

**VOLUME
U2**

**AFFIDAVIT
&
ANNEXURE
OF
SNEHAL NAGAR**



INDEX TO AFFIDAVIT OF S NAGAR

DESCRIPTION	PAGES
Affidavit of Snehal Nagar	001 to 017
Annexure "SN0"	018 to 020
Annexure "SN1"	021 to 023
Annexure "SN2"	024 to 029
Annexure "SN3"	030 to 032
Annexure "SN4"	033 to 035
Annexure "SN4A"	036 to 038
Annexure "SN5"	039 to 040
Annexure "SN6"	041 to 049
Annexure "SN7"	050 to 051
Annexure "SN8"	052 to 053
Annexure "SN8A"	054 to 056
Annexure "SN9"	057 to 059
Annexure "SN9A"	060 to 061
Annexure "SN9B"	062 to 064
Annexure "SN10"	065 to 068
Annexure "SN11"	069 to 071
Annexure "SN11A"	072 to 073
Annexure "SN11B"	074 to 075
Annexure "SN12"	076 to 078
Annexure "SN13"	079 to 080

DESCRIPTION	PAGES
Annexure "SN13A"	081 to 082
Annexure "SN14"	083 to 089
Annexure "SN15"	090 to 097
Annexure "SN16"	098 to 100



AFFIDAVIT

I, the undersigned

Snehal Nagar

do hereby state under oath in English:

1.

I am an adult male, with identity number 760716 5017 080. I am employed as Finance Business Partner: Primary Energy, Eskom and report to Mr Martin Buys, General Manager: Finance. My office is situated at Eskom Megawatt Park, 1 Maxwell Drive, Sunninghill, Sandton.

My contact details are:

Office: +27 (0)11 8005444;
Cell: +27 (0) 83 5720962; and
E-mail: nagars@eskom.co.za

2.

This statement is true to the best of my knowledge and belief.

3.

I am employed at Eskom SOC Limited (hereinafter referred to as **Eskom**) since October 2004 and in my current position since approximately 2008. I am responsible amongst other duties for the overall finance management of the Primary Energy area (Coal, Water and Sorbent). Mr Christo Kruger (**Mr Kruger**) is employed as Chief Advisor: Primary Energy Finance and reports to me. I have been requested to provide information and to comment on my knowledge with regard to certain payment transactions by Eskom. I have been shown documentation and correspondence relating to these payments and my

Handwritten signature/initials
SN

knowledge and/or involvement into these transactions will be discussed in further detail hereunder

4.

Payment to Tegeta Exploration and Resources in the amount of R659,558,079.38

4.1

On the 12 April 2016 02:45 pm, I received an email from Ayanda Nteta subject titled "FW: Eskom Proforma Invoice" (attached as **Annexure SN 0**). The contents of the email state "As discussed". I cannot recall a discussion taking place on this matter with Ms Ayanda Nteta. The attachment to the email was a proforma invoice for R659 558 079.38.

On 13 April 2016 (it was the same date when the payment was made in the amount of R659,558,079.38) I received a telephone call from Ms Maya Bhana (now Naidoo) on my cell phone. She called me during the morning (between about 10:00 to 11:00 am as I can recall), whilst I was driving and on my way to a client meeting. Ms Naidoo stated to me during our telephone conversation that there was an urgent request to make a payment to Tegeta Exploration and Resources (**Tegeta**) before 2pm on the day in the amount of R659,558,079.38. She further stated that the payment was approved by the Board Tender Committee (BTC). [I reported to Ms Naidoo at the time or Stefaan Cronje who reported to Ms Naidoo at the time (there was a transitional period where the organisational structure changed and I cannot recall the timing of the change)]. Ms Naidoo also assured me that the Treasury and Shared Services teams were on board or would be on board with respect to activities that they would need to conduct (e.g. making cash available and processing the payment with the banks, etc.) by the time the payment needed to be processed.

4.2

I then requested Ms Naidoo to provide me with the necessary documentation, i.e. the BTC resolution and the details surrounding the request in writing. I then contacted Mr Kruger immediately thereafter to attend to the instruction and to assist me to ensure payment before 2 pm on the day as instructed.

4.3

I received an email from Ms Naidoo thereafter on the same day (13 April 2016) at 12:38pm confirming the details of the telephone conversation, wherein she requested to fast track the payment before 2 pm on the day in respect of the R659 million (attached as **Annexure SN1/1-2**), as well as the payment of another two invoices to the same supplier for an early settlement discount of 1%. Ms Naidoo attached a document to her email titled "20160413120839515". Within that document "20160413120839515" was a document titled "Agreement Regarding Coal Supply and Limited Guarantee and Cession and Pledge in Security" entered into between Eskom and Tegeta dated 13 April 2016 (attached as **Annexure SN2**). The email from Ms Naidoo refers to an extract of the BTC meeting held on the Monday (11 April 2016) that had to be provided by Ms Daniels. Christo Kruger and I were provided with a copy of the Resolution by Ms Daniels of our legal department. We also received a copy of the extract from Ms Naidoo (attached as **Annexure SN3**). Mr Kruger processed the transaction for payment before 2pm on the day as instructed.

4.4

A Purchase Requisition (**PR**) had to be created and the new contract had to be loaded or existing contract modified onto our SAP accounting system for payment in respect of the aforesaid amount. From my experience we had insufficient time to process a PR and update a new contract or amend an existing contract on SAP for the "pre-payment" in the amount of R 659,558,079.38 for payment to Tegeta before 2pm and within approximately 2 to 3 hours as instructed. Mr Kruger processed the payment against the Majuba Contract (with contract number 4600596841), entered into with the same supplier (being Tegeta), but in respect of a different contract for the supply of coal to Brakfontein and was not in respect of the Arnot Power Station as contained in the Agreement provided. Mr Kruger obtained signature on the payment control sheet from Ms Maya Naidoo before processing the transaction. The payment control sheet (attached as **Annexure SN4A**) reflects the vendor details and payment details. Mr Kruger then informed me of the manner in which the transaction was processed. We then immediately started the process of loading the correct contracts on SAP in order to correctly post the transaction. The correction of the transaction against the correct contract on SAP was processed a few days later.

4.5

Mr Kruger later informed me that Eskom's Treasury had confirmed the transfer of funds [email confirmation also sent from Charl Dadswell (attached as Annexure SN4)], whereafter the documents were submitted to the Shared Services Department for the processing and release of the payment, which was done on the same day at around 2 pm as instructed. Anthea Cupido of my finance team confirmed by email on 13 April 2016 at 02.21 pm that Eskom made payment to the supplier in the total amount of R728,211,861.16. This amount included the pre-payment amount as well as the additional R68 million that was paid earlier on the day and was in respect of the two additional invoices as referred to by Ms Naidoo in her email I referred to herein above.

5.

I however wish to add that the nature of the pre-payment in the amount of R659,558,079.38, and the procedures that were followed to ensure the payment thereof before 2pm (within less than 2 hours from the time we received the instruction via email) was unusual and was not according to the normal business practice being followed by Eskom. It was not practically possible and hence the reason the payment was processed against another contract that was loaded onto the system as referred to herein above and was not according to Eskom's normal business procedures. The pre-payment was for services that had to be delivered in the future and the risk associated with these types of contracts are higher than normal because in the event the supplier fails to deliver the required services/ coal as agreed upon that will then possibly lead to civil litigation as a result of non-delivery, which may further result in additional costs and ultimately non recovery of the remaining upfront payment or value equated to the remaining upfront payment.

6.

SN

During my meeting with the investigation team I was asked to comment on my knowledge of the difference between the pre-payment mentioned above and investments into Cost Plus mines. Eskom has previously made payments in respect of investments in "cost-plus" type mine contracts. These payments were made as part of an investment into the establishment of the underlying Cost Plus mine. At that historical time when Eskom made these investments into the Cost Plus mines, one of the reasons for the investment would have been to reduce the cost of coal to Eskom. The Cost Plus mine owner earns an "annuity" type return/profit which is based on the establishment cost of the colliery. To the extent that Eskom's Weighted Average Cost of Capital (WACC) was less than that required by the mining company, it made financial sense for Eskom to invest as much as possible into the establishment of the mine. This would reduce the cost of coal to Eskom as it would reduce the profit payable to the mining company. The difference between this type of upfront payment compared to the pre-payment made to Tegeta is that Eskom has a potential claim to the pre-payment should Tegeta not perform while Eskom's recourse under the Cost Plus agreement for non-performance would be in terms of that agreement and not necessarily have recourse to the investment that was made. These payments were however made historically in relation to Long Term Coal Supply Agreements only and was not in respect of Short Term CSA as entered into with Tegeta for the supply of coal to Arnot Power Station for a 5 month period and was therefore unusual.

Handwritten signature and initials, possibly 'SN'.

7.

Calculation of penalty amount and Settlement Agreement entered into between Eskom and Optimum Coal Mine

During my meeting with the investigation team I was asked to comment on my knowledge of the calculation of the penalty amount that was levied against Optimum Coal Mine (OCM) in respect of coal supplied to the Hendrina Power Station, and the subsequent Settlement Agreement that was entered into between Eskom and OCM thereafter. My involvement was limited to the meetings I attended with Eskom's Legal Counsel (R Naidoo and J Ferris of CDH) and staff in respect of the CSA and the interpretation thereof, and the penalty calculation as will be discussed in further detail below. I however wish to state that I was not personally involved in the negotiations that lead to the Settlement Agreement. My knowledge and/or involvement was limited as will be discussed in further detail below.

7.1

A number of issues had arisen between Eskom and OCM relating to the interpretation, implementation and execution of the CSA over an extended period of time and in respect of the supply of coal to the Hendrina Power Station. Eskom and OCM had entered into negotiation proceedings in an attempt to settle their disputes. (I was not part of those negotiation proceedings). A number of issues had arisen between the parties relating to the interpretation, implementation and execution of the existing CSA and amendments that were entered into between Eskom and OCM.

7.2

Eskom and Glencore entered into a "Co-operation/Interim" arrangement whereby certain terms and conditions of the contract were suspended pending a negotiated outcome. Around the time that the "Co-operation/Interim" arrangement between Eskom and OCM (Glencore owned) was nullified/terminated or suspended, Eskom together with CDH, met a few times to calculate the potential claim against OCM. This was a retrospective claim due to the application of the penalty clauses being suspended during the period of the "Co-operation/Interim arrangement". Eskom terminated the settlement process around approximately May/June 2015 and hence confirmed that the provisions of the existing CSA were applicable. The interpretation and methodology of the CSA to calculate the penalty claim was agreed with Mr J Ferris and Mr R Naidoo of CDH and a calculation performed which has commonly been referred to as the "R2.1bn claim" (attached as **Annexure SN5**). I was not involved in the negotiation process and do not have any knowledge on the reasons for the "Co-operation/interim" process being terminated. I was not involved in the negotiation process of the R2.1bn penalty claim settlement with OCM.

7.3

OCM had for the period between 1 March 2012 to 31 May 2015 failed to supply coal and deliver to Eskom coal which met the quality as contemplated by Clause 3.4 of the First Addendum (an extract of the First Addendum Agreement is **attached as SN6**) titled "Quality Corridor". The coal supplied and delivered to Eskom had by way of example failed to comply with the expected sizing specification of the agreement. OCM did not apply any adjustment or reduction for the payment as provided for by Clause 3.6 of the said Addendum in terms of the interpretation (as agreed with J Ferris and R Naidoo of CDH) of the contract due to the "Co-operation/Interim" arrangement being in place. Once this arrangement lapsed, a retrospective claim became due and payable. Early in the process, I attended a consultation meeting with Mr Moodley and Mr J Ferris of CDH, Gert Opperman (contract manager) and was accompanied by Mr Kruger of Eskom. There could have possibly been other role players in the meeting that I cannot recall. During the

A
SN

meeting we discussed the CSA and the various Addendums thereto and agreed on how to apply the required information to determine and calculate a penalty amount to claim.

7.4

Mr Kruger compiled a spreadsheet for the period 1 March 2012 to 31 May 2015, containing information relating to the penalty amounts in respect of sizing, Abrasive Index (AI), Calorific Value (CV) and Ash as applied and supported by the information provided by the quality test results. Mr Kruger created the excel spreadsheet by creating formulae in line with the contract. Mr Kruger obtained the electronic version of the quality information relating to the OCM coal supply from either Gert Opperman or the technical services team or geologist supporting Gert Opperman in terms of managing the contract. The spreadsheet and formulae then uses that quality information and formulates the penalties payable in terms of the underlying contract. After Mr Kruger prepared the spreadsheet, we had a few discussions between Mr Kruger, Mr J Ferris, Mr R Naidoo and Gert Opperman. I did not personally attend all of those meetings. The meetings were setup to clarify possible issues at that stage in calculating the "R2.1bn" penalty as reflected in Annexure SN5. During those meetings, we (at a high level), tested the assumptions of the contract and the outcome of the calculations. In compiling all the information for the period under review, we determined from the aforesaid calculation that the total penalty amount that was already deducted during the aforesaid period amounted to R158,386,758.77. Based on the aforesaid calculation and our interpretation of the information provided and interpretation of the CSA, Eskom could impose a further penalty in the total amount of R2,176,530,611.99 as summarised in the spreadsheet (attached as SN5). Eshari Singh (part of my finance team and reports to Christo Kruger) updated the penalty calculation sheet on a regular basis until January 2017. These updated sheets were sent to Gert Opperman (contract manager) on a regular basis as well (Annexure SN7).

The investigation team requested me to provide a summary of the differences between the calculations of the original penalty levied for the period totalling R158 386 758.77 and the revised penalty calculations. I had requested my finance team to perform the analysis. The table below summarises the R158 386 758.77 into the different quality components.

	Total All Penalties (Excl VAT)	Total CV Penalties (Excl VAT)	Total Ash Penalties (Excl VAT)	Total Sizing Penalties (Excl VAT)	Total Penalties (Excl VAT)
Mar 12	-5,750,686.67				-5,750,686.67
Apr 12	-3,695,423.94				-3,695,423.94
May 12	-2,285,980.84				-2,285,980.84
Jun 12	-1,870,190.00				-1,870,190.00
Jul 12	-3,130,018.00				-3,130,018.00
Aug 12	-4,408,321.00				-4,408,321.00
Sep 12	-4,925,696.00				-4,925,696.00
Oct 12	-5,221,553.00				-5,221,553.00
Nov 12	-3,491,043.00				-3,491,043.00
Dec 12	-2,927,443.00				-2,927,443.00
Jan 13	-4,038,782.00				-4,038,782.00
Feb 13	-4,328,580.00				-4,328,580.00
Mar 13	-3,104,912.00				-3,104,912.00
Apr 13	-3,753,116.00				-3,753,116.00
May 13	-3,964,373.00				-3,964,373.00
Jun 13	-6,156,673.00				-6,156,673.00
Jul 13	-6,249,334.00				-6,249,334.00
Aug 13	-5,791,329.00				-5,791,329.00
Sep 13	-4,343,026.78	-4,266,927.51	-794,917.56	-406,790.00	-9,811,661.85
Oct 13	-5,052,276.58		-1,270,160.07	406,790.00	-5,915,646.65
Nov 13	-5,172,730.27		-917,192.63		-6,089,922.90
Dec 13	-5,404,289.26	-2,252,923.35	-208,867.76		-7,866,080.37
Jan 14	-5,229,765.73	-3,345,469.23	-1,044,299.99		-9,619,534.95
Feb 14	-5,221,216.82	-4,723,358.30	-400,927.48		-10,345,502.60
Mar 14	-6,719,030.12	-3,253,928.09	-1,737,368.28		-11,710,326.49
Apr 14	-6,891,383.90	-294,194.39	-7,027,582.64		-14,213,160.93
May 14	-6,482,858.66		-1,238,608.39		-7,721,467.05
	-125,610,032.57	-18,136,800.87	-14,639,924.80	-	-158,386,758.24

From the table above, it appears that the CV, Ash and Sizing penalties were not applied before September 2013. It also appears that the Sizing penalty was not applied for the entire period.

As indicated above, in 2015 we were requested to calculate a claim for the retrospective penalty which is commonly referred to as the R2.1bn claim. The following table reflects the

differences between the penalty that was initially applied for per quality parameters and the revised penalty that would have been applied using the interpretation that was agreed with CDH in 2015. The table below does not limit the total penalty to R1 per ton of delivered coal where the penalty amount exceeds the total invoice value. This is because the table is trying to illustrate the difference in penalty application per quality parameter for that which was originally applied when compared to that which should have been levied based on the revised interpretation. Therefore the total penalty in the table below will appear to be greater than the commonly referred to "R2.1bn" penalty.

Variance between original payment calculation and R2,1 Bn					
	Total AI Penalties (Excl VAT)	Total CV Penalties (Excl VAT)	Total Ash Penalties (Excl VAT)	Total Sizing Penalties (Excl VAT)	Total Penalties (Excl VAT)
Mar 12	1,608,187	-2,536,764	-9,134,639	-	-10,063,216
Apr 12	-484,679	-13,130,021	-5,780,230	-51,233,661	-70,628,591
May 12	-621,380	-16,776,364	-16,408,038	-60,601,021	-94,406,804
Jun 12	-222,257	-1,191,313	-19,953,406	-56,129,007	-77,495,982
Jul 12	-465,206	-3,544,079	-16,942,041	-62,545,284	-83,496,611
Aug 12	-679,108	-839,502	-20,527,666	-64,939,301	-86,985,577
Sep 12	-931,211	-	-4,580,073	-60,398,735	-65,910,018
Oct 12	197,821	-17,999,778	-3,213,696	-65,083,096	-86,098,749
Nov 12	349,325	-26,370,915	-10,498,241	-51,508,637	-88,028,468
Dec 12	-998,979	-13,387,409	-32,067,321	-58,641,074	-105,094,783
Jan 13	232,699	-16,341,853	-30,219,643	-56,738,724	-103,067,521
Feb 13	-116,169	-2,765,749	-17,902,165	-69,573,781	-90,357,864
Mar 13	-759,564	-4,912,503	-8,079,170	-65,592,896	-79,344,133
Apr 13	-1,078,666	-9,051,101	-28,905,713	-58,757,437	-97,792,917
May 13	-1,276,035	-40,061,422	-19,441,976	-57,855,470	-118,634,902
Jun 13	-572,736	-15,508,781	-61,600,891	-69,468,227	-147,150,636
Jul 13	-90,826	-39,791,910	-28,223,966	-65,412,000	-133,518,703
Aug 13	-127,426	-28,327,320	-28,675,599	-59,729,045	-116,859,390
Sep 13	0	-8,248,018	-24,700,206	-59,418,414	-92,366,637
Oct 13	-51,670	-1,686,444	-4,276,216	-66,555,157	-72,569,488
Nov 13	-0	-	-1,968,959	-53,310,037	-55,278,995
Dec 13	0	-4,503,278	0	-55,761,829	-60,265,107
Jan 14	0	-18,160,465	-18,430,795	-53,964,918	-90,556,178
Feb 14	-0	-0	-30,219,743	-53,876,551	-84,096,294
Mar 14	0	-5,852,717	-14,482,475	-69,369,266	-89,704,458
Apr 14	0	-1	-2,328,612	-73,047,899	-75,376,511
May 14	-0	-	-2,737,351	-66,916,339	-69,653,689
	-6,087,879	-290,987,707	-461,298,831	-1,586,427,804	-2,344,802,221

In an attempt to understand the differences between the original calculation and the revised calculation, we took a sample of 4 transactions. The 4 grey shaded invoices in the table above were reviewed to determine the major differences in application of the original penalty and revised penalty calculations. The reasons for these major variances will need to be obtained from the applicable Coal Supply Unit Manager and Coal Supply Manager presiding over this contract during that period. The major reasons for the differences were found to be related to the following issues:

a) Abrasive Index

- AI from March 2012 till August 2013 was applied at the base (unescalated) AI penalty price of Addendum 2. The revised penalty calculation used the same base AI penalty price but escalated the prices in line with Addendum 2.

b) Sizing

- The initial penalty calculation did not apply or enforce the sizing quality penalty. The revised calculation did apply the penalty for sizing. Sizing was the biggest portion of the difference between the 2 calculations.

c) CV and Ash

- Application or enforcement of the CV and Ash penalties prior to September 2013 was not enforced.
- The CV and ash penalties for the period where the qualities were out of specification for a 7 day rolling average, penalty was levied at a rate of R1/ton instead of paying the supplier only R1/ton.
- The CV and ash penalties for the period where the qualities were out of specification for a 6 day rolling average, penalty was levied at 25% of the price of coal instead of 50% of the price of coal.

EX
SN

I was not involved in any of the negotiation proceedings that lead to the calculation and settlement of the penalties in March 2017. I recall that Ms Daniels contacted me during early March 2017 to confirm if the penalty calculations that were provided was accurate. She thereafter sent me an email on 2 March 2017 wherein she requested me to look at the response from OCM (specifically Annexure A and verification of paragraph 6 of Annexure A of the email sent) and to compare it with our calculations in support of the negotiation proceedings (**attached as SN8**). I requested the supporting documentation and calculations to the information that I was requested to check. Ms Ayanda Nteta sent me an email with the supporting documentation (**attached as SN8A**). The calculations that Ms Daniels requested to be checked was based on a substantial amount of detailed data and formulae. I reviewed the documentation provided and worked with Mr Kruger to compare the information to the attachment within the email (Annexure A) as requested by Ms Daniels (**attached as Annexure SN9**).

Overall, the negotiating team used a spreadsheet that was created in June/July 2015 (**attached as Annexure SN5**). The negotiating team did not use spreadsheets updated post that June/July 2015 date that updated the historical calculations for any errors. When comparing the penalty calculations to the negotiated settlement, we sent an updated version of the penalty claim calculation. A comparison was made to this as well (**attached as Annexure SN 9A**).

We noted the following as part of the settlement offer by OCM, which related to the period 01 March 2012 to 31 May 2014:

- i. During this period, Eskom had deducted penalties in the amount of R158,386,758.77 from OCM. The basis for the calculation of the penalty was different to that agreed with CDH. I do not know why Eskom interpreted the contract in that manner during that period. The basis and supporting invoices of that calculation of the R158 386 758.77 was however sent to CDH (**attached as Annexure SN 12**). Based on the agreed interpretation of the contract with CDH for the period 01 March 2012 to 31 May 2014, the total penalty amount based on the updated spreadsheet calculated for this period amounted to R1,589,816,477.63 (including the sizing quality parameter)

A
SN

7.6

We noted the following as part of the settlement offer which related to the period June 2014 to May 2015:

- i. The total penalty as reflected in the offer of R419,000,000 was calculated by us to be R417,052,292.04. This amount was based on the penalties applied excluding the sizing (the total penalty amount calculated for the aforesaid period was R744,464,770.02). I do not know why the amount for sizing was excluded as I was not part of the negotiation proceedings;
- ii. The offer reflected a deduction for CV penalties which amounted to R126,679,838.80. Both Mr Kruger and myself agreed that the CV deduction should not have taken place as the formula on the original calculation, as provided, has already been corrected;
- iii. The offer further reflected a "GC penalty reduction Sept 13 – May 14" in the amount of R37,371,688.67. We were however unable to calculate this amount and have no knowledge as to the basis how this calculation was performed;
- iv. Based on our calculation we noted that the settlement amount for this period (excluding the sizing amount) should have been R417,052,292.04 and not R254,948,472.53 as reflected in the document provided.

We compared the calculations (attached as **Annexure SN9A**) to the "Annexure A" per the email from Ms Daniels (Attached as **Annexure SN9B**). We noted that there was a potential overstatement of the penalty claim of R20 642 923.37 and R12 571 418.28. If the R419 452 346.65 claim amount (excluding sizing) was reduced by these errors as claimed by Optimum, The net penalty claim amount of R386 238 005.16 does not tie up to Optimum's R322 227 646.96 claim (as per Annexure SN9B). Optimum also proposed a lower CV penalty of R45 979 732.37 against that calculated CV penalty of R126 679 838.

7.7

I sent an email to Ms Daniels on Saturday 4 March 2017 with the spreadsheet we prepared with comments (attached as **Annexure SN9A**). I also suggested to Ms Daniels a meeting with some of the role players to discuss the outcome of our findings. (attached as **Annexure 9**). A telecon was setup for Monday morning (attached as **Annexure SN10**) to

A
SN

discuss the spreadsheet provided and highlighted some of the findings. These findings were documented in the spreadsheet that was emailed out to the team. Mr Kruger continued working on the spreadsheet and found some additional errors. These errors were corrected and a further updated spreadsheet (attached as **Annexure SN11**) was sent out to the team on Monday morning before the telecon took place.

During the telecon, we discussed the spreadsheet and calculations at hand. We discussed the differences in our calculation compared to that per the original email from Ms Daniels. We discussed the different versions of the various spreadsheets and the errors that were corrected. We also discussed the issue that the current penalty claim calculation was only to May 2015. I questioned the period post May 2015 to the date of the discussion (4 March 2017) and the outstanding claims for that period. We questioned the reason for not including the entire period within the settlement. I also questioned the impact of this settlement on that outstanding period.

We further noted that the claim of R419 000 000 per the Optimum offer (attached as **Annexure 9B**) should have been R490 002 211.11 per the updated calculation based on the penalties applied excluding the sizing (the total penalty amount (incl. sizing) calculated for the aforesaid period was R744,464,770.02).

The issues raised above were not concluded during the telecon but rather noted for consideration by the team. Subsequent to the telecon, further documentation and clarification was requested by Mr Moodley of CDH. This was subsequently sent to CDH. Example of evidence attached as **Annexure SN12**.

While the above processes as described in the document were taking place, my finance team (Christo Kruger and Eshari Singh) continued to check the calculations of the spreadsheet and supporting data behind the calculations. They found a few more errors which were subsequently corrected (attached as **Annexure 11B**) approximately around the 08 March 2017. The major difference in the spread sheet calculation was that the R419 000 000 per the Optimum offer (attached as **Annexure 9B**) which was updated to R490 002 211.11 (attached as **Annexure 11A**) was now revised to R441 186 153.30 (attached as **Annexure 11B**).

M
SN

7.8

On or around the 13th of March 2017, I was requested by Ms Daniels to sign a memo as finance support for the settlement of the penalty claim. Upon review of the document, there was no link in the memo to the potential total claim/value that was due to Eskom [R1 166 164 713.37 (excl. sizing) as per **Annexure SN11B**]. I was also uncomfortable to support the memo as I was not part of the settlement negotiations and the memo did not refer to any of the calculations that we had performed. On 13 March 2017 I sent an email to Ms Daniels (attached as **Annexure SN13**) wherein I recommended a comment to be added to paragraph 1 under Financial Implications (attached as **Annexure SN13A**). The purpose of the comment was to provide context to the potential claim/value at hand and the potential value that was being given up. The purpose was also to link the financial quantum in the document to the calculations that my team had performed. Ms Daniels replied to me on the following day, being 14 March 2017 wherein she wanted clarity on the comment. She further indicated that she took Mr Singh through the document the previous day to finalise the matter on the same day, being 14 March 2017.

7.9

Ms Daniels provided me with an updated copy of the memorandum thereafter to request approval of the Interim Group Chief Executive and Group CFO to settle the legal claim in the matter between Eskom and OCM (attached as **Annexure SN14**), wherein it was agreed to be settled on the basis that the amount of the historic penalties was R577 million (R419,452,346.65 as referred to herein above for the period June 2014 to May 2015 plus the amount of R158,386,758.77 already deducted for the period March 2012 to May 2014), and that the parties have set out the terms of the settlement agreement to be signed between the parties and made an order of the arbitration, which I was requested to sign by Ms Daniels. I then signed as "Supported" on 14 March 2017 in terms of the

A
SN

calculations as described in the memo and to reflect the total amount of the claim of R1.17bn (excl. the sizing parameter). The total claim of R2.1bn (incl. the sizing parameter) still remained relatively the same on a rounded off to Rbillion basis.

The Settlement Award (By Agreement) in the Arbitration before Adv. RA Solomon SC, was signed in Johannesburg by the representatives of Eskom and Tegeta on 14 March 2017 (attached as SN15). I however wish to add that I was not part of the negotiation proceedings and I cannot comment on what had transpired during the process and/or if our comments were taken into consideration.

8.

Absa guarantee.

During my meeting with the investigation team I was asked to comment on my knowledge and involvement of the ABSA guarantee.

During December 2015/January 2016, I was on leave or away from the office. A member of my finance team (Rehana Moola) was standing in for me. Rehana received a call from the Eskom treasury team to deal with a guarantee. She did not understand what they were talking about and referred them to me when I returned from leave. When I returned to the office, I was presented with a copy of the guarantee (I cannot recall who from Eskom Treasury sent me the guarantee). I was also asked to deal with it. I then tried to get further information on this guarantee but was unsuccessful. I contacted Vusi Mboweni and checked with him whether he was aware of this guarantee and the detail around the guarantee. Vusi verbally indicated that he was also unaware of the guarantee. I could not find any further information at that time and for some reason that I cannot recall at this stage, this issue around the guarantee was dropped. I do not generally deal with bank guarantees in my previous or existing role at Eskom. Generally the bank guarantees would be managed by the Eskom Treasury team. It was therefore strange that they would request me to deal with this guarantee.

Towards the end of March 2016 (which was close to the Eskom financial year end), the issue around the guarantee was raised again. I was contacted by the Office of the CFO and specifically Teresa Michael within that office to potentially draft an accounting

position paper around this particular guarantee and transactions surrounding the guarantee. I then sent Teresa an email highlighting a few concerns around the transaction and the lack of clarity around this transaction. (Email attached as Annexure SN16). We subsequently received an email from Ms Naidoo informing us that the guarantee will lapse and be cancelled, My involvement around the ABSA guarantee was limited to that described above. I wish to state that I was not personally involved in the negotiations, creation or cancellation of the bank guarantee.


DOPNENT

THUS SIGNED and SWORN to before me at JOHANNESBURG on this 29th day of NOVEMBER 2018, the deponent having acknowledged that he/she knows and understands the contents of this Affidavit; that he/she has no objection to taking the prescribed oath and that he/she considers the oath binding on his/her conscience.


COMMISSIONER OF OATHS

BHUPENDRA CHUNILAL
Commissioner of Oaths
Practising Attorney R.S.A
First Floor, Central House
69 - 8th Avenue Mayfair
Johannesburg

Annexure “SN0”



Snehal Nagar

From: Ayanda Nteta
Sent: Tuesday, April 12, 2016 2:45 PM
To: Snehal Nagar
Subject: FW: Eskom Proforma Invoice
Attachments: Eskom Proforma Invoice.pdf

~~SNO~~

~~SNO~~

SNO

As discussed



SN

TEGETA EXPLORATION & RESOURCES (PTY) LTD

Block "A" Lower Ground Floor, Grayston
Ridge, 144 Katherine St, Sandton
Postnet Suite 458, Private Bag X9
Benmore 2010

Tel : 011 430 7640
Fax : 086 566 4377
Regn. 2006/014492/07
VAT : 4680233949

PROFORMA INVOICE

Account Number: EOP001
Name: ESKOM HOLDINGS SOC LTD.
Address: PO BOX 1091
JOHANNESBURG
CONTRACT REF- 724767
Postal Code: 2000
Customer Ref: =4502313607

Order Number: 00000194
Date: 12/04/2016
Quotation Number:
Sales Rep: 0011082687

Page: 1

Item Number	Description	Unit	Quantity	Price	Total Excl	Tax	Total Incl
EQC2	ESKOM QUALITY COAL<-50 MM SIZE	GJ	29375000.00	19 70	578559718.75	80998360.63	659558079.38
	* 1,250,000 MT@ CV OF 23.50						
	* = 29,375,000 GJ						
	* RATE = 20.41 LESS 3.5% DISCOUN						

578559718.75 80998360.63 659558079.38

Banking Details:

A/C Name: Tegeta Exploration & Resources Pty Ltd
Bank: First National Bank
Commercial Cheque A/C : 62117356990
Branch Code : 254605, Sandton City Branch

SN

Annexure “SN1”



SN1

Snehal Nagar

From: Maya Bhana
Sent: Wednesday, April 13, 2016 12:38 PM
To: Muvenda Khomola; Christo Kruger; Snehal Nagar; Andre Pillay; Rajen John; Muvenda Khomola; Charl Dadswell
Subject: Payment to be made before 2 today
Attachments: Tegeta - Eskom Invoice no.194.pdf; 20160413120839515.pdf; Tegeta Exploration-Eskom Pending Payments.pdf
Importance: High

Hallo all

Please can we fast track payment today before 2pm.

1. Two invoices as requested and approved for payment (~ R60m) today subject to early settlement discount of 1%
2. Attached invoice for R659m
 - a. See attached contract addendum
 - b. Copy of the extract of the BTC meeting on Monday and this morning will be forward by Suzanne during the course of today.

Please let me know if you require any additional information.

Kind regards
 Maya

From: Ronica Ragavan [mailto:ronica@oakbay.co.za]
Sent: Wednesday, April 13, 2016 12:08 PM
To: Anoj Singh; Maya Bhana
Subject: Fwd: Eskom Invoice- Tegeta

Dear sir

As requested

Ronica

Sent from my iPhone

Begin forwarded message:

From: Harshit Malviya <accounts@tegeta.com>
Date: 13 April 2016 at 12:03:48 PM SAST
To: Ronica Ragavan <ronica@oakbay.co.za>
Cc: Ravindra Nath <nath@oakbay.co.za>, Ugeshni Naidu <UgeshniN@sahara.co.za>
Subject: Eskom Invoice- Tegeta

Dear madam,

18
 SN

PFA Eskom Tax invoice.

--

Thanks & Regards,

Harshit Malviya

Fax to email : 011 262 4951 | Fax : 086 566 4377



SN

Annexure “SN2”



SN 2

Tegeta Exploration and Resources Pty Ltd

11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

Postal Address: 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

Telephone: 011 444 4444
Email: info@tegeta.co.za



COAL EXPLORATION

EXTRACT FROM THE MINUTES OF THE MEETING OF SHAREHOLDERS
OF TEGETA EXPLORATION AND RESOURCES PTY LTD
(REGISTRATION No. 2006/014492/07)
(THE COMPANY)
HELD AT SANDTON ON 13/04/2016

RESOLVED THAT the Company avails the pre-payment from Eskom for supply of Coal in next 5 months.

FURTHER RESOLVED THAT the Company pledges its shares to Eskom as a security for pre-payment.

Mr Ravindra Nath in his capacity as the director of the Company be & is hereby authorized to sign all the documents required to be signed on behalf of the Company to give effect to the above.

Certified to be true copy

For Shareholders:

Oakhay Investments Pty Ltd.

Mabengela Investments Pty Ltd.

Elgasolve Pty Ltd.

Fidelity Enterprises Ltd.

Accurate Investments Ltd.

SN

AGREEMENT REGARDING COAL SUPPLY AND LIMITED GUARANTEE AND CESSION AND PLEDGE IN SECURITY

- 1 Eskom has obtained a mandate from its board tender committee to enable it to pre-purchase coal from Tegeta Exploration and Resources Proprietary Limited, registration number 2006/014492/07 ("Tegeta") for the supply and delivery of coal in accordance with Eskom's approvals framework on substantially the terms and conditions set out in the Existing Coal Supply Agreement.
- 2 In order to enable Tegeta to undertake the required supply and delivery of coal to Arnot or any other power station as Eskom may direct, Eskom has agreed to advance funds to Tegeta in order for Tegeta to continue to supply and deliver coal to Eskom in terms of the Existing Coal Supply Agreement.
- 3 The parties to this agreement ("Parties") wish to enter into a binding agreement ("Agreement"), to facilitate the financial commitments which each party will be required to make in order to procure the timely supply and delivery of the coal required by Eskom on the terms and conditions of Addendum 2 to the Coal Supply Agreement.
- 4 **Terms of Agreement**
 - 4.1 Eskom will make an advance payment to Tegeta in lieu of future coal supply in terms of the Existing Coal Supply Agreement in the amount of R 659 558 079.00 (six hundred and fifty nine million five hundred and fifty eight thousand seventy nine rand and 38 cents) inclusive of VAT ("Advance Payment") payable on 13 April 2016.
 - 4.2 Notwithstanding the provisions of Addendum 2 to the Coal Supply Agreement, the following shall apply -
 - 4.2.1 Tegeta will procure that for supply to Eskom from the Optimum mine in terms of the Existing Coal Supply Agreement, for the 5 month period commencing on 16th April 2016 to 30 September 2016, a 3.5% discount shall be applied to the agreed price of R 20.41 (twenty rand and forty one cents) per Gigajoule. Accordingly the price payable for supply from the OCM mine shall be R 19.69 (nineteen rand and sixty nine cents) per Gigajoule;
 - 4.2.2 In lieu of the Advance Payment, in respect of all invoices issued by Tegeta to Eskom relating to supply of coal from the Optimum Colliery, ("Total Invoices"), at the end of each month commencing 16 April 2016 Tegeta shall procure that it issues a credit note to Eskom equal to R 659 558 079.00 (six hundred and fifty nine million five hundred and fifty eight thousand seventy nine rand and 38 cents) until the full amount of the Advance Payment has been recovered in full.
 - 4.2.3 In the event that the amount payable in respect of the Total Invoices is more than of R 659 558 079.00 (six hundred and fifty nine million five hundred and fifty eight thousand seventy nine rand and 38 cents), any amounts payable in respect of the Total Invoices in excess of R 659 558 079.00 (six hundred and fifty nine million five hundred and fifty eight thousand seventy nine rand and 38 cents) to Tegeta.
 - 4.2.4 The Discharge Date shall be the date upon which the prepayment is recovered in full.
 - 4.3 As security for the due performance of its obligations, Tegeta pledges to Eskom with effect from date of signature of this Agreement, the Pledged Shares and cedes in *securitatem debiti* to Eskom all its present Rights and Interests, as continuing general covering collateral security for the due, proper and punctual performance in full of all the obligations in terms of this Agreement read together with Addendum 2 to the Coal Supply Agreement, which pledge and cession Eskom accepts.

4/ X Q

mmk

SN

- 4.3.1 The pledge and cession contemplated by this Agreement are intended to operate as a pledge and a cession of each part of and all the Pledged Shares and the Rights and Interests, individually and collectively.
- 4.3.2 If, for any reason, any security interests intended to be created under this Agreement are or become illegal, invalid or unenforceable in respect of some of the Pledged Shares or the Rights and Interests, the pledge of those Pledged Shares and the cession of those Rights and Interests shall be severed from this Agreement, and this Agreement and all the security interests created over the remainder of the Pledged Shares and the Rights and Interests shall continue in full force and effect.
- 4.3.3 It is the intention of the Parties that the cession under this Agreement should operate as a security cession and not as an outright cession and, accordingly, that Tegeta shall (i) remain the beneficial owner of the Pledged Shares and the Rights and Interests (and consequently any distributions of any kind paid by the Issuer of the Pledged Shares and any other amounts of whatsoever nature payable on account of the Rights and Interests from time to time will accrue to, be paid to and be receivable and claimable by Tegeta until Eskom exercises its rights in terms of clause 4.5.
- 4.3.4 This Agreement and the security Interests created pursuant to this Agreement:
- 4.3.4.1 come into full force and effect on the date of this Agreement without any further action, consent or authority required from any person save for the actions, consents or authority required in order to give effect to the Statutory Flagging;
- 4.3.4.2 unless otherwise agreed by Eskom shall not terminate before the Discharge Date; and
- 4.3.4.3 shall remain in full force and effect as continuing covering security, notwithstanding any intermediate discharge or settlement of, or temporary fluctuation in, the Secured Obligations.
- 4.3.4.4 Eskom shall obtain the necessary approvals in terms of the Public Finance Management Act (PFMA) or any other approvals, should that be required.
- 4.3.5 Tegeta represents and warrants to Eskom that
- 4.3.5.1 It is the beneficial owner of the shares to be pledged and that no encumbrance exists whatsoever exists at this time of pledge;
- 4.3.5.2 The pledged shares are duly authorized, validly existing and fully paid up;
- 4.3.5.3 Its entry into and the performance of its obligations under this Agreement, the transactions contemplated by and the security interests created under this Agreement, do not and will not conflict with:
- 4.3.5.3.1 any law or regulation applicable to it; or
- 4.3.5.3.2 its constitutional documents; or
- 4.3.5.3.3 any contractual obligation or document which is binding upon it or any of its assets (except for contractual restrictions existing on the date of this Agreement which are waived to the satisfaction of the Cessionary before or on the date of this Agreement).
- 4.3.5.4 Tegeta has the full right, power and authority to enter into this Agreement and to pledge the Pledged Shares and has taken all necessary corporate action to authorize the entry into and performance of, this Agreement and the transactions contemplated by this Agreement.




- 4.4 Eskom enters into the prepayment arrangement on the strength of and relying on the representations and warranties set out in clause 4.3.5, each of which is a separate representation and warranty, given without prejudice to any other representation or warranty and is deemed to be a material representation or warranty (as applicable) inducing Eskom to enter into the prepayment arrangements.
- 4.5 Tegeta shall within 14 business days of signature of this Agreement provide Eskom with an alternate form of security, acceptable to Eskom.
- 4.5.1 In the event of the Alternative guarantee being provided to the satisfaction of Eskom, the pledge set out herein shall be discharged.
- 4.5.2 The security constituted by this Agreement in favour of Eskom will remain in place until it is terminated in accordance with the discharge provisions in clause 4.2.4 and/or the provisions of clause 4.5.1 become of force and effect.
- 4.5.3 This Agreement:
- 4.5.3.1 creates the security interests it purports to create and is not liable to be avoided or otherwise set aside on Tegeta's liquidation or business rescue or otherwise; and
- 4.5.3.2 Constitutes Tegeta's legally valid and binding obligation, enforceable against it in accordance with these terms.
- 5 Tegeta must deliver the documents set out in this Clause 5 to Eskom by no later than 1 (one) Business Day after the date of this Agreement (or in respect of Pledged Shares and the Rights and Interests acquired by Eskom or otherwise arising thereafter, as soon as reasonably possible after that property becomes Pledged Shares and the Rights and Interests).
- 5.1 Certified Shareholders' resolution indicating consent to pledge and cession;
- 5.2 Certified Directors Resolution authorising the signature of this Pledge;
- 5.3 Original Share Certificates
- 6 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties. The Parties will as soon as possible after the signature of this Agreement execute comprehensive agreements relating to the subject matter of this Agreement and which will contain further detailed provisions regarding the arrangements contemplated herein.
- 7 In the event of any of the Parties ("Defaulting Party") committing a breach of any of the terms of this Agreement and failing to remedy such breach within a period of 10 (ten) days after receipt of a written notice from another Party ("Aggrieved Party") calling upon the Defaulting Party so to remedy, then the Aggrieved Party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the terms of this Agreement or to cancel this Agreement forthwith and without further notice, and in either case to claim and recover damages from the Defaulting Party.
- 8 No addition to or variation, deletion, or agreed cancellation of all or any paragraphs or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

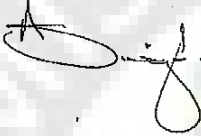
Handwritten initials and marks: "EJ", "K", "Q", and "mmk".

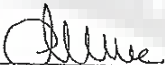
Handwritten initials: "SN".

- 9 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- 10 This Agreement shall be governed by the laws of the Republic of South Africa and each Party hereby consents and submits to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg.
- 11 Each of the Parties hereby agrees, by countersigning this Agreement below, that it binds itself to the provisions of this Agreement, and the natural person signing in a representative capacity hereby warrants that he/she is fully authorised.

SIGNED at Sunninghill on 13/4/16 2016
 For and on behalf of
ESKOM HOLDINGS SOC LIMITED

Witness:




 Signature

MATSHELA KOKO

GROUP EXECUTIVE: GENERATION

SIGNED at SunningHill. on 13th April 2016

For and on behalf of
**TEGETA EXPLORATION AND RESOURCES
 (PROPRIETARY) LIMITED**

WITNESS:




 Signature

RAVINDRA NATH
 Name of Signatory

DIRECTOR.
 Designation of Signatory

Annexure “SN3”



SN3

Snehal Nagar


From: Maya Bhana
Sent: Tuesday, April 19, 2016 3:53 PM
To: Snehal Nagar
Subject: Extract of BTC minutes - Tegeta transaction
Attachments: 20160415140259349.pdf

Hallo

Please see attached as promised.

Kind regards
Maya

X
SN

	ESKOM HOLDINGS SOC LTD Reg No 2002/015527/30 BOARD TENDER COMMITTEE	Unique Identifier	221-209
		Document Type	OCSSTE
		Revision	0
		Revision Date	July 2015
		Office of the Company Secretary	

**EXTRACT FROM THE APPROVED MINUTES OF THE SPECIAL BOARD
TENDER COMMITTEE 1-2016/17 HELD BY TELECONFERENCE ON 11 APRIL
2016 AT 21h00**


2.1 PRIMARY ENERGY

Addendum to the Short Term Coal Supply Agreement between various suppliers and Eskom Holdings SOC Limited ("Eskom") for the supply of coal to Arnot Power Station.

RESOLVED THAT:

- 2.1.1 Addenda to the Short Term Coal Supply Agreements between various suppliers and Eskom be concluded to extend the supply of coal from various sources to Arnot Power Station for up to a further five (5) months and/or such period as may be requested by the supplier but no later than 30 September 2016;
- 2.1.2 The Chief Financial Officer is hereby authorised to approve the basis for prepayment to secure the fixed coal price for the period of extension provided that there is a discount in the price, the supplier offers a guarantee in favour of Eskom and that the CFO can provide assurance to the committee that the transactions are economically viable for Eskom;
- 2.1.3 The Group Executive (Generation) is hereby authorised to take all the necessary steps to give effect to the above, including the signing of any consents, or any other documentation necessary or related thereto.

CERTIFIED AS A TRUE EXTRACT


S Daniels
COMPANY SECRETARY
 Date: 15/4/2016

4
SN

Annexure “SN4”



SN4

Snehal Nagar

From: Charl Dadswell
Sent: Wednesday, April 13, 2016 1:11 PM
To: Maya Bhana; Muvenda Khomola; Christo Kruger; Snehal Nagar; Andre Pillay; Rajen John; Muvenda Khomola
Subject: RE: Payment to be made before 2 today

Hi Maya,

Treasury has moved funds to Shared Services FNB GBM bank account @ 13h05

Kind regards
Charl

From: Maya Bhana
Sent: 13 April 2016 12:38
To: Muvenda Khomola; Christo Kruger; Snehal Nagar; Andre Pillay; Rajen John; Muvenda Khomola; Charl Dadswell
Subject: Payment to be made before 2 today
Importance: High

Hallo all

Please can we fast track payment today before 2pm.

1. Two invoices as requested and approved for payment (~ R60m) today subject to early settlement discount of 1%
2. Attached invoice for R659m
 - a. See attached contract addendum
 - b. Copy of the extract of the BTC meeting on Monday and this morning will be forward by Suzanne during the course of today.

Please let me know if you require any additional information.

Kind regards
Maya

From: Ronica Ragavan [<mailto:ronica@oakbay.co.za>]
Sent: Wednesday, April 13, 2016 12:08 PM
To: Anoj Singh; Maya Bhana
Subject: Fwd: Eskom Invoice- Tegeta

Dear sir

As requested

Ronica

Sent from my iPhone

A
SN

Begin forwarded message:

From: Harshit Malviya <accounts@tegeta.com>
Date: 13 April 2016 at 12:03:48 PM SAST
To: Ronica Ragavan <ronica@oakbay.co.za>
Cc: Ravindra Nath <nath@oakbay.co.za>, Ugeshni Naidu <UgeshniN@sahara.co.za>
Subject: Eskom Invoice- Tegeta

Dear madam,

PFA Eskom Tax invoice.

--

Thanks & Regards,

Harshit Malviya



Fax to email : [011 262 4951](tel:0112624951) | Fax : [086 566 4377](tel:0865664377)



Annexure “SN4A”




SN4A

	ESKOM HOLDINGS SOC PRIMARY ENERGY DEPARTMENT SUPPLIER PAYMENT CONTROL FORM	
---	---	---

VENDOR NO	11082607	POWER STATION	ARNOT
VENDOR NAME	TEGETA OPTIMUM	INTERNAL ORDER NUMBER	10000000031# 7
VENDOR VAT NUMBER	4600233949	BANKING DETAILS	
INVOICE DATE	2016/04/13	FNB	
PAYMENT DATE	2016/04/13	ACC NO. 62117356990 CODE : 254605	

INVOICE	AMOUNT (EXCL VAT)	VAT AMOUNT	TOTAL PAYMENT (INCL VAT)
194 PRE PAYMENT	578 559 718.75	80 998 360.63	659 558 079.38
CPA			
TOTAL INVOICE	578 559 718.75	80 998 360.63	659 558 079.38
CREDIT NOTE			
DEBIT NOTE			
TOTAL PAYMENT AMOUNT	578 559 718.75	80 998 360.63	659 558 079.38

CONTRACT NUMBER	460005926 6841	AUTHORISED BY:	SIGNATURES	DATE
PURCHASE ORDER NUMBER	4502343607 4502267381	NAME: Marya Bhanu		12/01/2016
SERVICE ENTRY NUMBER	1082805112	NAME:		
GOODS RECEIPT NUMBER				
FI RELEASE NUMBER	5005477159			
SAP INVOICE NUMBER				
CREDIT NOTE NUMBER				
DEBIT NOTE NUMBER				

INVOICE CHECK	
CONTRACT PRICE EXCL VAT	578 559 718.75
CPA PRICE EXCL VAT	-
CREDIT NOTE	-
DEBIT NOTE	-
SUB TOTAL EXCL VAT	578 559 718.75
VAT	80 998 360.63
TOTAL INCL VAT	659 558 079.38

INVOICE CHECK	
INVOICE & ESKOM CALCULATIONS ATTACHED	
SIGNED QUANTITIES ATTACHED	
SAP PROCESSING	
REQUIRED SIGNATURES	
INVOICE RELEASED	

RELEASED BY	
RELEASE DATE	

PREPARED BY	PHILETON Sibanyoni
CELL & EXT NUMBER	x4302

A
SN

TEGETA EXPLORATION & RESOURCES (PTY) LTD

Block "A" Lower Ground Floor, Grayston
Ridge, 144 Katherine St, Sandton
Postnet Suite 458, Private Bag X9
Benmore 2010

Tel : 011 430 7640
Fax : 086 566 4377
Regn. 2006/014492/07
VAT : 4680233949

TAX INVOICE

Account Number: EOP001
Name: ESKOM HOLDINGS SOC LTD.
Address: PO BOX 1091
JOHANNESBURG
CONTRACT REF- 724767
Postal Code: 2000
Customer Ref: =4502313607

Invoice Number: 00000194
Date: 13/04/2016
Vendor No: 0011082687
Order Number: 00000194
Vat Number: 4740101508

Page: 1

Item Number	Description	Unit	Quantity	Price	Total Excl
EQC2	ESKOM QUALITY COAL(-50 MM SIZE)	GJ	29375000.00	19.70	578559718.75
	* 1,250,000 MT@ CV OF 23.60				
	* = 29,375,000 GJ				
	* RATE = 20.41 LESS 3.5% DISCOUNT				

Total Excluding: 578559718.75
Total Tax: 80998360.63
Total Including: 659558079.38

Banking Details:

A/C Name: Tegeta Exploration & Resources Pty Ltd.
Bank: First National Bank
Commercial Cheque A/C : 62117356990
Branch Code : 254605, Sandton City Branch

ESKOM HOLDINGS SOC LTD.
PO BOX 1091
JOHANNESBURG
CONTRACT REF- 724767

Handwritten signature and initials.

Annexure “SN5”



Annexure “SN6”



SN6

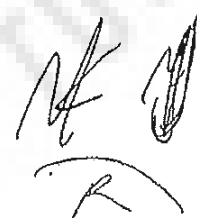
Page 13

Supplementary Fines, or any portion thereof, to such third party purchaser; or

- 3.3.7.2.3 Eskom shall be entitled to consent in respect of the sale of the Supplementary Fines to the third party purchaser specified in the Sale Intention Notice. In the event that Eskom shall not respond to the Sale Intention Notice during the 14th day period specified in clause 3.3.7.2.1, Eskom shall be deemed to have consented in respect of such sale.

3.4 Quality Corridor

- 3.4.1 Subject to clause 3.3 and with effect from the Effective Date (or, such other date as the Parties may agree in writing), the quality parameters of the coal required to be delivered by Optimum Colliery to Eskom shall be amended and, Eskom shall be entitled to certain remedies provided for below.
- 3.4.2 All coal to be supplied and delivered by Optimum Colliery to Eskom in terms of this Addendum, shall have an ash content which shall not exceed 28.8%, it being recorded that it is the intention of the Parties that the typical calorific value of the coal supplied and delivered by Optimum Colliery to Eskom shall not be less than 23.0MJ/kg (calculated on a moisture free basis);
- 3.4.3 All coal to be supplied and delivered by Optimum Colliery to Eskom in terms of this Addendum, shall have a monthly average size distribution of:
- 3.4.3.1 not more than 55% of coal supplied will be smaller than 6 mm;

Handwritten signatures and initials, including what appears to be 'NK', 'R', and 'SN'.Handwritten signature, possibly 'SN'.

- 3.4.3.2 not more than 35% of coal supplied will be smaller than 2,38 mm;
and
- 3.4.3.3 not more than 15% of coal supplied will be smaller than 0 .81 mm.
- 3.4.4 In the event that any of the Parties shall, at any time, be or become of the view that the specification in clauses 3.4.2 and 3.4.3 shall not be properly and/or realistically representative of the coal which Optimum Colliery shall reasonably be expected (In the event that it were to conduct its operations in a proper manner and in accordance with best industry standards) to achieve from the exploitation of the coal deposits constituting the Optimum Colliery, such Party shall be entitled to notify the other of them that it wishes to re-negotiate such specification.
- 3.4.5 On being so notified, the other Party shall enter into discussions and negotiations in good faith with the first Party, in order to reach agreement in respect of the amendment (if applicable) of such specification.
- 3.4.6 In the event that the Parties shall fail, for whatever reason, to reach such agreement, such failure to reach agreement shall constitute a dispute, which shall be dealt with in accordance with the provisions of clause 6.
- 3.4.7 It is further recorded, for the avoidance of doubt, that in the event that Optimum Colliery shall supply and deliver coal to Eskom which shall, for whatever reason, not comply with the requirements of clauses 3.4.2, 3.4.3 and 3.5 the entire quantity of such coal (which does not conform to the proper specifications) supplied by Optimum Colliery to Eskom shall, notwithstanding such failure to comply with the aforesaid

Handwritten signatures and initials, including what appears to be 'AF', 'B', and 'R'.Handwritten initials 'SN'.

specifications, constitute coal supplied in terms of this Addendum, but the purchase price payable by Eskom to Optimum Colliery in respect thereof shall be subject to and shall be reduced by reference to the Payment Rejection provisions specified in clause 3.6.

3.4.8 Without limiting the generality of the foregoing, it is specifically recorded that –

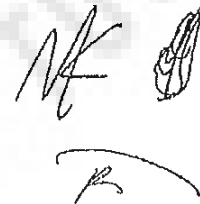
3.4.8.1 the delivery of Supplementary Fines in breach of the provisions of clause 3.3 shall be dealt with in terms of that clause and not, in terms of clause 3.4.7;

3.4.8.2 Optimum Colliery shall be and remain obliged to supply and deliver all such coal to Eskom, notwithstanding that such coal shall not conform to the aforementioned specifications; and

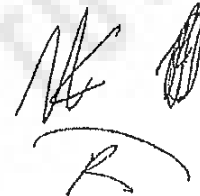
3.4.8.3 Eskom shall be entitled, without limiting any of its rights arising in terms of the CSA, this Addendum or otherwise at law, to apply for mandatory interdictory relief, on an urgent basis, compelling Optimum Colliery to supply and deliver coal of the correct specifications.

3.5 Instantaneous Moisture .

3.5.1 Subject to clause 3.5.7 and with effect from the Effective Date (or, such other date as the Parties may agree in writing), all coal supplied and delivered by Optimum Colliery to Eskom in terms of this Addendum shall have a moisture content of not more than 10% ("Moisture Limit").

Handwritten signatures and initials, including a large 'R' and a signature that appears to be 'NK'.Handwritten initials 'SN'.

- 3.5.2 In the event that Optimum Colliery supplies and delivers to Eskom any coal which shall be in excess of the Moisture Limit (as measured every two hours, on a continuous basis) ("Wet Coal"), Eskom shall, subject to clause 3.5.7, be entitled (but not obliged) to take such reasonable steps as it shall determine to dry the Wet Coal in order that such coal shall no longer be in excess of the Moisture Limit.
- 3.5.3 Should Eskom take the steps contemplated in clause 3.5.2, it shall notify Optimum Colliery accordingly, and Optimum Colliery shall be responsible for the costs of all such reasonable steps taken by Eskom in respect of and/or in connection with the drying of the Wet Coal, including, without limitation, steps taken in respect of the handling and/or reclaiming of such coal.
- 3.5.4 In order properly to monitor its performance in respect of the Moisture Limit, Optimum Colliery shall be entitled, from time to time, and upon reasonable notice to Eskom, to inspect the operating processes and procedures adopted by Eskom in respect of and/or in connection with the cleaning by or on behalf of Eskom of its conveyor belt system and all equipment associated therewith, including, without limitation, all chutes.
- 3.5.5 In the event that any coal supplied and delivered by Optimum Colliery to Eskom falls to comply with the Moisture Limit on account of Eskom's operating processes and procedures, whether wholly or in part, an appropriate adjustment shall be made in respect of the costs payable by Optimum Colliery in terms hereof.
- 3.5.6 Without limiting the generality of the foregoing, the Parties record that the Moisture Limit shall not be applicable, and no coal delivered by

Handwritten signature and initials, possibly 'R' and 'SN', located at the bottom right of the page.Handwritten initials 'SN' at the bottom right corner of the page.

Optimum Colliery to Eskom shall constitute Wet Coal in the event that such coal shall be delivered on any day in respect of which –

- 3.5.6.1 the average aggregate rainfall during the immediately preceding 30 (thirty) day period shall be in excess of 115% of the past 2 (two) year average aggregate rainfall in respect of such 30 (thirty) day period and for which purposes the historic aggregate rainfall in respect of such 30 (thirty) day period shall be deemed to be –
 - 3.5.6.1.1 the average historic rainfall in respect of the month immediately preceding calendar month during which such rainfall shall be measured,
 - 3.5.6.1.2 the calendar month during which such rainfall shall be measured, and
 - 3.5.6.1.3 the calendar month immediately succeeding the calendar month during which such rainfall shall be measured.
- 3.5.7 Notwithstanding any provisions to the contrary in this clause 3.5, in the event that the hourly moisture content, as measured at two hourly intervals, of the coal delivered under clauses 3.5.6.1.1 to 3.5.6.1.3 exceeds 12%, then Optimum shall stop all supply to Eskom and shall only continue deliveries when the moisture content per two hourly interval is less than 12% alternatively, when Eskom has given its written consent to deliver coal with a two hourly interval moisture content that exceeds 12%.

[Handwritten signatures and initials]

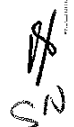
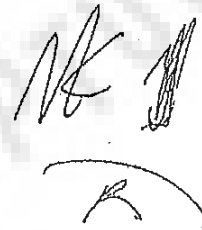
3.6 Payment Rejection

3.6.1 In the event that any coal supplied by Optimum Colliery to Eskom with effect from the Effective Date does not comply, for whatever reason, with the specifications provided for in this Addendum (including, without limitation, the specifications set out in clause 4.4.1 of Schedule 1 to the CSA to the extent that such specifications have not been amended by this Addendum) ("Quality Parameter"), then, in addition to any specific remedies provided for in clauses 3.2, 3.3, 3.4 and 3.5 of this Addendum, the purchase price payable in respect of such coal by Eskom to Optimum Colliery shall be adjusted and, if applicable, be reduced, on the basis that:

3.6.1.1 in the event that any Quality Parameter from time to time shall fail to have been met for any three day rolling period, no adjustment shall be made to the purchase price;

3.6.1.2 in the event that any Quality Parameter shall fail to have been met for any four day rolling period, the purchase price payable by Eskom to Optimum Colliery in respect of the coal (which shall not comply with the Quality Parameters) on the fourth day of such period, shall be reduced to 90% of the purchase price otherwise payable by Eskom to OCM in respect of such coal;

3.6.1.3 In the event that any Quality Parameter shall fail to have been met for any five day rolling period, the purchase price payable by Eskom to Optimum Colliery in respect of the coal (which shall not comply with the Quality Parameters) on the fifth day of such period, shall be reduced to 75 % of the purchase price otherwise payable by Eskom to Optimum Colliery in respect of such coal;



- 3.6.1.4 In the event that any Quality Parameter shall fail to have been met for any six day rolling period, the purchase price payable by Eskom to Optimum Colliery in respect of the coal (which shall not comply with the Quality Parameters) on the sixth day of such period, shall be reduced to 50 % of the purchase price otherwise payable by Eskom to Optimum Colliery in respect of such coal; and
- 3.6.1.5 In the event that any Quality Parameter shall fail to have been met for any seven day rolling period, the purchase price payable by Eskom to Optimum Colliery in respect of the coal (which shall not comply with the Quality Parameters) on the seventh day of such period and/or any subsequent consecutive day on which the Quality Parameters, or either of them, shall fail to have been met, shall be reduced to R1-00 per tonne.

4 ADDITIONAL COAL

- 4.1 The Parties hereby irrevocably and unconditionally undertake, as soon as reasonably possible after the Effective Date, but in any event, by not later than 30 September 2008 (provided that the Sale of Business Agreement has become unconditional by then), to enter into an agreement for the supply of additional coal on the basis recorded in this clause 4 ("the Additional Coal Agreement"), by entering into a formal written agreement, on terms and conditions mutually acceptable to the Parties, recording the terms and conditions of the supply of additional coal to Eskom with effect from a date to be agreed between the parties, but in any event, by not later than 31 October 2009.
- 4.2 Without limiting the generality of the provisions of clause 4.1, the Parties record their intention, as soon as possible after the signature of this



Agreement, to enter into negotiations in good faith in order to prepare a formal written agreement, constituting the Additional Coal Agreement,

- 4.3 It is contemplated by the Parties that Eskom shall be entitled in terms of the Additional Coal Agreement, but not obliged, at any time during the three-month period ("Additional Coal Option Period") commencing on the Effective Date, to demand, by the delivery to Optimum Colliery of a written notice ("Additional Coal Notice") to that effect, that Optimum shall supply and deliver to Eskom, with effect from a date ("Additional Coal Date") being not earlier than the first day of the calendar month immediately succeeding the first anniversary of the date on which Eskom shall have delivered the Additional Coal Notice to Optimum, until 31 December 2018 ("Additional Coal Period") -

- 4.3.1 1,000,000 tonnes of crushed run of mine coal ("ROM Coal") per year ("Additional Quantity") in respect of which the price payable by Eskom to Optimum Colliery shall be calculated on the basis of the calorific content of the Additional Quantity, and shall, subject to the provisions ("Payment Provisions") negotiated and agreed between the Parties and recorded in the Additional Coal Agreement, be up to R7-50 per gigajoule delivered to Hendrina Power Station stockyard; and/or
- 4.3.2 500,000 tonnes of ROM Coal per year ("Guaranteed Quantity") in respect of which the price payable by Eskom to Optimum Colliery shall, subject to the Payment Provisions, be calculated on the basis of the calorific content of the Guaranteed Quantity, and shall, subject to the Penalties, if applicable, be up to R7-50 per gigajoule delivered to Hendrina Power Station stockyard; and/or



R

8
SN

Annexure “SN7”



SN7

Snehal Nagar

From: Eshari Singh
Sent: Wednesday, September 26, 2018 5:12 PM
To: Snehal Nagar
Subject: FW: Emailing: 20160701 Penalty Master Sheet - Updated
Attachments: 20160701 Penalty Master Sheet - Updated.xlsx

FYI

-----Original Message-----

From: Bennett Maakana
Sent: 11 October 2016 09:02 AM
To: Gert Opperman
Cc: Eshari Singh
Subject: FW: Emailing: 20160701 Penalty Master Sheet - Updated

Hi Gert

Any feedback regarding the optimum Penalty calculation

Regards

-----Original Message-----

From: Bennett Maakana
Sent: 10 October 2016 09:26 AM
To: Gert Opperman
Cc: 'Eshari Singh'
Subject: Emailing: 20160701 Penalty Master Sheet - Updated

Hi Gert

Here is the updated calculation , but no changes are we penalizing them with all

Regards
Bennett

H
SN

Annexure “SN8”



SNB

Snehal Nagar

From: Suzanne Daniels
Sent: Thursday, March 2, 2017 6:23 PM
To: Snehal Nagar
Cc: Rishaban Moodley
Subject: FW: ESKOM//OPTIMUM
Attachments: O75 CDH 15.doc; ANNEXURE A.PDF; O75 SETTLEMENT AGREEMENT.pdf; Letter to Van Der Merwe - Eskom Settlement Proposal.pdf

Importance: High

Hi Snehal

Can you please look at Annexure A of the attached documents and verify the contents of paragraph 6 for me? We are in the process of settling this matter and I will need assurance that the figures and calculations are correct.

Kindly revert soonest.

Regards
Suzanne

From: Rishaban Moodley [mailto:Rishaban.Moodley@cdhlegal.com]
Sent: Monday, 27 February 2017 9:34 AM
To: Suzanne Daniels <DanielSM@eskom.co.za>
Subject: RE: ESKOM//OPTIMUM
Importance: High

Hi Suzanne,

Attached is the response from Optimum and our response.

Regards,

Rev

SN

Annexure “SN8A”



SN8A

Snehal Nagar

From: Ayanda Nteta
Sent: Friday, March 3, 2017 5:00 PM
To: Snehal Nagar
Subject: Fwd: Considerations for Purpose of Settlement Discussions Optimum Coal Mine - Feb 2017
Attachments: Considerations for Purpose of Settlement Discussions Optimum Coal Mine - Feb 2017.docx; ATT00001.htm; Calculation for Penalised Period (with inclusion of additional penalty f....xlsx; ATT00002.htm; Calculation for Period not Penalised (June 14 to May 15).xlsx; ATT00003.htm

Sent from my iPhone

Begin forwarded message:

From: "Suzanne Daniels" <DanielSM@eskom.co.za>
To: "Ayanda Nteta" <NtshanAK@eskom.co.za>
Subject: FW: Considerations for Purpose of Settlement Discussions Optimum Coal Mine - Feb 2017

From: Rishaban Moodley [mailto:Rishaban.Moodley@cdhlegal.com]
Sent: Wednesday, 08 February 2017 12:04 AM
To: Suzanne Daniels <DanielSM@eskom.co.za>
Subject: Considerations for Purpose of Settlement Discussions Optimum Coal Mine - Feb 2017

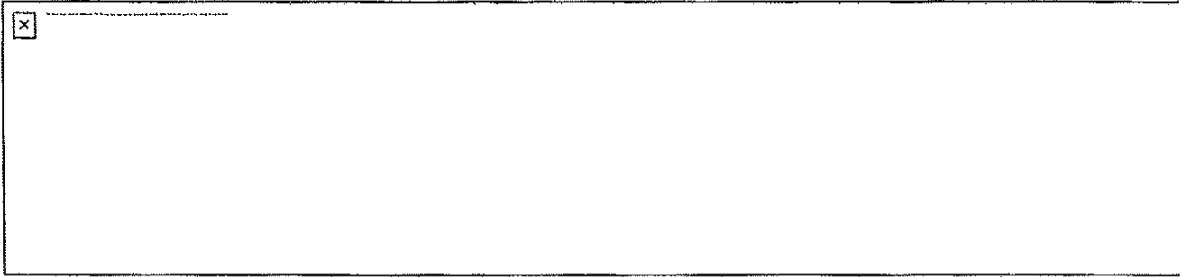
Hi Suzanne,

Attached is a brief summary of the legal considerations and calculations.

I also attach the Eskom calculations for the penalised period and non-penalised period.

Regards,

Rishaban Moodley
 Director - Dispute Resolution
 Cliffe Dekker Hofmeyr Inc
 Reg No: 2008/018923/21
 1 Protea Place, Cnr of Fredman and Protea Place, Sandton, Johannesburg, 2196
 Tel. +27 11 562 1666 Mobile. +27 82 926 0454 Fax. +27 11 562 1466
rishaban.moodley@cdhlegal.com | www.cliffedekkerhofmeyr.com



Cliffe Dekker Hofmeyr. The legal partner for your business.

Please consider the environment before printing this email.
The information in this email is confidential and is legally privileged. It is intended solely for the addressee. Access to this email by anyone else is unauthorised. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted in reliance on it, is prohibited and may be unlawful. Whilst all reasonable steps are taken to ensure the accuracy and integrity of information and data transmitted electronically and to preserve the confidentiality thereof, no liability or responsibility whatsoever is accepted if information or data is, for whatever reason, corrupted or does not reach its intended destination.



SN

Annexure “SN9”



SN9

Snehal Nagar

From: Suzanne Daniels
Sent: Saturday, March 4, 2017 12:19 PM
To: Snehal Nagar; Rishaban Moodley; Ayanda Nteta; Jackwell Feris
Cc: Christo Kruger; Eshari Singh
Subject: RE: ESKOM//OPTIMUM

Importance: High

Thank you for working through the issues so quickly

From: Snehal Nagar
Sent: Saturday, 04 March 2017 11:50 AM
To: Suzanne Daniels <DanielSM@eskom.co.za>; Rishaban Moodley <Rishaban.Moodley@cdhlegal.com>; Ayanda Nteta <NtshanAK@eskom.co.za>; Jackwell Feris <Jackwell.Feris@cdhlegal.com>
Cc: Christo Kruger <KrugerCr@eskom.co.za>; Eshari Singh <SinghEs@eskom.co.za>
Subject: RE: ESKOM//OPTIMUM

Hi Suzanne/Rishaban/Ayanda/Jackwell

I have looked at the following docs and spreadsheets:

PDF – Claim
 PDF – Optimum letter
 PDF – CDH response

I have looked at the following spreadsheets:

Penalty sheet sent to CDH in July 2015
 Penalty sheet split into the penalized period Mar12 to May2014 (CDH spreadsheet derived from Eskom spreadsheet)
 Penalty sheet split into the period June 2014 to May 2015 (CDH spreadsheet derived from Eskom spreadsheet)
 Recalculation/updated version of the penalty sheet taking some errors in the original spreadsheet into account.

I have attached the spreadsheet that summarises the issues. I have also indicated some concerns that I think we may have in the settlement agreement. Please note that this was a really short time to review this calc. I was also not party to the negotiations and thus I have no understanding of the negotiated position. I however suggest that maybe Rishaban, Jackwell, Christo, Ayanda and I meet to briefly discuss the above sheet. You guys can take a view on the way forward after that.

Regards
 Snehal

From: Suzanne Daniels
Sent: Thursday, March 2, 2017 6:23 PM
To: Snehal Nagar
Cc: Rishaban Moodley

88
 SN

Subject: FW: ESKOM//OPTIMUM
Importance: High

Hi Snehal

Can you please look at Annexure A of the attached documents and verify the contents of paragraph 6 for me? We are in the process of settling this matter and I will need assurance that the figures and calculations are correct.

Kindly revert soonest.

Regards
Suzanne

From: Rishaban Moodley [<mailto:Rishaban.Moodley@cdhlegal.com>]
Sent: Monday, 27 February 2017 9:34 AM
To: Suzanne Daniels <DanielSM@eskom.co.za>
Subject: RE: ESKOM//OPTIMUM
Importance: High

Hi Suzanne,

Attached is the response from Optimum and our response.

Regards,

Rev

Annexure “SN9A”



What happens for the period May 2015 to present?

Annexure “SN9B”



SN9B
"A"**OPTIMUM
COAL MINE**

16 February 2017
Van der Merwe & Ass Inc
62 Rigel Ave North
Waterkloof Ridge
Pretoria

Dear Sir,

RE: OPTIMUM COAL MINE (PTY) LTD / ESKOM HOLDINGS LIMITED

We refer to the meeting held with Eskom's attorneys on 15 February 2017 and advise that we do not agree with the counter-offer made by Eskom for the following reasons:

1. Your letter to Cliffe Decker Hofmeyr dated 13 December 2016 clearly sets out the calculation of how we arrived at the settlement amount;
2. Be that as it may, purely for the purpose of settling the matter, we are willing to accept Eskom's amount of R419 000 000.00 as the amount that we are to work with for the purposes of settlement;
3. We disagree that R419 000 000.00 represents a fair settlement amount as it fails to take into account the binary score method. In terms of the binary score method, penalties may be levied for either CV or Ash, but not both;
4. Eskom has taken both Ash and CV into account for the purpose of calculating a settlement amount;
5. Eskom has further failed to pay the amount of R37 371 688.67, being the amount that is due and payable by Eskom to Optimum in respect of the penalty reduction for the period September 2013 to May 2014. This amount has been invoiced to Eskom;
6. The amounts for September and May of the calculation table submitted by Eskom is incorrect. The Agreement is specific that the penalties will be limited to the amount of the distribution fee in the event of the penalty amount exceeding the distribution fee. The amounts should be R66 380 830.00 and R63 458 263.69 respectively. Be that as it may, purely in an attempt to settle the matter, we will not make an issue of these amounts.

Optimum Coal Mine (Pty) Ltd
(Registration No.: 2007/005308/07)
144 Katherine Street, Grayston Ridge Office Park, Block A Lower Ground Floor, Johannesburg, South Africa
Tel.: +27 11 542 2200 Fax: 086 685 1814

Directors: PU Govender | J Roux

SN



**OPTIMUM
COAL MINE**

Our previous offer of R238 876 225.92 was based on the following calculation:

DCM CALC		
TOTAL PENALTY		322 227 646,96
LESS CV PENALTY (BINARY SCORE)	TOTAL PENALTIES	-46 979 732,37
LESS GC PENALTY REDUCTION SEPT13-MAY14		-37 371 688,67
TOTAL PENALTY TO BE SETTLED		238 876 225,92
ABOVE DOES NOT INCLUDE THE PENALTY ALREADY DEDUCTED		
TOTAL PENALTY FROM MARCH 2012-MAY 2015		158 386 758,77
		397 262 984,69

Our final offer now is an amount of R254 948 472.53 in full and final settlement. The amount is calculated as follows:

ESKOM CALC		
TOTAL PENALTY		429 000 000,00
LESS CV PENALTY (BINARY SCORE)	TOTAL PENALTIES	-126 579 838,60
LESS GC PENALTY REDUCTION SEPT13-MAY14		-37 371 688,67
TOTAL PENALTY TO BE SETTLED		254 948 472,53
ABOVE DOES NOT INCLUDE THE PENALTY ALREADY DEDUCTED		
TOTAL PENALTY FROM MARCH 2012-MAY 2015		158 386 758,77
		413 335 231,30

We require an undertaking from Eskom that it will, within the next three months, discuss and agree with OCM the pricing formula for the period April 2016 to December 2018. We further require an undertaking from Eskom that the current penalty structure will not automatically apply. Should Eskom experience any problems with the quality of the Coal supplied in future, the Parties will enter into discussions and will mutually agree in writing on a resolution of any such problems with the quality of the Coal.

Yours faithfully,

Ronica Ragavan

Transmitted electronically and without signature

Optimum Coal Mine (Pty) Ltd
(Registration No.: 2007/005308/07)
144 Katherine Street, Grayston Ridge Office Park, Block A Lower Ground Floor, Johannesburg, South Africa
Tel.: +27 11 542 2200 Fax: 086 685 1814

Directors: PU Govender || Roux

Handwritten signature
SN

Annexure “SN10”



SN10

Snehal Nagar

From: Suzanne Daniels
Sent: Sunday, March 5, 2017 7:59 PM
To: Snehal Nagar; Rishaban Moodley; Ayanda Nteta; Jackwell Feris
Cc: Christo Kruger; Eshari Singh
Subject: RE: ESKOM//OPTIMUM

Importance: High

11h30 suits me

From: Snehal Nagar
Sent: Sunday, 05 March 2017 6:44 PM
To: Rishaban Moodley <Rishaban.Moodley@cdhlegal.com>; Ayanda Nteta <NtshanAK@eskom.co.za>; Suzanne Daniels <DanielSM@eskom.co.za>; Jackwell Feris <Jackwell.Feris@cdhlegal.com>
Cc: Christo Kruger <KrugerCr@eskom.co.za>; Eshari Singh <SinghEs@eskom.co.za>
Subject: RE: ESKOM//OPTIMUM

Hi all

I would be able to make or rearrange my meetings tomorrow to accommodate the telecon. Therefore any time before 3pm would suit me.

Regards
 Snehal

From: Rishaban Moodley [<mailto:Rishaban.Moodley@cdhlegal.com>]
Sent: Sunday, March 5, 2017 5:40 PM
To: Ayanda Nteta; Suzanne Daniels; Snehal Nagar; Jackwell Feris
Cc: Christo Kruger; Eshari Singh
Subject: RE: ESKOM//OPTIMUM

Hi Snehal,

Can you please send me your attachment referred to in your email below. I don't seem to have it.

I have a meeting in the morning. Would 11:30am be suitable?

Regards,

Rishaban

From: Ayanda Nteta [<mailto:NtshanAK@eskom.co.za>]
Sent: Sunday, 05 March 2017 9:47 AM
To: Suzanne Daniels <DanielSM@eskom.co.za>; Snehal Nagar <NagarS@eskom.co.za>; Rishaban Moodley <Rishaban.Moodley@cdhlegal.com>; Jackwell Feris <Jackwell.Feris@cdhlegal.com>
Cc: Christo Kruger <KrugerCr@eskom.co.za>; Eshari Singh <SinghEs@eskom.co.za>
Subject: RE: ESKOM//OPTIMUM

Thanks.

Handwritten initials "SN" and a signature.

Monday morning? 10am? Does that suit everyone?

Regards,
Ayanda

From: Suzanne Daniels
Sent: Saturday, March 4, 2017 12:19 PM
To: Snehal Nagar <NagarS@eskom.co.za>; Rishaban Moodley <Rishaban.Moodley@cdhlegal.com>; Ayanda Nteta <NtshanAK@eskom.co.za>; Jackwell Feris <Jackwell.Feris@cdhlegal.com>
Cc: Christo Kruger <KrugerCr@eskom.co.za>; Eshari Singh <SinghEs@eskom.co.za>
Subject: RE: ESKOM//OPTIMUM
Importance: High

Can we have a telecom on Monday?

From: Snehal Nagar
Sent: Saturday, 04 March 2017 11:50 AM
To: Suzanne Daniels <DanielSM@eskom.co.za>; Rishaban Moodley <Rishaban.Moodley@cdhlegal.com>; Ayanda Nteta <NtshanAK@eskom.co.za>; Jackwell Feris <Jackwell.Feris@cdhlegal.com>
Cc: Christo Kruger <KrugerCr@eskom.co.za>; Eshari Singh <SinghEs@eskom.co.za>
Subject: RE: ESKOM//OPTIMUM

Hi Suzanne/Rishaban/Ayanda/Jackwell

I have looked at the following docs and spreadsheets:

PDF – Claim
 PDF – Optimum letter
 PDF – CDH response

I have looked at the following spreadsheets:

Penalty sheet sent to CDH in July 2015
 Penalty sheet split into the penalized period Mar12 to May2014 (CDH spreadsheet derived from Eskom spreadsheet)
 Penalty sheet split into the period June 2014 to May 2015 (CDH spreadsheet derived from Eskom spreadsheet)
 Recalculation/updated version of the penalty sheet taking some errors in the original spreadsheet into account.

I have attached the spreadsheet that summarises the issues. I have also indicated some concerns that I think we may have in the settlement agreement. Please note that this was a really short time to review this calc. I was also not party to the negotiations and thus I have no understanding of the negotiated position. I however suggest that maybe Rishaban, Jackwell, Christo, Ayanda and I meet to briefly discuss the above sheet. You guys can take a view on the way forward after that.

Regards
Snehal

From: Suzanne Daniels
Sent: Thursday, March 2, 2017 6:23 PM
To: Snehal Nagar

Handwritten initials: SN

Cc: Rishaban Moodley
Subject: FW: ESKOM//OPTIMUM
Importance: High

Hi Snehal

Can you please look at Annexure A of the attached documents and verify the contents of paragraph 6 for me? We are in the process of settling this matter and I will need assurance that the figures and calculations are correct.

Kindly revert soonest.

Regards
Suzanne

From: Rishaban Moodley [mailto:Rishaban.Moodley@cdhlegal.com]
Sent: Monday, 27 February 2017 9:34 AM
To: Suzanne Daniels <DanielSM@eskom.co.za>
Subject: RE: ESKOM//OPTIMUM
Importance: High

Hi Suzanne,

Attached is the response from Optimum and our response.

Regards,

Rev

NB: This Email and its contents are subject to the Eskom Holdings SOC Limited EMAIL LEGAL NOTICE which can be viewed at http://www.eskom.co.za/Pages/Email_Legal_Spam_Disclaimer.aspx

SN

Annexure “SN11”



SN11

Snehal Nagar

From: Snehal Nagar
Sent: Monday, March 6, 2017 10:38 AM
To: Suzanne Daniels; 'Rishaban Moodley'; Ayanda Nteta; 'Jackwell Feris'
Cc: Christo Kruger; Eshari Singh
Subject: RE: ESKOM//OPTIMUM
Attachments: 20170306 Penalty Master Sheet - Updated Formula Adjusted.xlsx; 20170306 Optimum claim reconciliation.xlsx

Hi all

Please find an updated version of the spreadsheet sent this weekend for discussion at our telecon.

Regards
 Snehal

From: Snehal Nagar
Sent: Saturday, March 4, 2017 11:49 AM
To: Suzanne Daniels; Rishaban Moodley; Ayanda Nteta; Jackwell Feris
Cc: Christo Kruger; Eshari Singh
Subject: RE: ESKOM//OPTIMUM

Hi Suzanne/Rishaban/Ayanda/Jackwell

I have looked at the following docs and spreadsheets:

PDF – Claim
 PDF – Optimum letter
 PDF – CDH response

I have looked at the following spreadsheets:

Penalty sheet sent to CDH in July 2015
 Penalty sheet split into the penalized period Mar12 to May2014 (CDH spreadsheet derived from Eskom spreadsheet)
 Penalty sheet split into the period June 2014 to May 2015 (CDH spreadsheet derived from Eskom spreadsheet)
 Recalculation/updated version of the penalty sheet taking some errors in the original spreadsheet into account.

I have attached the spreadsheet that summarises the issues. I have also indicated some concerns that I think we may have in the settlement agreement. Please note that this was a really short time to review this calc. I was also not party to the negotiations and thus I have no understanding of the negotiated position. I however suggest that maybe Rishaban, Jackwell, Christo, Ayanda and I meet to briefly discuss the above sheet. You guys can take a view on the way forward after that.

Regards
 Snehal

From: Suzanne Daniels
Sent: Thursday, March 2, 2017 6:23 PM
To: Snehal Nagar
Cc: Rishaban Moodley
Subject: FW: ESKOM//OPTIMUM
Importance: High

Hi Snehal

Can you please look at Annexure A of the attached documents and verify the contents of paragraph 6 for me? We are in the process of settling this matter and I will need assurance that the figures and calculations are correct.

Kindly revert soonest.

Regards
Suzanne

From: Rishaban Moodley [mailto:Rishaban.Moodley@cdhlegal.com]
Sent: Monday, 27 February 2017 9:34 AM
To: Suzanne Daniels <DanielSM@eskom.co.za>
Subject: RE: ESKOM//OPTIMUM
Importance: High

Hi Suzanne,

Attached is the response from Optimum and our response.

Regards,

Rev

SN

Annexure “SN11A”



SN11A

Annexure "B" settlement agreement

Word/PDF documents	Settlement agreement/ Optimum Letter/ CHD Response letter	20150706 Penalty Master CHD Version (Version sent to CHD)	Calculation for period not penalised (June 14 to May 15)	20170301 Updated Penalty Master sheet	Difference between CHD version and Updated penalty sheet	Difference of RS626 between Updated sheet and CHD sheet
Annexure "B" refers to March 2014	2,175,350,611.59	2,175,350,611.59	744,464,770.02	2,175,350,611.59	616,123.11	
Period March 2012 to March 2014						
Total claim for the period (end date)	2,175,350,611.59	2,175,350,611.59	744,464,770.02	2,175,350,611.59	616,123.11	
Less: CHD penalty	158,386,758.77	158,386,758.77	158,386,758.77	158,386,758.77	0	
Net claim outstanding for the period	1,916,963,852.82	1,916,963,852.82	586,078,011.25	1,916,963,852.82	0	
Total claim for the period (end date)	1,916,963,852.82	1,916,963,852.82	586,078,011.25	1,916,963,852.82	0	
Less: CHD penalty	158,386,758.77	158,386,758.77	158,386,758.77	158,386,758.77	0	
Net claim outstanding for the period	1,758,577,094.05	1,758,577,094.05	427,691,252.48	1,758,577,094.05	0	

Annexure "B" refers to April 2014

Word/PDF documents	Settlement agreement/ Optimum Letter/ CHD Response letter	20150706 Penalty Master CHD Version (Version sent to CHD)	Calculation for period not penalised (June 14 to May 15)	20170301 Updated Penalty Master sheet	Difference between CHD version and Updated penalty sheet	Difference of RS626 between Updated sheet and CHD sheet
Annexure "B" refers to April 2014	2,175,350,611.59	2,175,350,611.59	744,464,770.02	2,175,350,611.59	616,123.11	
Period April 2014 to May 2015						
Total claim for the period (end date)	2,175,350,611.59	2,175,350,611.59	744,464,770.02	2,175,350,611.59	616,123.11	
Less: CHD penalty	158,386,758.77	158,386,758.77	158,386,758.77	158,386,758.77	0	
Net claim outstanding for the period	1,916,963,852.82	1,916,963,852.82	586,078,011.25	1,916,963,852.82	0	
Total claim for the period (end date)	1,916,963,852.82	1,916,963,852.82	586,078,011.25	1,916,963,852.82	0	
Less: CHD penalty	158,386,758.77	158,386,758.77	158,386,758.77	158,386,758.77	0	
Net claim outstanding for the period	1,758,577,094.05	1,758,577,094.05	427,691,252.48	1,758,577,094.05	0	

Annexure "B" refers to May 2015

Word/PDF documents	Settlement agreement/ Optimum Letter/ CHD Response letter	20150706 Penalty Master CHD Version (Version sent to CHD)	Calculation for period not penalised (June 14 to May 15)	20170301 Updated Penalty Master sheet	Difference between CHD version and Updated penalty sheet	Difference of RS626 between Updated sheet and CHD sheet
Annexure "B" refers to May 2015	2,175,350,611.59	2,175,350,611.59	744,464,770.02	2,175,350,611.59	616,123.11	
Period May 2015 to May 2015						
Total claim for the period (end date)	2,175,350,611.59	2,175,350,611.59	744,464,770.02	2,175,350,611.59	616,123.11	
Less: CHD penalty	158,386,758.77	158,386,758.77	158,386,758.77	158,386,758.77	0	
Net claim outstanding for the period	1,916,963,852.82	1,916,963,852.82	586,078,011.25	1,916,963,852.82	0	
Total claim for the period (end date)	1,916,963,852.82	1,916,963,852.82	586,078,011.25	1,916,963,852.82	0	
Less: CHD penalty	158,386,758.77	158,386,758.77	158,386,758.77	158,386,758.77	0	
Net claim outstanding for the period	1,758,577,094.05	1,758,577,094.05	427,691,252.48	1,758,577,094.05	0	

Annexure "A" Optimum letter

Word/PDF documents	Settlement agreement/ Optimum Letter/ CHD Response letter	20150706 Penalty Master CHD Version (Version sent to CHD)	Calculation for period not penalised (June 14 to May 15)	20170301 Updated Penalty Master sheet	Difference between CHD version and Updated penalty sheet	Difference of RS626 between Updated sheet and CHD sheet
Annexure "A" Optimum letter	2,175,350,611.59	2,175,350,611.59	744,464,770.02	2,175,350,611.59	616,123.11	
Paragraph 5 - Penalty reduction						
Paragraph 6 - Penalty amount cannot be greater than invoice amount						
September 2014 Invoice amount	66,380,830.00	66,380,830.00	66,380,830.00	66,380,830.00	0	
September 2014 Penalty amount (End) during penalty	87,023,753.37	87,023,753.37	87,023,753.37	87,023,753.37	0	
Difference - Overpayment of penalty claim	20,642,923.37	20,642,923.37	20,642,923.37	20,642,923.37	0	
Penalty claim stated above in Annexure "B" to be reduced to	459,452,346.65	459,452,346.65	459,452,346.65	459,452,346.65	0	
May 2015 Invoice amount	63,454,263.59	63,454,263.59	63,454,263.59	63,454,263.59	0	
May 2015 Penalty amount (End) during penalty	78,029,881.97	78,029,881.97	78,029,881.97	78,029,881.97	0	
Difference - Overpayment of penalty claim	14,575,618.38	14,575,618.38	14,575,618.38	14,575,618.38	0	
Penalty claim stated above in Annexure "B" to be reduced to	444,876,728.27	444,876,728.27	444,876,728.27	444,876,728.27	0	
Total overpayment of penalty	35,218,541.75	35,218,541.75	35,218,541.75	35,218,541.75	0	
Penalty claim stated above in Annexure "B" to be reduced to	409,658,186.90	409,658,186.90	409,658,186.90	409,658,186.90	0	
Optimum offer of RS3867525.52						
Total penalty	419,452,346.65	419,452,346.65	419,452,346.65	419,452,346.65	0	
Less: CHD penalty	158,386,758.77	158,386,758.77	158,386,758.77	158,386,758.77	0	
Net claim outstanding for the period	261,065,587.88	261,065,587.88	261,065,587.88	261,065,587.88	0	
Optimum offer	261,065,587.88	261,065,587.88	261,065,587.88	261,065,587.88	0	

CDH response letter

Paragraph 3.1 - The amount is per calculation sheet - cell F42

What happens if the 300k isn't not delivered after the 90 days. What do the parties fall back to? Does Edman's rights remain in terms of a failure to supply claim? Does this right apply from the contractual termage relating to the 5.5 months?

What happens if the supplier does not deliver the 300k until after the 90 day period? How do the parties proceed contractually. At what level do the failure to supply level apply?

What happens if the defendant does not pay an installment or late with a payment? Does interest get applied? At what rate?

This clause makes no sense or logic. What does the claimant do with the reject or lowest coal quality? Does any quality parameter actually apply?

This clause allows the settlement agreement to supersede the original agreement. The settlement agreement has no substantial clauses/agreement with regards to pricing or quality.

What happens for the period June 2015 to present?

Paragraph 5 - Penalty reduction

Paragraph 6 - Penalty amount cannot be greater than invoice amount

September 2014 Invoice amount

September 2014 Penalty amount (End) during penalty

Difference - Overpayment of penalty claim

Penalty claim stated above in Annexure "B" to be reduced to

May 2015 Invoice amount

May 2015 Penalty amount (End) during penalty

Difference - Overpayment of penalty claim

Penalty claim stated above in Annexure "B" to be reduced to

Total overpayment of penalty

Penalty claim stated above in Annexure "B" to be reduced to

Optimum offer of RS3867525.52

Total penalty

Less: CHD penalty

Net claim outstanding for the period

Optimum offer

Paragraph 3.1 - The amount is per calculation sheet - cell F42

Paragraph 5 - Penalty reduction

Paragraph 6 - Penalty amount cannot be greater than invoice amount

September 2014 Invoice amount

September 2014 Penalty amount (End) during penalty

Difference - Overpayment of penalty claim

Penalty claim stated above in Annexure "B" to be reduced to

May 2015 Invoice amount

May 2015 Penalty amount (End) during penalty

Difference - Overpayment of penalty claim

Penalty claim stated above in Annexure "B" to be reduced to

Total overpayment of penalty

Penalty claim stated above in Annexure "B" to be reduced to

Optimum offer of RS3867525.52

Total penalty

Less: CHD penalty

Net claim outstanding for the period

Optimum offer

Paragraph 3.1 - The amount is per calculation sheet - cell F42

Paragraph 5 - Penalty reduction

Annexure “SN11B”



SNIB

Annexure "B" settlement agreement

Period March 2012 to May 2015

Penalties claim (March 22 to May 15)

2,276,530,611.95

Annexure "B" refers to March 2014

Calculations arise from March 2012 to May 2015

Total claim for the period (and stamp)

158,386,758.77

Penalties paid

Net claim outstanding for the period

Total claim for the period (and stamp)

Penalties paid

Net claim outstanding for the period

Period April 2014 to May 2015

Calculations arise from March 2014 to May 2015

Total claim for the period (and stamp)

Less CV penalty

Less CV penalty reduction Sept 13 - May 14

Net claim outstanding for the period

TOTAL SETTLEMENT FOR MARCH TO MAY 15

Co-operation on remaining terms

Payment of settlement amount

Clause 3.1

Clause 4.1

Annexure "A" Optimum letter

Paragraph 5 - Penalty reduction

Paragraph 6 - Penalty amount cannot be greater than Invoice amount

September 2014 Invoice amount

September 2014 penalty amount (End) during penalty

Difference - Overstatement of penalty claim

Penalty claim stated above in Annexure "B"

penalty claim stated above in Annexure "B" to be reduced to

May 2015 Invoice amount

May 2015 penalty amount (End) during penalty

Difference - Overstatement of penalty claim

Penalty claim stated above in Annexure "B"

penalty claim stated above in Annexure "B" to be reduced to

Total overstatement of penalty

Penalty claim stated above in Annexure "B"

Net reduction in penalty claim amount

Optimum offer of 123,827,625.62

Total penalty

Less CV penalty

Less CV penalty reduction

Optimum offer

CDH response letter

Paragraph 3.1 - The amount is per calculation sheet - cell B42

Words/PDF documents

Settlement agreement/Optimum

Letter/CID Response letter

2015/05/06 Penalty

Annexure B

[Version sent to CDH]

Calculation for period

not penalties (June 14

including additional

penalty

to May 15]

Spreadsheet considered

Calculation for period

not penalties (June 14

including additional

penalty

to May 15]

Difference between

CDH version and

Updated penalty

sheet

Difference between

Updated sheet and

CDH sheet

Difference of 85855 between

Updated sheet and

CDH sheet

Difference of 85855 between

Updated sheet and

CDH sheet

Difference of 85855 between

Updated sheet and

CDH sheet

Difference of 85855 between

Updated sheet and

CDH sheet

Difference of 85855 between

Updated sheet and

CDH sheet

Difference of 85855 between

Updated sheet and

CDH sheet

Difference of 85855 between

Updated sheet and

CDH sheet

Difference of 85855 between

Updated sheet and

CDH sheet

Difference of 85855 between

Updated sheet and

CDH sheet

Difference of 85855 between

Updated sheet and

CDH sheet

Difference of 85855 between

Updated sheet and

CDH sheet

Difference of 85855 between

Updated sheet and

CDH sheet

Difference of 85855 between

Updated sheet and

CDH sheet

Difference of 85855 between

Updated sheet and

CDH sheet

Difference of 85855 between

Updated sheet and

CDH sheet

Difference of 85855 between

Updated sheet and

CDH sheet

Difference of 85855 between

Updated sheet and

CDH sheet

What happens if the 30 days is not delivered after the 90 days. What do the parties fall back to? Does Eksam's rights remain in terms of a failure to supply claim? Does this right apply from the contractual (language relating to the 5.5 month?

What happens if the supplier does not deliver the 30 days during the 90 day period? How do the parties proceed contractually. At what level do the failure to supply terms apply?

What happens if the defendant does not pay an instalment or is late with a payment? Does interest get applied? At what rate?

This clause makes no sense or legal. What does the defendant do with the request for interest cost quality? Does any quality parameter actually apply?

This clause allows the settlement agreement to supersede the original agreement. The settlement agreement has no substantial clauses/agreement with regards to pricing or quality.

What happens for the period June 2015 to present?

(37,371,558.67) I cannot calculate this amount

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

66,380,830.00

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

I cannot calculate this amount

The penalty claim has been updated to correctly reflect

The penalty claim has been updated to correctly reflect

The penalty claim has been updated to correctly reflect

Annexure “SN12”



SN 12

Snehal Nagar

From: Suzanne Daniels
Sent: Wednesday, March 8, 2017 1:31 PM
To: Christo Kruger; Rishaban Moodley; Snehal Nagar; Jackwell Feris; Tiffany Jegels
Subject: RE: Eskom / Optimum Coal Mine
Importance: High

So what does it say?

From: Christo Kruger
Sent: Wednesday, 08 March 2017 1:24 PM
To: Rishaban Moodley <Rishaban.Moodley@cdhlegal.com>; Snehal Nagar <NagarS@eskom.co.za>; Jackwell Feris <Jackwell.Feris@cdhlegal.com>; Tiffany Jegels <Tiffany.Jegels@cdhlegal.com>
Cc: Suzanne Daniels <DanielSM@eskom.co.za>
Subject: RE: Eskom / Optimum Coal Mine

Good afternoon,

We scanned a few invoices from the period between March 2012 and April 2014. Attached please find the payments, invoices and calculations.

Please see attached OCM invoices:

March 12
 Aug 12
 Feb 13
 July 13
 Aug 14
 Feb 15

We also attached the penalty calculations for the period from June 2015 to January 2017.

Kind regards

Christo Kruger
 Financial Advisor
 Primary Energy Division
 Megawatt Park B3B37
 Tel +27 11 800 4370
 Cell +27 82 561 8349
 Fax +27 86 667 7329
Christo.Kruger@eskom.co.za

From: Rishaban Moodley [<mailto:Rishaban.Moodley@cdhlegal.com>]
Sent: 06 March 2017 04:01 PM
To: Snehal Nagar; Christo Kruger; Jackwell Feris; Tiffany Jegels
Cc: Suzanne Daniels
Subject: FW: Eskom / Optimum Coal Mine

Dear Snehal/Christo,

Having reference to our consultation today.

We confirm that we require the information and/or documents set out below, in order for us to adequately respond to the opposing attorneys-

1. An explanation of how the R 158 386 758,77 was calculated (penalties already deducted);
2. An explanation of the formula error in respect of AI and the correct formula which was now utilised; and
3. The spreadsheet setting out the additional penalties due to Eskom from June 2015 to date.

We attach the documents set out below as promised-

1. The Co-operation Agreement;
2. The Interim Arrangement together with OCM's response thereto; and
3. The latest settlement proposal received from OCM dated 27 February 2017.

Regards

Rishaban



Handwritten signature
SN

Annexure “SN13”



SN13

Snehal Nagar

From: Snehal Nagar
Sent: Tuesday, March 14, 2017 9:01 AM
To: Suzanne Daniels; Ayanda Nteta
Cc: Rishaban Moodley
Subject: RE: Optimum settlement memo

Hi Suzanne

If the document I am to sign has no reference to the work we performed, then why am I signing the document. I am happy that you remove my signature from the doc.

Regards
Snehal

From: Suzanne Daniels
Sent: Tuesday, March 14, 2017 6:22 AM
To: Snehal Nagar; Ayanda Nteta
Cc: Rishaban Moodley
Subject: RE: Optimum settlement memo
Importance: High

Snehal

Your preference is noted. Not sure what you seek to achieve with this as the claim was issued for 2.1bn based on Eskom's calculations which we state earlier in the document. Please advise.

I took Anoj through the document yesterday and we are expected to finalise this morning. Would like clarity on this asap.

Thanks
Suzanne

From: Snehal Nagar
Sent: Monday, 13 March 2017 4:17 PM
To: Suzanne Daniels <DanielSM@eskom.co.za>; Ayanda Nteta <NtshanAK@eskom.co.za>
Subject: Optimum settlement memo

Hi Suzanne and Ayanda

Please find attached comment that I prefer would be added to paragraph 1 under Financial Implications.

Regards
Snehal

SN

Annexure “SN13A”



SN13A.

ESKOM HOLDINGS SOC LTD/OPTIMUM COAL MINE PTY LTD/OPTIMUM COAL HOLDINGS (PTY) LTD

8. Based thereon, I requested an assessment of the merits of the Eskom Claim from Cliffe Dekker Hofmeyr Inc. (CDH) (being the attorneys on record), during November 2016 pursuant to the recommencement of the arbitration proceedings, as a result of Optimum's request to Eskom to consider a potential settlement. CDH prepared a preliminary assessment on the merits of the Eskom Claim in December 2016 which highlighted various concerns and challenges with the Eskom Claim. In addition to the preliminary assessment, further reports were prepared by CDH pursuant to the settlement proposals from Optimum relating to the Eskom Claim.
9. The assessments were presented to the Board Tender Committee (BTC) on 8 February 2017. Even though not necessary, I thought it prudent to do so given the high profile that the matter was enjoying at the time. Based on the presentation, I was granted the authority to enter into the settlement negotiations.
10. Since the granting of the mandate by the BTC to negotiate a settlement with Optimum Coal, three meetings had been held with Tegeta (the new owners of Optimum).
11. Discussions were held between the CPO and I in respect of any primary energy issues (i.e. security of supply) which could arise from the arbitration with Tegeta.

FINANCIAL IMPLICATIONS

1. The mandate provided by the BTC indicated that a settlement figure of no lower than R500 million would be acceptable. Based on the further meetings between Optimum and Eskom we have now arrived at a settlement figure of R577 million in full and final settlement of the Eskom Claim.
2. Based on various credits over the penalty period, a cash balance of R255 400 819.18 remains to be settled. The settlement agreement sets out how this amount will be paid.
3. The rationale for and the makeup of the claim is set out in the attached settlement agreement.

→ Eskom calculated an amount owing of R1.177 bn for the period March 2012 to May 2015. However, based on the further meetings between Optimum and Eskom, we have now arrived at a settlement figure of R577m.

Eskom Holdings SOC Ltd Reg No 2002/015527/30

SN

Annexure “SN14”



SN14

19200



MEMORANDUM

To: Mr Matshela Koko, Interim Group Chief Executive Reference
Mr Anoj Singh, Group Chief Financial Officer

From: Ms Suzanne Daniels Version: 01

Date: 13 March 2017

SUBJECT: ESKOM HOLDINGS SOC LTD/OPTIMUM COAL MINE PTY LTD/OPTIMUM
COAL HOLDINGS (PTY) LTD

PURPOSE

1. The purpose of this Memorandum is to request the approval of the Interim Group Chief Executive and the Group Chief Financial Officer to settle the legal claim in the above matter in the manner set out herein and recorded in the attached Draft Settlement Agreement, to be signed by the Group Chief Financial Officer as the approval authority.¹

BACKGROUND

2. On 5 August 2015 Eskom Holdings SOC Limited ("Eskom") issued a summons (including the referral to arbitration) against Optimum Coal Holdings (Proprietary) Limited ("OCH") and Optimum Coal Mine (Proprietary) Limited ("OCM") for the payment in the amount of R 2, 176 530 611.99 (Two billion one hundred and seventy six million five hundred and thirty thousand six hundred and eleven rand and ninety nine cents) for its failure to supply and deliver coal which complies with the coal quality specification contemplated by the coal supply agreement ("CSA"), to Eskom's Hendrina Power Station ("Hendrina"). The pertinent provisions of the claim read as follows --

¹ Clause 8.2 of the Delegation of Authority Framework sets out that settlement agreements shall be signed by the relevant approval authority. In this instance, this would be the GCFO.

19201

ESKOM HOLDINGS SOC LTD/OPTIMUM COAL MINE PTY LTD/OPTIMUM COAL
HOLDINGS (PTY) LTD

"The Defendants have for a consecutive period from 1 March 2012 to 31 May 2015 (the "Supply Period"), failed to supply the Plaintiff with coal which meets the quality parameter contemplated in clause 3.4 of the First Addendum, in that 20% to 45% of the coal supplied and delivered by the Defendants to the Plaintiff on a monthly basis, during the Supply Period, was smaller than 0.81mm. Despite this failure by the Defendants, the Plaintiff has, without prejudice to its right in terms of clause 3.6 of the First Addendum, paid the Defendants for such coal, without applying any adjustment or reduction to the payment, for the Defendants' failure to comply with the quality parameters, even though the Plaintiff was entitled to adjust or reduce the payment accordingly.

The reduction the Plaintiff was entitled to impose on the purchase price paid to the Defendants for the Supply Period amounts to R 2, 176 530 611.99 (Two billion one hundred and seventy-six million five hundred and thirty thousand six hundred and eleven rand and ninety-nine cents)."

("Eskom Claim")

3. The Eskom Claim was preceded by a letter of demand dated 16 July 2015 in which Eskom demanded payment of the amount of R 2, 176 530 611.99 (Two billion one hundred and seventy-six million five hundred and thirty thousand six hundred and eleven rand and ninety-nine cents). Instead of OCM formally replying to the letter of demand received from Eskom, Glencore made various public statements relating to Eskom's demand and thereafter on 5 August 2015 OCM and OCH was placed into business rescue.
4. On 20 August 2015 the attorneys of OCH and OCM delivered its notice of intention to defendant the Eskom Claim, including their attorneys addressing a letter to CDH reserving their client's rights. On 31 August 2016 the business rescue practitioners of OCM filed a Notice of Termination of the Business Rescue Proceedings with the Companies and Intellectual Property Commission.
5. In light of the aforementioned, Eskom re-commenced with the referral of the arbitration in respect of the Eskom Claim for final determination. Eskom has an election to either

SN

19202

ESKOM HOLDINGS SOC LTD/OPTIMUM COAL MINE PTY LTD/OPTIMUM COAL HOLDINGS (PTY) LTD

continue with the arbitration against OCM or consider an amicable settlement with OCM in relation to the Eskom Claim. One of the main reasons it was important for Eskom to initiate the Eskom Claim against OCM and OCH was to stay the running of prescription in respect of the portion of the Eskom Claim which arose during 2012. The Eskom Claim is primarily based on the failure by OCM to meet the coal quality specification.

DISCUSSION

1. The fact that Eskom initiated the Eskom Claim, does not automatically mean that the amount claimed is due and payable. Eskom still has the onus as the plaintiff/claimant to demonstrate to a court/arbitrator on a balance of probabilities that the amount is due and payable.
2. In terms of the CSA, Eskom was contractually entitled to impose the penalties for any failure to comply with the quality specification – however due to a number of impasse's which arose between the parties relating to the imposition of the penalties (i.e. sampling process, the calculation of the penalty, interpretation of the penalty clause), Eskom reserved its right to impose the penalties at a later stage.
3. Subsequent to the issue of summons, Eskom recalculated an amount owing of R1.17 billion for the period under dispute. While the calculations could be verified, the basis of the interpretation is still under question.
4. The issues of concern relating to the Eskom Claim has always been, amongst others, the following (evidential items) –
 - 4.1 Eskom's compliance with all the contractual requirements in terms of the CSA and addenda (clause 9.6² of the CSA and 3.4.3³ of the First Addendum) to inform OCM on a monthly basis of its failure to comply with the quality specification, including such calculation of the

² Eskom must notify Optimum in writing within 15 days after each days deliver whether all coal supplied and delivered by Optimum to Eskom complies with the quality specifications.

³ Eskom will in writing advise Optimum monthly in arrears of the manner in which such penalties will have been calculated and Eskom will deliver to Optimum, together with the details of such calculations, laboratory relevant results in respect of the coal in question in support of such calculation.

SN

19203

ESKOM HOLDINGS SOC LTD/OPTIMUM COAL MINE PTY LTD/OPTIMUM COAL
HOLDINGS (PTY) LTD

penalty to be deducted from the monthly Invoice.

4.2 Rectification of clause 3.6 of the First Addendum as Eskom and OCM has opposing interpretations relating to the manner in which payment reduction should be calculated. Eskom has on a number of occasions placed on record that it only intends to deduct such amounts for OCM's failure to supply the correct quality specification as it is entitled to in terms of the CSA and addenda thereto. As Eskom will need to rely on the evidence of Eskom's ex-employees for that part of its claim, it was decided that in order to avoid the prescription of portions of the Eskom Claim (to the extent that some portions have not already prescribed) to proceed with action/referral to arbitration and amend the statement of claim/particulars of claim relating to, amongst others, the rectification of clause 3.6 of the First Addendum at a later. On Eskom's version the current Eskom Claim, subject to there being compliance with the other provisions of the CSA and the integrity of the sampling process, could be substantially more.

4.3 The integrity of the sampling method utilised to assess compliance by OCM with the coal quality specification of coal supplied and delivered to Hendrina,

5. The aforesaid hurdles do not imply that the Eskom's Claim is not sound. It merely implies that Eskom will need to ensure that it is in a position to lead evidence (factual and expert) to demonstrate to an arbitrator or a court that the amount claimed (or a portion thereof) is due and payable by, *inter alia*, refuting any contention by OCM that (1) it failed to comply with the terms of the CSA, (2) it waived its right to impose penalties in terms of the CSA (3) it failed to calculate the claim properly.

6. During September 2016 the arbitration proceedings instituted by Eskom against Optimum were reinstated, pursuant to Optimum being discharged from business rescue on 31 August 2016. As part of the recommenced arbitration proceedings, Optimum filed its statement of defence on 5 December 2016 and Eskom filed its replication thereto on 26 January 2017. The parties held a further pre-arbitration meeting with the arbitrator on 28 January 2017 on the further process required to conclude the arbitration proceedings.

SN

19204

ESKOM HOLDINGS SOC LTD/OPTIMUM COAL MINE PTY LTD/OPTIMUM COAL HOLDINGS (PTY) LTD

7. During the arbitration proceedings, Optimum's attorneys approached Eskom's attorneys with proposals for a possible settlement of the Eskom Claim.
8. Based thereon, I requested an assessment of the merits of the Eskom Claim from Cliffe Dekker Hofmeyr Inc. (CDH) (being the attorneys on record), during November 2016 pursuant to the recommencement of the arbitration proceedings, as a result of Optimum's request to Eskom to consider a potential settlement. CDH prepared a preliminary assessment on the merits of the Eskom Claim in December 2016 which highlighted various concerns and challenges with the Eskom Claim. In addition to the preliminary assessment, further reports were prepared by CDH pursuant to the settlement proposals from Optimum relating to the Eskom Claim.
9. The assessments were presented to the Board Tender Committee (BTC) on 8 February 2017. Even though not necessary, I thought it prudent to do so given the high profile that the matter was enjoying at the time. Based on the presentation, I was granted the authority to enter into the settlement negotiations.
10. Since the granting of the mandate by the BTC to negotiate a settlement with Optimum Coal, three meetings had been held with Tegeta (the new owners of Optimum).
11. Discussions were held between the CPO and I in respect of any primary energy issues (i.e. security of supply) which could arise from the arbitration with Tegeta.

FINANCIAL IMPLICATIONS

12. The mandate provided by the BTC indicated that a settlement figure of no lower than R500 million would be acceptable.
13. Based on the further meetings between Optimum and Eskom we have now arrived at a settlement figure of R577 million in full and final settlement of the Eskom Claim.

SN

SN

ESKOM HOLDINGS SOC LTD/OPTIMUM COAL MINE PTY LTD/OPTIMUM COAL
HOLDINGS (PTY) LTD

19206

Recommended by:

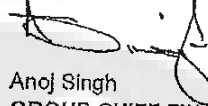


Suzanne Daniels

ACTING HEAD: LEGAL AND COMPLIANCE

Date: 14/3/2017

Recommended by:



Anoj Singh

GROUP CHIEF FINANCIAL OFFICER

Date: 14/03/17

Approved/Not approved



Matshela Koko

INTERIM GROUP CHIEF EXECUTIVE

Date: 14/3/17



Annexure “SN15”



SNIS

19193

1

1170

IN THE ARBITRATION BEFORE ADV. RA SOLOMON S.C
JOHANNESBURG

In the matter between:

ESKOM HOLDINGS SOC LIMITED

Claimant

and

OPTIMUM COAL MINE (PROPRIETARY) LIMITED

First Defendant

TEGETA EXPLORATION AND RESOURCES
(PROPRIETARY) LIMITED

Second Defendant

AWARD

BY AGREEMENT between the Parties, the following award is made:

The arbitration is settled, on the terms set out in the Settlement Agreement annexed hereto marked "A", the terms of which are Incorporated In this Award.

Signed and dated at SANDTON on this the 16th day of MARCH 2017.

RA Solomon

ADV. RA SOLOMON S.C

18
SN

19194

"A"

IN THE ARBITRATION BEFORE ADY. RA SOLOMON S.C
JOHANNESBURG

In the matter between
ESKOM HOLDINGS SOC LIMITED

Claimant

and

OPTIMUM COAL MINE (PROPRIETARY) LIMITED
TEGETA EXPLORATION AND RESOURCES
(PROPRIETARY) LIMITED

First Defendant

Second Defendant

SETTLEMENT AGREEMENT

PREAMBLE

The Claimant initiated arbitration proceedings against the Defendants for payment in the amount of R2 178 830 611.99 for accrued penalties not imposed against the Defendants by the Claimant for the period of March 2012 to May 2015 ("the Claim"). The aforesaid Claim was defended by the Defendants.

WHEREAS the Parties entered into a process of negotiation in order to resolve the Claim, Pursuant to the settlement negotiations, the Parties have agreed to settle this dispute in respect of the accrued penalties for the period March 2012 to May 2015 in an amount of R 577 839 105.42

WHEREAS the Parties acknowledge that the accrued penalty amount of R 577 839 105.42 is in full and final settlement of the Claim.

Handwritten initials and marks, including a circled 'A' and a circled 'B'.

Handwritten initials "SN" and a signature.

19195

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

It is hereby recorded and agreed that the accrued penalty due and payable for the period March 2012 to May 2015 is the amount of R 577 839 105.42 ("the Settlement Amount")

1 CALCULATION AND SETTLEMENT OF HISTORIC PENALTIES

The Settlement Amount is calculated based on the following periods i.e.

1.1 The period March 2012 to May 2014:

The parties agree that an amount of R158 386 768.77 (one hundred and fifty eight million three hundred and eighty-six thousand seven hundred and fifty-eight rand and seventy-seven cents) was deducted from payments due to the Defendants as penalties. The parties accept the aforesaid figure to be a settlement of any and all penalties due for the period March 2012 to May 2014;

1.2 The period June 2014 to May 2016:

1.2.1 For this period the Claimant calculated penalties in the amount of R419 452 346.65 (four hundred and nineteen million four hundred and fifty-two thousand three hundred and forty-six rand sixty-five cents) which is due and payable by the Defendants in order to settle and resolve the matter, the Defendants accepts liability in an amount of R255 400 810.18 (two hundred and fifty-five million four hundred thousand eight hundred and nineteen rand and eighteen cents) calculated in accordance with paragraph 1.2.2 *infra*, on which the parties so settle

1.2.2 The amount of R255 400 810.18 (two hundred and fifty-five million four hundred thousand eight hundred and nineteen rand and eighteen cents) is calculated as:

Total Penalty from March 2012 – May 2015	R 577 839 105.42
Less, Penalties already deducted	R 150 386 768.77
Total Penalty	R 419 452 346.65

Q B B

5

19196

Less: CV Penalty (Binary Score M Total Penalties)	- R 128 678 838.80
Less: GC Penalty reduction Sept 2013- May 2014	- R 37 371 688.67
Total payable	R 265 400 819.18

2 PAYMENT OF SETTLEMENT AMOUNT

2.1 The parties agree and confirm that the balance of the Settlement Amount of R 265 400 819.18 will be paid by the Defendants to the Claimant in equal monthly instalments, the first payment to be made on 1 April 2017 and the last payment to be made on or before 31 December 2018 when the current Coal Supply Agreement terminates. For clarity, the Claimant shall not be entitled to set off or deduct the monthly instalments from the monthly payments due by the Claimant to the Defendants for the remaining period of the Coal Supply Agreement.

2.2 In the event that any one payment is not paid in full on the due date:

2.1.1 the full amount then outstanding (whether or not the date for payment has fallen due) shall become due and payable immediately, and

2.1.2 the Defendants hereby consents to the Claimant making application for this settlement agreement/arbitration award to be made an order of court in terms of section 31 of the Arbitration Act 42 of 1985 and judgment to be granted for the outstanding amount, together with *more* interest and costs occasioned by such application.

3 GENERAL

3.1 This settlement agreement constitutes the sole record of the agreement between the parties in relation to the dispute raised herein.

3.2 The parties shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. No addition to, variation, novation or agreed cancellation of any provision in this settlement agreement shall

R
S

25

19197

be binding upon the parties unless reduced to writing and signed by and on behalf of the parties

- 3.3 No indulgence or extension of time which any party may grant to any other shall constitute a waiver of or whether by estoppel or otherwise limit any of the existing or future rights of the parties in terms hereof save in the event and to the extent that the parties have signed a written document expressly waiving or limiting such a right

4 COSTS

Each party will be liable for its own costs towards the arbitration whilst both parties will share the costs of the arbitrator equally.

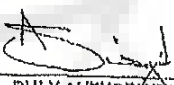
5 CONFIDENTIALITY

The existence, contents and terms of this settlement agreement are confidential and, save as may be required by law, no party shall disclose same to any third party other than its affiliates and their respective directors, employees, officers and advisors

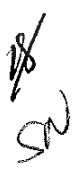
6 ARBITRATION AWARD

The parties agree that this settlement agreement be made an award by the arbitrator and both parties request the arbitrator to do so.

SIGNED AT JOHANNESBURG ON THIS 14 DAY OF MARCH 2017.


DULY AUTHORISED THERETO
AND ON BEHALF OF
ESKOM HOLDING SOC
LIMITED



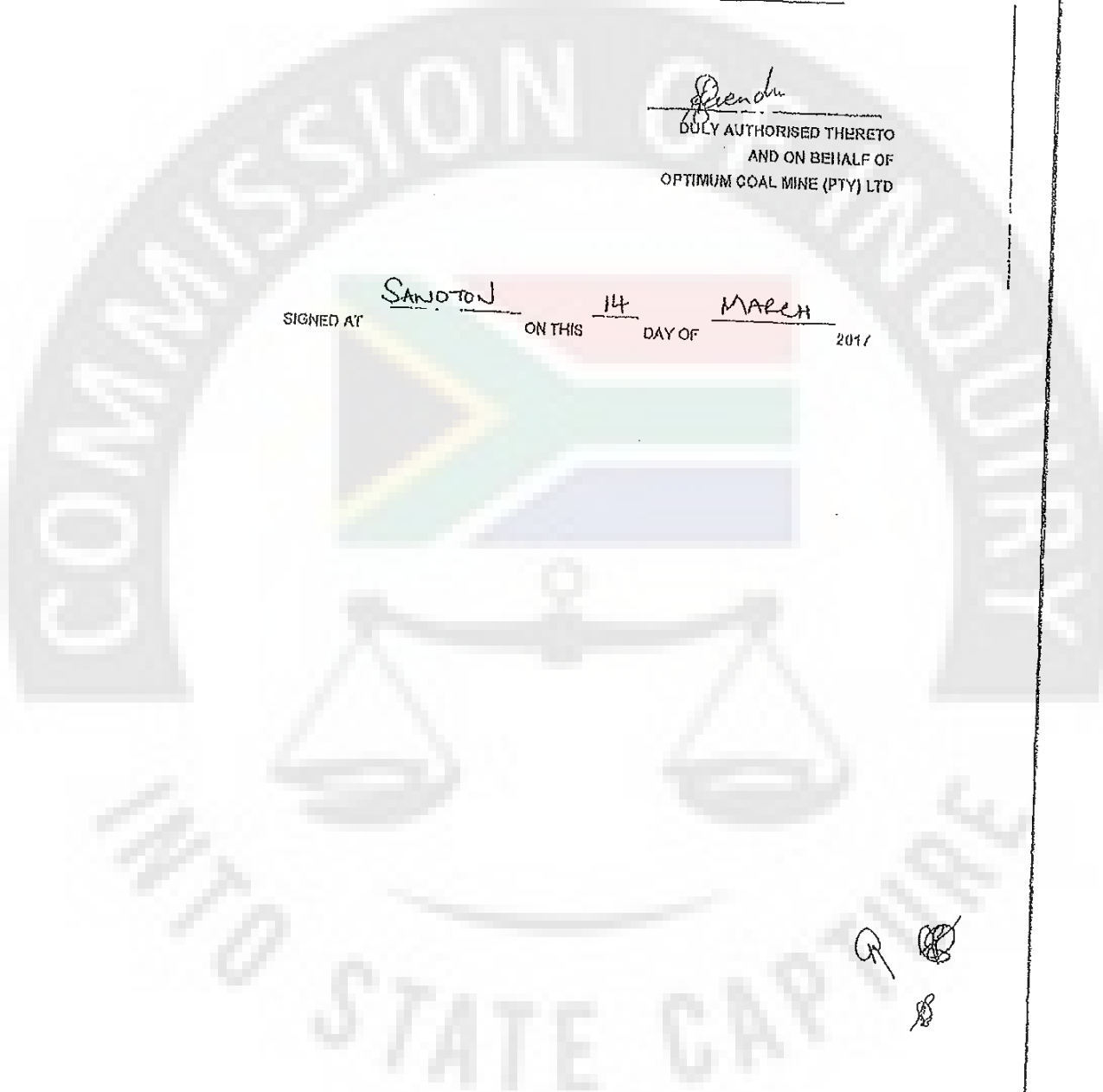


19198

SIGNED AT SANDTON ON THIS 14 DAY OF MARCH 2011

Quendu
DULY AUTHORISED THERETO
AND ON BEHALF OF
OPTIMUM COAL MINE (PTY) LTD

SIGNED AT SANDTON ON THIS 14 DAY OF MARCH 2011



Handwritten marks
A handwritten mark resembling a stylized 'X' or 'Z' is located at the bottom right of the page.

19199

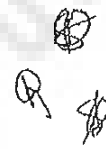
8



DULY AUTHORISED THERETO AND ON BEHALF OF
OPTIMUM GOAL HOLDINGS LTD
TEGETA EXPLORATION
AND RESOURCES (PTY)
LTD

9





4
SN

Annexure “SN16”



SN16

Snehal Nagar

From: Maya Bhana
Sent: Friday, March 18, 2016 9:26 AM
To: Marius Homewood; Snehal Nagar; Teressa Michael; Albert Scholtz; Christo Kruger; Ayanda Nteta
Cc: Office of the CFO
Subject: RE: ABSA/Coal Transaction

Hi there

We need to make sure the guarantee is cancelled with Absa. Marius can you please close out with the bank.

Neo is assisting from legal

Kind regards
Maya

From: Marius Homewood
Sent: Friday, March 18, 2016 8:00 AM
To: Maya Bhana; Snehal Nagar; Teressa Michael; Albert Scholtz; Christo Kruger; Ayanda Nteta
Cc: Office of the CFO
Subject: RE: ABSA/Coal Transaction

Hi Maya

Under certain conditions the guarantee may be triggered and they can call on ABSA, I think we need an (legal) analysis of the documents to ascertain actions (by whom) and timelines, I can think of some instances that are not clear, eg PFMA approval not obtained- what then. I see the agreement refers to Eskom's legal advisors, who are they?

Regards
Marius

From: Maya Bhana
Sent: 17 March 2016 05:42 PM
To: Snehal Nagar; Teressa Michael; Albert Scholtz; Marius Homewood; Christo Kruger; Ayanda Nteta
Cc: Office of the CFO
Subject: RE: ABSA/Coal Transaction

Hi guys

I have been told that the guarantee will lapse and not be used to purchase coal upfront.

Kind regards
Maya

From: Snehal Nagar
Sent: Thursday, March 17, 2016 4:40 PM
To: Teressa Michael; Albert Scholtz; Marius Homewood; Christo Kruger; Ayanda Nteta

Cc: Office of the CFO; Maya Bhana
Subject: RE: ABSA/Coal Transaction

Hi Teresa

I am not so worried about the position paper. We can potentially draft one between us depending on where the majority transaction activity takes place.

More important is whether we need to plan for a payment to be made on the 31st. We need some guidance on this please as this transaction seems to be completely off everybody's radar. For a payment to be made, we need all the PFMA approvals, legal confirmations, cash to be booked, vendor details updated on SAP, conditions precedent, etc. Next week everybody is on leave. Depending on how this transaction is done, the CFO and CE might have to sign-off a R1.7bn single payment transaction depending on the Eskom DOA.

If the approvals are not met, then what? I am also not sure what the defaulting events for the guarantees are. Documents do not seem to be clear. Guarantee also seems to expire in March. So if these pre-conditions are not met, then what does everyone do? Do we extend this arrangement or does everything fall away. What happens to Optimum in that event and the business rescue process? There are many issues around this transaction that I do not understand and most people seem to also not know.

Regards
 Snehal

From: Teresa Michael
Sent: Thursday, March 17, 2016 3:02 PM
To: Albert Scholtz; Marius Homewood; Snehal Nagar; Christo Kruger; Ayanda Nteta
Cc: Office of the CFO; Maya Bhana
Subject: ABSA/Coal Transaction

Hello again,

I have confirmed that Suzanne has an overview/is overseeing the conditions being met. In addition I have asked Aziz for the PFMA document.

Snehal, Ayanda Nteta has view of the transaction from PED, will you please engage Ayanda and check the notes made "payment to which party", vendor management etc (let me know if I can assist with anything here).

The position paper can be prepared assuming that all conditions will be met on 31 March 2016, Albert and Snehal (please let me know who will be leading this between you both).

Feel free to let me know how I can help.

Regards

Teresa Michael CA(SA)
 Office of the Chief Financial Officer
 Eskom Holdings SOC Ltd, Megawatt Park
 Tel : 011 516 7905
 Email : teressa.michael@eskom.co.za

[Handwritten signature]
 SN