
AFFIDAVIT

I, the undersigned,

BEN THERON

do hereby make oath and state:

1. I am an adult male employed as Chief Operating Officer by the Organisation Undoing Tax Abuse (“OUTA”) with business address 10th Floor, O’Keeffe & Swartz Building, 318 Oak Street, Ferndale, Randburg, Gauteng.

2. The contents of this affidavit fall within my personal knowledge, unless stated otherwise, and are in all aspects true and correct.

A. MANDATE & INTRODUCTION

3. OUTA is a proudly South African non-profit civil action organisation, supported and publicly funded by people who are passionate about improving the prosperity of our nation. OUTA was established to reintroduce accountability to government and to challenge the abuse of authority with regards to taxpayers’ money in South Africa.

4. In recent months, South Africa has been rocked by the Gupta emails and documents (#GuptaLeaks) which were retrieved from the server of Sahara

BK A

Computers Pty (Ltd) (Sahara). These #GuptaLeaks have substantiated most of the allegations pertaining to state capture and have unveiled evidence of misconduct by the Gupta family, many high-ranking government officials and private individuals.

5. OUTA received a copy of these emails during May 2017 from an unknown source, established the authenticity of such and released an extensive report on State Capture titled *"No Room to Hide – A President Caught in the Act"*.
6. Amongst the #GuptaLeaks were evidence of misconduct on the part of one Mr. Matshela Koko (Koko), including but not limited to a series of irregularities, amongst others, a corrupt relationship between Matshela Koko ("Koko") and the Gupta family. The facts surrounding this particular matter will become more apparent in subsequent paragraphs. **ANNEXURES SF2 – SF14** is a trail of e-mails and documents referred to and are sourced from the #GuptaLeaks.

B. THE PARTIES

7. The Complainant is Mr Ben Theron on behalf of the OUTA, a non-profit Company with limited liability, with company registration number 2012/0642/1308 and NPC number 124-38, duly registered in accordance with company laws of the Republic of South Africa, and with its principal place of business situated at 10th Floor, O'Keefe & Swartz Building, 318 Oak Avenue, Randburg, Gauteng.

8. The implicated individual is Koko, an adult male, the current acting Group Chief Executive ("GCE") of Eskom Holdings SOC Ltd ("Eskom") as of December 2016, and has been on "special leave" from 12 May 2017.
9. Eskom is a major public entity as listed in schedule 2 of the Public Finance Management Act, 1999 ("PFMA").
10. Optimum Coal Holdings (Pty) Ltd ("OCH") had been supplying coal to Eskom since 1993. OCH was controlled by Glencore prior to being subjected to business rescue proceedings on or about 4 August 2015. For conceptual clarity, "OCH/G" is used when reference is made to OCH under the control of Glencore. Where reference is made to OCH under the control of Tegeta, the reference "OCH/T" is used.
11. Optimum Coal Mine (Pty) Ltd ("OCM") is a subsidiary of OCH, which prior to business rescue proceedings had 100% control of OCM. OCH/G sourced its coal (supplied to Eskom) from OCM.
12. Tegeta Exploration and Resources (Pty) Ltd ("Tegeta") is a Gupta owned entity, controlled wholly by Oakbay Investments (Pty) Ltd. Tegeta entered into an agreement to purchase OCH on 10 December 2015 for the amount of R 2.15 billion.
13. Glencore South Africa (Pty) Ltd ("Glencore") was the controlling shareholder of OCH prior to the latter being placed under business rescue and acquired by Tegeta.

14. Just Coal (Pty) Ltd ("Just Coal") supplied Eskom with coal for its Arnot power station. The agreement between the parties was ended due a contractual dispute.
15. Exxaro Coal (Pty) Ltd ("Exxaro") is a major resource company which supplied Eskom with coal for its Arnot power station (amongst others). The agreement between the parties was not extended due to economic reasons.

C. BACKGROUND

16. Koko has been at Eskom since 1996. In December 2014, he joined Eskom's executive when he was appointed as the Group Executive: Technology and Generation ("GE: T&G").
17. In March 2015, Koko was one of four executives suspended pending an investigation and was reinstated in July 2015.
18. In October 2015, he was appointed as the GE:T&G after Brian Molefe resigned. He was put on "special leave" on 12 May 2017 pending an investigation into claims that his step-daughter's business received irregular Eskom contracts.

19. According to paragraph 41 of the PPSA Report (PPSA Report), attached hereto and marked “ANNEXURE SF1”¹, Eskom concluded a CSA with OCH in 1993, which expires on 31 December 2018.
20. On or about 16 July 2015, OCH was unable to supply Eskom with the correct coal for its Hendrina power station, which resulted in penalties and an arbitration processes.
21. Eskom issued a letter of demand for the payment of R 2, 176 530 611.99 (“the penalty”). OCH could not meet this demand upon which Eskom issued summons in the South Gauteng High Court.
22. OCH applied for business rescue in terms of the Companies Act 71 of 2008 (“the Companies Act”), upon which Marsden and Van den Steen Joint Business Rescue Practitioners was appointed as the business rescue practitioner (“BRP”). This process stayed the legal proceedings initiated by Eskom for the above-mentioned penalty.
23. OCH was officially placed under business rescue on or about 4 August 2015.

D. RELATIONSHIP WITH THE GUPTA FAMILY

24. On or about 3 January 2016 and at 15h52, Sarah Benhaouem (representative of the Oberoi Hotel in Dubai) sent an email to Ashu Chawla (Chawla),

¹ For brevity sake, we only include the relevant pages with the relevant paragraphs and the full report will be made available upon request.

regarding booking confirmation, attached hereto and marked "**ANNEXURE SF2**".

25. Chawla is a director of Sahara – a Gupta-owned company. Reservation was confirmed for Koko, under confirmation number 467415. The duration of his stay according to the booking confirmation was 4 January 2016 until 5 January 2016.
26. On or about 3 January 2016 and at 16h02, the Oberoi Hotel requested that Chawla indicate which guests would not be charged for future bookings. In response to this request, Chawla indicated that "*SAHARA will pay the entire bill please do not ask any credit card guarantee from the guest at the time of check in.*" The email is attached hereto and marked "**ANNEXURE SF3**".
27. On or about 3 January 2016 and at 23h04, Chawla requested the Oberoi Hotel to confirm the details of the chauffeur that would transport Koko upon arrival. On or about 4 January 2016 and at 12h28, the Oberoi Hotel confirmed that a 'Mr. Mehboob' would pick Koko from the airport. The confirmation email is attached hereto and marked "**ANNEXURE SF4**".
28. Considering the above, it is reasonable to conclude that Koko travelled to Dubai at the Gupta family's expense.
29. As per the Public Protector Report, in execution of his duties at the time, Koko was tasked with leading the turnaround strategy of the technical performance

of the Eskom generation fleet and ensuring effective implementation of the risk based engineering support while simultaneously leading the Technology Division.

30. This means that Koko's role as GE:T&C entailed an executive oversight over Eskom's generation capacity – particularly procurement for Eskom's various power stations.
31. Following Koko's visit to the Oberoi Hotel, Eskom concluded additional Coal Supply Agreements ("CSA's") with Tegeta on 14 January 2016 and 16 February 2016.
32. According to paragraph 5.338 the PPSA Report, Eskom effected payment of approximately R 1,2,378,167.57 between 29 January 2016 and 26 April 2016 to Tegeta.

E. SUSPENSION OF ESKOM'S COAL SUPPLY AGREEMENTS

BRAKFORTEIN COLLIERY

33. On or about 31 August 2015, Koko suspended the supply of coal from the Guptas' Brakfontein Colliery to Eskom's Majuba power station. This CSA had been concluded on 10 March 2015 between Tegeta and Eskom.

34. On or about 4 September 2015, Tegeta responded to the suspension of the CSA, disputing Eskom's version of the quality of coal supplied, attached hereto and marked "**ANNEXURE SF5**".
35. The parties previously agreed to the coal specifications as required by Majuba power station. The coal supplied by Tegeta had to conform to a Calorific Value ("CV") of 21.10 megajoules per kilogram ("MJ/kg"), with a rejection limit below 20.0 MJ/kg. Attached hereto is page 34 of the CSA (an extract of the CSA), marked "**ANNEXURE SF6**"².
36. A lab test report conducted by Sibonisiwe Coal Laboratory Services CC ("Sibonisiwe") reveal inconsistencies in the quality of coal which is the coal source for the CSA.
37. Samples from 24 August 2015 to 26 August 2015 were used to compile the report – which is a week prior to the suspension of the CSA. The report is attached hereto and marked "**ANNEXURE SF7**".
38. Considering the inconsistencies of coal supplied by Tegeta and specifically the alleged nonconformity of 21.10 MJ/kg, suspension of the CSA seemed justified. However, on or about 5 September 2015, Koko lifted the suspension in a letter addressed to Tegeta, attached hereto and marked "**ANNEXURE SF8**".

² For brevity sake, we only include the relevant page and the full CSA will be made available upon request.

39. The suspension had been lifted notwithstanding Tegeta's inconsistent coal supply (breach of contract).

JUST COAL (PTY) LTD

40. On or about 30 October 2015, Just Coal (PTY) Ltd ("Just Coal") responded to a suspension (effective from 31 October 2015) of their CSA by Eskom, attached hereto and marked "ANNEXURE SF9".
41. According to the Dentons Report ("ANNEXURE SF10"³), Just Coal had two medium term CSA's in place with Eskom. Presumably, the letter in question addresses the suspension of the CSA which was to supply Arnot power station. The CSA was concluded on 1 May 2015 and would have lapsed on 31 October 2015.
42. According to the letter, breach of contract was not the fault of Just Coal, but at that of Eskom. Eskom had allegedly obstructed Just Coal from properly performing and delivering the right quantities of coal as per the CSA. Delivery was thus made impossible by Eskom, which resulted in potential loss for Just Coal.

³ For brevity sake, we only include the relevant extract and the full report will be made available upon request.

43. On or about 4 November 2015, Koko, using the email address of matshela2010@yahoo.com, sent Just Coal's letter to Richard Seleke (Seleke).
44. As part of the #Gupta-Leaks, OUTA established that infoportal1@zoho.com is an email address belonging to Seleke. Seleke's other known alias is that of 'Business Man', which is affiliated with the email address above. The email is attached hereto and marked "ANNEXURE SF11". There would be no legitimate reason for Koko to have relayed the letter to Seleke.
45. In his email to Seleke, Koko states that the letter be given to "the Boss" and that the fight has commenced. This phrase should, however, be understood within the context of Tegeta's acquisition of OCH, which will be explained in more details below.
46. On or about 4 November 2015 and at 23h36, Seleke forwarded Koko's email with the attached letter to wdrsa1@gmail.com, which is an email address belonging to Tony Gupta. The latter forwarded the letter to Ashu Chawla, ashu@sahara.co.za on or about 7 November.
47. The Guptas' only reasonable interest in receiving the letter is that Just Coal is a direct competitor of Tegeta in supplying coal to Eskom.
48. As per the illustration on page 194 of the Dentons Report, Just Coal was to supply Eskom with coal conforming to a CV of 22.77 MJ/kg.

49. As per the PPSA Report, Eskom was short two CSA's for supply of coal to Arnot power station, as at 1 January 2016. This was notwithstanding the availability of adequate coal from Just Coal.
50. It should be noted that on or about 31 December 2015, Eskom's CSA with Exxaro came to an end as the agreement had lapsed. Exxaro supplied coal to Eskom's Arnot power station. Due to various economic reasons, as per paragraph 47 of the PPSA Report, Eskom elected not to renew Exxaro's CSA.
51. Koko, acting on behalf of Eskom, did not reinstate Just Coal's CSA (although the latter had sufficient resources) – creating Eskom's own coal stockpile emergency for Arnot power station. This in turn, created a "self-created" justification for the procurement of CSA's to third parties in terms of Eskom's emergency coal procurement mandate.

F. OPTIMUM COAL HOLDINGS (PTY) LTD

52. According to paragraph 52 of the PPSA Report, *"The Group Executive: Generation [Koko] requested an emergency plan to increase stock level and to increase the stockpile as soon as possible before 1 January 2016."*
53. Based on the fact that Koko suspended several CSA, he should have been aware of Eskom's anticipated coal shortfall as early as August 2015 and thus had ample opportunity to negotiate new terms with OCH.

54. On or about 17 September 2015, the BRP proposed the matter surrounding the penalty be settled and emphasised OCH's financial difficulties. The letter is attached hereto and marked "ANNEXURE SF12". At the time of the business rescue proceedings, Glencore was in control of OCH.
55. According to the PPSA Report, after placing OCH under business rescue, the BRP developed a business rescue plan to ultimately sell OCH once it was no longer under financial distress.
56. The BRP concluded that the most viable option for rescuing the business is that another company acquire OCM. During this process Tegeta was identified as a potential purchaser.
57. Pursuant to Tegeta being identified as the purchaser of OCM, the BRP and Tegeta approached Eskom for its consent to the cession of the CSA between Eskom and OCH/G to a CSA between the anticipated OCM/T and Eskom. This would however, create the need for a new CSA between OCM/T and Eskom which would require a whole new tender process.
58. Tegeta agreed to supply Eskom's Arnot power station with the coal so obtained via the proposed purchase of OCM at a reduced rate. Eskom did not entertain such proposal or any alternative by OCH/G. This could possibly have alleviated the levied penalty and ultimately "rescued" OCH without having to sell its shares to Tegeta.

59. According to an email sent by Koko on 26 November 2015, a meeting was attended, on 24 November 2015, by all the relevant parties. The email and attachment (draft meeting minutes) is attached hereto and marked **“ANNEXURE SF13”**.
60. According to the minutes, Koko reiterated that Eskom would not support the acquisition of OCM, but will be willing to consider the acquisition of both OCM and OCH by Tegeta.
61. Furthermore, Koko insisted that Eskom will not waive the penalty claim as levied on OCH/G. Koko emphasised that Eskom expects OCH/G to honour the CSA until it lapsed in 2018 as OCH/G had allegedly breached the CSA (which gave rise to the penalty).
62. According to the PPSA Report, OCH/G continued to supply Eskom with coal (for the latter’s Hendrina power station) after it had been placed under business rescue. Eskom withheld payment for the coal delivered, notwithstanding OCH/G willingness to supply it at a reduced rate.
63. On or about 9 December 2015, Tegeta as the controlling entity of OCH, addressed a letter to Koko, attached hereto and marked **“ANNEXURE SF14”**. In the letter, Tegeta requested that confirmation be sent regarding *“payment for supply of coal amounting to R1,680,000,000 (Rand one billion six hundred and eighty million)”*.

64. The letter suggests that Koko was considering to “invest” in an asset which Eskom had previously deemed as not suitable for its power stations. Thus, it would seem that Koko was willing to effect payment to Tegeta for the supply of coal from the exact same resource for which OCH/G was penalised.
65. The letter also notes that a meeting was held between Tegeta and Koko. This means that Koko was aware of Tegeta's intentions to obtain OCH and subsequently supply Eskom with coal. It is important to note that Eskom had only declared a coal stockpile emergency on 23 December 2015, shortly after Tegeta took control of OCH.
66. In anticipation of the so-called stockpile emergency, Eskom issued Requests for Proposals (“RFPs”) for the procurement of coal to Arnot power station in August 2015. No successful bidders were identified.

G. FACTS SURROUNDING THE ACQUISITION OF OCH

67. As per the PPSA Report, Tegeta entered into a share purchasing agreement with the BRP (on behalf of OCH/G) for the amount of R2,15 billion, on or about 11 December 2015.
68. During this time, OCH/G owed approximately R2,948,479,663.00 to a loan Consortium of Banks. The latter consists collectively of Nedbank Ltd (“Nedbank”), Rand Merchant Ltd (“Rand Merchant Bank”) and Investec Ltd (“Investec”) and referred to as the “Consortium of Banks”. This debt consisted

of a revolving loan that was obtained in 2011, subject to security of the entire share capital of OCH.

69. Tegeta's purchase price for OCH totalled R 2,15 billion, whereas Glencore would initially pay approximately R400 million in respect of settling the debt owed by OCH/G to the Consortium of Banks.
70. On or about 4 March 2016, the Bank of Baroda issued a letter to First Rand Bank, confirming that Tegeta had sufficient funds to continue with the purchase. According to paragraph 5.329 on page 274 of the PPSA Report, this amount consists of deposits in at least 14 (FOURTEEN) different bank accounts.
71. On or about 14 April 2017, Tegeta paid the amount of R2,084,210,260.10 to settle its portion of debt owed to the Consortium of Banks. This was the amount outstanding (payable by Tegeta in terms of the purchasing agreement) in order to complete the transfer of OCH.
72. OCH/G was ultimately responsible for an amount of approximately R864,269,457.16, which covered the remainder of the debt owed.
73. The PPSA Report further stated that, R910,000,000.00 of the R2,084,210,260.10 paid by the Bank of Baroda on behalf of Tegeta in respect of the sale agreement, was allegedly funded by Eskom.
74. Between 29 January 2016 and 13 April 2016, Tegeta received a total of R1,161,953,248.41 in payments from Eskom. The most significant of these

payments, is the amount paid on 13 April 2016 in the amount of R659,558,079.38. The latter payment was made one day prior to the payment by the Bank of Baroda which settled the debt owed to the Consortium of Banks.

H. ESKOM'S INVOLVEMENT IN THE ACQUISITION OF OPTIMUM MINE

75. According to the PPSA Report, an offer was made by Tegeta to supply Eskom with additional coal for its Arnot power station on or about 8 April 2016. The source of this coal would be from OCM.
76. It should be noted, however, that at this stage Tegeta had not yet acquired ownership of OCH but was controlling OCH.
77. The proposed CSA was subject to the advancement of a prepayment of approximately R 600 million by Eskom. The prepayment would purportedly enable Tegeta to operationalise its plant and equipment.
78. Initially, Tegeta proposed a settling R 800 million of the debt owed to the Consortium of Banks. The latter rejected this offer and indicated that Tegeta settle the full amount owed as referred to in paragraph 68 above.
79. On or about 11 April 2016, the BRP informed the Consortium of Banks that Tegeta was short some R 600 million. It was proposed that payment of this amount be deferred or that a loan be granted for the same amount. The

Consortium of Banks rejected the proposal and reiterated that Tegeta settle the full amount. Full payment was effected on 14 April 2016.

80. On 13 April 2016, Eskom effected payment in the amount of R 659,558,079.38 into Tegeta's First National Bank ("FNB") account, with account number 62117356990, as per paragraph 5.338 of the PPSA Report.

81. This amount is within the proximity of Tegeta's shortfall. Upon receipt of this amount, Tegeta was placed in the financial position to be able to conclude the purchase.

82. As part of the share purchase agreement, Tegeta would be the controlling shareholder of OCH, ensuring sustainability of the business pending the finalisation of the business rescue proceedings. Thus, no procurement procedures were required as Tegeta merely substituted OCH in its CSA.

I. ESKOM'S WAIVER OF THE PENALTY CLAIM

83. Throughout OCH's business rescue proceedings, Eskom insisted that the penalty will not be waived.

84. During the course of June 2017, Afribusiness requested information in terms of the Promotion of Access to Information Act 2 of 2000 ("PAIA") from Eskom. In the request, Afribusiness sought information relating to the fine imposed by Eskom on OCH/G.

85. In their response to Afribusines, Eskom refused access citing mandatory refusal for the protection of confidential records. The BusinessDay article entitled: *"Eskom refuses request on information on Optimum"* is attached hereto and marked "ANNEXURE SF15".
86. On or about 19 July 2017, Eskom held a press briefing in which they clarified the payment surrounding the imposed penalty.
87. Eskom's interim Chairperson at the time, Zethembe Khoza (Khoza), told the briefing that: *"...on the Tegeta matter, the arbitration award, the final one was R577 million."*
88. It was alleged that Eskom's sampling equipment was faulty and that the penalty's calculation was inaccurate.
89. The penalty was significantly reduced, but only after Tegeta had acquired OCH. Khoza further stated in the briefing: *"The R2.1 billion was the full – let's say it is the full value of the claim. About R1.1 billion or so of that related to this, let's call it false positive element, which means it was about R1.1 billion that was left over. R577 million of that is around 50% of that value. The contract manager believed that, excluding the crusher issue, the claim would have been in the region of about R700 million, so if you take R700 million over the R600 million that's almost around 75-80% of the value of the claim, and that is the basis on which we believed that that was a reasonable amount for us to have settled with Tegeta."*

90. The levying of the penalty during July 2015 was the primary reason why OCH initiated business rescue proceedings.
91. It would seem, however, that such penalty was imposed by Koko to frustrate the CSA with OCH/G.
92. The penalty levied by Eskom, was instrumental as it held OCH/G at ransom and forced them into business rescue, only to be reduced at a later stage when ownership had changed.
93. Koko helped facilitate Tegeta's acquisition of OCM and/or OCH and played an active role in directing coal supply agreements towards Gupta owned companies (Tegeta).
94. It would further appear that Koko used his position as GE:T&C to remove a coal supplier and justify procurement for Tegeta for the exact same resource of coal.

J. LEGAL FRAMEWORK

i. The Companies Act, 2008 ("The Companies Act")

95. In terms of section 76(1)(b) of the Companies Act, a person is a director of a company if he or she is a member of a **committee of a board** of a company, or of the audit committee of a company, irrespective of whether or not the person is also a member of the company's board.

96. In terms of section 76(2)(a)(i), a director may not use his position to gain advantage either to him – or herself or a third party. Section 76(2)(b)(ii) stipulates that a director may not knowingly cause harm to a company of which he is a director.
97. In terms of section 76(3)(a) and (b) a director of a company must act in good faith and for a proper purpose and in the best interest of the company.
98. **In terms of section 214(1)(c), a director of a company is guilty of an offense if he was knowingly a party to an act or omission by a company calculated to defraud a creditor or employee of the company, or a holder of the company's securities, or with another fraudulent purpose.**

ii. Prevention of Corrupt Activities Act, 2004 (“PRECCA”)

99. Koko’s conduct, as detailed above, constitutes contraventions of the following sections of the Prevention and Combating of Corrupt Activities Act, 2004 (“PRECCA”).
100. In terms of section 3(a) of PRECCA, a person is guilty of corruption, if he or she accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person.

101. In terms of section 3(b), a person is guilty of corruption, if he or she gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, acting in an illegal and dishonest manner, abuses his or her position or aims to achieve an unlawful objective.
102. In terms of section 4(a), a public officer is guilty of corruption, if he or she directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person.
103. In terms of section 4(b), a public officer is guilty of corruption, if his or her conduct in relation to section 4(a), is illegal, dishonest or biased entails the abuse of his or her position or has the aims to achieve an unlawful objective.
104. In terms of section 34, a person holding a position of authority is guilty of corruption, if he or she fails to report an offense in terms of PRECCA of which he or she had known, reasonably had known or suspected to the relevant authorities

iii. Fraud

105. Fraud is the unlawful and intentional making of a misrepresentation which causes actual or potentially prejudicial to another.

K. CONCLUSION

106. The awarding of the CSA's and Tegeta's acquisition of OCH can thus reasonably be attributed to Koko's improper relationship with the Gupta family.
107. The fact that Eskom levied a penalty on OCH/G (prior to business rescue) for the supply of sub-standard coal reflects a bias toward Tegeta.
108. The so-called stockpile emergency was specifically engineered to secure CSA(s) for Tegeta. Considering Koko's improper relationship with the Gupta family, and his knowledge of OCH's situation, it is reasonable to accept that he was placed in a strategic position to the benefit of Tegeta.
109. Koko used his position as GE:T&C within Eskom to facilitate the awarding of CSA's to Tegeta. In terms of section 76(1)(b) of the Companies Act, Koko's position as GE:T&C qualifies as a director of Eskom.
110. By levying a penalty on OCH and later reducing such amount when Tegeta acquired OCH, Koko placed Tegeta in an advantageous position in order to secure a CSA. This is an abuse of Koko's position as Eskom's GE:T&C, which is in contravention of section 76(2)(b)(i) and (ii) of the Companies Act. Furthermore, this conduct is also a contravention of section 3(b) of PRECCA.
111. Were OCH never burdened with a penalty, they would have been in a financial position to continue with the implementation of the initial CSA. The levying of the penalty made this impossible. His affiliation with the Gupta family

emphasises Koko's bias towards them in the facilitated acquisition of OCH and the awarding of additional CSA's. This conduct is in contravention with section 4(a) and (b) of PRECCA.

112. Koko's strategic payment to Tegeta in order facilitate funds in respect of the purchase of OCH is in contravention of section 76(3)(a) and (b) of the Companies Act and section 4(a) and (b) of PRECCA.

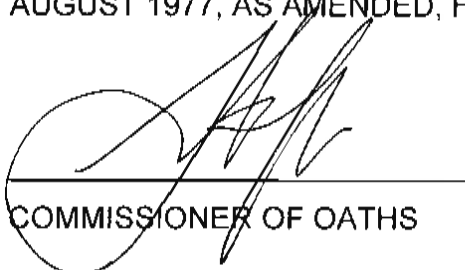
113. Therefore, based on the contents of this affidavit, I submit that the elements of criminal activities such as, but not limited to, fraud and corruption be thoroughly investigated by the South African Police Service and other relevant law enforcement authorities.

SIGNED AT **RANDBURG** ON THIS 2nd DAY OF **OCTOBER 2017**.



DEPONENT

I CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED THAT ~~SHE~~/HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT WHICH WAS SIGNED AND SWORN TO BEFORE ME AT **RANDBURG** ON THIS 2nd DAY OF **OCTOBER 2017**, THE REGULATIONS CONTAINED IN GOVERNMENT NOTICE NO. R1258 OF 21 July 1972, AS AMENDED, AND GOVERNMENT NOTICE NO. R1648 OF 19 AUGUST 1977, AS AMENDED, HAVING BEEN COMPLIED WITH.



COMMISSIONER OF OATHS

FULL NAME:

POSITION HELD:

BUSINESS ADDRESS:

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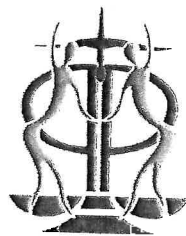
ANNEXURES

"SFI"

STATE OF CAPTURE

Report on an investigation into alleged improper and unethical conduct by the President and other state functionaries relating to alleged improper relationships and involvement of the Gupta family in the removal and appointment of Ministers and Directors of State-Owned Enterprises resulting in improper and possibly corrupt award of state contracts and benefits to the Gupta family's businesses

Report No: 6 of 2016/17



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VI. THE PROCUREMENT PROCESS FOR OPTIMUM COAL MINE – HENDRINA POWER STATION

The events leading up to the acquisition by Tegeta of the controlling shares of Optimum

41. *Eskom concluded a long term coal supply agreement ("CSA") with Optimum Coal Mine (Proprietary) Limited ("OCM") and Optimum Coal Holdings (Proprietary) Limited ("OCH") in 1993, which CSA expires on the 31 December 2018. For the duration of the CSA, Eskom and OCM/OCH (controlled by Glencore South Africa at that stage) have had a number of impasses regarding the coal supply from the Optimum Mine to Eskom's Hendrina Power Station. As a result of these impasses which include, inter alia, the failure to meet the coal quantity requirements of the power station, Eskom initiated arbitration proceedings against OCM and OCH for the accrued penalties, it was placed under voluntary business rescue. Despite various supply concerns with OCM during the business rescue process, OCM has continues to supply coal to the Hendrina Power Station based on the price determined in the CSA.*
42. *During any business rescue proceeding, such as the OCM business rescue, the business rescue practitioner is solely in charge of the operation of OCM and has an obligation to develop a business rescue plan to ultimately discharge the company from business rescue once it is no longer financially distressed. The business rescue practitioner through its own processes concluded, inter alia, that the best manner in rescuing the business would be for another company to acquire OCM. Through the business rescue process the Tegeta/OCM transaction came about.*



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43. Pursuant to Tegeta being identified as the purchaser of the issued shares of OCM, the business rescue practitioner and Tegeta approached Eskom for its consent to the cession of the coal supply agreement from OCH in terms of the commercial agreement concluded between Glencore, OCH, OCM and Tegeta. Eskom has imposed strict conditions for its consent to the cession of the coal supply agreement, one of which being the substitution of Tegeta as a party to the CSA and guarantees being put in place for Tegeta to comply with the coal quality parameters to Hendrina Power Station. The non-confidential report from the Competition Commission (provided to the Public Protector) provides more details of the Tegeta/OCM transaction.
44. The business rescue process of OCM has now been concluded. The supply of coal to the Hendrina Power Station is on the basis set-out in the coal supply agreement, with specific variations as recorded in correspondence exchanged between the parties to ensure OCM is able to meet the coal quality requirements.
45. It should be duly noted that Ms Nteta has expressed a high level answer on the question asked, however, she has limited knowledge on specific information as she was not the contract manager for the Hendrina Power Station.

VII. THE PROCUREMENT PROCESS FOR OPTIMUM COAL MINE - ARNOT POWER STATION

In respect of the supply of coal from the Optimum Mine and Tegeta to the Arnot Power Station, the following should be understood.



46. The supply of coal from the OCM through Tegeta (who in terms of the commercial transaction between the business rescue practitioner of OCM, Glencore and Tegeta would become the owner) to the Arnot Power Station was necessitated by the closure of the Arnot Coal mine. The closure of the Arnot Coal mine was as a result of the CSA with Exxaro coming to an end due to the effluxion of time (i.e. 31 December 2015).
47. For various commercially sound reasons, one of which being the astronomical cost at which Eskom bought coal from Exxaro (approximately R1132 per ton) and operational concerns with the running of the Arnot mine by Exxaro, Eskom elected not to continue with the coal supply from the Arnot coal mine. Any extension of such a coal supply agreement, despite bona fide efforts to do so in Eskom's view would not have been in the best interest of the public. Keeping this in mind, Eskom initiated a public procurement process for the supply of coal to the Arnot Power Station in August 2015. The coal quality requirements of the Arnot Power Station are higher than those of most of Eskom's power stations, which makes securing suppliers so much more difficult.
48. As will be gleaned from the documents provided to the Public Protector (in the Arnot Power Station RFP files), this RFP process only ended in August 2016. When considering the emergency supply by Eskom for the period 1 January 2016 to 30 September 2016 for the Arnot Power Station, regard must be had to the procurement process for coal which Eskom initiated in August 2015. Eskom also refers the Public Protector to the files labelled as Exxaro-Arnot, specifically the invoices reflecting the rand-per-ton for the cost of coal which Eskom paid to Exxaro until



31 December 2015. As at December 2015 Eskom paid to Exxaro. R1454.43 per ton.

49. By 1 January 2016 Eskom had to secure emergency coal supply from other mines such as OCM in order to ensure continued supply to the Arnot Power Station. OCM is one of a handful of mines in close proximity to the Arnot Power Station capable of supplying the coal quality specifications required by the power station. The only reason OCM had available capacity to supply Eskom on an emergency basis with the higher grade coal, was because its export mine had excess capacity due to the reduction of output prior to the business rescue process. The coal specification supplied to Hendrina Power Station is not suitable for the Arnot Power Station.
50. With reference to Eskom's procurement policy, we now explain the contracting process followed by Eskom to procure emergency coal from, inter alia, Tegeta for the Arnot Power Station from the Optimum Colliery.

The contracting process followed

51. The procurement process followed for the supply of coal for Amot Power from Tegeta was based on an emergency declared on 23 December 2015 on Arnot Power Station coal supply by the Primary Energy Technical Control Centre (PED TCC), to mitigate the risk of low coal stock levels." As discussed above. The contract between Eskom and Exxaro in respect of coal supply to Amot Power Station was due to come to an end on 31 December 2015. The security of supply of coal from January 2016 was thus at risk due to security threats against coal supplied by road transport to Amot Power Station and the risk of strike



action by the Amot Colliery employees, due to the closure of the Amot Colliery. Two suppliers, South 32 Holdings (Pty) Ltd and Tegeta Exploration and Resource (Pty) Ltd were contracted for the month of January to supply the power station.

52. **The Group Executive:** Generation requested an emergency plan to increase stock level and to increase the stockpile as soon as possible before 1 January 2016. The following important decisions and actions were noted at an emergency meeting held on 23 December 2015:

- 52.1. "The PED TCC declared the Amot Coal Supply Emergency with immediate effect;
- 52.2. The SM Integrated Planning and the Coal Supply Manager at Arnot were to determine what coal was in the system that can be moved to Arnot and that the Festive Period safety protocol should be observed;
- 52.3. The Acting GM Fuel Sourcing was requested to follow the emergency procedure to procure additional coal and to speed up the conclusion of contracts in the pipeline.
- 52.4. The Chief Executive and the Group Executive was to be requested to sign-off any deviations from the standard process should need arise;
- 52.5. The Acting GM Coal Operations and Chairperson PED TCC was to submit a request to reduce burn at Arnot;
- 52.6. Daily status update messages to be sent to the Group Executive; and
- 52.7. The PED SGM to engage Eskom Security DE for support on security intelligence."

53. The procurement of coal from Tegeta to address the emergency situation at Arnot Power Station was in accordance with the process for emergency coal in terms of SCM 32-1034. Pursuant to the emergency declared at the Arnot Power Station Tegeta submitted an offer to supply

coal to the Arnot Power Station. *Tegeta's offer (in line with the Eskom procedure) was received on 8 January 2016 in respect of coal from the Optimum Colliery. At that stage the OCM (in business rescue) the holder of the mining right for the Optimum Colliery was in the process of being acquired by Tegeta through the acquisition of the majority of the issued shares of OCH. On 14 January 2016 Tegeta and Eskom concluded a short term contract for the supply of 100 000 tons of coal for the Arnot Power Station as emergency supply.*

54. *During February 2016, there was a further need identified to increase the supply of coal for the 3 months to 30 April 2016. On 15 February 2016 Ms. Nteta prepared a briefing note to Mr. Vusi Mboweni: Senior General Manager: Primary Energy Division justifying the need to conclude a further coal supply agreement for the supply of 500 000 of coal to meet the needs of, inter alia, the Arnot Power Station.*
55. *On 16 February 2016 Tegeta and Eskom concluded a further agreement for the supply of 500 000 tons of coal for the period February to April 2016 as part of the emergency supply. As mentioned, this was due to the shortfall identified from the Coal Supply Plan and the delays in the RFP issued earlier. The process followed was as per the Medium Term Mandate 2008 and the SCM 32-188 read with SCM 32-1034.*
56. *The offer to supply coal for Amot Power Station was provided to Eskom by Tegeta Exploration and was thus explored. The process followed was in line with the relevant Eskom coal procurement policies and Mandate documents. During the period of contracting the supply in February 2016 for Amot Power Station, the current BEE certificate*



expired on the 09 February 2016. Tegeta subsequently provided a new BEE certificate.

57. The following divisions were involved in the procurement process:
- 57.1. Water and Environment Department - to provide water and environmental due diligence;
 - 57.2. Technical Services Department - to provide coal quality due diligence;
 - 57.3. Health and Safety Department - to provide health and safety due diligence;
 - 57.4. Coal Operations - to provide guidance on requirements on behalf of the power station and as contract management executors of the coal supply agreements.
58. Similarly in this case, compliance with the purchasing and contracting processes followed are best illustrated by the documents already provided to the Public Protector.

Reason for concluding coal supply agreement directly with Tegeta

59. There were a number of commercial factors which underpinned the conclusion of the short term agreement and the further coal supply agreements directly with Tegeta, as opposed to OCM –
- 59.1. Tegeta would be the controlling shareholding of OCM, pursuant to the transaction initiated by the business rescue practitioner with Tegeta to ensure OCM remains sustainable pursuant to its release from business rescue;
 - 59.2. As part of the sale of shares agreement with OCH by the business rescue practitioner, OCH had to be substituted by Tegeta to the coal supply agreement between OCM and Eskom.



60. *Tegeta became the controlling shareholder of OCM on 1 September 2016, when the business rescue practitioner discharged OCM from business rescue.*

The Arnot RFP process in parallel

61. *On 12 August 2015 Eskom issued a RFP under Enquiry Number: GEN 3264 to test the market for coal that meets the coal quality requirements for the Arnot Power Station. This process only concluded during August 2016 with the following outcome:*
- 61.1. *Nine bidders responded to the RFP, three bidders failed to comply with the mandatory gatekeeper requirements and were disqualified.*
- 61.2. *The six bidders that passed the mandatory gatekeeper requirements were evaluated on the following functional requirements in terms of the RFP: Environmental, Technical, and Health and Safety. The results of the evaluation was as follows –*
- 61.2.1. *Four bidders passed the 60% functionality threshold for immediate supply to Arnot or another power station;*
- 61.2.2. *One of the bidders passed the 60% functionality threshold for future supply.*
62. *In terms of the document titled "Submission to the Exco -Procurement: Sub-Committee on 28 July 2016" dated July 2016 a request is made for approval to conclude coal supply agreements for the supply and delivery of coal to Arnot Power Station or any other qualifying Eskom power station.*
63. *It was recommended that the Board Tender Committee concluded coal supply agreements with the four bidders who participated in the RFP. In*



addition to that due to the further requirement for coal for the Arnot Power Station, it was recommended that the agreement with Tegeta be extended for a further six months to ensure security of supply to the Arnot Power Station. As part of the approval for the conclusion of the Tegeta extension agreement it was resolved to submit a request to National Treasury.

64. *On 11 August 2016 Eskom approached National Treasury for a request to expand the Tegeta coal supply agreement due to the coal requirements of the Arnot Power Station.*
65. *On 22 August 2016 National Treasury replied to the request. amongst others, recording, "the reason provided for the extension is valid" but requires Eskom to follow a competitive bidding process for the procurement of coal from Tegeta and others listed in the reply. This will be a closed tender process due to the requirement to ensure continued supply to the Arnot Power Station.*
66. *We now deal with the advance payment, which essentially also entailed an extension of the coal supply agreement for a further five month period, pending the conclusion of the Arnot Power Station RFP process. As pointed out, the Arnot Power Station RFP process ran parallel to the emergency supply procedure.*

VIII. ADVANCE PAYMENTS

67. *The approval of advance payments is covered in SCM 32-1034 Rev 2 of 2014 that was directly applicable at the time of the approval of the advance payment to Tegeta In respect of the Arnot Power Station.*



68. SCM 32-1034 provides, *inter alia*, that whilst Eskom does not encourage the provision of advance payments, an advance payment may be an acceptable strategy for Eskom in certain circumstances. This may be considered in cases where the supplier will have to make a big capital outlay before starting with the contract. It further indicates that an advance payment will only be issued on condition that the supplier must provide an advance payment bond/guarantee and that the relevant contractual provisions relating to advance payments also need to be included in the contract.
69. **On 8 April 2016 Tegeta made an offer to supply additional coal for the Arnot Power Station from the Optimum Coal Mine over a period of five months.** This offer was made subject to a prepayment for the coal.-- The purpose of prepayment was to secure coal for Eskom, particularly of the high quality that was required by Arnot Power Station. To ensure Tegeta's ability to meet the production requirements for both Hendrina and Arnot in the short term, prepayment was requested. Tegeta indicated that the prepayment would enable them to operationalise plant and equipment that had been placed on 'care and maintenance' during the shutting of the export component of the mine.
70. On 11 April 2016 a submission prepared by Ms. Nteta for, *inter alia*, the approval to authorise the Chief Financial Officer to approve the basis for prepayments to secure the fixed coal price served before the BTC. One of the key assumptions noted in this submission was that the principle of prepayment for security of supply had been established by previous approvals. The BTC resolved, *inter alia*, that the CFO is authorised to approve the basis for prepayment to secure the fixed coal price, provided that:



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- 70.1. *there is a discount in the price;*
- 70.2. *the supplier offers a guarantee in favour of Eskom; and*
- 70.3. *the CFO provides assurance to the BTC that the transactions are economically viable for Eskom.*
71. *The agreement regarding coal supply and limited guarantee and cession and pledge in security between Eskom and Tegeta was concluded on 13 April 2016.*
72. *An assurance and forensic memorandum dated 14 September 2016 was prepared for the CFO detailing the review of the procurement process followed in awarding the contract relating to advance payments, particularly whether the advance payments were in line with the governance processes and contract terms and whether the recoveries were in terms of the contract.*
73. *The memorandum concludes that:*
- 73.1. *The appointment or extension of contracts of Tegeta and Urnsimbithi for the coal supply was in line with the procurement process.*
- 73.2. *The process followed by Eskom in effecting the advance payment was in compliance with existing governance processes (policies, procedures and processes).*
- 73.3. *The offered rand per gigajoule price to Tegeta compares favourably to the information obtained from the market.*
74. *In respect of the Public Protector's questions on the advance payment, the following should be noted -*
- 74.1. *Advance payments are provided for in terms of Eskom's procurement policy;*



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- 74.2. *Eskom followed a proper process in approving the advance payment;*
- 74.3. *The Chief Financial Officer of Eskom was authorized to approve the basis for the prepayment in accordance with the BTC resolution on 11 April 2016;*
- 74.4. *Eskom has secured the advance payment through the conclusion of security agreements (pledge, cession and assignment) to ensure such payment is recovered in the event of default by Tegeta.*
75. *The Public Protector is referred to the additional bundle enclosed hereto on further documents provided to National Treasury on 14 September 2016 dealing with the advance payment.*

Advance payments made in respect of fixed rate agreements and reasons

76. *The notion of advance payments to suppliers for the supply and delivery of coal to enable them to provide Eskom with the requisite quantities to enable it to meet its coal stocks is not a new phenomenon in Eskom procurement. A mandate to make advance payments to enable suppliers to undertake projects needed for processing, sampling, quality control and loading of coal was approved for the emergency procurement process in 2008 subject to the following conditions:*
- 76.1. *Advance payments to be recovered over contract period on a pro rata basis.*
- 76.2. *Co Gx to approve contingency spend.*
- 76.3. *Payment terms to be at least 20 days from invoice date.*
- 76.4. *Road Repairs to be capped at a maximum of R500m.*
- 76.5. *IT system to be quantified before approval is given.*
77. *Furthermore and as part of the Medium Term Mandate of 2008, the Treasury Department of Eskom prepared a financial review dated 18*



August 2008. The financial review considered the proposed advance payments to increase plant capacity and refurbish wash plants. The Treasury highlighted its concern regarding the significant advance payments being made to suppliers, even though there is a plan to recover these amounts during the contract period. It commented that adequate guarantees should be obtained from these suppliers to ensure that Eskom is not exposed to unnecessary risks. It was therefore understood that a guarantee is enough to mitigate any risk to Eskom.

Other Advance Payment fixed rate agreements

- 78. The following is a list of example where Eskom entered into advance payment agreements with its suppliers:*
- 78.1. Eskom concluded a coal processing contract with Isambane (Pty) Ltd with advance payment terms in respect of the approved emergency procurement process in 2008. Three loans were granted to Isambane. Isambane was required to conduct beneficiation and stockpiling services. The terms of the agreement was that Isambane would perform these services and eventually pay off the advance payments.*
- 78.2. An advance payment in the form of a loan was made to Liketh in 2008 to buy equipment to process coal from Kleinkopje Pit 5 West. The loan was recovered in 12 consecutive installments from 1 March 2008.*
- 78.3. Eskom has entered into loan agreements to assist Rand Mines for Capital expenditure. The first loan was payable over a period of 20 years until 31 December 2013. The second loan was in 1998, and it will*



be paid in full by December 2017. Eskom also assisted another Rand Mines operation with a loan for bridging finance. This loan is paid up.

RESPONSE TO THE LIST OF QUESTIONS FOR BRIAN MOLEFE AND ANOJ SINGH IN RE: INVESTIGATION INTO COMPLAINTS OF IMPROPER AND UNETHICAL CONDUCT BY THE PRESIDENT AND OFFICIALS OF STATE ORGANS DUE TO THEIR ALLEGED INAPPROPRIATE RELATIONSHIP WITH MEMBERS OF THE GUPTA FAMILY

5.283. I posed a number of questions to Mr Brian Molefe ("**Mr Molefe**") and Mr Anoj Singh ("**Mr Singh**"). The ensuing paragraphs will deal with their response, as is, to said questions:

Summary of their job roles and key responsibilities within Eskom SOC Limited ("Eskom") and Starting dates at Eskom and the committees they form part of, both at Exco and Board level, if applicable.

Messrs Molefe's Job Roles and Key Responsibilities

5. *Mr Molefe was seconded to Eskom on 20 April 2015 as an Acting Group Chief Executive. He was appointed as the Group Chief Executive ("GCE") on 25 September 2015.*
6. *Briefly, the purpose of the position of GCE is to ensure the operational effectiveness and long-term sustainability of the Eskom Group through the formulation, communication and implementation of the organisation's strategic objectives as set out in the Corporate Plan and approved by the Eskom Board of Directors annually.*
7. *This role has both a strong internal and external focus but the operational Group Executives and other Executives take accountability for day-to-day*



implementation of the strategy via delegated authority. The key performance areas include:

7.1. Provide Executive Leadership:

- 7.1.1. Ensure that the KPI's as set out in the Shareholder Compact are achieved;*
- 7.1.2. Through formal processes and personal leadership style, create an organisational culture which establishes and reflects the values of Eskom;*
- 7.1.3. Establish and apply succession and leadership appointment processes that ensure that the Executive teams in Eskom are staffed by high performance individuals;*
- 7.1.4. Through personal leadership behaviour, ensure that the Executive team functions effectively within a high performance team environment;*
- 7.1.5. Establish performance compacts with Executive leaders in the organisation, monitor performance and provide regular feedback in respect of progress;*
- 7.1.6. Ensure that effective Executive business plans and budgets are formulated and implemented;*
- 7.1.7. Ensure that effective personal development plans are formulated and implemented for all direct reports;*



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- 7.1.8. *Provide leadership in respect of stakeholder management, including shareholders;*
- 7.1.9. *Performance management of EXCO.*
- 7.2. *Formulate organisational strategy;*
- 7.2.1 *Analyse and interpret the global African and South African environment in which Eskom operates and identify key factors influencing the business now and in the future. These include:*
- 7.2.1.1 *Key drivers of the industry,*
- 7.2.1.2 *Global and local financial forces;*
- 7.2.1.3 *Global and local socio - political forces; and*
- 7.2.1.4 *Potential changes to the legislative framework.*
- 7.2.2 *Review and obtain Board approval for the vision, mission and values of the organisation to position it effectively within the current and future social, political and business environment in which it operates;*
- 7.2.3 *Determine the key financial and other measures to be adopted by the organisation for the short and medium term and approve targets for these in the current financial year;*
- 7.2.4 *Identify opportunities for new business development and growth and define the organisation's policy with regard to new initiatives from a "line of business", geographical location, research and development and other perspectives; and*



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- 7.2.5 *Communicate the strategic intent of the organisation to all stakeholders.*
- 7.3. *Stakeholder relations;*
- 7.3.1 *Establish and lead effective processes to engage with important stakeholders within the following stakeholder groupings;*
- 7.3.1.1 *Shareholders;*
- 7.3.1.2 *Various Government departments;*
- 7.3.1.3 *The Board of Eskom;*
- 7.3.1.4 *Customers;*
- 7.3.1.5 *Eskom employees;*
- 7.3.1.6 *The community which Eskom serves;*
- 7.3.1.7 *Suppliers; and*
- 7.3.1.8 *International politicians, business leaders and institutions such as industry players and credit rating agencies.*
- 7.3.2 *Engage with stakeholders on important issues (e.g. the role of Eskom, "green issues", electrification policy, regional development etc.) to influence them to support the strategic objectives of Eskom.*
- 7.3.3 *Create a global, regional and local presence amongst leaders of stakeholder groupings - e.g. politicians, business leaders etc. – to enhance business relationships.*
- 7.4. *Eskom Policy Approval;*
- 7.5. *Monitor operational effectiveness;*
- 7.6. *Resource management; and*
- 7.7. *Corporate governance.*



8. *Mr Molefe is a member of the Eskom Holdings Limited Board in the capacity as executive director. He is not a member of any of the Board committees within Eskom.*

Messrs Singh's Job Roles and Key Responsibilities

9. *Mr Singh was seconded to Eskom on 1 August 2015 as the Acting Chief Financial Officer. He was appointed as the Chief Financial Officer ("CFO") on 25 September 2015.*

10. *The position of CFO is responsible for:*

- 10.1 *The formulation of Eskom's financial strategies (including funding), policies and systems, for assuring adherence to these and for providing strategic financial services to the Eskom Group.*
- 10.2 *Reviewing all major capital investments in the Eskom Group.*
- 10.3 *Contributing to the achievement of Eskom Holding's strategy through participation on Eskom EXCO.*
- 10.4 *Member of the Eskom Holdings Limited Board; Chairman of Eskom Finance Company SOC Ltd (home loan company) and Escap SOC Limited (insurance captive) and shareholder representative and director of Eskom Enterprises SOC Limited.*

11. *Mr Singh is not a member of any of the Board committees within Eskom.*

12. *His key performance areas in the position of CFO include:*



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- 12.1 *Taking personal leadership and decision making in the Finance Group;*
 - 12.2 *Determine the vision and mission of the Finance Group and position it to contribute to the achievement of the Eskom vision and mission;*
 - 12.3 *Approve policies and standards regulating key aspects of those services for which the position is responsible;*
 - 12.4 *Ensure proper assurance processes are applied to monitor compliance with policies and standards;*
 - 12.5 *Establish annual, medium and long-term objectives, goals, policies and strategies for the Finance Group in alignment with Eskom's strategic intent and business model, obtains Eskom Board approval;*
 - 12.6 *Approving and presenting the Finance Group's operational annual business plans to the Board;*
 - 12.7 *Authorising all decisions as the delegated authority on behalf of the Finance Group;*
 - 12.8 *Accepting responsibility for driving the business to meeting compact targets set for Finance Group;*
 - 12.9 *Through formal processes and personal leadership ensure that sound corporate governance principles are adhered to throughout the Group;*
 - 12.10 *Provide advice in respect of the performance of the financial managers;*



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- 12.11 *Provide financial management leadership to all members of Eskom senior management team; and*
 - 12.12 *Manage the external audit process.*
 - 12.13 *Policy formulation and adherence:*
 - 12.13.1 *Scan the financial environment locally and globally to identify key financial issues and best practice;*
 - 12.13.2 *Following effective consultation with stakeholders, including Groups, formulate policies and institute effective assurance processes for all areas of Finance;*
 - 12.13.3 *Ensure all Eskom financial policies comply with legislation; and*
 - 12.13.4 *Ensure that policies are communicated to all relevant stakeholders.*
 - 12.14 *Treasury:*
 - 12.15 *Manage development and execution of the funding and hedging strategy.*
 - 12.16 *Growing Eskom's investor base locally and internationally.*
 - 12.17 *Managing relationships with key stakeholders e.g. Rating Agencies, National Treasury, South African Reserve Bank, Bond Investors and bankers.*
 - 12.18 *Financial planning and reporting:*



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- 12.18.1 *Approve Eskom financial planning and budgeting process and approve monthly management accounts;*
- 12.18.2 *Present Eskom financial plans for approval of Board;*
- 12.18.3 *Accept responsibility for the compilation and presentation of all Eskom annual and other financial reports including quarterly shareholder report) and statements for approval of Board;*
- 12.18.4 *Manage identification of financial information requirements and ensure that systems are installed and applied to provide financial information;*
- 12.18.5 *Approve the design of financial and administrative support systems and ensure effective implementation;*
- 12.18.6 *Identify key financial ratios and performance indicators for Eskom and monitor effectiveness;*
- 12.18.7 *Monitor performance of Eskom and Eskom Groups and functions against indicators and, where necessary, institute strategies to achieve performance targets.*
- 12.9 *Regulation;*
- 12.10 *Taxation;*
- 12.11 *Insurance;*
- 12.12 *Shared Services;*



12.13 *External leadership;*

12.14 *Managing key stakeholder relationships; and*

12.15 *Procurement.*

Explain the procurement process followed in the awarding of Coal Supply Agreements to Tegeta Exploration and Resources (Pty) Ltd ("Tegeta"), both for the Brakfontein Colliery and Optimum Coal Mines, in the case of the latter, to supply both Hendrina and Arnot Power Station

13. *As indicated above, Ms Nteta's response provided to the Public Protector on Monday, 26 September 2016 explains, in detail, Eskom's supply chain management policies and procedure in respect of the procurement of coal from suppliers by Eskom, specifically with reference to the following documents:*

12.1 *Eskom's Procurement and Supply Chain Management Procedure 32-1034 ("SCM 32-1034"); and*

12.2 *The Medium Term Coal Procurement Mandate of August 2008.*

14. *Messrs Molefe and Singh accordingly do not restate Eskom's procurement policies and framework for the procurement of coal in order to avoid unnecessary duplication and prolixity. In that regard we refer the Public Protector to the relevant sections V to VII of Ms Nteta's response. Those sections are to be read as if specifically incorporated herein.*



15. In amplification of Ms Nteta's response, we refer the Public Protector to Eskom's Delegation of Authority Framework: Part 1: Principles and Conditions Revision December 2012, ("DOA") read with the SCM 32-1034 which sets out the involvement of the GCE and CFO in the supply chain management process of Eskom. The table provides a summary of the delegation from the accounting authority (Board of Directors) to the executive management -

Category	Approves	Supports	Recommends	Maximum delegated contract/order value	Maximum delegated contract period
Strategy	Manager (M16-M18)		Buyer	>R1m<R5m	
	E or F-Band Manager	Manager (M16-M18)	Buyer	>R5m<R300m	
	EXCOPS	E or F-Band Manager	Manager (M16 - M18)	>R300m <R750m	
	BODTC	E or F-Band Manager	E or F- Band Manager	>750m	
Approval for the procurement / disposal of moveable assets, goods and/ or services	Manager (M16-M18) Dual adjudication			>R0<R1m	1 year
	Manager (E- or F-Band) Triple adjudication	Manager (M16-M18)		>R1m<R5m	2 years
	Site-based tender committees	Manager (M16-M18)	Buyer	>R1m<R50m	3 years
	Head Office based committees for corporate, operational and capital procurement	Manager (M16-M18)	Buyer	>R5m<R300m	5 years
	EXCOPS	E or F-Band Manager	Manager (M16-M18)	>R300m <R750m	10 years
	BODTC	E or F-Band Manager	Manager (M16-M18)	>750m	>10 years

16. When considering the table, please have specific regard to the extract from the DOA in respect of procurement which records that –



6. Procurement

- 6.1. *The commercial processes should be fair, equitable, transparent, competitive and cost effective. All authority set out herein can only be exercised after an appropriate procurement process has been executed by a Procurement Practitioner assigned by Group Commercial.*
- 6.2. *The Technology and Commercial Group is responsible for the procurement process and execution.*
- 6.3. *All Sole Source, Condonation, Ratification and Modifications exceeding 20% in terms of time/value must be approved by the appropriate Procurement Committees and reported to the Exco procurement committee if within the group/divisions. All Sole Source Transactions must be reviewed by the Supplier Development and Localisation department.*
- 6.4. *Proof that the expenditure is budgeted for or approved must accompany the recommendation for approval.*
- 6.5. *All procurement is subject to alignment within the Corporate Plan targets, or any procurement framework developed by the GE Technology and Commercial.*
- 6.6. *All disposals must be executed via an authorised representative of the Investment Recovery Department and all disposals of fixed assets must be reported to Exco and Board.*



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- 6.7. *With regard to appointment of consultants, the Internal Consulting department must be consulted prior to any appointment and ensure that empowerment and transformation is taken into account.*
- 6.8. *Regional or Site Tender Committee means a committee established for within a Group/Division by the CE/FD/GE/DE consisting of at least three members, collectively with technical, commercial and finance representatives/skill, to approve procurement for a site/BU (Site Committee) or across sites (Regional Committees) and must include a representative from the Commercial Department and take into account equity and transformation in its composition.*
- 6.9. *Corporate Opex or Capex Procurement Committee means a committee established at head office by the GE (Technology and Commercial) for procurement matters.*
- 6.10. *Title definitions:*
- a) *Procurement Practitioner: an employee within Eskom's Group Commercial Division appointed and accredited to manage or execute a procurement procedures or process.*
 - b) *Procurement Middle Manager (MPS Band): The Procurement Practitioner at an M/P/S band specifically responsible for managing the performance quality of procurement disposal function.*
 - c) *Procurement Executive Manager (E-Band): the Procurement Practitioner at an E band specifically accountable for managing the performance quality of the procurement /disposal function.*



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- d) *Commercial General Manager* An appointed executive manager with a direct reporting relationship to the GE technology & Commercial.
- e) *Disposal Officers* are Procurement Practitioners who by virtue of a written appointment are responsible for the disposal of moveable assets and goods.
- f) *Land & Rights Practitioners*: An Eskom employee appointed to execute transactions relating to the sourcing and securing of land and associated land/property rights.
- g) *Land & Rights development manager*: An Eskom employee appointed to manage transactions relating to the sourcing and securing of land and associated land/property rights.
- 6.11. *The Board IFC and BTC are authorised to delegate any higher authority to Exco or management in this regard.*
- 6.12. *Auditor fees must be approved by the Audit and Risk Committee subject to the approved budget.*
- 6.13. *For all transactions within Dual and Triple Adjudication:*
- a) *It must be reported to the Committee authorised to deal with that level of decision for oversight.*



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- b) *Transactions trends must be analyzed and investigated by Group Commercial Risk & Governance to identify and manage risks and compliance on below R5m transactions (including SD&L).*
- 6.14. *All transactions to procurement committees below the Exco subcommittee must be reported to the next level committee for oversight.*
- 6.15. *Project Sourcing and Commodity Sourcing Procurement Strategies must be submitted to the relevant committees as whole for the project and not the individual packages.*
- 6.16. *Procurement strategies for capital expenditure should be presented to relevant committees before ERA (after DRA) approval to ensure proactive inputs by the relevant committees before the final investment decision.*
- 6.17. *All procurement decisions must be reported to the next level committee for information.*
17. *The involvement of Messrs Molefe and Singh is accordingly limited to the extent required by the DOA read with SCM 32-1034.*

The role played by both Messrs Molefe and Singh in the procurement and subsequent awarding of the above contracts

18. *In respect of the involvement of Messrs Molefe and Singh in the procurement of coal from Tegeta for the Majuba Power Station, Hendrina Power Station and the Arnot Power Station the following is recorded:*



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- 18.1 *Mr Molefe and Mr Singh were not employed by Eskom at the time Eskom and Tegeta negotiated and concluded a coal supply agreement in respect of the Brakfontein resource.*
- 18.2 *Similarly, Optimum Coal Mine ("OCM") and its predecessors, has supplied Eskom with coal to the Hendrina Power Station for a major part of the life of the power station and in terms of a coal supply agreement concluded on 4 January 1993 (with other agreements dating back to the 1970s).*
- 18.3 *Shortly after his secondment to Eskom as its Acting GCE, Mr Molefe and his executive team, was involved in the decision to terminate settlement discussions with OCM relating to the proposed renegotiation of the Hendrina Power Station coal supply agreement. The proposed renegotiation of the Hendrina coal supply agreement culminated in a number of commercially substantial differences which included the price and the penalty regime between Eskom and OCM and which process was initiated in terms of a co-operation agreement concluded in May 2014. The proposal received from OCM, however, would to a great extent have impacted negatively on Eskom and as a result Mr Molefe decided not to entertain any further discussions thereon.*
- 18.4 *Mr Molefe and his executive team was involved in discussions with the business rescue practitioners ("BRP") of OCM to ensure security of supply to the Hendrina Power Station during the business rescue process, pursuant to the BRP stopping supply to the Hendrina Power Station in August 2015. During this process, Mr Molefe and his executive team remained adamant that the price of coal should remain R150 per ton, despite a request by the BRP to increase the cost of coal to more than R 530 per ton during the interim arrangement which had been initiated as part of the business rescue process.*

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- 18.5 *Mr Molefe and his executive team were approached with proposals for the purchase of OCM by a number of entities, Eskom referred these entities to the BRPs of OCM.*
- 18.6 *Mr Molefe and his executive team were engaged by the BRP on proposals made to Eskom on the option to ensure the sustainability of OCM, including initiating Eskom's own assessment of the economic viability of OCM to supply coal to Eskom without contribution from the export mine.*
- 18.7 *Mr Molefe was briefed on the following:*
- 18.7.1 *The Tegeta proposal that the BRP had received as more fully set-out in the report by the Competition Commission.*
- 18.7.2 *The requirements in terms of the sale of shares agreement between the BRP and Tegeta for Eskom's consent to the cession and assignment of the coal supply agreement from Optimum Coal Holdings (Proprietary) Limited ("OCH") to Tegeta Detail on the process is provided for in the Competition Commission Report.*
- 18.7.3 *The decision not to exercise its option to extend the coal supply agreement with Exxaro was based on the adverse impact that, inter alia, the price of coal from the Arnot Colliery would have on Eskom.*
- 18.7.4 *The emergency supply from suppliers such as Tegeta and South 32 Holdings (Pty) Ltd (South 32), was to ensure security of supply to the Arnot Power Station, pending the finalisation of the Arnot RFP issued in August 2015. The supply of coal to the Arnot Power Station was exacerbated by the decision of Eskom not to extend the Exxaro coal*



supply agreement for various commercially sound reasons which includes, inter alia, price, quality, performance, volumes and chronic under-delivery.

18.7.5 *The request received for the prepayment of coal by Tegeta and the resolution by the Board Tender Committee ("BTC") to approve the prepayment.*

19. *Mr Singh, on the other hand, was authorized by the BTC to approve the basis for prepayment to secure the fixed coal price, as more fully detailed below.*

20. *Messrs Molefe and Singh's involvement and participation in the procurement of coal was limited to what is required in terms of the delegation of authority from the accounting authority in accordance with their respective roles and responsibilities.*

Was the process followed in line with the relevant Eskom procurement policies and if so, which policy and what relevant sections

21. *The procurement processes followed was in line with the relevant applicable Eskom procurement policies, as outlined in Ms Nteta's response.*

If there were any deviations, what necessitated such deviations and how were they managed.

22. *The procurement of coal from Tegeta and South 32, to address the emergency at Arnot Power Station, was in accordance with the process for emergency coal procurement in terms of SCM 32-1034. Ms Nteta has dealt with this in more detail in her response.*

Did Tegeta comply with all the applicable legal and Eskom internal requirements for securing a Coal Supply Agreement?

23. *At the time of the conclusion of the coal supply agreement with Tegeta in relation to its Brakfontein resource, all contractual documentation, information and approvals had been provided. Ms Nteta has dealt with this in more detail in her response.*

If not, which requirements were not met and how were these managed.

24. *N/A*

How was the pricing determined on the above contracts and how does it compare to other sources, if such a comparison could be made?

25. *The pricing is determined based on the comparative analysis and the general pricing principles for coal based on the market value.*

26. *Reference is made to the comparative analyses of the pricing provided in Ms Nteta's response in section IX.*

Explain the circumstances for the prepayment to Tegeta and the role played by both Messrs Molefe and Singh in the approval of such a prepayment.

27. *Mr Molefe had no role during the pre-payment, save for being briefed on the rationale for the prepayment.*

28. *In terms of the BTC resolution, Mr Singh was to provide assurance that the transaction was economically viable for Eskom. Mr. Singh, in providing the*



required assurance to the BTC took the following commercial and financial considerations into account when considering the viability of the prepayment:

- 28.1 The coal purchased was budgeted for and in line with the Corporate Plan;*
- 28.2 Liquidity risk was mitigated by available cash on hand of R18bn on 13 April 2016 and the future liquidity risk was assessed in terms of the available cash flow forecasts and associated funding plans. A prepayment of R568 million could also be considered immaterial when compared to a cash balance of R 18 billion;*
- 28.3 Based on information provided the price of coal was bench-marked and found to be commercially acceptable;*
- 28.4 A 3.5% discount was negotiated with Tegeta for early payment of 6 months which translates into a 7% annual discount;*
- 28.5 A 4% negative cost of carry benefit accrued to Eskom due to the surplus cash on hand;*
- 28.6 Additionally, the next best option to acquiring coal would be to burn diesel to ensure no load shedding in winter. This option would have been the most expensive option as the cost of production of coal is R277/MWh and the cost of diesel is R2245/MWh;*
- 28.7 A further consideration was the record of decision issued by NERSA on Eskom's 2013/2014 Revenue claw back application in which the Regulator completely disallowed costs of diesel used to generate electricity as a cost recoverable from the consumer. Consequently, the use of diesel had to be the last option;*



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- 28.8 Adequate and appropriate security had been provided by Tegeta in the form of a limited guarantee and pledge of the issued shares of Tegeta;
- 28.9 This was accepted after careful consideration of the net asset value of Tegeta as contained in their latest approved annual financial statements and a review of their latest management accounts;
- 28.10 Additional security was derived from the underlying contracts from the coal supply of Tegeta with Eskom – e.g. Brakfontein contract over 10 years approximately R4 billion.

Has Eskom ever made a similar prepayment in respect of a fixed rate agreement and if so, kindly provide us with evidence of same and reasons for such a prepayment.

29. The following is a list of examples where Eskom entered into advance payment agreements with its suppliers:

- 29.1 Eskom concluded a coal processing contract with Isambane (Pty) Ltd with advance payment terms in respect of the approved emergency procurement process in 2008. Three loans were granted to Isambane. Isambane was required to conduct beneficiation and stockpiling services. The terms of the agreement were that Isambane would perform these services and eventually pay off the advance payments.
- 29.2 An advance payment in the form of a loan was made to Liketh in 2008 to buy equipment to process coal from Kleinkopje Pit 5 West. The loan was recovered in 12 consecutive installments from 1 March 2008.



29.3 *Eskom has entered into loan agreements to assist Rand Mines for Capital expenditure. The first loan was payable over a period of 20 years until 31 December 2013. The second loan was in 1998, and it will be paid in full by December 2017. Eskom also assisted another Rand Mines operation with a loan for bridging finance. This loan is paid up.*

29.4 *For the financial period ending 31 March 2016, Eskom made pre-payments totaling R6, 470,215,392 (six billion four hundred and seventy million two hundred and fifteen thousand three hundred and ninety-two) A detailed analysis of this figure is attached as "A" It is also reflected in Eskom's Annual Financial Statements Note 18.*

Who approved the prepayment and when?

30. *The BTC approved the prepayment on 11 April 2016 as per the minutes of the meeting and resolution attached.*

What was Eskom's cash flow position prior to making the prepayment and how did it affect the cash flow position afterwards?

31. *The following statement regarding Eskom's cash position related to the prepayment that was made on 13 April 2016.*

"Eskom's cash position was not adversely impacted as funds for the prepayment was funded from the R18bn Cash & cash equivalents. For the remainder of April 2016 the Cash & cash equivalents were approximately R18bn. As at 31 August 2016 Eskom had liquid assets of R38bn (including Cash & cash equivalents of R29.9bn)."



What role did both Messrs Molefe and Singh play in the approval of the sale of Optimum Coal Holdings assets to Tegeta?

32. *Messrs Molefe and Singh played no role in the approval of the OCM sale to Tegeta. OCM is a separate and independent company. The BRP of OCM concluded a sale of shares and claims agreement with Tegeta.*
33. *Eskom's involvement in the sale of shares and claims by Tegeta from the BRP of OCM was limited to the approval of the cession and assignment of the coal supply agreement from OCH to Tegeta. We refer the Public Protector to the Non-Confidential Report by the Competition Commission dated 9 February 2016, which depicts Eskom's involvement in the process. For convenience, we also enclose a set of the documents relating to the consent sought from Eskom.*

Provide a background into media reported penalty of R2bn levied against Optimum Coal Mines?

34. *On 16 July 2015 Eskom issued a letter of demand to OCH and OCM for the payment of the amount of R 2, 176 530 611.99 (Two billion one hundred and seventy-six million six hundred and eleven rand and ninety-nine cents) to Eskom for its failure to supply and deliver to the Hendrina Power Station coal which complied with the coal quality specification contemplated by the coal supply agreement.*
35. *Despite demand by Eskom, OCH and OCM failed to make payment to Eskom. Eskom then proceeded to issue a summons (including the referral to arbitration) claiming the accrued penalty amount. The pertinent provisions of the claim read as follows –*



"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.

35.1.1.1 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 six hundred and eleven rand and ninety nine cents)."

36. On 4 August 2015 OCM and OCH were placed under business rescue. In terms of the Companies Act, 71 of 2008 the legal proceedings against OCM was stayed pending the finalisation of the business rescue proceedings. The BRP discharged OCM from business rescue on 31 August 2016.

37. Eskom has reinstated the arbitration proceedings against OCM for the recovery of the accrued penalties. For convenience we enclose a set of the documents relating to the claim.

What is the current status of the penalties, are they still applicable?

38. During the business rescue process, an interim arrangement was entered into with the BRP in terms of which Eskom relaxed certain quality parameters and



further suspended the imposition of penalties to the extent that the coal qualities do not materially deviate from the quality specification. In that regard the power station and OCM had to continue on a daily/weekly/monthly basis to comply with all sampling and contractual requirements as required by the CSA, including to provide OCM with the required notices for non-compliance.

39. *However, since OCM has been discharged from business rescue on 31 August 2016, the interim arrangement has come to an end and the CSA is reinstated. Therefore, in relation to penalties levied for the failure to comply with the coal qualities Messrs Molefe and Singh confirm that they are applicable. For ease of reference we enclose a set of documents relating to the interim arrangement.*

What were the reasons Exxaro's contract to supply the Arnot Power Station was not renewed?

40. *Eskom elected not to continue with the coal supply from the Arnot coal mine for various commercially sound reasons, one of which being the astronomical cost at which Eskom bought coal from Exxaro (approximately R1132 per ton) and operational concerns with the running of the Arnot mine by Exxaro. Any extension of such a coal supply agreement, despite bona fide efforts to do so in Eskom's view would not have been in the best interest of the public. The Public Protector is referred to the files labelled as Exxaro-Arnot, specifically the invoices reflecting the rand-per-ton for the cost of coal which Eskom paid to Exxaro until 31 December 2015. As at December 2015 Eskom paid to Exxaro, R1454.43 per ton.*

What are the payment terms for Tegeta In terms of the delivered product and how do they compare to the other suppliers?



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41. In terms of the interim arrangement with OCM concluded during business rescue (September 2015) the payment terms for the coal to Hendrina Power Station was changed to 7 days after invoice from OCM in order to ensure OCM is sustainable.
42. The 7-day payment terms was a prerequisite by the BRP to Tegeta for the supply of coal to the Arnot Power Station from the Optimum Colliery.
43. As OCM was discharged from business rescue on 31 August 2016, the Coal Supply Agreement, including its payment terms has been reinstated. Accordingly, the 7-day payment terms are no longer applied. The payment terms are in terms of the Coal Supply Agreement which is as follows:
- 43.1 Arnot Power Station: 30 days;
- 43.2 Hendrina Power Station: 15 days.
44. The payment terms for Majuba is 30 days"

Preliminary Response By The Eskom Board To The Allegations And Statements Made In The Section 7(9) Notice Of The Public Protector Dated 4 October 2016 Which Purports To Implicate The Eskom Board And Certain Board Members In Relation To The Investigation By The Public Protector On Alleged Improper And Unethical Conduct By The President And Officials Of State Organs Such As Eskom Due To Their Alleged Inappropriate Relationship With Members Of The Gupta Family

- 5.284. I received the above mentioned response in relation to a notice in terms of section 7(9) which was served on the Board of Eskom.
- 5.285. The Eskom Board expressed concern with regards to the timeframes which were given to them in order to formulate a response on behalf of all Board members.



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- 5.286. The response further sets out the applicable legal framework governing the Eskom Board which included:
- a) The PFMA;
 - b) The Companies Act;
 - c) The King Code of Corporate Governance (King III);
 - d) Eskom Conflict of Interest Policy;
 - e) The Eskom Declaration of Interest Policy; and
 - f) The Eskom Code of Ethics: "The Way" Policy.
- 5.287. As mentioned above, this report will not deal with contracts awarded to Tegeta via the Brakfontein mines.
- 5.288. The Eskom Board stated *inter alia* the following with regards to the approval of contracts to OCM and Tegeta to supply coal to the Hendrima power station and Arnot power station and how the conflicts of interest were mitigated:
- a) The decision taken to purchase OCM by Tegeta was a BRP process and Eskom had no influence in this regard. Eskom was not part of this process other than to agree to the cession of the CSA to Tegeta.
 - b) OCM declared hardship in terms of the CSA and wanted a revised price of coal at a rate of R442/ton. A coal quality dispute existed between Eskom and OCM to the value of R2 billion. Eskom refused to accept the price and demanded settlement in terms of the penalty. This led to OCM being placed



into business rescue. According to Eskom during this process Ms D Naidoo recused herself declaring a potential conflict of interest as her husband is an advisor to the Minister of Mineral Resources. According to Eskom, Ms Carrim did not need to declare her alleged association with Mr Essa as the Eskom policy only deals with lineage conflict of interest. Furthermore, Eskom is of the view that Ms Carrim did not breach any obligations and that her alleged non-disclosure is not material.

- c) The Board Tender Committee members who made the decisions regarding OCM are Mr Z Khosa, Ms C Mabude, Ms N Carrim and Ms D Naidoo. Mr Pamensky is not part of the Board Tender Committee and had no access to information relating to this transaction.
- d) Arnot contract awarded post 1 January 2016-In order to ensure supply demands were met, a state of emergency was declared at Arnot in December 2015. Pursuant to the business rescue practitioners introduced Tegeta to Eskom as a potential buyers of OCM. Pursuant to this introduction and Tegeta's access OCM's reserves, Tegeta approached Eskom with additional volumes. This approval was made by the Senior General Manager: Primary Energy-Mr Vusi Mboweni.
- e) Arnot contract awarded February 2016- Umsimbithi experienced a strike which resulted in a potential shortage in coal supply. In terms of the 2008 mandate Eskom concluded a contract with Tegeta for the supply of 500 000 Tons to mitigate the potential shortage in supply. This approval was made on 16 February 2016 by the Senior General Manager: Primary Energy-Mr Vusi Mboweni.
- f) Tegeta prepayment April 2016- Tegeta was contracted to supply 1.2 million tons of coal to Eskom. There have been numerous other prepayments made since 2008 ranging between R100 million to R400 million. Cost plus mines



have upfront investments of capital. An internal audit verification revealed that the prepayment was fully recovered from Tegeta by 31 August 2016. The Board Tender Committee members who approved the prepayment to Tegeta are Mr Z Khosa, Ms C Mabude, Ms N Carrim and Ms D Naidoo. It is further stated that Ms Naidoo's non-recusal was no longer applicable as the potential conflict identified had been resolved by way of her husband no longer being an advisor to the Minister of Mineral Resource as at end of March 2016. As mentioned above, Eskom's views Ms Carrim's alleged conflict of interest to not be in breach of any policies and thus Ms Carrim did not breach any obligations. Eskom goes on to state "*In any event Ms Carrim is but only one member of the remaining 4 members. Consequently, Ms Carrim's alleged non-disclosure is deemed not material.*"

5.289. Eskom further states that:

- g) The conflicts with regards to Mr Ngubane is not applicable as he did not preside over any transactions relating to Tegeta.
- h) Mr Pamensky was not part of the Board Tender Committee and thus, could not have influenced any decision in respect of Tegeta.
- i) Ms D Naidoo recused herself on 10 February 2016 from decision making processes. On 7 March 2016, the Chairman invited comments from other committee members and it was concluded that there was no potential or perceived conflict of interest. Ms D Naidoo's non-recusal during the approval of the prepayment on 11 and 13 April 2016 was justified as the conflict previously identified was no longer applicable.
- j) Ms Cassim was not a member of the Board Tender Committee and thus, her alleged conflict is of no consequence.



- k) Mr Molefe is not a member of any of the subcommittees of the Board and cannot influence Board decisions.

Analysis of Tegeta Invoices and Eskom Supplier Payment Control forms

5.290. A review of Eskom Supplier Payment Control forms submitted for Tegeta was performed. I concentrated specifically on payment forms relating to Arnot power station. It should be noted that Eskom has reserved their right to supplement the information supplied to my office and as such the information presented below represents what I received from Eskom.

5.291. The table below reflects the information received from Eskom relating to amounts paid to the Arnot Power station:

No	Power Station	Invoice Date	Payment Date	Amount (Incl. Vat)	Credit Note issued
1	Arnot	10/05/2016	17/05/2016	8,168,679.42	37,212,985.60
2	Arnot	13/05/2016	20/05/2016	39,073.14	Not applicable
3	Arnot	17/05/2016	24/05/2016	6,440,299.79	28,896,871.36
4	Arnot	24/05/2016	31/05/2016	8,509,582.34	38,850,278.98
5	Arnot	31/05/2016	07/06/2016	8,656,984.79	39,139,058.53
6	Arnot	31/05/2016	14/06/2016	2,510,445.24	11,389,131.66
7	Arnot	07/06/2016	14/06/2016	7,205,398.72	32,468,934.62
8	Arnot	08/06/2016	14/06/2016	8,084.65	36,550.47
9	Arnot	10/06/2016	14/06/2016	413,017.12	3,121.04
10	Arnot	15/06/2016	21/06/2016	9,081,596.76	39,177,423.81
11	Arnot	21/06/2016	28/06/2016	7,679,348.30	32,435,262.03
12	Arnot	28/06/2016	05/07/2016	9,064,902.02	38,722,973.54
13	Arnot	30/06/2016	12/07/2016	6,034,847.58	25,839,039.28
14	Arnot	07/07/2016	12/07/2016	3,837,899.76	16,235,196.60
15	Arnot	12/07/2016	19/07/2016	9,907,738.03	43,519,181.44
16	Arnot	12/07/2016	19/07/2016	11,261,824.86	48,998,895.48
17	Arnot	26/07/2016	02/08/2016	11,398,665.37	48,935,795.62
Total				110,218,387.89	444,647,714.46

5.292. An analysis of the Invoices issued to Eskom by Tegeta over the same period revealed the following:



- a) The above mentioned amounts which were paid by Eskom to Tegeta for Arnot power station was for the haulage of coal.
- b) Coal was charged at a rate of 19.69/GJ which represented the 3.5% discount which Tegeta has allegedly given to Eskom.
- c) An analysis of the invoices submitted for the coal supplied to Arnot power station for the period May 2016 to July 2016 revealed that the average price paid for coal per ton was approximately R577 exclusive of VAT.
- d) An analysis of the average price paid for the haulage of coal for the period May 2016 to July 2016 was R105 per ton of coal delivered.
- e) Therefore, the average price paid for coal from Tegeta for the Arnot power station was approximately R682 per ton of coal exclusive of VAT.

**Important note*

- f) The discount given is somewhat misleading, both Eskom and Tegeta were aware that Tegeta was sourcing coal from OCM at the rate of 18.68/GJ. Therefore, Tegeta was not actually giving any material discount as they were still charging Eskom 19.69/GJ.

Consultations with relevant individuals

Loan Consortium

- 5.293. The Loan Consortium consisted of Rand Merchant Bank, a division of First Rand Bank Limited ("**RMB**"), Investec Limited ("**Investec**") and Nedbank Limited



("Nedbank"). During a meeting with the Loan Consortium, the following was stated:

- a) A secured loan to the sum of R2.5 billion was provided to OCH. In terms of the loan agreement, the Loan Consortium would hold all assets of OCH as security for the loan.
- b) Once in business rescue, the Loan Consortium was a secured creditor and thus consultations needed to be held with them throughout the business rescue process.
- c) During the initial months of the business rescue, only OCM was considered to be sold.
- d) On or about 26th November 2016, the Loan Consortium was approached by the BRP's in which it was mentioned that Oakbay/Tegeta wished to purchase all of the shares held by OCH. The initial offer from Oakbay/Tegeta was approximately R 800 million. The Loan Consortium rejected this offer.
- e) During the first meeting between the Loan Consortium and Oakbay/Tegeta, The Loan Consortium made it clear that they required full payment of the loan amount. Oakbay/Tegeta gave options whereby a portion of the amount would be lent to them or if the Loan Consortium would consider a reduced amount to be paid as full and final settlement. This offer was also rejected by the Loan Consortium.
- f) On the 8th of December 2015 a second meeting was held with Oakbay/Tegeta, some of the individuals present during this meeting was Mr Ajay Gupta, Mr Nazeem Howa, and Ms Ronica Ragavan as well as the Loan Consortium.



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- g) Oakbay/Tegeta, reiterated that they did not think they could settle the full amount. They wished to borrow a portion of the funds from the Loan Consortium. It was implied by Mr Ajay Gupta, during said meeting with the Loan Consortium, that they would find that Oakbay/Tegeta is the only party who would be capable of purchasing this entity as well as obtaining the necessary approvals from (Approvals from Department of Mineral Resource and Eskom). The Loan Consortium still maintained that they require settlement to the full amount of the loan.
- h) On 10 December 2015 the BRP's returned to the Loan Consortium and stated that Oakbay/Tegeta had agreed to pay R2.15 billion and Glencore would pay the remaining amount for the loan.
- i) A number of conditions needed to be met in order for the sale to proceed. The following conditions were required:
- a) Section 11 approval in terms of the MRPDA was required;
 - b) Funds certainty letter from a Bank (This was a guarantee from a financial institution that the funds are available);
 - c) Competition Commission approval; and
 - d) Oakbay/Tegeta was required to provide PCF.
- j) On 12 February 2016, at a meeting with Tegeta, a funds certainty letter was shown from the Bank of Baroda.
- k) On 4 March 2016 an official letter was given by the Bank of Baroda and this served as the funds certainty for the purchase of all shares in OCH.
- l) On 30 March 2016, Eskom signed the release agreement for OCH.



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- m) On 8th April 2016, the business rescue plan was approved by the Loan Consortium.
- n) **On 11th April 2016**, a meeting was held between the Loan Consortium and the BRP's. At the meeting the BRP's informed the Loan Consortium that Tegeta informed them on the same day that they were short R600 million. The BRP's stated that they were informed that offshore funds were no longer coming in for Tegeta and thus they were short R600 million. It was requested that the Loan Consortium either defer or loan the balance of R600 million. They also offered to cede their receivables from Arnot power station for a period of 3 months and 15 days. The Loan Consortium rejected all these offers and wanting their loan paid in full.
- o) On 14th April 2016, the Loan Consortium received the full amount of the loan which was owed to them (This means that both Tegeta and Glencore satisfied their full monetary obligations in terms of this agreement).

Meeting with the BRP's

5.294. At a meeting between the BRP's the following was stated:

- a) They were appointed as the BRP's of OCH and OCM on 4 August 2015.
- b) OCM, as per the CSA, is contracted to supply 5 million tons of coal per annum to the Hendrina Power Station.
- c) At the time of the business rescue, OCM was losing approximately R120 million a month. Eskom refused to renegotiate the Hendrina CSA.
- d) Received significant calls from parties for the purchase of OCM. During the early stages of business rescue, only OCM was considered to be sold.



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- e) They informed all parties interested in the purchase that they needed consent from Eskom.
 - f) Tegeta emerged as the only company willing to purchase OCM.
 - g) At a meeting as Eskom, Eskom stated that OCM cannot just be sold on its own and that you need to look at OCH as a whole (This means all shares held by OCH which includes Koorfontein Mine and Optimum Coal Terminal).
 - h) Thus, the sale of all shares held by OCH needed to be considered.
 - i) An agreement was signed with Tegeta for the sale of all shares held by OCH. One of the requirements for the sale to go through was that Eskom would provide a release of the guarantee held against OCH.
 - j) Tegeta needed to pay R2.15 billion and Glencore would pay R400 million.
 - k) Tegeta as of 1 January 2016 assumed all shortfalls from OCM from a cash perspective.
 - l) In January 2016, an agreement was signed with Tegeta for the supply of coal to Arno power station. OCM delivered coal to Arno power station.
 - m) **On 11 April 2016**, Tegeta asked for a concession of R600 million in terms of the purchase price of all shares in OCH. The BRP's approached the Loan Consortium and they declined to accept a reduced amount for the loan.
 - n) BRP's only found out about the pre-payment made to Tegeta after viewing interviews on Carte Blanche.



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- o) A submission was made in terms of section 34 of PRECCA to the Directorate for Priority Crime Investigations ("**DPCI**").

Consultations with Glencore

5.295. At a meeting with Glencore, the following was stated:

- a) Glencore bought over OCH in 2011 and the deal was finalised in 2012.
- b) OCH has a long standing 20 year CSA with Eskom for the supply of coal to the Hendrina power station.
- c) Due to numerous disputes between, Eskom and OCH, a co-operation agreement was entered into in 2014 whereby no party would enter into legal proceedings against the other.
- d) During this co-operation period, negotiations were entered into with Eskom which culminated in a Draft Addendum to the CSA around March 2015. This new agreement would see Eskom receive coal at cost price until 2018.
- e) They were informed by Eskom that the Draft Addendum was approved by the procurement committee and Board Tender committee.
- f) In April 2015, Mr Molefe declined to approve the Addendum. Mr Molefe said that Eskom could not afford the new agreement.
- g) OCM was losing approximately R100 million per month.
- h) Around mid-July 2015, Eskom levied the penalty of R2.1 billion.



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- i) Directors of OCM and OCH evaluated the companies position and placed both OCH and OCM in business rescue.
 - j) Beginning of July 2016, we received an approach to purchase OCM, from KPMG who was acting on behalf of a client who wished to remain anonymous.
 - k) Glencore thereafter spoke to KPMG and they confirmed that their company is Oakbay.
 - l) Oakbay contacted Glencore around August 2016 with regards to the purchasing of OCM. Glencore informed OCM that they were not ready to sell.
 - m) In September 2015, after proposals with regards to a new CSA were rejected by Eskom, we decided to sell OCM.
 - n) Pembani wanted to buy OCM, had an exclusivity deal. They tried to negotiate with Eskom but failed to reach agreement.
 - o) Pembani withdrew from negotiations to purchase OCM around end of September to Mid-October.
 - p) We thereafter proceeded to provide detailed information to Oakbay with regards to purchasing OCM.
 - q) At this point Glencore was only interested in selling OCM.
 - r) A term sheet was negotiated for the sale of OCM to Tegeta.
 - s) The most important term of the agreement was that Eskom needs to consent to the sale.

-
- t) A meeting was held in November between Glencore, the BRP's, Eskom and Oakbay. Eskom informed all parties present at this meeting that they would not consent to the sale of OCM alone. Eskom stated that the business needs to be kept together as that is the only way to keep Eskom's guarantee in place.
 - u) After the meeting with Eskom, negotiations proceeded with the sale of all shares in OCH to Tegeta.
 - v) Towards the end of November, a stale mate was reached with regards to the value of all the shares in OCH. Tegeta had an offer of R1 billion rejected.
 - w) At the end of November Glencore took the decision to keep OCM.
 - x) However, Tegeta returned with an improved offer in December and an agreement was reached for Tegeta to pay R2.15 billion and Glencore would pay R 400 million.
 - y) The deal was signed on 11 December 2015.
 - z) OCM thereafter contracted with Tegeta to supply coal for selling to Eskom.
 - aa) First contract signed in January for the supply of 100 000 tons of coal.
 - bb) Second contract was entered into Tegeta for the supply of 400 00 tons of coal.
 - cc) The haulage rate per ton was approximately R60. OCM paid for the trucking cost and Tegeta would pay OCM.



dd) **11 April 2016**- Tegeta approached Glencore and said they were R 600 million short. Glencore said they could not help. The BRP's were also contacted by Tegeta and the BRP's requested a meeting with the Loan Consortium. The Loan Consortium demanded full payment of the loan.

Sale of shares in OCH to Tegeta

Parties to the transaction

- 5.296. Financial transactions, legal contracts, public records and other relevant information has identified numerous persons and/or entities that were partisan or played an indirect role to the acquisition under scrutiny. The background to these parties are as follows:
- 5.297. Tegeta entered into an agreement to purchase all the shares held by OCH on 10 December 2015 for the amount of R 2.15 billion. At the time, OCH owed R 2,948,479,663.00 to a loan consortium of banks (the "Loan Consortium") as a settlement amount in order to release the surety held by the Loan Consortium, over the amount owed. Werksmans Incorporated ("Werksmans") was elected to act as the Escrow Agent to receive and facilitate the payment to the Loan Consortium. The complete ownership structure of Tegeta has been discussed in detail above.
- 5.298. OCH had been supplying coal to Eskom since 1993 and owns 100% of OCM, Koorfontein Mines, Optimum Coal Terminal, Optimum Vlakfontein Mining and Exploration, Optimum Overvaal Mining and Exploration, Optimum Mpefu Mining and Exploration and 51% of Optimum Neke! Mining and Exploration. OCH experienced accumulated and continuous financial losses in its operations due to various reasons including the low contract rates with ESKOM, a decline in



international coal prices, increased labour / operational costs and the weakened exchange rate.

- 5.299. In 2011, OCH obtained a revolving loan facility from Rand Merchant Bank ("RMB") and Investec for capital and operating expenses. Nedbank joined the Loan Consortium in 2014, providing additional financing. The total revolving loan facility granted was R 2.95 billion. The Loan Consortium granted the facility on condition that surety was supplied in the form of the entire share capital OCH and its subsidiaries, all movable and immovable assets, mining and exploration rights. The surety was held in a special purpose vehicle called Optrix Security Company (Pty) Ltd ("Optrix").
- 5.300. In 2015, Eskom levied a penalty of R 2,176,530,611.59 against OCH for contractual non-performance in terms of the coal supply agreement with Eskom. The combination of the penalty and continuous financial losses in operations resulted in OCH filing for Business Rescue ("BR") in July 2015 and was officially placed under BR on 04 August 2015. Piers Marsden of Matuson and Associates and Petrus Van Der Steen of V-Squared Business Rescue Services (Pty) Ltd were appointed as the Business Rescue Practitioners ("BRP").
- 5.301. The ownership structure of OCH is comprised as follows:
- a) Glencore- 38.8%;
 - b) Employee Trust-9.93%;
 - c) Community Trust-9.3%;
 - d) Partners (Warrior Coal, Kwini Mining Investments, Micsan Investments, Monkoe Coal Investments, Mobu Resources) - 41.32% combined; and
 - e) Unknown party-0.02%
- 5.302. Eskom, as mentioned above, Eskom is listed as a Schedule 2 entity (Major Public Entity) of the PFMA

5.303. Centaur Mining South Africa (Pty) Ltd ("Centaur") is registered in South Africa and is a subsidiary of Centaur Holdings Ltd which is registered in the UAE. In 2016, Centaur signed a \$100,000,000.00 (R1,500,000,000.00) revolving credit deal with an anonymous UAE-based family to expand its mining and natural resources projects in South Africa. Centaur also purchased the De Roodepoort coal mines in Mpumalanga during 2016. Centaur is one of the entities which contributed to the purchase price of OCH. The directors of Centaur are:

- a) Aakash Garg Jahajgarhia (Indian citizen), married to the daughter of Anil Kumar Gupta;
- b) Simon James Hoyle (UK citizen);
- c) Daniel James Mcgowan (UAE resident); and
- d) David Barnett Silver (South African).

5.304. Trillian Capital Partners (Pty) Ltd (2015/111759/07) ("Trillian Capital") is a diversified financial services and advisory firm with expertise in the fields of finance, management consulting, asset management, securities, engineering and property. Trillian Capital has various subsidiaries and has two major shareholders, namely Trillian Holdings (Pty) Ltd (2015/168302/07) with 60% shareholding and Zara W (Pty) Ltd (2011/104773/07) with 25% shareholding. The remaining 15% is held by employees and other smaller shareholders. Trillian Capital is one of the entities which contributed to the purchase price of OCH. The directors of Trillian Capital are:

- a) Jeffrey Irvine AFRIAT;
- b) Tebogo LEBALLO; and
- c) Eric Anthony Wood.

5.305. The director of Trillian Holdings (Pty) Ltd is: Mr Essa.

5.306. The director of Zara W (Pty) Ltd is Eric Anthony Wood.



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- 5.307. Regiments Capital (Pty) Ltd ("Regiments") (2004/023761/07) is one of the entities which contributed to the purchase price of OCH. The directors of Regiments are:
- a) Lithia Mveliso Nyhonyha (ID 5903155902083);
 - b) Magandheran Pillay (ID 6604025118087); and
 - c) Eric Anthony Wood (ID 6305225020087) is also one of the directors of TCP.
- 5.308. Albatime, as mentioned above Mr Moodley is the sole director of this entity and is a special advisor to the Minister of Mineral Resources. Mr Moodley is married to an Eskom board member Ms Viroshini Naidoo. Ms Viroshini Naidoo, in her declaration of interests to Eskom dated 19 February 2016 and 31 May 2016, lists herself as an employee of Albatime. Albatime contributed to the purchase price of OCH.
- 5.309. The Bank of Baroda is an Indian state-owned banking and financial services company headquartered in Vadodara (earlier known as Baroda) in Gujarat, India. It is the second largest bank in India, next to State Bank of India. Its headquarters is in Vadodara, it has a corporate office in the Bandra Kurla Complex in Mumbai. Bank of Baroda is one of the Big Four banks of India, along with ICICI Bank, State Bank of India and Punjab National Bank. The Bank of Baroda has a presence in South Africa with branches in Gauteng and KwaZulu Natal, offering customers a range of deposit plans a variety of transfer options and a global network.
- 5.310. The Loan Consortium consists collectively of Nedbank Limited, Rand Merchant Bank Limited and Investec Limited which provided a revolving loan facility to OCH to the accumulated value of R 2,948,479,663.00.
- 5.311. Werksmans Incorporated acted as the Escrow Agent to receive repayment of the revolving loan facility and authors of the 'Sale of Shares and Claims Agreement between OCH and Tegeta and Glencore and Oakbay.



- 5.312. The Business Rescue Practitioners consisted of two individuals. Piers Michael Marsden (ID 7703055168084), a senior business rescue practitioner ("BRP") employed by Matuson & Associates (Pty) Ltd (2009/008967/07). Petrus Francois van den Steen (ID 6811075024087), a senior BRP employed by V-Squared Rescue Services (Pty) Ltd (2010/011731/07).
- 5.313. Minister of Mineral Resources Mosebenzi Zwane
- 5.314. The Optimum Mine Rehabilitation Fund Trust and The Koornfontein Rehabilitation Fund. These funds are established under the National Environmental Management Act 107 of 1998 ("**NEMA**").
- 5.315. Minister of Public Enterprises Lynnette Brown (ID 6109260229086). Appointed on 25 May 2014.
- 5.316. In summary the individuals and/or entities which had an direct or indirect role in this transaction is as follows:

Name of Individual/Entity	Direct or Indirect role in acquisition of OCH
Tegeta	Purchased all shares held by OCH.
OCH	Sold all its shares to Tegeta.
Eskom	Consented to the sale, released OCH from all its guarantees and liabilities.
Centaur	Contributed to the purchase price of OCH.
Trillian Capital	Contributed to the purchase price of OCH.
Regiments	Contributed to the purchase price of OCH.
Albatime	Contributed to the purchase price of OCH. This entity also has a direct relation to an Eskom board member, Ms Viroshini Naidoo.
The Bank of Baroda	Transferred final purchase price to the Werksmans Escrow account on behalf of Tegeta, provided letter of comfort to the Loan Consortium to give assurance that the funds are available for the sale to proceed.
The Loan Consortium	Provided a revolving loan facility to OCH to the accumulated value of R 2,948,479,663.00. The Loan Consortium were secured creditors once OCH and OCM entered Business Rescue.
Werksmans Incorporated	Acted as the Escrow Agent to receive repayment of the revolving loan facility
The Business Rescue Practitioners	Negotiated the sale of all shares held by OCH. As The



	Business Rescue Practitioners they were essentially in charge of OCH and OCM.
Minister of Mineral Resources Mosebenzi Zwane	Approval for the sale needed to be given by the Department of Mineral Resource. Minister Zwane also assisted with the negotiations of the sale with Tegeta.
The Optimum Mine Rehabilitation Fund Trust and The Koorfontein Rehabilitation Fund	Rehabilitation Trusts are required to be set up for every mine and are for the benefit of the communities.
Minister of Public Enterprises Lynnette Brown	Minister Brown appointed the Eskom board who consented to various transactions.

Bank of Baroda Facilitating Payments for purchase of OCH

- 5.317. There have been numerous speculations about how Tegeta raised R2.15 billion to effect payment for OCH. Oakbay spokesperson Yolanda Zondo stated "that speculation that ESKOM's prepayment for the Arnot contract had facilitated the funding of the purchase of Optimum was unfounded" and further stated that "*The funding was in place from December 2015*".
- 5.318. According to Mr Nazim Howa ("Mr Howa") in the media, the funding of the acquisition constituted own cash, structured debt and funding. Mr Howa refused to disclose the details of the bank that assisted it to fund the deal claiming that if they did, the bank and Tegeta would be prejudiced due to other banks closing certain Oakbay accounts due to risks arising in money laundering and organised crime laws.
- 5.319. Mr Howa's statements created the impression that Tegeta's accounts were closed. However, account holder information confirms that at the time of the Tegeta deal, Tegeta held accounts with Nedbank and First National Bank. The accounts were active and were used for transaction purposes.



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- 5.320. In December 2015 the Loan consortium requested Tegeta to provide proof of funding to consider its offer. Despite, at the time, having an existing established banking relationship with two of the biggest banks in SA, Tegeta decided to use the Bank of Baroda as its partner to execute the payment required to purchase OCH.
- 5.321. On 04 March 2016 the Bank of Baroda issued an untitled letter to FirstRand Bank limited setting out that Tegeta was its client and that it would affect payment of R2.15 billion on certain conditions including obtaining by 30 March 2016.
- 5.322. All approvals and consents under the Mining and Petroleum Resources Act Number 28 of 2002 required for share transfer, including but not limited to a Section 11 approval.
- 5.323. This requirement read with consent requirements for lending or borrowing in section 11(3) of the Mining and Petroleum Resources Act Number 28 of 2002 implied, that the Bank of Baroda was holding the right or interest in the mine as security to grant a loan for the purposes of funding of financing the acquisition.
- 5.324. However, financial analysis confirms that the Bank of Baroda did not grant a loan to the value of R2.15 billion to Tegeta to purchase OCH. Tegeta raised the funds to pay the Loan Consortium from various sources. All funds were deposited via at least thirty-two (32) Electronic Funds Transfers ("EFTs") between 09 December 2015 and 14 April 2016 into the Bank of Baroda. The Bank of Baroda then effected payment on behalf of Tegeta on 14 April 2016 into the Escrow Account held by Werksmans Incorporated.
- 5.325. The conduct of the Bank of Baroda appears highly suspicious in light of the wording of their letter and their tacit agreement for Tegeta to receive more than R2.15 billion into its account in at least thirty-two (32) EFTs over four (4) months



without raising suspicion or concern on the part of the bank. Accordingly, it is safe to say that the frequency and amounts deposited should have attracted attention and an investigation by other financial institutions anti-money laundering departments due to money laundering risks based on the Financial Intelligence Centre's ("FIC's") guidance note concerning the reporting of suspicious and unusual financial transactions.

Funding of the Purchase

- 5.326. In South Africa, the Bank of Baroda operates as a branch of a foreign bank. The operations of the Bank of Baroda in South Africa are regulated and guided by the 'Conditions for the conducting of the business of a bank by a foreign institution by means of a branch in the Republic'.
- 5.327. In order to conduct the business of a bank, the Bank of Baroda utilises Nedbank's banking platform and infrastructure to offer banking services to its clients. The Bank of Baroda uses a portfolio of domestic treasury accounts, business accounts and investment accounts all held in the name of the Bank of Baroda to execute its operations.
- 5.328. To give effect to its undertaking in the letter to make payments on behalf of Tegeta in the purchasing of OCH, the Bank of Baroda utilised at least fourteen (14) of its own accounts to structure the management of their service and effect final payment.
- 5.329. **The fourteen (14) accounts identified are:**

Bank	Type of Account	Account Number	Account Holder
Nedbank	Business Account	1454095326	Bank of Baroda
Nedbank	Domestic Treasury	037881044497/346	Bank of Baroda
Nedbank	Domestic Treasury	037881044497/347	Bank of Baroda
Nedbank	Domestic Treasury	037881044497/348	Bank of Baroda
Nedbank	Domestic Treasury	037881044497/349	Bank of Baroda



Nedbank	Domestic Treasury	037881044497/350	Bank of Baroda
Nedbank	Domestic Treasury	037881044497/351	Bank of Baroda
Nedbank	Domestic Treasury	037881044497/352	Bank of Baroda
Nedbank	Domestic Treasury	037881044497/353	Bank of Baroda
Nedbank	Domestic Treasury	037881044497/354	Bank of Baroda
Nedbank	Domestic Treasury	037881044497/355	Bank of Baroda
Nedbank	Domestic Treasury	037881044497/356	Bank of Baroda
Nedbank	Domestic Treasury	037881044497/357	Bank of Baroda
Nedbank	Domestic Treasury	037881044497/358	Bank of Baroda

- 5.330. Business account number 145409532654 was used as the primary account to receive all deposit from various individuals and entities. Analysis suggests that monies were then moved from the business account to and between different Domestic Treasury accounts with favourable interest rates for investment purposes.

Use of the Business Account

- 5.331. The Bank of Baroda Business account with account number 1454095326 is the main deposit receiving account for the Bank of Baroda used by all clients to make deposits. All deposits made in favour of Tegeta to raise the purchase price were initially paid into this account.
- 5.332. Between 11 December 2015 and 14 April 2016, this account received thirty-two (32) deposits amounting to R 2,478,639,309.00 for the benefit of Tegeta. These deposits are set out in a timeline chart below.
- 5.333. The deposits into the business account originated from the following individuals and entities:

Depositor	Total Amount	% Contributed
Aerohaven Trading	R 19,200,000.00	0.77
AK Gupta	R 24,900,000.00	1.0
Albatime Pty Ltd	R 10,000,000.00	0.4
Annex Distribution	R 22,000,000.00	0.89
Bank of Baroda (DBN branch)	R 95,000,000.00	3.83

Centaur Mining	R 885,300,000.00	35.72
Confident Concepts	R 6,546,000.00	0.26
Islandsite Investments	R 28,500,000.00	1.15
Oakbay Investments	R 142,600,000.00	5.75
Regiments Capital	R 40,000,000.00	1.61
Shiva Uranium Ltd	R 120,000.00	0.00
Technova Packaging	R 10,000,000.00	0.4
Tegeta E & R	R 910,000,000.00	36.71
Tegeta E & R Resources	R 29,250,000.00	1.18
Trillian Advisory	R 95,639,309.00	3.86
Trillian Asset Management	R 74,784,000.00	3.02
Trillian Capital Partners	R 65,000,000.00	2.62
Westdown Investments	R 19,800,000.00	0.80
Total	R 2,478,639,309.00	100.00

- 5.334. On 14 April 2016, R 2,084,210,260.10 was transferred from the business account to Werksmans to settle the Tegeta portion payable to the Loan Consortium. This payment resulted in the Loan Consortium releasing all securities held to enable transfer of ownership to take place. Detailed analysis of the business account revealed that portions of the capital deposited as mentioned above were invested. These investments are detailed below.

Use of the Domestic Treasury Accounts

- 5.335. Between 09 December 2015 and 05 April 2016 at least R 1,390,000,000.00 was invested in and between the Domestic Treasury accounts.
- 5.336. Between 22 December 2015 and 12 April 2016, all Domestic Treasury accounts made transfers of the amounts they held for investment to the Domestic Treasury account 037881044497/353.
- 5.337. Between 13 and 14 April 2016, Domestic Treasury account 037881044497/353 paid R 1,080,000,000.00 to the business account.

Payments from Eskom to Tegeta



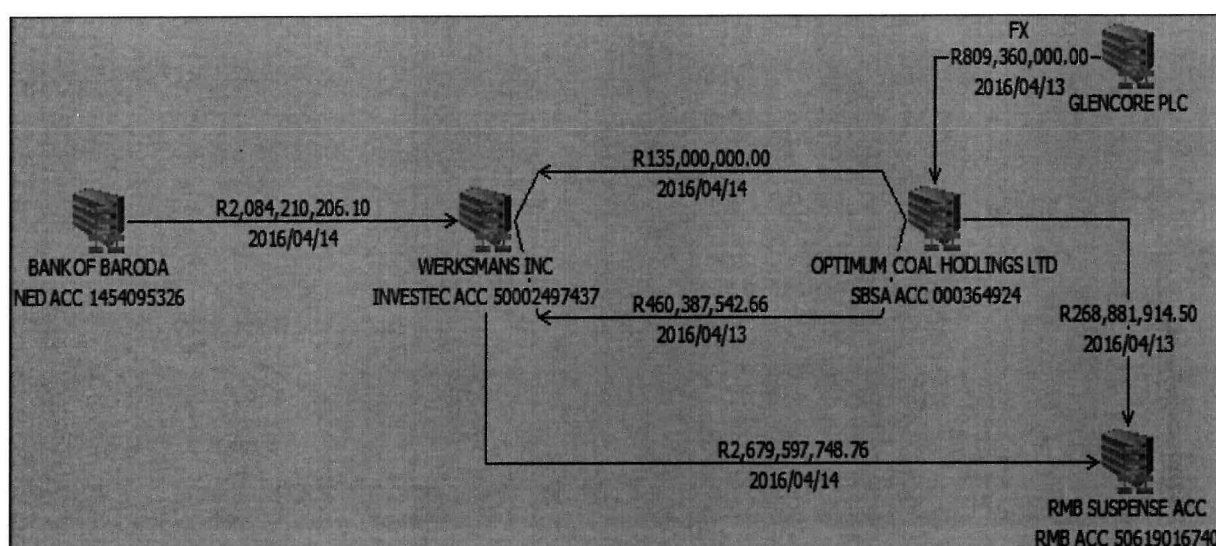
5.338. For the period 29 January 2016 to 13 April 2016, Eskom paid to Tegeta and amount of R 1,161,953,248.41. An additional R 47,424,919.16 was paid on 26 April 2016. The table on the following page sets out the transactions:

Date	From Account	Account Holder	To Account	Beneficiary	Amount
2016-01-29	FNB 54300028048	ESKOM HOLDINGS	FNB 62117356990	TEGETA	R 46,040,272.71
2016-02-28	SBSA 202616126	ESKOM HOLDINGS	FNB 62117356990	TEGETA	R 111,708,410.93
2016-03-18	FNB 54300028048	ESKOM HOLDINGS	FNB 62117356990	TEGETA	R 102,163,583.58
2016-03-22	FNB 54300028048	ESKOM HOLDINGS	FNB 62117356990	TEGETA	R 44,149,391.80
2016-03-29	FNB 54300028048	ESKOM HOLDINGS	FNB 62117356990	TEGETA	R 50,798,159.28
2016-03-31	FNB 54300028048	ESKOM HOLDINGS	FNB 62117356990	TEGETA	R 38,488,667.57
2016-04-05	FNB 54300028048	ESKOM HOLDINGS	FNB 62117356990	TEGETA	R 25,456,448.91
2016-04-12	FNB 54300028048	ESKOM HOLDINGS	FNB 62117356990	TEGETA	R 14,936,452.47
2016-04-13	FNB 54300028048	ESKOM HOLDINGS	FNB 62117356990	TEGETA	R 68,653,781.78
2016-04-13	FNB 54300028048	ESKOM HOLDINGS	FNB 62117356990	TEGETA	R 659,558,079.38
Sub Total					R 1,161,953,248.41
2016-04-26	FNB 54300028048	ESKOM HOLDINGS	FNB 62117356990	TEGETA	R 47,424,919.16
Total					R 1,209,378,167.57

5.339. Of the R 1,161,953,248.41 paid by Eskom, at least R 910,000,000.00 was diverted by Tegeta to fund forty-two percent (42%) of the purchase price (R2.15 billion) to acquire OCH. All payments with the exception of the payment made on 26 April 2016, were made prior to 14 April 2016, the date on which Tegeta settled their portion of the purchase price.

Payments to the Loan Consortium

- 5.340. The total amount owed to the Loan Consortium was R 2,948,479,663.26. This amount was settled as follows: The Bank of Baroda paid R 2,084,210,206.10 and R 864,269,457.1660 was received from Glencore and OCH.
- 5.341. The afore-mentioned transactions including how the total Glencore/OCH payment was structured is illustrated in detail below:



Tegeta assumes control over Mining Rehabilitation Funds

- 5.342. As part of the agreement with Glencore for the acquisition of OCH, Tegeta acquired control over the Optimum Mine Rehabilitation Fund Trust and the Koorfontein Rehabilitation Fund. The value of the Optimum Mine Rehabilitation Fund Trust on 21 June 2016 was R 1,469,916,933.63 and the Koorfontein Rehabilitation Fund on 23 May 2016 was R 280,000,000.00. The total value of the Optimum Mine Rehabilitation Fund of R 1,461,265,534.24 was transferred on 21 June 2016 to the Bank of Baroda. The Koorfontein Rehabilitation Fund value was transferred to the Bank of Baroda on 23 May 2016. It is calculated that the combined value of the interest earned off of these funds at 7% is approximately R 122,500,000.00 per annum.

"SF2"

From: The Oberoi, Dubai <reservations.todb@oberoihotels.com>
Sent on: Sunday, January 3, 2016 3:52:52 PM
To: ashu@sahara.co.za
CC: Sarah.Benhaouem@oberoihotels.com
Subject: Reservation Confirmation at The Oberoi, Dubai / Matshela Koko / 467415
Attachments: Untitled attachment 00401.jpg (8.27 KB), Untitled attachment 00404.jpg (1.1 KB), Untitled attachment 00407.jpg (95.16 KB), Untitled attachment 00410.jpg (1.1 KB), Untitled attachment 00413.jpg (1.1 KB), Untitled attachment 00416.jpg (18.92 KB), Untitled attachment 00419.gif (1.08 KB), Untitled attachment 00422.jpg (11.75 KB), Untitled attachment 00425.jpg (22.25 KB), Untitled attachment 00428.jpg (16.22 KB), Untitled attachment 00431.jpg (15.41 KB), Untitled attachment 00434.jpg (7.42 KB), Untitled attachment 00437.jpg (2.06 KB), Untitled attachment 00440.jpg (2.13 KB), Untitled attachment 00443.jpg (2 KB), Untitled attachment 00446.jpg (2.1 KB)

Reservation Confirmation - The Oberoi, Dubai

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IMG [cid:7e2fcdd9-acc4-4b6b-843b-e2fcc31c1f5d]

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IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]IMG

[cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]

Dear Mr. Koko,

Thank you for choosing The Oberoi, Dubai.

We are pleased to confirm your reservation and look forward to welcoming you to The Oberoi, Dubai.

Yours sincerely,

REYA POMAR

Room Reservations

IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]

IMG [cid:1fd1bf3f-169b-4ff3-8054-702cc816c2e0]

IMG [cid:1fd1bf3f-169b-4ff3-8054-702cc816c2e0]

Guest Name: Mr. Matshela Koko

Confirmation No.: 467415

Arrival Date: Monday, 04 Jan. 2016

Arrival Details: EK399 at 05:55 hrs

Transfer: Hotel car chargeable

Departure Date: Tuesday, 05 Jan. 2016

Transfer: Please advise

IMG [cid:1fd1bf3f-169b-4ff3-8054-702cc816c2e0]

MAP & DIRECTIONS

IMG [cid:1fd1bf3f-169b-4ff3-8054-702cc816c2e0]

IMG [cid:1fd1bf3f-169b-4ff3-8054-702ee816c2e0]

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[cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]

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[IMG \[cid:c9b42de4-1ea1-4241-a009-007b9a8d50ed\]](https://www.oberoihotels.com/oberoiadvantage-programme/) [https://www.oberoihotels.com/oberoiadvantage-programme/]

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IMG [cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]

IMG [cid:706baf17-04b0-40cc-902c-5056c7a21cba]ENHANCE YOUR EXPERIENCE AT THE OBEROI, DUBAI

IMG [cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]

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[cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]

Our team is here to help you plan your stay - from making dinner reservations to creating once in a lifetime experiences.

If you have any requests or if you are celebrating a special occasion, please let us know in advance. Your butler and our concierge team will also be happy to help at any time during your stay.

We can assist our valued guests with Meet & Greet service upon arrival to Dubai International Airport (Terminal 1 & Terminal 3). Should the service be requested 72 hours prior notice of exact flight details are required and remains subject to availability.

IMG [cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]IMG [cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]IMG

[cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]IMG [cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]IMG

[cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]IMG [cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]IMG

[cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]IMG [cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]

IMG [cid:713cc1a5-6ca3-40bb-9b3e-b7d46056ef54]

A WORLD OF FLAVOURS

Executive Chef Vishal Khulbe invites you to experience our three restaurants: Ananta, our signature Indian restaurant, Umai, our contemporary Asian restaurant and Nine7One, offering world cuisine and our legendary Friday Tapas Brunch. An extensive in-room dining menu is available 24 hours a day.

[CLICK HERE](#) for more information.

IMG [cid:f8f4e6aa-1dd3-4f41-9656-785f0d8c97fb]

THE OBEROI SPA

Treat yourself to luxurious rejuvenation and relaxation in the serenely appointed spa, open from 09:00 in the morning to 12:00 midnight. Energise yourself at the gymnasium, open 24 hours a day. The outdoor infinity swimming pool is open from sunrise to sunset. Complimentary Yoga sessions are available for resident guests every evening at 18:00 hrs. [CLICK HERE](#)

IMG [cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]IMG [cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]IMG

[cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]IMG [cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]IMG

[cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]IMG [cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]IMG

[cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]IMG [cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]

IMG [cid:fffbbb77-90db-46e9-a453-565c56c89b08]

ARRIVE IN STYLE

We would be pleased to arrange Meet & Greet services at arrival. Please email

[mailto:reservations.todb@oberoihotels.com?Subject=Meet & Gre...] or call us on +971 4 444 1444 to arrange this service.

IMG [cid:fdd0c347-2d22-4cfa-91de-9493c355a1a3]

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IMG [cid:1fd3fb3f-169b-4ff3-8054-702ee816e2e0]

IMG [cid:706baf17-04b0-40cc-902c-5056c7a21cba]ADDITIONAL RESERVATION DETAILS

IMG [cid:f574cb0b-11b8-4cc7-8c1a-e438fe59623a]IMG [cid:f574cb0b-11b8-4cc7-8c1a-e438fe59623a]IMG

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IMG [cid:f574cb0b-11b8-4cc7-8c1a-e438fe59623a]Number of Guests: 1 Adult IMG [cid:f574cb0b-11b8-4cc7-8c1a-e438fe59623a]

IMG [cid:f574cb0b-11b8-4cc7-8c1a-e438fe59623a]Room Category: 1 Deluxe Suite

[http://www.oberoihotels.com/oberoi-dubai/rooms-suites/deluxe...] IMG [cid:f574cb0b-11b8-4cc7-8c1a-e438fe59623a]

IMG [cid:f574cb0b-11b8-4cc7-8c1a-e438fe59623a]Preferences:

(subject to availability) Please advise IMG [cid:f574cb0b-11b8-4cc7-8c1a-e438fe59623a]

IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]Check In Time: 15:00 hrs IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]

IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]Check Out Time: 12:00 hrs IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]

IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]Rate Information:Inclusive of buffet breakfast in our world cuisine restaurant nine7one IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]

IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]

IMG [cid:706baf17-04b0-40cc-902c-5056c7a21eba]KINDLY NOTE

IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]

IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]CANCELLATION POLICY:

Guaranteed reservations may be cancelled before 15:00 hrs one day prior to the date of arrival. Any cancellations thereafter will incur a cancellation fee equivalent to one night's accommodation charge.

IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]

IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]EARLY ARRIVALS:

We recommend that the room should be reserved from the previous night if the arrival is early in the morning and the room is required immediately.

IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]

IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]PROOF OF IDENTITY:

Please be advised that valid identification is required at time of check in.

IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]

IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]SMOKING:

Smoking is only permitted in designated areas and guest rooms. To reserve a smoking room, please email us. We will endeavour to reserve a smoking room for you, subject to availability.

IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]

IMG [cid:7e2fcdd9-ace4-4b6b-843b-e2fec31c1f5d]

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[IMG \[cid:572e2e58-8aa6-4678-8c83-07b6f2b92373\] \[http://www.oberoihotels.com/oberoi_dubai/awards.asp\]](http://www.oberoihotels.com/oberoi_dubai/awards.asp)

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IMG [cid:f574cb0b-11b8-4ec7-8c1a-e438fe59623a]

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"SF3"

From: Ashu Chawla <ashu@sahara.co.za>
Sent on: Sunday, January 3, 2016 4:02:55 PM
To: Sarah Benhaouem <Sarah.Benhaouem@oberoihotels.com>
CC: DutyManager Toddb <DutyManager.Toddb@oberoihotels.com>; Reservations TODB <Reservations.TODB@oberoihotels.com>
Subject: RE: Booking for Sahara Computers
Attachments: image001.jpg (6.8 KB)

Thank you so much i will inform in advance in future if has to charge from guest
Thanks

On 3 Jan 2016 16:00, "Sarah Benhaouem" <Sarah.Benhaouem@oberoihotels.com
[mailto:Sarah.Benhaouem@oberoihotels.com] > wrote:
Dear Ashu,

The below is noted and the team has been informed.

Also for future bookings, unless you let us know which guest will pay we will not ask for credit card guarantee or payment.

Kind regards,

Sarah Ben Haouem
Sales Executive, MICE

The Oberoi, Dubai
The Oberoi Centre, Business Bay
P.O. Box 71847, Dubai, U.A.E

Telephone: +971 4 444 1 444
Direct: 1971 4 444 1 424
Facsimile: +971 4 444 1 333
Mobile: 1971 52 640 7351 [tel:%2B971%2052%20640%207351]
Email address: sarah.benhaouem@oberoihotels.com [mailto:sarah.benhaouem@oberoihotels.com]
Website: www.oberoidubai.com [http://www.oberoidubai.com/] | www.oberoihotels.com
[http://www.oberoihotels.com/]

IMG [0]

From: Ashu Chawla [mailto:ashu@sahara.co.za |mailto:ashu@sahara.co.za]]
Sent: Sunday, January 03, 2016 5:58 PM
To: Reservations TODB
Cc: Sarah Benhaouem
Subject: RE: Booking for Sahara Computers

Dear Riya

SAHARA will pay the entire bill please do not ask any credit card guarantee from the guest at the time of check in

Thanks

On 3 Jan 2016 15:53, "Reservations TODB" <Reservations.TODB@oberoihotels.com
[mailto:Reservations.TODB@oberoihotels.com] > wrote:
Dear Ms. Sarah,

Greetings.

We have already made the reservation for **Mr. Matshela Koko** under confirmation number 467415 and have shared the confirmation letter to Mr. Ashu and cc to you.

Please provide us with the guest's mobile number and email address so we can arrange for the transfers accordingly also kindly advise the billing instruction for the same.

Should you require any further assistance, please do not hesitate to contact us.

Warm Regards,

Reya Pomar
Room Reservation

The Oberoi
Business Bay
P.O. Box 71847
Dubai, UAE
Tel: +971 4 444 1 444
Fax: +971 4 444 1 333

Email: reservations.todb@oberoihotels.com [<mailto:reservations.todb@oberoihotels.com>]

Visit us at: www.oberoihotels.com [<http://www.oberoihotels.com/>]

IMG [0]

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"SF4"

From: Concierge TODB <Concierge.TODB@oberoihotels.com>
Sent on: Monday, January 4, 2016 12:28:29 AM
To: Ashu Chawla <ashu@sahara.co.za>
Subject: RE: Drop off

Dear Mr. Chawla
Greetings from the Oberoi Dubai.
Please note the chauffeur details mentioned below for the drop towards emirates hill:
Chauffeur: Mr. Yusuf
Mob:+971529063924

Please also note the chauffeur details for the arrival transfers arranged for Mr. Koko:
Chauffeur: Mr. Mehboob
Mob: +971555966963

Please contact me at the Concierge for any further assistance.

Warm regards,

Dhruv Anand

Concierge

The Oberoi

Business Bay

P.O. Box 71847

Dubai, UAE

Tel: +971 4 444 1 444

Fax: +971 4 444 1 333

Mob: +971 52 90 63926

Email: Concierge.todb@oberoihotels.com

Visit us at : www.oberoidubai.com [http://www.oberoidubai.com/], www.oberoihotels.com

[http://www.oberoihotels.com/]

From: Ashu Chawla [mailto:ashu@sahara.co.za]

Sent: Sunday, January 03, 2016 11:04 PM

To: Concierge TODB

Subject: Drop off

Dear Officer

I was trying to call you but there was no answer


Can you please arrange drop off for tomorrow morning at 7 for Mr Dan Mantsha to L35 Emirates Hills


Please provide me the driver details who will be taking him there

Thanks

Ashu

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Sandton, South Africa.
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Private Bag X9, Benmore, 2010
Tel: +27 11 262 3870
Email : infor@tegeta.com; joym@tegeta.com

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



COAL, COPPER & PGM

Group Executive Technology & Commercial
Eskom
Megawatt Park
Maxwell Drive
Sunninghill
Sandton

Attention: Mr. Matshela Koko

04th September 2015

Dear Sir

SUSPENSION OF COAL SUPPLY – BRAKFORTEIN COLLIERY

Kindly refer to your letter dated 31st August 2015 in the captioned matter. In the captioned matter we would like to bring to your kind attention the following facts:

- a. Up to 30th July 2015, 118 samples of coal stockpile were sent to Eskom's nominated labs out of which only 4 were rejected due to high sulphur contents. Out of these 4 samples two were disputed and was subsequently approved. The other 2 samples were not disputed.
- b. From 31st July till 31st August 2015, 41 samples were sent to Eskom nominated lab out of which 10 were rejected due to high sulphur.
- c. We have an independent in-house lab at the mine site, which also did the test of these samples and as per its reports and all of them have sulphur within the prescribed limits.
- d. In addition to this we have all the lab reports of various coal seams mined so far from our Brakfontein mine but none of Seam -4 Lower report has sulphur higher than the prescribed norms of Eskom i.e. 1.30.

In the light of the facts mentioned above we request you to kindly expedite the procedure at your end so that the suspension may be revoked at the earliest.

Yours sincerely

(Authorised Signatory)

"SF6"

REPORT

in respect of the investigation into the status of the business and challenges experienced by Eskom, instituted by the board of Eskom Holdings (SOC) Ltd in terms of a resolution passed on 11 March 2015

2 July 2015

(reflecting the state of the investigation as at 18 June 2015)

CONFIDENTIAL

Dentons South Africa
Ground Floor
Great Walksford
240 Main Road Rondebosch
7701, Cape Town
South Africa

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SECTION 6: QUALITY OF COAL
20. Contract Coal Quality

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

Table 3: Coal Quality Specifications and Rejection Limits

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

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

*Hard grove Index should be within Eskom acceptable limit of <55 in order to achieve the desired milling and coal fineness during combustion.

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

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

20.2 The Supplier shall ensure that no Ultrafines are blended into the coal to be Delivered to Eskom and that each Consignment of Contract Coal is substantially free from impurities and extraneous materials related to the proper mining and processing of coal.

20.3 Where the Supplier wishes to Deliver coal of a higher quality than the Quality Specifications, the Supplier shall make a written request to Eskom and the acceptance of such request shall be at Eskom's sole discretion. For the



"SF8"



Tegeta Exploration and Resources (Pty) Ltd
Attention: Mr Ravi Nath

By E-mail: nath@oakbay.co.za

Dear Sir

**UPLIFTMENT OF THE SUSPENSION OF COAL SUPPLY: BRAKFORTEIN COLLIERY
AND BRAKFORTEIN COLLIERY EXTENSION**

The above matter and our letter dated 31 August 2015 refer.

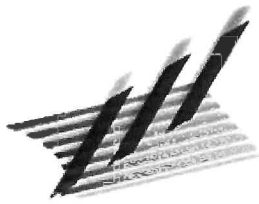
Eskom hereby lifts the suspension of coal supply from the Brakfontein Colliery and Brakfontein Colliery Extension effective immediately whilst it continues its investigation into the inconsistency in the coal quality management process.

Eskom's rights are fully reserved.

Yours sincerely

Matshela Koko
GROUP EXECUTIVE

Date: 31/8/15



Just Coal (Pty) Ltd

Reg No: 2012/218327/07 Vat No: 48101 65516

165 Cowen Ntuli Street
PO Box 22928
Middelburg, 1050

Tel: (013) 282 5742
Fax: (013) 282 5761
E-mail: info@justcoal.co.za

Eskom Holdings SOC Ltd
Primary Energy Division

Mr Martin Makoni
Coal Supply Unit Manager

Dear Mr Makoni

We refer to your letter dated 30th October 2015,
Term of Coal Supply Agreement (4600057172) – Ref 724981

We would like to inform you that we do not accept the termination date as the 31st October 2015. We don't see the merits nor the ethics of your decision.

I would like to bring to your attention in brief, the delays that lead to Just Coal not being able to deliver the said goods within the contracted period.

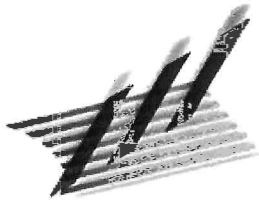
- 23rd April 2015 - SRN signed by Just Coal
- 29th April 2015 - CSA signed by Just Coal
- 4th May 2015 - CSA signed by Eskom
- 18th May 2015 - CSA signed by both parties mailed to Just Coal
- 21st May 2015 - Just Coal commenced delivery
- **1st May – 31st October 2015 Contractual period**

Delays experienced that slowed down deliveries

- Signed CSA was produce on the 18th May 2015
- Commencement date remained 1st May 2015
- Congestion at Power Station
- We were asked to deliver to different Power Stations by Eskom's Technical
- These Power Stations were experiencing the same problems of congestion
- Although drivers are Rotran inducted, Matla and Arnot Requires a mine induction
- As an example of time delay, **23rd October 2015 Eskom's Zero Harm Message**. Non deliver for this day alone amounted to between 15kt – 19kt.

Mr Makoni, the above is self-explanatory. Your Technical team was well aware of the delays. They did, I believe all they could to assist Just Coal to deliver the coal within the Contracted period, however with the reasons given above, achieving this was not possible.

With this said, it is not Just Coal that did not deliver but it was Eskom that could not receive.



Just Coal (Pty) Ltd

Reg No: 2012/218327/07 Vat No: 48101 65516

165 Cowen Ntuli Street
PO Box 22928
Middelburg, 1050

Tel: (013) 282 5742
Fax: (013) 282 5761
E-mail: info@justcoal.co.za

Your decision as it stands will have a costly negative financial impact on our business. We will continue to produce and make the contractual coal available for delivery.

Kindly reconsider your decision.

Our rights remain strictly reserved

Yours Sincerely

Joe Singh
Joe Singh Group Chairman

30th October 2015

(cc) Attached to the above mentioned Executive Summary is a document with the heading "Approval of negotiated outcome", dated 7 March 2014, which indicates that the purpose of the submission is to request that the Medium Term mandate awarded in 2008 remain open until 2018. The submissions included the following representations:

- (i) that the total value of coal procured was still well within the total value that was mandated by the BTC in 2008;
 - (ii) the weighted average price of coal at R344,45 was still well within the escalated mandated price (this includes the coal and transport portions);
 - (iii) quantities were higher than the original mandate;
 - (iv) the improved coal quality delivered increased the power station thermal efficiency and mitigates against coal related load losses;
 - (v) three life of mine contracts were concluded with Keaton, Kuyasa and Universal Coal;
 - (vi) prices negotiated during 2010 to 2013 were better than the mandated prices of 2008; and
 - (vii) the modes of transport that were negotiated were in the order of conveyor first, rail second, and then delivered and FCA last.
- (dd) Below is a list of the MTCs and STCs that were concluded after 2010, up to 2014, as provided to us:

Supplier	Power Station	Commence	End	MT	R(G)	CV	R/ton	BEE
African Exploration Mining and Finance Company - Witbankfontein	Kendal	2011/06/01	2020/03/31	0.76	13.61	20.33	278.59	N/A
Bankfontein	Korntati	2012/04/01	2016/01/31	1.62	17.78	21.2	279.31	No
BECSA - Portion 16	Kendal	2012/12/21	2016/06/30	2.00	14.24	19.12	272.39	No
Yxona - Thpu	Camden	2013/03/01	2015/12/31	1.59	14.86	23.35	280.76	No
Highgate Mining (Pty) Ltd	Amct	2013/07/01	2017/06/30	1.60	15.27	22.15	284.16	No
Perisat Investments (Pty) Ltd - Rirhandzu	Majuba/Kusile	2013/09/01	2018/03/31	1.20	11.53	22.3	256.50	Yes
Universal Coal Development (Pty) Ltd - Wabankfontein	Kusile/Kendal	2014/04/01	2023/03/31	2.00	13.49	20.40		
Just Coal CC - Bankfontein	Tutuka/Arnot	2014/04/01	2024/03/31	1.80	12.9	21.6	279.21	Yes
Tshedza Mining Resources (Pty) Ltd - Marungu	Kendal/Kusile	2015/04/01	2033/03/31	1.62	13.66	17.9	245.06	Yes
Just Coal CC - Permabani	Majuba	2015/04/01	2025/09/30	1.36	13.50	20.50		
Just Coal CC - Permabani	Malla	2015/05/01	2016/03/31	1.00	13.61	20.0	272.47	Yes

(see) The following observations are made concerning these contracts:

- (i) The majority of suppliers who are not BEE compliant were granted contracts in excess of the 2010-2014 mandate of R282.0m.
- (ii) Reporting of pricing information is confusing. Emphasis is placed on rand per ton pricing. Actual prices of individual contracts, escalations, and transport costs do not appear to be adequately reported and analysed.
- (iii) It was conceded in some of our interviews in respect of the period from 2010-2014 that contracts in excess of the procurement mandate were concluded despite the fact that the weighted average prices were within the mandate. The fact that individual contract prices were not clearly reported creates the potential for abuse.
- (iv) The contract for Just Coal CC-Bankfontein appears to be excessively high: beating in mind the mandate that was approved in 2014.
- (v) The submission checklist referred to in paragraph 3.3.8(b6) records that financial evaluations were conducted. It was further reported that the Treasury department confirmed that there is no need to issue a report as the analysis concluded that the actual spend is still significantly below the approved quantities. However, this seems

"SF11"

From: Wdrsal <wdrsal@gmail.com>
Sent on: Saturday, November 7, 2015 4:46:27 AM
To: Ashu Chawla <ashu@sahara.co.za>
Subject: Fwd: Eskom 30th October 2015..pdf
Attachments: Eskom 30th October 2015..pdf (155.71 KB), Untitled attachment 00204.htm (168 Bytes)

Begin forwarded message:

From: Business Man <infoportal1@zoho.com [mailto:infoportal1@zoho.com]>
Date: 04 November 2015 at 23:36:35 GMT-4
To: "Western " <wdrsal@gmail.com [mailto:wdrsal@gmail.com]>
Subject: Fwd:Eskom 30th October 2015..pdf

===== Forwarded Message =====

From : matshela2010@yahoo.com [mailto:matshela2010@yahoo.com]
To : "infoportal1@zoho.com" [mailto:infoportal1@zoho.com] "
Date : Wed, 04 Nov 2015 22:39:37 +0400
Subject : Eskom 30th October 2015..pdf

===== Forward Message =====

Please give the Boss. The fight begins

"SF 12"



WITHOUT PREJUDICE

SUBJECT TO CONTRACT

CONFIDENTIAL

Eskom Holdings SOC Limited
Megawatt Park
Maxwell Drive
Sunninghill

Attention: Brian Molefe: Acting Chief Executive Officer
E-mail: MolefeB@eskom.co.za

Matshela Koko : Group Executive – Technology and Commercial
E-mail matshela.koko@eskom.co.za

Cliffe Dekker Hofmeyer
Attention: Rishaban Moodley
E-mail: rishaban.moodley@dlacdh.com

17 September 2015

Dear Sirs

OPTIMUM COAL MINE (PTY) LTD (IN BUSINESS RESCUE) : SETTLEMENT PROPOSAL

We refer to our recent discussions regarding a resolution of the current disputes between Optimum Coal Mine (Pty) Ltd ("OCM") and Eskom SOC Limited ("Eskom") relating to the coal supply agreement between OCM and Eskom ("CSA"). As we have advised previously, Eskom is a key stakeholder in the business rescue proceedings of OCM and no rescue of OCM is possible unless there is a resolution of the outstanding disputes between OCM and Eskom including the hardship and penalty disputes. We do, however, appreciate Eskom's position that it has a binding agreement with OCM with certain accrued rights and that it cannot simply forego all of these rights in order to rescue OCM.

Optimum Coal Mine (Pty) Ltd

(Registration No: 2007/005308/07)

A Glencore Operation

Business Address: N11 Hendrina Road, Pullenshope Offramp, Pullenshope

Mailing Address: Private Bag X1201, Pullenshope, 1096, South Africa

Tel.: +27 13 2965111

Registered Address: 1st Floor, Nedbank Building, 23 Melrose Boulevard, Melrose Arch, Melrose North,
Johannesburg, 2196, South Africa

Mailing Address: Suite No. 19, Private Bag X1, Melrose Arch, Johannesburg, 2076

Tel: +27 11 772 0600 Fax: +27 11 772 0697

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

Accordingly, we have, together with the management of OCM, sought to develop a proposal which meets Eskom's key requirements while at the same time ensures that OCM is able to emerge from business rescue as a sustainable long-term supplier to Eskom.

This proposal consists of three components:

- an extension of the CSA which is designed to secure a long-term source of supply for Eskom and allow for a price averaging which will provide some short-term relief for OCM until 2019;
- a reasonable settlement of the alleged penalties which Eskom believes it has accrued against OCM; and
- the implementation of a new black economic empowerment transaction to make OCM a majority black owned company.

1. Extension of the CSA

We trust that Eskom and its advisers have now had sufficient time to consider the substantial financial information that was delivered to Eskom's attorneys on the 1st and 2nd of September 2015 and that it is clear to Eskom that OCM is suffering severe financial hardship as a result of the Eskom contract. We fully appreciate that even if Eskom accepts that OCM is suffering financial hardship, this is not necessarily a justification for Eskom to agree to any amendments to the CSA as Eskom believes that it has a binding contract that it is entitled to enforce.

We do, however, believe that Eskom cannot ignore the fact that the contract has a hardship clause which provides in its opening clause that it was the parties' intention that the agreement shall operate between them with fairness and without undue hardship to any party. While we accept that some level of subsidy from OCM's export operations was contemplated in the CSA, it could never have been contemplated that OCM would suffer such an extreme level of hardship or that the agreement would result in OCM suffering billions of Rands of losses over the term of the agreement.

Accordingly, Eskom would be acting in accordance with the principles set out in the CSA if it agrees to an accommodation in favour of OCM in order to ensure that OCM can emerge from business rescue and remain a long-term sustainable supplier to Eskom. Obviously, any such accommodation should insofar as possible also be in Eskom's standalone interests. Accordingly, after discussions with management and the shareholders of OCM, we wish to make the following indivisible proposal to Eskom which we believe meets these requirements:

- the duration of the CSA will be extended until 2023 to match the remaining useful life of the Hendrina power station;
- the tonnage to be delivered during such extension will be 27.5 million tons (i.e. 5.5 million tonnes per annum);
- the price for the coal delivered during the extension will be R630 per ton at a CV of 23 Mj/kg (moisture free) (subject to agreed inflationary adjustments with effect from 1 October 2015). We believe that this price is consistent with what Eskom could expect to achieve in a standalone new negotiation with OCM for this quantity of coal at this quality in 2019;
- the price for the coal for the period from 1 October 2015 to 31 December 2018 will remain unchanged, however, in order to provide some relief to OCM during the period until 2019, the price for the remainder of the CSA will be averaged out so that Eskom will pay a weighted average price of R443 per ton at a CV of 23 Mj/kg (moisture free) (subject to agreed inflationary adjustments with effect from 1 October 2015) for the

remainder of the CSA from 1 October 2015 to 31 December 2023. This average has been calculated on R156 per ton for the remaining 3.25 years (i.e. 17 875 000 tons) and then R630 for the next 5 years (i.e. 27 500 000 tons). The weighted average price of R443 per ton would still be less than OCM's average cash cost of production over the remainder of the extended CSA; and

- the specifications and price adjustment regime for the remaining coal to be delivered under the CSA will be amended to be consistent with the penalties and price adjustment regime agreed during the previous settlement discussions between OCM, the Eskom negotiating team and the Hendrina power station. These are set out in Annexure A for your ease of reference.

2. Penalties

Eskom has instituted claims against OCM for alleged non-compliance with the specifications set out in the CSA (and the addenda thereto), in amounts aggregating to approximately R2.2 billion. As you are aware, OCM disputes this amount and we believe that there is no reasonable basis to justify a penalty of this amount having regard to the history and background circumstances surrounding the imposition of penalties arising out of the CSA and that Eskom has no reasonable prospect of recovering this amount in an arbitration (this is separate from the issue as to whether OCM would, in fact, be able to settle such penalties if an award was made against it). In this regard, we note the following:

- the CSA includes a renegotiation clause in terms of which if at any time either party is of the view that the specifications in the CSA are no longer properly and/or realistically representative of the coal which OCM could reasonably expect to produce from its resource, it could request a renegotiation of the specification following which the parties would be required to enter into discussions and negotiations in good faith regarding the amended specification;
- in April 2013, OCM advised Eskom that the mine could no longer produce coal meeting the specifications and triggered the renegotiation clause;
- following the service of such notice, OCM and Eskom engaged in a process whereby OCM sought to demonstrate to Eskom that it was unable to meet the specification. This process endured until January 2014 during which time OCM provided significant information to Eskom regarding the difficulties it was having. Eskom has never disputed the technical reasoning put forward by OCM as to why it cannot meet the sizing specification. Eskom explicitly refrained from imposing any penalties regarding sizing during these negotiations in recognition of the fact that OCM had triggered the renegotiation clause;
- this renegotiation process was eventually subsumed into the broader settlement discussions which culminated in the signing of the Co-Operation Agreement in May 2014 which suspended all penalties. During the settlement discussions, there were extensive negotiations on the specifications with primary energy and the Hendrina power station and ultimately a specification was agreed in relation to sizing which matches that which OCM delivered during the period from 2012 to 2015. If this is a specification that the power station was capable of accepting, then clearly the delivery of coal meeting that sizing specification during most of 2012 to 2015 could not have caused any meaningful damage to the power station;
- if the Co-Operation Agreement had not been signed, and Eskom had not agreed to amend the specification, it is very likely that the dispute regarding the sizing specification would have, at that time, been referred to arbitration for dispute

resolution. If that had happened, Eskom would not have been able to impose the historical penalties for sizing;

- if the sizing penalty is excluded, then the sole basis for imposing a penalty would be in relation to ash and CV. As the Eskom negotiating team is aware, there is significant disagreement between Eskom and OCM regarding the imposition of the ash and CV penalties and the wording of the agreement does not support the penalties imposed by Eskom; and
- the factors set out above would present compelling defences in relation to any claim for penalties together with other defences such as the Conventional Penalties Act, waiver, estoppel etc.

In summary, we do not believe that any penalty is justifiable, but as part of an overall settlement, OCM would be willing, on a without prejudice basis, to pay a reasonable amount in full and final settlement of all penalties and/or damages alleged to be owing by OCM and/or its affiliated entities under or in connection with the CSA as at the date of signature of the amended CSA (including any alleged damages arising during the business rescue proceedings). We propose that once we have agreement on the balance of the proposal set out in this letter, we have a discussion regarding an appropriate settlement figure. As part of this discussion, we would also like to discuss the amounts withheld by Eskom for coal delivered during July and August 2015.

Obviously, OCM will not be in a position to settle any agreed settlement amount in cash, and therefore we would like to propose two options to Eskom as a method of settling such settlement amount.

▪ Issue of equity

The first option is that Eskom be issued an equity stake in OCM in order to settle the agreed settlement amount. The exact percentage will need to be discussed and agreed after agreement on the settlement amount. We believe that this would be a reasonable solution for Eskom in that it provides significant upside if export prices rally and it recognises that requiring OCM to settle the penalties in cash will impair OCM's ability to become a sustainable supplier to Eskom.

We understand that Eskom has expressed a reluctance to hold equity interests in mines, but Eskom would in due course be able to dispose of such stake or it could nominate a third party to acquire such shares, subject to OCM's agreement.

▪ Reduction of price

The second option is that Eskom be afforded a reduction in price on the coal purchased for the remainder of the term of the CSA in order to settle such penalties. This reduced price would obviously provide more certainty to Eskom but would not allow Eskom to participate in any upside in OCM.

3. Black Economic Empowerment transaction

The indirect major shareholders of OCM, Pembani Group Pty Ltd (which merged with Shanduka Resources Pty Ltd) ("Pembani") and Glencore Plc, have agreed a new BEE transaction in order to increase the black ownership of OCM to above 50% in line with Eskom's stated policy of sourcing coal from majority black-owned suppliers.

We note that as Pembani will be increasing its existing stake in OCM, they have requested to be directly involved in the negotiations of the proposal. They therefore have requested to participate in all future meetings in relation to this proposal.

Conclusion

We believe that this proposal represents a compelling offer for Eskom which allows Eskom to:

- secure a long-term sustainable supply of high quality coal for the remainder of the useful life of the Hendrina power station from a majority black supplier;
- ensure that Eskom continues to obtain the benefit of its existing low price CSA by using such price to reduce the price payable for the coal for the post 2018 period; and
- be compensated at a fair level for the penalties which it believes it has accrued.

This proposal will obviously also ensure the long-term sustainability of the OCM business and prevent the negative consequences that would arise for all stakeholders from a liquidation of OCM.

As you will appreciate, we have significant time constraints during the business rescue proceedings and if we are to finalise this proposal before the deadline for the publication of the business rescue plan (i.e. 30 October 2015), we need to receive Eskom's feedback as soon as possible. Accordingly, we request that Eskom respond to this proposal by Friday, 25 September 2015. If Eskom is willing to accept this proposal, we and the management of OCM are prepared to dedicate all necessary resources to ensure that the proposal is implemented as soon as possible.

Please contact us if you have any queries.

We look forward to hearing from you.

Yours faithfully


Piers Marsden


Peter Van den Steen

Joint Business Rescue Practitioners for Optimum Coal Mine (Pty) Ltd (In Business Rescue)


Clinton Ephron

Chief Executive Officer

Optimum Coal Mine (Pty) Ltd (In Business Rescue)

Annexure A – Specifications and Price adjustments

Quality Parameter	Unit	Expected Quality Parameter	Quality Parameter Limit	Measurement basis	Measurement	Rejection and Penalties
Calorific Value	MJ/kg	23	<21.65	Moisture Free	Monthly Weighted Average	Adjustment through price (i.e. through the fact that the price is calculated based on the GJ delivered) and ultimate rejection for < 21.65 – no other adjustment
Ash	%	27.5	>31.5	Moisture Free	Monthly Weighted Average	Adjustment through price (i.e. through the fact that the price is calculated based on the GJ delivered) and ultimate rejection for > 31.5 – no other adjustment
Moisture	%	9%	>12%	As Received	Monthly weighted Average	There will be no adjustment or rejection but Eskom will have the right to request Optimum to stop supplies as per below
Abrasive Index (Eskom Mining House Method)	mgFe/4kg	700	> 700	Moisture Free	Monthly weighted average	Penalty for > 700 as per below No rejection
Sulphur	%	1.5 %	> 1.6%	Moisture Free	None	Rejection No penalty
Volatiles	%	22.4%	< 20.5%	Moisture Free	None	Rejection No penalty
AFT (Initial deformation)	°C	1,300±	None	N / A	None	None
Sizing				N / A	Monthly weighted	Penalty for >20% - 0.81mm only as per

Quality Parameter	Unit	Expected Quality Parameter	Quality Parameter Limit	Measurement basis	Measurement	Rejection and Penalties
< 6mm	%	≤ 55%	None		average	below
<2.38mm	%	≤ 35%	None			
<0.81mm	%	≤20%	>20%			No rejection
	%					

1 The Parties agree that in respect of AFT (initial deformation), the Expected Quality Parameter sets out the quality which OCM expects to deliver. However, if OCM does not meet the Expected Quality Parameter, there will be no rejection, penalty or adjustment and OCM shall not be liable for any claim and/or damage.

2 If a consignment of coal on a particular day is rejected due to the weighted daily average not meeting the CV, Ash, Sulphur or Volatiles Quality Parameter Limit, then -

2.1 Eskom shall not pay for such consignment of coal and such consignment of coal will not reduce the Total Contract Quantity; and

2.2 such consignment of coal shall not be included in the calculation of the monthly weighted average for Abrasive Index and Sizing (i.e. the relevant weighted average shall be calculated in respect of the coal delivered over the balance of the days in the relevant month).

3 In the event that monthly weighted average Abrasive Index level of coal delivered by OCM in a month is > 700 mgFe/4kg, OCM will be liable to pay a penalty to Eskom in respect of each ton of coal delivered during that month, calculated on the following basis:

> 700-800	R 4.92 per ton
> 800-850	R 6.15 per ton
> 850-900	R7.38 per ton
> 900	R11.07 per ton

4 In the event that the monthly weighted average size distribution of coal delivered by OCM in a month contains more than 20% of coal with a size of 0.81mm, OCM shall be liable to pay Eskom a penalty as follows:

$$A = B \times (C - 20\%) \times D$$

where:

A = the sizing penalty to be calculated;

B = the total number of tons of coal delivered by OCM during the relevant month;

C = the weighted average percentage of coal delivered during the month with a sizing of less than 0.81mm;

D = 50% of the price per ton paid by Eskom for the coal delivered during the month.

- 5 OCM shall notify Eskom if the coal being delivered is above the Quality Parameter Limit for moisture and shall stop delivering such coal and request Eskom if they want OCM to continue delivering such coal which does not meet the Quality Parameter Limit in respect of moisture. Eskom shall then within one hour advise OCM whether it wishes to accept delivery of such coal. If Eskom elects to receive such coal, then, notwithstanding the moisture parameters of such coal being above the Quality Parameter Limit, the price of such coal shall be paid by Eskom and such coal shall be deemed delivered and reduce the total contract quantity.

"SF13"

From: Matshela Koko <KokoMM@eskom.co.za>
Sent: 2015-11-26 10:36:40 AM +0000
To: shaun.blankfield@glencore.com; Piers Marsden <pmarsden@matusonassociates.co.za>; Peter van den Steen <peter@v2rescue.co.za>; nazeem@tnameia.co.za; ashu@sahara.co.za; ronic@oakbay.co.za; ronica@oakbay.co.za
CC: Anoj Singh <SinghA3@eskom.co.za>; Brian Molefe <MolefeB@eskom.co.za>; Vusi Mboweni <MbowenV@eskom.co.za>; Dan Mashigo <MashigDM@eskom.co.za>
Subject: 24112015 meeting with OCH v1
Attachments: 24112015 meeting with OCH v1.pdf

Good day,

Herewith find attached minutes of our meeting on Tuesday 24th November 2015.

Regards,

Matshela Koko

I'm part of the 49Million initiative...
<http://www.49Million.co.za>

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

Message Headers:

Delivered-To: ashu@sahara.co.za
Received: by 10.129.134.5 with SMTP id w5csp250196ywf;
Thu, 26 Nov 2015 02:37:13 -0800 (PST)
X-Received: by 10.28.225.84 with SMTP id y81mr2964850wrmg.87.1448534233724;
Thu, 26 Nov 2015 02:37:13 -0800 (PST)
Return-Path: <KokoMM@eskom.co.za>
Received: from mail1.bemta18.message-labs.com (mail1.bemta18.message-labs.com. [196.14.170.129])
by mx.google.com with ESMTPS id vu8si40471804wjc.28.2015.11.26.02.37.12
for <ashu@sahara.co.za>
(version=TLS1_2 cipher=ECDHE-RSA-AES128-GCM-SHA256 bits=128/128);
Thu, 26 Nov 2015 02:37:13 -0800 (PST)
Received-SPF: neutral (google.com: 196.14.170.129 is neither permitted nor denied by best guess record for domain of KokoMM@eskom.co.za);
spf=neutral (google.com: 196.14.170.129 is neither permitted nor denied by best guess record for domain of KokoMM@eskom.co.za)
Return-Path: <KokoMM@eskom.co.za>
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X-Env-Sender: KokoMM@eskom.co.za
X-Msg-Ref: server-9.tower-211.message-labs.com!1448534228!3088563!4
X-Originating-IP: [147.110.251.16]
X-StarScan-Received:
X-StarScan-Version: 7.19.2; banners=eskom.co.za,-,-
X-VirusChecked: Checked
Received: (qmail 7229 invoked from network); 26 Nov 2015 10:37:09 -0000
Received: from unknown (HELO MWPXET03.elec.eskom.co.za) (147.110.251.16)
by server-9.tower-211.message-labs.com with AES128-SHA encrypted SMTP; 26 Nov 2015 10:37:09 -0000
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MWPXET03.elec.eskom.co.za (147.110.251.16) with Microsoft SMTP Server (TLS)
id 14.3.224.2; Thu, 26 Nov 2015 12:36:33 +0200
Received: from MWPXMB13.elec.eskom.co.za ([169.254.4.244]) by
MWPXHT02.elec.eskom.co.za ([172.17.38.11]) with mapi id 14.03.0224.002; Thu,
26 Nov 2015 12:36:41 +0200
From: Matshela Koko <KokoMM@eskom.co.za>
To: "shaun.blankfield@glencore.com" <shaun.blankfield@glencore.com>, "Piers
Marsden" <pmarsden@matusonassociates.co.za>, "Peter van den Steen"
<peter@v2rescue.co.za>, "nazeem@tnameia.co.za" <nazeem@tnameia.co.za>,
"ashu@sahara.co.za" <ashu@sahara.co.za>, "ronic@oakbay.co.za"
<ronic@oakbay.co.za>, "ronica@oakbay.co.za" <ronica@oakbay.co.za>
CC: Anoj Singh <SinghA3@eskom.co.za>, Brian Molefe <MolefeB@eskom.co.za>, Vusi
Mboweni <MbowenV@eskom.co.za>, Dan Mashigo <MashigDM@eskom.co.za>
Subject: 24112015 meeting with OCH v1
Thread-Topic: 24112015 meeting with OCH v1
Thread-Index: AdEoNIVq65njweZlQlqAwAen5IcCVw==
Date: Thu, 26 Nov 2015 10:36:40 +0000
Message-ID: <34DBEF869C52E7488F7D8F56CF849AED9BC75C0B@MWPXMB13.elec.eskom.co.za>
Accept-Language: en-ZA, en-US
Content-Language: en-US
X-MS-Has-Attach: yes
X-MS-TNEF-Correlator:
x-originating-ip: [172.28.43.231]
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boundary="_004_34DBEF869C52E7488F7D8F56CF849AED9BC75C0B@MWPXMB13.elec.eskom.co.za"
MIME-Version: 1.0

SUMMARY RECORD OF DISCUSSION

Meeting Name: Exploratory Discussions on Sustainable Hendrina Coal Supply

Date: 24 November 2015	Time: 15h00 -16h20	Venue: Huvo Nkulu Boardroom	Meeting No.: 01/2015
Attendees:			
Shaun Blankfield (Glencore) (SB)		Matshela Koko (Chairperson) (MK)	
Piers Marsden (Marsden Associates) (PM)		Suzanne Daniels (SD)	
Peter van den Steyn (PvdS)		Edwin Mabelane (EM)	
Nazeem Howa (Oakbay) (NH)		Ayanda Nteta (AN)	
Ashu Chawla (Oakbay) (AC)			
Ronica Ragavan (Oakbay) (RR)			

The Chairperson opened the meeting and welcomed all.

Emergency evacuation procedure was explained to all.

Chairman's opening remarks: Eskom is managing a tight system and Hendrina is key to the system. Therefore it is important to rescue the mine to ensure security of electricity supply.

PM indicated that the BRPs were looking at disposing the interest to Oakbay. The Due Diligence commenced 9 days ago and is currently underway. **The purpose of the meeting was seek the support of Eskom to understand Eskom's concerns and what it needed to see out of the process.**

Oakbay confirmed that the Due Diligence started 9 days ago and it is committed to a 30 day due diligence period with a definitive agreement to be in place by 15 December 2015.

Eskom questioned what would be the arrangement for the period 1-15 December.

PM advised that an extension of the current arrangement was anticipated and that a formal request for the extension of the current dispensation until such time as there is a definitive agreement in place, would be sought. SB confirmed that funding has been secured and will be extended until agreement was reached. He reiterated that there would be no interruption of coal supply and the amendments to the current funding arrangements were currently being effected by Glencore's legal team.

The Chairman emphasized the Eskom position: Eskom's priority is security of supply. There is a coal supply contract in place until 2018. Eskom expects Optimum Coal Mine to honour the contract at the contracted price until 2018. Eskom will not waive its penalty claim.

He noted that the Koorfontein supply contract expires in December 2015. It appeared that the Koorfontein disposal and that of the export allocation are separate to that of OCM. This gave rise to the question of how does OCH survive beyond the life of the Koorfontein contract. He further questioned the financial strength of the new buyer ; firstly would it be able to sustain a loss of ZAR 130M per month and secondly, how will the buyer survive without Koorfontein Contract and the export allocation? He postulated that if OCM were to be ring-fenced, Eskom was not convinced that it will survive on its own and hence he was compelled to engage in a discussion regarding OCH, and not OCM, in totality.

PM indicated that the BRP's view of the claim differed to that of Eskom. In addition, there was a ZAR 2.7bn of senior secured bank debt held by the Banking Consortium which will need to be evaluated by Oakbay. The BRP has had open discussions with Oakbay on this debt. PM confirmed that there was no engagement around the OCH solution and from a Glencore perspective, it may be open to this but at the moment Oakbay was dealing with the transaction from an OCM perspective.

NH confirmed that Oakbay would like to close the transaction as soon as possible. It had wanted clarity in respect of the key issues. While the Eskom position was very clearly stated, it had wished to seek clarity on the following key issues (i) was the price negotiable? NH confirmed that he understood the Eskom position to be that the contract price was to remain the same until contract expiry, subject to the current terms and conditions of the contract. (ii) Could the parties start discussions beyond 2018? It was confirmed that the Eskom position was understood by the parties to be that the discussions relating to what happens beyond 2018 are off the table. (iii) Would Eskom consider a waiver of the penalty claim? It was also clear that Eskom was not prepared to waive the penalty claim.

NH confirmed that Oakbay was dealing with it from an OCM perspective and that it did not have a mandate to talk regarding OCH.

It was concluded that the Eskom position was now clear to all parties and that Oakbay required a mandate to take the discussion further. NH requested to reconvene with the Business Rescue Practitioner and Glencore at 17h30 to discuss further. The Chairman reiterated that the parties would not have Eskom consent should it be limited to a transaction at OCM level. While it was supportive of a transaction with Oakbay, it would not be supportive were it to be limited to OCM level. The Chairman insisted that Eskom needs to know by the weekend that there is a prospect at OCH level to rescue the mine.

The meeting closed at 16h20.

Minutes submitted by: Ayanda Nteta

Approved by:



Matshela Koko
Chairman

Approved by:

On behalf of:
BRP's

Approved by:

On behalf of:
Oakbay

Tegeta Exploration & Resources Pty Ltd.

Lower Ground Floor,
Grayston Ridge Block A,
144 Katherine Street, Sandown,
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Ronica Govender
Ravindra Nath
Registration No.:
2006/014492/07



COAL, COPPER & PGM

Group Executive Technology & Commercial
Eskom
Megawatt Park
Maxwell Drive, Sunninghill
Sandton

Attn. Mr Matshela Koko

Date: 09th December 2015

Dear Sir,

PRE-PAYMENT FOR SUPPLY OF COAL BY OPTIMUM COAL MINE

We are thankful to you for meeting with us in the captioned matter. As discussed in the meeting we want to once again reiterate our commitment for continuous supply of agreed quantity of coal to Eskom.

In this connection we humbly request you to kindly send us a written confirmation regarding the payment for supply of coal amounting to R1,680,000,000 (Rand one billion six hundred and eighty million) detailing the agreed terms and conditions.

Please find below the details of our Attorneys i.e. Van Der Merwe & Associates

Contact Person: Gert van der Merwe

Tel: 087 654 0209

Fax: (012) 343 5435

E-mail: gert@vdmass.co.za

Address: 62 Rigel Avenue, Waterkloof Ridge, Pretoria

Banking Details: Van Der Merwe & Associates Trust Account

ABSA Bank

Account No: 4061343497

Brooklyn Branch, Pretoria

Yours sincerely

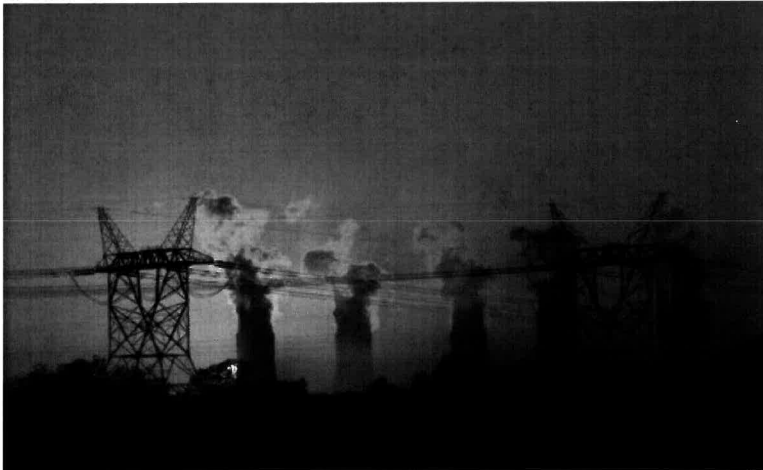
(Authorised Signatory)

[Companies / Energy](#)

Eskom refuses request for information on Optimum fine

AfriBusiness filed an application under the Promotion of Access to Information Act, seeking information on a settlement Eskom says is confidential

23 June 2017 - 17:05 Staff Writer



Picture: REUTERS

Eskom has refused to provide information that business grouping AfriBusiness sought about a R2bn fine the utility levied on Optimum Coal.

The fine was levied when Optimum was still owned by Glencore — before it was bought by Tegeta, a company linked to the Guptas, in a deal that drew scrutiny of its funding.

In April Eskom said a settlement had been reached, but refused to give any details, saying it was confidential.

AfriBusiness said on Friday that it had filed an application under the Promotion of Access to Information Act, requesting the following information:

AfriBusiness requested the following information from Eskom:

- Receipt of payment from Tegeta to Eskom regarding the R2bn fine;
- A copy of the fine imposed on Optimum originally issued to Glencore; and
- The arbitration agreement and/or reward made by the arbitrator between Eskom and Optimum.

But Eskom had refused to provide any of this information, AfriBusiness said.

In its response, Eskom again cited confidentiality, saying the act provides for mandatory protection of confidential information of a third party.