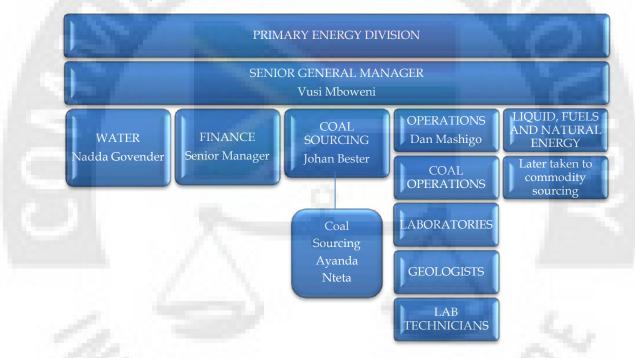
6.7. INTRODUCTION

6.7.1. On 10 March 2015 Eskom concluded a Coal Supply Agreement ("CSA") with Tegeta Exploration and Resources ("Tegeta") for the supply of a total quantity of 13 950 000 tons of a blend of seam 4 lower and seam 4 upper coal, from Tegeta's

- Brakfontein Colliery. The value of the said CSA was R3.7 billion for a period of ten (10) years commencing on 1 April 2015 to 30 September 2025.
- 6.7.2. There were various allegations made to the effect that the CSA entered between Eskom and Tegeta was not in compliance with Eskom's procurement policy as well as the relevant legislation. Below we discuss our findings, conclusions and recommendations relating to Eskom and Tegeta's CSA.
- 6.7.3. National Treasury conducted preliminary investigations into allegations of irregularities at Eskom. National Treasury investigated inter alia the following allegations:
 - 6.7.3.1. Procurement processes followed in the appointment of Tegeta for the supply of coal from Brakfontein Colliery and Brakfontein Colliery Extension to Majuba power station;
 - 6.7.3.2. The prepayment of R659 million made to Tegeta; and
 - 6.7.3.3. Procurement processes followed in the appointment of McKinsey and Trillian to provide services at Eskom.
- 6.7.4. National Treasury appointed Fundudzi Forensic Services to conduct a detailed investigation relating to the allegations above.
- 6.7.5. Our findings are based on the review of the relevant documentation obtained and consultations conducted. For ease of reference, we set out our findings under the following sections:
 - 6.7.5.1. Eskom's Primary Energy Division ("PED");
 - 6.7.5.2. Procurement process followed;
 - 6.7.5.3. Evaluation of the Tegeta unsolicited bid;
 - 6.7.5.4. Water use license;
 - 6.7.5.5. The Coal Supply Agreement ("CSA") between Eskom and Tegeta;
 - 6.7.5.6. Coal deliveries from Brakfontein mine;
 - 6.7.5.7. Review of coal quality from Brakfontein mine; and
 - 6.7.5.8. The prepayment made to Tegeta.

6.8. ESKOM'S PRIMARY ENERGY DIVISION

- 6.8.1. Eskom's Primary Energy Division's ("PED") critical responsibilities include inter alia Coal Sourcing which falls under the Coal Operations division ("Coal Operations").
- 6.8.2. Within Coal Operations there is a division known as Fuel Sourcing responsible for coal procurement. Once coal has been procured and the contracts signed, the said contracts are handed over to Coal Operations for management.
- 6.8.3. Coal Operations is responsible for managing coal contracts. By way of example, Coal Operations ensures that the coal procured and delivered at the relevant power stations meets the specifications for the said power stations as per the coal contracts signed between Eskom and the service providers. Below is an organogram of Eskom's PED as at the time of the conclusion of the CSA between Tegeta and Eskom.



- 6.8.4. During our consultations with Vusi Mboweni ("Mboweni") he stated that during July 2014, Matshela Koko ("Koko") approached and requested him to occupy the position of an Acting Divisional Executive within the PED.
- 6.8.5. Mboweni further indicated that during the said period *i.e.* July 2014, he was a Senior General Manager responsible for overseeing five (5) power stations. Mboweni stated that he informed Koko that he could only consider the said role

- once Koko had discussed it with his, (Mboweni's) superior. According to Mboweni, Koko indicated to him that he had already discussed the said request with his superior.
- 6.8.6. Mboweni indicated that pursuant to his discussion with Koko, he received a phone call from Collin Matjila ("Matjila") the then Acting Group Chief Executive ("GCE") who indicated to him that he, Mboweni, should start occupying the role of Acting Divisional Executive.
- 6.8.7. Mboweni further indicated that he informed Matjila that his current state of health would not allow him to occupy the said executive position. According to Mboweni, Matjila indicated that, despite Mboweni's ill health status, he should proceed to occupy the said executive role.
- 6.8.8. Mboweni stated he accepted the offer and joined Eskom's PED as an Acting Executive in August 2014. He further indicated that Johan Bester ("Bester') reported to him and Ayanda Nteta ("Nteta") reported to Bester.

The Mandate to negotiate and conclude the Tegeta CSA

- 6.8.9. There were various meetings attended by Nteta and other Eskom employees including *inter alia* Bester and Mothapo where the CSA between Tegeta and Eskom was negotiated and concluded.
- 6.8.10. Mboweni was the Divisional Executive at the time the Tegeta CSA was concluded. Mboweni indicated that he was side-lined from the negotiations leading to the conclusion of the Tegeta CSA as Koko and Matjila perceived him to be a hindrance in finalising the said CSA.
- 6.8.11. Mboweni further indicated that part of Koko's and Matjila's attempts to persuade him to conclude the Tegeta CSA was to arrange meetings between himself and various parties associated with the Gupta family.
- 6.8.12. Mboweni, in his capacity as the Senior General Manager, PED, was authorised by the Medium-Term Mandate to negotiate and conclude CSA agreements. According to Mboweni, he did not negotiate the CSA.
- 6.8.13. Mboweni indicated that he was aware that Nteta negotiated and concluded the Tegeta CSA. He however indicated that he did not delegate, her (Nteta) to negotiate and conclude the said Tegeta CSA.

- 6.8.14. We determined that during the conclusion of the CSA between Eskom and Tegeta, Nteta also referred to by her previous surname "Ntshanga" was a Senior Manager: Coal Sourcing, in the Primary Energy Division reporting to Bester the latter being the Senior Manager, PED. Bester in turn reported to Mboweni who was Senior General Manager PED.
- 6.8.15. During our consultations with Nteta on 30 April 2018, she indicated that her position was that of Senior General Manager, PED. We understand that after the conclusion of the Tegeta CSA, Nteta got promoted from Senior Manager Coal Sourcing, and skipped the level of Senior Manager, PED to be appointed Senior General Manager, PED.
- 6.8.16. It is our understanding that Eskom did not follow the required processes to fill the position of Senior General Manager, PED when appointing Nteta into the said position.
- 6.8.17. We noted from documentation that throughout the entire process of the appointment of Tegeta to provide coal to Eskom's Majuba power station from the Brakfontein Colliery, Mboweni and Bester played lesser roles than the role played by Nteta. This is evident from the discussions below.

6.9. PROCUREMENT PROCESSES FOLLOWED IN THE APPOINTMENT OF TEGETA

- 6.9.1. We understand that Eskom procured coal using the Overarching mandate until it was replaced in 2008 by the Medium-Term Mandate. We further understand that the Medium-Term Mandate, approved by the BTC in 2008, was updated in 2016.
- 6.9.2. Eskom's procurement of coal from Tegeta in 2015 was through the Medium-Term Mandate.

6.9.3. Approval of specifications

- 6.9.3.1. We determined that part of the 2008 Medium-Term Mandate was to provide specifications for the coal procured for Eskom's various power stations.
- 6.9.3.2. From various consultations we understand that Eskom sought the supply of a total quantity of 65 000 tons of a blend of Seam 4 lower and Seam 4 upper coal, for its Majuba Power Station.

6.9.3.3. The specifications for the procurement of coal for the Majuba Power Station were part of the specifications of coal as per the Medium-Term Mandate and were approved in the said Mandate.

6.9.4. Approval of budget

- 6.9.4.1. The value of the CSA between Eskom and Tegeta was R3.7 billion for a period of ten (10) years commencing on 1 April 2015 to 30 September 2025.
- 6.9.4.2. As at the date of concluding the CSA between Eskom and Tegeta i.e. 10 March 2015, there was budget of approximately R62 billion (R164 billion (budget) R102 billion (actual spend)) available for the procurement of coal.

6.9.5. Advertisement

- 6.9.5.1. Based on documentation reviewed and consultations conducted during our investigations, we confirmed National Treasury's finding that:
 - 6.9.5.1.1. Eskom did not advertise a competitive bid to supply Majuba Power Station with coal;
 - 6.9.5.1.2. Eskom allowed the supplier to make an offer outside the competitive bidding process; and
 - 6.9.5.1.3. The process followed was allowed by Eskom's 2008 Medium -Term Procurement Mandate.

6.10. MEETINGS (EVALUATION OF THE RELEVANT DOCUMENTS)

- 6.10.1. In May 2014, Goldridge approached Eskom with an unsolicited bid to supply coal to Eskom. Goldridge then represented by Ravindra Nath ("Nath") and Satish Mudaliar ("Mudaliar") held various meetings with Nteta and her PED team (Annexure E1).
- 6.10.2. The details of the said meetings with Nteta are discussed in the relevant paragraphs below.
- 6.10.3. The said meetings, attended by Eskom and Tegeta representatives, concentrated on the evaluation and assessment of Tegeta documents relating to their unsolicited bids as reflected above.

- 6.10.4. The Medium-Term Mandate provided critical criteria that Eskom should comply with during the coal procurement evaluation process.
- 6.10.5. Furthermore, the Medium-Term Mandate required a potential supplier to furnish the following documents:
 - 6.10.5.1. Mining Rights;
 - 6.10.5.2. Proof of Ownership;
 - 6.10.5.3. Section 11 documents relating to mining rights (with regards to change of ownership if applicable);
 - 6.10.5.4. Tax Clearance Certificate;
 - 6.10.5.5. B-BBEE Certificate;
 - 6.10.5.6. Three-year Audited Financial Statements; and
 - 6.10.5.7. Employment Equity Plan.
- 6.10.6. As discussed below, we determined that not all criteria reflected above was adhered to during the meetings to evaluate the Tegeta submission to Eskom.
- 6.10.7. Evaluation of the relevant documents for the Tegeta's appointment
 - 6.10.7.1. We determined that paragraph 3.4.5.8 of the Procurement and Supply Chain Management ("PSCM") procedure, provides that Eskom employees that are approached with the first type of unsolicited offer should immediately refer the supplier to the SD & L Department within Group Technology and Commercial to engage in the registration process without further representation, engagement or commitment.
 - 6.10.7.2. As discussed below, we noted that Nteta failed comply with this requirement.
 - 6.10.7.3. We determined that paragraph 2.5.6 of the PSCM procedure manual provides that the Cost Centre Manager is the End-User or the manager of the End-User who is responsible for ensuring that any procurement requested, or financial commitment made on the cost centre he/she manages, is approved by him/herself based on a valid need and availability of the necessary funds to ensure that the procurement is neither wasteful nor irregular, as defined in the

PFMA, and is in accordance with the requirements of the Approved Procurement Framework (**Annexure E2**).

- 6.10.8. We determined that Mboweni was the cost centre manager at the time of the conclusion of the Tegeta CSA. Mboweni indicated that he did not manage or approve the procurement process followed in the appointment of Tegeta CSA as he was not involved. We however noted that Mboweni signed the ten (10) year CSA between Eskom and Tegeta.
- 6.10.9. During our consultation with Mothapo she indicated that the Technical Services Department ("TSD") forms part of PED which has various departments including the following:

6.10.9.1. Fuel Sourcing Commercial;

6.10.9.2. Coal Operations;

6.10.9.3. Environmental;

6.10.9.4. Safety;

6.10.9.5. Projects; and

6.10.9.6. Logistics.

6.10.10. From a review of the minutes of the above meeting and other meetings discussed below, held between Eskom and Tegeta, we determined that the parties who attended the said meetings comprised of parties from different divisions within Eskom's PED.

Meeting between Eskom and Goldridge of 9 May 2014

- 6.10.11. From searches conducted in Nteta's e-mails we determined that Goldridge approached Eskom with an unsolicited bid to supply coal to Eskom's power stations. We further determined that there was a meeting between Goldridge and Eskom on 9 May 2014 at Eskom's Mega Watt Park offices.
- 6.10.12. The said meeting was attended by the following individuals:

6.10.12.1. Ayanda Nteta;

6.10.12.2. Shumani Muvhungo;

6.10.12.3. Sunjay Andhee;

6.10.12.4. Thabani Mashego; and

- 6.10.12.5. Mmabatho Mothapo.
- 6.10.13. Goldridge was represented by Nath and Mudaliar.
- 6.10.14. Nteta confirmed that there was a meeting between Eskom and Goldridge which took place around May 2014 which she attended.
- 6.10.15. Nteta indicated that the purpose of the meeting was to engage with Goldridge in order for Eskom to understand what Goldridge's coal service offerings entailed and to further establish whether the said coal service offerings were in line with Eskom's coal requirements.
- 6.10.16. Nteta further indicated that the purpose of the meeting was to enquire about Goldridge's mine location and to discuss issues of the coal quality that Goldridge was proposing to supply to Eskom.
- 6.10.17. At the meeting Eskom asked various questions including ownership of the Brakfontein mine from which Goldridge wanted to supply coal to Eskom. Nteta pointed out to Goldridge that Eskom preferred to contract with companies which were 50%+1 black owned. We determined that Tegeta was not 50%+1 black owned at the time.
- 6.10.18. Nteta indicated that she attended various meetings between Eskom and other potential coal suppliers. She further indicated that she chaired some of the said meetings and at certain instances the meetings were chaired by Mothapo or Bester, the latter having since left the employ of Eskom.
- 6.10.19. We noted that according to minutes of the meeting held between Eskom and Goldridge on 9 May 2014, Goldridge proposed supplying coal to Eskom from Brakfontein and Vierfontein mines. (Annexure E3).
- 6.10.20. It is our understanding that as on 9 May 2018, Tegeta was owned by a company called Oakbay Investments ("Oakbay").
- 6.10.21. The minutes indicate that environmental evaluations for both sites were undertaken and it was further vindicated that the Brakfontein environmental report was finalised.

Site Evaluations

6.10.22. According to the minutes of the meeting of 9 May 2014, Mothapo (Technical Services) went for a site visit to Brakfontein before conducting a technical evaluation. The minutes further indicate that Goldridge explained to the

- Eskom team that mining at Brakfontein was temporarily halted for a month and a half and they had a stockpile of coal amounting to one hundred and fifty thousand (150 000) tons.
- 6.10.23. The minutes of the said meeting further indicate that Eskom was concerned about the number of suppliers supplying coal from Brakfontein. According to the minutes, the Eskom team required clarification from Goldridge regarding the details of individuals who would be responsible for communicating with Eskom regarding the possible supply of coal from the Brakfontein mine.
- 6.10.24. According to the minutes, Goldridge explained that they were the owners of Brakfontein through Tegeta and as such they would be the preferred supplier to Eskom.
- 6.10.25. We were not provided with any evidence that Tegeta furnished the information indicated above to Eskom, prior the negotiation of the CSA.
- 6.10.26. From the review of available documentation, we determined that Tegeta was not referred to SD & L Department for supplier pre-qualification and supplier registration, as per the PSCM procedure. The failure by Nteta and her team to refer Tegeta to the SD & L Department for supplier pre-qualification and supplier registration as per the PSCM procedure was thus irregular.

Evaluation relating to the commercial and financial requirements

6.10.27. We could not find any evidence that a financial modelling and evaluation process was followed, or a clear commercial motivation for entering into the contract on the commercial terms provided.

Eskom's BBBEE Requirements

- 6.10.28. Tegeta failed to meet Medium-Term Mandate requirements which provided that they were supposed to furnish *inter alia* their BBBEE Certificate and proof of ownership. The explanation, by Goldridge, of their business structure is indicative of the fact that Tegeta did not comply with the Medium-Term Mandate's requirement in respect of BEE.
- 6.10.29. From the minutes of the meeting of 9 May 2014, it appears as if Eskom was not interested in the Coal Resources being offered by Goldridge/Tegeta. This is reflected from Nteta indicating *inter alia* that Eskom prefers dealing with companies that are 50% + 1 share black owned.

Second negotiation meeting between Eskom and Tegeta on 10 July 2014

- 6.10.30. Another evaluation meeting was held between Tegeta and Eskom on 10 June 2014. (Annexure E4).
- 6.10.31. The minutes of the said meeting reflected that the following Eskom employees attended the said meeting:
 - 6.10.31.1. Ayanda Ntshanga;
 - 6.10.31.2. Shumani Muvhungo;
 - 6.10.31.3. Thabang Motsoaboli;
 - 6.10.31.4. Sunjay Andhee;
 - 6.10.31.5. Thabani Mashego; and
 - 6.10.31.6. Rakgomo Setshedi.
- 6.10.32. We further determined that Goldridge/Tegeta was represented by the following individuals:
 - 6.10.32.1. Satish Mudaliar; and
 - 6.10.32.2. Rayindra Nath.
- 6.10.33. The minutes also indicated that Nteta and Shumani Muvhungo ("Muvhungo") provided feedback on *inter alia* the Brakfontein offer from Tegeta.
- 6.10.34. According to the minutes, Muvhungo indicated that when the Eskom team performed a site visit evaluation at Brakfontein they observed that Brakfontein was mining close to a wetland stream and this was considered to be a sensitive environmental area.
- 6.10.35. In response to our second draft report, Tegeta stated that "Eskom conducted the site visit of both Brakfontein & Vierfontein. The mining near the wetland stream was at Vierfontein and not at Brakfontein".
- 6.10.36. The minutes further indicate that a wall which was constructed upstream to prevent water had collapsed leading to flooding of the mine workings. Tegeta responded to the above by stating that "This comment also relates to Vierfontein and not Brakfontein".

- 6.10.37. The minutes indicate that Nath acknowledged that current mining was taking place close to a stream and Tegeta was issued a fine for contravening environmental regulations. In response to the above, Tegeta stated, *inter alia*, that the above finding also "relates to Vierfontein mine owned by Idwala and not Tegeta and it was Idwala which was fined for contravention of environmental regulations".
- 6.10.38. According to the minutes, Nath indicated that Tegeta had paid the aforesaid fine and had since been mining in accordance with the law. The discussion relating to Tegeta's water use license is discussed in the paragraphs below.
- 6.10.39. We conducted business intelligence searches and determined that as at the date of the said meeting, Nath was a registered director of both Idwala Coal and Tegeta. As previously indicated, the minutes of the said meeting provided that it was attended by Nath and Mudaliar, on behalf of Tegeta/Goldridge. The above responses from Tegeta and the said dual directorship, identified in our business intelligence searches, suggests that Eskom was simultaneously evaluating coal supply proposals from both Idwala Coal and Tegeta.
- 6.10.40. Sunjay Andhee ("Andhee") enquired from Tegeta if they could provide Eskom with a fresh coal sample for chemical testing purposes.
- 6.10.41. Nath indicated that Brakfontein's mining had been suspended and that they would like to sell the existing stockpile on the ground before re-commencing with any mining.
- 6.10.42. The Brakfontein's stockpile was between seventy thousand (70 000) and seventy-five thousand (75 000) tons.
- 6.10.43. Tegeta requested that Eskom collect and re-test another sample from Brakfontein stockpile as the previous tested stock pile did not meet specifications.
- 6.10.44. The said retesting of coal samples related to the pretesting of Eskom's potential suppliers' coal, as outlined in Eskom's Technical Evaluation procedure, discussed below, for sourcing coal, prior to the conclusion of the CSA.
- 6.10.45. Eskom revealed that the mining was taking place very close to a stream which was a sensitive environmental area. It further indicated that a wall that was

- constructed upstream to prevent water had collapsed leading to flooding of the mine works.
- 6.10.46. Eskom requested Tegeta to provide an authorisation from the relevant authorities allowing mining through a wetland and diversion of a stream.
- 6.10.47. Tegeta acknowledged that mining was taking place very close to a stream. Tegeta further indicated that the entity was fined for contravening environmental regulations. Tegeta clarified in its response dated 14 September 2016 that the colliery referred to was not Brakfontein but Vierfontein (Annexure E5).
- 6.10.48. Eskom indicated that the diversion of a stream required authorisation in terms of the National Water Act;
- 6.10.49. It was stated at the meeting that a sample of Seam Lower was within Eskom's specifications. However, Seam 4 Lower could only be considered for further assessment if the Hand Grove Index can meet Eskom's threshold of a minimum of 50 and the analysis of Seam 4 Lower came back at 28.
- 6.10.50. Eskom further requested a recently mined sample.
- 6.10.51. Tegeta indicated that mining was suspended in order to sell the existing stock pile before re-commencing any mining.

Evaluation relating to technical and coal quality requirements

- 6.10.52. Mothapo indicated that during the conclusion of the Tegeta CSA she was responsible for *inter alia*, performing technical evaluations as a due diligence process, with the assistance of Eskom's Research, Testing and Development ("RT & D") department, to assist the Fuel Sourcing Commercial department ("FSCD") with their coal procurement processes.
- 6.10.53. Mothapo further stated that her role was mainly to perform geological modelling of a supplier's technical aspect of their coal supply proposal, by confirming that the supplier's coal quality was within Eskom's quality specification requirements and whether the said supplier has adequate coal reserves and resources to fulfil Eskom's coal requirements.
- 6.10.54. Mothapo indicated that the purpose of performing the aforesaid activities, by the TSD, was to provide the FSCD with an assurance, prior to concluding a CSA with a supplier, that the supplier's coal quality is within Eskom's coal

quality specification requirements and that the supplier's coal reserves and resources would be sufficient to fulfil Eskom's coal requirements.

Collection of coal samples from Brakfontein mine for evaluation purposes – June 2014

- 6.10.55. In June 2014 Mothapo collected coal samples from an existing coal stock pile of the Brakfontein mine as part of a due diligence process of testing the quality of the supplier's coal. The said samples comprised two (2) tons of a blend of the Seam 4 upper and Seam 4 lower and a separate one (1) ton of Seam 4 upper and Seam 4 lower coal. Tegeta initially proposed to supply Eskom with an existing stockpile consisting of a blend of the Seam 4 upper and Seam 4 lower coal.
- 6.10.56. Mothapo indicated that when she went to collect the aforesaid samples, she noticed that the Seam 4 upper coal stockpile looked as if it had been there for a long time and spoiled by unfavourable climate changes.
- 6.10.57. She further indicated that she submitted the aforesaid samples to the RT & D and requested that they perform coal combustion testing and analysis on same.
- 6.10.58. The chemical analysis conducted on the samples revealed that only the Seam 4 lower was found to be within Eskom's specifications. The said Seam 4 lower could only be considered for further assessment if the Hard Grove Index ("HGI") of same would meet Eskom's threshold minimum of fifty (50). The minutes further indicate that the HGI of the Seam 4 lower was at twenty-eight (28), lower than the requirement.

RT & D's Brakfontein Coal Sample Testing Results for evaluation purposes

6.10.59. Bonny Nyangwa ("Nyangwa"), Technical Combustion and Analysis, PED indicated that, around June 2014, he issued a report, discussed below, on the aforesaid combustion testing and analysis. Nyangwa further indicated that the objective of the combustion testing and analysis performed was to determine whether the blended coal samples from Brakfontein Colliery would be suitable for use at Eskom's power stations.

RT & D's - June 2014 Technical Assessment Report used for evaluation

6.10.60. The HGI on the Brakfontein Seam 4 upper coal samples tested was way too low and the said coal samples were indicated to be problematic to mill in a power plant.

- 6.10.61. The Ash content of the said Seam 4 upper coal samples was too high and not within the required 240 coal quality specifications qualities as all the submitted Seam 4 upper samples. The Ash qualities were not in line with the acceptable limit.
- 6.10.62. Nyangwa recommended that only the Seam 4 lower coal samples were within the Majuba and Matla power stations' specifications.
- 6.10.63. Combustion tests on Seam 4 upper coal samples could only be considered if the source HGI could meet the Eskom threshold of fifty (50) and further that should the supplier meet the said HGI threshold requirements it would be important that three (3) types of Seam 4 lower coal samples are submitted to the RT & D for further combustion tests.

Email dated 25 June 2014 from Nyangwa to Mothapo

- 6.10.64. We noted a copy of an email dated 25 June 2014 addressed to Mothapo by Nyangwa titled "Emailing: Brakfontein Technical Assessment" copied to Phillip Mostert ("Mostert"). Nyangwa sent the email to provide Mothapo with the Brakfontein technical assessment report. (Annexure E6).
- 6.10.65. Attached to the email was a copy of a report dated June 2014, addressed by Nyangwa to the PED titled 'TEGETA, BRAKFONTEIN BLEND TECHNICAL ASSESSMENT". (Annexure E7).
- 6.10.66. The report contained the coal test results referred to in the minutes of meeting of 10 July 2014 mentioned above.
- 6.10.67. The report concluded as follows:
 - 6.10.67.1. Brakfontein blend and S4U coal was not within the required qualities due to the high ash content. Excluding physical analysis S4L qualities were only within Majuba and Matla specification.
 - 6.10.67.2. Should the supplier meet the above requirement, it was important that three (3) tons of S4L be submitted for combustion trials.
 - 6.10.67.3. Brakfontein blend of S4L: 60%, S4U:40% and S4U should not be considered by PED as they *did not meet the 240-71273834* standard".
- 6.10.68. The report further provided, as part of the recommendations that:

- 6.10.68.1. Only Brakfontein S4L was within Majuba and Matla specification. Combustion tests in the Pilot Scale Combustion Test Facility can only be considered if the source HGI can meet Eskom's threshold of 50;
- 6.10.68.2. Should the supplier meet the above requirement, it was important that 3 tons of S4L is (sic) be submitted for combustion trials; and
- 6.10.68.3. Brakfontein blend of S4L:60%, S4U:40% and S4U should not be considered by PED as they did not meet the 250-71273834 standards.
- 6.10.69. During our consultation with Mothapo, she indicated that the aforesaid RT & D report was in respect of the initial chemical analysis test and, at this stage; the RT & D had not performed combustion and QEMSCAN coal analysis.
- 6.10.70. She further indicated that on completion of the technical coal analysis, the RT & D provides the PED with two (2) reports, one compiled by Nyangwa and the other by Dr Van Alphen.
- 6.10.71. Mothapo indicated that she compiled a feedback report on the above, around July 2014, which she emailed to Nteta and Mashego.
- 6.10.72. From various consultations and documentation reviewed, we determined that, based on the results as reflected above, Eskom gave Tegeta preferential treatment by continuing with the evaluation of the unsolicited bid even after the Brakfontein coal tests failed to meet specifications.

Brakfontein Technical Evaluation Update document dated 2 July 2014

- 6.10.73. We noted a copy of an update report dated 2 July 2014 addressed by Mothapo to Ntshanga ("né Nteta") and copied to Thozama Gangi ("Gangi") titled "*Brakfontein (Tegeta) Technical Evaluation Update*". (Annexure E8).
- 6.10.74. The report was compiled by Mothapo and provided feedback in respect of the technical assessment conducted by the RT & D. We determined that the conclusions and recommendations provided in the report were similar to those of the RT & D's report, discussed in the previous paragraphs, dated June 2014.
- 6.10.75. During our consultation with Nyangwa, he indicated that he understood that the purpose of the aforesaid coal test was that Eskom wanted to conclude a

CSA with Tegeta for procuring coal from the Brakfontein Colliery. Nyangwa however did not provide us with a copy of the aforesaid 240-7127834 Coal Quality Specifications.

Further sampling of coal at Brakfontein for evaluation purposes - August 2014

- 6.10.76. In August 2014 Mothapo returned to Brakfontein to collect three thousand (3 000) tons of Seam 4 lower coal samples as per the recommendation provided in the RT & D's report, discussed above, dated June 2014.
- 6.10.77. Nyangwa indicated that in approximately August 2014, PED sent the RT & D another Seam 4 lower coal sample, from Brakfontein, which was approximately three thousand (3 000) tons. The said sample is the same sample of the Seam 4 lower that Mothapo collected.
- 6.10.78. According to Nyangwa, the coal combustion test that he conducted revealed that the HGI was close to fifty (50) as it was on forty-nine (49).
- 6.10.79. The above HGI appeared to of acceptable levels until Nyangwa compared it to the acceptable range for Eskom's power stations and found that the coal sample analysed was marginal for Majuba power station due to the percentage of the Ash content.
- 6.10.80. The coal analysed was marginal for Matla power station due to the calorific value which was also between acceptable and rejection levels.
- 6.10.81. The fact that Eskom conducted further tests of the Brakfontein coal during the evaluation process is another indication that Eskom continued to give Tegeta preferential treatment regardless of the Brakfontein mine coal not meeting the required specifications.

RT & D's August 2014 Technical Assessment Report for evaluation purposes

- 6.10.82. We noted a copy of a report dated August 2014, addressed by Nyangwa to the PED titled "TEGETA, BRAKFONTEIN S4L TECHNICAL ASSESSMENT".
- 6.10.83. The report concluded as follows:
 - 6.10.83.1. Brakfontein was within the acceptable range for Kendal, Kriel 4-6, Lethabo and Matimba. It was marginal for Majuba due to the ash percentage which was between acceptable and rejection range, marginal for Matla due to the CV which was also between acceptable and rejection range.

- 6.10.83.2. The AI result for Brakfontein was well below the prescribed limit of 450.
- 6.10.83.3. Milling the Brakfontein (August sample) at the PSCTF did not exhibit any milling problems and the required fineness was achieved at lower classifier speed, this suggested that HGI was within Eskom acceptable limits of 50-55 based on previous milling assessment.
- 6.10.83.4. Based on the burnout time measured at 6% 02 and design furnace exit temperature, Brakfontein's August sample combustion characteristic met only Kendal, Majuba, Matimba and Matla burnout time and furnace exit temperature.
- 6.10.84. The report provided the following recommendation:
 - 6.10.84.1. Brakfontein's August sample could be considered for Kendal, Majuba and Matla; and
 - 6.10.84.2. PED should not contract at rejection limits as set-out in Appendix A Table A.2. (Annexure E9)

Third negotiation meeting between Eskom and Tegeta dated 23 September 2014

- 6.10.85. We noted a copy of minutes of a meeting held between Eskom and Tegeta on 23 September 2014.
- 6.10.86. The minutes indicate that Nteta recapped on the Eskom process and provided a status update on the Tegeta offer. According to the minutes, "It was recalled that an initial sample was collected, this initial sample was tested and there were some concerns around the Hard Grove Index ("HGI")".
- 6.10.87. According to the minutes, "A second sample was collected for a combustion test, hence the need for this meeting, to provide feedback on the combustion test and chemical analysis results".
- 6.10.88. According to the minutes, "some concerns around the coal's characteristics were raised, namely:
 - 6.10.88.1. Higher Iron and Calcium compared to the previous sample that was tested, this is a concern as it potentially cause (sic) slagging.
 - 6.10.88.2. Low burn out time;

6.10.88.3. The CV is on the low side."

- 6.10.89. Nath mentioned the possibility of blending the Seam 4 with the higher quality Seam. Mostert indicated the potential problems that could occur with blending and further that a new offer would have to be submitted.
- 6.10.90. Nath queried if there were incentives for supplying improved coal qualities, upon which Nteta responded by stating that Tegeta should provide a proposal on the said query.
- 6.10.91. We do not understand why Tegeta would want incentives for producing coal that meets Eskom specifications. We further do not understand why Eskom would even entertain the issue of incentives.
- 6.10.92. Tegeta requested that as a way forward Eskom should share the Coal Quality Management Procedure ("CQMP") and a CSA template. The minutes further provide that Tegeta indicated that they would send official communication to Eskom regarding whom Eskom must discuss the CSA with.
- 6.10.93. It is not clear why Eskom agreed to share the aforesaid information with Tegeta during the negotiation stage of Tegeta's coal supply commercial offer.
- 6.10.94. The aforesaid agreement by Eskom to share the requested information by Tegeta which included *inter alia* the CSA template was an indication that, as at the date of the said meeting i.e. 23 September 2014, Eskom was already committing to accept Tegeta's coal supply commercial offer prior to finalising the evaluating of same.
- 6.10.95. Tegeta agreed to submit a revised proposal to supply Seam 4 lower coal. The proposal would indicate price; volume; and duration (Annexure E10).

6.11. TEGETA COMMERCIAL OFFER

Submission of Tegeta's Commercial Offer via an email dated 23 September 2014 addressed by Mudaliar to Nteta

- 6.11.1. We determined that there was a meeting between Eskom and Tegeta on 23 September 2014.
- 6.11.2. In the said meeting Mudaliar enquired if a new or fresh sample of Seam 4 Upper could be prepared for testing, to which Nteta indicated that it would depend if there was a request for the said coal at a later stage.

- 6.11.3. It was agreed at the said meeting that Tegeta would submit a revised proposal only supplying the Seam 4 Lower and should indicate price, volume and duration.
- 6.11.4. We determined that on the same date *i.e.* 23 September 2014 and subsequent to the said meeting Mudaliar asked if there as way Eskom could accommodate Tegeta as they were only looking to supply a small amount of coal from their stock pile from Seam 4 Upper and Lower.
- 6.11.5. Nteta responded by stating that Seam 4 Upper was not within Eskom's parameters.
- 6.11.6. We noted a copy of an email dated 23 September 2014 addressed by Mudaliar to Nteta and copied to Mashego, Aditya Mishra ("Mishra") and Mothapo, titled "Re: Commercial Offer 4th Lower Seam Tegeta Exploration". (Annexure E11).
- 6.11.7. The email was sent on the same day that Tegeta and Eskom had a meeting *i.e.* 23 September 2014.
- 6.11.8. Tegeta provided Eskom with their commercial offer, discussed below, in respect of the Seam 4 lower coal. According to the email, Tegeta requested that Eskom provides them with the following information:
 - 6.11.8.1. The CSA;
 - 6.11.8.2. The quality management process document; and
 - 6.11.8.3. The coal combustion report which was performed by Eskom.

Coal Supply Commercial Offer from Tegeta to Eskom dated 23 September 2014

- 6.11.9. We noted a copy of a letter dated 23 September 2014 addressed by Tegeta to Eskom titled "COMMERCIAL OFFER FOR SUPPLY OF COAL TO ESKOM". (Annexure E12).
- 6.11.10. The letter reflects that it was signed by Nath, on the signature space provided for an authorised signatory of Tegeta. The letter states as follows:
 - " Dear Sir,

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. ii Maximum 70000 Mt
- 3. Quality:

Sr No	Particulars	Typical	Rejections 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"

6.11.11. We determined that the meeting referred to in the aforesaid letter was the meeting which was held between Tegeta and Eskom on the same day.

Further negotiations between Tegeta and Eskom

- 6.11.12. Mothapo indicated that Tegeta held further meetings with Eskom between September 2014 and December 2014.
- 6.11.13. During the said meetings, Tegeta requested Eskom to re-test their blended coal samples.
- 6.11.14. Tegeta indicated that they had fresh stockpiles and the initial tests conducted by Eskom in June 2014 were based on an existing stockpile. Tegeta had already agreed to supply Eskom with the Seam 4 lower coal in that the said Seam 4 lower coal had passed the RT & D's technical assessments.

Emails between Tegeta and Eskom relating to a new Seam 4 upper sample

6.11.15. We noted a copy of an email dated 6 October 2014 addressed to Nteta by Nath and copied to Mashego, Mudaliar, Mothapo and Mishra titled "RE: Commercial Offer- 4th Upper Seam - Tegeta Exploration. (Annexure E13).

- 6.11.16. Tegeta advised Eskom that they had since mined fresh Seam 4 upper coal and requested that Eskom should sample and conduct technical assessments on same.
- 6.11.17. Tegeta suggested that if the specifications of the aforesaid new samples were acceptable to Eskom a CSA incorporating Seam 4 upper and Seam 4 lower would be drafted.
- 6.11.18. It should be noted that the aforesaid email was sent pursuant to the issuing of the RT & D's technical assessment reports which indicated that only Seam 4 lower coal from Brakfontein was acceptable for the Majuba power station.
- 6.11.19. We noted a copy of an email dated 9 October 2014 addressed to Nath by Nteta and copied to Mashego, Mothapo and Mishra titled "*Template Cost Breakdown and Sample*", which stated that (Annexure E14).
- 6.11.20. In view of the above, Eskom granted Tegeta's request of conducting technical assessments on their newly mined sample in respect of Seam 4 upper coal even though a technical assessment was previously performed, by the RT & D, on the aforesaid Seam 4 upper coal and was found to be of unacceptable levels. This is an indication that Eskom gave Tegeta preferential treatment.

Reassessment of Brakfontein coal samples – 16 October 2014

- 6.11.21. Mothapo collected samples on 16 October 2014 and delivered the said samples to the RT & D on 24 October 2014. Mothapo provided feedback of the chemical analysis results on the samples to Nteta and Mashego.
- 6.11.22. Mothapo further indicated that on the same day that she collected the said samples she and her team also discussed the CQMP with parties from Tegeta.
- 6.11.23. The coal samples of the Seam 4 upper and blend coal, discussed in the previous sections, submitted to the RT & D on 24 October 2014 did not pass the first phase of the chemical analysis test and as such, were not considered for further combustion assessments.
- 6.11.24. The RT & D's final combustion results reports, shared with Eskom's power stations, only provided details of the samples which passed the first phase of the chemical test, and were considered for further combustion tests.

- 6.11.25. Laurence Greyvenstein ("Greyvenstein") and Markus Jonker ("Jonker"), confirmed that it was Eskom's standard process to share technical coal assessment results of a potential coal supplier with Eskom's power stations.
- 6.11.26. They further indicated that the PED provided them with some of the technical coal analysis reports in respect of the Brakfontein Colliery.
- 6.11.27. According to the Greyvenstein and Jonker, Eskom's power stations were not involved in the negotiations held between the PED and a potential coal supplier. The role of power stations is to review the technical coal analysis reports in order to determine whether the potential supplier's coal conforms to the power station's technical requirements.

6.11.28. Emails between Eskom and Tegeta relating to the CSA template

- 6.11.28.1. We noted a copy of an email dated 6 November 2014 addressed by Nath to Nteta and copied to Mudaliar, Mashego, Mothapo, and Adity, titled "RE: Template Cost Breakdown and Sample".

 (Annexure E15)
- 6.11.28.2. According to the email, Tegeta enquired if Eskom had finalised reviewing the master CSA and requested that Eskom send Tegeta a copy for their perusal.
- 6.11.28.3. We further noted a copy of an email dated 7 November 2014, responding to the above email, addressed by Nteta to Nath and Mudaliar and copied to Mashego and Adity, titled "RE: Template Cost Breakdown and Sample". (Annexure E16).
- 6.11.28.4. According to the email, Eskom provided Tegeta with a template of a CSA for their input. The email further provides that Eskom indicated that the provision of the aforesaid CSA template to Tegeta did not in any way create an obligation on Eskom's part to purchase the coal from Tegeta, either then or in the future.
- 6.11.28.5. The provision of the template to Tegeta by Eskom is yet another indication of the preferential treatment afforded to Tegeta. Daniels stated the provision of an editable document to a service provide was irregular.

CSA template

- 6.11.29. As stated above, we determined that attached to the email dated 7 November 2014 was a copy of a CSA template. The aforesaid CSA had blank spaces provided to be completed, in certain sections, by Tegeta. (Annexure E17).
- 6.11.30. During our consultation with Daniels she indicated that she was responsible for developing the CSA template around 2007. She further indicated that it was a standard practice for Eskom to send a template to potential suppliers only if it was sent for the purposes of showing the client the standard terms and conditions of the contract being negotiated.
- 6.11.31. According to Daniels, sending an editable CSA template to a client, for the client's input on same, was irregular on the part of Eskom in that the said CSA was only supposed to be shared once it was finalised and in a PDF format.

Email dated 27 November 2014 addressed by Mothapo to Nyangwa

- 6.11.32. We noted a copy of an email dated 27 November 2014 addressed by Mothapo to Nyangwa and copied to Gangi, Nteta and Dr Van Alphen, titled "Brakfontein S4U and Blend Analysis feedback". (Annexure E18).
- 6.11.33. Mothapo indicated to Nyangwa that she had advised the PED that all the Brakfontein Seam 4 upper and blended coal analysis performed by RT & D, showed inconsistency on certain quality parameters.
- 6.11.34. Mothapo requested Nyangwa to send her formal feedback, as it was requested by the FSCD, in respect of the aforesaid coal assessments which reflected all the coal quality concerns and implications relating to same.
- 6.11.35. The aforesaid formal feedback was required in order to enable the FSCD to make an informed decision when continuing with the commercial process in respect of the Seam 4 lower coal offer from Tegeta.

Email correspondences relating to Brakfontein Seam 4 Upper and Blend Analysis – January 2015

- 6.11.36. We noted a copy of an email dated 13 January 2015 addressed by Mothapo to Nteta and copied to Gangi, Nyangwa and Dr Van Alphen titled "RE: Brakfontein S4U and Blend Analysis feedback". (Annexure E19).
- 6.11.37. The email states as follows:

[&]quot; Good day Ayanda,

Regards"

- 6.11.38. Mothapo indicated that the chemical results referred to above were in respect of Tegeta's October 2014 coal samples, previously discussed, which did not pass the RT & D's first chemical tests due to a high AI.
- 6.11.39. We noted a copy of an email dated 14 January 2015 addressed by Dr Van Alphen to Mothapo and copied to Nyangwa, responding to the above email, titled "RE: Brakfontein S4U and Blend Analysis feedback". (Annexure E20).
- 6.11.40. Dr Van Alphen indicated to Mothapo that once he had received the coal samples from the RT & D's chemistry division, he would analyse same on the QEMSCAN in order to determine the nature of the high AI and HGI.
- 6.11.41. We noted a copy of an email dated 15 January 2015 addressed by Nteta to Mothapo and where Gangi was copied, titled "RE: Brakfontein S4U and Blend Analysis feedback". (Annexure E21).
- 6.11.42. Nteta sent the email to enquire from Mothapo if she managed to get feedback from Dr Van Alphen or Nyangwa relating to the coal analysis conducted in October 2014.
- 6.11.43. In response to the above email Mothapo indicated that, she informed Nteta through an email dated 16 January 2015 that she would be meeting with Dr Van Alphen to discuss the aforesaid coal analysis and suggested that Dr Van Alphen should be invited to the meeting between Tegeta and Eskom to provide them with the aforesaid feedback. (Annexure E22)
- 6.11.44. Mothapo indicated that she was not certain if Nteta responded to the aforesaid email.
- 6.11.45. We reviewed a forensic image of Nteta's emails and could not find her response to the above email. Mothapo further indicated that, although the October 2014 Brakfontein coal samples failed the RT & D's initial chemical tests, Dr Van Alphen still referred to it in his report dated 12 March 2015.
- 6.11.46. From an analysis of Nteta's emails we determined that there was a meeting between Eskom and Tegeta on 23 January 2015. The said meeting reflected

- that Tegeta made a new offer different from the one the company made on 23 September 2014.
- 6.11.47. The offer of 23 September 2014 included only the Seam 4 Lower, where Tegeta offered a blended product of Seam 4 Upper and Seam 4 Lower at a price of R145 per gigajoule

Fourth negotiations meeting held between Eskom and Tegeta on 23 January 2015

- 6.11.48. Minutes of a meeting held between Eskom and Tegeta on 23 January 2015 provides that numerous tests were conducted on the Seam 4 lower, Seam 4 upper and a blend of the aforesaid Seams. (Annexure E23).
- 6.11.49. The said tests were in respect of Tegeta's coal sample analysis, discussed above, which were respectively performed by RT & D during the months of June, August and October 2014.
- 6.11.50. The tests revealed that the Seam 4 lower coal was suitable for Eskom to use at certain power stations, however Seam 4 upper and the blend of the said Seams (Seam 4 upper and Seam 4 lower) were not suitable for Eskom because of the high AI and the marginal HGI.
- 6.11.51. According to the minutes, "The in Seam partings which predominately sandstone is Seam 4 Upper is responsible for the high IA.".
- 6.11.52. To address the above issue of a high AI, Tegeta indicated that they would selectively mine the Seam and use a grader to remove the major inseam partings and over drilling and blasting into the floor would be avoided.
- 6.11.53. Nteta raised concerns about the high prices that were being offered by Tegeta. We further determined from the minutes that Tegeta was offering to supply coal to Eskom at a rate of R17 per gigajoule ("gj") for the Seam 4 lower and R15/Gj for the blended coal.
- 6.11.54. Tegeta and Eskom agreed that a way forward was for Tegeta to revise their pricing and revert back to Eskom and to also present their technical plans to Eskom which detail how they planned to address Seam 4 upper qualities.

Fifth negotiation meeting held between Eskom and Tegeta on 30 January 2015

6.11.55. We noted a copy of minutes of a meeting held between Eskom and Tegeta on 30 January 2015. (**Annexure E24**). The details of the said meeting are discussed below:

Price

- 6.11.55.1. Bester discussed Eskom's pricing principles and indicated that Eskom and Tegeta were far apart in terms of the price.
- 6.11.55.2. Bester showed Tegeta the average cost of coal delivered to Majuba power station.
- 6.11.55.3. Nath, in response to Bester's pricing issues, indicated that Tegeta had increased its BBBEE ownership and as such, a higher price would be needed to finance their BBBEE partners.
- 6.11.55.4. Nath indicated that the recent changes in the environmental laws as well as royalties, justified the need for a higher price.
- 6.11.55.5. Bester indicated that any price that the parties agree on would set a new benchmark on coal sold to Eskom and that it was important that an acceptable price be agreed between Eskom and Tegeta.
- 6.11.55.6. Bester urged Tegeta to review their price and if they were unable to do so Eskom would have to consider perhaps alternative suppliers.
- 6.11.55.7. Nath excused himself to make a call to Tegeta's board of directors to obtain a mandate to adjust their coal price offer. After making the said call, Nath proposed a price offer of R13.50/Gj for a five-year contract of approximately 65 000 tons per month from the Brakfontein Colliery.
- 6.11.55.8. Eskom agreed to accept the aforesaid price, provided that the Eskom has a first right of refusal for the additional coal resources at Brakfontein Colliery Extension and that the coal must first meet the technical and combustion requirements of Majuba power station.

Technical discussion

- 6.11.55.9. The minutes provided, under the technical discussion heading, that Brakfontein's Mine Manager presented a proposed technical plan to mitigate the high AI.
- 6.11.55.10. Eskom's other big concern was the marginal HGI and that Eskom requires a minimum of fifty (50) relating to same.

- 6.11.55.11. Mothapo and Nteta were satisfied by the plans presented by Tegeta on how they planned to mitigate the HGI.
- 6.11.55.12. A newly mined sample of the blended product would have to be collected for testing.
- 6.11.55.13. Tegeta proposed to supply Eskom with 65 000 tons per month of the said blended product.
- 6.11.55.14. The proposed start date for the supply was 1 April 2015 subject to a successful combustion test. The minutes concluded by indicating that Tegeta was requested to provide Eskom with their proposed ramp up plan.

Collection of newly mined sample of blended coal from Brakfontein – 10 March 2015

- 6.11.56. Pursuant to a meeting of 10 March 2015 between Eskom and Tegeta, Eskom collected a sample of a newly blended coal at Brakfontein Colliery.
- 6.11.57. Mothapo indicated that as requested by the FSCD on 10 March 2015, she collected a newly mined sample of the blended coal from Brakfontein, referred to above, and delivered same to RT & D for testing.
- 6.11.58. Mothapo collected the said blended coal samples on the same day in which the CSA was concluded in respect of Seam 4 upper and Seam 4 lower coal.
- 6.11.59. Mothapo stated that she was not aware that the CSA had already been signed in that in terms of the meeting held between Eskom and Tegeta on 30 January 2015, it was agreed that the expected start date of the said CSA was 1 April 2015.
- 6.11.60. We determined that even after signing the CSA, Eskom continued to conduct coal analysis tests in respect of the blended coal samples which Tegeta proposed to supply to Eskom.
- 6.11.61. It is not clear why Eskom continued with the aforesaid tests even after various coal analysis results *i.e.* June 2014 and October 2014, in respect of the said blended coal samples, indicated that the said blended coal was not suitable for Majuba power station.
- 6.11.62. The above suggests that Eskom was under pressure to conclude the CSA in respect of a blend of Seam 4 lower and Seam 4 upper coal in that copies of minutes of various meetings held between Eskom and Tegeta indicate that

- Tegeta had an existing stockpile of a blend of Seam 4 upper and Seam 4 lower coal which they were proposing to offer to Eskom.
- 6.11.63. In response to our second draft report Tegeta responded stating that " There was no pressure from Tegeta to conclude a CSA. The coal supplied to Eskom from 01/04/2015 was freshly mined coal and not from an existing stockpile". The discussion relating to the above response from Tegeta and other responses relating to freshly mined coal is provided below.

Dr Van Alphen's expert Technical Evaluation of the Tegeta CSA

- 6.11.64. We requested Dr Van Alphen (with permission from National Treasury) to provide us with an expert technical evaluation of the Brakfontein CSA.
- 6.11.65. We have since obtained a copy RT & D's Technical Memorandum titled "Technical Evaluation of Brakfontein Contract" dated 28 June 2018, authored by Dr Van Alphen and reviewed by Nyangwa. (Annexure E25)
- 6.11.66. In relation to our observation made about Eskom being under pressure to conclude the CSA with Tegeta, Dr Van Alphen's Technical Memorandum states *inter alia*, as part of the discussion section, that "The formation of extensive stockpiles along the Western boundary prior to coal contract been signed, would have placed pressure on the negotiating teams to conclude a contract prior to completing the technical evaluations"
- 6.11.67. Technical memorandum further states *inter alia*, as part of the conclusion, that "Prior to signing the CSA, Brakfontein had already starting (sic) mining and developing stockpiles along the western border of portion 17/27. It is conceivable that there was some pressure on all parties to conclude the contract to ensure that the stockpiled coal could be paid for and delivered to Majuba power station".
- 6.11.68. In response to the above, Tegeta stated in response to our second draft report, that "The mining was being conducted at Brakfontein since 2012 and the coal was being sold to local buyers. The mining was suspended due to accumulated coal stock and a dispute with the mining contractor. The production re-started in March 2015 after the CSA was signed. In February 2015 Tegeta acquired new mining equipment and started mining itself and removed the contractor".

- 6.11.69. The above response from Tegeta, relating to their production re-starting in March 2015, is inconsistent with the information provided in their email addressed to Eskom on 6 October 2014. In the said email Tegeta advised Eskom that they have since mined fresh Seam 4 upper coal and requested Eskom to sample same. The above suggests that, contrary to Tegeta's response, mining was never suspended at Tegeta or that Tegeta might have misled Eskom when they indicated that they had mined fresh stockpile which samples of which were collected by Mothapo on 16 October 2014.
- 6.11.70. Furthermore, the fact that the said samples collected on 16 October 2014 did not pass the first phase of the chemical analysis test and that, according to Tegeta, "mining was suspended due to accumulated coal stock" further suggest that the said sample was obtained from an existing stockpile and not from freshly mined stockpiles.
- 6.11.71. In Eskom Management's comments to a previous investigation finding relating Eskom's failure to conduct health and safety checks at Brakfontein Colliery prior to concluding the CSA, Eskom stated that "Health and Safety checks could not be performed as the mine was, at the time, not operating. The checks could only be performed at least 6 weeks after the mine became operational".
- 6.11.72. In view of the above, we determined that Tegeta misled Eskom when they indicated that they had mined a new Seam 4 upper stockpile, as there was ample evidence that there were no mining activities at the time Tegeta alleged to have been mining.
- 6.11.73. As previously indicated, National Treasury issued our draft report to various parties implicated in the investigation. While she commented on other issues relating to the investigation, Nteta did not comment on the above finding raised in the said draft report.

6.12. WATER USE LICENSE

Background

6.12.1. The CSA in respect of the Brakfontein Colliery and Brakfontein Colliery Extension provides that Tegeta warrants to comply and would continue to comply with all their obligations under all current and future applicable laws

- including but not limited to the National Water Act No 36 of 1998 ("The NW Act").
- 6.12.2. In terms of the 2008 Medium-Term Mandate Legislative Compliance Condition, Eskom's coal suppliers were required to comply with the requirements of *inter alia* the NW Act.
- 6.12.3. The section below provides a detailed discussion relating to Tegeta's compliance with the NW Act.

Tegeta CSA Legislative Compliance Requirements

- 6.12.4. As reflected in the paragraphs below, the Tegeta CSA needed to be aligned with the relevant legislative compliance requirements.
- 6.12.5. The NW Act regulates water usage and provides for permissible water use in terms of section 22. In terms of the section, unless water use is in terms of exempted circumstances, it must be used pursuant to a licence issued under the Act.

6.12.6. Tegeta Water License

- 6.12.6.1. As previously discussed, the negotiations between Eskom and Tegeta commenced as early as 2012. The said negotiations commenced prior to Tegeta obtaining their water use license on 22 December 2014 as required by the 2008 Medium-Term Mandate and the NW Act.
- 6.12.6.2. We were provided with a copy of Tegeta's water use license, license number: 04/B20E/ABCGIJ/2994 and File number: 16/2/7/B200/C585, dated 22 December 2014 titled "LICENSE IN TERMS OF CHAPTER 4 OF THE NATIONAL WATER ACT, 1998 (ACT NO. 36 OF 1998) (THE ACT)". (Annexure E26).
- 6.12.6.3. Mothapo, indicated that since Eskom followed an unsolicited tender process in concluding the CSA with Tegeta, there was no requirement for Tegeta to be in a possession of a water use license during the negotiations stage of the said CSA. The statement by Mothapo was confirmed by Mboweni who indicated that there was a period in which Eskom allowed potential coal suppliers to approach Eskom without any Water Use License.

- 6.12.6.4. Mothapo and Mboweni both indicated that Eskom's Water Use License requirement was that a potential coal supplier was expected to prove that they were in the process of obtaining the license.
- 6.12.6.5. The above statement was also confirmed by Susan Daniels ("Daniels") who indicated that coal suppliers were not required to have a water use license during the negotiations of their proposals. According to Daniels, during the negotiation of Tegeta's CSA, it was sufficient that Tegeta was in the process of obtaining their water use license.
- 6.12.6.6. During the course of our investigations we conducted various consultations and reviewed documentation relating to the water use license for Tegeta's Brakfontein Coal Mine.
- 6.12.6.7. Our findings in this regard are in agreement with those made by National Treasury in that we found *inter alia* the following:
 - 6.12.6.7.1. Tegeta submitted a proposal to supply coal before it was issued the water use license;
 - 6.12.6.7.2. Eskom and Tegeta commenced with the negotiations in 2013 before the water use licence was issued; and
 - 6.12.6.7.3. The water use licence for Tegeta was issued on 22 December 2014.

6.12.7. Department of Water and Sanitation Compliance Audit

- 6.12.7.1. We determined that during the year 2016, the Department of Water and Sanitation ("DWS") conducted a Water Use License Compliance Audit at Brakfontein Colliery.
- 6.12.7.2. We were provided with a copy of a Compliance Audit report in respect of the said Water Use License Audit, dated 20 September 2016. The said Compliance Audit report states that "A WUL compliance audit was arranged and conducted at Brakfontein Colliery on 20-22 July 2016 for the WUL No: 04/B20E/ABCGIJ/ABCGIJ/2994 granted on the 22/12/2014". (Annexure E27).

- 6.12.7.3. According to the Compliance Audit report, there were twenty-two (22) instances of non-compliance with the conditions of Tegeta's water use license.
- 6.12.7.4. In view of the aforesaid non-compliances, we determined that Tegeta contravened clause 6.1 of the CSA, which provides *inter alia*, that "The supplier warrants that it is complying and will continue to comply with all its obligations under all current and future applicable laws," in that they failed to comply, as outlined above, with all the conditions of their Water Use License.
- 6.12.7.5. In response to our second draft report, Tegeta responded to the above finding by indicating that "Immediate remedial action was taken by Tegeta to rectify the points raised by DWA under the supervision of "Cabanga Concepts", who submitted the compliance report to DWA after rectification". (Annexure E28)
- 6.12.7.6. In view of confirming the above assertion by Tegeta, we requested Eskom to provide us with copies of all reports in respect of follow up audits conducted by the DWS at the Brakfontein Colliery and copies of all communication between Eskom and Brakfontein Colliery relating to the DWS's audit findings.
- 6.12.7.7. In response to our request, Eskom indicated, through email, that they were not aware of any audits that were conducted by the DWS at the Brakfontein Colliery and any reports relating to the said audits. (Annexure E29).
- 6.12.7.8. In the absence of the above reports, we requested the DWS to provide us with copies of all the follow-up audits which they conducted or were conducted by Cabanga Concepts, at the Brakfontein Colliery, to confirm the above assertion by Tegeta and to establish whether there were any actions taken against Tegeta for the non-compliance. As at the date of this report the said reports remain outstanding.

6.13. ESKOM OFFER TO TEGETA

Letter dated 30 January 2015 addressed to Nath by Bester

- 6.13.1. We determined that, pursuant to the negotiation meeting held between Eskom and Tegeta on 30 January 2015, Eskom accepted Tegeta's coal offer of 23 September 2014 through communication from Bester to Nath, discussed below.
- 6.13.2. We noted a copy of a letter dated 30 January 2015 addressed to Nath by Bester titled "COAL SUPPLY OFFER TEGETA (BRAKFONTEIN COLLIERY)". (Annexure E30). We determined that the said letter was sent as a response to a letter dated 23 September 2014 which was attached to the email addressed to Nteta by Nath on the same day i.e. 23 September 2014 We noted differences in coal quality specification parameters between the letter dated 23 September 2014 addressed to Nteta by Tegeta and the aforesaid letter dated 30 January 2015 addressed to Nath by Bester. The table below provides the aforesaid differences.

Coal Quality Parameter	Eskom Quality Specifications		Tegeta Quality Specifications	
	Quality Expected	Quality Rejection Limit	Quality Expected	Quality Rejection Limit
Calorific Value	21.10	<20.00	22.00	19.50
Ash	27.9	>30.0	25.00	>32.00
Sulphur	1.0	>1.3	1.00	>1.30
Volatile	21.3	<20.0	21.00	<20.00

6.13.3. The above differences in expected coal quality parameters indicate that the coal quality specifications between the aforesaid letters remained the same only in respect of the sulphur parameter and slightly changed, in favour of Eskom, in respect of the Calorific Value, Ash and Volatile parameters.

6.13.4. In view of the above, we determined that Tegeta initially proposed to conclude a CSA with Eskom which had favourable quality specifications requirements on their part. This was not in line with the requirements of the Medium-Term Mandate.

6.13.5. Nteta's Request for Tegeta's Vendor Registration prior to contracting Email dated 3 February 2015 addressed to Mhlophe by Nteta

- 6.13.5.1. We noted a copy of an email dated 3 February 2015 addressed by Nteta to Mhlophe and copied to Nath, Mashego, Portia Ndlovu ("Ndlovu"), Mudaliar titled "Vendor Registration". (Annexure E31). We determined that Nteta addressed this email to request Mhlophe to arrange for Tegeta's vendor registration.
- 6.13.5.2. We determined that on 3 February 2015, Nteta sent an e-mail to Luyanda Mlonzi (Mlonzi") an Eskom official requesting her to do a vendor registration for Tegeta. (Annexure E32).
- 6.13.5.3. We further determined that the above vendor registration request by Nteta to Mhlophe and Mlonzi was as a result of the condition indicated in paragraph 5(c) of the letter addressed by Bester to Nath on 30 January 2015.
- 6.13.5.4. The letter indicated that "The contracting entity complies with Eskom's requirements which shall include all Eskom policy and procedure, including Vendor registration".
- 6.13.5.5. We however noted that Tegeta and Eskom became "the contracting parties" on 10 March 2015 when they entered into a CSA.

6.13.6. Nteta's Assertion Relating to Tegeta's Vendor Registration

Email dated 5 February 2015 addressed to Nteta by Mlonzi

- 6.13.6.1. We noted a copy of an email dated 5 February 2015 addressed by Mlonzi to Nteta titled "Re: Vendor Registration". The email states:
 - " Good Day Ayanda,

I just want to find out if there is a contract awarded or specific motivation for registering this supplier. I will need that information before proceeding as registration is now done on a need basis.

Regards" (Annexure E33).

- 6.13.6.2. Nteta responded to the above enquiry, through an email dated 5 February 2015 titled "Re: *Vendor Registration*", by indicating that a contract had been awarded and was scheduled to commence on 1 April 2015. (Annexure E34).
- 6.13.6.3. We determined that Nteta was not telling the truth as the contract was only signed on 10 March 2015.
- 6.13.6.4. We further determined that the above assertion by Nteta that a contract had been awarded to Tegeta was a misrepresentation in that there is no evidence that, as at the date of the above email, there was a recommendation made to the delegated approval authority for contract award as required by clause of 3.8.1 of the Eskom Procurement and Supply Chain Management Procedure.
- 6.13.6.5. Nteta's response to the above finding, through her attorneys, stated inter alia that "Nteta contends that she never misrepresented or led anyone to act to Eskom's detriment as a result of her email of 5 February 2015. This was not to be taken out of context and ignoring conditions precedent which the selfsame report recognizes at page 260 at paragraph 5.56.4. She further asserts that as at that time, all the essential terms of the agreement had in fact been agreed to. It is also clear that such agreement is also to comply with ".... all Eskom policy and procedure...." (emphasis added).
- 6.13.6.6. It should be noted that the said paragraph 5.56.4, highlighted in our second draft report, is a condition to a Coal Supply Offer letter addressed by Eskom to Tegeta. The said paragraph read as "The letter indicated that "The contracting entity complies with Eskom's requirements which shall include all Eskom policy and procedure, including Vendor registration".
- 6.13.6.7. As discussed above, paragraph 3.8.1 of the Eskom PSCM procedure clearly states *inter alia* that, a supplier's registration on the Eskom Supplier Database must be given priority in the processing thereof at least by the time of making a recommendation to the Delegated Approval Authority for contract award.

- 6.13.6.8. There is no part of the said paragraph which provides or indicates that a supplier's registration may be given priority as soon as "all the essential terms of the agreement had in fact been agreed to". Tegeta's vendor registration was supposed to be given priority once a recommendation to the Delegated Approval Authority was made not when all the essential terms of the agreement were agreed to.
- 6.13.6.9. Nteta's response further stated that "It therefore stands to reason that if the approval authority for whatever reason elects not to approve, then no contract would have been consumed. Consequently, there would never be a situation where Eskom is or would have been exposed to litigation arising from that agreement. Nteta accepts that on the face of it, one can interpret the contents of her email of 5 February 2015 to Mlonzi could be interpreted as "determined" however, the conditions precedent clearly militates against that being the only interference that could be drawn".
- 6.13.6.10.In addition to the above, Nteta's response stated that "The much quoted email of 5 February 2015, to the extent that it refers to the vendor registration process, is actually in kitter with the request for the commencement of that vendor registration process. Given how long such a process could take, Nteta's email was to be lauded as proactive, as opposed to attracting the ire of the draft report".
- 6.13.6.11. Even though Nteta's conduct was according the above response, a proactive nature, it was supposed to have been done in accordance with the applicable policies and procedures. In terms of best practice, a condition to an agreement negotiated with a service provider could not be considered to take precedence over an entity's prevailing policies and procedures.
- 6.13.6.12.Moreover, in terms of the minutes of the meeting held between Eskom and Tegeta on 30 January 2015 it was agreed that a sample of the proposed blended coal would be collected for combustion tests and further that proposed start date of the CSA, subject to a successful combustion test, was 1 April 2015.
- 6.13.6.13.In terms of the letter dated 30 January 2015 addressed to Nath by Bester, negotiations on the terms between Eskom and Tegeta were all

- subject to a duly signed CSA and compliance with, inter alia, the requirement that the coal proposed complies with Eskom's full combustion test and is suitable to supply Eskom Majuba power station.
- 6.13.6.14. The letter dated 3 February 2015, addressed to Bester by Tegeta, reflected that Tegeta was still negotiating the terms of the CSA with Eskom and Eskom had not agreed to Tegeta's terms. As at the date of the aforesaid email from Nteta to Mlonzi, the CSA had not been concluded and no successful combustion tests were concluded for the proposed blended coal.
- 6.13.6.15. It is clear that Nteta was giving Tegeta preferential treatment by fast-tracking its vendor registration prior to the conclusion of a successful combustion test on the proposed blended coal.
- 6.13.6.16.Nteta misled Mlonzi by stating that the contract had been awarded whilst certain conditions of awarding same were not achieved.

 Nteta's actions were a direct contravention of clause 3.8.1 of the PSCM procedure.
- 6.13.6.17. As previously discussed, paragraph 3.4.5.8 of the PSCM procedure requires suppliers, who approach Eskom with unsolicited offers, to be referred to the SD & L department within Group Technology and Commercial, to engage in this registration process without further representation, engagement or commitment.
- 6.13.6.18. Paragraph 3.4.5.8 further requires that only once a supplier's offer has been evaluated and pre-qualified after application against the Eskom Conditions of Registration, the supplier may then be given a vendor number confirming registration on the Eskom Supplier database and may be considered for any future tenders.
- 6.13.6.19. The fact that Tegeta's vendor registration was done before the award, it was therefore in and contravention of paragraph 3.7.3.9 of the Eskom PSCM procedure. Tegeta was supposed to be referred to SD & L for pre-qualification and supplier registration prior to being registered on the Eskom Supplier database.

6.13.7. Tegeta's follow up on their vendor registration

- 6.13.7.1. We noted a copy of an email dated 9 February 2015 addressed by Nath to Mlonzi and copied to Nteta and Mudaliar, titled "RE: Vendor Registration Tegeta Exploration". (Annexure E35).
- 6.13.7.2. In this email Nath was enquiring whether the documents Tegeta had submitted, in respect of Tegeta's vendor registration, were complete. According to the email, Nath indicated that should there be any further documents required by Eskom, Tegeta would submit same on an urgent basis.

6.13.8. Issuing of Tegeta vendor registration number

- 6.13.8.1. We determined that Tegeta obtained their Eskom vendor registration number on the same day of signing the aforesaid CSA. We further determined that Eskom sent the aforesaid vendor registration number to Tegeta on the same day of signing the aforesaid CSA.
- 6.13.8.2. The aforesaid vendor registration number was sent through an email dated 10 March 2015 addressed by Modiehi Mapela ("Mapela") to Nath and copied to Nteta, titled "TEGETA EXPLORATION AND RESOURCES". (Annexure E36). In this email Mapela informed Nath that Tegeta had been approved to be on Eskom's database and that Tegeta's vendor number is 11082687.

6.13.9. Tegeta's response to Eskom's Offer

Email dated 4 February 2015 addressed by Nath to Bester

6.13.9.1. We determined that Nath responded to Bester's letter of 30 January 2015, through an email dated 4 February 2015 titled "Request Letter – Tegeta Coal Offer". In his email, Nath sent Tegeta's coal offer letter which he indicated was favourable to Eskom.

6.13.10. Tegeta's request to Eskom to their offer

Letter dated 3 February 2015 addressed by Tegeta to Bester

6.13.10.1.We noted a copy of a letter, attached to Nath's email, dated 3 February 2015 addressed to Bester titled "COAL SUPPLY OFFER –

- *TEGETA (BRAKFONTEIN COLLIERY)*". (**Annexure E37**). The letter from Tegeta requested Eskom to consider the following:
- 6.13.10.1.1. Increasing the initial coal volumes of 65 000 tonnes per month volume to 100 000 tonnes a month effective 1 October 2015 as the Extension of Brakfontein Colliery would be operational by then.
- 6.13.10.1.2. Allowing Tegeta to increase the entity's black ownership to 50% plus 1 share in a phased manner over a period of 3 years; and
- 6.13.10.1.3. To consider a 10-year supply agreement as Tegeta's reserves supported the supply of volumes required for 10 years.

6.13.11. Eskom's response to Tegeta's counter offer for the CSA

Email dated 12 February 2015 addressed to Nath by Nteta

- 6.13.11.1. Eskom responded to Tegeta's coal supply letter of 3 February 2015 through an email dated 12 February 2015 addressed to Nath and Mudaliar by Nteta titled "722983 COAL SUPPLY OFFER TEGETA (BRAKFONTEIN COLLIERY AND EXTENSION)".
- 6.13.11.2. Attached to the aforesaid email was a copy of a letter dated 12 February 2015 addressed to Nath by Bester titled "COAL SUPPLY OFFER TEGETA (BRAKFONTEIN COLLIERY AND EXTENSION)" (Annexure E38). The letter states as follows:

" Dear Ravindra

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

Source of additional 35 000 tons coal mined at Brakfontein

- 6.13.11.3. Mothapo and Opperman respectively indicated that the additional 35 000 tons of coal was supposed to be mined from the Brakfontein Colliery Extension and would be subjected to similar technical assessments which were performed on the coal samples obtained from Brakfontein Colliery prior to delivery of same to Eskom's power stations.
- 6.13.11.4. Opperman indicated that Tegeta never delivered any coal to Eskom from the Brakfontein Colliery Extension as provided in clause 10.4 of the CSA and the contract coal supply schedule, outlined therein.
- 6.13.11.5. The said CSA and contract coal supply schedule provide that Tegeta would supply a minimum monthly coal quantity of 65 000 tons for the period April 2015 to September 2015 and 113 000 tons from October 2015 to September 2020.
- 6.13.11.6. Opperman further indicated that around October 2015 Tegeta was still busy with the preparation of the Brakfontein Colliery Extension site.
- 6.13.11.7. Furthermore, Opperman indicated that the increased coal volumes delivered by Tegeta to Eskom, around October 2015, was mined from the Brakfontein Colliery.
- 6.13.11.8. The letter dated 12 February 2015 from Bester to Nath accepted Tegeta's offer as indicated in the annexure
- 6.13.11.9. Mothapo indicated that during the time the TSD conducted a technical assessment at Brakfontein Colliery, she noted that Brakfontein had about ten (10) million tons of gross coal.

6.13.12. Tegeta's request to make changes on the Eskom coal offer

6.13.12.1. We determined that Tegeta responded to Eskom's letter of 12 February 2015 through an email dated 13 February 2015 addressed to Nteta by Nath titled "RE: 722983 COAL SUPPLY OFFER -

- TEGETA (BRAKFONTEIN COLLIERY AND EXTENSION). (Annexure E39).
- 6.13.12.2. In the said e-mail, Nath indicated to Nteta that Tegeta required a ten (10) year contract in order to satisfy their funders in that Tegeta's loan period was going to be more than seven (7) years.
- 6.13.12.3. Nath indicated to Nteta that in the initial five (5) years of CSA Tegeta would be supplying 65 000 tons from Brakfontein Colliery and the remaining coal would be supplied from Brakfontein Colliery Extension.
- 6.13.12.4. Nath requested Nteta to consider making various changes to the Eskom's coal supply offer letter, including *inter alia* the coal volume requirements, the CSA duration.
- 6.13.12.5. We noted a copy of an email dated 13 February 2015 addressed by Nteta to Nath, responding to the above email, titled "RE: 722983 COAL SUPPLY OFFER TEGETA (BRAKFONTEIN COLLIERY AND EXTENSION)". (Annexure E40). Nteta indicated in her email that she had noted the contents of Nath's email and further that she would revert back to him on Monday, 16 February 2015.
- 6.13.12.6. Nteta responded to Nath's email of 13 February 2015, through an email dated 16 February 2015 titled "RE: 722983 COAL SUPPLY OFFER TEGETA (BRAKFONTEIN COLLIERY AND EXTENSION). (Annexure E41)
- 6.13.12.7. Nteta forwarded the aforesaid emails to Bester through an email dated 16 February 2015 titled "FW: 722983 COAL SUPPLY OFFER TEGETA (BRAKFONTEIN COLLIERY AND EXTENSION). In the said email Nteta informed Bester that she had committed to responding to Nath on Monday, 16 February 2015. According to the email, Nteta indicated that she would draft a document and discuss same with Bester on Monday.
- 6.13.12.8. Nteta indicated to Nath that she had reviewed his comments in respect of the coal offer letter Eskom sent to Tegeta on 12 February 2015. Nteta suggested a meeting with Nath and his team on

- Friday, 20 February 2015, at Eskom offices to go through the issues highlighted by Nath.
- 6.13.12.9. Nath confirmed Nteta's meeting request for 20 February 2015, through an email dated 16 February 2015 titled "RE: 722983 COAL SUPPLY OFFER TEGETA (BRAKFONTEIN COLLIERY AND EXTENSION).
- 6.13.12.10. During our consultations with Mothapo she indicated that there were no records which indicate that the said meeting took place.
- 6.13.12.11. In order to establish whether Eskom rejected or agreed to Tegeta's requested changes to the terms of the CSA, we compared Tegeta's requests as per their email of 13 February 2015, discussed above, to the provisions of the signed CSA, discussed below.
- 6.13.12.12. Tegeta requested for five (5) changes to be made to Eskom's coal offer letter dated 12 February 2015. The said changes are as follows:
 - 6.13.12.12.1. A change in paragraph 2 of Eskom's coal offer letter to read as "Eskom has agreed to initially take 65,000 tons from Brakfontein Colliery and shall increase the quantity to 100,000 tons on the same commercial terms once Tegeta starts their Brakfontein Extension Colliery. Each of the tranches are subject to the terms hereunder".
- 6.13.12.13. We determined that the above requests, to provide coal from both the Brakfontein Colliery and Brakfontein Colliery Extension, was granted by Eskom in clause 2.1.37 of the signed CSA, which provides that a Mine "means the Brakfontein Colliery and Brakfontein Colliery Extension coal mine(s) established to exploit the Coal Resource". Tegeta's request relating to the increased coal quantity is discussed below.
- 6.13.12.14. The second request by Tegeta was a change in the lower portion of paragraph 2 of Eskom's coal offer letter which stated that ""A maximum price of R13.50 per gigajoule for an additional 35 000 tons per month from Brakfontein Extension Colliery, which shall

be offered to Eskom" to read as "A maximum price of R13.50 per gigajoule for a total of 100,000 tons per month from Brakfontein Colliery or Brakfontein Extension Colliery or from any one of them. & quot (sic)".

- 6.13.12.15. We determined that the above request by Tegeta was granted by Eskom in that clause 15.1 of the signed CSA states that "The price for Contract Coal on the Base Date ("the Base Price") shall be R13.50 (thirteen Rands and fifty cents) excluding VAT per GJ, Free Carrier (FCA) at the Delivery Point for Rail Coal and Road Coal".

 Although the CSA does not specify a price per coal source a reasonable conclusion to make is that the above price of R13.50 (thirteen rand and fifty cents) is applicable to both the coal from Brakfontein Colliery and Brakfontein Colliery Extension.
- 6.13.12.16. The third request by Tegeta relating to the increase in coal quantities, as stated under Tegeta's first request discussed above, was a change in paragraph 3 of Eskom's coal offer letter to state that "the proposed volumes are 65,000 tons per month from Brakfontein Colliery. The volumes shall be increased to 100,000 per month from October 2015 once Tegeta's Brakfontein Extension Colliery becomes operational".
- 6.13.12.17. We determined that the above request was granted by Eskom in that clause 10.4 of the CSA and the contract coal supply schedule, outlined therein, provides that Tegeta were to supply a monthly coal quantity of 65 000 tons for the period April 2015 to September 2015 and 113 000 tons from October 2015 to September 2020. We further determined that Eskom also agreed to a quantity of 113 000 tons, for the period commencing October 2015, which is 13 000 tons more than Tegeta's requested quantity of 100 000 tons.
- 6.13.12.18. The fourth request by Tegeta, in respect of an extended CSA term, was a change in paragraph 5 of Eskom's coal offer letter which stated "*Para* (sic) 5 "Ten-year duration".
- 6.13.12.19. We determined that Tegeta's request to increase the CSA term from five (5) years to ten (10) years was granted by Eskom in that the CSA coal supply schedule, provided under clause 10.4 of the

- signed CSA, provided that Tegeta is to supply a total of 13 950 000 tons of coal quantities during the period commencing on April 2015 to September 2025. The said period is ten (10) years.
- 6.13.12.20. The fifth and final request by Tegeta was for Eskom to delete paragraph 6 (c) of their coal offer letter which stated that "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".
- 6.13.12.21. We determined that the above request was granted by Eskom in terms of the signed CSA as it made no clear provision, under clause 14 titled "Eskom Technical Compliance", which indicated that Tegeta's Brakfontein Colliery Extension must meet and comply with Eskom's technical requirements of producing saleable tons prior to the contract being extended to up to 10 years. The said clause stated inter alia that "The Contract Coal to be supplied from both Brakfontein and Brakfontein Colliery Extension must at all times comply with Eskom's technical and coal supply requirements".
- 6.13.12.22. In view of the above, we determined that Eskom agreed to all the changes requested by Tegeta. The aforesaid agreement, by Eskom, to Tegeta's terms is also confirmed in paragraph one (1) of the briefing note, discussed below, dated 10 March 2015 addressed by Bester to Mboweni. The briefing note is discussed in the paragraphs below. (Annexure E42)
- 6.13.12.23. We found the above to be irregular on the part of Nteta, Bester for their participation and/or non-participation in the negotiations between Eskom and Tegeta, in that they allowed Tegeta to dictate the terms of the CSA which, consequentially, were favourable on their part and was not in the best interest of Eskom.
- 6.13.12.24. During our consultation with Nteta, she indicated that the CSA between Tegeta and Eskom was drafted by Eskom's legal department as request by the PED. She further indicated that the negotiations regarding the ten (10) year period of the said CSA were handled by herself and Bester, without the involvement of

- Eskom's legal department, due to lack of capacity within Eskom's legal department.
- 6.13.12.25. The above finding was also highlighted in our second draft report. Nteta's response to the above finding, through her attorneys, stated inter alia that "The fact that the primary negotiations were handled by Nteta and Bester does not, without more, prove that Legal Department's inputs were not solicited or obtained at all. Capacity Constraints referred to (sic) related to frequency and extent of involvement and that still be independently verified as recognized in paragraph 5.69.5 and 5.70.5 respectively. Consequently, what is recorded in 5.70.3 (page 272) is premature and unfortunate, certainly if such a bold 'finding" is made without interviewing legal department officials who could shed light thereon".
- 6.13.12.26. During our consultation with Daniels, she indicated that allowing a service provider to make changes or amend the terms of a contract while it is being negotiated, is illegal. According to Daniels, the requested changes by Tegeta should have been negotiated and handled by the whole negotiation team, which comprised various parties including, amongst others, the geologists and the finance personnel and not by a single individual. Daniels further indicated that Tegeta was not supposed to dictate to the terms of the contract *i.e.* the 10 years period.
- 6.13.12.27. It should be noted that, in response to our draft report, Tegeta did not comment on the above finding relating to the changes in on the CSA.

The increase of the contract period from five to ten years

6.13.12.28. As indicated above, the original offer made by Eskom to Tegeta was a contract for the duration of five (5) years for Tegeta to supply Eskom with coal from Brakfontein Colliery. The said offer of five (5) years would have run from April 2015 to 31 March 2019 and would have therefore exceeded the Medium-Term Mandate period which ended in September 2018.

- 6.13.12.29. The revised period of ten (10) years awarded to the Tegeta for the supply of coal for the Brakfontein Colliery mine led to Eskom signing an agreement that went further beyond the 2018, September end date for the Medium-Term Mandate.
- 6.13.12.30. The CSA between Eskom and Tegeta is regulated by the Medium-Term Mandate. Various Eskom executives including Nteta, Mboweni and Daniels agree the Eskom coal procurement from Tegeta's Brakfontein mine was concluded under the Medium-Term Mandate.
- 6.13.12.31. The Medium-Term Mandate was a process approved by the Board.
- 6.13.12.32. The CSA between Eskom and Tegeta went beyond the life of the Medium-Term Mandate.
- 6.13.12.33. There is no indication that the period of the CSA that went beyond the Medium-Term Mandate (*i.e.* October 2018 to 2025), was approved by the Board.
- 6.13.12.34. Eskom contracting to a period beyond the Medium-Term Mandate life span was unauthorised and irregular.
- 6.13.12.35. Koko, Nteta, Mabelane and Mboweni should be held to account for the irregular and unauthorised expenditure.
- 6.13.12.36. There is no evidence that Eskom Executives who concluded the coal supply agreement between Eskom and Tegeta obtained approval to procure beyond the lifespan of the Medium-Term Mandate.

Eskom accepts Tegeta's offer of an increased coal quantity

- 6.13.12.37. We determined that on 9 March 2015 at 19:08 pm which was a day before the signing of the CSA, between Eskom and Tegeta, Nteta sent an e-mail to Nath and Mudaliar and copied Mashego. In the said email Nteta wrote *inter alia* the following: "Goodday, please find attached draft contract. We have tried to accommodate your comments where possible".
- 6.13.12.38. Nteta's e-mail further reflected the following:

"As indicated, our legal advisor is to review the changes that we discussed during our operational meeting this afternoon. Please note that we have increased your monthly tonnage to 113 000 tons, with a variance on the max and min". (Annexure E43)

THE COAL SUPPLY AGREEMENT

Tegeta Coal Supply Briefing Note dated 10 March 2015

- 6.13.13. We noted a copy of a briefing note dated 10 March 2015 from Bester to Mboweni titled "CSA WITH TEGETA EXPLORATION AND RESOURCES" (Annexure E42) The briefing note highlighted the following:
 - 6.13.13.1. Eskom had negotiated a contract for the supply of coal from Tegeta Exploration and Resources; and
 - 6.13.13.2. According to the briefing note, Eskom's legal advisor had reviewed the contract.
- 6.13.14. During our consultation with Mboweni, he indicated that he could not recall whether he received the said briefing document prior to signing the CSA or received it on the day that he signed the CSA.
- 6.13.15. Mboweni further indicated that it is highly probable that he received the said briefing document on the same day that he signed the CSA in that he had always requested to be provided with a documentary audit trail. The documentary audit trail would indicate various signatories and the purpose of his signature, before he signed any document.
- 6.13.16. In his response to our consultation questions, Koko indicated that Mboweni was the official who signed the CSA on 10 March 2015. Koko further indicated that he was not directly involved in the management of the coal supply contract and was therefore not able to comment on the transition.

Conditions Precedent to the Tegeta CSA

6.13.17. We determined that, in addition to the suspensive condition provided on the briefing note discussed above, clause 10.1 of the CSA provides that Eskom and Tegeta agreed that the CSA would be subject to the fulfilment or waiver of the following conditions:

- 6.13.17.1. According to clause 10.2.1, in respect of Tegeta, to complete and report a successful combustion test, for coal supply to Majuba power station, by no later than 16h00 on 31 August 2015.
- 6.13.17.2. We further determined that clause 10.3 of the CSA provides that "It is specifically recorded that if the Conditions Precedent are not fulfilled or waived on or prior to the applicable date referred to in clause 10.2.1. the remaining provisions of this Agreement shall never become effective/ In such event, neither Party shall have any claim of any nature against the other".
- 6.13.18. We noted that Eskom Management admitted in previous investigations that the above conditions precedent were not complied with.

Suspensions of Eskom Executives

- 6.13.19. We determined that on 11 March 2015 Eskom suspended the following Executives:
 - 6.13.19.1. Tshediso Matona, Group Chief Executive
 - 6.13.19.2. Matshela Koko, Group Executive, Commercial and Technology;
 - 6.13.19.3. Dan Marokane, Group Executive, Capital; and
 - 6.13.19.4. Tsholofelo Molefe, Finance Director.
- 6.13.20. We determined that from the four Executives, only Koko returned to Eskom after the said suspensions.
- 6.13.21. During our consultations with Matona, he confirmed that he was suspended on 11 March 2015 together with the three Executives reflected above. Matona indicated that there was a Board Meeting scheduled for 9 March 2015. He indicated that in the said meeting the Board proposed to have an investigation conducted relating to *inter alia* load shedding.
- 6.13.22. Matona indicated that he raised issues relating to the fact that various investigations had been conducted and Eskom knew what the problems of *inter alia* load shedding were, as a result he did not support a new investigation.
- 6.13.23. Matona further indicated that the Board told him that the investigation was requested by the then Minister, Lynne Brown. As a result the Board took a

- resolution to reschedule the meeting to 11 March 2015 in order to be addressed by Minister Brown.
- 6.13.24. Matona indicated that on 11 March 2015 the Board had a meeting in which Minister Brown was also present.
- 6.13.25. Matona further indicated that at the commencement of the said meeting the Board requested him and Tsholofelo Molefe to be excused. According to Matona, the Board sat until in the afternoon when Minister Brown left, after which Matona was asked to re-join the meeting.
- 6.13.26. It was at the said meeting that Matona was served with a suspension letter.
- 6.13.27. In his address to the Portfolio Committee on Public Enterprises Ben Ngubane ("Ngubane") indicated that the suspension of the four Executives was done during the tenure of Zola Tsotsi ("Tsotsi"), the then Eskom Board Chairman.
- 6.13.28. Ngubane further indicated that Tsotsi had apparently suspected the executives of wrongdoing.
- 6.13.29. Ngubane stated that an investigation was ultimately conducted, but on different terms than those initially proposed by Tsotsi.
- 6.13.30. Both Matona and Tsholofelo Molefe were in June 2015 replaced by Brian Molefe and Anoj Singh as Acting GCE and Acting GCFO respectively. On 25 October 2015 Minister Brown appointed Molefe and Singh as GCE and GCFO respectively.

6.14. COAL TESTING AFTER SIGNING THE CSA

- 6.14.1. Nyangwa indicated that Dr Van Alphen also conducted a coal chemical analysis and QEMSCAN just after he had also concluded on the combustion test on the second sample that was provided by the PED in August 2014. During our consultation with Mothapo she indicated that Dr. Van Alphen commenced with the aforesaid coal analysis and QEMSCAN around January 2015. According to Nyangwa, Dr. Van Alphen's test results concurred with his results in that they were both of the view that the Seam 4 upper coal from Brakfontein was not suitable for most of Eskom's power stations.
- 6.14.2. Dr. van Alphen, confirmed that he performed the aforesaid tests and indicated that Brakfontein Colliery's Seam 4 lower coal was good in that it could be used at various Eskom power stations. Furthermore, Dr Van Alphen indicated that

the RT & D's overall conclusion was that the Seam 4 lower coal was always the preferred option for Majuba power station.

RT& D's Technical Memorandum dated 12 March 2015

- 6.14.3. We noted a copy of a Technical Memorandum dated 12 March 2015 addressed by Dr. van Alphen to the PED referenced "RT&D FM 209-21 Rev.1" and titled "Brakfontein S4L Coal Assessment". (Annexure E44).
- 6.14.4. The said memorandum contained drastically improved HGI in the Brakfontein Colliery's Seam 4 Upper and a blend of Seam 4 lower
- 6.14.5. Nyangwa indicated that he was surprised by the sudden improved HGI in Brakfontein Colliery's Seam 4 upper coal and a blend of Seam 4 lower and Seam 4 upper coal in that his report of August 2014 reflected an HGI which was not in line with Eskom's coal quality requirements.
- 6.14.6. Dr. Van Alphen indicated that the above improved HGI was so shocking that one would have concluded that it was based on coal samples derived from different sources.
- 6.14.7. In response to the above statement, Tegeta stated that "The coal sample supplied to Eskom was from the Brakfontein mine only".
- 6.14.8. The memorandum recommended that Sending a "mixed" Brakfontein S4U/S4L blend to Majuba and Matla power station was not recommended as there was a high probability that the "mix" would frequently exceed Majuba and Matla 240 rejection specification. This was attributed to the poorer quality S4U which exceeded Majuba/Matla 240 rejection specifications. If however, S4U and S4L were to be de-stoned, the qualities would be acceptable and a mixed product would be suitable for Matla and Majuba.
- 6.14.9. If de-stoning was not feasible, then sending only S4L to Matla and Majuba was an option. The remaining S4U could be sent to Kendal power station.

Nteta's request of feedback on RT& D's Technical Memorandum

6.14.10. We noted a copy of an email dated 23 March 2015 addressed by Nteta to Mothapo and copied to Mashego, titled "Feedback on Full Combustion Test – Brakfontein Colliery". (Annexure E45). In the email Nteta requested Mothapo to provide her with feedback on the full combustion test for the Brakfontein Colliery.

Full combustion test Seam 4 Upper Coal

- 6.14.11. Mothapo indicated that the "full combustion test" referred to in Nteta's e-mail was in respect of the fresh Seam 4 upper coal stockpile, which she collected on 10 March 2015 as requested by Tegeta in the meeting held between Eskom and Tegeta on 30 January 2015.
- 6.14.12. Mothapo further stated that she had requested that the aforesaid fresh stockpile be tested prior to the PED accepting same. Mothapo further indicated that the full combustion test results were provided to her by the RT & D on 9 April 2015 and she then reported the results to Nteta and Mashego on 10 April 2015. Mothapo further indicated that RT & D tested both Seam 4 upper and Seam 4 lower fresh stockpiles samples provided to them.
- 6.14.13. As discussed below, the CSA between Tegeta and Eskom was concluded on 10 March 2015, before the above tests were conducted which was in contravention of clause 3.1 and clause 3.2.1.6 of the Eskom Technical Evaluation Procedure for Sourcing Coal (Annexure E46).
- 6.14.14. Tegeta responded to the above finding by stating that "Full combustion test was a pre-condition in the CSA. Eskom took the sample on 10th March 2016 (sic). When Tegeta did not receive any letter regarding an adverse finding in the sample and subsequently pre-approved the stockpiles, it was presumed that the sample was approved".
- 6.14.15. The above response from Tegeta confirms that the Tegeta CSA was handled with gross negligence and Eskom's best interests were not considered. The said statement further confirms that the suspensive conditions provided in Bester's letter addressed to Mboweni, were not met prior to signing the CSA.
- 6.14.16. During our consultation with Daniels, she indicated that failing to comply with a pre-condition to the CSA, in this case a full combustion test, renders the Tegeta CSA irregular.
- 6.14.17. Tegeta was arbitrarily allowed to start making deliveries without any confirmation on the part of Eskom that their coal was compliant with Eskom's quality requirements. This was irregular on the part of Eskom.
- 6.14.18. Nyangwa confirmed that he received the stockpile samples collected by Mothapo.

- 6.14.19. Nyangwa indicated that it was surprising that the PED sent another coal sample to his division to analyse as had never happened before, during his tenure in the RT & D. He further indicated that it appeared that Tegeta wanted to make sure that their coal passed all RT & D tests in order for the CSA to be concluded.
- 6.14.20. According to Nyangwa, Mothapo appeared to be coerced by someone to swiftly finalise Tegeta's coal chemical analysis. Dr. Van Alphen confirmed Nyangwa's assertions during our consultations with him. He further stated that Mothapo appeared to be pressured to conclude on the chemical analysis.
- 6.14.21. During our consultation with Mothapo, she confirmed that she was under pressure and further that the said pressure was exerted on her by Nteta. She further indicated that she did not see anything wrong with the level of pressure exerted to her by Nteta as it appeared to be normal and expected due to the fact that Eskom was experiencing coal shortages at its various power stations.

RT & D's April 2015 Technical Assessment Report - April 2015

- 6.14.22. We noted during the review of a report dated April 2015, (actual day not reflected), attached to an email from Nyangwa to the PED "TEGETA, BRAKFONTEIN MARCH 2015 BLEND TECHNICAL ASSESSMENT". (Annexure E47), that the report concluded the following:
 - "The March 2015 sample is similar in most characteristics to the June 2014 sample.
 - When Hardgrove is not (sic) be considered in the first pass assessment of comparing the Brakfontein (March 2015 sample) to Coal Quality Specifications, the submitted sample is within the acceptable range for Kendal and Kriel 4-6 units. It is marginal for Tutuka & Majuba due to ash which is at the limit of the rejection range, marginal for Matla due to CV which is also between acceptable and rejection range.
 - When Hardgrove is considered in the overall assessment, based only on the laboratory analysis then the March 2015 sample is not suitable for all the power stations as the required mill throughput to meet full load will not be achieved.

- The results achieved by the PSCTF mill does conclude that Brakfontein March 2015 sample will produce fineness below 70% passing a 75um sieve.
- In the absence of the rate of slagging as determined by the Qemscan, the ash elemental results indicate a medium to high slagging propensity.
- Based on the determined burnout time and design furnace exit temperature, the March 2015 Brakfontein sample meets Kendal, Tutuka, Matla and Majuba. The source is marginal for Kriel 4-6 units.
- 6.14.23. The report further provided, as part of the recommendation, that "Practically, producing a consistent blend which will always have the same qualities as the March 2015 sample is difficult to maintain. This can result to producing a blend with a Hardgrove which is worse than the one analysed, and also surpassing the 240-71273834 ash and CV rejection limit. Since it is not the first Brakfontein sample to be assessed in RT&D, it is still recommended that if destoning is not feasible, then sending only S4L to Matla, Tutuka, and Majuba is an option. The remaining S4U could be sent to Kendal power station".
- 6.14.24. In response to the above, Tegeta quoted and pointed to the last sentence, which formed part of the conclusions discussed above, provided by RT & D which stated that "Based on the determined burnout time and design furnace exit temperature, the March 2015 Brakfontein sample meets Kendal, Tutuka, Matla and Majuba. The source is marginal for Kriel 4-6 units".
- 6.14.25. It should be noted that the above statement was part of the conclusions of the RT & D reports, as discussed above, and was not part of the recommendations provided by RT & D. The statement is based on the coal burnout time and the design furnace exit temperature. Our finding is based on the recommendation provided by RT & D which focused on the quality specifications provided in Eskom's 240 specs document. The said recommendation clearly stated *inter alia* that "it is still recommended that if de-stoning is not feasible, then sending only S4L to Matla, Tutuka, and Majuba is an option. The remaining S4U could be sent to Kendal power station".
- 6.14.26. Nyangwa indicated that when he issued the above report, he was not aware that the CSA had already been signed in that, according to him, the above report should have been used by the PED to guide the negotiations between Eskom and Tegeta.

- 6.14.27. As indicated above, according to the briefing note dated 10 March 2015, one of the suspensive conditions to the CSA was that prior to acceptance of the supplier coal for both Brakfontein Colliery and Brakfontein Colliery Extension, the supplier must meet Eskom's environmental and technical requirements, which include but not limited to a full combustion test.
- 6.14.28. We determined from the review of the coal offloading reconciliation document that Tegeta made the first delivery to Majuba power station on 7 April 2015.
- 6.14.29. The technical reports issued by RT & D on 12 March 2015 and April 2015 indicated that the delivery of S4 upper coal or a blend of S4 upper and S4 lower was not recommended for Majuba power station.
- 6.14.30. Tegeta responded to the above finding by stating that "The statement is not correct. The March 2015 sample Report clearly indicated that "Based on the determined burnout time and design furnace exit temperature, the March 2015 Brakfontein sample meets Kendal, Tutuka, Matla and Majuba". Our analysis of Tegeta's response is discussed above.
- 6.14.31. The two (2) RT & D technical reports referred to above were issued after Tegeta had made the first delivery at Majuba power station *i.e.* 7 April 2015.
- 6.14.32. A detailed discussion relating to deliveries from Brakfontein mine is provided in the following section.
- 6.14.33. In response to the above, Tegeta stated that "The supply contract commenced from 01/04/2015. The sample was collected on 10/03/2015. Eskom never informed Tegeta that the test is not conducted or have not passed. It was therefore presumed that he (sic) coal met Eskom's requirement and the delivery started. Further, the coal was supplied from pre-certified stockpiles by Eskom. In the event that the sample had not been satisfactory Eskom would never have pre-certified these stockpiles".
- 6.14.34. The above response by Tegeta was addressed in the previous section. Further to our analysis of Tegeta's response we determined that the response regarding the pre-certified stockpiles renders the coal pre-certification process questionable. The coal pre-certification process is discussed in the next section.

- 6.14.35. The delivery of a blend of S4 upper and S4 lower coal before a successful combustion test on same was concluded, was in contravention of the suspensive conditions to the CSA referred to above.
- 6.14.36. As indicated above, Nyangwa indicated that although he was not aware that the CSA had already been signed, he understood that Tegeta started making deliveries of coal to Eskom around 28 March 2015.
- 6.14.37. As further indicated above, a detailed discussion relating to deliveries made from Brakfontein mine, is provided in the next section.

6.14.38. Discussion of Drainage Tests during Monthly Technical Liaison Meetings

- 6.14.38.1. We determined that various Monthly Technical Liaison Meetings were held between Eskom and Tegeta during the year 2015. According to clause 22.10 of the CSA, " Eskom and the Supplier shall jointly and in consultation with each other and no later than 30 (thirty) days after Delivery of Contract Coal, conduct drainage tests to determine the Equilibrium Moisture content and the stockpile drainage period required for coal to attain such Equilibrium Moisture, which stockpile Retention Time will then be reduced to writing and signed off by duly authorised representatives of both Parties to be used for evidentiary purposes. The Supplier shall bear the cost of sampling and Eskom shall bear the cost of the analysis".
- 6.14.38.2. We noted copies of various minutes of Monthly Technical Liaison Meetings held between Eskom and Tegeta as referred to above. The minutes indicate, under the agenda item titled "CQMP", that "The drainage test date need to be scheduled" and, under the agenda item titled "Environmental", that "All mining activities should be compliant with water use license".
- 6.14.38.3. The said meetings were convened in accordance with the requirements of clause 28 of the CSA which provides "inter alia, that "At least once per Month during the currency of this Agreement, a Technical Liaison Meeting shall be held and be attended by authorised representatives of Eskom and the Supplier".

Non-compliance with Drainage Tests Requirements

- 6.14.38.4. A review of the coal offloading reconciliation document prepared by Majuba stated that the first delivery from Brakfontein Colliery was made on 7 April 2015. In view of the aforesaid, we determined that Eskom failed to enforce clause 22.10 of the CSA by not conducting drainage tests which were supposed to be conducted by no later than thirty (30) days after delivery of contract coal. Eskom was supposed to conduct a drainage test by, at latest, the end of June 2015.
- 6.14.38.5. During our consultation with Gert Opperman ("Opperman"), he indicated that, as the CSA contract manager, it was his duty to resolve instances of non-compliance by Tegeta with the CSA by noting the said instances of non-compliance in the minutes of the technical monthly meetings.
- 6.14.38.6. Opperman further indicated that he actioned the aforesaid instances of non-compliances by, inter alia, communicating with Tegeta and, in certain instances, involving Eskom's legal department for their assistance.
- 6.14.38.7. We requested Opperman to provide us with communication sent to Eskom's legal department relating to non-compliance with the terms of the CSA. We further sent our consultation questions to Eskom's legal department personnel to, inter alia, confirm the above.
- 6.14.38.8. As at date of this report we had not yet received the relevant responses.
- 6.14.38.9. We determined, from the review of the minutes of the Monthly Technical Liaison Meetings, that the CSA was a standing agenda item on the previously mentioned meetings. We however noted that, contrary to the above assertion by Opperman, issues of noncompliance with clause 22.10 of same were never discussed in any of the said meetings.
- 6.14.38.10. We determined that Opperman's assertion, that he noted instances of non-compliance with the CSA in the technical monthly meeting

minutes, was a misrepresentation in that instances of non-compliance with clause 22.10 of the CSA, discussed above, were never noted in any of the aforesaid minutes of the Monthly Technical Liaison Meetings.

6.14.39. We further determined that Eskom's legal department officials were never in attendance in any of the meetings referred to above. Although clause 28 of the CSA is not clear and specific about the authorised representatives of Eskom who were expected to attend the Monthly Technical Liaison Meetings, the non-attendance by Eskom's legal department officials of the said meetings, placed Eskom in a compromised position in that the presence of Eskom's legal department officials or their representatives would have, reasonably, mitigated and/or ultimately prevented instances of non-compliance, with the CSA by Tegeta.

RT& D's Technical Memorandum dated 17 April 2015

- 6.14.40. We determined that RT&D issued a Technical Memorandum, in respect of Tegeta's coal, dated 17 April 2015 addressed by Dr Van Alphen to the PED referenced "RT&D FM 209-21 Rev.1" and titled "*Brakfontein S4L and S4U blend*". (Annexure E48).
 - I. The memorandum indicated that Brakfontein S4L was recommended for Tutuka, Majuba and Matla. This recommendation is based on the coal qualities and the combustion characteristics. If the ash content of S4U is reduced then sending a blend of S4L and S4U to Majuba is a feasible option.
- 6.14.41. Tegeta responded to the above statement by indicating that "All the coal stockpiles supplied to Eskom was pre-certified coal approved by Eskom after lab test. So high ash coal cannot be supplied by Tegeta to any power station".
- 6.14.42. As part of the conclusions, the memorandum states, inter alia, that "Even though, the March 2015 is a selectively mined blend, the quality is still controlled by the proportion of S4U. Although the 98% combustion efficiency burnout time and furnace exit temperatures are within Majuba design specification, Brakfontein is still marginal for Majuba power station as the ash content is borderline on the 240-reject specification".

6.14.43. Mothapo and Nyangwa indicated that they understood that Tegeta's continuous attempts of proposing to supply a blend of Seam 4 upper and Seam 4 lower coal was that it appeared that Tegeta would not make profit by only supplying Seam 4 lower coal

6.14.44. Additional Technical Assessments conducted on Tegeta's coal

Brakfontein's Geological Borehole Data Assessment

- 6.14.44.1. During our consultation with Mothapo, she indicated that around June 2015, she provided geological borehole data, which she obtained from Brakfontein, to Dr Van Alphen to conduct a geological review on same in order to reach further conclusions on the low HGI on the Seam 4 coal.
- 6.14.44.2. She further indicated that the said geological review was conducted as a result of many concerns of a low HGI which were raised by coal miners who were mining close to the Brakfontein Colliery.

RT& D's Technical Memorandum dated 18 June 2015

- 6.14.44.3. We noted a copy of a Technical Memorandum dated 18 June 2015 addressed by Dr Van Alphen to the PED referenced "RT&D FM 209-21 Rev.1" and titled "Brakfontein Borehole Assessment". (Annexure E49). The memorandum provides that the objective of the analysis was to determine the lateral and vertical quality variation of S4, the degree of weathering/devolatilisation, proximity to a paleo-river or paleo-high and nature and frequency of in-Seam partings.
- 6.14.44.4. The memorandum concluded by providing that Brakfontein had four (4) options for supplying coal to Eskom's Majuba power station. The said options were as follows:
 - 6.14.44.4.1. Blend raw S4U with S4L to produce a product which is within Majuba 240 specification;
 - 6.14.44.4.2. A blend of selectively mined S4U and raw S4L;
 - 6.14.44.4.3. A blend of washed S4U (density cut point of 1.7-1.9 g/cm3) and raw S4L; and

6.14.44.4.4. Mine only S4L.

6.14.44.5. The memorandum concludes by stating that "Sending a blend of raw S4L and a washed S4U to Majuba, Tutuka and Matla power station was recommended in previous Brakfontein reports (RP_FUEL_QS_114_121 and RP_FUEL_QS_15_04). Based on the borehole review, the recommendation is still valid for Majuba and Tutuka power stations. It is not recommended for Matla power station as Brakfontein predicted 98% combustion efficiency burnout time is comparable to or exceeds Matla power station residence time of 1.9s.

Sending a blend of raw S4U and S4L to Kendal and Kusile power station is only viable if S4U selective mining is practiced and if blending is optimised".

6.14.44.6. The memorandum recommended as follows:

- 6.14.44.6.1. Producing a blend of raw S4L and selectively mined S4U is not recommended for Majuba, Tutuka or Matla power station. It could be considered for Kendal and Kusile power stations only if S4U is selectively mined and if blending is optimised. If there is no selective mining of S4U and blending is not optimised, then there was a high probability that the resultant "mixed" pre-certified samples would periodically exceed Kusile and Kendal 240 specifications.
- 6.14.44.6.2. The high total sulphur content of Brakfontein is also a concern. It was recommended that the Majuba 240 reject dry base total sulphur of 1.14% be included in the contract.
- 6.14.44.7. We determined that the PED disregarded the recommendations provided in the above report in that, as at the date of the aforesaid report i.e. 18 June 2015, the CSA between Eskom and Tegeta had already been concluded on 10 March 2015.
- 6.14.44.8. We found this to be irregular on the part of the PED in that they concluded a CSA without considering the recommendations of the

RT & D. The aforesaid report provided, inter alia, critical coal quality specification recommendations which should have been considered prior to concluding a CSA.

PED's disregard of RT & D's recommendations made on Brakfontein coal stockpile samples

- 6.14.44.9. As discussed above, Eskom's PED disregarded RT & D's recommendations, on tests conducted on Tegeta's coal, relating to the conclusion of CSA for the supply of both Seam 4 upper and Seam 4 lower coal to Eskom's Majuba power station. All RT & D's reports, some of which issued after the conclusion of the CSA, recommended against the supply of a blend of Seam 4 upper and Seam 4 lower coal to Eskom's Majuba power station.
- 6.14.44.10. There is no evidence that Eskom's management took any action as stated above, in that Tegeta continued to deliver a blend of Seam 4 lower and Seam 4 upper coal to Eskom's Majuba power station, despite the said coal not complying with the quality requirements of Majuba power station.
- 6.14.44.11. From a review of documentation we understand that PED was required to conduct additional assessments including Health and Safety Checks and Environmental assessments before the conclusion of the CSA.
- 6.14.44.12. Documents reviewed reflected that the first Health and Safety evaluation was conducted on 18 March 2015 which was eight (8) days after the contract was signed. The on-site visit was conducted on 26 March 2015, which was two (2) and a half months after the contract was signed.
- 6.14.44.13. The process followed in concluding the Tegeta CSA, as described above was in contravention with section 217 of the Constitution which states that in that the said process followed was not fair and competitive since an opportunity was not afforded to other potential service providers to participate in this process.

- 6.14.44.14. The irregular conclusion of the CSA may have caused Eskom to suffer and irregular expenditure, as the life span of the agreement fell outside the Medium-Term Mandate.
- 6.14.44.15. The said irregular expenditure was in contravention of section 51(1)(b)(ii) of the PFMA, which states that the "An accounting authority for a public entity must take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity".

6.15. PERFORMANCE OF TEGETA UNDER THE CSA - COAL DELIVERIES

Background

- 6.15.1. We determined that the CSA provided various provisions in respect of coal quantities which Tegeta was expected to deliver to Eskom during the contract period. The CSA further provides specific clauses relating to payments made by Eskom for the coal delivered by Tegeta. The said clauses detail various provisions which were to be adhered to by both Tegeta and Eskom during the contract period.
- 6.15.2. The initial discussion between Tegeta and Eskom was for the provision of 65 000 tons of coal from Brakfontein Mine.
- 6.15.3. The signed CSA between Eskom and Tegeta was for the supply of a total quantity of 13 950 000 tons of a blend of Seam 4 lower and Seam 4 upper coal, from Tegeta's Brakfontein Colliery. The value of the said CSA was R3.7 billion and was for a period of ten (10) years commencing on 1 April 2015 to 30 September 2025.
- 6.15.4. Our discussion relating to the coal deliveries made by Tegeta covers the period April 2015 to December 2015. It must however be noted that below we discussed payments made by Eskom to Tegeta for the duration of the contract.

Alleged Early Delivery of Coal at Majuba Power Station by Tegeta

6.15.5. During our consultations with various Eskom officials, including Charlotte Ramavhona ("Ramavhona"), Dr. Van Alphen and Nyangwa, they respectively indicated that Tegeta started making coal deliveries at Majuba Power Station prior to signing the CSA. At the time of our consultation with

- the three (3) Eskom officials referred to above, they did not provide us with evidence to this effect.
- 6.15.6. The allegations by Ramavhona, Dr. Van Alphen and Nyangwa was contradicted by information we obtained from Nteta and Opperman who, during our consultations, indicated that Tegeta only started making deliveries after signing the CSA.
- 6.15.7. According to Nteta, Tegeta started delivering coal to Eskom on 12 April 2015 and they did not make any delivery prior to signing the CSA.
- 6.15.8. We determined from the review of the Coal Offloading Reconciliation document prepared by Majuba that the first delivery from Brakfontein Colliery was made on 7 April 2015. We further determined from the offloading reconciliation document that Brakfontein Colliery delivered 48 000 tonnes between the period 7 April 2015 to 30 April 2015 which was far below the required quantity (Annexure E50).
- 6.15.9. According to the technical monthly liaison meeting of 13 May 2015, discussed below, Tegeta indicated that the reason for the deliveries being below plan was due to challenges on the processing plant.
- 6.15.10. According to the CSA and contract coal supply schedule, reflected above, Tegeta agreed to supply Eskom a minimum monthly coal quantity of 52 000 tonnes.
- 6.15.11. During the meeting of 10 July 2014, Tegeta indicated that they had between 70 000 to 75 000 tonnes of existing stockpiles in Brakfontein Colliery which they were proposing to supply to Eskom.
- 6.15.12. As discussed below, Tegeta failed to meet their minimum monthly delivery commitment even though they claimed they had enough stock pile to meet a coal quantity of 65 000 tonnes per month prior to signing the CSA.

Monthly delivery schedules agreed upon during the Technical Monthly Meetings

6.15.13. We requested copies of all the minutes of the monthly Technical Liaison Meetings held between Eskom and Tegeta in respect of the Brakfontein CSA, with a view of quantifying coal which was agreed upon and delivered by Tegeta, over the period of the CSA. We were however only provided with copies of minutes of the monthly Technical Liaison Meetings held between 13 May 2015 and 21 September 2016. In the absence of complete information for

- the year 2016, our quantification is limited to coal deliveries made in the year 2015, which covers the period April to December 2015. (**Annexure E51**).
- 6.15.14. During a review of the minutes we determined that various monthly coal quantity targets and forecasts were agreed upon. The minutes further reflected reasons provided, by Tegeta, for failing to meet their monthly targets.
- 6.15.15. Based on documentation reviewed, we determined that during 2015 Tegeta made 9 deliveries to Majuba Power Station.
- 6.15.16. As discussed in the paragraphs above, the CSA provided various coal quantity requirements which Tegeta was expected to comply with. Given the fact that the said coal quantity requirements were provided in many forms i.e. monthly, quarterly, annually, below we provide an analysis of the coal quantities delivered by Tegeta per quarter, during the year 2015:

7	Quarterly Delivery Schedule Analysis for the year 2015						
No	Delivery Months	Planned Delivery (Tons)	Actual Delivery (Tons)	Difference	Effect		
1	April, May and June	207 206	204 876	(2 330)	Below planned quantity		
2	July, August and September	293 000	342 775	49 775	Above planned quantity		
3	October, November and December	579 245	512 386	(66 859)	Below planned quantity		

6.15.17. As reflected on the above table, during the year 2015, Tegeta failed to meet the planned delivery requirements on two occasions. Furthermore, the above table provides that Tegeta delivered, on one occasion, above the planned delivery requirements.

- 6.15.18. According to the CSA coal delivery schedule, Tegeta was expected to deliver a monthly quantity of 65 000 tons for the first six (6) months (April 2015 to September 2015) of the CSA period. The said schedule further indicated that over the same period, Tegeta was expected to deliver a minimum and maximum monthly quantity of 52 000 and 78 000 tons, respectively.
- 6.15.19. The CSA's coal delivery schedule further provides that Tegeta was expected to deliver a monthly quantity of 113 000 tons for the periods October 2015 to September 2020 and October 2020 to September 2025 of the CSA period. According to the said schedule, over the same periods, Tegeta was expected to deliver a minimum and maximum monthly quantity of 90 400 and 135 600 tons, respectively.
- 6.15.20. As previously indicated in the preceding paragraphs, the CSA defines minimum and maximum monthly and quarterly quantities as follows:
 - 6.15.20.1. The CSA was drafted in a manner which benefitted Tegeta instead of Eskom. We determined that the minimum monthly quantity based on the provisions of the Medium-Term Mandate would have amounted to 55 250 (65 000 * 85%). This was irregular on the part of Eskom.
 - 6.15.20.2. We determined that 80% of the monthly quantity, referred to above, equates to 52 000 tons (65 000 * 80%) in respect of the first six (6) months (April 2015 to September 2015) of the CSA and 90 400 (113 000 * 80%) for the second part of the CSA (October 2025 to September 2020).
 - 6.15.20.3. We further determined that, in respect of the last period of CSA (October 2020 to September 2025), the minimum monthly quantity remained similar to that of the second part of the CSA.
- 6.15.21. We determined that Tegeta's reasons provided for the under supply during the month of April 2015, does not meet the definition and was not as a result of force majeure, as discussed in the preceding section.
- 6.15.22. We determined that the said under delivery was below the minimum required quantity, as calculated in accordance with clause 12.4 of the CSA, and as such amounted to a direct contravention of clause 11.4 of the CSA which is further discussed below.

- 6.15.23. We further determined that the quantity of the under delivery in respect of the delivery made in April 2015, as calculated in accordance with clause 12.4 of the CSA, equates to 4 000 tons (52 000 48 000).
- 6.15.24. We further determined that, during the second quarter of 2015, Tegeta delivered 342 775 tons of coal, which is more than the maximum quarterly quantity of 336 950 tons, calculated above.
- 6.15.25. In response to our finding relating to the possibility that Tegeta may have misrepresented to Eskom that they had existing stockpiles when they were negotiating for the CSA, Tegeta responded by indicating that "Tegeta never misrepresented. Tegeta had old stockpiles but once Eskom refused to take that coal Tegeta sold it in open market at a much reduced price".
- 6.15.26. Our review of the various minutes of the negotiation meetings held between Eskom and Tegeta revealed no evidence that Tegeta sold their existing stock piles, which they were proposing to supply to Eskom. We were not provided with any evidence relating to the above response from Tegeta.

6.16. REVIEW OF COMPLIANCE WITH THE CSA COAL QUALITY REQUIREMENTS

- 6.16.1. As discussed in the paragraphs relating to the coal testing's above, Eskom sought to procure coal of specific quality suitable for its Majuba Power Station.
- 6.16.2. The said coal quality was subjected to constant inspection and sampling to ensure that it complied with Eskom's requirements.
- 6.16.3. Eskom procured services of various service providers to test and transport coal to its various power stations.
- 6.16.4. Amongst the service providers appointed by Eskom to provide laboratory and coal transportation services was Sibonisiwe Coal Laboratory Services cc ("Sibonisiwe"); SGS Services South Africa (Pty) Ltd ("SGS") and South African Bureau of Standards ("SABS").

6.16.5. Supply of Foreign Material to Majuba Power Station

6.16.5.1. Ramavhona and Opperman stated that there were instances when Brakfontein mine delivered contaminated coal to Majuba Power Station. They indicated that the said contaminated coal had foreign material which was identified by Majuba Power Station officials.

- 6.16.5.2. Ramavhona and Opperman indicated that the above issues of foreign materials delivered at Majuba Power Station would be identified by various parties including the Majuba Power Station officials and Eskom's officials who were based at the Brakfontein Colliery.
- 6.16.5.3. Andrew Dick ("Dick") from Majuba Power Station confirmed Ramavhona and Opperman's version and further indicated that the foreign material was identified by Majuba Power Stations.

Majuba Laboratory Coal Analysis Results

- 6.16.5.4. We were provided with a copy of Majuba Power Station's coal analysis report in respect of coal analysis results performed on 30 May 2015, titled "COAL ANALYSIS FROM UNIT ONE MILL FEEDERS". (Annexure E52).
- 6.16.5.5. The said report provides that the coal analysis report was performed by a company styled Pharmatrend Projects CC ("Pharmatrend").
- 6.16.5.6. During our consultations with various parties including Dick, Greyvenstein and Jonker, they respectively indicated that Pharmatrend is an independent laboratory service provider appointed by Majuba Power Station and is responsible for conducting coal analysis on coal delivered to Majuba Power Station by various coal suppliers.
- 6.16.5.7. The said parties further indicated that the findings indicated in the said results were in respect of coal which was delivered by Brakfontein to Majuba Power Station.
- 6.16.5.8. The said report provides that the samples tested were received on 29 May 2015 and reported on 30 May 2015.
- 6.16.5.9. During our consultations with Greyvenstein and Jonker, they indicated that the said report provides that the coal analysed did not comply with the Majuba Power Station quality specifications.
- 6.16.5.10. The above statement suggests that not all coal delivered by Tegeta to Majuba Power Station complied with the CSA coal quality

- requirements and that there is a likelihood that Eskom paid for the said non-compliant coal.
- 6.16.5.11. Tegeta responded to the above by stating that "As already mentioned that Tegeta "cannot supply non-compliant coal" to Eskom because every stockpile is tested as per CSA and only once approved by Eskom it is loaded for delivery to Eskom".
- 6.16.5.12. The above statement by Tegeta is contrary to their confirmation, discussed above, that Eskom allowed them to deliver coal, as "a special case" which failed to meet the quality requirements due to "shortage of coal supply being faced by Eskom at the relevant time".

Coal Testing performed by Sibonisiwe

- 6.16.5.13. We determined from documentation reviewed that between March and April 2015, SGS was the nominated laboratory which was responsible for the analysis of Brakfontein's coal samples.
- 6.16.5.14. In May 2015, Eskom re-allocated SGS's responsibilities from being a nominated laboratory of Brakfontein to a referee laboratory responsible for the reanalysis of Brakfontein's coal stockpiles pursuant to disputes raised on coal analysis results.
- 6.16.5.15. It is our understanding from consultations conducted with Eskom officials that laboratories were rotated once a year to prevent any potential risks to Eskom emanating from prolonged working relationships between laboratories and coal suppliers.
- 6.16.5.16. As discussed above, Sibonisiwe was part of Eskom's panel of independent laboratory service providers.
- 6.16.5.17. We determined that subsequent to SGS' appointment as referee laboratory, Eskom appointed Sibonisiwe as a nominee laboratory for the analysis of Brakfontein's coal from 24 May 2015 to 30 August 2015.

Reporting of coal analysis performed by Sibonisiwe

6.16.5.18. We determined that Sibonisiwe reported their coal analysis results for the period 23 July to 25 August 2015 through an email titled

- "BRAKFONTEIN QUALITIES" dated 23 August 2015 addressed by a Lungy from an email address titled results@sibonisiwelab.co.za.
- 6.16.5.19. We noted that the said report by Sibonisiwe was only three days after Koko came back from his suspension on 20 July 2015.
- 6.16.5.20. The report further indicates that it was compiled and authorized by Evelyn Sepeng ("Sepeng") and Nkosi respectively.
- 6.16.5.21. According to Masuku, Sepeng and Nkosi they were part of the Lungy's team but had since left the employ of Sibonisiwe subsequent to Eskom suspending Sibonisiwe's contract.
- 6.16.5.22. Masuku further indicated that the person whose name is reflected as a Technical Signatory on the test results reports, takes full responsibility of the test results in that he or she is accredited by the South African National Accreditation System ("SANAS") to approve all Sibonisiwe's coal test results.
- 6.16.5.23. We were provided with an unsigned copy of Sibonisiwe's coal analysis report dated 28 August 2015 titled "Test Report Coal Analysis" with reference "1509-153". (Annexure E53).
- 6.16.5.24. The report provides results in respect of coal samples which were received and reported between 23 August 2015 and 30 August 2015. .

Dispute relating to Coal Analysis Results

- 6.16.5.25. We determined that during August 2015, Tegeta raised a dispute on Brakfontein's coal sample based on coal analysis results which were reported by Sibonisiwe between the period 23 August 2015 and 25 August 2015. The said dispute was raised by Roux through Koko.
- 6.16.5.26. In his written response relating to the above, Koko confirmed that towards the end of August 2015, on more than one occasion, he was approached by Roux of Brakfontein mine alleging corruption in the coal sampling analysis and the reporting of the results by Sibonisiwe.

- 6.16.5.27. We determined that following Tegeta's dispute to Sibonisiwe's laboratory results. Eskom appointed SGS to conduct an analysis of the said samples.
- 6.16.5.28. During our consultation with Ramavhona and Van Der Riet, they indicated that SGS was responsible for conducting referee coal analysis in instances of a dispute on the coal an analysis results reported by Sibonisiwe in respect of Brakfontein's coal.
- 6.16.5.29. We were provided with a copy of an undated and unsigned SGS's coal analysis report titled "TEST REPORT" and referenced "2015/15-8". The report indicates that the material tested is coal samples. (Annexure E54).

Details contained in SGS's coal analysis report:

Received	Reported	TAT	Lab. No	Sample Name	Sample Mass (Kg)
26-08-2015 08:06 AM	26-08-2015 04:05 PM	07:59	47409	BFK 24.08.15 S/P A	220,14
27-08-2015 10:51 PM	28-08-2015 03:30 PM	16:39	47433	BFK 26.08.15 S/P A	167,17
27-08-2015 10:51 PM	28-08-2015 03:30 PM	16:39	47434	BFK 26.08.15 S/P B	188,51
28-08-2015 04:21 PM	29-08-2015 03:15 PM	22:54	47452	BFK 27.08.15 S/P A	204,68

6.16.5.30. SGS indicated that the above results were not in respect of a contractual sampling service but were merely for four disputed coal samples which were delivered by Sibonisiwe on an instruction from Ramavhona.

- 6.16.5.31. We determined that coal sample reference names reflected in the above coal analysis report were similar to those which were reflected in Sibonisiwe's coal analysis report for the period 23 August 2015 to 30 August 2015.
- 6.16.5.32. During our consultations with Ramavhona and Van der Riet, they respectively indicated that the above coal dispute results were unfavourable on the part of Brakfontein.
- 6.16.5.33. According to Ramavhona and Van der Riet, the above results concurred with Sibonisiwe's initial coal analysis results for the period 23 August 2015 to 30 August 2015, which according to them, indicated that Brakfontein's disputed coal did not comply with the CSA' coal quality requirements.
- 6.16.5.34. The officials mentioned above, including Tshwaro Petso ("Petso"), Magwaza and Mothapo, indicated that the said coal sample dispute results should have been regarded as final and binding on the part of Brakfontein Colliery. They further indicated that the above assertion is informed by clause 10.3 of Eskom's CQMP which states inter alia that "The results of all the parameters analysed at the independent laboratory shall be final and binding".

6.16.6. Brakfontein Coal Quality Investigation

- 6.16.6.1. As discussed above, during August 2015, Roux approached Koko alleging corruption in the coal sampling analysis and reporting of the results by Sibonisiwe. It is further our understanding that Roux reported the said allegations to Koko on more than one occasion.
- 6.16.6.2. As previously indicated, Koko confirmed the said meeting with Roux. In his response to our questions, Koko indicated that "Mr Roux told me that their own laboratory results showed that they complied and that they felt prejudiced by Eskom not complying with its own coal quality management process".
- 6.16.6.3. It is our understanding that Koko requested Van der Riet and other Eskom officials, including Ramavhona, Siphelele Gobeni

("Gobeni") and Sam Phetla ("Phetla"), to investigate the above complaint and to provide findings on same.

Alleged solicitation of a bribe by an Eskom's nominated laboratory

- 6.16.6.4. During our consultation with Van der Riet, he indicated that on 25 August 2015, he received a phone call from Mboweni who informed him about an alleged solicitation of a bribe, by an Eskom's nominated laboratory, from Brakfontein's representatives.
- 6.16.6.5. According to Van der Riet, Mboweni indicated to him that there is a certain white woman, employed by an Eskom nominated laboratory, who allegedly demanded a bribe from Brakfontein's representatives in order to change their coal analysis results.
- 6.16.6.6. During our follow up consultation with Masuku, he indicated that Sibonisiwe did not have an employee that fits the description referred to above. According to Masuku, the only official that may have fit the description was an Elzabe Truter ("Truter") who was an independent consultant responsible for SANAS quality assurance services relating to Sibonisiwe's lab equipment.
- 6.16.6.7. According to Masuku, Truter could not have solicited a bribe from the Brakfontein representatives as she was not involved in the operations related to coal analysis.
- 6.16.6.8. Van der Riet indicated that Mboweni informed him that he received the above allegation from Koko.
- 6.16.6.9. According to Koko's written response to our questions, he confirmed that he was approached by Roux to raise the said allegations of corruption in the coal mining sampling analysis and the reporting of the results by Sibonisiwe Laboratories.

Meeting of 28 August 2015 between Masuku and Koko

6.16.6.10. Masuku indicated that on 28 August 2015, he received a call from Koko who requested a meeting at the Eskom's Megawatt Park office. Masuku indicated that he met with Koko at Eskom's Megawatt Park offices on 28 August 2015. Masuku further

- indicated that he was accompanied to the said meeting by Jimmy Sindane ("Sindane") who was one of Sibonisiwe's employees.
- 6.16.6.11. According to Masuku, Koko requested that Sindane should wait outside his office and not be part of their meeting. Masuku indicated that Koko started the meeting by introducing himself as Eskom's Group Executive and asked Masuku why he was fighting with the Gupta family, to which Masuku responded by stating that he did not understand Koko's question and further that he did not know who the Guptas were.
- 6.16.6.12. According to Masuku, at the said meeting, Koko made a phone call to Roux relating to Brakfontein's Sulphur quality parameter results for stockpile 26B and 27A.
- 6.16.6.13. Masuku further indicated that during the telephone discussion between Koko and Roux, there was a suggestion to resample Brakfontein's stockpiles which had failed the precertification process. Masuku further indicated that it was during the said discussion it was suggested that Sibonisiwe would also be involved in the said precertification.
- 6.16.6.14. Masuku stated that Sibonisiwe was not involved in the said resampling, as discussed by Koko and Roux, and that no samples were delivered to his lab for testing.
- 6.16.6.15. Masuku stated that during the meeting Koko enquired from him whether he knew the owners of Brakfontein Colliery and Masuku responded by stating that he did not know them.
- 6.16.6.16. He further stated that Koko informed him that Brakfontein Colliery was owned by the Gupta family and that he, Masuku, was fighting with them by providing unfavourable coal analysis results performed on Brakfontein's coal.
- 6.16.6.17. Masuku stated that he was informed by Koko that he was providing unfavourable coal analysis results in respect of Brakfontein's coal analysis in order to solicit a bride from the Gupta family. Masuku responded to Koko by informing him that

- he is not soliciting any bribe from anyone and reiterated that he did not know the Gupta family.
- 6.16.6.18. Masuku indicated that he had never accepted any bribe from the Gupta family and further that he had never met them before.
- 6.16.6.19. Masuku stated that he informed Koko that he did not provide unfavourable coal analysis results to any mine and further that Sibonisiwe was appointed, by Eskom, for coal transportation and analysis services. He further stated that he had no knowledge of the coal quality specification parameters which were detailed in the contracts between Eskom and its coal suppliers.
- 6.16.6.20. He further stated that Koko requested that they break from the meeting, while they wait for the comparison of Sibonisiwe's coal analysis results to those of SGS's and reconvene at 03h00 PM to discuss same.
- 6.16.6.21. Masuku indicated that when the meeting reconvened at the agreed time, Koko made a phone call to Phetla and requested that he brought brings the comparison results to his office. Masuku stated that Phetla brought the results which were hand written on a piece of paper to Koko's office.
- 6.16.6.22. According to Masuku, the aforesaid comparison was only in respect of the total Sulphur parameter. He further indicated that the aforesaid comparison indicated that Sibonisiwe's total Sulphur results were similar to those of SGS. Furthermore, Masuku indicated that Koko seemed unhappy about the aforesaid results.
- 6.16.6.23. In his response to our questions relating to the above allegations, Koko indicated that "I deny making any threats to Mr Happing Masuku. Dr Van der Riet, Ms Charlotte Ramavhona and I meet (sic) with Mr Happing Masuku of Sibonisiwe. The meeting took place on or around 28 August 2015 in my office. We agreed that samples from the stockpiles at Brakfontein mine that had failed the prior tests had to be taken under controlled circumstance for separate analysis at Eskom, Sibonisiwe and SABS laboratories" (Annexure E55).

- We provided Van der Riet and Ramavhona with Koko's response 6.16.6.24. as reflected above, however as the date of this report we had only obtained Van der Riet's response. In his response, Van der Riet stated inter alia that "I can confirm that I did not meet with Mr Happing Masuku of Sibonisiwe. Although requested to do so by Mr Matshela Koko on 26 August 2015, I explained to Mr Koko on 27 August 2015 that we needed to compile evidence with which to confront Mr Masuku. Mr Koko undertook to call Mr Masuku himself. I was not involved in any communication between them, and only heard from Ms Charlotte Ramavhona that they had actually met. I was therefore not party to what they agreed. I can however comment that as per the Eskom Coal Quality Management Procedure (CQMP), Sibonisiwe laboratories only did coal analyses for Eskom, and were not involved in coal sampling. It would therefore have been highly irregular for them to have been involved in sampling, as their contract did not allow for this service. Eskom has a separate contract with other parties for sampling" (Annexure E56).
- 6.16.6.25. We had not received Ramavhona's version as the time of this report.
- 6.16.6.26. During our follow up consultation with Masuku he indicated that the said meeting between himself and Koko was never attended by Van der Riet and Ramavhona as stated above by Koko. He further indicated that, as previously discussed, the other person who was part of the meeting was Phetla, who brought the coal analysis results.

Meeting between Koko, Daniels, Ramavhona and Van Der Riet

- 6.16.6.27. During our consultation with Van der Riet, he indicated that Koko requested a meeting in Koko's office to discuss the investigation into allegations against Sibonisiwe on 28 August 2015
- 6.16.6.28. According to Van der Riet, he requested Ramavhona to accompany him to Koko's office. Ramavhona confirmed that she accompanied Van der Riet to the feedback meeting with Koko. Ramavhona further stated that Daniels was also part of the said

- meeting. During our consultation with Daniels she confirmed being part of the said meeting.
- 6.16.6.29. Ramavhona indicated that, Koko introduced himself to her and requested that she explains the Eskom coal analysis results dispute process. Ramavhona further indicated that she explained the said process to Koko.
- 6.16.6.30. Ramavhona further indicated that Koko requested that all Brakfontein's laboratory samples for the month of August should be retrieved from Eskom's storage and kept aside until he provides further instructions on same.
- 6.16.6.31. Ramavhona indicated that Koko requested he be provided, with all Brakfontein's laboratory coal analysis results reported by various laboratory services from inception of the CSA by close of business.

Analysis of Tegeta's previous results

- 6.16.6.32. Ramavhona indicated that she duly retrieved Brakfontein's coal analysis results which were submitted by both SGS and Sibonisiwe from inception of the CSA.
- 6.16.6.33. She further indicated that Gobeni provided her with the contractual coal quality parameter specifications stipulated in the CSA. According to Ramavhona she and Gobeni, analysed the contractual coal quality parameter specifications and compared them to the submitted laboratory results.
- 6.16.6.34. Ramavhona stated that the purpose of the said comparison was to establish, *inter alia*, the following:
 - 6.16.6.34.1. The number of laboratory results which did not comply with the CSA quality parameters:
 - 6.16.6.34.2. The specific parameters which the aforesaid results did not comply with; and
 - 6.16.6.34.3. The total coal quantity that was delivered by Tegeta from inception of the CSA.

- 6.16.6.35. Ramavhona further indicated that the aforesaid analysis and comparison was documented on an excel spreadsheet.
- 6.16.6.36. According to Ramavhona, it was evident from the analysis that the quantity of coal which was delivered from Brakfontein increased around July and the rate of coal stockpiles which did not comply with the contractual coal quality parameter and the specifications had also increased.
- 6.16.6.37. Van der Riet conceded to Ramavhona's statement and further indicated that the coal analysis results reflected Brakfontein's sporadic increase in the CV, Ash, TS and later sizing of the CSA coal quality requirements.
- 6.16.6.38. According to Van der Riet their briefing note reflected that Brakfontein started increasing their coal volumes and further that they disputed two out of twenty-four of their rejected stockpiles.
- 6.16.6.39. Van der Riet further indicated that Gobeni emailed Brakfontein advising them of their right to declare a dispute in respect of Brakfontein's coal analysis results conducted by an Eskom nominated laboratory. He further stated that the reason for sending the said email was that Brakfontein had only disputed two of the twenty-four rejected stockpiles since commencement of their CSA.
- 6.16.6.40. Van Der Riet indicated that Brakfontein was not exercising their coal dispute as per the processes provided in the CQMP.

Presentations of the coal analysis report to Koko

- 6.16.6.41. We determined that Ramavhona, Gobeni and Daniels had a meeting with Koko wherein the coal analysis discussed above was presented.
- 6.16.6.42. Ramavhona indicated that during the said meeting, Koko enquired about the reasons why the contractual laboratory was changed from SGS to Sibonisiwe.
- 6.16.6.43. According to Ramavhona, she indicated to Koko that nominated laboratories were rotated once a year to prevent any potential risks

- to Eskom emanating from prolonged working relationships between laboratories and coal suppliers.
- 6.16.6.44. Furthermore, Ramavhona indicated that Daniels commented that it was obvious from the said analysis that something had changed.
- 6.16.6.45. According to Ramavhona, Gobeni informed Daniels that she had previously communicated with Brakfontein about their poor coal quality in respect of high AI and TS.
- 6.16.6.46. Ramavhona indicated that Gobeni also stated that a site visit was scheduled for the week ahead and further that she would report back on the issues identified at the mine once the said visit has been conducted.
- 6.16.6.47. During our consultation with Van Der Riet, he indicated that Daniels and Koko were of a view that based on the said analysis, they had sufficient information to approach Sibonisiwe regarding the said allegation made by Brakfontein.

6.17. SABS RETESTING OF DISPUTED SAMPLES

- 6.17.1. We determined that during August 2015, Eskom appointed Commercial Laboratories ("SABS") in Middleburg on an *ad hoc* basis to conduct retests on samples that were previously tested by Sibonisiwe.
- 6.17.2. SABS conducted the first test on 26 August 2015 on samples that were previously tested by Sibonisiwe during the period 1 August 2015 to 23 August 2015.
- 6.17.3. On 29 August 2015, SABS conducted the second test on samples that were initially tested by Sibonisiwe and later retested by SGS following a dispute raised by Brakfontein mine.
- 6.17.4. We discuss below the analysis of samples conducted by SABS on 26 August 2015 and 29 August 2015 respectively.

Retesting performed by SABS on 26 August 2015

6.17.5. During our consultation with Ramavhona, she indicated that on 26 August 2015, Koko instructed her to take the reference samples from Brakfontein mine which were obtained from Sibonisiwe for delivery at SABS for analysis of Ash, CV, Vols and TS.

- 6.17.6. We were provided with a copy of an email dated 26 August 2015 from Ramavhona to Molatuli and copied to Ridwaan Asmal ("Asmal") titled "Samples to be delivered by Morne from Natural sampling". (Annexure E57). Ramavhona requested Morne to personally deliver samples to Molatuli at SABS.
- 6.17.7. The above email further provided that Ramavhona *inter alia* informed Molatuli to complete one delivery note for all the samples and provide proof of same to Morne.
- 6.17.8. In the said email Ramavhona requested Molatuli to analyse the following:
 - 6.17.8.1. PF samples for Prox;
 - 6.17.8.2. CV;
 - 6.17.8.3. TS;
 - 6.17.8.4. AFT;
 - 6.17.8.5. Bulk reference sample for PSD; and
 - 6.17.8.6. AI starting from 50mm and to cover the Eskom sizes.
 - 6.17.8.7. Ramavhona further requested that the results to be presented to her only, when they become available.
- 6.17.9. Ramavhona stated that she took thirty (30) pulverised fuel ("PF") and seven (7) bulk samples to SABS as instructed by Koko.
- 6.17.10. Ramavhona further indicated that the reference names of the said samples were renamed in order to hide the identity of the coal supplier and the nominated laboratory.
- 6.17.11. The above statement was confirmed by various parties, during our consultations, including Molatuli, Wolters and Madela, from SABS.
- 6.17.12. The SABS officials referred to above confirmed that Eskom requested SABS to provide coal analysis services on an *ad hoc* basis.

SABS 26 August 2015 results

6.17.13. Ramavhona stated that SABS provided her with a coal analysis report regarding the above request. She further indicated that the said results revealed that twenty-nine (29) out of thirty (30) samples were not compliant with the contractual coal quality parameters.

- 6.17.14. We determined that on 26 August 2015, van der Riet wrote an e-mail to Koko. The purpose of the e-mail was to provide *inter ali*a feedback on the progress made in the investigation commissioned by Koko into the Brakfontein coal quality dispute. According to the e-mail, van der Riet indicated that SABS would reanalyse all samples that Sibonisiwe had available going back to August 2015. (Annexure E58).
- 6.17.15. Furthermore, Ramavhona indicated that the laboratory results submitted by Sibonisiwe, based on the same samples used by SABS, reflected fifteen (15) out of thirty (30) samples were not compliant with the contractual coal quality parameters of Ash, TS and Vols.
- 6.17.16. We determined that on 28 August 2015, Ramavhona and van der Riet prepared a report relating to the tests conducted by SABS on 26 August 2015.

 As discussed below, the said report was presented to Koko on 28 August 2015.
- 6.17.17. We were provided with a copy of an email dated 28 August 2015 addressed to Koko by van der Riet titled "Brakfontein Colliery investigation preliminary results". The purpose of van der Riet's email was to amongst other things, provide Koko with the preliminary investigation report containing the results conducted by SABS on 26 August 2015.
- 6.17.18. We further determined that van der Riet, informed Koko that he had arranged with Jacques Roux ("Roux") from Brakfontein, to resample three (3) stockpiles with Ramavhona the following day *i.e.* 29 August 2015. (.
- 6.17.19. Attached to Van der Riet's email of 28 August 2015 was a briefing document to Koko, titled "PROGRESS FEEDBACK ON BRAKFONTEIN QUALITY DISPUTE".
- 6.17.20. According to the briefing document, both laboratories (SABS and Sibonisiwe) confirmed that above 50% of the stockpiles produced at Brakfontein until 23 August 2015 were of lower quality on ASH, CV, Vols, AI and TS.
- 6.18. ESKOM'S DECISION TO APPOINT SABS TO RETEST FAILED SAMPLES 29 AUGUST 2015

Plan to resample and retest coal from Brakfontein

6.18.1. We determined that three stockpiles were sent for retesting at SABS following dispute from Brakfontein mine.

- 6.18.2. Van der Riet indicated that on 28 August 2015, Koko informed him that he and Ramavhona should resample the Brakfontein disputed stockpiles at SABS.
- 6.18.3. Ramavhona indicated that Van der Riet created a WhatsApp chat group named "*Brakfontein Investigation*". She further indicated that the said WhatsApp group was used for the discussion and planning of the resampling process.
- 6.18.4. Ramavhona stated that Van der Riet sent a text message to the said WhatsApp group to indicate that there was a plan to resample three (3) rejected stockpiles on 29 August 2015.
- 6.18.5. According to clause 10.3 of the CQMP "The results of all the parameters analysed at the independent laboratory shall be final and binding".
- 6.18.6. In his written response to our questions, Koko indicated that the reason he commissioned SABS to conduct resampling of coal from the Brakfontein mine was that Sibonisiwe and SGS had previously reported significantly different results which were unacceptable.
- 6.18.7. We however understand that Koko wanted to determine the cause of the differences in the tests conducted by Sibonisiwe, SGS and SABS.

Appointment of SABS to retest disputed coal from Brakfontein

- 6.18.8. Ramavhona indicated on 28 August 2015, she contacted Molatuli from SABS and informed him that Eskom was going to conduct a retest of disputed samples from Brakfontein mine. It is our understanding that Ramavhona informed Molatuli that the said samples would be delivered at SABS for retesting.
- 6.18.9. Molatuli confirmed receiving a phone call from Ramavhona relating to retest samples from Brakfontein.
- 6.18.10. Molatuli further stated that Ramavhona indicated that SABS should expect the said samples. As discussed below the samples were delivered on 29 August 2015.
- 6.18.11. Molatuli indicated that Ramavhona never provided SABS with a written appointment letter relating to the said plan. He further indicated that the

presumption was that the SABS's appointment related to an ad hoc request and as such no formal appointment was expected.

6.19. FAILURE BY ESKOM TO ARRIVE AT BRAKFONTEIN TO OBESRVE RESAMPLING

- 6.19.1. We determined that on 28 August 2015 van der Riet sent an e-mail to Koko and copied Mboweni, Dan Mashigo ("Mashigo"), Petros Mazibuko ("Mazibuko"), van der Riet and Ramavhona, titled "Letter to Brakfontein Colliery". Attached to the email was a letter addressed to Roux, for Koko's signature, to be sent to Brakfontein to notify them of Eskom's planned site inspection. (Annexure E59)..
- 6.19.2. We noted that the said letter stated *inter alia* that Eskom would send samples from Brakfontein to SABS, with duplicate samples to the Eskom Research Test and Development (RT&D) laboratories. The letter further stated that Eskom would rotate their Quality Assurance professional assigned to Brakfontein Colliery.
- 6.19.3. Ramavhona and van der Riet confirmed that the above letter was sent to Brakfontein to inform them of Eskom plan to conduct a site inspection of Brakfontein's coal sampling processes.
- 6.19.4. In his written response to our second draft report, Koko stated that he made it clear to van de Riet and Ramavhona that the analytical process had to be transparent and above board.
- 6.19.5. He further stated that "he directed Ramavhona and van der Riet to have "hold points" and "witness points" where all parties were present and instructed the team to have traceability so that the prepared coal sample would not be compromised".

6.20. RESAMPLING AT BRAKFONTEIN MINE ON 29 AUGUST 2015

The absence of Eskom officials at Brakfontein Mine to observe the resampling

6.20.1. During our consultation with van der Riet, he indicated that on 29 August 2015, the same day they were scheduled to observe the resampling process at Brakfontein mine, Koko called and informed him that Brakfontein requested Eskom to cancel the scheduled visit.

- 6.20.2. Van der Riet indicated that he informed Koko that Brakfontein's request was suspicious in that the said resampling of the disputed stockpiles needed to be observed by Eskom's representatives.
- 6.20.3. According to van der Riet, Koko instructed him and the investigation team, to continue with the planned intra lab comparison instead of going to Brakfontein mine.
- 6.20.4. Van der Riet stated that Koko told him that Eskom would insist that he (Van der Riet) and his team observe Brakfontein's sampling process the following week on not on the scheduled day *i.e.* 29 August 2015.
- 6.20.5. In his response to our questions, Koko indicated that he was not aware that van der Riet and Ramavhona were scheduled to visit Brakfontein mine on 29 August 2015 to witness the resampling process. Koko further stated that had he been aware of such a visit, he would have supported it.
- 6.20.6. Koko stated that that he did not issue any instruction to van der Riet, Ramavhona and their team not to visit Brakfontein mine for such purpose.
- 6.20.7. Van der Riet maintained his statement discussed above that he was informed by Koko not to attend and witness the sampling at Brakfontein as the mine did not want Eskom present on their site.
- 6.20.8. It is however inconceivable that Ramavhona and van der Riet would to go the trouble of making all necessary arrangements to ensure that Eskom is represented at the SABS testing and not attend and witness the Brakfontein and SABS resampling and retesting processes.
- 6.20.9. It is highly unlikely that both van der Riet and Ramavhona would decide not to show up at the sampling process when they were the officials who were instrumental in ensuring that the sampling and retesting was done.
- 6.20.10. Koko indicated in his written response that he did not know when the sampling and the testing was going to take place as he was not directly involved in the sampling and analytical processes.
- 6.20.11. We however find this statement by Koko highly improbable taking into consideration the various meetings he called prior to the said retesting.
- 6.20.12. It is not clear why Koko disputed any knowledge of the sampling and testing discussed above, as on 26 August 2015 van der Riet sent an email to Koko with

- a briefing document dated 26 August 2015 which clearly reflected that there was going to be a retesting of Brakfontein coal at SABS on 29 August 2015.
- 6.20.13. In view of the above, Koko was well aware of the planned resampling of Brakfontein's stockpile samples. This is further confirmed by Koko's response which indicated that on 31 August 2015 he received the results of the testing.
- 6.20.14. We determined that none of the Eskom officials observed the resampling process based on Koko's instruction.

The absence of Mpumamanzi at Brakfontein Mine to observe the resampling

- 6.20.15. We determined that during March 2014, Eskom and Mpumamanzi entered into a contract in terms of which Mpumamanzi would provide coal sampling, sampling oversight, analysis of Eskom coal imports and technical audits of the sampling plants on as and when required basis. The contract was valid for a period of thirty-six (36) months commencing on 27 March 2014 and expiring on 31 October 2017.
- 6.20.16. According to the contract, Mpumamanzi was required to provide observing and roving services on a 24-hour basis at the designated sites.
- 6.20.17. The provisions of the contract required that, depending on the site requirements, there would be a minimum of one observer and one rover per shift working different shifts in rotation.
- 6.20.18. During our consultation with Maseko and Mahlangu from Mpumamanzi, they indicated that on 29 August 2015 when they arrived at Brakfontein mine at 17:00 there was no rover on site. They further indicated that they found Mudaliar and Roux (Brakfontein representatives) waiting with bags of samples. According to the above officials, the said samples were sealed and ready for collection.
- 6.20.19. According to Maseko and Mahlangu, they could not establish whether the said stockpiles were sampled from Brakfontein's stockpiles in that they did not observe the sampling process of same. The said parties further indicated that Kgaphola was on duty during the day and would have observed the said sampling process.
- 6.20.20. We however noted that Mpumamanzi observers' reports reflect that Kgaphola observed the sampling of the stockpiles eventually transported to SABS for retesting. (Annexure E60).

- 6.20.21. Mpumamanzi responded as follows relating to the above "The records show that this allegation is FALSE. Written evidence, under the hand of 'Maseko' contradicts her own oral testimony where she confirms the presence of the duty of the Observer in various reports on 29.08.2015. It must be noted that supporting written evidence is uncontaminated and they have accurately recorded the events of 29 August 2015 until 06 September 2015. The said reports were submitted within one (1) day after the Auditors requested them" (Annexure E61).
- 6.20.22. The response by Mpumamanzi is incorrect in that Maseko did not contradict her own oral testimony with any written evidence. During our consultation with Maseko, she indicated that she prepared the Mpumamanzi site reports retrospectively as she could not complete them daily. Maseko therefore compiled a report based on the notes recorded by Kgaphola and not her own assessment of the events of the day.
- 6.20.23. Mpumamanzi site reports, compiled by Maseko, and their attendance register cannot be relied upon as a basis to confirm that Kgaphola was indeed at the Brakfontein mine when the sampling of stockpiles took place.
- 6.20.24. Mpumamanzi further stated that, "Written evidence, under the hand of 'Maseko' contradicts her own oral testimony. This statement was made in view of the fact that the first two stockpiles were already sampled, labelled and ready for loading. PLEASE NOTE ONLY COAL STOCKPILES as per the records were ready when 'Mahlangu' arrived. The last stockpile was only closed only at 17h45 on 29.08.2015. This places both 'Maseko' and 'Mahlangu' directly at the scene whilst the observing and sampling was taking place. Written evidence shows that it was 'Mahlangu' who informs 'Mike' from SABS Laboratory that the samples were indeed linked to the disputed stockpiles.
- 6.20.25. We sent questions to Roux and Mudaliar relating to the sampling process followed by Brakfontein on 29 August 2015. Mudaliar indicated that he was no longer an employee of Tegeta and referred us to Nath. As at date of this report, Roux had not responded to our questions.
- 6.20.26. Tegeta failed to respond to our questions relating to the coal sampling at Brakfontein mine on 29 August 2015 and the subsequent testing by SABS on 30 August 2015.

- 6.20.27. During our telephone consultation with Kgaphola, he disputed Mahlangu and Maseko's statement that he was not on site when the latter collected the samples from the mine.
- 6.20.28. We consulted with Mahlangu and Maseko individually and they corroborated each other's statement that there was no rover when they arrived at the Brakfontein mine. There was no reason for the two officials to lie about the fact that Kgaphola was not on site when they arrived to collect samples for transportation to SABS for retesting.
- 6.20.29. In response to the above Mpumamanzi stated *inter alia* that "We have no comment to make regarding the above statement as the written records speaks for themselves and more specifically with respect to 'Maseko".
- 6.20.30. According to the terms of their agreement with Eskom, Mpumamanzi's supervisor was required to ensure that the Monitor does not move from their allocated sites during production, sampling and loading of Eskom product, without consent from Eskom.
- 6.20.31. Based on the consultations with Mpumamanzi officials and the assessment of the resampling process followed on the day, Mpumamanzi failed to ensure that the observers were present during the resampling of stockpiles at Brakfontein mine.
- 6.20.32. Mpumamanzi's absence during the said resampling of the stockpile rendered the process irregular.
- 6.20.33. Kgaphola' could not recall the events of the day except for partial scenes; however, he insisted that he recorded all his activities in the BLACK BOOK and that we should make reference to this instead of interrogating him.
- 6.20.34. Mpumamanzi contended that "The record would show that 'Maseko' summarised the events of the day as extracted from the BLACK BOOK. As the duty Rover/Supervisor, she made NO additional comments but, gave her full endorsement for the comments extracted from the said book".
- 6.20.35. The absence of the Black Book makes it impossible for us to confirm that the contents of the Mpumamanzi's daily site reports were similar to those which were recorded in the Black Book.
- 6.20.36. As previously indicated, our review of Mpumamanzi's attendance registers and site report of 29 August 2015 revealed that the first stockpile was prepared

- in the absence of Maseko. The said site report was derived from the Black Book and was, according to Mpumamanzi and various parties, compiled and "endorsed" by Maseko.
- 6.20.37. We determined that there are contradicting versions as to whether Mpumamanzi observed the resampling of the stockpiles that were later transported to SABS for retesting.
- 6.20.38. We however determine that there is no evidence that Mpumamanzi had a supervisor and a rover present at Brakfontein at the time of the sampling of the coal that was later transported to SABS for retesting.

6.21. LOADING OF SAMPLES

6.21.1. Based on the above response by Mpumamanzi and the review of their SABS delivery notes, we determined that three (3) stockpiles which were at Brakfontein mine on 29 August 2015 were loaded and allocated to the vehicles as reflected below:

Stockpile ID	Loading times	Vehicle registration number	Driver
26/08/15 B	17H10	HJZ 631 MP or HJZ 465 MP	Mahlangu or unknown driver
26/08/15 A	17H20	HJZ 631 MP or HJZ 465 MP	Mahlangu or unknown driver
27/08/15 A	19H20	HJZ 462 MP	Makua

- 6.21.2. Mpumamanzi further provided, in addition to the above, that the records also show that the said bags were loaded into the first two (2) vehicles and the first delivery notes were signed off just after 17h00. According to Mpumamanzi, the photo copy of the said delivery notes was handed over to Kgaphola as part of the standard procedure. Mpumamanzi further stated that the said delivery notes were signed off by 'Mike' at SABS Laboratory.
- 6.21.3. The above assertion, relating to the signing of delivery notes, was confirmed by Mahlangu who indicated that the said delivery notes were signed off by Mike Mabuyakhulu.

- 6.21.4. Further to the above response, Mpumamanzi stated that "The records will show that coal stockpile S/P A 27/08/2015 was still in the process of being sampled and the process was only completed at 17H45 as confirmed by both 'Maseko' and 'Kgaphola'. The records will also show that HJZ 462 MP, driven by Johannes Makua ('Makua'), arrived just before 19h00 to collect and load the coal samples for stockpile for S/P A 27/08/2015".
- 6.21.5. Makua indicated that he found Mahlangu, who had already loaded the samples in his bakkie, waiting next to the coal samples which Makua needed to load to his vehicle.

6.22. TRANSPORTATION OF SAMPLES TO SABS BY MPUMAMANZI

- 6.22.1. During our consultation with Matowanyika, she indicated that on 29 August 2015, Ramavhona sent her a text message to request Mpumamanzi to transport three stockpiles from Brakfontein Colliery to the SABS Middleburg laboratory.
- 6.22.2. Matowanyika indicated that she dispatched two (2) bakkies to collect the said samples. Matowanyika further stated that she dispatched a third bakkie from one of Mpumamanzi's clients not far from the Brakfontein mine.
- 6.22.3. The above statement was confirmed by Mahlangu, who indicated that Mpumamanzi used three (3) bakkies to transport samples from Brakfontein to SABS.
- 6.22.4. Mpumamanzi confirmed that the following bakkies were dispatched to collect samples at Brakfontein mine to SABS:
 - 6.22.4.1.1. HJZ 465 MP;
 - 6.22.4.1.2. HJZ 462 MP; and
 - 6.22.4.1.3. HRZ 631 MP
- 6.22.5. According to Mpumamanzi's response, Mahlangu drove the bakkie with registration number HJZ 465 MP, and not the bakkie with registration HJX 465 MP as previously indicated in our second draft report. Mpumamanzi further indicated, through their response, that the bakkie with registration number HJZ 462 MP was driven by Makua.
- 6.22.6. According to Mpumamanzi and the parties we consulted with, they do not recall who drove the other bakkie i.e. HRZ 631 MP.

- 6.22.7. It is however inconceivable that a company of the stature of Mpumamanzi would not have a record of drivers of their vehicles used to transport samples to Eskom.
- 6.22.8. Furthermore, Mpumamanzi indicated, during our consultation that the bakkie with registration number HRZ 631 MP had no tracking device installed.
- 6.22.9. As discussed earlier in the report, Mpumamanzi's contract with Eskom clearly stated that Mpumamanzi's vehicles must to be fitted with a satellite tracking system and the relevant tracking reports were supposed to be submitted to Eskom on an as and when basis. Mpumamanzi breached their contract with Eskom by not having a tracking device installed in one of the bakkies which transported samples to SABS.
- 6.22.10. During our consultation with Makua, he confirmed that he was driving the bakkie with registration number HJZ 462 MP. Makua, indicated that he was informed by Matowanyika, as he was about to leave his place of employment, that there was a crisis and he was requested to assist with the transportation of samples to SABS.
- 6.22.11. Matowanyika stated that she requested Maseko and Mahlangu to be responsible for the observation and transportation of the said Brakfontein stockpiles. Maseko and Mahlangu confirmed that they were responsible for the observation and transportation of the Brakfontein stockpiles.

Vehicle Tracking Requirements

- 6.22.12. During our consultation with various parties, including Matowanyika, Molatuli, and Wolters, they indicated that Eskom required that all vehicles transporting coal on behalf of Eskom should be fitted with a tracking device.
- 6.22.13. We have since received copies of the tracking reports from Mpumamanzi, as part of their response to our second draft report, in respect of the two bakkies i.e. HJZ 465 MP and HJZ 462 MP.
- 6.22.14. The said tracking reports are discussed in the relevant section below.
- 6.22.15. Mpumamanzi confirmed that the third bakkie that did not have a tracking device was not meant to deliver coal. They however utilised the said bakkie to transport coal samples from Brakfontein to SABS.

- 6.22.16. As discussed above, we determined that Eskom required that all vehicles transporting coal on behalf of Eskom should be fitted with a tracking device.
- 6.22.17. As previously discussed, the number of sample bags in respect of stockpile 27/08/15 A decreased by five (5) sample bags when they were offloaded at SABS.
- 6.22.18. The number of coal samples in respect of stockpile 26/08/15 A, as discussed above, increased by three (3) sample bags when they were offloaded at SABS.
- 6.22.19. As previously discussed, the coal samples in respect of the above stockpile were transported either in the bakkie driven by the unknown driver's or Mahlangu's bakkie. The bakkie with the unknown driver, as discussed above, had no tracking device installed.
- 6.22.20. The fact that one of Mpumamanzi's bakkies had no tracking device installed and the discrepancies in the number of sample bags prepared at Brakfontein and delivered at SABS further suggests that some of the samples might have exchanged on route to SABS.
- 6.22.21. Mpumamanzi's documentary evidence provided reflect events that happened between 29 August 2015 to 6 September 2015 however the details of the third driver were not mentioned anywhere in their written submission. It therefore follows that the information provided by Mpumamanzi was incomplete.

6.23. DELIVERY OF SAMPLES

- 6.23.1. During our consultations with Maseko and Mahlangu, they indicated that when they arrived at the SABS laboratory, they delivered the said samples to the SABS personnel. According to Mahlangu, they left Mudaliar and Roux at the SABS laboratory.
- 6.23.2. Available information as well as consultations conducted confirmed that Mudaliar and Roux were left at SABS and were there until the tests results were obtained.

Mpumamanzi delivery notes

6.23.3. We were provided with three (3) copies of delivery notes dated 29 August 2015, which were prepared by Mahlangu on behalf of Mpumamanzi. (Annexure E62).

6.23.4. The said delivery notes provide that the aforementioned samples were delivered at SABS at 20:40. The said delivery notes further provide that the above stockpiles were received and signed for by an individual by the name of Mike. During our consultation with Mahlangu, he indicated that Mike reflected in the said delivery is Mike Mabuyakhulu ("Mabuyakhulu").

SABS confirmation of delivery by Mpumamanzi

6.23.5. During our consultation with Ramavhona, she indicated that Molatuli sent her a text message at 21:34 to confirm SABS's receipt of Brakfontein's samples. According to Ramavhona, Molatuli also indicated, in the same text message, that there were Brakfontein's officials at the SABS laboratory.

SABS Sample Receiving and Integrity Check procedure

- 6.23.6. We enquired from various parties, including Molatuli, Wolters and Madela, whether SABS is required to verify the source of the coal samples which SABS is required to analyse.
- 6.23.7. The said parties respectively indicated that SABS is only able to vouch for the source of coal samples which was transported by SABS.
- 6.23.8. The said parties further indicated that in instances in which coal samples are delivered by a third-party, SABS places reliance on the said third-party's documentary information. Furthermore, the said parties indicated that a third-party's documentary information should clearly provide details of the source of the sample they are delivering.
- 6.23.9. Madela, Wolters and Molatuli stated that the documentation provided by Mpumamanzi indicated that the source of the coal was Brakfontein mine.

6.24. TEGETA PRESENCE

- 6.24.1. As stated above, we determined that none of Eskom officials were present at SABS on 29 August 2015 when the coal analysis was performed.
- 6.24.2. Molatuli indicated that he informed Ramavhona about SABS's receipt of the Brakfontein samples. He further confirmed that he informed Ramavhona about the presence of the Brakfontein officials at the SABS laboratory.
- 6.24.3. Molatuli stated that he was not on duty when the said analysis was performed. He further indicated that he was informed by SABS personnel who received

- the samples that Brakfontein officials were at the laboratory to observe the analysis of the said samples.
- 6.24.4. We determined that Mudaliar and Roux observed the retesting and analysis of the coal samples from Brakfontein mine.
- 6.24.5. Molatuli indicated that the presence of Brakfontein's parties at the SABS laboratory may have been irregular as SABS did not have any agreements with Brakfontein or Tegeta.
- 6.24.6. According to Molatuli, Ramavhona indicated to him that the Brakfontein officials were not supposed to observe the coal analysis process in the absence of Eskom's personnel.
- 6.24.7. Molatuli further indicated that Ramavhona emailed him a sample preparation flow sheet to be used by SABS for the analysis of the Brakfontein samples.
- 6.24.8. According to Molatuli, since he was not present at work, he, delegated his responsibility to Madela. He further indicated that Madela informed him that Mudaliar and Roux spent the whole night at the SABS laboratory.
- 6.24.9. Madela confirmed that Molatuli requested him to conduct the said analysis. Madela indicated that he reported for duty around midnight and found Mudaliar and Roux at the SABS laboratory. Madela confirmed that Mudaliar and Roux observed the analysis of the samples from Brakfontein mine.
- 6.24.10. Molatuli indicated that Madela provided him with updates on the said coal analysis. Molatuli indicated that during the course of the analysis, he communicated with Mudaliar, through Madela's phone.
- 6.24.11. Van Der Riet indicated the following in his written response relating to Brakfontein officials' presence at SABS "At no stage did I give approval for the Brakfontein staff to be present at SABS. I am also not aware that any of my staff gave this approval, and can comment that this would have been highly irregular. I can confirm that Ms Ramavhona Whatsapp'ed me at 9:19 on 30 August 2015 to confirm that Brakfontein staff had indeed witnessed the SABS analyses. We consulted each other, then had a teleconference with Mr Jacques Roux, the manager of Brakfontein Colliery, to explain the following essential Eskom Coal Quality Management Procedure principles: (1) he must not communicate with the Eskom labs; (2) sampling, sample preparation and analyses had to be witnessed by both Eskom and the supplier for them to be

- valid; (3) this weekend's exercise was not for contractual purposes, as the repeat analyses had already been done on the reject stockpiles and had proven rejection. These repeat analyses are final and binding, as per the CQMP; (4) Eskom geology would like to assess the colliery operations to confirm potential problems. Mr Roux accepted the points, and apologised for contravening the CQMP principles".
- 6.24.12. In the absence of any agreement with Tegeta or Brakfontein mine, Mudaliar and Roux were not authorised to observe the coal analysis at SABS.
- 6.24.13. We could not find any indication that Tegeta and/or Brakfontein mine requested and obtained permission from Eskom to observe the testing and analysis of the coal transported from Brakfontein to SABS on 29 August 2015.
- 6.24.14. It was therefore odd that Eskom employees would be absent at the said coal analysis while Brakfontein representatives were present for the entire period of the retest and analysis.
- 6.25. Teleconference between Roux, Ramavhona and Van der Riet relating to Tegeta's presence at SABS
 - 6.25.1. Ramavhona indicated that subsequent to the resampling of stockpile S/P A 26/08/15, S/P 26 B 26/08/15 and S/P A 27/08/15 by SABS she and van de Riet requested a teleconference with Roux to discuss *inter alia* the following:
 - 6.25.1.1. non compliance to the CQMP,
 - 6.25.1.2. alleged harassment of the laboratory staff and
 - 6.25.1.3. attempt to influence the contractual analysis for the 3 stockpiles results.
 - 6.25.2. Ramavhona indicated that during the said teleconference, Roux was informed of the following:
 - 6.25.2.1. That site visits to the contractual laboratory should be arranged through Eskom and further that 24 hours' notice should be given, and the audit should be conducted in the presence of an Eskom Employee;
 - 6.25.2.2. Eskom had a doubt on the integrity of stockpiles S/P A 26/08/15, S/P 26 B 26/08/15 and S/P A 27/08/15 results analysed at SABS and Sibonisiwe laboratories due to the inappropriate conduct of

- Brakfontein representatives. It was further explained to Roux that harassment of Eskom Contractors was unacceptable.
- 6.25.2.3. The results of the 3 stockpiles that were static sampled at the mine by SABS on 29 August 2015 and analysed at different laboratories were meant for comparison purposes only. Ramavhona indicated that the exercise was done outside of the contract therefore all the results do not replace the original results reported by the contractual laboratory and the independent laboratory where a dispute was declared.
- 6.25.3. Ramavhona indicated that Roux apologised for the non compliance to the CQMP and the allegations above.
- 6.25.4. As discussed above, we sent questions to Roux and Mudaliar regarding, *inter alia*, the above allegations.
- 6.25.5. Tegeta failed to address the issues relating to the observation at SABS on 29 August 2015 when they responded to our second draft report.
- 6.25.6. Brakfontein mine was not a client of SABS at the time of the coal analysis on 29 August 2015. Eskom requested that the said coal samples be retested and analysed and as such Eskom was the SABS client.
- 6.25.7. SABS contravened their own policies and procedures when they allowed the Brakfontein parties to witness the analysis of their colliery's coal samples in that Brakfontein was not SABS's client.
- 6.25.8. Tegeta did not provide a response relating to the above allegations.

6.26. RESULTS OF THE RETESTING CONDUCTED BY SABS ON 29 AUGUST 2015 SABS lab results

- 6.26.1. During our consultations with Molatuli and Madela, they indicated that during the analysis of the Brakfontein samples Roux and Mudaliar were taking notes of the test results.
- 6.26.2. During our consultation with Van Der Riet, he indicated that on 30 August 2015 at 08h08 he received a phone call from Roux who indicated that he had obtained unconfirmed results from SABS relating Brakfontein's coal analysis.
- 6.26.3. According to van Der Riet, Roux indicated that he would like to deliver the stockpiles relating to the unconfirmed SABS results. He further indicated that he informed Roux that Tegeta could not deliver the coal from which the

- disputed samples were taken as analysis was not for delivery or payment purposes but for intra lab analysis.
- 6.26.4. Van Der Riet further indicated to Roux that Brakfontein should wait for the results of the other laboratories. Van Der Riet further indicated that Roux made the said request prior to Eskom receiving the results from SABS for the analysis done on 29 August 2015.
- 6.26.5. During our consultation with Madela and Molatuli, they confirmed that the SABS coal analysis results were only made available to Eskom after 09:00 on 30 August 2015.

SABS retesting report dated 30 August 2015

- 6.26.6. We were provided with a signed copy of SABS's coal analysis report dated 30 August 2015 titled "Coal Analysis" and referenced "kkk 05/2015". (Annexure E63). The report was compiled and authorized by Koos Mokwena ("Mokwena") and Wiseman Madela ("Madela").
- 6.26.7. Roux's phone call to Van der Riet was prior to SABS issuing the results of the coal sample analysis conducted on 29 August 2015 to Eskom.
- 6.26.8. SABS issued the results of the coal sample analysis to Tegeta/Brakfontein prior to releasing the said results to their customer, Eskom.
- 6.26.9. The version by SABS that Roux and Mudaliar were not given the said results but simply wrote them from the computer screens would mean that they were allowed to even check the said computer screens to the extent that they managed to read the results of the analysis.

Brakfontein Colliery investigation Feedback to Koko

- 6.26.10. Van Der Riet indicated that on 30 August 2015 he sent an email to Koko relating to the coal analysis conducted in respect of the Brakfontein coal samples.
- 6.26.11. We noted a copy of an email dated 30 August 2015 addressed to Koko by Van Der Riet and copied to Ramavhona and titled "Brakfontein coal quality investigation". (Annexure E64). The email states as follows:

[&]quot; Dear Matshela

We have results from SABS and Sibonisiwe, and await RT & D and Duvha tomorrow. Jacques Roux had also noted that he is checking his own lab results, and will confirm these once he is complete.

It is too early to draw conclusions, other than there is an unacceptably large variation in Sulphur determinations from the two labs so far.

Yours Sincerely."

6.27. SUSPENSION OF THE TEGETA CSA

- 6.27.1. Based on documentation reviewed and consultations conducted, we determined that on 31 August 2015 Koko suspended the CSA between Eskom and Tegeta for the provision of coal to Majuba Power Station from Brakfontein Mine
- 6.27.2. We determined that Koko issued a letter of suspension dated 31 August 2015 to Tegeta. (Annexure E65).
- 6.27.3. The purpose of the letter was to *inter alia* notify Tegeta of the suspension of the "offtake" from the mines in order to investigate the root cause of the inconsistency in the coal quality management process.
- 6.27.4. During our consultation with Ramavhona, Dr Van Alphen and Opperman, they respectively indicated that they understand that the above letter was as result of the coal quality investigations on Brakfontein's coal quality.
- 6.27.5. We noted that Koko suspended the Tegeta CSA on 31 August 2015, a day after he received the SABS's results on the Brakfontein Coal quality testing. As indicated above, SABS conducted the tests on 29 August 2015.
- 6.27.6. According to Koko's response to our questions relating to the suspension of the CSA, he stated that the reason for the suspension of the Brakfontein CSA on 31 August 2015 can be found in his letter to Mr Ravi Nath ("Nath") of Tegeta, dated 31 August 2015. Koko further stated that Eskom noted the significant increase in the number of out of specification coal stockpiles that had been found from July to August 2015.
- 6.27.7. Koko further stated that during August 2015, 50% of the stockpiles were out of specification resulting in rejections. He further indicated that Eskom noted the inconsistencies in the laboratory coal results between Sibonisiwe and SABS. According to Koko, Eskom notified Tegeta of the suspension as a

- precautionary measure, to enable Eskom to investigate the causes of the inconsistencies in the coal quality management processes.
- 6.27.8. As stated above, Koko suspended the Tegeta CSA after he had received the SABS results on 30 August 2015. The reason for the said suspension could therefore not have been based on the SABS results.
- 6.27.9. As discussed below, we determined that Koko uplifted Tegeta's suspension on 5 September 2015.

Delivery of coal after the suspension of the CSA

- 6.27.10. During the course of our investigation, we determined that Tegeta delivered coal to Majuba Power station after their CSA was suspended by Koko on 31 August 2015.
- 6.27.11. According to Mpumamanzi's rovers report dated 31 August 2015 there was no sampling and loading of stockpiles at the mine on 31 August 2015.
- 6.27.12. We noted that the last stockpile dispatched to Majuba power station was stockpile number S/P B 25/08/15. The said stockpile was dispatched on 30 August 2015 before the suspension of the CSA.
- 6.27.13. We were provided with a letter dated 31 August 2015 submitted to Majuba power stations by IK Mnguni Transport. According to the letter, one of their trucks with registration number FLD870MP had a major breakdown on route to Majuba Power Station and the truck could not offload the coal on the same day. The letter sought assistance from Majuba Power Station to offload the coal on 31 August 2015.
- 6.27.14. There was no record on the Mpumamanzi rovers' reports reviewed of a truck with registration number FLD870MP having collected a stockpile from Brakfontein.
- 6.27.15. We however noted that Majuba Power Station recorded a delivery on 31 August 2015 and 1 September 2015 from Brakfontein mine. The stockpile numbers for the coal delivered were however not reflected.
- 6.27.16. During our consultation with Dick and Petso from Majuba Power stations, they respectively confirmed that on 31 August 2015, 125 tonnes of coal was delivered from Brakfontein mine by three trucks. They further confirmed that on 1 September 2015, 33 tonnes of coal was delivered from Brakfontein mine.

- 6.27.17. Mpumamanzi responded to the above finding by stating that" The stated allegation is FALSE based on a misunderstanding of standard protocol. The standard procedure for recording of trucks collecting and delivering coal stockpiles as specified by Eskom states that Contractors need only record the registration numbers (amongst other details) for the first three (3) trucks and the last three (3) trucks and this was done. The form that contains this instruction was issued to us by Eskom (see MMG 8). There is really nothing more that we can say about this allegation and we trust that the records will be corrected".
- 6.27.18. We were not provided with copies of Mpumamanzi's completed observer checklists for the period 29 and 30 August 2015 in order to confirm the information recorded relating to the trucks that collected the coal.

Upliftment of suspension of the CSA

- 6.27.19. We determined from documentation reviewed that Koko sent a letter to Tegeta dated 5 September 2015. The purpose of the letter was to notify Tegeta of the upliftment of the suspension of the coal supply from Brakfontein Colliery and Brakfontein Colliery Extension effective immediately (Annexure E66).
- 6.27.20. The letter further indicated that the upliftment of suspension would take place while Eskom continued its investigation into the inconsistency in the coal quality management process.
- 6.27.21. In his response to our second draft report, Koko admitted that he lifted the suspension on coal supply from the Brakfontein Colliery. Koko indicated that the decision was based on the SABS results dated 30 August 2015. Koko further stated that the results were authorised by Wiseman Madela.
- 6.27.22. Koko became aware of the SABS test results on 30 August 2015, a day before he suspended Tegeta's CSA with Eskom.
- 6.27.23. It is therefore not clear why Koko would suspend Tegeta's CSA on 31 August 2015 after he had received the SABS results on 30 August 2015 and uplift the suspension based on the same SABS results.
- 6.27.24. There is no indication that Eskom or any other entity conducted tests on the Brakfontein coal between 31 August 2015 and 5 September 2015 that would

- have informed him of his decision to uplift the suspension on 5 September 2015.
- 6.27.25. Koko's statement that he was not influenced by anyone to uplift the suspension and that he merely discharged his duties without fear or prejudice is questionable, taking into account that he did not consider the SABS results when he suspended the CSA.
- 6.27.26. Available facts suggest that Koko may have favoured Tegeta in uplifting the CSA.

Request from Tegeta to supply more coal to Eskom

- 6.27.27. We determined that on 4 September 2015 at 13:08 Nath sent an email to Nteta. The subject of the said email is reflected as "Draft".
- 6.27.28. Attached to the said email is a letter dated 28 August 2015 addressed to Nteta. The said letter, titled Coal Supply Offer-Tegeta, reflected that Tegeta was willing to supply additional 200 000 tonnes of coal to Eskom. The proposal indicated that the coal was of similar specification to what Tegeta was supplying to Eskom under the CSA.
- 6.27.29. What is evident in the said email and the attached letter is the fact that:
 - 6.27.29.1. The letter was dated the same date that Koko had called an urgent meeting with Van der Riet and Ramavhona to discuss the coal quantity issues at Brakfontein;
 - 6.27.29.2. The email to Nteta was sent on the eve of Koko uplifting Tegeta's CSA. (Annexure E67)
- 6.27.30. It appears that the suspension of the CSA was a smoke screen in that Tegeta issued a request to supply an additional 200 000 tonnes of coal whilst there were on suspension. Subsequent to their request, Koko uplifted the suspension of Tegeta's CSA.

6.28. APPOINTMENT OF SABS TO PROVIDE TRANSPORTATION AND ANALYSIS OF COAL FROM BRAKFONTEIN MINE

6.28.1. We were provided with a copy of a letter dated 31 August 2015 addressed by Ramavhona to Frans Wolters ("Wolters") titled "TRANSPORT AND ANALYSIS SERVICES CONTRACT BETWEEN THE SABS AND ESKOM: TRANSPORT AND ANALYSIS OF ESKOM CONTRACTUAL SAMPLES

FROM TEGETA BRAKFONTEIN COLLIERY – REF: 724828". (Annexure E68). The letter states that "As per Eskom Contract with SABS to render Service (sic) on as and when required basis, SABS is hereby requested to provide Eskom with the Transport and Analysis of Eskom contractual samples from Tegeta Brakfontein Colliery. SABS is hereby required to make arrangements with Tegeta Brakfontein Colliery to complete (sic) safety file and induction. SABS is hereby required to declare any conflicting interests by 01 September 2015. Eskom would like to thank SABS for continued support".

- 6.28.2. During our consultation with Ramavhona, she indicated that she was responsible for the above appointment. She further indicated that she made the above appointment the day before she was suspended from Eskom.
- 6.28.3. According to Ramavhona, the rationale for the above appointment was that there was no laboratory allocated to the CSA between Eskom and Tegeta in that Eskom had, on the same day, suspended the laboratory services of Sibonisiwe and SGS.
- 6.28.4. During our consultation with Van Der Riet, he confirmed that Ramavhona was responsible for SABS's appointment to provide transportation and analysis of coal samples from Brakfontein mine.
- 6.28.5. Koko's response to our questions relating to the appointment of SABS was as follows: "I did not know when the testing was going to take place. I was not directly involved in sampling and analytical processes. I have since had sight of a letter dated 31 August 2015 from Ms Charlotte Ramavhona to Mr Frans Wolters of SABS. In that letter Ms Charlotte Ramavhona requests SABS to provide Eskom with the transport and analysis of Eskom contractual samples from Tegeta Brakfontein Colliery. This had to be done as per the Eskom Contract with SABS to render services on as and when required basis, It, in other words suggest that was (sic) there was an existing Contract with SABS to render analytical services to Eskom for coal samples."
- 6.28.6. During our consultations with Molatuli, he confirmed that Eskom issued an appointment letter on 31 August 2015 for the appointment of SABS to provide transportation and analysis of coal from Brakfontein mine. Molatuli indicated that he received a call from Ramavhona on 31 August 2015 confirming the said appointment.

- 6.28.7. Molatuli further indicated that on 1 September 2015, he received a call for Viloshnee Moodley who indicated that Ramavhona had been suspended and further confirmed that SABS had been appointed to provide transportation and analysis of coal from Brakfontein mine.
- 6.28.8. Wolters and Madela confirmed Molatuli's version that SABS had been appointed to provide transportation and analysis of coal from Brakfontein mine.

Collection of samples from Brakfontein mine on 6 September 2015

- 6.28.9. We determined that on 6 September 2015, SABS collected two samples from Brakfontein mine with samples number BKF S/P A 06-09-2015 and BKF S/P B 06-09-2015.
- 6.28.10. During our consultation with Molatuli, he indicated that Mahlangu from SABS collected samples from Brakfontein mine for testing. According to Molatuli Eskom official observed the collection of the samples. Molatuli indicated that Mudaliar signed for the collection of the said samples.
- 6.28.11. Molatuli indicated that the said samples were delivered at SABS for analysis on 6 September 2015.
- 6.28.12. We noted that Mahlangu was not escorted to SABS by Brakfontein officials as was the case on 29 August 2015 when Mpumamanzi was escorted by Roux and Mudaliar.
- 6.28.13. According to Molatuli the collection of the samples from Brakfontein was witnessed by officials from Eskom and Brakfontein mine. Molatuli could however not provide us with the names of the officials from Eskom who witnessed the collection of the samples.

Analysis of samples from Brakfontein mine

- 6.28.14. As indicated above, on 6 September 2015, SABS collected two samples from Brakfontein mine with samples number BKF S/P A 06-09-2015 and BKF S/P B 06-09-2015 for analysis at the SABS Middleburg laboratory. Molatuli indicated that Brakfontein officials did not observe the analysis of the samples.
- 6.28.15. We determined that the SABS results of the samples tested on 6 September 2015 were reported on 7 September 2015. The said results were included in the SABS report dated 18 September 2015.

- 6.28.16. Molatuli confirmed that the analysis results for the two samples were reported on 7 September 2015.
- 6.28.17. We requested Molatuli to compare the results of 30 August 2015 and the results of 7 September 2015 which are contained in the SABS report of 18 September 2015. Molatuli indicated that the results of 7 September 2015 contained in the SABS report of 18 September 2015 failed. Molatuli indicated that the two results differed significantly to the extent that his conclusion was that the samples did not come from the same mine.
- 6.28.18. Molatuli indicated that if the coal tested on 29 August 2016 and 6 September 2015 were from the same mine, the result could not have differed significantly.
- 6.28.19. During our consultation with Wolters and Madela, they confirmed Molatuli's version as it relates to the processes followed in the transportation and analysis of the coal from Brakfontein by SABS.
- 6.28.20. The observation made by Molatuli was also made by Dr van Alphen when we presented him with the two results during our consultations with him. Dr van Alphen stated that it was not possible that the source of the coal tested on 29 August 2015 and 6 September 2015 was Brakfontein mine.
- 6.28.21. Based on the consultations conducted with officials from SABS and Eskom, it is evident that the samples tested by SABS on 29 August 2015 were not from Brakfontein mine.

6.29. SUSPENSION OF INVESTIGATION TEAM

- 6.29.1. We determined that on 1 September 2015, Koko issued letters of intention to suspend to the following Eskom officials:
 - 6.29.1.1. Mark Van der Riet:
 - 6.29.1.2. Charlotte Ramavhona;
 - 6.29.1.3. Sam Phetla; and
 - 6.29.1.4. Siphelele Gobeni.
- 6.29.2. According to the letters of intention to suspend, allegations had come to Eskom's attention that the above-mentioned officials may have committed a serious misconduct by amongst others, inconsistency in the management of the coal quality assurance process.

- 6.29.3. The letter indicated that Eskom had taken a decision to investigate the alleged misconduct.
- 6.29.4. During our consultation with Mboweni, he indicated that he was not involved in the decisions to suspend the above-mentioned officials. Mboweni stated that he was not aware of the reasons that lead to the said suspensions.
- 6.29.5. Mboweni indicated that in his view, when Koko instructed him to serve the letters of intention to suspend van der Riet and Ramavhona, he (Koko) had already taken the decision to suspend.
- 6.29.6. Mboweni indicated that he was not consulted by Koko on the decision to suspend the above-mentioned officials even though they were reporting to him.
- 6.29.7. We did no investigate the process followed in the suspension of the abovementioned officials as we were not required to do so.
- 6.29.8. What is of importance to note is the fact that at the time of their suspension, Ramavhona, and Van der Riet were in the process of finalising an investigation into the inconsistencies in the test results issued by the contractual laboratories and those issued by Brakfontein's laboratory.
- 6.29.9. In his response to our question relating to the suspensions of the officials referred to above, Koko indicated the following: "The officials listed were suspended without prejudice pending forensic investigations. Siphelele Gobeni and Sam Phetla's suspensions were lifted based on the results of the investigations. Dr Van der Riet and Ms Charlotte Ramavhona were charged in disciplinary enquiries. In both cases the external independent chairpersons of the tribunal recommended dismissals. The recommendations for Dr Van der Riet took place after I left the employ of Eskom".

INVOICES RELATING TO DELIVERY OF COAL BY TEGETA

- 6.29.10. As indicated above, we determined that on 10 March 2015, Eskom concluded a CSA with Tegeta for the supply of a total quantity of 13 950 000 tons, of a blend of Seam 4 lower and Seam 4 upper coal, from Tegeta's Brakfontein Colliery. The value of the said CSA was R3 794 748 750.00.
- 6.29.11. The CSA was for a period of ten (10) years commencing on 1 April 2015 to 30 September 2025.

6.29.12. We determined that Tegeta issued invoices to Eskom for the supply of coal to various power stations including the following:

6.29.12.2. Majuba Power Station/Hawerklip;

6.29.12.3. Matla Power Station; and

6.29.12.4. Blinkpan Power station.

Invoices Issued by Tegeta

- 6.29.13. It should be noted that in addition to the delivery of coal at Majuba Power Station, Tegeta also delivered coal to Matla power station which was against the recommendation provided by the RT & D, discussed in the previous section, which stated, inter alia, that "Sending a "mixed" Brakfontein S4U/S4L blend to Majuba and Matla power station is not recommended as there is a high probability that the "mix" would frequently exceed Majuba and Matla 240 rejection specification.
- 6.29.14. The said coal delivered to Majuba and Matla Power Stations paid for by Eskom, as provided in the table below.
- 6.29.15. Based on the analysis of invoices provided to us by Eskom, we determined that Tegeta submitted various invoices for the period May 2015 to February 2018 for the supply of coal at different power station totalling R1 299 513 526.52.

Discrepancies relating to coal quantities delivered at Majuba Power Station in 2015

- 6.29.16. Based on our review of the technical liaison meetings between Tegeta and Eskom, discussed in the preceding sections, we determined that during the year 2015, Tegeta delivered total coal quantity of 1 060 037 tons to Eskom's Majuba power station.
- 6.29.17. We extracted, invoices in respect of quantities submitted by Tegeta to Eskom during the year 2015 for the supply of coal to Majuba power station.

Year	Delivery point	Invoice amount including VAT	Quantity delivered measured in GJ	Quantity delivered measured in tonnes as per contract
2015	Majuba Power Station	R 253 036 128,41	16 317 614,17	825 181,15
	Hawerklip power station	R 86 163 989,37	5 556 595,50	280 996,83
	Grand Total	R 339 200 117,78	21 874 209,67	1 106 117,98

- 6.29.18. In light of the above, we determined that there are discrepancies between the total actual coal quantities delivered by Tegeta i.e.1 060 037 tonnes as provided in the minutes of the technical monthly meetings and the total of coal quantities as per the above table i.e. 1 106 117.98 tonnes.
- 6.29.19. The said discrepancy suggests that Tegeta may have been paid for more than the coal quantities they delivered during 2015. We determined that the said discrepancy and possible overpayment by Eskom was in respect of 46 080.98 tonnes (1 106 117, 98 1 060 037).
- 6.29.20. We requested copies of the Supplier Payment Control Forms, for the period 2015 to 2018, relating to all payments made to Tegeta in respect of the CSA.
- 6.29.21. In order to identify parties who were involved in approving payments during the said periods we need to review all Supplier Payment Control Forms relating to the said period. As at the date of this report we were not provided with the said Supplier Payment Control Forms.

TEGETA'S RESPONSES TO NATIONAL TREASURY'S PRELIMINARY INVESTIGATION CONDUCTED IN 2016

6.29.22. During the analysis of Nteta's e-mails, we determined that on 14 September 2016 at 09:30 Nath sent an email to Nteta with subject matter "Reply".

- 6.29.23. We further determined that there was an attachment to the said document titled "NT-Reply clean doc". The said attachment contained a list of responses to National Treasury's investigation at Eskom at the time (Annexure E69).
- 6.29.24. National Treasury appointed us to conduct investigations following a preliminary investigation they conducted at Eskom and Transnet in 2016.
- 6.29.25. National Treasury provided us with the responses provided by Tegeta to National Treasury on the preliminary investigations at Eskom dated 14 September 2016, the same date that Nath emailed Tegeta's responses to Nteta.
- 6.29.26. We compared the responses provided to Nteta by Nath and the responses provided to National Treasury by Tegeta and determined that they were 100% match.
- 6.29.27. This is a clear indication that Tegeta and Eskom officials were colluded and deliberated on how they responded to National Treasury's investigations.

OTHER ISSUES

- 6.29.28. During an analysis of Nteta's e-mails we determined that on 4 August 2016 at 19:20 Howa sent an untitled e-mail to Nteta. Howa sent the said e-mail using an e-mail address naz.howa@icloud.com.
- 6.29.29. We opened the untitled attachment that accompanied the e-mail and determined that it was an invoice dated 31 July 2016, with invoice number 90015135. The reference number on the said invoice is reflected as 1700040. The invoice reflected that it was for R203691.930 tons of coal at a price of R455.59 per ton. The item description is reflected as COL_MID_KFT with a purchase order reflected as R203 691 93 Komati Power Station. The invoice total is reflected as R105 792 007.28 inclusive of VAT.
- 6.29.30. The invoice reflected a Bank of Baroda account number 1454095325. We noted that the e-mail was sent after hours using Howa's private e-mail address, with the attached invoice not described as such from the e-mail.

Offer to provide stockpile at Koornfontein

6.29.31. We further determined that on 6 August 2016 Howa sent another e-mail to Nteta with the subject matter reflected as Koornfontein Stockpile. The e-mail was sent to Nteta at 08:21 from an e-mail address nazeenh@tnamedia.co.za. Attached to the said e-mail is a letter dated 5 August, on a Tegeta letterhead. The letter stated

- inter alia the following: "I write today to offer Eskom SPACE At our Koornfontein Coal Mine for storing pre-certified coal ahead of transporting to Komati Power Station". At the bottom of the letterhead we noted that the names of the three Tegeta directors, Ronica Ragavan, Ravindra Nath and Ashur Chawla, are reflected.
- 6.29.32. It is not clear why Howa chose to send the two e-mails attaching the invoice and proposal and whether this was in the normal cause of business. This matter fell outside of our scope and was therefore not investigated.
- 6.29.33. The issues relating to the emails sent to Nteta by Howa as reflected were not part of the scope our investigations and were therefore not investigated.

CONCLUSIONS RELATING TO THE CSA BETWEEN TEGETA AND ESKOM

6.29.34. Advert and assessment of the Tegeta unsolicited bid

- 6.29.34.1. Tegeta failed to meet the 50%+1 black ownership requirement at the time of their appointment.
- 6.29.34.2. Mboweni, Koko, Nteta and Mabelane contravened the provisions of the Medium Term Mandate and section 57(c) of the PFMA in that they concluded or caused to be concluded, a CSA with an entity which was not 50%+1 at the time of conclusion.
- 6.29.34.3. Eskom and Tegeta commenced with the negotiations of the CSA in 2013 prior to obtaining a water use license.
- 6.29.34.4. Eskom failed to conduct drainage tests within thirty (30) days after delivery of contract coal as required by clause 22.10 of the CSA.
- 6.29.34.5. Tegeta failed to comply with some of their obligations under the Water use license in that:
 - 6.29.34.5.1. Brakfontein mine used portable water for washing machineries which was not its intended purpose;
 - 6.29.34.5.2. Monitoring points had been changed without notification and approval by the Provincial Head of the Department of Water and Sanitation; and
 - 6.29.34.5.3. Final ground monitoring water programme was not submitted within six months of the Water Use License.

- 6.29.34.6. Samples collected by Mothapo on June 2014 showed that only Seam 4 lower from Brakfontein complied with the requirements Eskom's specifications for the Majuba Power Stations.
- 6.29.34.7. Bester and Nteta allowed Tegeta to dictate to the terms of the CSA which, consequentially, were favourable on Tegeta's part and was not in the best interest of Eskom.
- 6.29.34.8. Nteta's request to Mlonzi to register Tegeta as a vendor in the Eskom's database was irregular and against Eskom's supply chain policy in that it was done given prior to Tegeta and Eskom concluding a CSA;
- 6.29.34.9. Nteta misrepresented facts to Mlonzi when indicating that the CSA had already been concluded when it was not the case

6.29.35. Price and quantity adjustment

- 6.29.35.1. Eskom officials increased the duration of the CSA from five (5) years to ten (10) years, without consultations with legal and the Senior General Manager, Primary Energy Division, Mboweni.
- 6.29.35.2. There is no evidence that the Eskom Executives who concluded the coal supply agreement between Eskom and Tegeta obtained approval to procure beyond the lifespan of the Medium-Term Mandate from the Board.
- 6.29.35.3. Nteta gave preferential treatment to Tegeta by emailing an editable template of a CSA for inputs.
- 6.29.35.4. Mboweni irregularly signed the ten (10) year CSA between Eskom and Tegeta.
- 6.29.35.5. The conclusion of the CSA with Tegeta prior to conducting successful combustion tests was irregular;
- 6.29.35.6. Eskom continued with blended tests even after various coal analysis results in respect of the blended coal samples, indicated that the blended coal was not suitable for Majuba power station.
- 6.29.35.7. It is not clear whether Nteta's promotion was a reward for giving favourable conditions to Tegeta
- 6.29.35.8. Bester and Nteta failed to act in the best interest of Eskom in that they permitted Tegeta to dictate to the terms of the CSA.

- 6.29.35.9. Nteta, Bester and any other role player may have received gratification for changing the conditions of the CSA;
- 6.29.35.10.Nteta, Bester and any role player may have contravened section 34 of Prevention and Combating of Corrupt Activities Act.

6.29.36. SABS – testing of new samples

- 6.29.36.1. Koko's conduct in preventing Eskom's employees from observing the resampling and retesting processes compromised the transparency of the said processes as none of the Eskom officials observed the sampling process.
- 6.29.36.2. The integrity of the sampling process followed at the Brakfontein mine is questionable as Mpumamanzi and Eskom cannot confirm that the samples collected at Brakfontein Colliery were indeed from the mine.
- 6.29.36.3. A vehicle without a tracking device was used to transport coal samples from Brakfontein to SABS in contravention of Eskom and Mpumamanzi contract.
- 6.29.36.4. The first stockpile sampled at Brakfontein on 29 August 2015 was done in the absence of Mpumamanzi's Rover/Supervisor, contrary to the contract between Mpumamanzi and Eskom.
- 6.29.36.5. The integrity of SABS tests results of 30 August 2015 are brought to question in that there are discrepancies in the number of sample bags recorded in Mpumamanzi's report and the SABS delivery notes.
- 6.29.36.6. Mudaliar and Roux were not authorised to observe the coal analysis at SABS.
- 6.29.36.7. SABS contravened their own policies and procedures when they allowed the Brakfontein parties to witness the analysis of their colliery's coal samples.
- 6.29.36.8. Koko suspended the Tegeta CSA on 31 August a day after he received the SABS's results on the Brakfontein Coal quality testing which was done on 29 August 2015 and the results thereof provided to Eskom on 30 August 2015.

6.29.37. Coal Deliveries from Brakfontein Mine

- 6.29.37.1. Tegeta was given preferential treatment in that they were allowed to commence coal deliveries without any confirmation by Eskom that Tegeta's coal was compliant with CSA's coal quality requirements;
- 6.29.37.2. Tegeta failed to meet their quarterly planned quantity requirements, during 2015.
- 6.29.38. The samples tested by SABS on 29 August 2015 were not from Brakfontein mine due to the significant difference in the samples tested on 29 September 2015 and 6 September 2015.
- 6.29.39. SABS should have handled the analysis of the tests of 30 August 2015 differently by not allowing Brakfontein officials to be present at SABS laboratories during the analysis of the said coal samples.
- 6.29.40. The Brakfontein officials, i.e. Mudaliar and Roux interfered with the resampling and analysis of the SABS tests of 28 August 2015 by:
 - 6.29.40.1. Completing the resampling without the Eskom and Mpumamanzi observers.
 - 6.29.40.2. Following the Mpumamanzi coal transportation to SABS;
 - 6.29.40.3. Being present at SABS during the analysis of the coal samples when they should not have been there.
 - 6.29.40.4. Sending the test results to Eskom prior to SABS communicating the said results to Eskom.

RECOMMENDATIONS RELATING TO THE CSA BETWEEN ESKOM AND TEGETA

Based on our findings and conclusions above, we recommend as follows:

- 6.29.40.5. Eskom provides the report to the Director Priority Crimes Investigation ("DPCI") to investigate if any role players did not receive gratification and also contravened section 34 of the Prevention and Combating of Corrupt Activities Act
- 6.29.40.6. Eskom Board institutes appropriate disciplinary action against the officials who played a role in the irregular appointment of Tegeta

- 6.29.40.7. There is a possible case of fraud that should be investigated by the DPCI against possible collusion between Eskom and Brakfontein officials may have caused samples from outside Brakfontein to be analysed
- 6.29.40.8. Consider restricting Mpumamanzi for breaching the terms of the contract
- 6.29.40.9. Consider restricting Tegeta for colluding with Eskom Officials, manipulating samples and compromising the integrity of the procurement process.

7. TEGETA PREPAYMENT

7.1. Introduction

- 7.1.1.One of the allegations we were required to investigate was the Eskom to Tegeta prepayment of R659 558 079.00 (six hundred and fifty-nine million five hundred and fifty-eight thousand seventy-nine rand) inclusive of VAT.
- 7.1.2. The process and the payment thereof have been questioned by media and the public in general, while Eskom has denied any wrong doing and insisted that there was nothing untoward in making the said prepayment.

7.2. Background

- 7.2.1.As reflected above, one of the allegations National Treasury mandated Fundudzi Forensic Services to investigate is a prepayment Eskom made to Tegeta on 14 April 2016.
- 7.2.2. During our investigations, we determined that on 14 April 2016 Eskom made a prepayment of R659 558 079.00 including VAT to Tegeta.
- 7.2.3.From various documentation obtained from Eskom, including e-mail communication between Eskom employees and Tegeta representatives, as well as media searches and consultations conducted with Eskom employees as well as third parties, we determined that Eskom concluded a contract with Tegeta to supply 1 250 000 tonnes of coal from April 2016 to September 2016 and obtained approval from a Special Board Tender Committee held on 11 April 2016 to extend the contract with Umsimbithi to supply 540 000 tonnes of coal from June 2016 to September 2016.
- 7.2.4. We were not required to, and did not investigate whether Umsimbithi supplied the 540 000 tonnes as contracted.