

FUNDUDZI

NATIONAL TREASURY

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

CHAPTER III: REPORT RELATING TO
ESKOM INVESTIGATIONS

NOVEMBER 2018



**PUBLIC ENTITIES CAPTURED AS A RESULT OF
DYSFUNCTIONAL GOVERNANCE STRUCTURES**

CHAPTER III OF THE INVESTIGATIONS: ESKOM

EXECUTIVE SUMMARY

1. THE CSA BETWEEN TEGETA AND ESKOM

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

Adjustment of CSA duration

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

SABS – testing of new samples

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

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

Coal Deliveries from Brakfontein Mine

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

2. OPTIMUM COAL HOLDINGS

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

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

3. PREPAYMENT OF R659 558 079

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

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

4. ANALYSIS OF SINGH'S FNB BANK ACCOUNTS

4.1. Singh indicated in his response that all the funds received in his bank account were received in lieu of his employment at Transnet and/or Eskom;

4.2. Singh may have received funds from other sources to service his personal lifestyle as there were minimal transactions in his bank account.

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

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

6. THE LEAKING OF CONFIDENTIAL INFORMATION AT ESKOM

6.1. One of the allegations which we were required to investigate was the Eskom Executives may have leaked confidential information to third parties through an email styled infoportal1@zoho.com.

Koko

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

Ngubane

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

Daniels

6.4. Daniels indicated that infoportal1@zoho.com belongs to Seleke.

Seleke

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

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ROLE PLAYERS IDENTIFIED

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

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

| Name | Description |
|----------------|----------------------------------|
| Wolters | Frans Wolters: SABS |
| Madela | Wiseman Madela: SABS |
| Brown | Lynne Brown: Former Minister DPE |

TERMINOLOGY USED

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

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

EXHIBIT LISTS

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

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

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

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

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

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

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

| Annexure No. | Description |
|--------------|---|
| E82 | Copy of an email by Ronica Ragavan, one of Tegeta Directors sent an e-mail to Anoj Singh and Nath with the subject reflected as “ <i>Tegeta shareholders resolution</i> ” |
| E83 | Copy of an email sent to Singh’s email from an e-mail address reflected as <u>Brian Molefe</u> mdprivate-mail0@gmail.com on 3 November 2015 at 13:54 |
| E84 | Copy of email sent by Koko to the e-mail address infoportal1@zoho.com . on 20 July 2015 at 09:47 |
| E85 | Copy of Ngubane’s response |

1. INTRODUCTION

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

BACKGROUND TO THE INVESTIGATION

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

it was indicated that two of Eskom's Officials, Anoj Singh, Chief Financial Officer ("Singh") and Matshela Koko, Executive Director of Generation ("Koko") undertook trips to Dubai, which trips were allegedly paid for by the Gupta Family.

- 1.9. National Treasury further indicated that the investigation should establish the role played by the former Chief Executive Officer of Eskom, Mr Brain Molefe ("Molefe") regarding CSA entered into between Eskom and Tegeta.

DETAILED ALLEGATIONS RELATING TO ESKOM

- 1.10. We understand that the scope of our investigation will be to independently investigate the following:

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

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

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

2. LIMITATIONS

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

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

3. SCOPE AND METHODOLOGY

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

SCOPE

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

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

METHODOLOGY

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

General procedures performed

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

Consultations conducted

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

Eskom

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

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

3.6.33. Wiseman Madela.

Review of documentation

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

Media searches

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

Individuals relating to Eskom:

3.8.1. Anoj Singh;

3.8.2. Brian Molefe;

3.8.3. Ben Ngubane;

3.8.4. Matshela Koko;

3.8.5. Ayanda Nteta;

3.8.6. Susan Daniels.

Entities relating to Eskom:

3.8.7. Glencore;

3.8.8. McKinsey and Company South Africa;

3.8.9. Optimum Coal Holding;

3.8.10. Optimum Coal Mine;

3.8.11. Oakbay;

3.8.12. Tegeta exploration and Resources (Pty) Ltd;

3.8.13. Trillian Management Consulting (Pty) Ltd.

Computer Imaging

3.9. We imaged computers and apple devices belonging to the following Eskom individuals:

3.9.1. Anoj Singh – Eskom only;

3.9.2. Ayanda Nteta;

3.9.3. Brian Molefe – Eskom only;

3.9.4. Matshela Koko; and

3.9.5. Susan Daniels.

4. LEGISLATION, POLICIES AND PROCEDURES

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

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

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

4.3. Public Finance Management Act

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

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

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

“ An official in a public entity –

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

(e) acquisition or disposal of a significant asset”

4.3.3. Section 57 Responsibility of other officials

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

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

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

Negligently:

(a) *fails to comply with a requirement of section 50, 51, 52, 53, 54 or 55; or*

(b) *makes or permits an irregular expenditure or a fruitless and wasteful expenditure.*

ss(2) If the accounting authority is a board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority.

ss(3) An official of a public entity to whom a power or duty is assigned in terms of section 56 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.

ss(4) Financial misconduct is a ground for dismissal or suspension of, or other sanction against, a member or person referred to in subsection (2) or (3) despite any other legislation..

4.3.5. Section 84 - Applicable legal regime for disciplinary proceedings

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

4.3.6. Section 86 Offences and penalties

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

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

4.4. Transnet Group Limits of Authority

Section 5.1 Capital Expenditure

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

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

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

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

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

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

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

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

4.6. National Treasury Instruction and Practice Notes

Instruction Note

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

4.7. PRECCA

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

“(a) Accepts or agree or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

(a) Gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person,

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

(i) That amounts to the -

(aa) illegal, dishonest, unauthorised, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the,

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

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

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

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

Basic Value and principles governing public administration”.

4.8. National Water Act

- 4.8.1. In terms of section 4 (4) (b) and section 4 (4) (f) of the NWA: Any entitlement granted to a person by or under the NWA replaces any right to use water which that person might otherwise have been able to enjoy or enforces under any other law to obstruct or divert a flow of water and to construct, operate any water work.
- 4.8.2. Section 21 (a) and 21 (c) of the NWA, provide that water use includes taking water from a water resource and impeding or diverting the flow of water in a watercourse.
- 4.8.3. According to section 151 (1) (a) of the NWA “No person may use water otherwise than as permitted under this Act”
- 4.8.4. Section 151 (2) provides that any person who uses water without a required water use licence is guilty of an offence and liable, on the first conviction, to a fine or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment and, in the case of a second or subsequent conviction, to a fine or

imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.

4.9. ESKOM AND TEGETA COAL QUALITY MANAGEMENT PROCEDURE

PARAGRAPH 13 OF THE PROCEDURE - PRE-CERTIFIED STOCKPILE MANAGEMENT

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

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

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

5. FINDINGS

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

5.2. In line with Fundudzi Forensic Services practice, due care was taken to confirm the factual accuracy of the findings in this report. This includes consultations with individuals who in our opinion had information relevant for our investigation.

5.3. The findings in this report should be addressed decisively by National Treasury. We believe that corrective action limited to the specific individual findings alone would likely address symptoms but not the underlying causes. The approach carries the risk of deficiencies recurring in the future. It is therefore imperative that the underlying causes contributing to the deficiencies be properly understood and addressed as part of the corrective actions to be taken in response to our report.

5.4. **Background**

5.4.1. It is our understanding that following allegations of irregularities levelled against certain companies and individuals relating to contracts at Eskom and Transnet, National Treasury conducted an investigation to determine the veracity of the said allegations. We further understand that National Treasury produced a report of their factual findings at the end of the said investigations.

5.4.2. Part of the recommendations of National Treasury's report was that a forensic investigation company be appointed to conduct a full investigation on the said allegations.

5.4.3. The investigations which National Treasury sought to be conducted related to the following:

6. **ESKOM RELATED INVESTIGATIONS**

6.1. CSA between Eskom and Tegeta;

6.2. Tegeta Prepayment;

6.3. Analysis of Singh's bank accounts;

6.4. Various requests for Singh to transfer money or make payment;

6.5. Leaking of confidential information at Eskom

6.6. Allegations of fruitless and wasteful expenditure relating to the CSA;

6.7. **INTRODUCTION**

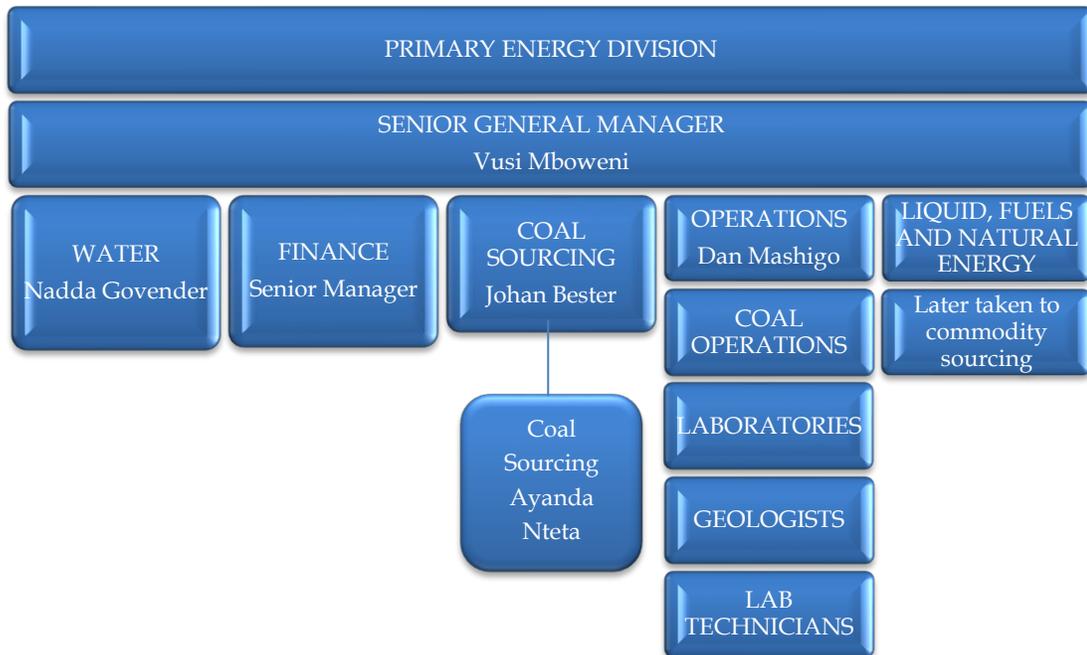
6.7.1. On 10 March 2015 Eskom concluded a Coal Supply Agreement ("CSA") with Tegeta Exploration and Resources ("Tegeta") for the supply of a total quantity of 13 950 000 tons of a blend of seam 4 lower and seam 4 upper coal, from Tegeta's

Brakfontein Colliery. The value of the said CSA was R3.7 billion for a period of ten (10) years commencing on 1 April 2015 to 30 September 2025.

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

6.8. ESKOM’S PRIMARY ENERGY DIVISION

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



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

once Koko had discussed it with his, (Mboweni's) superior. According to Mboweni, Koko indicated to him that he had already discussed the said request with his superior.

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

The Mandate to negotiate and conclude the Tegeta CSA

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

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

6.9. PROCUREMENT PROCESSES FOLLOWED IN THE APPOINTMENT OF TEGETA

- 6.9.1. We understand that Eskom procured coal using the Overarching mandate until it was replaced in 2008 by the Medium-Term Mandate. We further understand that the Medium-Term Mandate, approved by the BTC in 2008, was updated in 2016.
- 6.9.2. Eskom’s procurement of coal from Tegeta in 2015 was through the Medium-Term Mandate.
- 6.9.3. **Approval of specifications**
- 6.9.3.1. We determined that part of the 2008 Medium-Term Mandate was to provide specifications for the coal procured for Eskom’s various power stations.
- 6.9.3.2. From various consultations we understand that Eskom sought the supply of a total quantity of 65 000 tons of a blend of Seam 4 lower and Seam 4 upper coal, for its Majuba Power Station.

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

6.9.4. Approval of budget

6.9.4.1. The value of the CSA between Eskom and Tegeta was R3.7 billion for a period of ten (10) years commencing on 1 April 2015 to 30 September 2025.

6.9.4.2. As at the date of concluding the CSA between Eskom and Tegeta i.e. 10 March 2015, there was budget of approximately R62 billion (R164 billion (budget) – R102 billion (actual spend)) available for the procurement of coal.

6.9.5. Advertisement

6.9.5.1. Based on documentation reviewed and consultations conducted during our investigations, we confirmed National Treasury’s finding that:

6.9.5.1.1. Eskom did not advertise a competitive bid to supply Majuba Power Station with coal;

6.9.5.1.2. Eskom allowed the supplier to make an offer outside the competitive bidding process; and

6.9.5.1.3. The process followed was allowed by Eskom’s 2008 Medium -Term Procurement Mandate.

6.10. MEETINGS (EVALUATION OF THE RELEVANT DOCUMENTS)

6.10.1. In May 2014, Goldridge approached Eskom with an unsolicited bid to supply coal to Eskom. Goldridge then represented by Ravindra Nath (“Nath”) and Satish Mudaliar (“Mudaliar”) held various meetings with Nteta and her PED team (Annexure E1).

6.10.2. The details of the said meetings with Nteta are discussed in the relevant paragraphs below.

6.10.3. The said meetings, attended by Eskom and Tegeta representatives, concentrated on the evaluation and assessment of Tegeta documents relating to their unsolicited bids as reflected above.

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

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

- 6.10.8. We determined that Mboweni was the cost centre manager at the time of the conclusion of the Tegeta CSA. Mboweni indicated that he did not manage or approve the procurement process followed in the appointment of Tegeta CSA as he was not involved. We however noted that Mboweni signed the ten (10) year CSA between Eskom and Tegeta.
- 6.10.9. During our consultation with Mothapo she indicated that the Technical Services Department (“TSD”) forms part of PED which has various departments including the following:
- 6.10.9.1. Fuel Sourcing Commercial;
 - 6.10.9.2. Coal Operations;
 - 6.10.9.3. Environmental;
 - 6.10.9.4. Safety;
 - 6.10.9.5. Projects; and
 - 6.10.9.6. Logistics.
- 6.10.10. From a review of the minutes of the above meeting and other meetings discussed below, held between Eskom and Tegeta, we determined that the parties who attended the said meetings comprised of parties from different divisions within Eskom’s PED.

Meeting between Eskom and Goldridge of 9 May 2014

- 6.10.11. From searches conducted in Nteta’s e-mails we determined that Goldridge approached Eskom with an unsolicited bid to supply coal to Eskom’s power stations. We further determined that there was a meeting between Goldridge and Eskom on 9 May 2014 at Eskom’s Mega Watt Park offices.
- 6.10.12. The said meeting was attended by the following individuals:
- 6.10.12.1. Ayanda Nteta;
 - 6.10.12.2. Shumani Muvhungo;
 - 6.10.12.3. Sunjay Andhee;
 - 6.10.12.4. Thabani Mashego; and

6.10.12.5. Mmabatho Mothapo.

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

Site Evaluations

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

Eskom team that mining at Brakfontein was temporarily halted for a month and a half and they had a stockpile of coal amounting to one hundred and fifty thousand (150 000) tons.

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

Evaluation relating to the commercial and financial requirements

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

Eskom's BBBEE Requirements

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

Second negotiation meeting between Eskom and Tegeta on 10 July 2014

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

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

constructed upstream to prevent water had collapsed leading to flooding of the mine works.

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

Evaluation relating to technical and coal quality requirements

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

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

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

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

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

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

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

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

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

Email dated 25 June 2014 from Nyangwa to Mothapo

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

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

Brakfontein Technical Evaluation Update document dated 2 July 2014

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

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

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

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

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

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

- 6.10.83.2. The AI result for Brakfontein was well below the prescribed limit of 450.
- 6.10.83.3. Milling the Brakfontein (August sample) at the PSCTF did not exhibit any milling problems and the required fineness was achieved at lower classifier speed, this suggested that HGI was within Eskom acceptable limits of 50-55 based on previous milling assessment.
- 6.10.83.4. Based on the burnout time measured at 6% O₂ and design furnace exit temperature, Brakfontein's August sample combustion characteristic met only Kendal, Majuba, Matimba and Matla burnout time and furnace exit temperature.
- 6.10.84. The report provided the following recommendation:
 - 6.10.84.1. Brakfontein's August sample could be considered for Kendal, Majuba and Matla; and
 - 6.10.84.2. PED should not contract at rejection limits as set-out in Appendix A Table A.2. (**Annexure E9**)

Third negotiation meeting between Eskom and Tegeta dated 23 September 2014

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

6.10.88.3. *The CV is on the low side.*”

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

6.11. **TEGETA COMMERCIAL OFFER**

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

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

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

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

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

" Dear Sir,

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

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

| <i>Sr No</i> | <i>Particulars</i> | <i>Typical</i> | <i>Rejections Limit</i> | <i>Bonus</i> |
|--------------|------------------------|----------------|-------------------------|--------------|
| 1. | <i>Calorific Value</i> | 22.00 | 19.50 | >22.50 |
| 2. | <i>Sulphur</i> | 1.00 | >1.30 | <1.00 |
| 3. | <i>Volatile</i> | 21.00 | <20.00 | |
| 4. | <i>Ash</i> | 25.00 | >32.00 | <25.00 |

4. *Rate Offered per Mj.: R17.00*

Yours Sincerely"

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

Further negotiations between Tegeta and Eskom

6.11.12. Mothapo indicated that Tegeta held further meetings with Eskom between September 2014 and December 2014.

6.11.13. During the said meetings, Tegeta requested Eskom to re-test their blended coal samples.

6.11.14. Tegeta indicated that they had fresh stockpiles and the initial tests conducted by Eskom in June 2014 were based on an existing stockpile. Tegeta had already agreed to supply Eskom with the Seam 4 lower coal in that the said Seam 4 lower coal had passed the RT & D’s technical assessments.

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

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

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

Reassessment of Brakfontein coal samples – 16 October 2014

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

- 6.11.25. Laurence Greyvenstein (“Greyvenstein”) and Markus Jonker (“Jonker”), confirmed that it was Eskom’s standard process to share technical coal assessment results of a potential coal supplier with Eskom’s power stations.
- 6.11.26. They further indicated that the PED provided them with some of the technical coal analysis reports in respect of the Brakfontein Colliery.
- 6.11.27. According to the Greyvenstein and Jonker, Eskom’s power stations were not involved in the negotiations held between the PED and a potential coal supplier. The role of power stations is to review the technical coal analysis reports in order to determine whether the potential supplier’s coal conforms to the power station’s technical requirements.
- 6.11.28. **Emails between Eskom and Tegeta relating to the CSA template**
- 6.11.28.1. We noted a copy of an email dated 6 November 2014 addressed by Nath to Nteta and copied to Mudaliar, Mashego, Mothapo, and Adity, titled “*RE: Template Cost Breakdown and Sample*”. **(Annexure E15)**
- 6.11.28.2. According to the email, Tegeta enquired if Eskom had finalised reviewing the master CSA and requested that Eskom send Tegeta a copy for their perusal.
- 6.11.28.3. We further noted a copy of an email dated 7 November 2014, responding to the above email, addressed by Nteta to Nath and Mudaliar and copied to Mashego and Adity, titled “*RE: Template Cost Breakdown and Sample*”. **(Annexure E16)**.
- 6.11.28.4. According to the email, Eskom provided Tegeta with a template of a CSA for their input. The email further provides that Eskom indicated that the provision of the aforesaid CSA template to Tegeta did not in any way create an obligation on Eskom's part to purchase the coal from Tegeta, either then or in the future.
- 6.11.28.5. The provision of the template to Tegeta by Eskom is yet another indication of the preferential treatment afforded to Tegeta. Daniels stated the provision of an editable document to a service provide was irregular.

CSA template

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

Email dated 27 November 2014 addressed by Mothapo to Nyangwa

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

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

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

“ Good day Ayanda,

Bonny is currently on leave for the rest of January perhaps Chris can assist us in this matter. Please find attached the chemical results for the Brakfontein S4U and S4 Blend which indicate the high Abrasive Index.

Regards

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

that Tegeta made a new offer different from the one the company made on 23 September 2014.

- 6.11.47. The offer of 23 September 2014 included only the Seam 4 Lower, where Tegeta offered a blended product of Seam 4 Upper and Seam 4 Lower at a price of R145 per gigajoule

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

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

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

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

Price

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

Technical discussion

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

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

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

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

Tegeta had an existing stockpile of a blend of Seam 4 upper and Seam 4 lower coal which they were proposing to offer to Eskom.

- 6.11.63. In response to our second draft report Tegeta responded stating that “ *There was no pressure from Tegeta to conclude a CSA. The coal supplied to Eskom from 01/04/2015 was freshly mined coal and not from an existing stockpile*”. The discussion relating to the above response from Tegeta and other responses relating to freshly mined coal is provided below.

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

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

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

6.12. WATER USE LICENSE

Background

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

including but not limited to the National Water Act No 36 of 1998 (“The NW Act”).

- 6.12.2. In terms of the 2008 Medium-Term Mandate Legislative Compliance Condition, Eskom’s coal suppliers were required to comply with the requirements of *inter alia* the NW Act.
- 6.12.3. The section below provides a detailed discussion relating to Tegeta’s compliance with the NW Act.

Tegeta CSA Legislative Compliance Requirements

- 6.12.4. As reflected in the paragraphs below, the Tegeta CSA needed to be aligned with the relevant legislative compliance requirements.
- 6.12.5. The NW Act regulates water usage and provides for permissible water use in terms of section 22. In terms of the section, unless water use is in terms of exempted circumstances, it must be used pursuant to a licence issued under the Act.

6.12.6. Tegeta Water License

- 6.12.6.1. As previously discussed, the negotiations between Eskom and Tegeta commenced as early as 2012. The said negotiations commenced prior to Tegeta obtaining their water use license on 22 December 2014 as required by the 2008 Medium-Term Mandate and the NW Act.
- 6.12.6.2. We were provided with a copy of Tegeta’s water use license, license number: 04/B20E/ABCGIJ/2994 and File number: 16/2/7/B200/C585, dated 22 December 2014 titled “*LICENSE IN TERMS OF CHAPTER 4 OF THE NATIONAL WATER ACT, 1998 (ACT NO. 36 OF 1998) (THE ACT)*”. (**Annexure E26**).
- 6.12.6.3. Mothapo, indicated that since Eskom followed an unsolicited tender process in concluding the CSA with Tegeta, there was no requirement for Tegeta to be in a possession of a water use license during the negotiations stage of the said CSA. The statement by Mothapo was confirmed by Mboweni who indicated that there was a period in which Eskom allowed potential coal suppliers to approach Eskom without any Water Use License.

6.12.6.4. Mothapo and Mboweni both indicated that Eskom's Water Use License requirement was that a potential coal supplier was expected to prove that they were in the process of obtaining the license.

6.12.6.5. The above statement was also confirmed by Susan Daniels ("Daniels") who indicated that coal suppliers were not required to have a water use license during the negotiations of their proposals. According to Daniels, during the negotiation of Tegeta's CSA, it was sufficient that Tegeta was in the process of obtaining their water use license.

6.12.6.6. During the course of our investigations we conducted various consultations and reviewed documentation relating to the water use license for Tegeta's Brakfontein Coal Mine.

6.12.6.7. Our findings in this regard are in agreement with those made by National Treasury in that we found *inter alia* the following:

6.12.6.7.1. Tegeta submitted a proposal to supply coal before it was issued the water use license;

6.12.6.7.2. Eskom and Tegeta commenced with the negotiations in 2013 before the water use licence was issued; and

6.12.6.7.3. The water use licence for Tegeta was issued on 22 December 2014.

6.12.7. Department of Water and Sanitation Compliance Audit

6.12.7.1. We determined that during the year 2016, the Department of Water and Sanitation ("DWS") conducted a Water Use License Compliance Audit at Brakfontein Colliery.

6.12.7.2. We were provided with a copy of a Compliance Audit report in respect of the said Water Use License Audit, dated 20 September 2016. The said Compliance Audit report states that "*A WUL compliance audit was arranged and conducted at Brakfontein Colliery on 20-22 July 2016 for the WUL No: 04/B20E/ABCGIJ/ABCGIJ/2994 granted on the 22/12/2014*". (Annexure E27).

- 6.12.7.3. According to the Compliance Audit report, there were twenty-two (22) instances of non-compliance with the conditions of Tegeta's water use license.
- 6.12.7.4. In view of the aforesaid non-compliances, we determined that Tegeta contravened clause 6.1 of the CSA, which provides *inter alia*, that "*The supplier warrants that it is complying and will continue to comply with all its obligations under all current and future applicable laws,*" in that they failed to comply, as outlined above, with all the conditions of their Water Use License.
- 6.12.7.5. In response to our second draft report, Tegeta responded to the above finding by indicating that "*Immediate remedial action was taken by Tegeta to rectify the points raised by DWA under the supervision of "Cabanga Concepts", who submitted the compliance report to DWA after rectification*". (**Annexure E28**)
- 6.12.7.6. In view of confirming the above assertion by Tegeta, we requested Eskom to provide us with copies of all reports in respect of follow up audits conducted by the DWS at the Brakfontein Colliery and copies of all communication between Eskom and Brakfontein Colliery relating to the DWS's audit findings.
- 6.12.7.7. In response to our request, Eskom indicated, through email, that they were not aware of any audits that were conducted by the DWS at the Brakfontein Colliery and any reports relating to the said audits. (**Annexure E29**).
- 6.12.7.8. In the absence of the above reports, we requested the DWS to provide us with copies of all the follow-up audits which they conducted or were conducted by Cabanga Concepts, at the Brakfontein Colliery, to confirm the above assertion by Tegeta and to establish whether there were any actions taken against Tegeta for the non-compliance. As at the date of this report the said reports remain outstanding.

6.13. **ESKOM OFFER TO TEGETA**

Letter dated 30 January 2015 addressed to Nath by Bester

- 6.13.1. We determined that, pursuant to the negotiation meeting held between Eskom and Tegeta on 30 January 2015, Eskom accepted Tegeta’s coal offer of 23 September 2014 through communication from Bester to Nath, discussed below.
- 6.13.2. We noted a copy of a letter dated 30 January 2015 addressed to Nath by Bester titled “*COAL SUPPLY OFFER - TEGETA (BRAKFRONTEIN COLLIERY)*”. (Annexure E30). We determined that the said letter was sent as a response to a letter dated 23 September 2014 which was attached to the email addressed to Nteta by Nath on the same day *i.e.* 23 September 2014 We noted differences in coal quality specification parameters between the letter dated 23 September 2014 addressed to Nteta by Tegeta and the aforesaid letter dated 30 January 2015 addressed to Nath by Bester. The table below provides the aforesaid differences.

| Coal Quality Parameter | Eskom Quality Specifications | | Tegeta Quality Specifications | |
|------------------------|------------------------------|-------------------------|-------------------------------|-------------------------|
| | Quality Expected | Quality Rejection Limit | Quality Expected | Quality Rejection Limit |
| Calorific Value | 21.10 | <20.00 | 22.00 | 19.50 |
| Ash | 27.9 | >30.0 | 25.00 | >32.00 |
| Sulphur | 1.0 | >1.3 | 1.00 | >1.30 |
| Volatile | 21.3 | <20.0 | 21.00 | <20.00 |

- 6.13.3. The above differences in expected coal quality parameters indicate that the coal quality specifications between the aforesaid letters remained the same only in respect of the sulphur parameter and slightly changed, in favour of Eskom, in respect of the Calorific Value, Ash and Volatile parameters.

6.13.4. In view of the above, we determined that Tegeta initially proposed to conclude a CSA with Eskom which had favourable quality specifications requirements on their part. This was not in line with the requirements of the Medium-Term Mandate.

6.13.5. **Nteta's Request for Tegeta's Vendor Registration prior to contracting**

Email dated 3 February 2015 addressed to Mhlophe by Nteta

6.13.5.1. We noted a copy of an email dated 3 February 2015 addressed by Nteta to Mhlophe and copied to Nath, Mashego, Portia Ndlovu ("Ndlovu"), Mudaliar titled "*Vendor Registration*". (**Annexure E31**). We determined that Nteta addressed this email to request Mhlophe to arrange for Tegeta's vendor registration.

6.13.5.2. We determined that on 3 February 2015, Nteta sent an e-mail to Luyanda Mlonzi (Mlonzi") an Eskom official requesting her to do a vendor registration for Tegeta. (**Annexure E32**).

6.13.5.3. We further determined that the above vendor registration request by Nteta to Mhlophe and Mlonzi was as a result of the condition indicated in paragraph 5(c) of the letter addressed by Bester to Nath on 30 January 2015.

6.13.5.4. The letter indicated that "*The contracting entity complies with Eskom's requirements which shall include all Eskom policy and procedure, including Vendor registration*".

6.13.5.5. We however noted that Tegeta and Eskom became "the contracting parties" on 10 March 2015 when they entered into a CSA.

6.13.6. **Nteta's Assertion Relating to Tegeta's Vendor Registration**

Email dated 5 February 2015 addressed to Nteta by Mlonzi

6.13.6.1. We noted a copy of an email dated 5 February 2015 addressed by Mlonzi to Nteta titled "*Re: Vendor Registration*". The email states:

" Good Day Ayanda,

I just want to find out if there is a contract awarded or specific motivation for registering this supplier. I will need that information before proceeding as registration is now done on a need basis.

Regards” (Annexure E33).

- 6.13.6.2. Nteta responded to the above enquiry, through an email dated 5 February 2015 titled “Re: *Vendor Registration*”, by indicating that a contract had been awarded and was scheduled to commence on 1 April 2015. (Annexure E34).
- 6.13.6.3. We determined that Nteta was not telling the truth as the contract was only signed on 10 March 2015.
- 6.13.6.4. We further determined that the above assertion by Nteta that a contract had been awarded to Tegeta was a misrepresentation in that there is no evidence that, as at the date of the above email, there was a recommendation made to the delegated approval authority for contract award as required by clause of 3.8.1 of the Eskom Procurement and Supply Chain Management Procedure.
- 6.13.6.5. Nteta’s response to the above finding, through her attorneys, stated *inter alia* that “*Nteta contends that she never misrepresented or led anyone to act to Eskom’s detriment as a result of her email of 5 February 2015. This was not to be taken out of context and ignoring conditions precedent which the selfsame report recognizes at page 260 at paragraph 5.56.4. She further asserts that as at that time, all the essential terms of the agreement had in fact been agreed to. It is also clear that such agreement is also to comply with “... all Eskom policy and procedure...” (emphasis added).*
- 6.13.6.6. It should be noted that the said paragraph 5.56.4, highlighted in our second draft report, is a condition to a Coal Supply Offer letter addressed by Eskom to Tegeta. The said paragraph read as “*The letter indicated that “The contracting entity complies with Eskom’s requirements which shall include all Eskom policy and procedure, including Vendor registration”.*
- 6.13.6.7. As discussed above, paragraph 3.8.1 of the Eskom PSCM procedure clearly states *inter alia* that, a supplier’s registration on the Eskom Supplier Database must be given priority in the processing thereof at least by the time of making a recommendation to the Delegated Approval Authority for contract award.

6.13.6.8. There is no part of the said paragraph which provides or indicates that a supplier's registration may be given priority as soon as "*all the essential terms of the agreement had in fact been agreed to*". Tegeta's vendor registration was supposed to be given priority once a recommendation to the Delegated Approval Authority was made not when all the essential terms of the agreement were agreed to.

6.13.6.9. Nteta's response further stated that "*It therefore stands to reason that if the approval authority for whatever reason elects not to approve, then no contract would have been consumed. Consequently, there would never be a situation where Eskom is or would have been exposed to litigation arising from that agreement. Nteta accepts that on the face of it, one can interpret the contents of her email of 5 February 2015 to Mlonzi could be interpreted as "determined" however, the conditions precedent clearly militates against that being the only interference that could be drawn*".

6.13.6.10. In addition to the above, Nteta's response stated that "*The much quoted email of 5 February 2015, to the extent that it refers to the vendor registration process, is actually in kitter with the request for the commencement of that vendor registration process. Given how long such a process could take, Nteta's email was to be lauded as proactive, as opposed to attracting the ire of the draft report*".

6.13.6.11. Even though Nteta's conduct was according the above response, a proactive nature, it was supposed to have been done in accordance with the applicable policies and procedures. In terms of best practice, a condition to an agreement negotiated with a service provider could not be considered to take precedence over an entity's prevailing policies and procedures.

6.13.6.12. Moreover, in terms of the minutes of the meeting held between Eskom and Tegeta on 30 January 2015 it was agreed that a sample of the proposed blended coal would be collected for combustion tests and further that proposed start date of the CSA, subject to a successful combustion test, was 1 April 2015.

6.13.6.13. In terms of the letter dated 30 January 2015 addressed to Nath by Bester, negotiations on the terms between Eskom and Tegeta were all

subject to a duly signed CSA and compliance with, inter alia, the requirement that the coal proposed complies with Eskom's full combustion test and is suitable to supply Eskom Majuba power station.

6.13.6.14. The letter dated 3 February 2015, addressed to Bester by Tegeta, reflected that Tegeta was still negotiating the terms of the CSA with Eskom and Eskom had not agreed to Tegeta's terms. As at the date of the aforesaid email from Nteta to Mlonzi, the CSA had not been concluded and no successful combustion tests were concluded for the proposed blended coal.

6.13.6.15. It is clear that Nteta was giving Tegeta preferential treatment by fast-tracking its vendor registration prior to the conclusion of a successful combustion test on the proposed blended coal.

6.13.6.16. Nteta misled Mlonzi by stating that the contract had been awarded whilst certain conditions of awarding same were not achieved. Nteta's actions were a direct contravention of clause 3.8.1 of the PSCM procedure.

6.13.6.17. As previously discussed, paragraph 3.4.5.8 of the PSCM procedure requires suppliers, who approach Eskom with unsolicited offers, to be referred to the SD & L department within Group Technology and Commercial, to engage in this registration process without further representation, engagement or commitment.

6.13.6.18. Paragraph 3.4.5.8 further requires that only once a supplier's offer has been evaluated and pre-qualified after application against the Eskom Conditions of Registration, the supplier may then be given a vendor number confirming registration on the Eskom Supplier database and may be considered for any future tenders.

6.13.6.19. The fact that Tegeta's vendor registration was done before the award, it was therefore in and contravention of paragraph 3.7.3.9 of the Eskom PSCM procedure. Tegeta was supposed to be referred to SD & L for pre-qualification and supplier registration prior to being registered on the Eskom Supplier database.

6.13.7. Tegeta’s follow up on their vendor registration

6.13.7.1. We noted a copy of an email dated 9 February 2015 addressed by Nath to Mlonzi and copied to Nteta and Mudaliar, titled “RE: Vendor Registration – Tegeta Exploration”. (**Annexure E35**).

6.13.7.2. In this email Nath was enquiring whether the documents Tegeta had submitted, in respect of Tegeta’s vendor registration, were complete. According to the email, Nath indicated that should there be any further documents required by Eskom, Tegeta would submit same on an urgent basis.

6.13.8. Issuing of Tegeta vendor registration number

6.13.8.1. We determined that Tegeta obtained their Eskom vendor registration number on the same day of signing the aforesaid CSA. We further determined that Eskom sent the aforesaid vendor registration number to Tegeta on the same day of signing the aforesaid CSA.

6.13.8.2. The aforesaid vendor registration number was sent through an email dated 10 March 2015 addressed by Modiehi Mapela (“Mapela”) to Nath and copied to Nteta, titled “*TEGETA EXPLORATION AND RESOURCES*”. (**Annexure E36**). In this email Mapela informed Nath that Tegeta had been approved to be on Eskom’s database and that Tegeta’s vendor number is 11082687.

6.13.9. Tegeta’s response to Eskom’s Offer

Email dated 4 February 2015 addressed by Nath to Bester

6.13.9.1. We determined that Nath responded to Bester’s letter of 30 January 2015, through an email dated 4 February 2015 titled “*Request Letter – Tegeta Coal Offer*”. In his email, Nath sent Tegeta’s coal offer letter which he indicated was favourable to Eskom.

6.13.10. Tegeta’s request to Eskom to their offer

Letter dated 3 February 2015 addressed by Tegeta to Bester

6.13.10.1. We noted a copy of a letter, attached to Nath’s email, dated 3 February 2015 addressed to Bester titled “*COAL SUPPLY OFFER –*

TEGETA (BRAKFORTEIN COLLIERY)". (**Annexure E37**). The letter from Tegeta requested Eskom to consider the following:

6.13.10.1.1. Increasing the initial coal volumes of 65 000 tonnes per month volume to 100 000 tonnes a month effective 1 October 2015 as the Extension of Brakfontein Colliery would be operational by then.

6.13.10.1.2. Allowing Tegeta to increase the entity's black ownership to 50% plus 1 share in a phased manner over a period of 3 years; and

6.13.10.1.3. To consider a 10-year supply agreement as Tegeta's reserves supported the supply of volumes required for 10 years.

6.13.11. Eskom's response to Tegeta's counter offer for the CSA

Email dated 12 February 2015 addressed to Nath by Nteta

6.13.11.1. Eskom responded to Tegeta's coal supply letter of 3 February 2015 through an email dated 12 February 2015 addressed to Nath and Mudaliar by Nteta titled "*722983 COAL SUPPLY OFFER - TEGETA (BRAKFORTEIN COLLIERY AND EXTENSION)*".

6.13.11.2. Attached to the aforesaid email was a copy of a letter dated 12 February 2015 addressed to Nath by Bester titled "COAL SUPPLY OFFER - TEGETA (BRAKFORTEIN COLLIERY AND EXTENSION)" (**Annexure E38**). The letter states as follows:

" Dear Ravindra

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

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

Extension Colliery. Each of the tranches are subject to the terms herein.

Source of additional 35 000 tons coal mined at Brakfontein

- 6.13.11.3. Mothapo and Opperman respectively indicated that the additional 35 000 tons of coal was supposed to be mined from the Brakfontein Colliery Extension and would be subjected to similar technical assessments which were performed on the coal samples obtained from Brakfontein Colliery prior to delivery of same to Eskom's power stations.
- 6.13.11.4. Opperman indicated that Tegeta never delivered any coal to Eskom from the Brakfontein Colliery Extension as provided in clause 10.4 of the CSA and the contract coal supply schedule, outlined therein.
- 6.13.11.5. The said CSA and contract coal supply schedule provide that Tegeta would supply a minimum monthly coal quantity of 65 000 tons for the period April 2015 to September 2015 and 113 000 tons from October 2015 to September 2020.
- 6.13.11.6. Opperman further indicated that around October 2015 Tegeta was still busy with the preparation of the Brakfontein Colliery Extension site.
- 6.13.11.7. Furthermore, Opperman indicated that the increased coal volumes delivered by Tegeta to Eskom, around October 2015, was mined from the Brakfontein Colliery.
- 6.13.11.8. The letter dated 12 February 2015 from Bester to Nath accepted Tegeta's offer as indicated in the annexure
- 6.13.11.9. Mothapo indicated that during the time the TSD conducted a technical assessment at Brakfontein Colliery, she noted that Brakfontein had about ten (10) million tons of gross coal.

6.13.12. Tegeta's request to make changes on the Eskom coal offer

- 6.13.12.1. We determined that Tegeta responded to Eskom's letter of 12 February 2015 through an email dated 13 February 2015 addressed to Nteta by Nath titled "*RE: 722983 COAL SUPPLY OFFER -*

TEGETA (BRAKFORNTEIN COLLIERY AND EXTENSION).
(Annexure E39).

- 6.13.12.2. In the said e-mail, Nath indicated to Nteta that Tegeta required a ten (10) year contract in order to satisfy their funders in that Tegeta's loan period was going to be more than seven (7) years.
- 6.13.12.3. Nath indicated to Nteta that in the initial five (5) years of CSA Tegeta would be supplying 65 000 tons from Brakfontein Colliery and the remaining coal would be supplied from Brakfontein Colliery Extension.
- 6.13.12.4. Nath requested Nteta to consider making various changes to the Eskom's coal supply offer letter, including *inter alia* the coal volume requirements, the CSA duration.
- 6.13.12.5. We noted a copy of an email dated 13 February 2015 addressed by Nteta to Nath, responding to the above email, titled "*RE: 722983 COAL SUPPLY OFFER - TEGETA (BRAKFORNTEIN COLLIERY AND EXTENSION)*". (Annexure E40). Nteta indicated in her email that she had noted the contents of Nath's email and further that she would revert back to him on Monday, 16 February 2015.
- 6.13.12.6. Nteta responded to Nath's email of 13 February 2015, through an email dated 16 February 2015 titled "*RE: 722983 COAL SUPPLY OFFER - TEGETA (BRAKFORNTEIN COLLIERY AND EXTENSION)*". (Annexure E41)
- 6.13.12.7. Nteta forwarded the aforesaid emails to Bester through an email dated 16 February 2015 titled "*FW: 722983 COAL SUPPLY OFFER TEGETA (BRAKFORNTEIN COLLIERY AND EXTENSION)*". In the said email Nteta informed Bester that she had committed to responding to Nath on Monday, 16 February 2015. According to the email, Nteta indicated that she would draft a document and discuss same with Bester on Monday.
- 6.13.12.8. Nteta indicated to Nath that she had reviewed his comments in respect of the coal offer letter Eskom sent to Tegeta on 12 February 2015. Nteta suggested a meeting with Nath and his team on

Friday, 20 February 2015, at Eskom offices to go through the issues highlighted by Nath.

- 6.13.12.9. Nath confirmed Nteta's meeting request for 20 February 2015, through an email dated 16 February 2015 titled "*RE: 722983 COAL SUPPLY OFFER - TEGETA (BRAKFRONTEIN COLLIERY AND EXTENSION)*".
- 6.13.12.10. During our consultations with Mothapo she indicated that there were no records which indicate that the said meeting took place.
- 6.13.12.11. In order to establish whether Eskom rejected or agreed to Tegeta's requested changes to the terms of the CSA, we compared Tegeta's requests as per their email of 13 February 2015, discussed above, to the provisions of the signed CSA, discussed below.
- 6.13.12.12. Tegeta requested for five (5) changes to be made to Eskom's coal offer letter dated 12 February 2015. The said changes are as follows:
- 6.13.12.12.1. A change in paragraph 2 of Eskom's coal offer letter to read as "*Eskom has agreed to initially take 65,000 tons from Brakfontein Colliery and shall increase the quantity to 100,000 tons on the same commercial terms once Tegeta starts their Brakfontein Extension Colliery. Each of the tranches are subject to the terms hereunder*".
- 6.13.12.13. We determined that the above requests, to provide coal from both the Brakfontein Colliery and Brakfontein Colliery Extension, was granted by Eskom in clause 2.1.37 of the signed CSA, which provides that a Mine "*means the Brakfontein Colliery and Brakfontein Colliery Extension coal mine(s) established to exploit the Coal Resource*". Tegeta's request relating to the increased coal quantity is discussed below.
- 6.13.12.14. The second request by Tegeta was a change in the lower portion of paragraph 2 of Eskom's coal offer letter which stated that "*A maximum price of R13.50 per gigajoule for an additional 35 000 tons per month from Brakfontein Extension Colliery, which shall*

be offered to Eskom” to read as “A maximum price of R13.50 per gigajoule for a total of 100,000 tons per month from Brakfontein Colliery or Brakfontein Extension Colliery or from any one of them. & quot (sic)”.

- 6.13.12.15. We determined that the above request by Tegeta was granted by Eskom in that clause 15.1 of the signed CSA states that *“ The price for Contract Coal on the Base Date (“the Base Price”) shall be R13.50 (thirteen Rands and fifty cents) excluding VAT per GJ, Free Carrier (FCA) at the Delivery Point for Rail Coal and Road Coal”.* Although the CSA does not specify a price per coal source a reasonable conclusion to make is that the above price of R13.50 (thirteen rand and fifty cents) is applicable to both the coal from Brakfontein Colliery and Brakfontein Colliery Extension.
- 6.13.12.16. The third request by Tegeta relating to the increase in coal quantities, as stated under Tegeta’s first request discussed above, was a change in paragraph 3 of Eskom’s coal offer letter to state that *“ the proposed volumes are 65,000 tons per month from Brakfontein Colliery. The volumes shall be increased to 100,000 per month from October 2015 once Tegeta’s Brakfontein Extension Colliery becomes operational”.*
- 6.13.12.17. We determined that the above request was granted by Eskom in that clause 10.4 of the CSA and the contract coal supply schedule, outlined therein, provides that Tegeta were to supply a monthly coal quantity of 65 000 tons for the period April 2015 to September 2015 and 113 000 tons from October 2015 to September 2020. We further determined that Eskom also agreed to a quantity of 113 000 tons, for the period commencing October 2015, which is 13 000 tons more than Tegeta’s requested quantity of 100 000 tons.
- 6.13.12.18. The fourth request by Tegeta, in respect of an extended CSA term, was a change in paragraph 5 of Eskom’s coal offer letter which stated *“ Para (sic) 5 “Ten-year duration”.*
- 6.13.12.19. We determined that Tegeta’s request to increase the CSA term from five (5) years to ten (10) years was granted by Eskom in that the CSA coal supply schedule, provided under clause 10.4 of the

signed CSA, provided that Tegeta is to supply a total of 13 950 000 tons of coal quantities during the period commencing on April 2015 to September 2025. The said period is ten (10) years.

- 6.13.12.20. The fifth and final request by Tegeta was for Eskom to delete paragraph 6 (c) of their coal offer letter which stated that “Eskom’s *technical requirements are met and confirm that the additional Brakfontein Extension can produce saleable tons prior to the contract being extended to up to 10 years*”.
- 6.13.12.21. We determined that the above request was granted by Eskom in terms of the signed CSA as it made no clear provision, under clause 14 titled “*Eskom Technical Compliance*”, which indicated that Tegeta’s Brakfontein Colliery Extension must meet and comply with Eskom’s technical requirements of producing saleable tons prior to the contract being extended to up to 10 years. The said clause stated *inter alia* that “*The Contract Coal to be supplied from both Brakfontein and Brakfontein Colliery Extension must at all times comply with Eskom’s technical and coal supply requirements*”.
- 6.13.12.22. In view of the above, we determined that Eskom agreed to all the changes requested by Tegeta. The aforesaid agreement, by Eskom, to Tegeta’s terms is also confirmed in paragraph one (1) of the briefing note, discussed below, dated 10 March 2015 addressed by Bester to Mboweni. The briefing note is discussed in the paragraphs below. **(Annexure E42)**
- 6.13.12.23. We found the above to be irregular on the part of Nteta, Bester for their participation and/or non-participation in the negotiations between Eskom and Tegeta, in that they allowed Tegeta to dictate the terms of the CSA which, consequentially, were favourable on their part and was not in the best interest of Eskom.
- 6.13.12.24. During our consultation with Nteta, she indicated that the CSA between Tegeta and Eskom was drafted by Eskom’s legal department as request by the PED. She further indicated that the negotiations regarding the ten (10) year period of the said CSA were handled by herself and Bester, without the involvement of

Eskom's legal department, due to lack of capacity within Eskom's legal department.

- 6.13.12.25. The above finding was also highlighted in our second draft report. Nteta's response to the above finding, through her attorneys, stated *inter alia* that " *The fact that the primary negotiations were handled by Nteta and Bester does not, without more, prove that Legal Department's inputs were not solicited or obtained at all. Capacity Constraints referred to (sic) related to frequency and extent of involvement and that still be independently verified as recognized in paragraph 5.69.5 and 5.70.5 respectively. Consequently, what is recorded in 5.70.3 (page 272) is premature and unfortunate, certainly if such a bold 'finding' is made without interviewing legal department officials who could shed light thereon*".
- 6.13.12.26. During our consultation with Daniels, she indicated that allowing a service provider to make changes or amend the terms of a contract while it is being negotiated, is illegal. According to Daniels, the requested changes by Tegeta should have been negotiated and handled by the whole negotiation team, which comprised various parties including, amongst others, the geologists and the finance personnel and not by a single individual. Daniels further indicated that Tegeta was not supposed to dictate to the terms of the contract *i.e.* the 10 years period.
- 6.13.12.27. It should be noted that, in response to our draft report, Tegeta did not comment on the above finding relating to the changes in on the CSA.

The increase of the contract period from five to ten years

- 6.13.12.28. As indicated above, the original offer made by Eskom to Tegeta was a contract for the duration of five (5) years for Tegeta to supply Eskom with coal from Brakfontein Colliery. The said offer of five (5) years would have run from April 2015 to 31 March 2019 and would have therefore exceeded the Medium-Term Mandate period which ended in September 2018.

- 6.13.12.29. The revised period of ten (10) years awarded to the Tegeta for the supply of coal for the Brakfontein Colliery mine led to Eskom signing an agreement that went further beyond the 2018, September end date for the Medium-Term Mandate.
- 6.13.12.30. The CSA between Eskom and Tegeta is regulated by the Medium-Term Mandate. Various Eskom executives including Nteta, Mboweni and Daniels agree the Eskom coal procurement from Tegeta's Brakfontein mine was concluded under the Medium-Term Mandate.
- 6.13.12.31. The Medium-Term Mandate was a process approved by the Board.
- 6.13.12.32. The CSA between Eskom and Tegeta went beyond the life of the Medium-Term Mandate.
- 6.13.12.33. There is no indication that the period of the CSA that went beyond the Medium-Term Mandate (*i.e.* October 2018 to 2025), was approved by the Board.
- 6.13.12.34. Eskom contracting to a period beyond the Medium-Term Mandate life span was unauthorised and irregular.
- 6.13.12.35. Koko, Nteta, Mabelane and Mboweni should be held to account for the irregular and unauthorised expenditure.
- 6.13.12.36. There is no evidence that Eskom Executives who concluded the coal supply agreement between Eskom and Tegeta obtained approval to procure beyond the lifespan of the Medium-Term Mandate.

Eskom accepts Tegeta's offer of an increased coal quantity

- 6.13.12.37. We determined that on 9 March 2015 at 19:08 pm which was a day before the signing of the CSA, between Eskom and Tegeta, Nteta sent an e-mail to Nath and Mudaliar and copied Mashego. In the said email Nteta wrote *inter alia* the following: "*Goodday, please find attached draft contract. We have tried to accommodate your comments where possible*".
- 6.13.12.38. Nteta's e-mail further reflected the following:

“As indicated, our legal advisor is to review the changes that we discussed during our operational meeting this afternoon. Please note that we have increased your monthly tonnage to 113 000 tons, with a variance on the max and min”. (Annexure E43)

THE COAL SUPPLY AGREEMENT

Tegeta Coal Supply Briefing Note dated 10 March 2015

- 6.13.13. We noted a copy of a briefing note dated 10 March 2015 from Bester to Mboweni titled *“CSA WITH TEGETA EXPLORATION AND RESOURCES”* (Annexure E42) The briefing note highlighted the following:
- 6.13.13.1. Eskom had negotiated a contract for the supply of coal from Tegeta Exploration and Resources; and
 - 6.13.13.2. According to the briefing note, Eskom’s legal advisor had reviewed the contract.
- 6.13.14. During our consultation with Mboweni, he indicated that he could not recall whether he received the said briefing document prior to signing the CSA or received it on the day that he signed the CSA.
- 6.13.15. Mboweni further indicated that it is highly probable that he received the said briefing document on the same day that he signed the CSA in that he had always requested to be provided with a documentary audit trail. The documentary audit trail would indicate various signatories and the purpose of his signature, before he signed any document.
- 6.13.16. In his response to our consultation questions, Koko indicated that Mboweni was the official who signed the CSA on 10 March 2015. Koko further indicated that he was not directly involved in the management of the coal supply contract and was therefore not able to comment on the transition.

Conditions Precedent to the Tegeta CSA

- 6.13.17. We determined that, in addition to the suspensive condition provided on the briefing note discussed above, clause 10.1 of the CSA provides that Eskom and Tegeta agreed that the CSA would be subject to the fulfilment or waiver of the following conditions:

- 6.13.17.1. According to clause 10.2.1, in respect of Tegeta, to complete and report a successful combustion test, for coal supply to Majuba power station, by no later than 16h00 on 31 August 2015.
- 6.13.17.2. We further determined that clause 10.3 of the CSA provides that *“ It is specifically recorded that if the Conditions Precedent are not fulfilled or waived on or prior to the applicable date referred to in clause 10.2.1. the remaining provisions of this Agreement shall never become effective/ In such event, neither Party shall have any claim of any nature against the other”*.
- 6.13.18. We noted that Eskom Management admitted in previous investigations that the above conditions precedent were not complied with.

Suspensions of Eskom Executives

- 6.13.19. We determined that on 11 March 2015 Eskom suspended the following Executives:
- 6.13.19.1. Tshediso Matona, Group Chief Executive
- 6.13.19.2. Matshela Koko, Group Executive, Commercial and Technology;
- 6.13.19.3. Dan Marokane, Group Executive, Capital; and
- 6.13.19.4. Tsholofelo Molefe, Finance Director.
- 6.13.20. We determined that from the four Executives, only Koko returned to Eskom after the said suspensions.
- 6.13.21. During our consultations with Matona, he confirmed that he was suspended on 11 March 2015 together with the three Executives reflected above. Matona indicated that there was a Board Meeting scheduled for 9 March 2015. He indicated that in the said meeting the Board proposed to have an investigation conducted relating to *inter alia* load shedding.
- 6.13.22. Matona indicated that he raised issues relating to the fact that various investigations had been conducted and Eskom knew what the problems of *inter alia* load shedding were, as a result he did not support a new investigation.
- 6.13.23. Matona further indicated that the Board told him that the investigation was requested by the then Minister, Lynne Brown. As a result the Board took a

resolution to reschedule the meeting to 11 March 2015 in order to be addressed by Minister Brown.

- 6.13.24. Matona indicated that on 11 March 2015 the Board had a meeting in which Minister Brown was also present.
- 6.13.25. Matona further indicated that at the commencement of the said meeting the Board requested him and Tsholofelo Molefe to be excused. According to Matona, the Board sat until in the afternoon when Minister Brown left, after which Matona was asked to re-join the meeting.
- 6.13.26. It was at the said meeting that Matona was served with a suspension letter.
- 6.13.27. In his address to the Portfolio Committee on Public Enterprises Ben Ngubane (“Ngubane”) indicated that the suspension of the four Executives was done during the tenure of Zola Tsotsi (“Tsotsi”), the then Eskom Board Chairman.
- 6.13.28. Ngubane further indicated that Tsotsi had apparently suspected the executives of wrongdoing.
- 6.13.29. Ngubane stated that an investigation was ultimately conducted, but on different terms than those initially proposed by Tsotsi.
- 6.13.30. Both Matona and Tsholofelo Molefe were in June 2015 replaced by Brian Molefe and Anoj Singh as Acting GCE and Acting GCFO respectively. On 25 October 2015 Minister Brown appointed Molefe and Singh as GCE and GCFO respectively.

6.14. COAL TESTING AFTER SIGNING THE CSA

- 6.14.1. Nyangwa indicated that Dr Van Alphen also conducted a coal chemical analysis and QEMSCAN just after he had also concluded on the combustion test on the second sample that was provided by the PED in August 2014. During our consultation with Mothapo she indicated that Dr. Van Alphen commenced with the aforesaid coal analysis and QEMSCAN around January 2015. According to Nyangwa, Dr. Van Alphen’s test results concurred with his results in that they were both of the view that the Seam 4 upper coal from Brakfontein was not suitable for most of Eskom’s power stations.
- 6.14.2. Dr. van Alphen, confirmed that he performed the aforesaid tests and indicated that Brakfontein Colliery’s Seam 4 lower coal was good in that it could be used at various Eskom power stations. Furthermore, Dr Van Alphen indicated that

the RT & D's overall conclusion was that the Seam 4 lower coal was always the preferred option for Majuba power station.

RT& D's Technical Memorandum dated 12 March 2015

- 6.14.3. We noted a copy of a Technical Memorandum dated 12 March 2015 addressed by Dr. van Alphen to the PED referenced "RT&D FM 209-21 Rev.1" and titled "*Brakfontein S4L Coal Assessment*". (**Annexure E44**).
- 6.14.4. The said memorandum contained drastically improved HGI in the Brakfontein Colliery's Seam 4 Upper and a blend of Seam 4 lower
- 6.14.5. Nyangwa indicated that he was surprised by the sudden improved HGI in Brakfontein Colliery's Seam 4 upper coal and a blend of Seam 4 lower and Seam 4 upper coal in that his report of August 2014 reflected an HGI which was not in line with Eskom's coal quality requirements.
- 6.14.6. Dr. Van Alphen indicated that the above improved HGI was so shocking that one would have concluded that it was based on coal samples derived from different sources.
- 6.14.7. In response to the above statement, Tegeta stated that "*The coal sample supplied to Eskom was from the Brakfontein mine only*".
- 6.14.8. The memorandum recommended that Sending a "mixed" Brakfontein S4U/S4L blend to Majuba and Matla power station was not recommended as there was a high probability that the "mix" would frequently exceed Majuba and Matla 240 rejection specification. This was attributed to the poorer quality S4U which exceeded Majuba/Matla 240 rejection specifications. If however, S4U and S4L were to be de-stoned, the qualities would be acceptable and a mixed product would be suitable for Matla and Majuba.
- 6.14.9. If de-stoning was not feasible, then sending only S4L to Matla and Majuba was an option. The remaining S4U could be sent to Kendal power station.

Nteta's request of feedback on RT& D's Technical Memorandum

- 6.14.10. We noted a copy of an email dated 23 March 2015 addressed by Nteta to Mothapo and copied to Mashego, titled "Feedback on Full Combustion Test – Brakfontein Colliery". (**Annexure E45**). In the email Nteta requested Mothapo to provide her with feedback on the full combustion test for the Brakfontein Colliery.

Full combustion test Seam 4 Upper Coal

- 6.14.11. Mothapo indicated that the “full combustion test” referred to in Nteta’s e-mail was in respect of the fresh Seam 4 upper coal stockpile, which she collected on 10 March 2015 as requested by Tegeta in the meeting held between Eskom and Tegeta on 30 January 2015.
- 6.14.12. Mothapo further stated that she had requested that the aforesaid fresh stockpile be tested prior to the PED accepting same. Mothapo further indicated that the full combustion test results were provided to her by the RT & D on 9 April 2015 and she then reported the results to Nteta and Mashego on 10 April 2015. Mothapo further indicated that RT & D tested both Seam 4 upper and Seam 4 lower fresh stockpiles samples provided to them.
- 6.14.13. As discussed below, the CSA between Tegeta and Eskom was concluded on 10 March 2015, before the above tests were conducted which was in contravention of clause 3.1 and clause 3.2.1.6 of the Eskom Technical Evaluation Procedure for Sourcing Coal (**Annexure E46**).
- 6.14.14. Tegeta responded to the above finding by stating that *“Full combustion test was a pre-condition in the CSA. Eskom took the sample on 10th March 2016 (sic). When Tegeta did not receive any letter regarding an adverse finding in the sample and subsequently pre-approved the stockpiles, it was presumed that the sample was approved”*.
- 6.14.15. The above response from Tegeta confirms that the Tegeta CSA was handled with gross negligence and Eskom’s best interests were not considered. The said statement further confirms that the suspensive conditions provided in Bester’s letter addressed to Mboweni, were not met prior to signing the CSA.
- 6.14.16. During our consultation with Daniels, she indicated that failing to comply with a pre-condition to the CSA, in this case a full combustion test, renders the Tegeta CSA irregular.
- 6.14.17. Tegeta was arbitrarily allowed to start making deliveries without any confirmation on the part of Eskom that their coal was compliant with Eskom’s quality requirements. This was irregular on the part of Eskom.
- 6.14.18. Nyangwa confirmed that he received the stockpile samples collected by Mothapo.

- 6.14.19. Nyangwa indicated that it was surprising that the PED sent another coal sample to his division to analyse as had never happened before, during his tenure in the RT & D. He further indicated that it appeared that Tegeta wanted to make sure that their coal passed all RT & D tests in order for the CSA to be concluded.
- 6.14.20. According to Nyangwa, Mothapo appeared to be coerced by someone to swiftly finalise Tegeta's coal chemical analysis. Dr. Van Alphen confirmed Nyangwa's assertions during our consultations with him. He further stated that Mothapo appeared to be pressured to conclude on the chemical analysis.
- 6.14.21. During our consultation with Mothapo, she confirmed that she was under pressure and further that the said pressure was exerted on her by Nteta. She further indicated that she did not see anything wrong with the level of pressure exerted to her by Nteta as it appeared to be normal and expected due to the fact that Eskom was experiencing coal shortages at its various power stations.

RT & D's April 2015 Technical Assessment Report – April 2015

- 6.14.22. We noted during the review of a report dated April 2015, (actual day not reflected), attached to an email from Nyangwa to the PED "*TEGETA, BRAKFORTEIN MARCH 2015 BLEND TECHNICAL ASSESSMENT*". (Annexure E47), that the report concluded the following:
- *"The March 2015 sample is similar in most characteristics to the June 2014 sample.*
 - *When Hardgrove is not (sic) be considered in the first pass assessment of comparing the Brakfontein (March 2015 sample) to Coal Quality Specifications, the submitted sample is within the acceptable range for Kendal and Kriel 4-6 units. It is marginal for Tutuka & Majuba due to ash which is at the limit of the rejection range, marginal for Matla due to CV which is also between acceptable and rejection range.*
 - *When Hardgrove is considered in the overall assessment, based only on the laboratory analysis then the March 2015 sample is not suitable for all the power stations as the required mill throughput to meet full load will not be achieved.*

- *The results achieved by the PSCTF mill does conclude that Brakfontein March 2015 sample will produce fineness below 70% passing a 75um sieve.*
 - *In the absence of the rate of slagging as determined by the Qemscan, the ash elemental results indicate a medium to high slagging propensity.*
 - *Based on the determined burnout time and design furnace exit temperature, the March 2015 Brakfontein sample meets Kendal, Tutuka, Matla and Majuba. The source is marginal for Kriel 4-6 units.*
- 6.14.23. The report further provided, as part of the recommendation, that *“ Practically, producing a consistent blend which will always have the same qualities as the March 2015 sample is difficult to maintain. This can result to producing a blend with a Hardgrove which is worse than the one analysed, and also surpassing the 240-71273834 ash and CV rejection limit. Since it is not the first Brakfontein sample to be assessed in RT&D, it is still recommended that if de-stoning is not feasible, then sending only S4L to Matla, Tutuka, and Majuba is an option. The remaining S4U could be sent to Kendal power station”*.
- 6.14.24. In response to the above, Tegeta quoted and pointed to the last sentence, which formed part of the conclusions discussed above, provided by RT & D which stated that *“ Based on the determined burnout time and design furnace exit temperature, the March 2015 Brakfontein sample meets Kendal, Tutuka, Matla and Majuba. The source is marginal for Kriel 4-6 units”*.
- 6.14.25. It should be noted that the above statement was part of the conclusions of the RT & D reports, as discussed above, and was not part of the recommendations provided by RT & D. The statement is based on the coal burnout time and the design furnace exit temperature. Our finding is based on the recommendation provided by RT & D which focused on the quality specifications provided in Eskom’s 240 specs document. The said recommendation clearly stated *inter alia* that *“ it is still recommended that if de-stoning is not feasible, then sending only S4L to Matla, Tutuka, and Majuba is an option. The remaining S4U could be sent to Kendal power station”*.
- 6.14.26. Nyangwa indicated that when he issued the above report, he was not aware that the CSA had already been signed in that, according to him, the above report should have been used by the PED to guide the negotiations between Eskom and Tegeta.

- 6.14.27. As indicated above, according to the briefing note dated 10 March 2015, one of the suspensive conditions to the CSA was that prior to acceptance of the supplier coal for both Brakfontein Colliery and Brakfontein Colliery Extension, the supplier must meet Eskom's environmental and technical requirements, which include but not limited to a full combustion test.
- 6.14.28. We determined from the review of the coal offloading reconciliation document that Tegeta made the first delivery to Majuba power station on 7 April 2015.
- 6.14.29. The technical reports issued by RT & D on 12 March 2015 and April 2015 indicated that the delivery of S4 upper coal or a blend of S4 upper and S4 lower was not recommended for Majuba power station.
- 6.14.30. Tegeta responded to the above finding by stating that *"The statement is not correct. The March 2015 sample Report clearly indicated that "Based on the determined burnout time and design furnace exit temperature, the March 2015 Brakfontein sample meets Kendal, Tutuka, Matla and Majuba". Our analysis of Tegeta's response is discussed above.*
- 6.14.31. The two (2) RT & D technical reports referred to above were issued after Tegeta had made the first delivery at Majuba power station *i.e.* 7 April 2015.
- 6.14.32. A detailed discussion relating to deliveries from Brakfontein mine is provided in the following section.
- 6.14.33. In response to the above, Tegeta stated that *"The supply contract commenced from 01/04/2015. The sample was collected on 10/03/2015. Eskom never informed Tegeta that the test is not conducted or have not passed. It was therefore presumed that he (sic) coal met Eskom's requirement and the delivery started. Further, the coal was supplied from pre-certified stockpiles by Eskom. In the event that the sample had not been satisfactory Eskom would never have pre-certified these stockpiles".*
- 6.14.34. The above response by Tegeta was addressed in the previous section. Further to our analysis of Tegeta's response we determined that the response regarding the pre-certified stockpiles renders the coal pre-certification process questionable. The coal pre-certification process is discussed in the next section.

- 6.14.35. The delivery of a blend of S4 upper and S4 lower coal before a successful combustion test on same was concluded, was in contravention of the suspensive conditions to the CSA referred to above.
- 6.14.36. As indicated above, Nyangwa indicated that although he was not aware that the CSA had already been signed, he understood that Tegeta started making deliveries of coal to Eskom around 28 March 2015.
- 6.14.37. As further indicated above, a detailed discussion relating to deliveries made from Brakfontein mine, is provided in the next section.

6.14.38. **Discussion of Drainage Tests during Monthly Technical Liaison Meetings**

- 6.14.38.1. We determined that various Monthly Technical Liaison Meetings were held between Eskom and Tegeta during the year 2015. According to clause 22.10 of the CSA, “ *Eskom and the Supplier shall jointly and in consultation with each other and no later than 30 (thirty) days after Delivery of Contract Coal, conduct drainage tests to determine the Equilibrium Moisture content and the stockpile drainage period required for coal to attain such Equilibrium Moisture, which stockpile Retention Time will then be reduced to writing and signed off by duly authorised representatives of both Parties to be used for evidentiary purposes. The Supplier shall bear the cost of sampling and Eskom shall bear the cost of the analysis*”.
- 6.14.38.2. We noted copies of various minutes of Monthly Technical Liaison Meetings held between Eskom and Tegeta as referred to above. The minutes indicate, under the agenda item titled “CQMP”, that “ *The drainage test date need to be scheduled*” and, under the agenda item titled “ *Environmental*”, that “ *All mining activities should be compliant with water use license*”.
- 6.14.38.3. The said meetings were convened in accordance with the requirements of clause 28 of the CSA which provides “ *inter alia, that “At least once per Month during the currency of this Agreement, a Technical Liaison Meeting shall be held and be attended by authorised representatives of Eskom and the Supplier*”.

Non-compliance with Drainage Tests Requirements

- 6.14.38.4. A review of the coal offloading reconciliation document prepared by Majuba stated that the first delivery from Brakfontein Colliery was made on 7 April 2015. In view of the aforesaid, we determined that Eskom failed to enforce clause 22.10 of the CSA by not conducting drainage tests which were supposed to be conducted by no later than thirty (30) days after delivery of contract coal. Eskom was supposed to conduct a drainage test by, at latest, the end of June 2015.
- 6.14.38.5. During our consultation with Gert Opperman (“Opperman”), he indicated that, as the CSA contract manager, it was his duty to resolve instances of non-compliance by Tegeta with the CSA by noting the said instances of non-compliance in the minutes of the technical monthly meetings.
- 6.14.38.6. Opperman further indicated that he actioned the aforesaid instances of non-compliances by, inter alia, communicating with Tegeta and, in certain instances, involving Eskom’s legal department for their assistance.
- 6.14.38.7. We requested Opperman to provide us with communication sent to Eskom’s legal department relating to non-compliance with the terms of the CSA. We further sent our consultation questions to Eskom’s legal department personnel to, inter alia, confirm the above.
- 6.14.38.8. As at date of this report we had not yet received the relevant responses.
- 6.14.38.9. We determined, from the review of the minutes of the Monthly Technical Liaison Meetings, that the CSA was a standing agenda item on the previously mentioned meetings. We however noted that, contrary to the above assertion by Opperman, issues of non-compliance with clause 22.10 of same were never discussed in any of the said meetings.
- 6.14.38.10. We determined that Opperman’s assertion, that he noted instances of non-compliance with the CSA in the technical monthly meeting

minutes, was a misrepresentation in that instances of non-compliance with clause 22.10 of the CSA, discussed above, were never noted in any of the aforesaid minutes of the Monthly Technical Liaison Meetings.

- 6.14.39. We further determined that Eskom's legal department officials were never in attendance in any of the meetings referred to above. Although clause 28 of the CSA is not clear and specific about the authorised representatives of Eskom who were expected to attend the Monthly Technical Liaison Meetings, the non-attendance by Eskom's legal department officials of the said meetings, placed Eskom in a compromised position in that the presence of Eskom's legal department officials or their representatives would have, reasonably, mitigated and/or ultimately prevented instances of non-compliance, with the CSA by Tegeta.

RT& D's Technical Memorandum dated 17 April 2015

- 6.14.40. We determined that RT&D issued a Technical Memorandum, in respect of Tegeta's coal, dated 17 April 2015 addressed by Dr Van Alphen to the PED referenced "RT&D FM 209-21 Rev.1" and titled "*Brakfontein S4L and S4U blend*". (**Annexure E48**).

I. The memorandum indicated that Brakfontein S4L was recommended for Tutuka, Majuba and Matla. This recommendation is based on the coal qualities and the combustion characteristics. If the ash content of S4U is reduced then sending a blend of S4L and S4U to Majuba is a feasible option.

- 6.14.41. Tegeta responded to the above statement by indicating that "*All the coal stockpiles supplied to Eskom was pre-certified coal approved by Eskom after lab test. So high ash coal cannot be supplied by Tegeta to any power station*".
- 6.14.42. As part of the conclusions, the memorandum states, *inter alia*, that "*Even though, the March 2015 is a selectively mined blend, the quality is still controlled by the proportion of S4U. Although the 98% combustion efficiency burnout time and furnace exit temperatures are within Majuba design specification, Brakfontein is still marginal for Majuba power station as the ash content is borderline on the 240-reject specification*".

6.14.43. Mothapo and Nyangwa indicated that they understood that Tegeta's continuous attempts of proposing to supply a blend of Seam 4 upper and Seam 4 lower coal was that it appeared that Tegeta would not make profit by only supplying Seam 4 lower coal

6.14.44. **Additional Technical Assessments conducted on Tegeta's coal**

Brakfontein's Geological Borehole Data Assessment

6.14.44.1. During our consultation with Mothapo, she indicated that around June 2015, she provided geological borehole data, which she obtained from Brakfontein, to Dr Van Alphen to conduct a geological review on same in order to reach further conclusions on the low HGI on the Seam 4 coal.

6.14.44.2. She further indicated that the said geological review was conducted as a result of many concerns of a low HGI which were raised by coal miners who were mining close to the Brakfontein Colliery.

RT& D's Technical Memorandum dated 18 June 2015

6.14.44.3. We noted a copy of a Technical Memorandum dated 18 June 2015 addressed by Dr Van Alphen to the PED referenced "*RT&D FM 209-21 Rev.1*" and titled "*Brakfontein Borehole Assessment*". (**Annexure E49**). The memorandum provides that the objective of the analysis was to determine the lateral and vertical quality variation of S4, the degree of weathering/devolatilisation, proximity to a paleo-river or paleo-high and nature and frequency of in-Seam partings.

6.14.44.4. The memorandum concluded by providing that Brakfontein had four (4) options for supplying coal to Eskom's Majuba power station. The said options were as follows:

6.14.44.4.1. Blend raw S4U with S4L to produce a product which is within Majuba 240 specification;

6.14.44.4.2. A blend of selectively mined S4U and raw S4L;

6.14.44.4.3. A blend of washed S4U (density cut point of 1.7-1.9 g/cm³) and raw S4L; and

6.14.44.4.4. Mine only S4L.

6.14.44.5. The memorandum concludes by stating that “Sending a blend of raw S4L and a washed S4U to Majuba, Tutuka and Matla power station was recommended in previous Brakfontein reports (RP_FUEL_QS_114_121 and RP_FUEL_QS_15_04). Based on the borehole review, the recommendation is still valid for Majuba and Tutuka power stations. It is not recommended for Matla power station as Brakfontein predicted 98% combustion efficiency burnout time is comparable to or exceeds Matla power station residence time of 1.9s.

Sending a blend of raw S4U and S4L to Kendal and Kusile power station is only viable if S4U selective mining is practiced and if blending is optimised”.

6.14.44.6. The memorandum recommended as follows:

6.14.44.6.1. Producing a blend of raw S4L and selectively mined S4U is not recommended for Majuba, Tutuka or Matla power station. It could be considered for Kendal and Kusile power stations only if S4U is selectively mined and if blending is optimised. If there is no selective mining of S4U and blending is not optimised, then there was a high probability that the resultant “mixed” pre-certified samples would periodically exceed Kusile and Kendal 240 specifications.

6.14.44.6.2. The high total sulphur content of Brakfontein is also a concern. It was recommended that the Majuba 240 reject dry base total sulphur of 1.14% be included in the contract.

6.14.44.7. We determined that the PED disregarded the recommendations provided in the above report in that, as at the date of the aforesaid report i.e. 18 June 2015, the CSA between Eskom and Tegeta had already been concluded on 10 March 2015.

6.14.44.8. We found this to be irregular on the part of the PED in that they concluded a CSA without considering the recommendations of the

RT & D. The aforesaid report provided, inter alia, critical coal quality specification recommendations which should have been considered prior to concluding a CSA.

PED's disregard of RT & D's recommendations made on Brakfontein coal stockpile samples

- 6.14.44.9. As discussed above, Eskom's PED disregarded RT & D's recommendations, on tests conducted on Tegeta's coal, relating to the conclusion of CSA for the supply of both Seam 4 upper and Seam 4 lower coal to Eskom's Majuba power station. All RT & D's reports, some of which issued after the conclusion of the CSA, recommended against the supply of a blend of Seam 4 upper and Seam 4 lower coal to Eskom's Majuba power station.
- 6.14.44.10. There is no evidence that Eskom's management took any action as stated above, in that Tegeta continued to deliver a blend of Seam 4 lower and Seam 4 upper coal to Eskom's Majuba power station, despite the said coal not complying with the quality requirements of Majuba power station.
- 6.14.44.11. From a review of documentation we understand that PED was required to conduct additional assessments including Health and Safety Checks and Environmental assessments before the conclusion of the CSA.
- 6.14.44.12. Documents reviewed reflected that the first Health and Safety evaluation was conducted on 18 March 2015 which was eight (8) days after the contract was signed. The on-site visit was conducted on 26 March 2015, which was two (2) and a half months after the contract was signed.
- 6.14.44.13. The process followed in concluding the Tegeta CSA, as described above was in contravention with section 217 of the Constitution which states that in that the said process followed was not fair and competitive since an opportunity was not afforded to other potential service providers to participate in this process.

6.14.44.14. The irregular conclusion of the CSA may have caused Eskom to suffer and irregular expenditure, as the life span of the agreement fell outside the Medium-Term Mandate.

6.14.44.15. The said irregular expenditure was in contravention of section 51(1)(b)(ii) of the PFMA, which states that the “*An accounting authority for a public entity must take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity*”.

6.15. PERFORMANCE OF TEGETA UNDER THE CSA – COAL DELIVERIES

Background

6.15.1. We determined that the CSA provided various provisions in respect of coal quantities which Tegeta was expected to deliver to Eskom during the contract period. The CSA further provides specific clauses relating to payments made by Eskom for the coal delivered by Tegeta. The said clauses detail various provisions which were to be adhered to by both Tegeta and Eskom during the contract period.

6.15.2. The initial discussion between Tegeta and Eskom was for the provision of 65 000 tons of coal from Brakfontein Mine.

6.15.3. The signed CSA between Eskom and Tegeta was for the supply of a total quantity of 13 950 000 tons of a blend of Seam 4 lower and Seam 4 upper coal, from Tegeta’s Brakfontein Colliery. The value of the said CSA was R3.7 billion and was for a period of ten (10) years commencing on 1 April 2015 to 30 September 2025.

6.15.4. Our discussion relating to the coal deliveries made by Tegeta covers the period April 2015 to December 2015. It must however be noted that below we discussed payments made by Eskom to Tegeta for the duration of the contract.

Alleged Early Delivery of Coal at Majuba Power Station by Tegeta

6.15.5. During our consultations with various Eskom officials, including Charlotte Ramavhona (“Ramavhona”), Dr. Van Alphen and Nyangwa, they respectively indicated that Tegeta started making coal deliveries at Majuba Power Station prior to signing the CSA. At the time of our consultation with

the three (3) Eskom officials referred to above, they did not provide us with evidence to this effect.

- 6.15.6. The allegations by Ramavhona, Dr. Van Alphen and Nyangwa was contradicted by information we obtained from Nteta and Opperman who, during our consultations, indicated that Tegeta only started making deliveries after signing the CSA.
- 6.15.7. According to Nteta, Tegeta started delivering coal to Eskom on 12 April 2015 and they did not make any delivery prior to signing the CSA.
- 6.15.8. We determined from the review of the Coal Offloading Reconciliation document prepared by Majuba that the first delivery from Brakfontein Colliery was made on 7 April 2015. We further determined from the offloading reconciliation document that Brakfontein Colliery delivered 48 000 tonnes between the period 7 April 2015 to 30 April 2015 which was far below the required quantity (**Annexure E50**).
- 6.15.9. According to the technical monthly liaison meeting of 13 May 2015, discussed below, Tegeta indicated that the reason for the deliveries being below plan was due to challenges on the processing plant.
- 6.15.10. According to the CSA and contract coal supply schedule, reflected above, Tegeta agreed to supply Eskom a minimum monthly coal quantity of 52 000 tonnes.
- 6.15.11. During the meeting of 10 July 2014, Tegeta indicated that they had between 70 000 to 75 000 tonnes of existing stockpiles in Brakfontein Colliery which they were proposing to supply to Eskom.
- 6.15.12. As discussed below, Tegeta failed to meet their minimum monthly delivery commitment even though they claimed they had enough stock pile to meet a coal quantity of 65 000 tonnes per month prior to signing the CSA.

Monthly delivery schedules agreed upon during the Technical Monthly Meetings

- 6.15.13. We requested copies of all the minutes of the monthly Technical Liaison Meetings held between Eskom and Tegeta in respect of the Brakfontein CSA, with a view of quantifying coal which was agreed upon and delivered by Tegeta, over the period of the CSA. We were however only provided with copies of minutes of the monthly Technical Liaison Meetings held between 13 May 2015 and 21 September 2016. In the absence of complete information for

the year 2016, our quantification is limited to coal deliveries made in the year 2015, which covers the period April to December 2015. (**Annexure E51**).

- 6.15.14. During a review of the minutes we determined that various monthly coal quantity targets and forecasts were agreed upon. The minutes further reflected reasons provided, by Tegeta, for failing to meet their monthly targets.
- 6.15.15. Based on documentation reviewed, we determined that during 2015 Tegeta made 9 deliveries to Majuba Power Station.
- 6.15.16. As discussed in the paragraphs above, the CSA provided various coal quantity requirements which Tegeta was expected to comply with. Given the fact that the said coal quantity requirements were provided in many forms i.e. monthly, quarterly, annually, below we provide an analysis of the coal quantities delivered by Tegeta per quarter, during the year 2015:

| Quarterly Delivery Schedule Analysis for the year 2015 | | | | | |
|--|--------------------------------|-------------------------|------------------------|------------|------------------------|
| No | Delivery Months | Planned Delivery (Tons) | Actual Delivery (Tons) | Difference | Effect |
| 1 | April, May and June | 207 206 | 204 876 | (2 330) | Below planned quantity |
| 2 | July, August and September | 293 000 | 342 775 | 49 775 | Above planned quantity |
| 3 | October, November and December | 579 245 | 512 386 | (66 859) | Below planned quantity |

- 6.15.17. As reflected on the above table, during the year 2015, Tegeta failed to meet the planned delivery requirements on two occasions. Furthermore, the above table provides that Tegeta delivered, on one occasion, above the planned delivery requirements.

- 6.15.18. According to the CSA coal delivery schedule, Tegeta was expected to deliver a monthly quantity of 65 000 tons for the first six (6) months (April 2015 to September 2015) of the CSA period. The said schedule further indicated that over the same period, Tegeta was expected to deliver a minimum and maximum monthly quantity of 52 000 and 78 000 tons, respectively.
- 6.15.19. The CSA's coal delivery schedule further provides that Tegeta was expected to deliver a monthly quantity of 113 000 tons for the periods October 2015 to September 2020 and October 2020 to September 2025 of the CSA period. According to the said schedule, over the same periods, Tegeta was expected to deliver a minimum and maximum monthly quantity of 90 400 and 135 600 tons, respectively.
- 6.15.20. As previously indicated in the preceding paragraphs, the CSA defines minimum and maximum monthly and quarterly quantities as follows:
- 6.15.20.1. The CSA was drafted in a manner which benefitted Tegeta instead of Eskom. We determined that the minimum monthly quantity based on the provisions of the Medium-Term Mandate would have amounted to 55 250 ($65\,000 \times 85\%$). This was irregular on the part of Eskom.
- 6.15.20.2. We determined that 80% of the monthly quantity, referred to above, equates to 52 000 tons ($65\,000 \times 80\%$) in respect of the first six (6) months (April 2015 to September 2015) of the CSA and 90 400 ($113\,000 \times 80\%$) for the second part of the CSA (October 2020 to September 2025).
- 6.15.20.3. We further determined that, in respect of the last period of CSA (October 2020 to September 2025), the minimum monthly quantity remained similar to that of the second part of the CSA.
- 6.15.21. We determined that Tegeta's reasons provided for the under supply during the month of April 2015, does not meet the definition and was not as a result of force majeure, as discussed in the preceding section.
- 6.15.22. We determined that the said under delivery was below the minimum required quantity, as calculated in accordance with clause 12.4 of the CSA, and as such amounted to a direct contravention of clause 11.4 of the CSA which is further discussed below.

- 6.15.23. We further determined that the quantity of the under delivery in respect of the delivery made in April 2015, as calculated in accordance with clause 12.4 of the CSA, equates to 4 000 tons (52 000 – 48 000).
- 6.15.24. We further determined that, during the second quarter of 2015, Tegeta delivered 342 775 tons of coal, which is more than the maximum quarterly quantity of 336 950 tons, calculated above.
- 6.15.25. In response to our finding relating to the possibility that Tegeta may have misrepresented to Eskom that they had existing stockpiles when they were negotiating for the CSA, Tegeta responded by indicating that “ *Tegeta never misrepresented. Tegeta had old stockpiles but once Eskom refused to take that coal Tegeta sold it in open market at a much reduced price*”.
- 6.15.26. Our review of the various minutes of the negotiation meetings held between Eskom and Tegeta revealed no evidence that Tegeta sold their existing stock piles, which they were proposing to supply to Eskom. We were not provided with any evidence relating to the above response from Tegeta.

6.16. REVIEW OF COMPLIANCE WITH THE CSA COAL QUALITY REQUIREMENTS

- 6.16.1. As discussed in the paragraphs relating to the coal testing’s above, Eskom sought to procure coal of specific quality suitable for its Majuba Power Station.
- 6.16.2. The said coal quality was subjected to constant inspection and sampling to ensure that it complied with Eskom’s requirements.
- 6.16.3. Eskom procured services of various service providers to test and transport coal to its various power stations.
- 6.16.4. Amongst the service providers appointed by Eskom to provide laboratory and coal transportation services was Sibonisiwe Coal Laboratory Services cc (“Sibonisiwe”); SGS Services South Africa (Pty) Ltd (“SGS”) and South African Bureau of Standards (“SABS”).
- 6.16.5. **Supply of Foreign Material to Majuba Power Station**
- 6.16.5.1. Ramavhona and Opperman stated that there were instances when Brakfontein mine delivered contaminated coal to Majuba Power Station. They indicated that the said contaminated coal had foreign material which was identified by Majuba Power Station officials.

- 6.16.5.2. Ramavhona and Opperman indicated that the above issues of foreign materials delivered at Majuba Power Station would be identified by various parties including the Majuba Power Station officials and Eskom's officials who were based at the Brakfontein Colliery.
- 6.16.5.3. Andrew Dick ("Dick") from Majuba Power Station confirmed Ramavhona and Opperman's version and further indicated that the foreign material was identified by Majuba Power Stations.

Majuba Laboratory Coal Analysis Results

- 6.16.5.4. We were provided with a copy of Majuba Power Station's coal analysis report in respect of coal analysis results performed on 30 May 2015, titled "*COAL ANALYSIS FROM UNIT ONE MILL FEEDERS*". (Annexure E52).
- 6.16.5.5. The said report provides that the coal analysis report was performed by a company styled Pharmatrend Projects CC ("Pharmatrend").
- 6.16.5.6. During our consultations with various parties including Dick, Greyvenstein and Jonker, they respectively indicated that Pharmatrend is an independent laboratory service provider appointed by Majuba Power Station and is responsible for conducting coal analysis on coal delivered to Majuba Power Station by various coal suppliers.
- 6.16.5.7. The said parties further indicated that the findings indicated in the said results were in respect of coal which was delivered by Brakfontein to Majuba Power Station.
- 6.16.5.8. The said report provides that the samples tested were received on 29 May 2015 and reported on 30 May 2015.
- 6.16.5.9. During our consultations with Greyvenstein and Jonker, they indicated that the said report provides that the coal analysed did not comply with the Majuba Power Station quality specifications.
- 6.16.5.10. The above statement suggests that not all coal delivered by Tegeta to Majuba Power Station complied with the CSA coal quality

requirements and that there is a likelihood that Eskom paid for the said non-compliant coal.

- 6.16.5.11. Tegeta responded to the above by stating that “As already mentioned that Tegeta *“cannot supply non-compliant coal’ to Eskom because every stockpile is tested as per CSA and only once approved by Eskom it is loaded for delivery to Eskom”* .
- 6.16.5.12. The above statement by Tegeta is contrary to their confirmation, discussed above, that Eskom allowed them to deliver coal, as “a special case” which failed to meet the quality requirements due to *“shortage of coal supply being faced by Eskom at the relevant time”* .

Coal Testing performed by Sibonisiwe

- 6.16.5.13. We determined from documentation reviewed that between March and April 2015, SGS was the nominated laboratory which was responsible for the analysis of Brakfontein’s coal samples.
- 6.16.5.14. In May 2015, Eskom re-allocated SGS’s responsibilities from being a nominated laboratory of Brakfontein to a referee laboratory responsible for the reanalysis of Brakfontein’s coal stockpiles pursuant to disputes raised on coal analysis results.
- 6.16.5.15. It is our understanding from consultations conducted with Eskom officials that laboratories were rotated once a year to prevent any potential risks to Eskom emanating from prolonged working relationships between laboratories and coal suppliers.
- 6.16.5.16. As discussed above, Sibonisiwe was part of Eskom’s panel of independent laboratory service providers.
- 6.16.5.17. We determined that subsequent to SGS’ appointment as referee laboratory, Eskom appointed Sibonisiwe as a nominee laboratory for the analysis of Brakfontein’s coal from 24 May 2015 to 30 August 2015.

Reporting of coal analysis performed by Sibonisiwe

- 6.16.5.18. We determined that Sibonisiwe reported their coal analysis results for the period 23 July to 25 August 2015 through an email titled

“BRAKFORTEIN QUALITIES” dated 23 August 2015 addressed by a Lungy from an email address titled results@sibonisiwelab.co.za.

- 6.16.5.19. We noted that the said report by Sibonisiwe was only three days after Koko came back from his suspension on 20 July 2015.
- 6.16.5.20. The report further indicates that it was compiled and authorized by Evelyn Sepeng (“Sepeng”) and Nkosi respectively.
- 6.16.5.21. According to Masuku, Sepeng and Nkosi they were part of the Lungy’s team but had since left the employ of Sibonisiwe subsequent to Eskom suspending Sibonisiwe’s contract.
- 6.16.5.22. Masuku further indicated that the person whose name is reflected as a Technical Signatory on the test results reports, takes full responsibility of the test results in that he or she is accredited by the South African National Accreditation System (“SANAS”) to approve all Sibonisiwe’s coal test results.
- 6.16.5.23. We were provided with an unsigned copy of Sibonisiwe’s coal analysis report dated 28 August 2015 titled “*Test Report – Coal Analysis*” with reference “1509-153”. (**Annexure E53**).
- 6.16.5.24. The report provides results in respect of coal samples which were received and reported between 23 August 2015 and 30 August 2015. .

Dispute relating to Coal Analysis Results

- 6.16.5.25. We determined that during August 2015, Tegeta raised a dispute on Brakfontein’s coal sample based on coal analysis results which were reported by Sibonisiwe between the period 23 August 2015 and 25 August 2015. The said dispute was raised by Roux through Koko.
- 6.16.5.26. In his written response relating to the above, Koko confirmed that towards the end of August 2015, on more than one occasion, he was approached by Roux of Brakfontein mine alleging corruption in the coal sampling analysis and the reporting of the results by Sibonisiwe.

- 6.16.5.27. We determined that following Tegeta’s dispute to Sibonisiwe’s laboratory results. Eskom appointed SGS to conduct an analysis of the said samples.
- 6.16.5.28. During our consultation with Ramavhona and Van Der Riet, they indicated that SGS was responsible for conducting referee coal analysis in instances of a dispute on the coal an analysis results reported by Sibonisiwe in respect of Brakfontein’s coal.
- 6.16.5.29. We were provided with a copy of an undated and unsigned SGS’s coal analysis report titled “TEST REPORT” and referenced “2015/15-8”. The report indicates that the material tested is coal samples. (Annexure E54).

Details contained in SGS’s coal analysis report:

| Received | Reported | TAT | Lab. No | Sample Name | Sample Mass (Kg) |
|------------------------|------------------------|-------|---------|--------------------------|------------------|
| 26-08-2015 08:06 AM | 26-08-2015 04:05 PM | 07:59 | 47409 | BFK 24.08.15 S/P A | 220,14 |
| 27-08-2015 10:51 PM | 28-08-2015 03:30 PM | 16:39 | 47433 | BFK 26.08.15 S/P A | 167,17 |
| 27-08-2015 10:51 PM | 28-08-2015 03:30 PM | 16:39 | 47434 | BFK 26.08.15 S/P B | 188,51 |
| 28-08-2015 04:21 PM | 29-08-2015 03:15 PM | 22:54 | 47452 | BFK 27.08.15 S/P A | 204,68 |

- 6.16.5.30. SGS indicated that the above results were not in respect of a contractual sampling service but were merely for four disputed coal samples which were delivered by Sibonisiwe on an instruction from Ramavhona.

- 6.16.5.31. We determined that coal sample reference names reflected in the above coal analysis report were similar to those which were reflected in Sibonisiwe's coal analysis report for the period 23 August 2015 to 30 August 2015.
- 6.16.5.32. During our consultations with Ramavhona and Van der Riet, they respectively indicated that the above coal dispute results were unfavourable on the part of Brakfontein.
- 6.16.5.33. According to Ramavhona and Van der Riet, the above results concurred with Sibonisiwe's initial coal analysis results for the period 23 August 2015 to 30 August 2015, which according to them, indicated that Brakfontein's disputed coal did not comply with the CSA' coal quality requirements.
- 6.16.5.34. The officials mentioned above, including Tshwaro Petso ("Petso"), Magwaza and Mothapo, indicated that the said coal sample dispute results should have been regarded as final and binding on the part of Brakfontein Colliery. They further indicated that the above assertion is informed by clause 10.3 of Eskom's CQMP which states *inter alia* that "*The results of all the parameters analysed at the independent laboratory shall be final and binding*".

6.16.6. **Brakfontein Coal Quality Investigation**

- 6.16.6.1. As discussed above, during August 2015, Roux approached Koko alleging corruption in the coal sampling analysis and reporting of the results by Sibonisiwe. It is further our understanding that Roux reported the said allegations to Koko on more than one occasion.
- 6.16.6.2. As previously indicated, Koko confirmed the said meeting with Roux. In his response to our questions, Koko indicated that "*Mr Roux told me that their own laboratory results showed that they complied and that they felt prejudiced by Eskom not complying with its own coal quality management process*".
- 6.16.6.3. It is our understanding that Koko requested Van der Riet and other Eskom officials, including Ramavhona, Siphelile Gobeni

(“Gobeni”) and Sam Phetla (“Phetla”), to investigate the above complaint and to provide findings on same.

Alleged solicitation of a bribe by an Eskom’s nominated laboratory

- 6.16.6.4. During our consultation with Van der Riet, he indicated that on 25 August 2015, he received a phone call from Mboweni who informed him about an alleged solicitation of a bribe, by an Eskom’s nominated laboratory, from Brakfontein’s representatives.
- 6.16.6.5. According to Van der Riet, Mboweni indicated to him that there is a certain white woman, employed by an Eskom nominated laboratory, who allegedly demanded a bribe from Brakfontein’s representatives in order to change their coal analysis results.
- 6.16.6.6. During our follow up consultation with Masuku, he indicated that Sibonisiwe did not have an employee that fits the description referred to above. According to Masuku, the only official that may have fit the description was an Elzabe Truter (“Truter”) who was an independent consultant responsible for SANAS quality assurance services relating to Sibonisiwe’s lab equipment.
- 6.16.6.7. According to Masuku, Truter could not have solicited a bribe from the Brakfontein representatives as she was not involved in the operations related to coal analysis.
- 6.16.6.8. Van der Riet indicated that Mboweni informed him that he received the above allegation from Koko.
- 6.16.6.9. According to Koko’s written response to our questions, he confirmed that he was approached by Roux to raise the said allegations of corruption in the coal mining sampling analysis and the reporting of the results by Sibonisiwe Laboratories.

Meeting of 28 August 2015 between Masuku and Koko

- 6.16.6.10. Masuku indicated that on 28 August 2015, he received a call from Koko who requested a meeting at the Eskom’s Megawatt Park office. Masuku indicated that he met with Koko at Eskom’s Megawatt Park offices on 28 August 2015. Masuku further

indicated that he was accompanied to the said meeting by Jimmy Sindane (“Sindane”) who was one of Sibonisiwe’s employees.

- 6.16.6.11. According to Masuku, Koko requested that Sindane should wait outside his office and not be part of their meeting. Masuku indicated that Koko started the meeting by introducing himself as Eskom’s Group Executive and asked Masuku why he was fighting with the Gupta family, to which Masuku responded by stating that he did not understand Koko’s question and further that he did not know who the Guptas were.
- 6.16.6.12. According to Masuku, at the said meeting, Koko made a phone call to Roux relating to Brakfontein’s Sulphur quality parameter results for stockpile 26B and 27A.
- 6.16.6.13. Masuku further indicated that during the telephone discussion between Koko and Roux, there was a suggestion to resample Brakfontein’s stockpiles which had failed the precertification process. Masuku further indicated that it was during the said discussion it was suggested that Sibonisiwe would also be involved in the said precertification.
- 6.16.6.14. Masuku stated that Sibonisiwe was not involved in the said resampling, as discussed by Koko and Roux, and that no samples were delivered to his lab for testing.
- 6.16.6.15. Masuku stated that during the meeting Koko enquired from him whether he knew the owners of Brakfontein Colliery and Masuku responded by stating that he did not know them.
- 6.16.6.16. He further stated that Koko informed him that Brakfontein Colliery was owned by the Gupta family and that he, Masuku, was fighting with them by providing unfavourable coal analysis results performed on Brakfontein’s coal.
- 6.16.6.17. Masuku stated that he was informed by Koko that he was providing unfavourable coal analysis results in respect of Brakfontein’s coal analysis in order to solicit a bride from the Gupta family. Masuku responded to Koko by informing him that

he is not soliciting any bribe from anyone and reiterated that he did not know the Gupta family.

- 6.16.6.18. Masuku indicated that he had never accepted any bribe from the Gupta family and further that he had never met them before.
- 6.16.6.19. Masuku stated that he informed Koko that he did not provide unfavourable coal analysis results to any mine and further that Sibonisiwe was appointed, by Eskom, for coal transportation and analysis services. He further stated that he had no knowledge of the coal quality specification parameters which were detailed in the contracts between Eskom and its coal suppliers.
- 6.16.6.20. He further stated that Koko requested that they break from the meeting, while they wait for the comparison of Sibonisiwe's coal analysis results to those of SGS's and reconvene at 03h00 PM to discuss same.
- 6.16.6.21. Masuku indicated that when the meeting reconvened at the agreed time, Koko made a phone call to Phetla and requested that he brought brings the comparison results to his office. Masuku stated that Phetla brought the results which were hand written on a piece of paper to Koko's office.
- 6.16.6.22. According to Masuku, the aforesaid comparison was only in respect of the total Sulphur parameter. He further indicated that the aforesaid comparison indicated that Sibonisiwe's total Sulphur results were similar to those of SGS. Furthermore, Masuku indicated that Koko seemed unhappy about the aforesaid results.
- 6.16.6.23. In his response to our questions relating to the above allegations, Koko indicated that *"I deny making any threats to Mr Happing Masuku. Dr Van der Riet, Ms Charlotte Ramavhona and I meet (sic) with Mr Happing Masuku of Sibonisiwe. The meeting took place on or around 28 August 2015 in my office. We agreed that samples from the stockpiles at Brakfontein mine that had failed the prior tests had to be taken under controlled circumstance for separate analysis at Eskom, Sibonisiwe and SABS laboratories"* (Annexure E55).

- 6.16.6.24. We provided Van der Riet and Ramavhona with Koko's response as reflected above, however as the date of this report we had only obtained Van der Riet's response. In his response, Van der Riet stated *inter alia* that "I can confirm that I did not meet with Mr Happening Masuku of Sibonisiwe. Although requested to do so by Mr Matshela Koko on 26 August 2015, I explained to Mr Koko on 27 August 2015 that we needed to compile evidence with which to confront Mr Masuku. Mr Koko undertook to call Mr Masuku himself. I was not involved in any communication between them, and only heard from Ms Charlotte Ramavhona that they had actually met. I was therefore not party to what they agreed. I can however comment that as per the Eskom Coal Quality Management Procedure (CQMP), Sibonisiwe laboratories only did coal analyses for Eskom, and were not involved in coal sampling. It would therefore have been highly irregular for them to have been involved in sampling, as their contract did not allow for this service. Eskom has a separate contract with other parties for sampling" (Annexure E56).
- 6.16.6.25. We had not received Ramavhona's version as the time of this report.
- 6.16.6.26. During our follow up consultation with Masuku he indicated that the said meeting between himself and Koko was never attended by Van der Riet and Ramavhona as stated above by Koko. He further indicated that, as previously discussed, the other person who was part of the meeting was Phetla, who brought the coal analysis results.

Meeting between Koko, Daniels, Ramavhona and Van Der Riet

- 6.16.6.27. During our consultation with Van der Riet, he indicated that Koko requested a meeting in Koko's office to discuss the investigation into allegations against Sibonisiwe on 28 August 2015
- 6.16.6.28. According to Van der Riet, he requested Ramavhona to accompany him to Koko's office. Ramavhona confirmed that she accompanied Van der Riet to the feedback meeting with Koko. Ramavhona further stated that Daniels was also part of the said

meeting. During our consultation with Daniels she confirmed being part of the said meeting.

- 6.16.6.29. Ramavhona indicated that, Koko introduced himself to her and requested that she explains the Eskom coal analysis results dispute process. Ramavhona further indicated that she explained the said process to Koko.
- 6.16.6.30. Ramavhona further indicated that Koko requested that all Brakfontein's laboratory samples for the month of August should be retrieved from Eskom's storage and kept aside until he provides further instructions on same.
- 6.16.6.31. Ramavhona indicated that Koko requested he be provided, with all Brakfontein's laboratory coal analysis results reported by various laboratory services from inception of the CSA by close of business.

Analysis of Tegeta's previous results

- 6.16.6.32. Ramavhona indicated that she duly retrieved Brakfontein's coal analysis results which were submitted by both SGS and Sibonisiwe from inception of the CSA.
- 6.16.6.33. She further indicated that Gobeni provided her with the contractual coal quality parameter specifications stipulated in the CSA. According to Ramavhona she and Gobeni, analysed the contractual coal quality parameter specifications and compared them to the submitted laboratory results.
- 6.16.6.34. Ramavhona stated that the purpose of the said comparison was to establish, *inter alia*, the following:
 - 6.16.6.34.1. The number of laboratory results which did not comply with the CSA quality parameters:
 - 6.16.6.34.2. The specific parameters which the aforesaid results did not comply with; and
 - 6.16.6.34.3. The total coal quantity that was delivered by Tegeta from inception of the CSA.

- 6.16.6.35. Ramavhona further indicated that the aforesaid analysis and comparison was documented on an excel spreadsheet.
- 6.16.6.36. According to Ramavhona, it was evident from the analysis that the quantity of coal which was delivered from Brakfontein increased around July and the rate of coal stockpiles which did not comply with the contractual coal quality parameter and the specifications had also increased.
- 6.16.6.37. Van der Riet conceded to Ramavhona's statement and further indicated that the coal analysis results reflected Brakfontein's sporadic increase in the CV, Ash, TS and later sizing of the CSA coal quality requirements.
- 6.16.6.38. According to Van der Riet their briefing note reflected that Brakfontein started increasing their coal volumes and further that they disputed two out of twenty-four of their rejected stockpiles.
- 6.16.6.39. Van der Riet further indicated that Gobeni emailed Brakfontein advising them of their right to declare a dispute in respect of Brakfontein's coal analysis results conducted by an Eskom nominated laboratory. He further stated that the reason for sending the said email was that Brakfontein had only disputed two of the twenty-four rejected stockpiles since commencement of their CSA.
- 6.16.6.40. Van Der Riet indicated that Brakfontein was not exercising their coal dispute as per the processes provided in the CQMP.

Presentations of the coal analysis report to Koko

- 6.16.6.41. We determined that Ramavhona, Gobeni and Daniels had a meeting with Koko wherein the coal analysis discussed above was presented.
- 6.16.6.42. Ramavhona indicated that during the said meeting, Koko enquired about the reasons why the contractual laboratory was changed from SGS to Sibonisiwe.
- 6.16.6.43. According to Ramavhona, she indicated to Koko that nominated laboratories were rotated once a year to prevent any potential risks

to Eskom emanating from prolonged working relationships between laboratories and coal suppliers.

- 6.16.6.44. Furthermore, Ramavhona indicated that Daniels commented that it was obvious from the said analysis that something had changed.
- 6.16.6.45. According to Ramavhona, Gobeni informed Daniels that she had previously communicated with Brakfontein about their poor coal quality in respect of high AI and TS.
- 6.16.6.46. Ramavhona indicated that Gobeni also stated that a site visit was scheduled for the week ahead and further that she would report back on the issues identified at the mine once the said visit has been conducted.
- 6.16.6.47. During our consultation with Van Der Riet, he indicated that Daniels and Koko were of a view that based on the said analysis, they had sufficient information to approach Sibonisiwe regarding the said allegation made by Brakfontein.

6.17. SABS RETESTING OF DISPUTED SAMPLES

- 6.17.1. We determined that during August 2015, Eskom appointed Commercial Laboratories (“SABS”) in Middleburg on an *ad hoc* basis to conduct retests on samples that were previously tested by Sibonisiwe.
- 6.17.2. SABS conducted the first test on 26 August 2015 on samples that were previously tested by Sibonisiwe during the period 1 August 2015 to 23 August 2015.
- 6.17.3. On 29 August 2015, SABS conducted the second test on samples that were initially tested by Sibonisiwe and later retested by SGS following a dispute raised by Brakfontein mine.
- 6.17.4. We discuss below the analysis of samples conducted by SABS on 26 August 2015 and 29 August 2015 respectively.

Retesting performed by SABS on 26 August 2015

- 6.17.5. During our consultation with Ramavhona, she indicated that on 26 August 2015, Koko instructed her to take the reference samples from Brakfontein mine which were obtained from Sibonisiwe for delivery at SABS for analysis of Ash, CV, Vols and TS.

- 6.17.6. We were provided with a copy of an email dated 26 August 2015 from Ramavhona to Molatuli and copied to Ridwaan Asmal (“Asmal”) titled “*Samples to be delivered by Morne from Natural sampling*”. (Annexure E57). Ramavhona requested Morne to personally deliver samples to Molatuli at SABS.
- 6.17.7. The above email further provided that Ramavhona *inter alia* informed Molatuli to complete one delivery note for all the samples and provide proof of same to Morne.
- 6.17.8. In the said email Ramavhona requested Molatuli to analyse the following:
- 6.17.8.1. PF samples for Prox;
 - 6.17.8.2. CV;
 - 6.17.8.3. TS;
 - 6.17.8.4. AFT;
 - 6.17.8.5. Bulk reference sample for PSD; and
 - 6.17.8.6. AI starting from 50mm and to cover the Eskom sizes.
 - 6.17.8.7. Ramavhona further requested that the results to be presented to her only, when they become available.
- 6.17.9. Ramavhona stated that she took thirty (30) pulverised fuel (“PF”) and seven (7) bulk samples to SABS as instructed by Koko.
- 6.17.10. Ramavhona further indicated that the reference names of the said samples were renamed in order to hide the identity of the coal supplier and the nominated laboratory.
- 6.17.11. The above statement was confirmed by various parties, during our consultations, including Molatuli, Wolters and Madela, from SABS.
- 6.17.12. The SABS officials referred to above confirmed that Eskom requested SABS to provide coal analysis services on an *ad hoc* basis.

SABS 26 August 2015 results

- 6.17.13. Ramavhona stated that SABS provided her with a coal analysis report regarding the above request. She further indicated that the said results revealed that twenty-nine (29) out of thirty (30) samples were not compliant with the contractual coal quality parameters.

- 6.17.14. We determined that on 26 August 2015, van der Riet wrote an e-mail to Koko. The purpose of the e-mail was to provide *inter alia* feedback on the progress made in the investigation commissioned by Koko into the Brakfontein coal quality dispute. According to the e-mail, van der Riet indicated that SABS would reanalyse all samples that Sibonisiwe had available going back to August 2015. (**Annexure E58**).
- 6.17.15. Furthermore, Ramavhona indicated that the laboratory results submitted by Sibonisiwe, based on the same samples used by SABS, reflected fifteen (15) out of thirty (30) samples were not compliant with the contractual coal quality parameters of Ash, TS and Vols.
- 6.17.16. We determined that on 28 August 2015, Ramavhona and van der Riet prepared a report relating to the tests conducted by SABS on 26 August 2015. As discussed below, the said report was presented to Koko on 28 August 2015.
- 6.17.17. We were provided with a copy of an email dated 28 August 2015 addressed to Koko by van der Riet titled “Brakfontein Colliery investigation – preliminary results”. The purpose of van der Riet’s email was to amongst other things, provide Koko with the preliminary investigation report containing the results conducted by SABS on 26 August 2015.
- 6.17.18. We further determined that van der Riet, informed Koko that he had arranged with Jacques Roux (“Roux”) from Brakfontein, to resample three (3) stockpiles with Ramavhona the following day *i.e.* 29 August 2015. (.
- 6.17.19. Attached to Van der Riet’s email of 28 August 2015 was a briefing document to Koko, titled “*PROGRESS FEEDBACK ON BRAKFORNTEIN QUALITY DISPUTE*”.
- 6.17.20. According to the briefing document, both laboratories (SABS and Sibonisiwe) confirmed that above 50% of the stockpiles produced at Brakfontein until 23 August 2015 were of lower quality on ASH, CV, Vols, AI and TS.

6.18. ESKOM’S DECISION TO APPOINT SABS TO RETEST FAILED SAMPLES - 29 AUGUST 2015

Plan to resample and retest coal from Brakfontein

- 6.18.1. We determined that three stockpiles were sent for retesting at SABS following dispute from Brakfontein mine.

- 6.18.2. Van der Riet indicated that on 28 August 2015, Koko informed him that he and Ramavhona should resample the Brakfontein disputed stockpiles at SABS.
- 6.18.3. Ramavhona indicated that Van der Riet created a WhatsApp chat group named "*Brakfontein Investigation*". She further indicated that the said WhatsApp group was used for the discussion and planning of the resampling process.
- 6.18.4. Ramavhona stated that Van der Riet sent a text message to the said WhatsApp group to indicate that there was a plan to resample three (3) rejected stockpiles on 29 August 2015.
- 6.18.5. According to clause 10.3 of the CQMP "*The results of all the parameters analysed at the independent laboratory shall be final and binding*".
- 6.18.6. In his written response to our questions, Koko indicated that the reason he commissioned SABS to conduct resampling of coal from the Brakfontein mine was that Sibonisiwe and SGS had previously reported significantly different results which were unacceptable.
- 6.18.7. We however understand that Koko wanted to determine the cause of the differences in the tests conducted by Sibonisiwe, SGS and SABS.

Appointment of SABS to retest disputed coal from Brakfontein

- 6.18.8. Ramavhona indicated on 28 August 2015, she contacted Molatuli from SABS and informed him that Eskom was going to conduct a retest of disputed samples from Brakfontein mine. It is our understanding that Ramavhona informed Molatuli that the said samples would be delivered at SABS for retesting.
- 6.18.9. Molatuli confirmed receiving a phone call from Ramavhona relating to retest samples from Brakfontein.
- 6.18.10. Molatuli further stated that Ramavhona indicated that SABS should expect the said samples. As discussed below the samples were delivered on 29 August 2015.
- 6.18.11. Molatuli indicated that Ramavhona never provided SABS with a written appointment letter relating to the said plan. He further indicated that the

presumption was that the SABS's appointment related to an ad hoc request and as such no formal appointment was expected.

6.19. FAILURE BY ESKOM TO ARRIVE AT BRAKFRONTEIN TO OBSERVE RESAMPLING

- 6.19.1. We determined that on 28 August 2015 van der Riet sent an e-mail to Koko and copied Mboweni, Dan Mashigo ("Mashigo"), Petros Mazibuko ("Mazibuko"), van der Riet and Ramavhona, titled "Letter to Brakfontein Colliery". Attached to the email was a letter addressed to Roux, for Koko's signature, to be sent to Brakfontein to notify them of Eskom's planned site inspection. (**Annexure E59**)..
- 6.19.2. We noted that the said letter stated *inter alia* that Eskom would send samples from Brakfontein to SABS, with duplicate samples to the Eskom Research Test and Development (RT&D) laboratories. The letter further stated that Eskom would rotate their Quality Assurance professional assigned to Brakfontein Colliery.
- 6.19.3. Ramavhona and van der Riet confirmed that the above letter was sent to Brakfontein to inform them of Eskom plan to conduct a site inspection of Brakfontein's coal sampling processes.
- 6.19.4. In his written response to our second draft report, Koko stated that he made it clear to van der Riet and Ramavhona that the analytical process had to be transparent and above board.
- 6.19.5. He further stated that *"he directed Ramavhona and van der Riet to have "hold points" and "witness points" where all parties were present and instructed the team to have traceability so that the prepared coal sample would not be compromised"*.

6.20. RESAMPLING AT BRAKFRONTEIN MINE ON 29 AUGUST 2015

The absence of Eskom officials at Brakfontein Mine to observe the resampling

- 6.20.1. During our consultation with van der Riet, he indicated that on 29 August 2015, the same day they were scheduled to observe the resampling process at Brakfontein mine, Koko called and informed him that Brakfontein requested Eskom to cancel the scheduled visit.

- 6.20.2. Van der Riet indicated that he informed Koko that Brakfontein's request was suspicious in that the said resampling of the disputed stockpiles needed to be observed by Eskom's representatives.
- 6.20.3. According to van der Riet, Koko instructed him and the investigation team, to continue with the planned intra lab comparison instead of going to Brakfontein mine.
- 6.20.4. Van der Riet stated that Koko told him that Eskom would insist that he (Van der Riet) and his team observe Brakfontein's sampling process the following week on not on the scheduled day *i.e.* 29 August 2015.
- 6.20.5. In his response to our questions, Koko indicated that he was not aware that van der Riet and Ramavhona were scheduled to visit Brakfontein mine on 29 August 2015 to witness the resampling process. Koko further stated that had he been aware of such a visit, he would have supported it.
- 6.20.6. Koko stated that that he did not issue any instruction to van der Riet, Ramavhona and their team not to visit Brakfontein mine for such purpose.
- 6.20.7. Van der Riet maintained his statement discussed above that he was informed by Koko not to attend and witness the sampling at Brakfontein as the mine did not want Eskom present on their site.
- 6.20.8. It is however inconceivable that Ramavhona and van der Riet would go the trouble of making all necessary arrangements to ensure that Eskom is represented at the SABS testing and not attend and witness the Brakfontein and SABS resampling and retesting processes.
- 6.20.9. It is highly unlikely that both van der Riet and Ramavhona would decide not to show up at the sampling process when they were the officials who were instrumental in ensuring that the sampling and retesting was done.
- 6.20.10. Koko indicated in his written response that he did not know when the sampling and the testing was going to take place as he was not directly involved in the sampling and analytical processes.
- 6.20.11. We however find this statement by Koko highly improbable taking into consideration the various meetings he called prior to the said retesting.
- 6.20.12. It is not clear why Koko disputed any knowledge of the sampling and testing discussed above, as on 26 August 2015 van der Riet sent an email to Koko with

a briefing document dated 26 August 2015 which clearly reflected that there was going to be a retesting of Brakfontein coal at SABS on 29 August 2015.

- 6.20.13. In view of the above, Koko was well aware of the planned resampling of Brakfontein's stockpile samples. This is further confirmed by Koko's response which indicated that on 31 August 2015 he received the results of the testing.
- 6.20.14. We determined that none of the Eskom officials observed the resampling process based on Koko's instruction.

The absence of Mpumamanzi at Brakfontein Mine to observe the resampling

- 6.20.15. We determined that during March 2014, Eskom and Mpumamanzi entered into a contract in terms of which Mpumamanzi would provide coal sampling, sampling oversight, analysis of Eskom coal imports and technical audits of the sampling plants on as and when required basis. The contract was valid for a period of thirty-six (36) months commencing on 27 March 2014 and expiring on 31 October 2017.
- 6.20.16. According to the contract, Mpumamanzi was required to provide observing and roving services on a 24-hour basis at the designated sites.
- 6.20.17. The provisions of the contract required that, depending on the site requirements, there would be a minimum of one observer and one rover per shift working different shifts in rotation.
- 6.20.18. During our consultation with Maseko and Mahlangu from Mpumamanzi, they indicated that on 29 August 2015 when they arrived at Brakfontein mine at 17:00 there was no rover on site. They further indicated that they found Mudaliar and Roux (Brakfontein representatives) waiting with bags of samples. According to the above officials, the said samples were sealed and ready for collection.
- 6.20.19. According to Maseko and Mahlangu, they could not establish whether the said stockpiles were sampled from Brakfontein's stockpiles in that they did not observe the sampling process of same. The said parties further indicated that Kgaphola was on duty during the day and would have observed the said sampling process.
- 6.20.20. We however noted that Mpumamanzi observers' reports reflect that Kgaphola observed the sampling of the stockpiles eventually transported to SABS for retesting. (**Annexure E60**).

- 6.20.21. Mpumamanzi responded as follows relating to the above *“The records show that this allegation is FALSE. Written evidence, under the hand of ‘Maseko’ contradicts her own oral testimony where she confirms the presence of the duty of the Observer in various reports on 29.08.2015. It must be noted that supporting written evidence is uncontaminated and they have accurately recorded the events of 29 August 2015 until 06 September 2015. The said reports were submitted within one (1) day after the Auditors requested them”*(Annexure E61).
- 6.20.22. The response by Mpumamanzi is incorrect in that Maseko did not contradict her own oral testimony with any written evidence. During our consultation with Maseko, she indicated that she prepared the Mpumamanzi site reports retrospectively as she could not complete them daily. Maseko therefore compiled a report based on the notes recorded by Kgaphola and not her own assessment of the events of the day.
- 6.20.23. Mpumamanzi site reports, compiled by Maseko, and their attendance register cannot be relied upon as a basis to confirm that Kgaphola was indeed at the Brakfontein mine when the sampling of stockpiles took place.
- 6.20.24. Mpumamanzi further stated that, *“Written evidence, under the hand of ‘Maseko’ contradicts her own oral testimony. This statement was made in view of the fact that the first two stockpiles were already sampled, labelled and ready for loading. PLEASE NOTE ONLY COAL STOCKPILES as per the records were ready when ‘Mahlangu’ arrived. The last stockpile was only closed only at 17h45 on 29.08.2015. This places both ‘Maseko’ and ‘Mahlangu’ directly at the scene whilst the observing and sampling was taking place. Written evidence shows that it was ‘Mahlangu’ who informs ‘Mike’ from SABS Laboratory that the samples were indeed linked to the disputed stockpiles.*
- 6.20.25. We sent questions to Roux and Mudaliar relating to the sampling process followed by Brakfontein on 29 August 2015. Mudaliar indicated that he was no longer an employee of Tegeta and referred us to Nath. As at date of this report, Roux had not responded to our questions.
- 6.20.26. Tegeta failed to respond to our questions relating to the coal sampling at Brakfontein mine on 29 August 2015 and the subsequent testing by SABS on 30 August 2015.

- 6.20.27. During our telephone consultation with Kgaphola, he disputed Mahlangu and Maseko's statement that he was not on site when the latter collected the samples from the mine.
- 6.20.28. We consulted with Mahlangu and Maseko individually and they corroborated each other's statement that there was no rover when they arrived at the Brakfontein mine. There was no reason for the two officials to lie about the fact that Kgaphola was not on site when they arrived to collect samples for transportation to SABS for retesting.
- 6.20.29. In response to the above Mpumamanzi stated *inter alia* that "*We have no comment to make regarding the above statement as the written records speaks for themselves and more specifically with respect to 'Maseko'*".
- 6.20.30. According to the terms of their agreement with Eskom, Mpumamanzi's supervisor was required to ensure that the Monitor does not move from their allocated sites during production, sampling and loading of Eskom product, without consent from Eskom.
- 6.20.31. Based on the consultations with Mpumamanzi officials and the assessment of the resampling process followed on the day, Mpumamanzi failed to ensure that the observers were present during the resampling of stockpiles at Brakfontein mine.
- 6.20.32. Mpumamanzi's absence during the said resampling of the stockpile rendered the process irregular.
- 6.20.33. Kgaphola' could not recall the events of the day except for partial scenes; however, he insisted that he recorded all his activities in the BLACK BOOK and that we should make reference to this instead of interrogating him.
- 6.20.34. Mpumamanzi contended that "*The record would show that 'Maseko' summarised the events of the day as extracted from the BLACK BOOK. As the duty Rover/Supervisor, she made NO additional comments but, gave her full endorsement for the comments extracted from the said book'*".
- 6.20.35. The absence of the Black Book makes it impossible for us to confirm that the contents of the Mpumamanzi's daily site reports were similar to those which were recorded in the Black Book.
- 6.20.36. As previously indicated, our review of Mpumamanzi's attendance registers and site report of 29 August 2015 revealed that the first stockpile was prepared

in the absence of Maseko. The said site report was derived from the Black Book and was, according to Mpumamanzi and various parties, compiled and “endorsed” by Maseko.

6.20.37. We determined that there are contradicting versions as to whether Mpumamanzi observed the resampling of the stockpiles that were later transported to SABS for retesting.

6.20.38. We however determine that there is no evidence that Mpumamanzi had a supervisor and a rover present at Brakfontein at the time of the sampling of the coal that was later transported to SABS for retesting.

6.21. LOADING OF SAMPLES

6.21.1. Based on the above response by Mpumamanzi and the review of their SABS delivery notes, we determined that three (3) stockpiles which were at Brakfontein mine on 29 August 2015 were loaded and allocated to the vehicles as reflected below:

| Stockpile ID | Loading times | Vehicle registration number | Driver |
|--------------|---------------|-----------------------------|----------------------------|
| 26/08/15 B | 17H10 | HJZ 631 MP or HJZ 465 MP | Mahlangu or unknown driver |
| 26/08/15 A | 17H20 | HJZ 631 MP or HJZ 465 MP | Mahlangu or unknown driver |
| 27/08/15 A | 19H20 | HJZ 462 MP | Makua |

6.21.2. Mpumamanzi further provided, in addition to the above, that the records also show that the said bags were loaded into the first two (2) vehicles and the first delivery notes were signed off just after 17h00. According to Mpumamanzi, the photo copy of the said delivery notes was handed over to Kgaphola as part of the standard procedure. Mpumamanzi further stated that the said delivery notes were signed off by ‘Mike’ at SABS Laboratory.

6.21.3. The above assertion, relating to the signing of delivery notes, was confirmed by Mahlangu who indicated that the said delivery notes were signed off by Mike Mabuyakhulu.

- 6.21.4. Further to the above response, Mpumamanzi stated that *“The records will show that coal stockpile S/P A 27/08/2015 was still in the process of being sampled and the process was only completed at 17H45 as confirmed by both ‘Maseko’ and ‘Kgaphola’. The records will also show that HJZ 462 MP, driven by Johannes Makua (‘Makua’), arrived just before 19h00 to collect and load the coal samples for stockpile for S/P A 27/08/2015”*.
- 6.21.5. Makua indicated that he found Mahlangu, who had already loaded the samples in his bakkie, waiting next to the coal samples which Makua needed to load to his vehicle.

6.22. TRANSPORTATION OF SAMPLES TO SABS BY MPUMAMANZI

- 6.22.1. During our consultation with Matowanyika, she indicated that on 29 August 2015, Ramavhona sent her a text message to request Mpumamanzi to transport three stockpiles from Brakfontein Colliery to the SABS Middleburg laboratory.
- 6.22.2. Matowanyika indicated that she dispatched two (2) bakkies to collect the said samples. Matowanyika further stated that she dispatched a third bakkie from one of Mpumamanzi’s clients not far from the Brakfontein mine.
- 6.22.3. The above statement was confirmed by Mahlangu, who indicated that Mpumamanzi used three (3) bakkies to transport samples from Brakfontein to SABS.
- 6.22.4. Mpumamanzi confirmed that the following bakkies were dispatched to collect samples at Brakfontein mine to SABS:
- 6.22.4.1.1. HJZ 465 MP;
 - 6.22.4.1.2. HJZ 462 MP; and
 - 6.22.4.1.3. HRZ 631 MP
- 6.22.5. According to Mpumamanzi’s response, Mahlangu drove the bakkie with registration number HJZ 465 MP, and not the bakkie with registration HJX 465 MP as previously indicated in our second draft report. Mpumamanzi further indicated, through their response, that the bakkie with registration number HJZ 462 MP was driven by Makua.
- 6.22.6. According to Mpumamanzi and the parties we consulted with, they do not recall who drove the other bakkie i.e. HRZ 631 MP.

- 6.22.7. It is however inconceivable that a company of the stature of Mpumamanzi would not have a record of drivers of their vehicles used to transport samples to Eskom.
- 6.22.8. Furthermore, Mpumamanzi indicated, during our consultation that the bakkie with registration number HRZ 631 MP had no tracking device installed.
- 6.22.9. As discussed earlier in the report, Mpumamanzi's contract with Eskom clearly stated that Mpumamanzi's vehicles must to be fitted with a satellite tracking system and the relevant tracking reports were supposed to be submitted to Eskom on an as and when basis. Mpumamanzi breached their contract with Eskom by not having a tracking device installed in one of the bakkies which transported samples to SABS.
- 6.22.10. During our consultation with Makua, he confirmed that he was driving the bakkie with registration number HJZ 462 MP. Makua, indicated that he was informed by Matowanyika, as he was about to leave his place of employment, that there was a crisis and he was requested to assist with the transportation of samples to SABS.
- 6.22.11. Matowanyika stated that she requested Maseko and Mahlangu to be responsible for the observation and transportation of the said Brakfontein stockpiles. Maseko and Mahlangu confirmed that they were responsible for the observation and transportation of the Brakfontein stockpiles.

Vehicle Tracking Requirements

- 6.22.12. During our consultation with various parties, including Matowanyika, Molatuli, and Wolters, they indicated that Eskom required that all vehicles transporting coal on behalf of Eskom should be fitted with a tracking device.
- 6.22.13. We have since received copies of the tracking reports from Mpumamanzi, as part of their response to our second draft report, in respect of the two bakkies i.e. HJZ 465 MP and HJZ 462 MP.
- 6.22.14. The said tracking reports are discussed in the relevant section below.
- 6.22.15. Mpumamanzi confirmed that the third bakkie that did not have a tracking device was not meant to deliver coal. They however utilised the said bakkie to transport coal samples from Brakfontein to SABS.

- 6.22.16. As discussed above, we determined that Eskom required that all vehicles transporting coal on behalf of Eskom should be fitted with a tracking device.
- 6.22.17. As previously discussed, the number of sample bags in respect of stockpile 27/08/15 A decreased by five (5) sample bags when they were offloaded at SABS.
- 6.22.18. The number of coal samples in respect of stockpile 26/08/15 A, as discussed above, increased by three (3) sample bags when they were offloaded at SABS.
- 6.22.19. As previously discussed, the coal samples in respect of the above stockpile were transported either in the bakkie driven by the unknown driver's or Mahlangu's bakkie. The bakkie with the unknown driver, as discussed above, had no tracking device installed.
- 6.22.20. The fact that one of Mpumamanzi's bakkies had no tracking device installed and the discrepancies in the number of sample bags prepared at Brakfontein and delivered at SABS further suggests that some of the samples might have exchanged on route to SABS.
- 6.22.21. Mpumamanzi's documentary evidence provided reflect events that happened between 29 August 2015 to 6 September 2015 however the details of the third driver were not mentioned anywhere in their written submission. It therefore follows that the information provided by Mpumamanzi was incomplete.

6.23. DELIVERY OF SAMPLES

- 6.23.1. During our consultations with Maseko and Mahlangu, they indicated that when they arrived at the SABS laboratory, they delivered the said samples to the SABS personnel. According to Mahlangu, they left Mudaliar and Roux at the SABS laboratory.
- 6.23.2. Available information as well as consultations conducted confirmed that Mudaliar and Roux were left at SABS and were there until the tests results were obtained.

Mpumamanzi delivery notes

- 6.23.3. We were provided with three (3) copies of delivery notes dated 29 August 2015, which were prepared by Mahlangu on behalf of Mpumamanzi. (**Annexure E62**).

6.23.4. The said delivery notes provide that the aforementioned samples were delivered at SABS at 20:40. The said delivery notes further provide that the above stockpiles were received and signed for by an individual by the name of Mike. During our consultation with Mahlangu, he indicated that Mike reflected in the said delivery is Mike Mabuyakhulu (“Mabuyakhulu”).

SABS confirmation of delivery by Mpumamanzi

6.23.5. During our consultation with Ramavhona, she indicated that Molatuli sent her a text message at 21:34 to confirm SABS’s receipt of Brakfontein’s samples. According to Ramavhona, Molatuli also indicated, in the same text message, that there were Brakfontein’s officials at the SABS laboratory.

SABS Sample Receiving and Integrity Check procedure

6.23.6. We enquired from various parties, including Molatuli, Wolters and Madela, whether SABS is required to verify the source of the coal samples which SABS is required to analyse.

6.23.7. The said parties respectively indicated that SABS is only able to vouch for the source of coal samples which was transported by SABS.

6.23.8. The said parties further indicated that in instances in which coal samples are delivered by a third-party, SABS places reliance on the said third-party’s documentary information. Furthermore, the said parties indicated that a third-party’s documentary information should clearly provide details of the source of the sample they are delivering.

6.23.9. Madela, Wolters and Molatuli stated that the documentation provided by Mpumamanzi indicated that the source of the coal was Brakfontein mine.

6.24. TEGETA PRESENCE

6.24.1. As stated above, we determined that none of Eskom officials were present at SABS on 29 August 2015 when the coal analysis was performed.

6.24.2. Molatuli indicated that he informed Ramavhona about SABS’s receipt of the Brakfontein samples. He further confirmed that he informed Ramavhona about the presence of the Brakfontein officials at the SABS laboratory.

6.24.3. Molatuli stated that he was not on duty when the said analysis was performed. He further indicated that he was informed by SABS personnel who received

the samples that Brakfontein officials were at the laboratory to observe the analysis of the said samples.

- 6.24.4. We determined that Mudaliar and Roux observed the retesting and analysis of the coal samples from Brakfontein mine.
- 6.24.5. Molatuli indicated that the presence of Brakfontein's parties at the SABS laboratory may have been irregular as SABS did not have any agreements with Brakfontein or Tegeta.
- 6.24.6. According to Molatuli, Ramavhona indicated to him that the Brakfontein officials were not supposed to observe the coal analysis process in the absence of Eskom's personnel.
- 6.24.7. Molatuli further indicated that Ramavhona emailed him a sample preparation flow sheet to be used by SABS for the analysis of the Brakfontein samples.
- 6.24.8. According to Molatuli, since he was not present at work, he, delegated his responsibility to Madela. He further indicated that Madela informed him that Mudaliar and Roux spent the whole night at the SABS laboratory.
- 6.24.9. Madela confirmed that Molatuli requested him to conduct the said analysis. Madela indicated that he reported for duty around midnight and found Mudaliar and Roux at the SABS laboratory. Madela confirmed that Mudaliar and Roux observed the analysis of the samples from Brakfontein mine.
- 6.24.10. Molatuli indicated that Madela provided him with updates on the said coal analysis. Molatuli indicated that during the course of the analysis, he communicated with Mudaliar, through Madela's phone.
- 6.24.11. Van Der Riet indicated the following in his written response relating to Brakfontein officials' presence at SABS *"At no stage did I give approval for the Brakfontein staff to be present at SABS. I am also not aware that any of my staff gave this approval, and can comment that this would have been highly irregular. I can confirm that Ms Ramavhona Whatsapp'ed me at 9:19 on 30 August 2015 to confirm that Brakfontein staff had indeed witnessed the SABS analyses. We consulted each other, then had a teleconference with Mr Jacques Roux, the manager of Brakfontein Colliery, to explain the following essential Eskom Coal Quality Management Procedure principles: (1) he must not communicate with the Eskom labs; (2) sampling, sample preparation and analyses had to be witnessed by both Eskom and the supplier for them to be*

valid; (3) this weekend's exercise was not for contractual purposes, as the repeat analyses had already been done on the reject stockpiles and had proven rejection. These repeat analyses are final and binding, as per the CQMP; (4) Eskom geology would like to assess the colliery operations to confirm potential problems. Mr Roux accepted the points, and apologised for contravening the CQMP principles".

6.24.12. In the absence of any agreement with Tegeta or Brakfontein mine, Mudaliar and Roux were not authorised to observe the coal analysis at SABS.

6.24.13. We could not find any indication that Tegeta and/or Brakfontein mine requested and obtained permission from Eskom to observe the testing and analysis of the coal transported from Brakfontein to SABS on 29 August 2015.

6.24.14. It was therefore odd that Eskom employees would be absent at the said coal analysis while Brakfontein representatives were present for the entire period of the retest and analysis.

6.25. Teleconference between Roux, Ramavhona and Van der Riet relating to Tegeta's presence at SABS

6.25.1. Ramavhona indicated that subsequent to the resampling of stockpile S/P A 26/08/15, S/P 26 B 26/08/15 and S/P A 27/08/15 by SABS she and van de Riet requested a teleconference with Roux to discuss *inter alia* the following:

6.25.1.1. non - compliance to the CQMP,

6.25.1.2. alleged harassment of the laboratory staff and

6.25.1.3. attempt to influence the contractual analysis for the 3 stockpiles results.

6.25.2. Ramavhona indicated that during the said teleconference, Roux was informed of the following:

6.25.2.1. That site visits to the contractual laboratory should be arranged through Eskom and further that 24 hours' notice should be given, and the audit should be conducted in the presence of an Eskom Employee;

6.25.2.2. Eskom had a doubt on the integrity of stockpiles S/P A 26/08/15, S/P 26 B 26/08/15 and S/P A 27/08/15 results analysed at SABS and Sibonisiwe laboratories due to the inappropriate conduct of

Brakfontein representatives. It was further explained to Roux that harassment of Eskom Contractors was unacceptable.

6.25.2.3. The results of the 3 stockpiles that were static sampled at the mine by SABS on 29 August 2015 and analysed at different laboratories were meant for comparison purposes only. Ramavhona indicated that the exercise was done outside of the contract therefore all the results do not replace the original results reported by the contractual laboratory and the independent laboratory where a dispute was declared.

6.25.3. Ramavhona indicated that Roux apologised for the non - compliance to the CQMP and the allegations above.

6.25.4. As discussed above, we sent questions to Roux and Mudaliar regarding, *inter alia*, the above allegations.

6.25.5. Tegeta failed to address the issues relating to the observation at SABS on 29 August 2015 when they responded to our second draft report.

6.25.6. Brakfontein mine was not a client of SABS at the time of the coal analysis on 29 August 2015. Eskom requested that the said coal samples be retested and analysed and as such Eskom was the SABS client.

6.25.7. SABS contravened their own policies and procedures when they allowed the Brakfontein parties to witness the analysis of their colliery's coal samples in that Brakfontein was not SABS's client.

6.25.8. Tegeta did not provide a response relating to the above allegations.

6.26. RESULTS OF THE RETESTING CONDUCTED BY SABS ON 29 AUGUST 2015

SABS lab results

6.26.1. During our consultations with Molatuli and Madela, they indicated that during the analysis of the Brakfontein samples Roux and Mudaliar were taking notes of the test results.

6.26.2. During our consultation with Van Der Riet, he indicated that on 30 August 2015 at 08h08 he received a phone call from Roux who indicated that he had obtained unconfirmed results from SABS relating Brakfontein's coal analysis.

6.26.3. According to van Der Riet, Roux indicated that he would like to deliver the stockpiles relating to the unconfirmed SABS results. He further indicated that he informed Roux that Tegeta could not deliver the coal from which the

disputed samples were taken as analysis was not for delivery or payment purposes but for intra lab analysis.

- 6.26.4. Van Der Riet further indicated to Roux that Brakfontein should wait for the results of the other laboratories. Van Der Riet further indicated that Roux made the said request prior to Eskom receiving the results from SABS for the analysis done on 29 August 2015.
- 6.26.5. During our consultation with Madela and Molatuli, they confirmed that the SABS coal analysis results were only made available to Eskom after 09:00 on 30 August 2015.

SABS retesting report dated 30 August 2015

- 6.26.6. We were provided with a signed copy of SABS's coal analysis report dated 30 August 2015 titled "*Coal Analysis*" and referenced "*kkk 05/2015*". (**Annexure E63**). The report was compiled and authorized by Koos Mokwena ("Mokwena") and Wiseman Madela ("Madela").
- 6.26.7. Roux's phone call to Van der Riet was prior to SABS issuing the results of the coal sample analysis conducted on 29 August 2015 to Eskom.
- 6.26.8. SABS issued the results of the coal sample analysis to Tegeta/Brakfontein prior to releasing the said results to their customer, Eskom.
- 6.26.9. The version by SABS that Roux and Mudaliar were not given the said results but simply wrote them from the computer screens would mean that they were allowed to even check the said computer screens to the extent that they managed to read the results of the analysis.

Brakfontein Colliery investigation Feedback to Koko

- 6.26.10. Van Der Riet indicated that on 30 August 2015 he sent an email to Koko relating to the coal analysis conducted in respect of the Brakfontein coal samples.
- 6.26.11. We noted a copy of an email dated 30 August 2015 addressed to Koko by Van Der Riet and copied to Ramavhona and titled "Brakfontein coal quality investigation". (**Annexure E64**). The email states as follows:

" Dear Matshela

We have results from SABS and Sibonisiwe, and await RT & D and Duvha tomorrow. Jacques Roux had also noted that he is checking his own lab results, and will confirm these once he is complete.

It is too early to draw conclusions, other than there is an unacceptably large variation in Sulphur determinations from the two labs so far.

Yours Sincerely."

6.27. SUSPENSION OF THE TEGETA CSA

- 6.27.1. Based on documentation reviewed and consultations conducted, we determined that on 31 August 2015 Koko suspended the CSA between Eskom and Tegeta for the provision of coal to Majuba Power Station from Brakfontein Mine.
- 6.27.2. We determined that Koko issued a letter of suspension dated 31 August 2015 to Tegeta. (**Annexure E65**).
- 6.27.3. The purpose of the letter was to *inter alia* notify Tegeta of the suspension of the "offtake" from the mines in order to investigate the root cause of the inconsistency in the coal quality management process.
- 6.27.4. During our consultation with Ramavhona, Dr Van Alphen and Opperman, they respectively indicated that they understand that the above letter was as result of the coal quality investigations on Brakfontein's coal quality.
- 6.27.5. We noted that Koko suspended the Tegeta CSA on 31 August 2015, a day after he received the SABS's results on the Brakfontein Coal quality testing. As indicated above, SABS conducted the tests on 29 August 2015.
- 6.27.6. According to Koko's response to our questions relating to the suspension of the CSA, he stated that the reason for the suspension of the Brakfontein CSA on 31 August 2015 can be found in his letter to Mr Ravi Nath ("Nath") of Tegeta, dated 31 August 2015. Koko further stated that Eskom noted the significant increase in the number of out of specification coal stockpiles that had been found from July to August 2015.
- 6.27.7. Koko further stated that during August 2015, 50% of the stockpiles were out of specification resulting in rejections. He further indicated that Eskom noted the inconsistencies in the laboratory coal results between Sibonisiwe and SABS. According to Koko, Eskom notified Tegeta of the suspension as a

precautionary measure, to enable Eskom to investigate the causes of the inconsistencies in the coal quality management processes.

- 6.27.8. As stated above, Koko suspended the Tegeta CSA after he had received the SABS results on 30 August 2015. The reason for the said suspension could therefore not have been based on the SABS results.
- 6.27.9. As discussed below, we determined that Koko uplifted Tegeta's suspension on 5 September 2015.

Delivery of coal after the suspension of the CSA

- 6.27.10. During the course of our investigation, we determined that Tegeta delivered coal to Majuba Power station after their CSA was suspended by Koko on 31 August 2015.
- 6.27.11. According to Mpumamanzi's rovers report dated 31 August 2015 there was no sampling and loading of stockpiles at the mine on 31 August 2015.
- 6.27.12. We noted that the last stockpile dispatched to Majuba power station was stockpile number S/P B 25/08/15. The said stockpile was dispatched on 30 August 2015 before the suspension of the CSA.
- 6.27.13. We were provided with a letter dated 31 August 2015 submitted to Majuba power stations by IK Mnguni Transport. According to the letter, one of their trucks with registration number FLD870MP had a major breakdown on route to Majuba Power Station and the truck could not offload the coal on the same day. The letter sought assistance from Majuba Power Station to offload the coal on 31 August 2015.
- 6.27.14. There was no record on the Mpumamanzi rovers' reports reviewed of a truck with registration number FLD870MP having collected a stockpile from Brakfontein.
- 6.27.15. We however noted that Majuba Power Station recorded a delivery on 31 August 2015 and 1 September 2015 from Brakfontein mine. The stockpile numbers for the coal delivered were however not reflected.
- 6.27.16. During our consultation with Dick and Petso from Majuba Power stations, they respectively confirmed that on 31 August 2015, 125 tonnes of coal was delivered from Brakfontein mine by three trucks. They further confirmed that on 1 September 2015, 33 tonnes of coal was delivered from Brakfontein mine.

- 6.27.17. Mpumamanzi responded to the above finding by stating that “ The *stated allegation is FALSE based on a misunderstanding of standard protocol. The standard procedure for recording of trucks collecting and delivering coal stockpiles as specified by Eskom states that Contractors need only record the registration numbers (amongst other details) for the first three (3) trucks and the last three (3) trucks and this was done. The form that contains this instruction was issued to us by Eskom (see MMG 8). There is really nothing more that we can say about this allegation and we trust that the records will be corrected’* .
- 6.27.18. We were not provided with copies of Mpumamanzi’s completed observer checklists for the period 29 and 30 August 2015 in order to confirm the information recorded relating to the trucks that collected the coal.

Upliftment of suspension of the CSA

- 6.27.19. We determined from documentation reviewed that Koko sent a letter to Tegeta dated 5 September 2015. The purpose of the letter was to notify Tegeta of the upliftment of the suspension of the coal supply from Brakfontein Colliery and Brakfontein Colliery Extension effective immediately (**Annexure E66**).
- 6.27.20. The letter further indicated that the upliftment of suspension would take place while Eskom continued its investigation into the inconsistency in the coal quality management process.
- 6.27.21. In his response to our second draft report, Koko admitted that he lifted the suspension on coal supply from the Brakfontein Colliery. Koko indicated that the decision was based on the SABS results dated 30 August 2015. Koko further stated that the results were authorised by Wiseman Madela.
- 6.27.22. Koko became aware of the SABS test results on 30 August 2015, a day before he suspended Tegeta’s CSA with Eskom.
- 6.27.23. It is therefore not clear why Koko would suspend Tegeta’s CSA on 31 August 2015 after he had received the SABS results on 30 August 2015 and uplift the suspension based on the same SABS results.
- 6.27.24. There is no indication that Eskom or any other entity conducted tests on the Brakfontein coal between 31 August 2015 and 5 September 2015 that would

have informed him of his decision to uplift the suspension on 5 September 2015.

- 6.27.25. Koko's statement that he was not influenced by anyone to uplift the suspension and that he merely discharged his duties without fear or prejudice is questionable, taking into account that he did not consider the SABS results when he suspended the CSA.
- 6.27.26. Available facts suggest that Koko may have favoured Tegeta in uplifting the CSA.

Request from Tegeta to supply more coal to Eskom

- 6.27.27. We determined that on 4 September 2015 at 13:08 Nath sent an email to Nteta. The subject of the said email is reflected as "Draft".
- 6.27.28. Attached to the said email is a letter dated 28 August 2015 addressed to Nteta. The said letter, titled Coal Supply Offer-Tegeta, reflected that Tegeta was willing to supply additional 200 000 tonnes of coal to Eskom. The proposal indicated that the coal was of similar specification to what Tegeta was supplying to Eskom under the CSA .
- 6.27.29. What is evident in the said email and the attached letter is the fact that:
- 6.27.29.1. The letter was dated the same date that Koko had called an urgent meeting with Van der Riet and Ramavhona to discuss the coal quantity issues at Brakfontein;
- 6.27.29.2. The email to Nteta was sent on the eve of Koko uplifting Tegeta's CSA. (**Annexure E67**)
- 6.27.30. It appears that the suspension of the CSA was a smoke screen in that Tegeta issued a request to supply an additional 200 000 tonnes of coal whilst there were on suspension. Subsequent to their request, Koko uplifted the suspension of Tegeta's CSA.

6.28. APPOINTMENT OF SABS TO PROVIDE TRANSPORTATION AND ANALYSIS OF COAL FROM BRAKFONTHEIN MINE

- 6.28.1. We were provided with a copy of a letter dated 31 August 2015 addressed by Ramavhona to Frans Wolters ("Wolters") titled "*TRANSPORT AND ANALYSIS SERVICES CONTRACT BETWEEN THE SABS AND ESKOM: TRANSPORT AND ANALYSIS OF ESKOM CONTRACTUAL SAMPLES*"

FROM TEGETA BRAKFRONTEIN COLLIERY – REF: 724828”. (Annexure E68). The letter states that “ As per Eskom Contract with SABS to render Service (sic) on as and when required basis, SABS is hereby requested to provide Eskom with the Transport and Analysis of Eskom contractual samples from Tegeta Brakfontein Colliery. SABS is hereby required to make arrangements with Tegeta Brakfontein Colliery to complete (sic) safety file and induction. SABS is hereby required to declare any conflicting interests by 01 September 2015. Eskom would like to thank SABS for continued support”.

- 6.28.2. During our consultation with Ramavhona, she indicated that she was responsible for the above appointment. She further indicated that she made the above appointment the day before she was suspended from Eskom.
- 6.28.3. According to Ramavhona, the rationale for the above appointment was that there was no laboratory allocated to the CSA between Eskom and Tegeta in that Eskom had, on the same day, suspended the laboratory services of Sibonisiwe and SGS.
- 6.28.4. During our consultation with Van Der Riet, he confirmed that Ramavhona was responsible for SABS’s appointment to provide transportation and analysis of coal samples from Brakfontein mine.
- 6.28.5. Koko’s response to our questions relating to the appointment of SABS was as follows: *“I did not know when the testing was going to take place. I was not directly involved in sampling and analytical processes. I have since had sight of a letter dated 31 August 2015 from Ms Charlotte Ramavhona to Mr Frans Wolters of SABS. In that letter Ms Charlotte Ramavhona requests SABS to provide Eskom with the transport and analysis of Eskom contractual samples from Tegeta Brakfontein Colliery. This had to be done as per the Eskom Contract with SABS to render services on as and when required basis, It, in other words suggest that was (sic) there was an existing Contract with SABS to render analytical services to Eskom for coal samples.”*
- 6.28.6. During our consultations with Molatuli, he confirmed that Eskom issued an appointment letter on 31 August 2015 for the appointment of SABS to provide transportation and analysis of coal from Brakfontein mine. Molatuli indicated that he received a call from Ramavhona on 31 August 2015 confirming the said appointment.

- 6.28.7. Molatuli further indicated that on 1 September 2015, he received a call for Viloshnee Moodley who indicated that Ramavhona had been suspended and further confirmed that SABS had been appointed to provide transportation and analysis of coal from Brakfontein mine.
- 6.28.8. Wolters and Madela confirmed Molatuli's version that SABS had been appointed to provide transportation and analysis of coal from Brakfontein mine.

Collection of samples from Brakfontein mine on 6 September 2015

- 6.28.9. We determined that on 6 September 2015, SABS collected two samples from Brakfontein mine with samples number BKF S/P A 06-09-2015 and BKF S/P B 06-09-2015.
- 6.28.10. During our consultation with Molatuli, he indicated that Mahlangu from SABS collected samples from Brakfontein mine for testing. According to Molatuli Eskom official observed the collection of the samples. Molatuli indicated that Mudaliar signed for the collection of the said samples.
- 6.28.11. Molatuli indicated that the said samples were delivered at SABS for analysis on 6 September 2015.
- 6.28.12. We noted that Mahlangu was not escorted to SABS by Brakfontein officials as was the case on 29 August 2015 when Mpumamanzi was escorted by Roux and Mudaliar.
- 6.28.13. According to Molatuli the collection of the samples from Brakfontein was witnessed by officials from Eskom and Brakfontein mine. Molatuli could however not provide us with the names of the officials from Eskom who witnessed the collection of the samples.

Analysis of samples from Brakfontein mine

- 6.28.14. As indicated above, on 6 September 2015, SABS collected two samples from Brakfontein mine with samples number BKF S/P A 06-09-2015 and BKF S/P B 06-09-2015 for analysis at the SABS Middleburg laboratory. Molatuli indicated that Brakfontein officials did not observe the analysis of the samples.
- 6.28.15. We determined that the SABS results of the samples tested on 6 September 2015 were reported on 7 September 2015. The said results were included in the SABS report dated 18 September 2015.

- 6.28.16. Molatuli confirmed that the analysis results for the two samples were reported on 7 September 2015.
 - 6.28.17. We requested Molatuli to compare the results of 30 August 2015 and the results of 7 September 2015 which are contained in the SABS report of 18 September 2015. Molatuli indicated that the results of 7 September 2015 contained in the SABS report of 18 September 2015 failed. Molatuli indicated that the two results differed significantly to the extent that his conclusion was that the samples did not come from the same mine.
 - 6.28.18. Molatuli indicated that if the coal tested on 29 August 2016 and 6 September 2015 were from the same mine, the result could not have differed significantly.
 - 6.28.19. During our consultation with Wolters and Madela, they confirmed Molatuli's version as it relates to the processes followed in the transportation and analysis of the coal from Brakfontein by SABS.
 - 6.28.20. The observation made by Molatuli was also made by Dr van Alphen when we presented him with the two results during our consultations with him. Dr van Alphen stated that it was not possible that the source of the coal tested on 29 August 2015 and 6 September 2015 was Brakfontein mine.
 - 6.28.21. Based on the consultations conducted with officials from SABS and Eskom, it is evident that the samples tested by SABS on 29 August 2015 were not from Brakfontein mine.
- 6.29. **SUSPENSION OF INVESTIGATION TEAM**
- 6.29.1. We determined that on 1 September 2015, Koko issued letters of intention to suspend to the following Eskom officials:
 - 6.29.1.1. Mark Van der Riet;
 - 6.29.1.2. Charlotte Ramavhona;
 - 6.29.1.3. Sam Phetla; and
 - 6.29.1.4. Siphhelele Gobeni.
 - 6.29.2. According to the letters of intention to suspend, allegations had come to Eskom's attention that the above-mentioned officials may have committed a serious misconduct by amongst others, inconsistency in the management of the coal quality assurance process.

- 6.29.3. The letter indicated that Eskom had taken a decision to investigate the alleged misconduct.
- 6.29.4. During our consultation with Mboweni, he indicated that he was not involved in the decisions to suspend the above-mentioned officials. Mboweni stated that he was not aware of the reasons that lead to the said suspensions.
- 6.29.5. Mboweni indicated that in his view, when Koko instructed him to serve the letters of intention to suspend van der Riet and Ramavhona, he (Koko) had already taken the decision to suspend.
- 6.29.6. Mboweni indicated that he was not consulted by Koko on the decision to suspend the above-mentioned officials even though they were reporting to him.
- 6.29.7. We did not investigate the process followed in the suspension of the above-mentioned officials as we were not required to do so.
- 6.29.8. What is of importance to note is the fact that at the time of their suspension, Ramavhona, and Van der Riet were in the process of finalising an investigation into the inconsistencies in the test results issued by the contractual laboratories and those issued by Brakfontein's laboratory.
- 6.29.9. In his response to our question relating to the suspensions of the officials referred to above, Koko indicated the following: *"The officials listed were suspended without prejudice pending forensic investigations. Siphелеle Gobenі and Sam Phetla's suspensions were lifted based on the results of the investigations. Dr Van der Riet and Ms Charlotte Ramavhona were charged in disciplinary enquiries. In both cases the external independent chairpersons of the tribunal recommended dismissals. The recommendations for Dr Van der Riet took place after I left the employ of Eskom"*.

INVOICES RELATING TO DELIVERY OF COAL BY TEGETA

- 6.29.10. As indicated above, we determined that on 10 March 2015, Eskom concluded a CSA with Tegeta for the supply of a total quantity of 13 950 000 tons, of a blend of Seam 4 lower and Seam 4 upper coal, from Tegeta's Brakfontein Colliery. The value of the said CSA was R3 794 748 750.00.
- 6.29.11. The CSA was for a period of ten (10) years commencing on 1 April 2015 to 30 September 2025.

6.29.12. We determined that Tegeta issued invoices to Eskom for the supply of coal to various power stations including the following:

- 6.29.12.1. Arnot Power Station;
- 6.29.12.2. Majuba Power Station/Hawerklip;
- 6.29.12.3. Matla Power Station; and
- 6.29.12.4. Blinkpan Power station.

Invoices Issued by Tegeta

6.29.13. It should be noted that in addition to the delivery of coal at Majuba Power Station, Tegeta also delivered coal to Matla power station which was against the recommendation provided by the RT & D, discussed in the previous section, which stated, inter alia, that “Sending a “mixed” Brakfontein S4U/S4L blend to Majuba and Matla power station is not recommended as there is a high probability that the “mix” would frequently exceed Majuba and Matla 240 rejection specification.

6.29.14. The said coal delivered to Majuba and Matla Power Stations paid for by Eskom, as provided in the table below.

6.29.15. Based on the analysis of invoices provided to us by Eskom, we determined that Tegeta submitted various invoices for the period May 2015 to February 2018 for the supply of coal at different power station totalling R1 299 513 526.52.

Discrepancies relating to coal quantities delivered at Majuba Power Station in 2015

6.29.16. Based on our review of the technical liaison meetings between Tegeta and Eskom, discussed in the preceding sections, we determined that during the year 2015, Tegeta delivered total coal quantity of 1 060 037 tons to Eskom’s Majuba power station.

6.29.17. We extracted, invoices in respect of quantities submitted by Tegeta to Eskom during the year 2015 for the supply of coal to Majuba power station.

| Year | Delivery point | Invoice amount including VAT | Quantity delivered measured in GJ | Quantity delivered measured in tonnes as per contract |
|------|-------------------------|------------------------------|-----------------------------------|---|
| 2015 | Majuba Power Station | R 253 036 128,41 | 16 317 614,17 | 825 181,15 |
| | Hawerklip power station | R 86 163 989,37 | 5 556 595,50 | 280 996,83 |
| | Grand Total | R 339 200 117,78 | 21 874 209,67 | 1 106 117,98 |

- 6.29.18. In light of the above, we determined that there are discrepancies between the total actual coal quantities delivered by Tegeta i.e. 1 060 037 tonnes as provided in the minutes of the technical monthly meetings and the total of coal quantities as per the above table i.e. 1 106 117.98 tonnes.
- 6.29.19. The said discrepancy suggests that Tegeta may have been paid for more than the coal quantities they delivered during 2015. We determined that the said discrepancy and possible overpayment by Eskom was in respect of 46 080.98 tonnes (1 106 117, 98 - 1 060 037).
- 6.29.20. We requested copies of the Supplier Payment Control Forms, for the period 2015 to 2018, relating to all payments made to Tegeta in respect of the CSA.
- 6.29.21. In order to identify parties who were involved in approving payments during the said periods we need to review all Supplier Payment Control Forms relating to the said period. As at the date of this report we were not provided with the said Supplier Payment Control Forms.

TEGETA'S RESPONSES TO NATIONAL TREASURY'S PRELIMINARY INVESTIGATION CONDUCTED IN 2016

- 6.29.22. During the analysis of Nteta's e-mails, we determined that on 14 September 2016 at 09:30 Nath sent an email to Nteta with subject matter "Reply".

- 6.29.23. We further determined that there was an attachment to the said document titled “*NT-Reply clean doc*”. The said attachment contained a list of responses to National Treasury’s investigation at Eskom at the time (**Annexure E69**).
- 6.29.24. National Treasury appointed us to conduct investigations following a preliminary investigation they conducted at Eskom and Transnet in 2016.
- 6.29.25. National Treasury provided us with the responses provided by Tegeta to National Treasury on the preliminary investigations at Eskom dated 14 September 2016, the same date that Nath emailed Tegeta’s responses to Nteta.
- 6.29.26. We compared the responses provided to Nteta by Nath and the responses provided to National Treasury by Tegeta and determined that they were 100% match.
- 6.29.27. This is a clear indication that Tegeta and Eskom officials were colluded and deliberated on how they responded to National Treasury’s investigations.

OTHER ISSUES

- 6.29.28. During an analysis of Nteta’s e-mails we determined that on 4 August 2016 at 19:20 Howa sent an untitled e-mail to Nteta. Howa sent the said e-mail using an e-mail address naz.howa@icloud.com.
- 6.29.29. We opened the untitled attachment that accompanied the e-mail and determined that it was an invoice dated 31 July 2016, with invoice number 90015135. The reference number on the said invoice is reflected as 1700040. The invoice reflected that it was for R203691.930 tons of coal at a price of R455.59 per ton. The item description is reflected as COL_MID_KFT with a purchase order reflected as R203 691 93 Komati Power Station. The invoice total is reflected as R105 792 007.28 inclusive of VAT.
- 6.29.30. The invoice reflected a Bank of Baroda account number 1454095325. We noted that the e-mail was sent after hours using Howa’s private e-mail address, with the attached invoice not described as such from the e-mail.

Offer to provide stockpile at Koornfontein

- 6.29.31. We further determined that on 6 August 2016 Howa sent another e-mail to Nteta with the subject matter reflected as Koornfontein Stockpile. The e-mail was sent to Nteta at 08:21 from an e-mail address nazeenh@tamedia.co.za. Attached to the said e-mail is a letter dated 5 August, on a Tegeta letterhead. The letter stated

inter alia the following: “I write today to offer Eskom SPACE At our Koornfontein Coal Mine for storing pre-certified coal ahead of transporting to Komati Power Station “. At the bottom of the letterhead we noted that the names of the three Tegeta directors, Ronica Ragavan, Ravindra Nath and Ashur Chawla, are reflected.

- 6.29.32. It is not clear why Howa chose to send the two e-mails attaching the invoice and proposal and whether this was in the normal cause of business. This matter fell outside of our scope and was therefore not investigated.
- 6.29.33. The issues relating to the emails sent to Nteta by Howa as reflected were not part of the scope our investigations and were therefore not investigated.

CONCLUSIONS RELATING TO THE CSA BETWEEN TEGETA AND ESKOM

6.29.34. Advert and assessment of the Tegeta unsolicited bid

- 6.29.34.1. Tegeta failed to meet the 50%+1 black ownership requirement at the time of their appointment.
- 6.29.34.2. Mboweni, Koko, Nteta and Mabelane contravened the provisions of the Medium Term Mandate and section 57(c) of the PFMA in that they concluded or caused to be concluded, a CSA with an entity which was not 50%+ 1 at the time of conclusion.
- 6.29.34.3. Eskom and Tegeta commenced with the negotiations of the CSA in 2013 prior to obtaining a water use license.
- 6.29.34.4. Eskom failed to conduct drainage tests within thirty (30) days after delivery of contract coal as required by clause 22.10 of the CSA.
- 6.29.34.5. Tegeta failed to comply with some of their obligations under the Water use license in that:
 - 6.29.34.5.1. Brakfontein mine used portable water for washing machineries which was not its intended purpose;
 - 6.29.34.5.2. Monitoring points had been changed without notification and approval by the Provincial Head of the Department of Water and Sanitation; and
 - 6.29.34.5.3. Final ground monitoring water programme was not submitted within six months of the Water Use License.

- 6.29.34.6. Samples collected by Mothapo on June 2014 showed that only Seam 4 lower from Brakfontein complied with the requirements Eskom's specifications for the Majuba Power Stations.
- 6.29.34.7. Bester and Nteta allowed Tegeta to dictate to the terms of the CSA which, consequentially, were favourable on Tegeta's part and was not in the best interest of Eskom.
- 6.29.34.8. Nteta's request to Mlonzi to register Tegeta as a vendor in the Eskom's database was irregular and against Eskom's supply chain policy in that it was done given prior to Tegeta and Eskom concluding a CSA;
- 6.29.34.9. Nteta misrepresented facts to Mlonzi when indicating that the CSA had already been concluded when it was not the case

6.29.35. **Price and quantity adjustment**

- 6.29.35.1. Eskom officials increased the duration of the CSA from five (5) years to ten (10) years, without consultations with legal and the Senior General Manager, Primary Energy Division, Mboweni.
- 6.29.35.2. There is no evidence that the Eskom Executives who concluded the coal supply agreement between Eskom and Tegeta obtained approval to procure beyond the lifespan of the Medium-Term Mandate from the Board.
- 6.29.35.3. Nteta gave preferential treatment to Tegeta by emailing an editable template of a CSA for inputs.
- 6.29.35.4. Mboweni irregularly signed the ten (10) year CSA between Eskom and Tegeta.
- 6.29.35.5. The conclusion of the CSA with Tegeta prior to conducting successful combustion tests was irregular;
- 6.29.35.6. Eskom continued with blended tests even after various coal analysis results in respect of the blended coal samples, indicated that the blended coal was not suitable for Majuba power station.
- 6.29.35.7. It is not clear whether Nteta's promotion was a reward for giving favourable conditions to Tegeta
- 6.29.35.8. Bester and Nteta failed to act in the best interest of Eskom in that they permitted Tegeta to dictate to the terms of the CSA.

6.29.35.9. Nteta, Bester and any other role player may have received gratification for changing the conditions of the CSA;

6.29.35.10. Nteta, Bester and any role player may have contravened section 34 of Prevention and Combating of Corrupt Activities Act.

6.29.36. **SABS – testing of new samples**

6.29.36.1. Koko's conduct in preventing Eskom's employees from observing the resampling and retesting processes compromised the transparency of the said processes as none of the Eskom officials observed the sampling process.

6.29.36.2. The integrity of the sampling process followed at the Brakfontein mine is questionable as Mpumamanzi and Eskom cannot confirm that the samples collected at Brakfontein Colliery were indeed from the mine.

6.29.36.3. A vehicle without a tracking device was used to transport coal samples from Brakfontein to SABS in contravention of Eskom and Mpumamanzi contract.

6.29.36.4. The first stockpile sampled at Brakfontein on 29 August 2015 was done in the absence of Mpumamanzi's Rover/Supervisor, contrary to the contract between Mpumamanzi and Eskom.

6.29.36.5. The integrity of SABS tests results of 30 August 2015 are brought to question in that there are discrepancies in the number of sample bags recorded in Mpumamanzi's report and the SABS delivery notes.

6.29.36.6. Mudaliar and Roux were not authorised to observe the coal analysis at SABS.

6.29.36.7. SABS contravened their own policies and procedures when they allowed the Brakfontein parties to witness the analysis of their colliery's coal samples.

6.29.36.8. Koko suspended the Tegeta CSA on 31 August a day after he received the SABS's results on the Brakfontein Coal quality testing which was done on 29 August 2015 and the results thereof provided to Eskom on 30 August 2015.

6.29.37. Coal Deliveries from Brakfontein Mine

- 6.29.37.1. Tegeta was given preferential treatment in that they were allowed to commence coal deliveries without any confirmation by Eskom that Tegeta's coal was compliant with CSA's coal quality requirements;
- 6.29.37.2. Tegeta failed to meet their quarterly planned quantity requirements, during 2015.
- 6.29.38. The samples tested by SABS on 29 August 2015 were not from Brakfontein mine due to the significant difference in the samples tested on 29 September 2015 and 6 September 2015.
- 6.29.39. SABS should have handled the analysis of the tests of 30 August 2015 differently by not allowing Brakfontein officials to be present at SABS laboratories during the analysis of the said coal samples.
- 6.29.40. The Brakfontein officials, i.e. Mudaliar and Roux interfered with the resampling and analysis of the SABS tests of 28 August 2015 by:
 - 6.29.40.1. Completing the resampling without the Eskom and Mpumamanzi observers.
 - 6.29.40.2. Following the Mpumamanzi coal transportation to SABS;
 - 6.29.40.3. Being present at SABS during the analysis of the coal samples when they should not have been there.
 - 6.29.40.4. Sending the test results to Eskom prior to SABS communicating the said results to Eskom.

RECOMMENDATIONS RELATING TO THE CSA BETWEEN ESKOM AND TEGETA

Based on our findings and conclusions above, we recommend as follows:

- 6.29.40.5. Eskom provides the report to the Director Priority Crimes Investigation ("DPCI") to investigate if any role players did not receive gratification and also contravened section 34 of the Prevention and Combating of Corrupt Activities Act
- 6.29.40.6. Eskom Board institutes appropriate disciplinary action against the officials who played a role in the irregular appointment of Tegeta

- 6.29.40.7. There is a possible case of fraud that should be investigated by the DPCI against possible collusion between Eskom and Brakfontein officials may have caused samples from outside Brakfontein to be analysed
- 6.29.40.8. Consider restricting Mpumamanzi for breaching the terms of the contract
- 6.29.40.9. Consider restricting Tegeta for colluding with Eskom Officials, manipulating samples and compromising the integrity of the procurement process.

7. TEGETA PREPAYMENT

7.1. Introduction

- 7.1.1. One of the allegations we were required to investigate was the Eskom to Tegeta prepayment of R659 558 079.00 (six hundred and fifty-nine million five hundred and fifty-eight thousand seventy-nine rand) inclusive of VAT.
- 7.1.2. The process and the payment thereof have been questioned by media and the public in general, while Eskom has denied any wrong doing and insisted that there was nothing untoward in making the said prepayment.

7.2. Background

- 7.2.1. As reflected above, one of the allegations National Treasury mandated Fundudzi Forensic Services to investigate is a prepayment Eskom made to Tegeta on 14 April 2016.
- 7.2.2. During our investigations, we determined that on 14 April 2016 Eskom made a prepayment of R659 558 079.00 including VAT to Tegeta.
- 7.2.3. From various documentation obtained from Eskom, including e-mail communication between Eskom employees and Tegeta representatives, as well as media searches and consultations conducted with Eskom employees as well as third parties, we determined that Eskom concluded a contract with Tegeta to supply 1 250 000 tonnes of coal from April 2016 to September 2016 and obtained approval from a Special Board Tender Committee held on 11 April 2016 to extend the contract with Umsimbithi to supply 540 000 tonnes of coal from June 2016 to September 2016.
- 7.2.4. We were not required to, and did not investigate whether Umsimbithi supplied the 540 000 tonnes as contracted.

7.2.5. We determined that the contract extensions for both Tegeta and Umsimbithi were approved by Eskom Special Board Tender Committee (“SBTC”) meeting which took place on 11 April 2016 at 21:00.

7.2.6. Below we discuss the processes leading up to Eskom making the said prepayment of R659 558 079.00 to Tegeta on 14 April 2016.

7.2.7. To adequately understand the circumstances leading up to the prepayment, one would have to go to the very beginning of the acquisition of all Optimum Coal Holding’s subsidiaries by Tegeta in late 2015 and early 2016. This is critical in that some of the allegations are that the prepayment made to Tegeta, by Eskom was used to fund the purchase of Optimum Coal Holding’s seven subsidiaries.

7.3. Optimum Coal Holdings

7.3.1. We conducted searches on Optimum Coal Holdings Limited (“OCH”) and determined that OCH, a subsidiary of Glencore Operations South Africa, together with its subsidiaries, engages in the production and sale of low sulphur thermal coal in South Africa. OCH owns and operates Optimum Collieries, an opencast and underground coal mining complex comprising the Kwagga, Pullenshope, Eikeboom, Boschmanspoort, and Koornfontein mines located in the Mpumalanga Province. OCH supplies coal for power generation.

7.3.2. We further determined that OCH owned the Optimum Coal Mine (“OCM”). Optimum Coal Holdings had *inter alia* the following subsidiaries:

7.3.2.1. Optimum Coal Mine (“OCM”);

7.3.2.2. Optimum Coal Terminal (“OCT”); and

7.3.2.3. Optimum Koornfontein Mines (“KFM”).

7.3.3. From OCH’s website, we determined that the company is reflected as having been incorporated in 2006 and based in Johannesburg. The website further reflected that as of 14 April 2016, Optimum Coal Holdings Limited operated as a subsidiary of Tegeta Exploration and Resources Pty Ltd.

7.3.4. The date of 14 April 2016 is critical as it is the date on which Eskom paid Tegeta R659 558 079.00 prepayment. Was it a co- incidence that Eskom paid the prepayment to Tegeta on the same date that Tegeta was to make a payment of R2.15 billion to Glencore for the purchase of OCH’s subsidiaries? We will unpack and conclude on this at the end of the report.

7.3.5. From various media searches and consultations conducted with one of the then OCH Business Rescue Practitioners, we determined that Tegeta, a subsidiary of Oakbay Investments Group (“Oakbay”), bought the assets of OCH, which included OCM, OCT and OKM for R2.15 billion.

7.3.6. In the company’s comments to our second draft report, Tegeta confirmed that it purchased all the shares held by OCH in the 7 (seven) subsidiaries.

7.3.7. The sale of the shares held by OCH to Tegeta followed Glencore’s OCH and OCM going into business rescue proceedings on 4 August 2015. We consulted with Piers Marsden (“Marsden”) who confirmed that he was one of the two Business Rescue Practitioners appointed to assist OCH which was at the time placed in business rescue. The other Business Rescue Practitioner for OCH was Peter Van Den Steen (“Van Den Steen”).

7.3.8. We understand, based on analysis of e-mail communication between Eskom employees and third parties relating to the Tegeta and OCH subsidiaries’ sale agreement that between 2015 and 2016 there were various discussions between Eskom executives and the Business Rescue Practitioners representing OCH relating to the sale and purchase of the assets of OCH.

7.3.9. The processes followed in the sale of OCH subsidiaries to Tegeta is discussed below.

7.3.10. Eskom has, through various media statements as well as interviews, denied that the prepayment made to Tegeta was a loan or that it was irregular and fraudulent.

7.4. Optimum Coal Holdings Coal Supplier Agreement (“CSA”)

7.4.1. From various e-mail communications, we determined that Nteta sent a letter addressed to Business Rescue Practitioners Marsden and Van Den Steen, dated 30 March 2016. (**Annexure E71**). The said letter reflected that Eskom, OCH, and OCM were parties to a 1993 CSA as amended by the first, second and third addenda dated 8 April 2008, 12 April 2012, and 11 February 2013 respectively. The letter further reflected that OCM supplied coal to Hendrina Power Station in terms of the said CSA.

7.4.2. We determined that the CSA between OCH and Eskom was a 25-year supplier agreement with the effective date of 1993 and expiring in December 2018. (**Annexure E71**).

7.4.3. During our consultations with Marsden, he indicated that OCM is not a fixed cost mine but had a supply agreement with Eskom, with a fixed price.

7.4.4. Mboweni, Magwaza and Dick indicated that both Optimum and Brakfontein coal mines were not fixed cost, or cost-plus mines. Magwaza stated that the fixed cost mines are those mines owned or subsidized by Eskom. He further stated that the following are *inter alia* the current cost-plus mines:

- 7.4.4.1. Matla;
- 7.4.4.2. Kriel;
- 7.4.4.3. Khutala; and
- 7.4.4.4. New Vaal.

7.5. Memorandum from Primary Energy Division (PED) to negotiate with OCM

7.5.1. We determined that on 26 February 2015 there was a submission e-mailed to Bester and Nteta by Jithin Mohan ("Mohan") with the title reflected as "*Mandate to conclude negotiations with Optimum Coal Mine for Coal Supply to Hendrina power station*". (Annexure E72).

7.5.2. The document reflected the following as the resolutions required from the BTC:

- 7.5.2.1. *Primary Energy Division ("PED") is mandated to conclude negotiations with Optimum Coal Mine ("OCM") to ensure security of supply for the life of Hendrina Power Station ("Hendrina") at a real base of R442/ton (February 2015 money values).*
- 7.5.2.2. *PED is mandated to engage with alternate suppliers to secure and develop alternative coal supply options for Hendrina for the period pre and post 2018 should the opportunity arise to reduce the delivered cost of coal to Hendrina and achieve transformation objectives.*
- 7.5.2.3. **PED is mandated to negotiate and conclude the termination of the OCM hardship claim in lieu of writing off the penalties that have been suspended on OCM since 2012. (Our emphasis)**
- 7.5.2.4. *PED is mandated to conclude negotiations with OCM for the full OCM reserve/resource and production for Eskom supply, for other Eskom power stations including but not limited to Arnot and Tutuka, should it be possible to achieve an average cost per ton at or below R436/ton (February 2015 money values) for the entire complex.*

- 7.5.2.5. **PED is mandated to engage with OCM to facilitate the purchase of OCM by Eskom or one of the state owned mining companies, but not to conclude.** (Our emphasis)
- 7.5.2.6. *The Divisional Executive, PED is authorised herewith, with the power to delegate further, to take all the necessary steps to give effect to the above, including the signing of any agreements, consents, or other documentation necessary or related therewith.*
- 7.5.3. The memorandum outlines several critical factors that, had they been addressed, OCM may have found itself in a different position than the business rescue proceedings it ended up in.
- 7.5.4. The critical factors worth mentioning here are the following:
- 7.5.4.1. Eskom was willing (through PED) to negotiate with OCM to ensure security of supply of coal for the life of the Hendrina Power Station;
- 7.5.4.2. Eskom was considering writing off the penalties that had been suspended on OCM since 2012; and
- 7.5.4.3. Eskom was considering negotiating with OCM for the full OCM reserve/resource and production for Eskom supply to include other power stations.
- 7.5.5. We could not get any indication whether the above request was resolved by BTC and approved by the Eskom Board. What we however determined from available facts is that Phembani Group attempted to purchase OCM and their efforts were allegedly thwarted by Brian Molefe (“Molefe”). This is reflected in the communication between Molefe and Phembani, discussed in detail in the paragraphs below. .
- 7.5.6. We noted through minutes of a meeting between Eskom, Tegeta and Glencore, that Koko indicated the fact that Eskom was not willing to waive the penalties levied against OCM.
- 7.5.7. As reflected below, we determined that about five months after PED issued the above memorandum, Glencore announced that OCM was going into business rescue sighting the very issues that were identified by Eskom’s PED, scheduled for tabling at Eskom’s EXCO Procurement Sub Committee on 25 March 2015 and to the Eskom Board Tender Committee (“BTC”) on 15 April 2015.

7.5.8. We determined that the period during which PED scheduled to table the above memorandum to Eskom's EXCO Procurement Sub Committee i.e. 25 March 2015, and to the BTC, i.e. on 15 April 2015, was during the period in which Koko was on suspension.

7.5.9. Koko returned from suspension on 20 July 2015 and, as reflected below, on 4 August 2015 Glencore issued a statement announcing that the directors of its subsidiaries, OCH and OCM had resolved to commence business rescue proceedings and to place both companies under supervision given the continued and unstable financial hardship.

7.6. Optimum Coal Mine commences business rescue proceedings

7.6.1. From various media searches, a review of Eskom employees' e-mail communication as well as consultations with Marsden and Nteta, we determined that on 4 August 2015 Glencore issued a statement announcing that the directors of its subsidiaries, OCH and OCM had resolved to commence business rescue proceedings and to place both companies under supervision given the continued and unstable financial hardship.

7.6.2. From available documentation, we determined that as at time of OCM going into business rescue, it had historical penalties of approximately R2.1 billion. Eskom levied the said penalties for alleged non-compliance by OCM over a period during the subsistence of the CSA with Eskom.

7.6.3. Paragraph 8 of Glencore's media statement reflected that *"Whilst fully aware of the unsustainable nature of the agreement and Optimum's precarious financial situation, Eskom served a notice on Optimum in July 2015 in which it asserts its rights to claim significant historical penalties from Optimum and to impose future penalties"*.

7.6.4. From the said paragraph, it appears that one of the main reasons Glencore placed OCH and OCM in business rescue was Eskom's decision to claim historical penalties and impose future penalties. It has widely been reported that had Eskom claimed historical penalties and imposed future penalties, Glencore would have had to supply coal to Eskom at R1 per ton.

7.6.5. In reference to the memorandum of 26 March 2015, we determined that PED sought permission to negotiate the write off, of the penalties that it indicated were suspended on OCM since 2012. The situation went from Eskom seeking

permission to negotiate and write off the historical debt, to Eskom serving a notice to claim the penalties in just four months.

7.6.6. The notice by Eskom to claim historical penalties and levy new penalties was one of the reasons OCH commenced with business rescue processes as the contract between Eskom and OCH was a “massively” loss making contract. Marsden confirmed this during our consultations with him.

7.7. Signing of the Tegeta CSA and Koko’s suspension

7.7.1. We determined during the time PED was requesting a mandate to negotiate with OCM, that there were ongoing discussions between Tegeta and Eskom relating to an unsolicited bid to supply coal to Eskom’s Majuba Power station from the Brakfontein Colliery.

7.7.2. The CSA between Eskom and Tegeta for the supply of coal to Majuba Power Station was concluded on 10 March 2015.

7.7.3. On 11 March 2015, a day after the conclusion of the CSA, Eskom suspended Koko and the following three other executives:

7.7.3.1. Dan Marokane, Group Executive, Capital;

7.7.3.2. Tshediso Matona, Group Chief Executive; and

7.7.3.3. Tsholofelo Molefe, Finance Director.

7.7.4. Koko would return from his suspension on 20 July 2015 and play a pivotal role in the sale of the OCH assets to Tegeta.

7.7.5. On 7 August 2015, just three weeks after Koko’s return to Eskom, Optimum Coal Mine’s mining licence was briefly suspended by the DMR.

7.8. Various key milestones relating to the Optimum Coal Holding Business Rescue

7.8.1. Phase one of the business rescue – Negotiations

7.8.1.1. Marsden indicated that the Business Rescue Practitioners’ plan of action was to first negotiate with Eskom to find common ground to solve the issues that led to OCH and OCM going into business rescue. Marsden stated that the Business Rescue Practitioners’ duties included *inter alia* the following:

7.8.1.1.1. Suspend the seemingly onerous agreement between OCH and Eskom;

- 7.8.1.1.2. Find an interim negotiated settlement; and
- 7.8.1.1.3. Propose to extend the CSA with Eskom beyond 2018.
- 7.8.1.2. The negotiation tactic that Marsden attempted to put in action was in fact supported by the memorandum sent to Bester and Nteta by Mohan as indicated above. Paragraph 2.1 of the said memorandum clearly stipulated that PED sought permission to conclude negotiations with OCM to ensure security of supply (of coal) for the life of Hendrina Power Station.
- 7.8.1.3. The memorandum referred to above would therefore have covered the three issues that the Business Rescue Practitioners wanted to achieve during the negotiation phase.
- 7.8.1.4. There is no indication that Eskom attempted to meet the Business Rescue Practitioners half way in terms of what the practitioners wanted to achieve. In fact, what happened was the opposite of what the Business Rescue Practitioners wanted to achieve. Marsden indicated that the process was frustrated right from the beginning as Eskom did not give the Business Rescue Practitioners the time of day to try and resolve the matter. He indicated that at times the Business Rescue Practitioners had to threaten Eskom to get meeting appointments with Eskom management. The action by Eskom was therefore contrary to the memorandum prepared by PED for submission at BTC with a view to resolve the OCH and OCM business rescue situation.
- 7.8.1.5. Although the memorandum may not have been taken to Eskom's EXCO Procurement Sub Committee and BTC for approval, the fact that PED drafted it is enough to infer that Eskom was willing to negotiate with Glencore on the OCH and OCM business rescue matter. The said negotiations may or may not have resulted in Glencore managing to save the sale of the assets of OCH, but they should at least have been given a chance.
- 7.8.1.6. We reviewed Koko and Nteta's e-mails and determined that Marsden's version that Eskom was reluctant or unwilling to assist in resolving the OCH issues had substance.

- 7.8.1.7. There were various e-mails emanating from Marsden, Van Den Steen as well as Clinton Ephron (“Ephron”) seeking to schedule meetings with Eskom’s Molefe, Nteta and Koko to discuss the OCH business rescue matter. The said requests were either ignored or frequently rescheduled.
- 7.8.1.8. We determined that between 28 November 2014 and 29 January 2015 Ephron sent various e-mails to Koko requesting a meeting to discuss the OCM matter. We further determined that at one stage Ephron requested that the meeting took place at his house as he, had injured himself in a bicycle accident.
- 7.8.1.9. At one point we noted that in his e-mail response to his PA who had received the requests for meetings from Ephron, Koko indicated that *“I am not going to go to this guy’s house who does he think he is?”*.
- 7.8.1.10. We noted that the first time Koko’s office responded to Ephron’s requests for a meeting was through an e-mail dated 29 January 2015 from Noluthando Mgijima (“Mgijima”), Executive Assistant to Koko. In the said e-mail Mgijima indicated she was would schedule the requested meeting as promised. We are not aware it the said meeting materialised.
- 7.8.2. Letter from Marsden to Eskom requesting a meeting**
- 7.8.2.1. From various e-mail communication we determined that on 13 August 2015 Marsden wrote a letter to Nteta confirming various calls and SMS’s between them and requesting confirmation of a meeting to be held between Eskom and the OCH Business Rescue Practitioners. Marsden e-mailed the letter to Nteta on the same date at 08:41 and copied Van Den Steen.
- 7.8.2.2. We determined that Nteta responded to Marsden’s meeting request on 14 August 2015 and confirmed that there was going to be a meeting on 17 August 2015 at 16:00 at Eskom Megawatt Park. (**Annexure E73**). We further determined that Nteta requested Marsden to provide her with a meeting agenda.
- 7.8.2.3. From Nteta’s e-mails we determined that Marsden responded to Nteta’s e-mail on the same date, i.e. 14 August 2015 AT 10:50 PM and confirmed the meeting of 17 August 2015. Marsden further provided Nteta with the

meeting agenda, which he reflected as *“Introduction Business Rescue Process Business rescue vs liquidation Current position / causes of distress Way forward General”*

- 7.8.2.4. We determined from Nteta’s e-mails that on 15 August 2015 Van Den Steen sent an e-mail to Nteta in which he copied Marsden. Van Den Steen indicated that he and Marsden would discuss an agenda to be tabled. Van Den Steen’s e-mail further indicated that Nteta was aware of the issues that had been mentioned re the CSA from all sides and further that the Business Rescue Practitioners’ mission was to determine if they could find a solution for sustainability together with Eskom for Optimum.
- 7.8.2.5. From the e-mail communication as well as consultations conducted, it would appear that Eskom took a hardline stance to attempts by Glencore or the appointed Business Rescue Practitioners to negotiate either the price Eskom was paying for Optimum coal, or any resolution in terms of the courses of the OCM financial distress.

7.8.3. Phased two of the business rescue – selling OCM

- 7.8.3.1. It has been widely reported that Molefe and Ngubane attempted to persuade the then DMR Minister Ngoako Ramatlhodi to cancel Glencore’s mining rights in a bid to force Glencore into submission to sell the OCH assets.
- 7.8.3.2. As discussed below, we determined that Glencore all OCH subsidiaries to Tegeta in a transaction that came into effect on 14 April 2016.
- 7.8.3.3. Marsden indicated that after various failed attempts to reach a negotiated settlement with Eskom, the Business Rescue Practitioners moved into the second phase of the process which entailed selling OCH subsidiaries.
- 7.8.3.4. Marsden stated that it was at around the same time that the process moved into the second phase, that Eskom sought legal opinion on two items:
- 7.8.3.4.1. Whether Eskom could remove the Business Rescue Practitioners from the matter; and
- 7.8.3.4.2. Whether Eskom could be accused of not engaging with the Business Rescue Practitioners.

- 7.8.3.5. From Koko's e-mails we determined that there was an e-mail sent to him by Rishaban Moodley of Cliffe Dekker Hofmeyr Inc on 4 November 2015. Attached to the said e-mail was a document titled "memorandum from counsel- Eskom rights relating to Optimum Business Rescue". The said document confirms Marsden's assertions that Eskom sought legal advice to remove him as the appointed Business Rescue Practitioner on the matter.
- 7.8.3.6. We determined that paragraph 7.1 of the memorandum, which deals with conclusions, reflected that Cliffe Dekker Hofmeyr Inc concluded the following: *"In our view, there is no factual basis that would satisfy any of the grounds set out in the Companies Act upon which an application for the removal or setting aside of the appointment of the Business Rescue Practitioners could be based."*
- 7.8.3.7. It was based on the said memorandum that Marsden was eventually allowed to continue as one of the two Business Rescue Practitioners on the matter. It is not clear why Eskom went to the extent of obtaining legal opinion on whether Marsden could be removed as a Business Rescue Practitioner on the OCH matter.

7.8.4. The selling of Optimum Coal Mine

- 7.8.4.1. As stated above, we determined that one of the reasons Glencore wanted to sell OCM was the huge losses that it was operating in, consisting of the historic and forward loss making. As indicated above, Glencore was slapped with a historic fine of approximately R2.1 billion by Eskom as non-performance penalty levied on Optimum Coal Mine. Our understanding is that Eskom levied the fine on the then Glencore-OCM for what Eskom indicated were coal supplies failing to meet agreed specifications. It is however a question that still needs to be answered by the relevant Eskom Executives as to why Eskom continued to use the coal and only levied the penalties afterwards.
- 7.8.4.2. In contrast, we determined that Eskom failed to levy any penalties for out of specification coal delivered at Majuba Power station by Brakfontein Colliery.
- 7.8.4.3. We however fail to understand the rationale behind Eskom utilising the out of specification coal as alleged and only complained afterwards.

7.8.4.4. The exact value of the penalties remained a bone of contention until resolved by an arbitrator at a reduced total of R577 000.00. The said reduction occurred after the sale of the OCH subsidiaries to Tegeta in a sale agreement concluded on 14 April 2016 after the payment of the R2.15 billion by Tegeta.

7.8.5. Signing of a new Glencore CSA agreement

7.8.5.1. It is our understanding that during the process of selling the OCM assets, Glencore and Eskom managed to agree on a new CSA which was approved by Eskom procurement division and had to be taken to the Eskom board for approval. Marsden stated that Molefe rejected the proposal although it was approved by Eskom procurement division. We could not find any documentation relating to the approval of any OCM and Eskom agreement during the business rescue period.

7.8.6. Attempt by Phembani and other parties to buy OCM

7.8.6.1. Marsden stated that after OCH failed to enter into a negotiated settlement with Eskom, the Business Rescue Practitioners' next move was to sell OCM. Marsden stated that the following were two requirements for a successful Optimum Coal Mine sale:

7.8.6.1.1. The buyers had to provide proof that they had financing for the purchase price; and

7.8.6.1.2. The buyers had to have a contract to purchase the 4 million tons of coal that Optimum produced for the domestic market every year.

7.8.6.2. It is our understanding that Phembani was established in 1994, and is a South African based industrial holding company with a focus on investing in, as well as operating businesses and interests in the oil, gas, minerals, mineral resources, metals, and infrastructure related. We understand that Phembani, which was 51% black owned at the time, had interest in the purchase of OCM.

7.8.6.3. We further understand that Phembani had no problem in obtaining the financing to purchase OCM, given their net worth at the time. Marsden stated that Glencore agreed to sell OCM to Phembani in principle, provided that Phembani securing a contract with Eskom as one of the

conditions. Glencore signed heads of agreement with Phembani to sell OCM to the company.

- 7.8.6.4. We determined, from various e-mail communications, that there were attempts by Phembani to secure meetings with Molefe. As reflected below, we could find only one instance where a meeting between Phembani and Eskom's GCE, Molefe, took place regarding the OCM sale.
- 7.8.6.5. Marsden confirmed that Phembani only had one meeting with Eskom in which Molefe indicated Eskom's unwillingness to conclude a contract with Phembani.
- 7.8.6.6. From Molefe's e-mails we determined that there was an e-mail sent to him by Bronwyn de Villiers on 16 October 2015. The e-mail reflected de Villiers as Phembani Group Personal Assistant. We determined that there was a letter from Phuthuma Nhleko ("Nhleko") attached to the said e-mail to Molefe. (**Annexure E72**).
- 7.8.6.7. It is in paragraph 4 of the said e-mail that we determined the correctness of Marsden's version when he stated that Phembani's request to purchase OCM was rejected by Molefe. In the said paragraph Nhleko wrote the following *"I affirm my understanding that Eskom's firm position is that it is unable to enter into any discussion with PG (Phembani Group) that would vary the current OCM contract, nor vary the claim of R2.1 bn on OCM and/or its guarantors. Further, that any engagement as regarded a new contract, would only take place in 2018 and that the current BR (Business Rescue) and liquidation process should be left to run its course to a certain conclusion."*
- 7.8.6.8. We determined that one of the resolutions required from BTC by PED as reflected in paragraph 2.5 of the memorandum sent to Johan Bester and Nteta by Jithin Mohan, was to engage with OCM to facilitate the purchase of OCM by Eskom or one of the state-owned mining companies.
- 7.8.6.9. We could not find any indication that Molefe submitted the PED request to BTC for approval. From Nhleko's letter as reflected above, it is apparent that Molefe may not have submitted the PED request to BTC.
- 7.8.6.10. As will be discussed in the later paragraphs, we determined that, contrary to the PED request to negotiate a new contract with OCM and to negotiate

the sale of OCM to either Eskom or a state-owned mining house, Eskom instead negotiated and facilitated the sale of OCM to Tegeta only a month after Molefe rejected Phembani's request to buy OCM.

7.8.7. Transfer of Tegeta shares

7.8.7.1. Searches conducted by us on Tegeta reflected that on 20 November 2015, about half of Tegeta's shares were transferred to Mabengela Investments, of which Duduzane Zuma is reflected as one of the shareholders, and a company called Elgasolve. Oakbay owns 34.5% of Tegeta. Mabengela 28.5%, Elgasolve 21.5% and Dubai-based Fidelity Enterprises 15.5%.

7.8.7.2. E-mail communication between Nteta and Mohan dated 13 April 2016 reflected that Ragavan Nath ("Nath") sent an e-mail to Nteta on 12 April 2016 at 06:30 PM providing a BEE certificate and a list of the issued share capital of Tegeta shares. The Tegeta shares were reflected as 1549 held as follows (**Annexue E73**):

7.8.7.2.1. Oakbay Investments – 450 Tegeta shares;

7.8.7.2.2. Mabengela Investment – 442 Tegeta shares;

7.8.7.2.3. Elgasolve – 333 Tegeta shares;

7.8.7.2.4. Fidelity Enterprises Limited 200 Tegeta shares; and

7.8.7.2.5. Accurate Investments – 124 Tegeta shares.

7.8.7.3. The said e-mail from Nteta to Mohan further reflected that the directors of Tegeta were as follows:

7.8.7.3.1. Ravindra Nath;

7.8.7.3.2. Ronica Ragavan;

7.8.7.3.3. Ashu Chawla; and

7.8.7.3.4. Nazeem Howa.

7.8.8. Sale of Optimum Coal Holding's subsidiaries to Tegeta

7.8.8.1. Marsden stated that after all other companies failed to purchase OCM; KPMG approached the Business Rescue Practitioners and indicated that Tegeta was interested to purchase OCM.

7.8.8.2. We determined that on 24 November 2015 there was a meeting at Eskom where the following individuals were present (**Annexure E74**):

- 7.8.8.2.1. Matshela Koko;
- 7.8.8.2.2. Suzanne Daniels;
- 7.8.8.2.3. Edwin Mabelane;
- 7.8.8.2.4. Ayanda Nteta;
- 7.8.8.2.5. Piers Marsden;
- 7.8.8.2.6. Van Den Steen;
- 7.8.8.2.7. Nazeem Howa;
- 7.8.8.2.8. Shaun Blankfield;
- 7.8.8.2.9. Ashu Chawla; and
- 7.8.8.2.10. Ronica Ragavan.

7.8.8.3. The minutes of the said meeting reflected that the purpose thereof was exploratory discussions on sustainable Hendrina Coal Supply. Koko chaired the said meeting.

7.8.8.4. Marsden stated that it was in the said meeting that Koko stated that Eskom would only allow a new contract if Glencore was willing to sell OCH and its subsidiaries as reflected above, and not just the sale of OCM.

7.8.8.5. We determined from the minutes of the said meeting that the following statements were attributed to Koko:

- 7.8.8.5.1. *Eskom indicated the importance of sustainable supply to Hendrina as it contributes to managing of a tight electricity supply system;*
- 7.8.8.5.2. *Eskom re-iterated the need to resolve the current Mine situation timeously to ensure security of supply;*
- 7.8.8.5.3. *Eskom is concerned with the sustainability of Optimum Coal Mine, and thus the ability to continue to supply coal to Eskom. Therefore, the sale needs to consider including all Optimum Coal Holding entities;*

7.8.8.5.4. *Eskom expects Optimum Coal Mine to honour the contract at the contract price to 2018*

7.8.8.5.5. *Eskom will not waiver their penalty;*

7.8.8.5.6. *In principle Eskom supports exploratory discussions for the sale;*

7.8.8.5.7. *The sale needs to be at Optimum Coal Holdings level; and*

7.8.8.5.8. *The agreement in terms of a way forward must be concluded by Friday 27 August 2015 (sic).*

7.8.8.6. When Koko indicated that *“The sale needs to be at Optimum Coal Holdings level”* he not only paved the way for the deal to be concluded, but ensured that Tegeta not only purchased the allegedly loss making OCM, but also acquire the Optimum Coal Terminal and the Optimum Koornfontein Mines.

7.8.8.7. We understand that subsequent to the meeting of 24 August 2015 Glencore agreed to sell all OCH’s subsidiaries to Tegeta.

7.8.8.8. On 27 November 2015 Tegeta made a formal offer of R2.15 billion for OCM. Marsden convened a meeting with the banks, and made verbal offers as per the agreement.

7.8.9. Inspection at all Glencore mines

7.8.9.1. It is our understanding from various consultations that during the weekend of 28 and 29 November 2015 the Department of Mineral Resources (“DMR”) sent officials to all Glencore mines and conducted inspections and issued all Glencore mines with section 54 notices, which enable the DMR to close entire mines and shafts in the event of a safety breach, most seriously when there is a mine fatality. The notion behind the section is for remedial action to be undertaken to avoid a repeat.

7.8.10. Meeting between Glencore and Eskom on 1 December 2015

7.8.10.1. Marsden stated that the visit to Glencore mines by DMR during the weekend of 28 and 29 November 2015 led to a panic at Glencore and the company called him on Monday 30 November 2015, and requested that he schedule two meetings, one with the banking consortium and the other one with Eskom.

7.8.10.2. Marsden stated that he met with Glencore and Koko on 1 December 2015. Marsden indicated that in the said meeting Glencore agreed on everything that was placed on the table by Eskom. Marsden indicated that Glencore made the following decisions:

7.8.10.2.1. That business rescue was a disaster;

7.8.10.2.2. Glencore would live with the contract;

7.8.10.2.3. Glencore would litigate on the fine; and

7.8.10.2.4. Glencore would take OCM out of business rescue.

7.8.11. Marsden's meeting with the banks on 1 December 2015

7.8.11.1. Marsden indicated that after the meeting with Eskom on 1 December 2015, he and the Glencore representatives drove from Megawatt Park to Rand Merchant Bank to inform the bank to restructure the debt. We understand that the debt originated from the loan to Glencore over the years.

7.8.11.2. Marsden further stated that between driving from Eskom to Rand Merchant Bank, one of the Glencore representatives, Clinton Ephron did not arrive at the bank. The #GuptaLeaks reflect that Ephron flew to Switzerland on 1 December 2015 to meet with Glencore CEO Ivan Glasenberg.

7.8.11.3. According to former Public Protector Thuli Madonsela's *"State of Capture"* report, Zwane travelled to Zurich during November and December 2015, to attend a meeting with Glencore CEO Ivan Glasenberg. Rajesh "Tony" Gupta and Salim Essa, a well-known Gupta associate allegedly attended the said meeting.

7.8.11.4. The #GuptaLeaks reflected that on 2 December 2016 Zwane failed to board his scheduled flight from Zurich to Dubai as he was allegedly on board the Gupta's Bombardier jet, ZS-OAK along with Tony Gupta and Salim Essa.

7.8.12. Negotiations from 1 December 2015 to 10 December 2015

7.8.12.1. From various e-mail communications, we determined that between 1 December 2015 and 10 December 2015 Glencore and Tegeta entered into negotiations for the final agreement of sale between the two parties.

7.8.12.2. Marsden indicated that there was an amended Tegeta offer made on 8 December 2015 for an amount of R2.15 billion. The amended Tegeta offer of 8 December was signed as a final deal on 10 December 2015. The outcome of the final deal was that Tegeta replaced the Eskom guarantee and stepped into OCH position.

7.8.13. Agreement regarding the pre-purchase of coal from OCM

7.8.13.1. From an analysis of Singh's documents, we determined that on 10 December 2015 Eskom and Tegeta signed an agreement regarding the pre-purchase of coal from Optimum Coal Pty Ltd. The agreement was signed by Singh and Nath on 10 December 2015 respectively (**Annexure E75**).

7.8.13.2. Paragraph 2 of the said agreement reflected that Eskom had obtained a mandate from its board of directors to enable Tegeta pre-purchase coal from OCM for the supply and delivery of coal in accordance with Eskom's approvals framework on sustainability terms and conditions set out in the existing CSA.

7.8.13.3. The agreement further reflected that Tegeta was in the process of acquiring all shares on OCM from the existing shareholder, OCM Holdings (sic).

7.8.14. Advance payment of R1.6 billion

7.8.14.1. We noted that paragraph 6.1 of the above agreement reflected that Eskom would make an advance payment to OCM to pre-purchase future coal supply in terms of the Existing Coal Supply Agreement in the amount of R1 680 000.00

7.8.14.2. Paragraph 6.2 of the agreement reflected that Eskom would issue a bank guarantee in favour of Tegeta in the amount of R1 680 000.00 to secure the payment of the advance payment.

7.8.14.3. From Singh's emails we determined that on the same date that the pre-purchase agreement was signed, i.e. 10 December 2015 at 19:08, Nath sent an e-mail to Koko and copied Polly Ndzotyana ("Ndzotyana"), the latter being Singh's personal assistant at the time. We noted that Nath attached a letter containing the Tegeta banking details reflected as follows:

| | | |
|-------------|----------------------|--|
| 7.8.14.3.1. | Name of the Account: | Tegeta Exploration & Resources Pty Ltd |
| 7.8.14.3.2. | Bank | State Bank of India; |
| 7.8.14.3.3. | Account number | 20047920101; |
| 7.8.14.3.4. | Branch Code | 801000. |

7.8.14.4. We noted that Koko forwarded the e-mail to Singh on 10 December at 19:23. We further noted that on 11 December 2015 at 09:05 AM, Ndzotyana sent an e-mail to Nath and copied Singh, Koko and Mgijima. In the said e-mail, Ndzotyana wrote *“Please find the above attached signed by Eskom.”*

7.8.15. Performance guarantee from ABSA Bank

7.8.15.1. We noted that that there was a letter titled Performance Guarantee 175-02-0142113-G, addressed to Tegeta from ABSA dated 11 December 2016.

7.8.15.2. Anna Henery and Almarie Boshoff signed the said letter as BGI Centre Manager BGI Team Leader respectively.

7.8.15.3. We noted that paragraph 1 of the said letter reflected Tegeta had entered into a written contract with Eskom (the “Applicant”) on 10 December 2015 for coal supply in terms of which the Eskom was required to furnish the Beneficiary with a performance guarantee for the maximum amount of R1, 680, 000, 000.00 (the “Guaranteed Amount”).

7.8.15.4. We further noted that paragraph 2 of the said letter reflected that Absa, guaranteed the payment to the beneficiary on the Beneficiary’s first written demand of the Guaranteed amount in the event that the applicant failed to fulfil any of its obligations under the Contract and provided that conditions precedent reflected in the said letter had been fulfilled and the Applicant had not made payment.

7.8.15.5. The letter further reflected that the Guarantee was to expire at the abovementioned office of the Bank on 31 March 2016 and any claim and statement received under the said guarantee should be received at the Absa office on or before the expiry date.

7.8.15.6. We did not get any information reflecting that the said guarantee was ever utilised by Tegeta. Marsden indicated that the guarantee was not utilised

as its purpose may have been to induce the banks to provide funding to Tegeta

7.8.16. Status report: Notice to affected parties dated 4 February 2016

7.8.16.1. From Nteta's e-mails we determined that there was a letter from the Business Rescue Practitioners to the affected parties dated 4 February 2016. Both Marsden and Van der Steen signed the said letter.

7.8.16.2. Notice in terms of section 132 (3) of the companies Act, 2008, and Regulation 125 of the Companies Regulations, 2011 because of the business rescue not being completed in 3 months.

7.8.16.3. We further noted that on 5 February Nteta sent the said letter to Rakgomo, Fula, Aditi and Jithin. Nteta wrote "*– please see clause 4.4 in connection with the Tegeta short term contract*"

7.8.16.4. Paragraph 4.4 of the letter "*stated the Business Rescue Practitioners can confirm that Tegeta commenced with its financing of the ongoing operations of OCM with effect from 1 January 2016. As you are aware, all ongoing services rendered and supplies provided to OCM post the commencement of OCM's business rescue must be authorised by OCM before rendered or supplied*".

7.8.16.5. We further determined that paragraph 4.2 of the said letter stated the following: "*the Business Rescue Practitioners have been in discussions with the representatives of Tegeta to consider the manner in which OCM can be released from business rescue following the finalisation of the OCH/Tegeta transaction (i.e. once all conditions to the OCH/Tegeta transaction have been fulfilled)*" This is confirmation of Marsden's version that in late November and early December 2015 Glencore entered into negotiations to sell OCH to Tegeta.

7.8.17. The fourth addendum between Eskom, OCH and Tegeta

7.8.17.1. We determined that on 30 March 2016 Marsden sent an e-mail to Koko and Howa. The e-mail reflected the following "*Nazeem as discussed with both of you, attached please find the signed addendum. We have made 1 change in 1.1.3 in the definition by removing the words "becomes unconditional" and replacing them with "is implemented" This is to*

ensure that this addendum only becomes effective once the deal has been finalised. Please could you initial the change and return. Regards Piers.

7.8.18. Conditions Precedent related to the Tegeta and Glencore agreement

7.8.18.1. During an analysis of the Eskom e-mails we determined that there was a submission to the Board Tender Committee on 10 February 2016 document, signed by Mboweni, Neo Tsholanku (“Tsholanku”) and Koko on 9 February 2016.

7.8.18.2. The said submission was a recommendation to enter into a cession and assignment of the coal supply agreement between OCH and Eskom from Glencore Operations South Africa to Tegeta.

7.8.18.3. In the summary of facts paragraphs, the submission reflected inter alia that *“the transaction for the acquisition will only be completed once approval is granted by the competition commission, the Department of Mineral Resources and the conditions precedent in the sale agreement between OCH and Tegeta have been met, including Eskom’s cession and assignment of the coal supply agreement.”*

7.8.18.4. The submission further reflected that in terms of the agreement, Tegeta would acquire all assets of OCH, including OCM, Optimum Coal Terminal Proprietary Limited and Koornfontein Mines Proprietary Limited.

7.8.18.5. We further noted that the submission reflected that:

7.8.18.5.1. Tegeta would pay a consideration of approximately R2.15 billion for the assets of OCH, the proceeds of which will be used to part settle the existing bank debt of approximately R2.55 billion of OCH; and

7.8.18.5.2. Glencore Plc had agreed to advance approximately R400 million to OCH to settle the balance of the bank debt so that the agreement can be implemented.

7.8.18.6. We understand that the agreement had 5 Conditions precedent required before the finalisation of the deal. The said conditions precedent needed to be met before performance under the agreement between Glencore and Tegeta became due. We further understand that the said conditions precedents, due on 31 March 2016, were the following:

7.8.18.6.1. Eskom approval;

7.8.18.6.2. Consent of the lenders of OCH;

7.8.18.6.3. DMR Approval;

7.8.18.6.4. Competition Commission Approval; and

7.8.18.6.5. Final adoption of the Business Rescue plan for OCH.

7.8.19. We understand that until such time that all the above conditions were fulfilled, the agreement would not take effect. The above conditions precedent were to be met by 31 March 2016. We understand that Tegeta provided confirmation from the Bank of Baroda confirming that they had the R2.5 billion funds. South African banks were apparently not happy with the Bank of Baroda guarantee but were reasonably comfortable. We understand that the DMR, Competition Commission and Eskom approval arrived late but were acceptable.

7.8.20. Marsden indicated that the Business Rescue Plan was published on 1 April 2016 and approved on 8 April 2016.

7.8.21. The Escrow account

7.8.21.1. Marsden indicated that as part of the agreement, the deal stated that there was to be an Escrow account and conditions for the agreement as follows:

7.8.21.1.1. Tegeta deposits R2.1 billion into the escrow account;

7.8.21.1.2. Glencore deposits R400 million into the escrow account for top up, warranties and asset value reconciliations;

7.8.21.1.3. Banking Consortium to put in security;

7.8.21.1.4. Compliance documents by Glencore – resolution of resignation of directors;

7.8.21.1.5. Escrow agent checks that all the three requirements are complied with; and

7.8.21.1.6. Escrow agent releases the contract.

7.8.21.2. We understand that the Escrow Agent was scheduled to release the contract for the sale of OCM to Tegeta on 11 April 2016.

7.8.22. Communication dated 8 April 2016

- 7.8.22.1. From an analysis of Daniels' emails, we determined that she sent an e-mail to Zethembe Khoza on 8 April 2016 at 16:37 in which she indicated that she was requesting for additional items to be tabled at the next sitting of BTC. Daniels further indicated that she had prepared the attached letter in consultation with the Chief Procurement Officer (**Annexure E76**).
- 7.8.22.2. The subject of Daniels' e-mail to Khoza is reflected as "BTC 13 April 2016 Additional items". The said subject heading is an indication that there was a scheduled SBTC for 13 April 2016. This brings in a question as to why there was a need to have an extraordinary SBTC on 11 April 2016 at 21:00 when there was an already scheduled SBTC on 13 April 2016. Could it be that Eskom felt the pressure to approve the Tegeta prepayment as 11 April 2016 was the deadline for Tegeta to pay the R2.15 billion for the purchase of the assets in OCH?
- 7.8.22.3. Khoza responded to Daniels' e-mail on 10 April 2016 at 06:04 PM and stated that *"Hi Suzanne, the mail is noted and can be added to the agenda. Kind regards, Zethembe Khoza."*
- 7.8.22.4. Daniels further indicated that she would ensure delivery of hard copy packs on Monday (presumably 10 April 2016).
- 7.8.22.5. Daniels' e-mail of 8 April 2016 coincided with Tegeta's version that they approached Eskom for a prepayment on or about 8 April 2016.
- 7.8.22.6. We were not able to determine the document Daniels attached to the e-mail to Khoza as there was no attachment on the e-mail retrieved by us.

7.8.23. Communication dated 10 April 2016

- 7.8.23.1. We determined that on Sunday, 10 April 2016 at 20:17 Nteta sent an e-mail to Daniels with the subject reflected as *"20160410 - Annexure A Executive Summary - Tegeta OCM CSA Addendum 1 - rev a"*. In the said e-mail Nteta wrote *"Hi, Please see attached executive summary. I have not addressed the Pre-payment issue. It is in the resolution only. Regards, Ayanda"*. From Nteta's communication, it is apparent that the e-mail related to inter alia a prepayment to Tegeta.
- 7.8.23.2. We determined that the document Nteta sent to Daniels was a draft submission to Eskom's Board Tender Committee titled *"SUBMISSION*

TO THE BOARD TENDER COMMITTEE (BTC) ON 11 APRIL 2016” we determined that the said document was still in draft form as it displayed the following *“First Addendum to the Short Term Coal Supply Agreement number 46000XXXX between Tegeta Exploration and Resources (Pty) Ltd (“supplier”) and Eskom Holdings SOC Limited (“Eskom”) for supply of coal from Optimum Coal Mine.”*

- 7.8.23.3. We determined from the said document’s metadata that Diane (an Eskom employee) created it, and it was saved by Ntshanga (Nteta) on the same date at 15:32 and 20:04 respectively.
- 7.8.23.4. We determined that on the same date, i.e. 10 April 2016 at 21:41, Daniels responded to Nteta’s e-mail and attached a refined copy of the document e-mailed to her by Nteta earlier.
- 7.8.23.5. We noted that paragraph 2.2 of Ntshanga’s (né Nteta) document reflected a prepayment of R500 million whereas the same paragraph on Daniels document did not reflect any amount. As reflected below, we determined that Tegeta submitted their prepayment request to Eskom only on 11 April 2016.
- 7.8.23.6. The fact that Nteta had to send the said communication on a Sunday demonstrates the commitment she showed in assisting Tegeta with the prepayment application.

7.8.24. Tegeta short of R600 million by 11 April 2016

- 7.8.24.1. Marsden stated that on 11 April 2016, just two days before Tegeta was due to pay R2.15 billion for the shares in OCH’s subsidiaries, he was contacted by Oakbay’s former CEO, Nazeem Howa (“Howa”) who indicated that Tegeta was R600 million short of the purchase price for the shares in OCH.
- 7.8.24.2. Marsden further indicated that Howa asked him to source funding from a consortium of banks.
- 7.8.24.3. Marsden indicated that he could not understand why there was a shortage as the Bank of Baroda had previously issued a guarantee for the purchase of the assets in OCH by Tegeta. Marsden further stated that Howa requested him to go to the banks to request that Tegeta pay R1.5 billion and arrange to pay R600 million over three months. Marsden

stated that he met with the banks at about 12:00 and they refused to enter into the requested arrangement with Tegeta. Marsden went back to Howa at around 15:00 and told him either to pay the R600 million by 14 April or face the prospect of the deal collapsing.

7.8.25. Tegeta approaches Eskom with a request for prepayment

7.8.25.1. In their response to our draft report, Tegeta indicated that they commenced prepayment discussions with Eskom on or around Friday 8 April 2016. This assertion by Tegeta is probable, taking into consideration that Nteta sent prepayment e-mail communications to Eskom executives two days later, on Sunday 10 April 2016.

7.8.25.2. Tegeta further indicated that the communication between their representatives and Nteta relating to the prepayment occurred through emails and telephone calls.

7.8.25.3. We however could not find any evidence of the said communication either through documents or emails.

7.8.25.4. During an analysis of Ayanda Nteta's ("Nteta") e-mails we determined that on 11 April 2016 at 16:27 Ravindra Nath ("Nath") sent an e-mail to Nteta with the subject matter reflected as draft. The e-mail was sent from nath@oackbay.co.za.

7.8.25.5. The contents of the said e-mail reflected the following:

7.8.25.5.1. *Kindly refer to the discussion we had in this regard. In this connection Tegeta Exploration and Resources (Pty) Ltd (Tegeta) offers Eskom to supply additional 1,250,000 (one million and two hundred fifty thousand) tonnes of coal from the Optimum Coal Mine (Pty) Ltd (OCM) over a period of 5 months. For increasing the production of the mine and beneficiation thereof we need funds for smooth execution of this contract. We therefore request you as under:*

7.8.25.5.2. a. *The rate per gigajoule shall be R20.41 (Rand twenty and cents forty one) plus VAT;*

7.8.25.5.3. b. *The whole of the price for 1.25 Mn tonnes i.e. R650 Mn (approx.) shall be pre-paid by Eskom to meet the cost for the additional production;*

7.8.25.5.4. *c. Tegeta is ready to offer a 3.5% discount on the selling price to Eskom in lieu of pre-payment;*

7.8.25.5.5. *d. As a security for the pre-payment Eskom shall be entitled to appropriate the full sale proceeds of coal supplied to Eskom by Tegeta under various contracts in case of default.*

7.8.25.5.6. *In case our request is considered favourably we are ready to sign the agreement in this regard.*

7.8.25.6. We inspected the metadata of the document and determined that it was created by TEGNATH on 11 April 2016 at 14:26. As reflected above, we determined that Nath was a Tegeta employee who sent the said document to Nteta. (**Annexure E77**).

7.8.25.7. In their response to our report relating to the email sent by Nath to Nteta Tegeta responded as follows:

7.8.25.7.1. *“The contents of this point are correct. Tegeta came to understand from various sources that Eskom provides advance payment to suppliers of coal to ensure the continuous supply of coal and Eskom charge a certain discount in this regard varying from 2% to 5%. Tegeta wrote a letter to Eskom on 8 April 2016 in this regard and subsequently had consultation with Eskom on or around 8th April 2016 to understand the process and formalities regarding the advance payment. Eskom suggested some changes in our letter. In this context the “Draft Letter” was sent to Ms Ayanda for her guidance vide official email.”*

7.8.25.8. We determined that on the same date, i.e. 11 April 2016 at 16:57:07 Nteta forwarded Nath’s e-mail, with the draft document, to Edwin Mabelane.

7.8.25.9. We further determined that on the same date at 16:57: 47 Nteta replied to Nath’s e-mail and wrote *“Hi, I will get back to you. Regards, Ayanda Nteta”*.

7.8.25.10. We determined that on 11 April 2016 at 18:28 Mabelane sent a document titled *“Umsimbithi volume recon”* to Nteta. We further determined that at 18:56 Mabelane sent another document to Nteta with the subject

reflected as “*Annexure A Executive Summary Arnot PS Extension*”. We determined that in the said e-mail, Mabelane requested Nteta to fill in the blanks.

- 7.8.25.11. From the above e-mail communication, it appears that there was some discussion around the prepayment issue even prior to Nath sending the e-mail to Nteta.
- 7.8.25.12. We could not find any communication from Nteta to Nath asking more details about his letter to her. This is an indication that the matter was previously discussed, as indeed stated in the first sentence of Nath’s e-mail stating “*Kindly refer to the discussion we had in this regard*”.
- 7.8.25.13. As reflected above, Tegeta indicated that they approached Eskom to request a prepayment on or about 8 April 2016. Tegeta further indicated that they only communicated with Nteta and no one else.
- 7.8.25.14. We noted that Nteta did not send any of communications relating to the prepayment request to Group CFO, Singh on 11 April 2016.
- 7.8.25.15. We found it odd that Nteta chose to communicate with other Eskom executives and excluded the Executive in charge of the finance department.
- 7.8.25.16. In her response to our second draft report, Nteta reflected that “*Payment terms are and have always been the domain of the Finance Department and not Fuel Sourcing Department. This is amplified by the segregation of duties in Eskom. The role of any sourcing practitioner such as Nteta would not be to determine payment terms.*”
- 7.8.25.17. This statement by Nteta is contradicted by available documentation reflecting that she communicated with Tegeta relating to the prepayment and scheduled or caused a BTC on 11 April 2016 to be scheduled without involving Singh.
- 7.8.25.18. There is no evidence that Nteta scheduled a meeting for Singh and Tegeta to discuss the prepayment prior, during or subsequent to the SBTC of 11 April 2016. The lack of such facilitation by Nteta is in direct contradiction to her statement reflected above.

7.8.26. Board Tender Committee of 11 April 2016

- 7.8.26.1. From a review of Nteta's e-mails we determined that on 11 April 2016 at 07:22 Nteta e-mailed a document titled "*20160410 - Annexure A Executive Summary - Tegeta OCM CSA Addendum 1 v4*" to Koko, Mabelane and Mboweni (**Annexure E78**).
- 7.8.26.2. From a further analysis of Nteta's e-mails, we determined that on 11 April 2016 at 08:40 she sent an e-mail to Daniels with the subject heading reflected as "*FW: BTC Submissions for signature*". Nteta wrote the following in the body of the e-mail: "*Hi, Electronic versions. Copies getting signed. Regards, Ayanda*"
- 7.8.26.3. As stated below, the two documents provided as space for Koko, Mabelane and Mboweni to sign. It is therefore apparent that when Nteta sent the documents to the three individuals at 07:22 on 11 April 2016, it was for them to sign the said documents. This is also confirmed by Nteta's e-mail which stated "*copies getting signed*".
- 7.8.26.4. In paragraph 109 of Koko's written submission to the Parliamentary Portfolio Committee on Public Enterprises, he indicated that he "*learnt from Nteta that Tegeta had requested a prepayment in respect of the to be extended short term coal supply agreement.*"
- 7.8.26.5. As indicated above, Nteta sent an e-mail relating to the Tegeta prepayment to *inter alia* Koko, on Monday 11 April 2016 at 07:22. It is improbable that the said e-mail was the first time that Koko learnt about the Tegeta prepayment. Nteta would not send SBTC submission documents to Koko for signature without a prior discussion about the prepayment request from Tegeta. Or would she?
- 7.8.26.6. If 11 April 2016 was not the first time that Koko learnt about the said prepayment, it follows therefore that he and Nteta communicated about the Tegeta prepayment either on Friday 8 April 2016 or during the weekend of 9 to 10 April 2016.
- 7.8.26.7. If Tegeta approached Eskom and requested a prepayment for coal on 8 April 2016 and Nteta was already busy with the SBTC documents on Sunday 10 April 2016, then questions must be raised as to why it was so

urgent that Eskom officials had to work even over the weekend to ensure that the prepayment was granted.

7.8.26.8. Nteta attached the following two documents in her e-mails to Koko Mabelane, Mboweni and Daniels.

7.8.26.8.1. 20160410 – Annexure A Executive Summary - Tegeta OCM CSA Addendum 1 execution copy; and

7.8.26.8.2. 20160410 - Modification to contract - Tegeta First Addendum - execution copy.

7.8.26.9. We could not find any correspondences from Koko Mabelane, Mboweni and Daniels to Nteta requesting clarity on the latter's e-mail to her. This is a clear indication that Koko Mabelane, Mboweni and Daniels knew what Nteta was referring to and further that they were expecting Nteta's e-mails.

7.8.26.10. We determined that the two documents bear the number 20160410 which may be a reference of the date 10 April 2016. The said date may be the two documents' creation date.

7.8.27. **Annexure A : Executive Summary**

7.8.27.1. We determined that the document titled Annexure A, Executive Summary contained the following paragraph:

“2.1 The First Addendum to the Short-Term Coal Supply Agreement between Tegeta and Eskom be concluded to extend the supply of coal from Optimum for a further five (5) months with effect from 11 April 2016;

2.2 The Chief Financial Officer, together with the Group Executive (Generation), are hereby authorised to negotiate and conclude an agreement with Tegeta in regard to the prepayment to secure the fixed coal price for the period of extension, i.e. 5 months or up to a limit of R 469,430M, whichever is the lesser;

2.3 The Group Executive (Generation) is hereby authorised to take all the necessary steps to give effect to the above, including the signing of any consents, or any other documentation necessary or related thereto”.

- 7.8.27.2. The document further reflected that Tegeta had requested that Eskom consider some form of prepayment to enable it to meet the production requirements from the export component of the mine in lieu of the fact that it was subsidizing the direct feed to Hendrina Power and further that this would enable Eskom to meet the coal supply demands for the two power stations in the short term.
- 7.8.27.3. The document stated that Tegeta had offered to grant Eskom a security interest in and to all its right, title, and interest in and to the Equipment at Brakfontein Mine under the laws of South Africa. The document further indicated that the grant with respect to the Equipment was to be as of the signature date of the Addendum. Such security interest was granted by Tegeta to secure performance by it of its obligations to Eskom in terms of the Addendum.
- 7.8.27.4. The document further indicated that Tegeta shall ensure that such security interest would be and remained a sole and valid first lien and the value of the Equipment remained equal or above the contract value.
- 7.8.27.5. We noted that the document provided a space for signature by Vusi Mboweni, Edwin Mabelane and Matshela Koko in their capacities as Senior General Manager, Primary Energy, Acting Chief Procurement Officer, Group Commercial and Group Executive, Generations, respectively.
- 7.8.27.6. The details in the document e-mailed to Daniels by Nteta are not contained in the e-mail from Nath to Nteta. The information may have been communicated telephonically as indicated below.
- 7.8.27.7. In response to the above, Tegeta confirmed that there were discussions between themselves and Eskom through meetings at Eskom's offices and over the phone.
- 7.8.27.8. Tegeta further stated that the said discussions were with Nteta and no one else.
- 7.8.27.9. It should further be noted that the e-mails from Nteta to Koko, Mabelane, Mboweni and Daniels were sent before she received Nath's e-mail requesting the prepayment.

7.8.27.10. We determined that Daniels e-mailed the same document titled "20160410 - Annexure A Executive Summary - Tegeta OCM CSA Addendum 1 v3" to Nteta on the same date at 22:05 with the body of the e-mail stating "See if that makes sense. Regards Suzanne ". We noted that Daniels e-mail was in response to Nteta's e-mail to her on the same date at 20:17 where in Nteta wrote "*To: Suzanne Daniels <DanielSM@eskom.co.za> Subject: 20160410 - Annexure A Executive Summary - Tegeta OCM CSA Addendum 1 - rev a Hi, Please see attached executive summary. I have not addressed the Pre-payment issue. It is in the resolution only. Regards, Ayanda "*

7.8.27.11. As reflected below, Daniels' e-mail to Nteta was after the BTC meeting on the same date at 21:00.

7.8.28. **Modification to contract**

7.8.28.1. As discussed above, we determined that part of the documentation e-mailed by Nteta to Koko, Mabelane, Mboweni and Daniels was a document titled modification to contract. We determined that the document titled modification of the contract reflected *inter alia* the following:

7.8.28.2. *"It is recommended that the existing contract 4600059148 with Tegeta Exploration and Resources (Pty) Ltd for the supply of coal from Optimum Coal Mine be modified to extend the supply duration for five (5) months to increase the contract value to R469,430M excluding VAT. The total contract value will increase to R 525 407M (five hundred and twenty-five million four hundred and seven thousand) excluding VAT and CPA. The contract duration, including this modification will be for a period of the later of 8 months or when the Total Energy Quantity or volumes are delivered which is expected to be around 11 September 2016.*

7.8.28.3. *It is further recommended that, Mr Matshela Koko, Group Executive (Generation) be authorised, with the power to delegate further, to take all the necessary steps to give effect to the above, including the signing of any agreements, consents or other documentation necessary or related thereto."*

7.8.28.4. The modification to contract document provided a space for Mboweni and Mabelane to sign in their capacities as Senior General Manager, Primary Energy and Acting Chief Procurement Officer, Group Commercial respectively.

7.8.29. The Special Board Tender Committee teleconference

7.8.29.1. We determined that there was a Board Tender Committee meeting on 11 April 2016 at 21:00. The meeting took place by way of teleconference.

7.8.29.2. From e-mail communications we determined that on 11 April 2016 Daniels sent an e-mail as follows: *“ Good evening BTC members. At the request of the Chairman, kindly take notice that this meeting is called for 21h00 on 11 April 2016. Members will be able to connect telephonically The transaction requires urgent BTC consideration and approval for immediate implementation. The matter for approval relates to the extension of 2 current short-term contracts that will expire in 3 days’ time. The Procurement team unfortunately were unable to conclude the current RFP medium term negotiations in time to secure Arnot Winter Burn Plan, hence the requirement for extension”*

7.8.29.3. We determined that on 11 April 2016 at 20:53, in response to Daniels’ e-mail of the same date, Viroshini Naidoo (“V Naidoo”) sent an e-mail to the following people:

7.8.29.3.1. Zethembe Khoza;

7.8.29.3.2. Edwin Mabelane;

7.8.29.3.3. Ayanda Nteta;

7.8.29.3.4. Nazia C;

7.8.29.3.5. Mabude Chwayita; and

7.8.29.3.6. Matshela Koko.

7.8.29.4. V Naidoo’s e-mail sought clarity on the following issues:

7.8.29.4.1. When is the RFP going to be ready;

7.8.29.4.2. Is the delay not costing Eskom money;

- 7.8.29.4.3. Is Umsimbithi already supplying Eskom with coal;
- 7.8.29.4.4. If so why are we not negotiating a cheaper rate;
- 7.8.29.4.5. Is Tegeta the new company that bought Optimum;
- 7.8.29.4.6. Was Optimum supplying Eskom before and at a better rate;
- 7.8.29.4.7. Is Optimum not in business rescue;
- 7.8.29.5. By prepaying Tegeta, who gets the money, is it the business rescue practitioner;
- 7.8.29.6. Can Eskom lose money by it going to the administrator;
- 7.8.29.7. If Eskom puts the money in the bank instead of prepayment and earn interest will it be getting a better deal based on the price being paid for the coal; and
- 7.8.29.8. Can Eskom justify the price it is paying for this coal to the public and DPE.
- 7.8.29.9. V Naidoo further stated that the matter had been in the public domain and as a result she needed to know that everything possible had been done to get the best deal for Eskom. We could not find any indication that any of the red flags raised by V Naidoo's were adequately addressed by any of the BTC members or Eskom executives before the 21:00 scheduled teleconference.
- 7.8.29.10. We determined that on 12 April 2016 at 15:50 Mabelane sent an e-mail to Koko, Daniels and Nteta with the subject matter "Special BTC – Coal Supply to Arnot Power Station". In the said e-mail Mabelane referred to a table from Vusi Mboweni and the responses to V Naidoo's questions reflected above.
- 7.8.29.11. Following Mabelane's e-mail as reflected above, we determined that Koko responded to the said e-mail on the same date, i.e. 12 April 2016 at 16:02 and indicated that he was happy with, ostensibly referring to Mabelane's answers to V Naidoo's questions.
- 7.8.29.12. It is not clear however, why V Naidoo's questions were only answered a day after the SBTC teleconference, instead of the date of the teleconference, i.e. 11 April 2016.

7.8.29.13. It is further evident that the scheduling of the SBTC on an emergency basis was so critical that the Eskom Executives chose to go ahead with the meeting regardless of the critical and very relevant questions asked by V Naidoo.

7.8.30. Extract from the approved minutes of the SBTC

- 7.8.30.1. From documentation provided to us by Eskom we determined that there was an extract of the approved minutes of the Special Board Tender Committee 1-2016/17 held by teleconference on 11 April 2016 at 21:00 (**Annexure E79**).
- 7.8.30.2. The said extracts reflected that the following was resolved by the SBTC:
- 7.8.30.3. Addenda to the Short-Term Coal Supply Agreements between various suppliers and Eskom be concluded to extend the supply of coal from various sources to Arnot Power Station for up to a further five (5) months and/or such period as may be requested by the supplier but no later than 30 September 2016;
- 7.8.30.4. The Chief Financial Officer is hereby authorised to approve the basis for prepayment to secure the fixed coal price for the period of extension provided that that there is a discount in the price, the supplier offers a guarantee in favour of Eskom and that the CFO can provide assurance to the committee that the transactions are economically viable for Eskom; and
- 7.8.30.5. The Group Executive (Generation) is hereby authorised to take all the necessary steps to give effect to the above, including the signing of any agreements, consents, or other documentation necessary or related thereto.
- 7.8.30.6. The extracts of the SBTC of 11 April 2016 as reflected above were signed by Daniels on 15 April 2016 to certify them as a true extract.
- 7.8.30.7. We noted that the extracts of the SBTC meeting as reflected above were a carbon copy of a document titled "*20160410 - Modification to contract - Tegeta First Addendum - rev 5*" which was e-mailed to an e-mail address agesan_rajagopaul@mckinsey.com by Nteta on 11 May 2016 at 18:04. (**Annexure E80**). In the said e-mail, Nteta requested Agesan Rajagopaul ("Rajagopaul") to comment on the said document.

- 7.8.30.8. We determined that Rajagopaul responded to Nteta's e-mail on 18 May 2015 at 00:01 and copied an e-mail address styled Dereck_Armstrong@mckinsey.com. Rajagopal's e-mail to Nteta reflected the following: *"HI Ayanda. Are you around to chat on this on Wednesday (today)? Thanks, Agesan Rajagopaul"*.
- 7.8.30.9. During our meeting with McKinsey on 14 June 2018, they confirmed that Agesan is one of the company's employees. Following our questions to McKinsey on this issue amongst others, the company indicated that they did not play any role in the Eskom and Tegeta prepayment and would follow up on the matter.
- 7.8.30.10. During a follow up consultation with McKinsey, the company confirmed that Nteta e-mailed Rajagopaul the said documents a month after Eskom made the prepayment to Tegeta.

7.8.31. Draft offer to supply additional coal

- 7.8.31.1. We determined that on 12 April 2016 at 09:21 Nteta wrote an e-mail to Nath wherein she stated that *"Hi, please see my comments. The discount will be negotiated with the CFO. Regards, Ayanda"*.
- 7.8.31.2. In their response relating to the discount, Tegeta reflected that Nteta advised them that the 3.5% discount offered by Tegeta was not final. They further indicated that Nteta advised that the discount percentage would be left open for discussion with the CFO of Eskom.
- 7.8.31.3. There is no evidence that the Eskom CFO discussed the 3.5% percent discount with Tegeta. In fact, the final discount for the prepayment was the same 3.5% offered by Tegeta at the commencement of their application for prepayment.
- 7.8.31.4. Tegeta stated that during a discussion between their company and Singh, the latter asked for a higher discount but Tegeta insisted for 3.5% discount.
- 7.8.31.5. There is no evidence that Singh negotiated any discount at all, let alone a higher discount. In any event, there is no communication between Singh Tegeta relating to the said discount.
- 7.8.31.6. Although part of the SBTC resolution was for Singh to negotiate a discount, there is no communication from Koko, Nteta, or Daniels to

- Singh to bring to his attention that the SBTC had mandated him to negotiate a discount on the prepayment for coal with Tegeta.
- 7.8.31.7. Tegeta stated that by accepting the 3.5% discount, Eskom saved R21.50 million. Tegeta further indicated that in the event that the same money would have been placed with a commercial bank it would have fetched only R16.68 million with a higher deposit rate @PLR.
- 7.8.31.8. The above assertion by Tegeta is not correct as our calculations reflect that Eskom would have earned interest of R25,31 million (R25,311,987.68) over a period of 5 months at a Prime Lending Rate (PLR) of 10.5% per annum on R578.56 million (which R659,558,079 less 14% VAT) had it been deposited with the financial institution. The 10.5% PLR was the rate applicable during April 2016 to October 2016.
- 7.8.31.9. If Tegeta's calculations above included VAT, then Eskom would have earned R28,83 million (R28,831,250) over a period of 5 months at a Prime Lending Rate (PLR) of 10.5% per annum on R659 million (R659,000,000) had it been deposited with the financial institution for five (5) months between April 2016 and October.
- 7.8.31.10. The financial analysis reflected above is part of the activities that should have been done by the CFO and there is no evidence that it was done. V Naidoo raised a similar question which was never addressed by the Eskom executives and fellow SBTC members.
- 7.8.31.11. The findings of our investigations are that the said discussion between Tegeta and Singh relating to the 3.5% discount did not take place. This finding is further strengthened by the fact that the 3.5% offered by Tegeta was the discount that was eventually implemented.
- 7.8.31.12. The above statement by Tegeta confirms our finding that the 3.5% discount was offered by Tegeta and not negotiated by Singh.
- 7.8.31.13. Nteta attached the same document that she received from Nath on 11 April 2016 as discussed above. In the attachment Nteta sent to Nath, we determined that she deleted the first sentence of the document prepared by Nath which read as follows: (~~Kindly refer to the discussion we had in this regard.~~) Nteta further deleted item (c), which reflected that

(Tegeta is ready to offer a 3,50% discount on the selling price to Eskom in lieu of pre-payment)

- 7.8.31.14. We further noted that Nteta's document was structured in a letter format with the addressee reflected as herself.
- 7.8.31.15. From Nath's original e-mail it is therefore apparent that there was a discussion between Tegeta represented by himself and at least Nteta representing Eskom about the contents of the e-mail.
- 7.8.31.16. In their responses, Tegeta stated that the prepayment discussions with Eskom started on 8 April 2016. Tegeta further indicated that they only discussed with Nteta and no one else.
- 7.8.31.17. It is therefore worrying that Nteta would request Tegeta to delete the words "kindly refer to *the discussions we had in this regard*" from Tegeta's application for prepayment. Nteta failed to address this issue in her response to our draft report.
- 7.8.31.18. Part of the said discussion was about the prepayment of R650 million as reflected in item (b) of Nath's e-mail.
- 7.8.31.19. It is therefore evident that Nteta edited the document sent to her by Nath, and ensured that it appeared as originating from Tegeta without a reference to a previous discussion or a discount offer from Tegeta.
- 7.8.31.20. The editing of the original Tegeta request for prepayment by Nteta, and the removal of the offer of 3.5% discount made by Tegeta, and reflecting the 3.5% discount in the SBTC submission as if it was an Eskom initiative, is the clearest indication that Nteta went to great length to assist Tegeta in getting the prepayment of R659 million.
- 7.8.31.21. In their response relating to the editing of the letter by Nteta, Tegeta stated that they were requesting the prepayment for the first time and therefore it took the assistance and guidance from Eskom to draft the application letter. Tegeta further indicated that there was nothing sinister as the communication was made through official regular email channel.
- 7.8.31.22. The assistance given to Tegeta by Nteta entailed a deletion of critical information which led to a misrepresentation that the 3.5% discount was not offered by Tegeta but negotiated by Singh. The said

misrepresentation was carried through to the Parliamentary Portfolio Committee on Public Enterprises by Koko and Singh respectively.

7.8.32. **Formal letter from Tegeta requesting to supply coal to Eskom**

- 7.8.32.1. We determined that after Nteta sent her response to Nath as reflected above, the latter (Nath) sent an e-mail to Nteta on the same date, i.e. 12 April 2016 at 11:32. We further determined that attached to Nath's e-mail to Nteta was a letter dated 11 April 2016 which was on Tegeta's letterhead. The said document, addressed to Nteta, is a letter titled "OFFER TO SUPPLY ADDITIONAL COAL TO ESKOM OPTIMUM COAL MINE".
- 7.8.32.2. We determined that the letter from Tegeta dated 11 April 2016 was an exact copy of the document Nteta sent to Nath at 09:21 document to Nath reflected above. The letter further contained the two deletions that Nteta suggested be removed in her e-mail to Nath. We determined that the Tegeta letter dated 11 April 2016 was signed by Nath. From the e-mail communication and the document's metadata, we determined that the offer to supply additional coal to Eskom document was edited on 12 April 2016 but backdated to 11 April 2016.
- 7.8.32.3. In their response to the above, Tegeta indicated that they had no knowledge of the content of the paragraph. Tegeta did not request us to provide them with the relevant document in order to respond thereto.
- 7.8.32.4. We determined that on the same date, 12 April 2016 at 11:46 Nteta forwarded Nath's e-mail containing the Tegeta signed letter, to Mabelane.

7.8.33. **Change of date on the Tegeta offer to supply coal letter**

- 7.8.33.1. We determined that on 12 April 2016 at 11:47, a minute after Nteta had sent the Tegeta letter to Mabelane, Nath sent a copy of the exact same letter to Nteta. There were two differences in the two letters as follows:
- 7.8.33.2. The second letter sent by Nath on 12 April 2016 did not have the sentence "*Kindly refer to the discussion we had in this regard*";
- 7.8.33.3. The second letter sent by Nath on 12 April 2016 did not have the sentence "*Tegeta is ready to offer a 3,50% discount on the selling price to Eskom in lieu of pre-payment;*" and

- 7.8.33.4. The second letter sent by Nath to Nteta on 12 April 2016 had its date changed from 11 April 2016 to 8 April 2016.
- 7.8.33.5. We could not find any e-mail communication between Nath and Nteta before the changes were effected and therefore do not know what informed Nath to effect the date changes. As indicated above, Nteta had initially recommended to Nath to remove references to a previous discussion and offer of 3.5% discount, which ostensibly indicates that there was a prior discussion between the two relating to the offer to supply additional coal by Tegeta.
- 7.8.33.6. In their response relating to the letter sent by Nath to Nteta on 12 April 2016, Tegeta stated that the said letter was the original letter which was initially provided to Eskom. Tegeta further indicated that the letter was sent to Eskom for record purposes.
- 7.8.33.7. The version provided by Tegeta is not correct in that the letter of 12 April 2016 was not similar to the one sent on 11 April 2016. The letter of 12 April 2016 incorporated the deletions recommended by Nteta to Nath, which were in the letter of 11 April 2016.

Prepayment invoicing

- 7.8.33.8. From an analysis of various documents, we determined that there was a Proforma invoice and an invoice issued by Tegeta to Eskom relating to the prepayment of R659 558 079.00 (**Annexure E81**)

Pro-forma invoice for prepayment

- 7.8.33.9. We determined that on 12 April 2016 at 14:07 Nath sent an e-mail to Nteta with the subject heading reflected as *FW: Eskom Proforma Invoice*. The body of Nath's e-mail reflected the following: *"Hello Madam, Please find attached Proforma Invoice for Pre-payment. Thanks & Regards, R. Nath"*.
- 7.8.33.10. Attached to Nath's the e-mail was a Tegeta Exploration and Resources invoice number 194 dated 12 April 2016.
- 7.8.33.11. We determined that on 12 April 2016 at 14:25 Nteta forwarded the proforma invoice to Mabelane and Daniels. In her e-mail to the two, Nteta wrote the following: *" Good Day, Herewith proforma invoice. Please note it includes VAT Regards, Ayanda"*

- 7.8.33.12. We noted that Nteta did not send the invoice to Singh who was the GCFO and mandated to inter alia “negotiate” the 3.5% with Tegeta.
- 7.8.33.13. Nteta knew, when she sent the Tegeta invoice to Mabelane and Daniels that the instructions from the SBTC to Singh could not have been carried out. More so taking into account the time of the said SBTC and the fact that Singh was neither a part of the said SBTC nor copied in the subsequent e-mail communication preceding Tegeta issuing the proforma invoice as reflected above.
- 7.8.33.14. It is evident that Singh could not have completed the tasks mandated to him by the SBTC on in its meeting of 11 April 2016 at 21:00 as at the time Tegeta sent the proforma invoice to Nteta who in turn sent it to Mabelane and Daniels.
- 7.8.33.15. In their response to our report, Tegeta indicated that the proforma invoice was sent to Nteta on 12 April 2016 for the purpose of calculating (a) the price of coal to be supplied by Tegeta, (b) the amount of discount and (c) the amount of advance payment to be made by Eskom. Tegeta further stated in their response that this was to enable Eskom to draw the agreement to be executed in that regard.
- 7.8.33.16. As reflected below, we find this response by Tegeta improbable as the memorandum submitted to SBTC of 11 April 2016 had the total coal tonnage as well as the period within which the supply of the said coal was to be made, including the amount to be advanced.
- 7.8.33.17. Tegeta further indicated in their response that the final tax invoice was submitted to Eskom on 13 April 2016 after signing of the Agreement and other documents for making the advance payment to Tegeta.

Invoice for prepayment

- 7.8.33.18. We determined that on 13 April 2016 at 12:03 Harshit Malviya with e-mail address accounts@tegeta.com sent an e-mail to Ronica Ragavan, Ravindra, Nath and UgeshnsiN@sahara.co.za with the subject heading reflected as Eskom Invoice. The body of the e-mail reflected the following: “*Dear madam, PFA Eskom Tax invoice*”. We noted that one of the individuals copied on Harshit Malviya is a Sahara employee. Sahara is one of the companies owned by the Gupta family.

7.8.33.19. Attached to Harshit Malviya's e-mail was a Tegeta Exploration and Resources invoice number 194 dated 13 April 2016. Except for the date and the wording "proforma", we determined that the two invoices are the same in terms of the items number, description, unit, quantity, and price.

Tegeta Prepayment Resolution

7.8.33.20. As discussed above, we determined that in his e-mail to Nteta, Nath stated that Tegeta would *inter alia* do the following:

"c. Tegeta is ready to offer a 3.50% discount on the selling price to Eskom in lieu of pre-payment;

d. As a security for the pre-payment Eskom shall be entitled to appropriate the full sale proceeds of coal supplied to Eskom by Tegeta under various contracts in case of default."

7.8.33.21. Only the shareholders of Tegeta could authorise that Nath bind the company in both the said instances. One would therefore expect that there would be a Tegeta shareholder resolution relating to the above undertakings.

Resolution of the shareholders of the Tegeta Exploration and resources

7.8.33.22. We determined that on 13 April 2016 at 11:31 Ronica Ragavan, one of the Tegeta Directors and an attendee to most of the Tegeta-Eskom meetings, sent an e-mail to Anoj Singh and Nath with the subject reflected as "Tegeta shareholders resolution". Attached to the e-mail was a document on Tegeta letterhead and titled "EXTRACTS FROM THE MINUTES OF THE SHAREHOLDERS OF THE TEGETA EXPLORATION AND RESOURCES" (Annexure E82). The document reflected that the said meeting took place in Sandton on 13 April 2016. The document further reflected that the following was resolved:

7.8.33.23. That the Company avails the pre-payment from Eskom for the supply of coal in the next 5 months;

7.8.33.24. That the Company pledges its shares to Eskom as security for prepayment;

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

- 7.8.33.26. We determined that the extracts were certified as true copy and signed by the following shareholders:
- 7.8.33.26.1. Oakbay Investments Pty Ltd - Nazeem Howa;
 - 7.8.33.26.2. Mabengela Investments Pty Ltd- unknown signature;
 - 7.8.33.26.3. Elgasolve Pty Ltd Salim Essa;
 - 7.8.33.26.4. Fidelity Enterprise Ltd unknown signature; and
 - 7.8.33.26.5. Accurate Investments Ltd unknown signature.
- 7.8.33.27. We however noted that the resolution was taken on 13 April 2016; two days after Eskom's SBTC approved the prepayment to Tegeta on 11 April 2016.
- 7.8.33.28. In their responses, Tegeta indicated that the proforma invoice was sent to Eskom for preparation of the Agreement. Tegeta further stated that the Shareholder's resolution was signed on 13 April 2016 before availing of the final invoice in order that the advance payment be made and for pledging the "Tegeta Shares" to Eskom as security in the project.
- 7.8.33.29. It does not make sense for Tegeta to send the invoice to Eskom and claim it was for Eskom to prepare a prepayment agreement. The submission made to SBTC on 11 April 2016 was more detailed than the invoice and was *prima facie* the document that was ultimately used to prepare the agreement, not the Tegeta pro former invoice.
- 7.8.33.30. Tegeta further stated that the prepayment could only be availed once Eskom approved it. According to Tegeta, SBTC approved the prepayment on 11 April 2016 and that the resolution had to be only after the date of approval.
- 7.8.33.31. This reasoning by Tegeta that the advance payment had to be approved first and then the resolution taken later does not make business sense as it ultimately meant that Eskom had to approve the prepayment without any security in place.

7.8.34. Resolution of the board of directors

- 7.8.34.1. We determined that on 13 April 2016 at 13:09 Ronica Ragavan sent another e-mail to Singh with the subject reflected as "*Tegeta Resolution for Prepayment.pdf*". Attached to the e-mail was a document on Tegeta letterhead and titled "*EXTRACTS FROM THE MINUTES OF THE MEETING OF THE*

BOARD OF DIRECTORS'. The document reflected that the said meeting took place in Sandton on 13 April 2016. The document further reflected that the following was resolved:

- 7.8.34.2. That the Company avails the pre-payment from Eskom for the supply of coal in the next 5 months;
- 7.8.34.3. That the Company pledges its shares to Eskom as security for prepayment;
- 7.8.34.4. That Mr Ravindra Nath in his capacity as the director of the Company be and is hereby authorised to sign all the documents required to be signed on behalf of the Company to give effect to the above.
- 7.8.34.5. We determined that the extracts were certified as true copy and signed by Nazeem Howa as Tegeta's Director. We however do not understand why only Howa signed the resolution, and why was it not a shareholders' resolution. We further determined that the directors meeting that took the above resolutions sat two days after Eskom's SBTC approved the prepayment to Tegeta.

Singh's mandate relating to the prepayment

- 7.8.34.6. As indicated above, the BTC's resolution of 11 April 2016 reflected inter alia that:
- 7.8.34.7. The Chief Financial Officer be authorised to do the following:
 - 7.8.34.7.1. Approve the basis for prepayment to secure the fixed coal price for the period of extension
 - 7.8.34.7.2. Negotiate a discount in the price,
 - 7.8.34.7.3. The supplier offers a guarantee in favour of Eskom
 - 7.8.34.7.4. Provide assurance to the committee that the transactions are economically viable for Eskom
- 7.8.34.8. As indicated above, we determined that the discount of 3.5% on price was offered by Tegeta prior to the BTC's meeting of 11 April 2016 at 21:00. We determined that the BTC's resolution was on 11 April 2016 at 21:00 and the payment for the said prepayment was on 14 April 2016, three days after the BTC approval.

- 7.8.34.9. We were not provided with any documentation indicating that Singh negotiated the discount on the prepayment of coal. The 3.5% discount was already offered by Tegeta even before the BTC set.
- 7.8.34.10. We conducted searches on Nteta, Koko and Singh's documents and e-mails and could not find any evidence that Singh negotiated the discount on the prepayment of coal or that he carried out the SBTC mandate relating to the said prepayment.
- 7.8.34.11. We determined that the letter from Tegeta requesting a prepayment was sent to Eskom on 12 April 2016 pledging its shares to Eskom as security for the prepayment. The pledging of the shares by Tegeta was done even before the shareholders took a resolution to do so on 13 April 2016.
- 7.8.34.12. In their responses to our draft report, Tegeta indicated that the agreement for prepayment was finalised and executed on 13 April 2016 after which date the shares were pledged. Tegeta further stated that there could not have been a pledge in the absence of an agreement.
- 7.8.34.13. According to Tegeta, in the letter sent on 12 April 2016 by Tegeta to Eskom, and option to "*Pledge to Tegeta shares*" was given as security for prepayment.
- 7.8.34.14. In his response during the parliamentary portfolio committee on Public Enterprises, Koko indicated that Eskom negotiated the 3.5% discount. The exact words used were "*A 3.5% discount was negotiated with Tegeta for the 5 month early payment that was agreed.*"
- 7.8.34.15. In his response to our second draft report and questions Koko stated the following, "*It was not stated in the submission of 11 April 2015 (sic) that the CFO was to negotiate a reduction of 3.5% on the selling of price of coal from Tegeta to Eskom. The request for the discount came from the Board Tender Committee, although it seems that Tegeta had offered a discount. I was not party to the deliberations of the Board Tender Committee but refer in this regard to the minutes of the Board Tender Committee meeting of 11 April 2016*".
- 7.8.34.16. Information available and the self-saying Board Tender Committee Minutes Koko referring to, relate to a date and time after Tegeta had already offered the 3.5% discount. It is therefore misleading for Koko or

anyone to state that the request for the 3.5% discount came from the Board Tender Committee.

- 7.8.34.17. The pledging of shares occurred prior to the resolution of Tegeta's board of directors on 13 April 2016. We could not find any documentation reflecting that Singh provided assurance to the committee that the transaction was economically viable for Eskom. In fact, there would not have been enough time for Singh to perform any activities to provide the said assurance as there were only three days between BTC's approval and the payment of the prepayment.
- 7.8.34.18. During Singh's appearance in the Parliamentary Portfolio Committee on Eskom, he indicated that he inter alia negotiated a 3.5% discount for Eskom. The documentation reflected above indicated that the discount was offered by Tegeta and therefore Singh's may have misled the Parliamentary Portfolio Committee. On 13 July 2018, we provided Singh with questions relating to our investigations. One of the said questions related to his role in the negotiation of the 3.5% discount by Tegeta. After Singh failed to respond to our e-mail, we contacted him on his mobile number and promised to respond to our e-mail. As at date of this report he had not yet done so.

CONCLUSIONS

- 7.8.35. The following conclusions are based on the documentation reviewed and consultations conducted as at date of this report.

Conclusions relating to OCH

- 7.8.35.1. Eskom management prejudiced Glencore by refusing to sign the negotiated CSA, giving advantage to Tegeta to acquire all assets in OCH and which amounted to the abuse of a position of authority, a breach of trust, and a violation of a legal duty or a set of rules in terms of the Prevention and Combating of Criminal Activities Act.
- 7.8.35.2. Eskom management prejudiced Glencore by fining OCM R2.1 billion for supplying allegedly poor-quality coal, which prejudice which amounted to the abuse of a position of authority, a breach of trust, and a violation of a legal duty or a set of rules in terms of the Prevention and Combating of Criminal Activities Act.

7.8.35.3. Eskom was prejudiced by the reduction of R2,1 billion penalty imposed for supplying allegedly poor coal quality which amounted to the abuse of a position of authority, a breach of trust, and a violation of a legal duty or a set of rules in terms of the Prevention and Combating of Criminal Activities Act.

7.8.35.4. Eskom acted in bad faith when the Company, represented by Koko, refused to waive the historical penalties levied against OCM which led to OCM going into business rescue, but reduced the said penalties through arbitration after Tegeta purchased the assets in OCH.

Conclusions relating to the prepayment of R659 558 079

7.8.35.5. Tegeta and Eskom officials (Nteta, Koko, Mabelane, Daniels and Mboweni) discussed the prepayment of R659 558 079.00 well before 11 April 2016;

7.8.35.6. Nteta engaged Tegeta about the prepayment through discussions, telephone calls and emails from at least 8 April 2016;

7.8.35.7. Nteta sent an e-mail relating to the Tegeta prepayment to inter alia Koko, on Monday 11 April 2016 at 07:22. It is improbable that the said e-mail was the first time that Koko learnt about the Tegeta prepayment.

7.8.35.8. Nteta would not have sent the SBTC submission documents to Koko for signature without a prior discussion about the prepayment request from Tegeta.

7.8.35.9. Eskom's Special Board Tender Committee ("SBTC") meeting of 11 April 2016 rubber stamped the conditions and terms of the prepayment that were agreed by Eskom and Tegeta officials.

7.8.35.10. Red flags raised by V Naidoo were ignored by Eskom's management and Special Board Tender Committee ("SBTC");

7.8.35.11. The SBTC approved the Tegeta prepayment request on 11 April 2016 in a meeting held by teleconference at 21:00;

7.8.35.12. The SBTC approved the prepayment before the Tegeta shareholders took a resolution to request the prepayment and provide guarantee, which resolution was taken on 13 April 2016;

- 7.8.35.13. Nteta drafted the letter that was used by Tegeta on 11 April 2016 as an offer to supply additional coal to Eskom;
- 7.8.35.14. Tegeta issued a proforma invoice and e-mailed it to Nteta a day after the SBTC approved the prepayment;
- 7.8.35.15. The proforma invoice issued by Tegeta on 12 April 2016 could not have been the basis for the drafting of the prepayment agreement as the memorandum submitted to the SBTC on 11 April contained all the relevant information that was eventually used in the agreement;
- 7.8.35.16. Ragavan e-mailed a copy of the Tegeta invoice to Singh two days after the SBTC approved the prepayment to Tegeta;
- 7.8.35.17. Singh and or Eskom did not negotiate the 3.5% discount as the said discount was offered by Tegeta prior to the BTC's approval of the prepayment;
- 7.8.35.18. Singh misrepresented facts to the Parliamentary Portfolio Committee on Public Enterprises when he indicated that he negotiated the 3.5 % discount as the documents indicate that he did not do so.
- 7.8.35.19. There is no evidence that Singh provided the assurance that the transaction was economically viable for Eskom as requested by the BTC
- 7.8.35.20. Koko misrepresented facts to the Parliamentary Portfolio Committee on Public Enterprises (refer paragraph 114 of his statement to the Committee) when he indicated that Eskom negotiated the 3.5 % discount as the documents indicate that it was Tegeta that offered the said discount.
- 7.8.35.21. Eskom and or Nteta gave Tegeta preferential treatment in that Eskom/Nteta assisted Tegeta in the drafting of the prepayment application letter.
- 7.8.35.22. Eskom suffered a loss because it paid R19.68 per gigajoule for six months and later offered R15,50 per gigajoule for the same coal.
- 7.8.35.23. Eskom's SBTC gave Tegeta preferential treatment in that an urgent SBTC was scheduled and took place at 21:00, with the sole purpose of approving the R659 million prepayment to Tegeta.

- 7.8.35.24. Eskom and Tegeta officials contravened section 34(1) of the Prevention and Combating of Corrupt Activities Act
- 7.8.35.25. SBTC members, Koko, Nteta, Daniels, Singh, Mboweni and Mabelane may have received gratification for assisting Tegeta to receive the prepayment from Eskom.
- 7.8.35.26. Koko, Nteta, Daniels, Singh, Mboweni and Mabelane contravened Section 57 of PFMA in that:
 - 7.8.35.26.1. They failed to carry out within their areas of responsibilities, the system of financial management and internal control established for Eskom;
 - 7.8.35.26.2. They failed to use the financial and other resources within their areas of responsibilities, effectively, efficiently, economically and in a transparent manner;
 - 7.8.35.26.3. They failed to take effective and appropriate steps to prevent irregular expenditure and fruitless and wasteful expenditure within their areas of responsibilities.
- 7.8.35.27. Nteta's conduct in assisting Tegeta in completing Tegeta's application documents for the prepayment as well as deletion of critical information in the said document unfairly benefited Tegeta.
- 7.8.35.28. Nteta misrepresented facts to SBTC by deleting of the sentence relating to the 3.5% discount offered by Tegeta.

RECOMMENDATIONS

Based on the conclusions discussed above, we recommend that this report be provided to the DPCI to institute criminal investigations for possible receipt of gratification and contravention of section 34(1) of the Prevention and Combating of Corrupt Activities Act against the following:

- 7.8.35.29. Matshela Koko;
- 7.8.35.30. Ayanda Nteta;
- 7.8.35.31. Anoj Singh;
- 7.8.35.32. Edwin Mabelane; and

- 7.8.35.33. Suzanne Daniels.
- 7.8.35.34. The following Eskom SBTC Board Members
 - 7.8.35.34.1. Zethembe Khoza;
 - 7.8.35.34.2. Nazia Carrim;
 - 7.8.35.34.3. Viroshini Naidoo; and
 - 7.8.35.34.4. Chwayita Mabude;
- 7.8.35.35. Ravindra Nath;
- 7.8.35.36. Ronica Ragavan; and
- 7.8.35.37. Tegeta Directors.
- 7.8.35.38. We recommend that this report be provided to the DPCI to investigate possible criminal conduct against Singh and Koko for misrepresentation to the Parliamentary Portfolio Committee on Public Enterprises.
- 7.8.35.39. We recommend that this report be provided to the DPCI to investigate possible criminal conduct against Nteta for misrepresentation to SBTC.
- 7.8.35.40. Board to consider cancelling the Tegeta contract for abusing the supply chain management system
- 7.8.35.41. Board to consider restricting Tegeta and its directors from doing business with any organ of state
- 7.8.35.42. Cabinet to consider restricting the officials who resigned from Eskom from employment from an organ of state for a period of five years.

8. ANALYSIS OF SINGH'S FNB BANK ACCOUNTS

- 8.1. During the course of our analysis of Singh's emails and computer hard-drive we identified that there were transactions relating to the following four bank accounts, which are in Singh's name:
 - 8.1.1. ABSA Bank account number 4056337233;
 - 8.1.2. FNB Bank account number: 62364926380;
 - 8.1.3. FNB Bank account number : 62624587608; and

8.1.4. FNB Bank account number: 62624592607.

8.2. Movements in Singh's ABSA Bank account number 4056337233

8.2.1. During our analysis of Singh's Mimecast emails, we determined that there were ABSA bank statements for the period 15 October 2010 to October 2014. We determined that Singh's salary with reference "*Tgr01 00000136 10*" was paid into the said account from October 2010 to June 2012.

8.2.2. On 5 July 2012, Singh opened an FNB account with account number 62364926380. Singh was subsequently paid his monthly salary in the said account. Singh's FNB account is discussed below.

8.3. Movements in Singh's FNB bank account number 62364926380

8.3.1. During the analysis of Singh's computer hard drive, we determined that there were bank statements for the period 6 July 2012 to 5 July 2016 for FNB account number 62364926380 in Singh's name. We further determined that said bank account was opened at FNB Carlton Centre on 5 July 2012 with a cash deposit of R200.00.

8.3.2. We analysed the said bank statements and established the following:

Transfers in 2012

8.3.3. As indicated above, Singh opened bank account number 62364926380 at Carlton Centre on 5 July 2012 with a cash deposit of R200.00.

8.3.4. We determined that on 10 July 2012, almost five days after the account was opened, a payment was deposited into Singh's account with the description reflected as "*Magtape Credit Tgr 01 00000136*".

8.3.5. We further determined that there was a total of 5 credit transfers to Singh's account for the period 10 July 2012 to 27 November 2012 with the reference "*Magtape Credit Tgr 01 00000136*"

8.3.6. We noted that there were cash withdrawals totalling R23 750 for the period July 2012 to December 2012. We further noted that the debits in Singh's account for the period July 2012 to December 2012 relate to bank charges.

Transfers in 2013

8.3.7. We determined that the opening balance for 2013 was R3 319 341.89.

8.3.8. We further determined that there was total of 13 credit transfers to Singh's account for the period 27 February 2013 to 14 December 2013. We determined that the said credits were paid by Transnet.

8.3.9. We noted that there were no debits for the entire period 27 February 2013 to 14 December 2013. We further noted that over and above his salary which was paid on the 27th of each month there other payments relating to the short and long incentives.

Transfers in 2014

8.3.10. We determined that the opening balance for 2014 was R7 003 235.58.

8.3.11. We further determined that there we total of 9 credit transfers to Singh's account for the period 27 January 2014 to 13 December 2014. We determined that the said credits were paid by Transnet.

8.3.12. We noted that there were no debits from Singh's account for the period reflected above. We further noted that there were three amounts paid into Singh's bank account in June 2014 with reference "*Tgr 01 00000136*"

8.3.13. The transfers in June 2014 led to Singh's account to have an opening balance of R11 336 321.37 for the month of July 2014.

Transfers in 2015

8.3.14. We determined that the opening balance for 2015 was R16 816 183.29.

8.3.15. We further determined that there were 15 credit transfers to Singh's account for the period 27 January 2015 to 15 December 2015. We determined that the said credits were paid by Transnet.

8.3.16. We noted that during the period 24 July 2015 to 30 November 2015 Singh's account was debited with amounts totalling R556 038.06.

Transfers in 2016

8.3.17. We determined that the opening balance for 2016 was R19 534 742.20.

8.3.18. We further determined that there were no credits into Singh's account during the period 30 January 2016 to 30 December 2016.

8.3.19. We however noted that there were various debits for the said period for the amount of approximately R26 000 .00 per month in respect of car payments to Wesbank.

8.3.20. As discussed above, we determined that Singh did not utilise his salary for the period of July 2012 to July 2015.

8.4. The source of the credits into Singh’s bank account number 62364926380

8.4.1. From an analysis of Singh’s bank account number 62364926380 we determined that the description on all the credits is reflected as “*Magtape Credit - Tgr01*”.

8.4.2. The credits into Singh’s FNB account reflected above included what appears to be his monthly salaries from Transnet and Eskom. The credits further reflected large sums of money whose sources are unknown and suspicious.

8.4.3. We determined that the reference “*Tgr01 00000136*” is reflected in both Singh’s ABSA account number 4056337233 and FNB account 62364926380. Transnet have confirmed that “*Tgr01 00000136*” is Singh’s salary reference number.

8.5. Deposits into Anoj Singh’s account numbers 62624587608 and 62624592607

8.5.1. During the analysis of Singh’s bank account numbers 62364926380 we noted that on 14 July 2016 Singh transferred R6 million and R10 million out to his other FNB bank account numbers 62624587608 and 62624592607.

8.5.2. The details of the transfers are indicated below:

| Date | Description 1 | Description 2 | To Account no | Amount (R) |
|--------------|----------------------|----------------------------------|---------------|----------------------|
| 11 July | Tel-banking | Vanonselen attorneys/Diane Singh | - | 620 000.00 |
| 14 July | Internet trf to | - | 62624587608 | 1 000 000.00 |
| 14 July | Internet trf to | - | 62624592607 | 1 000 000.00 |
| 14 July | Tel-banking trf to | | 62624587608 | 5 000 000.00 |
| 14 July | Tel-banking trf to | | 62624592607 | 9 000 000.00 |
| 30 July | Internal debit order | Wesbank | 85235755416 | 26 598.33 |
| Total | | | | 16 646 598.33 |

8.5.3. It is not evident why Singh transferred R16 million on 14 July 2016 into two other accounts.

8.5.4. National Treasury requested Singh to respond to our second draft report.

In his response through Peyper Attorneys, Singh indicated that “ *All the funds received in our client’s bank account and referred to in the draft report were received in lieu of our client’s employment at Transnet and/or Eskom*”.

8.5.5. Singh is not telling the truth by stating that all funds received were in lieu of employment at Transnet/Eskom because the analysis above show that he received other suspicious credits into his bank account.

8.5.6. As at date of this report Peyper attorneys did not respond to a question as to whether they received any payments from Singh’s bank accounts.

8.6. **Payments to Van Onselen Attorneys**

8.6.1. As reflected in the table above we determined that Van Onselen Attorneys were paid an amount R620 000.00 from Singh’s account. In their response Van Onselen Attorneys confirmed receipt of the R620 000.00 as reflected. Van Onselen however did not indicate what the amount was for.

8.6.2. During the analysis of Singh’s emails, we determined that there was correspondence between Singh and Van Onselen attorneys relating a transfer of a property, identified as Erf 3440, 8 Ugwadule Close, Umhlanga Rocks from RSYN (Pty) Limited to Anoj and Diane Singh. The transferring attorneys are referred to as Van Onselen attorneys. The purchase price of the property is reflected as R5 580 000.00.

8.6.3. We determined that on 27 July 2016 Singh applied for a guarantee of R5 580 000.00 from Rand Merchant Bank, which was granted on 28 July 2016 under guarantee reference G657/0590773/GLO.

8.6.4. As indicated above the transfer costs relating to the property were paid to Van Onselen attorneys on 11 July 2016.

8.6.5. Van Onselen Attorneys further stated that another amount of R595 900.60 was received from “ *the same person*” on 26 September 2016 by the same person Van Onselen were ostensibly referring to Anoj Singh.

8.6.6. It is not clear how Singh was servicing his personal accounts because for a period of four (4) years we could not see any debit orders or cash withdrawals

for paying his personal accounts. It is also not clear whether Singh was using another bank account to service his personal accounts, if that is the case, what were the sources of Singh's other income. Transnet/Eskom Board should request DPCI to investigate how Singh was servicing his personal accounts.

- 8.6.7. The DPCI will have to investigate whether some of these amounts may have been paid to Van Onselen attorneys or any other attorney for paying for services rendered or procurement of valuable assets. They will need to further investigate what are the sources money that accumulated to a bank balance of R19 million.

CONCLUSION

- 8.6.8. Singh indicated in his response that all the funds received in his bank account were received in lieu of his employment at Transnet and/or Eskom;
- 8.6.9. Singh's personal attorneys, Peyper may have received funds from his bank accounts;
- 8.6.10. Singh may have received funds from other sources to service his personal lifestyle as there were minimal transactions in his bank account.

RECOMMENDATION

- 8.6.11. DPCI should investigate if Singh did not use other sources of income to service his personal accounts.
- 8.6.12. DPCI should investigate if Singh did not use trust accounts of attorneys to service his personal accounts and procuring valuable assets

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

- 8.7.1. We determined that on 25 September 2015, the Minister of Public Enterprises, Minister Lynn Brown, announced that Cabinet had approved the appointments of Dr Ben Ngubane as Chairperson of Eskom's Board, Mr Brian Molefe as Chief Executive, and Mr Anoj Singh as Chief Financial Officer (CFO) of Eskom.
- 8.7.2. Molefe and Singh had worked together as GCE and GCFO at Transnet respectively, and were being appointed to hold the positions of GCE and GCFO at Eskom, respectively.
- 8.7.3. The business intelligent searches conducted, we determined that Ngubane was a director of Mitsui. In one of his responses to our questions, Ngubane

indicated that he was still a director of Mitsui as at the time of our questions which was in July 2018.

8.7.4. As discussed under Transnet investigations above, we determined that Mitsui was one of the companies that were awarded locomotive tenders prior to 2012. We determined that from 2013, Mitsui failed to get any locomotive tenders as the bulk of the said tenders were awarded to China South Rail. The China South Rail Locomotive tenders are covered in detail in the relevant paragraphs above.

8.7.5. During an analysis of Singh and Molefe's e-mails we established that there were various e-mail communications from either Brian Molefe and Ben Ngubane, or individuals purporting to be both of them. The said e-mails were sent to Singh's Transnet e-mail address anoj.singh@transnet.net and his Eskom e-mail address SinghA3@eskom.co.za. The said e-mails made various requests for Singh to transfer money to various accounts. The requests did not have any supporting documentation but merely provided Singh with account numbers and the amounts to be transferred or paid into the said bank account numbers.

8.7.6. **Requests from Molefe or someone using his e-mail addresses**

E-mail dated 3 November 2015

8.7.6.1. From an analysis of Singh's e-mails we determined that on 3 November 2015 at 13: 54 there was an e-mail sent to his e-mail address from an e-mail address reflected as *Brian Molefe mdprivate-mail0@gmail.com*. The e-mail read *"Hello Anoj How are you? I need you to prepare a wire transfer for a payment, let me know if you're available so I can send you transfer details. Thanks Sent from my iPhone"*. We could not find any response from Singh for the e-mail. We reviewed Molefe's e-mails for the said date and could not find the e-mail reflected above. **(Annexure 83)**

E-mail dated 9 November

- From an analysis of Singh's e-mails we determined that on 9 November 2015 at 13: 50 there was an e-mail sent to his e-mail address from an e-mail address reflected as *Brian Molefe mdprivate-mail0@gmail.com*. The e-mail read *"Hello Anoj.*

How are you doing today? Am very busy that is why you I didn't respond on time. Here is the details. Bank name: CIBC

- *Account number: 06182/8280290*
- *Amount £20,000.*

8.7.6.2. We could not find any response from Singh for the e-mail. We reviewed Molefe's e-mails for the said date and could not find the e-mail reflected above.

E-mail dated 9 December 2015

8.7.6.3. From an analysis of Singh's e-mails we determined that on 9 Dec 2015 at 10:07 he received an e-mail from Brian Molefe with e-mail address brian.molefe@eskom.co.za. The e-mail was enquiring if Singh was at his desk. We determined that Singh responded to Molefe's e-mail and asked if it was Molefe who sent the e-mail. We further determined that Singh sent a response to Molefe on the e-mail address brian.molefe@eskom.co.za and wrote "always sir, how can I help?" From Singh's e-mails we determined that once he confirmed that he was at his desk, Molefe requested him to transfer an amount of R550,793.34 to the following account immediately.

- Bank - Standard Bank
- Account Name - GO AFRICA
- Account # - 001516264
- Bank Code - 002305

8.7.6.4. We analysed Molefe's e-mails and determined that on 9 December 2015 at 10:07 there was indeed an e-mail sent from his e-mail address brian.molefe@eskom.co.za to Singh. We further established, from Molefe's e-mails, that Singh indeed sent an e-mail to Molefe enquiring whether it was Molefe who sent the e-mail.

E-mail dated 18 January 2016

8.7.6.5. From an analysis of Singh's e-mails we determined that on 18 January 2016 at 11:56 there was an e-mail sent to his e-mail address from an e-mail address reflected as Brian Molefe executivedesk50@gmail.com. The individual who sent the said e-

mail to Singh added the name Brian Molefe in the e-mail. The message in the said e-mail read: *“Kindly confirm if you are available and let me know if you can process a day bank transfer to a beneficiary, confirm so I can forward you beneficiary details and amount code as professional service.”*

- 8.7.6.6. Available e-mails from Singh’s e-mails indicated that Singh did not respond to the e-mail from Brian Molefe executivedesk50@gmail.com. We could not find the corresponding e-mail from the analysis we did on Molefe’s e-mails.

E-mail dated 2 August 2018

- 8.7.6.7. From an analysis of Singh’s e-mails we determined that on 2 August 2016 at 13:35 56 there was an e-mail sent to his e-mail address from an e-mail address reflected as Brian Molefe lawest2090@gmail.com in which he wrote *“On Hello, Are you available to execute a real-time gross settlement for me now? Let me know so I can send the beneficiary details. Thanks”*

- 8.7.6.8. We could not find the corresponding e-mail from the analysis we did on Molefe’s e-mails.

8.7.7. E-mail dated 28 January 2016

- 8.7.7.1. We determined that on 28 January 2016 at 08:17 there was an e-mail sent to Singh from an e-mail address styled Brian Molefe personal@myprprivate-mail.com. The e-mail reflected *“Anoj, are you available at your desk now? Let me know, Thanks, Brian.* Singh responded at 10:23 and wrote *“I am in London at the moment but what do you need will try and action from here.”* At 11:44 Brian Molefe personal@myprprivate-mail.com responded *“Hi Anoj, I need to know if we can send an outgoing wire transfer international today for an invoice payment. Also, let me know if you make an exception on this wire. It has to go out today.* At 11:01 Singh wrote *“I am sure we can what are the details of the wire?”*

- 8.7.7.2. We determined that 11:44 Brian Molefe personal@myprprivate-mail.com wrote *“Hi Anoj, Sorry for the delay. See below beneficiary details you need to get the wire done. Transfer amount is \$250,709.00*

- *Bank Name:* LLOYDS Bank
- *Account Number:* 29645060

Let me know if you need anything else. Kindly get me the confirmation page once the wire has been sent out. Thanks, Brain."

8.7.7.3. The above communication is just a snippet of the transactions that took place relating to the request to make payments into certain bank accounts by either Molefe or an individual who calls himself Brian Molefe, to Singh. The fact that Singh participated in the said communication and appears to have executed the instructions without asking any questions reinforces the fact that he knew that the individual he was communicating with was Brian Molefe or a person purporting to be Brian Molefe

8.7.7.4. The following is a list of some of the e-mail addresses used by Molefe or a person purporting to be Molefe to communicate with and requesting Singh to transfer money into various accounts:

- *executivedesk50@gmail.com;*
- *home@myprprivate-mail.com;*
- *infos@personamail.org;*
- *lawest2090@gmail.com;*
- *officialdesk827@gmail.com; and*
- [*personal@myprprivate-mail.com.*](mailto:personal@myprprivate-mail.com)

8.7.7.5. In his response to our questions relating to the requests for transfers discussed above, Singh, through his attorneys responded as follows:

8.7.7.5.1. *"the email referred to in the draft report were not authentic due to various email domains being hacked. A criminal case was filed with the South African Police Services ("SAPS) in the respectunder (sic) case number : 982/9/2015 at the Sandton SAPS"; and*

8.7.7.5.2. *No payments were effected in accordance with this bogus e-mail instruction as referred to in this report".*

- 8.7.7.5.3. During the course of our investigations we consulted with Captain Motsai at Sandton police station in order to establish whether the case number reflected above was in respect of the allegations relating to the email domains. Captain Motsai indicated the record on the system reflected that a case was opened with reference number: 982/9/2015 in respect of theft and robbery on Zimbabwe national *i.e.* Mncume for the robbery of his passport and R300.00.
- 8.7.7.5.4. Motsai further stated that Sandton police station has no record of a criminal case opened by Singh in respect of alleged email domains or any other criminal activity.
- 8.7.7.5.5. Motsai stated the only record appearing on the system registered by Singh was in respect of a car hijacking which took place in Durban during 2012 and the case was opened at Durban central police station with case number 1333/13/2012.
- 8.7.7.6. Molefe failed to respond to the questions posed to him relating to this matter.
- 8.7.8. **Requests from Ben Ngubane or someone using his e-mail addresses**
- 8.7.8.1. We determined that there was an e-mail from e-mail address <mailto:ceocompany@gmail.com> which was sent to Singh on 8 December 2015 at 10:12. The said e-mail address reflected that it was from Dr Ben Ngubane. The e-mail read *“Are you at your desk? I need you to process an invoice payment today and e-mail through the confirmation to be forwarded according”*.
- 8.7.8.2. We determined that Singh responded to the e-mail at 9:13 and stated *“Yes please send details”* At 9:18 <mailto:ceocompany@gmail.com> responded *“Sounds Perfect, I will get back to you with the bank details within the next hour”* At 9:38 <mailto:ceocompany@gmail.com> wrote *“Did you receive my last e-mail? Also I need you to make the money available to the recipient immediately after you sent it because they need to get their funds today. Let me know if you get this.”*

8.7.8.3. Realising that Singh was not responding to the e-mail, <mailto:ceocompany@gmail.com>, sent another e-mail at 11:05 and wrote "Hi Anoj, are you still at your desk?" At 10:22 Singh wrote " Yes just been a bit busy but your request is noted." At 10:36 <mailto:ceocompany@gmail.com> wrote "Alright...I will e-mail you the details shortly." At 11:27 <mailto:ceocompany@gmail.com> provided the following banking information to Singh:

Kindly remit payment of 230,000 South African Rands to the account information below.

- *Bank Name: Standard Bank*
- *Account Number: 0015547941*
- *Company Name: Afrikico Import and Export*
- *Address: 11, Park St*
- *Johannesburg, 2192, South Africa*

You are to e-mail me back with the confirmation slip and reference once done. Kindly get on it now.

E-mail me back to confirm if you get this.

We were not able to obtain Ngubane's e-mails from Eskom and as such were not able to determine if they were available as part of his Eskom e-mails.

8.7.8.4. We conducted a company search on searches Afrikico Import and Export and determined that is a company registered on 20 January 2006 with its address reflected as Shop 14, 100 Market Street, Old Arcade, Johannesburg. We determined that the company has one director, Owusu Kwame with no listed identity number. We will attempt to visit the given address to get more information which will be included in our final report.

8.7.8.5. In his response to our questions, Ngubane indicated that he does not know who the e-mail address <mailto:ceocompany@gmail.com> belong to and further that he had never requested Singh or anyone to deposit or pay anyone. As discussed below, Ngubane also denied any knowledge of an e-mail address styled infoportal1@zoho.com. We

established that he sent several e-mails, including Eskom confidential information, to the said e-mail address. (**Annexure F1**)

8.7.8.6. In his response to our draft report Ngubane, through his attorneys *i.e.* Mchunu attorneys stated the following:

“With regard to the email scam asking Anog(Anoj) Singh to deposit money into foreign bank accounts a cash (case) was opened at Sandton police station and case no. Is 982/9/2015

Ben”.

8.7.8.7. As discussed above the case number provided by both Singh and Ngubane is not linked to any of the allegation relating the e-mail scam.

8.7.8.8. The emails and bank accounts will form part of the information we will hand over to the head of the Directorate for Priority Crime Investigations for further investigations. The DPCI will have to investigate the validity of the email addresses and whether Singh transferred money to those accounts or any other accounts if the identified bank accounts were used to hide the real bank accounts.

8.7.9. E-mails sent to Singh’s Transnet e-mail address

8.7.9.1. During an analysis of part of Singh’s Transnet e-mails through mime cast, we determined that there were at least four e-mails sent to him from the following e-mail addresses:

8.7.9.1.1. brian.molefe@transnet.net sent on 31 March 2016 at 11:05;

8.7.9.1.2. executiveportal02@gmail.com; sent on 3 February 2016 at 08:57;

8.7.9.1.3. executiveportal03@gmail.com sent on 19 January 2016 at 11:00; and

8.7.9.1.4. bendavid1212@gmail.com sent on 1 February 2016 at 14:25.

8.7.9.2. We noted that the first e-mail reflected a false Molefe e-mail address as his correct Transnet e-mail address was brian.molefe@transnet.net and not Transnet.

- 8.7.9.3. The subject matter of the four e-mails was similar in that they sought to establish if Singh was at his desk as the writer wanted Singh to make a bank transfer or pay an invoice. The particulars of the said transfer or invoice were however not included in the e-mails.
- 8.7.9.4. We determined that the above e-mails were sent to Singh's Transnet e-mail address and further that they were delivered to the said email address. There is no valid reason why Singh's Transnet e-mail address would have been active even when he was no longer a Transnet employee as he was appointed as Eskom GCFO on 25 October 2015.
- 8.7.10. **Are the e-mails a scam by fraudsters, or a slush fund operated by Singh for the benefit of Molefe and Ngubane or a person purporting to be Molefe or Ngubane?**
- 8.7.10.1. On face value, it would appear that the said e-mails were sent by fraudsters who impersonated Molefe and Ngubane in the hope that Singh would fall for their tricks and transfer money into the provided bank account numbers or pay the invoices as requested.
- 8.7.10.2. The e-mails from what appears to be Ngubane and Molefe utilized different e-mail addresses which Singh appeared to recognize. In some instances Singh responded with the words "is it you boss" We further determined that in some of the responses from Singh to Molefe, he copied Molefe's Eskom e-mail address.
- 8.7.10.3. We determined that in some instances, there were responses from Singh to the said e-mail requests. The question is therefore, if this was the work of fraudsters, why did Singh respond to the said e-mails and promised that he was going to assist with the transfers. We could not find any proof that Singh reported the requests by the individuals to the law enforcement agencies as one would have expected from a reasonable person.
- 8.7.10.4. We have sent questions to both Singh and Molefe which includes amongst others the issues relating to the e-mails above.
- 8.7.10.5. Some of the bank accounts identified in the emails appear to be valid bank accounts. It had not been established whether Singh transferred

money to those bank accounts or not and whether the bank accounts were used as codes to hide the real bank accounts.

8.7.11. **Conclusions**

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

8.7.12. **Recommendations**

8.7.12.1. DPCI should investigate if Singh deposited/transferred to any beneficiary mentioned in the emails.

9. **THE LEAKING OF CONFIDENTIAL INFORMATION AT ESKOM**

9.1. **E-mails sent to infoportal1@zoho.com (Annexure F11)**

9.1.1. One of the allegations which we were required to investigate was the Eskom Executives may have leaked confidential information to third parties through an email styled infoportal1@zoho.com.

9.1.2. We did an internet search on the said e-mail and determined that it is alleged that on 29 June 2015 at 10:54 Duduzane Zuma received an e-mail from the said account, infoportal1@zoho.com. The media searches reflected that the e-mail was a forwarded message from Richard Seleke, who wrote: *“Evening sir, please find attached my CV and supporting documents. Regards, Richard.”*

9.1.3. We determined that a few months later Seleke was appointed to the post of director-general in the National Department of Public Enterprises, which had oversight of SAA, Eskom, Transnet and other strategic state-owned companies.

9.1.4. With the said background relating to the infoportal1@zoho.com e-mail, we traced the said e-mails sent by the Eskom executives and determined that at least two Senior Eskom Executives, Koko and Daniels, sent e-mails to the said e-mail address.

9.2. **E-mails sent by Koko to infoportal1@zoho.com**

9.2.1. Various internet searches revealed that one of the Eskom executives who sent emails to the e-mail address infoportal1@zoho.com is Koko. The said internet searches revealed that Koko is alleged to have sent the following emails to infoportal1@zoho.com:

- 9.2.1.1. 7 August 2015 sent letter from Optimum Business Rescue Practitioners, which infoportal forwarded to Chawla;
- 9.2.1.2. 4 November 2015 sent Eskom privileged legal opinion, which infoportal forwarded to Tony Gupta;
- 9.2.1.3. 4 November 2015 sent letter from Just Coal (Pty) Ltd, which infoportal forwarded it to Tony Gupta.
- 9.2.1.4. During an analysis of Koko's e-mails we determined that he sent several e-mails to infoportal1@zoho.com using his Eskom e-mail address.

9.2.2. **E-mail dated 20 July 2015**

- 9.2.2.1. On 20 July 2015 at 09:47 Koko sent an e-mail to the e-mail address infoportal1@zoho.com. Attached to the said e-mail is a document titled: *Approval Conditions agreed to between Acting CFO and Acting GCE: GC&T on Friday, 26 June 2015 (TOPE ENGINEERING DEVELOPMENT PROGRAM) (Annexure E84)*
- 9.2.2.2. The attached document reflected the approval conditions of the relevant top engineers and the fact that there had to be a retention strategy developed to retain the engineers. What is not immediately clear though is why Koko sent the said document to the infoportal1 e-mail address.

9.3. **E-mail dated 20 July 2015**

- 9.3.1. On 20 July 2015 at 09:47 Koko sent an e-mail to the e-mail address infoportal1@zoho.com. Koko stated in the e-mail that *"we did not finish our discussion about this transaction" This is what is going to board of 18 August*". Attached to the said e-mail is a document titled: *SUBMISSION TO THE EXCO PROCUREMENT SUB-COMMITTEE (EXCOPS) ON 11 AUGUST 2015. SUBMISSION TO THE BOARD TENDER COMMITTEE (BTC) ON 18 AUGUST 2015.*
- 9.3.2. The title of the submission reflected that it was a feedback on the results of the negotiations held to negotiate but not conclude with ten (10) service providers for the provision of online vending agency services, selling prepaid electricity on behalf of Eskom Holdings SOC LTD. The document, signed by Koko and Kalima on 8 August 2015, reflected the following 10 service providers:

- 9.3.2.1. CigiCell Pty Ltd;
 - 9.3.2.2. Qhakaza Amps Pty Ltd;
 - 9.3.2.3. A 2 L Trading as A 2 Pay;
 - 9.3.2.4. Anytime Power;
 - 9.3.2.5. Flash Mobile Vending Pty Ltd and Lancaster Electricity /Solutions Pty Ltd;
 - 9.3.2.6. Contour Technology;
 - 9.3.2.7. Pamodzi Phasha (JV);
 - 9.3.2.8. Easy Pay Pty Ltd;
 - 9.3.2.9. Sandulela Technologies
 - 9.3.2.10. Itron Metering Solution South Africa.
- 9.3.3. In his response, Koko stated that the infoportal1@zoho.com e-mail address was given to him by Daniels on the basis that he (Koko) had to use it for purposes of assisting her to provide information on a day to day to the Chairman (Dr Ngubane?) regarding topical operational aspects of Eskom business. Koko stated that he used the infoportal1@zoho.com e-mail address for the said purpose. We find Koko's statement in this regard improbable because if this was true, he would therefore have not emailed Dr Ngubane's letter addressed to Brown, to the said e-mail address as the Chairman was aware of the letter as he wrote it.

9.4. E-mail dated 21 September 2015

- 9.4.1. On 21 September 2015 at 16:32 Koko sent an e-mail to the e-mail address infoportal1@zoho.com. Attached to the said e-mail is a document titled: INTENTION TO EFFECT SUSPENSION WITH PAY PENDING AN INVESTIGATION INTO ALLEGED MISCONDUCTS AND/OR DISCIPLINARY ACTION.
- 9.4.2. The document relates to suspensions that are discussed under the coal quality heading above. The said suspension followed the failed Brakfontein coal quality tests conducted by Sibonisiwe, SGS and SABS between 20 August 2015 and 29 August 2015. The merits or otherwise of the said suspensions are discussed in detail in the relevant paragraphs in this report. What is not clear

however is why Koko chose to send the letter of intention to suspend an Eskom employee to the said e-mail address.

9.5. E-mail dated 21 September 2015

9.5.1. We determined that on 25 November 2015 at 15:47 Koko sent an e-mail to the e-mail address infoportal1@zoho.com. Attached to the said e-mail is a spreadsheet with various mines and what is reflected as *“Actual rands (Future fuel) invested by Eskom according to SAP since inception of Cost Plus Agreements”*.

9.5.2. The spreadsheet contains various financial figures for the various Cost Plus Mines and therefore we do not understand why Koko e-mailed it to the info portal e-mail address.

9.6. E-mail dated 30 September 2015

9.6.1. We determined that on 30 September 2015 at 14:47 Koko sent an e-mail to the e-mail address infoportal1@zoho.com. The subject matter is reflected as *Re*. Attached to Koko’s e-mail to the said e-mail address was a letter dated 30 September 2015 from Eskom’s Interim Board Chairman Ben Ngubane addressed to former DPE Minister Lynne Brown. We determined that Ngubane was announced as Eskom Board Chairman by Minister Brown in October 2015, on the same date that Minister Brown announced the appointments of Molefe and Singh as Eskom’s GCE and GCFO respectively.

9.6.2. The letter to Brown is titled: *SUSPENSION OF CONTACT IN ANY FORM WHATSOEVER AND/OR COMMERCIAL RELATIONSHIP WITH THE MAIL AND GUARDIAN, CITY PRESS AND SUNDAY TIMES*.

9.6.3. We noted that the letter referred to Minister Brown’s correspondence of 28 September 2015 and further that the (Eskom) Board had deliberated on the issues and *“found that Eskom was experiencing a similar trend as the Transnet example”*The letter further reflected that the Board had resolved that *“Eskom shall suspend any dealing, be it the placement of advertising, or any commercial relationship with the Mail and Guardian, Sunday Times and City Press pending the resolution of the complaints that the state owned entities have against the three newspapers”*

9.6.4. As indicated above, we determined that Koko sent the said letter to the infoportal1@zoho.com e-mail address.

- 9.6.5. In reply to the question why Ngubane wrote the letter to former Minister Brown, he stated the following *“Writing the Minister of DPE (Lynne Brown) and expressing you deeply we were aggrieved by some newspapers could not be something terrible. Eskom never blacklisted any of the newspapers you talk of. I reject you charge that we did this because we wanted to favour New Age, this would be preposterous because New Age was quite a different new paper in style and content and could never compete with the newspapers you talk about”*.
- 9.6.6. We are in the process of contacting DPE to determine the reasons the letter was sent to the Department and will include the outcome of the said request with our final report.

9.7. E-mail dated 4 November 2015

- 9.7.1. From the searches on the Guptaleaks we determined that there was an e-mail sent to an e-mail address infoportal1@zoho.com from the matshela2010@yahoo.com e-mail address. The said e-mail, which was sent on 4 November 2015 at 22:39, had various attachments, one of which is a Just Coal document titled *“Eskom 30th October 2015”*.
- 9.7.2. We determined that the said e-mail was forwarded from infoportal1@zoho.com to wdrsa1@gmail.com on 4 November at 23:36 before it was finally forwarded from the latter e-mail address to ashu@sahara.co.za on the same date at 4:46 am. Media searches reflected that Koko denied that the said e-mail address, matshela2010@yahoo.com is his.
- 9.7.3. We conducted a search on Koko’s emails using the file name *“Eskom 30th October 2015”* and determined that Nteta sent the said document to Koko’s Eskom e-mail address KokoMM@eskom.co.za on 4 November 2015 at 20:34. We analysed Nteta’s sent items on the date in question and determined that Koko was the only individual she sent the said document to. On a balance of probabilities, taking all available information into consideration, Koko owns the matshela2010@yahoo.com and he is the one who sent the Just Coal document to infoportal1@zoho.com.

9.8. E-mail dated 14 November 2015

- 9.8.1. We determined that on 14 November 2015 at 10:36 Koko sent an e-mail to the e-mail address infoportal1@zoho.com. Attached to the said e-mail is a document titled ELECTICITY LOADSHEDING REVIEW AND WAY FORWARD. We determined that the document has the following five sub-headings:
- 9.8.1.1. Executive summary;
 - 9.8.1.2. Introduction;
 - 9.8.1.3. New build and planned maintenance;
 - 9.8.1.4. Light at the end of the tunnel; and
 - 9.8.1.5. Conclusion.
- 9.8.2. The document, which is not on any letterhead, appears to suggest that Eskom management previously made choices that contributed to the load shedding that was being experienced at the time. In its conclusion, the document indicated that the biggest game changer for the dramatic reduction in load shedding incidents had been change in leadership that introduced a much higher motivation and resolve to eliminate load shedding.
- 9.8.3. Looking back at the time of the load shedding, it is apparent that the Eskom Executive the document may be referring to, many have been the then acting GCE, Tshediso Matona (“Matona”) who saw an unprecedented number of load shedding during his tenure. It is also a known fact that when Molefe took over as Eskom’s acting and later appointed GCE, the load shedding ceased.
- 9.8.4. Was load shedding a sabotage to get rid of an un-cooperating Matona and replacing him with Molefe who perhaps was willing and able to assist certain individuals?
- 9.8.5. During our consultations with Matona he stated that it would not surprise him if it was established that the load shedding that occurred during his time as GCE was as a result of sabotage. He further indicated that he did not get support from his Executives during his tenure as GCE.
- 9.8.6. We determined from the document’s metadata that it was created by Edwin Mabelane on 13 November 2015 at 15:42, a day before Koko e-mailed it to the infoportal1 e-mail address. Mabelane saved the document on the same date at 20:31.

9.9. E-mail dated 10 December 2015

- 9.9.1. From an analysis of Daniels' emails we determined that on 10 December 2015 at 07:31 she received an e-mail from Koko's private e-mail address matshela2010@yahoo.com. From the said e-mail's timelines we determined that on 10 December 2015 at 00:15 matshela2010@yahoo.com received the e-mail from infoportal1@zoho.com. The contents of the e-mail is reflected as follows: *"2 Pager 2 pager between Tegeta and Eskom, salient points: Eskom will provide bank guarantee for R1.68 Billion CP for release is Section 11 Approval from DMR Competitions Commission Approval Tegeta will supply from OCM as per contract, but for the 12 months prepayment (Jan 2016 to Jan 2017) will give a 5% discount off the R154 Tegeta will supply from Koorfontein as per contract for same period at the original R380, not the requested increased tariff At end of each month starting (end Feb 2016) Eskom shall deduct R140 million from amounts due to recoup the R1,68 Billion Tegeta receiving prepayment for 2 mines supply but Eskom can use monies owed from all 3 Mines (Brakfontein also) to recoup the R140m a month Therefore if Tegeta does not deliver full volume from OCM or Kroon, the payments due for Brakfontein can be clawed Any amounts due over the R140m for each month shall be payable to Tegeta 2 pager, almost as addendum to the supply contracts."*
- 9.9.2. From the e-mail reflected above, it appears that the issue relating to the Tegeta and Optimum prepayments may have been in the pipeline from as early as October 2015.

9.10. Whose e-mail address is it anyway

- 9.10.1. A lot has been said and written about the e-mail address infoportal1@zoho.com with various media houses reporting that it belongs to Essa. We determined that the Organisation Undoing Tax Abuse ("OUTA"), reported in some of the organisation's slide presentation that infoportal1@zoho.com belongs to Seleke.

Koko's version

- 9.10.2. On 13 July 2018 we sent written questions to Koko through his attorney, Asger Gani. One of the questions we sent to him related to the infoportal1 e-mail address and his reasons for sending the above emails to the said address.

- 9.10.3. In his responses to our questions, Koko stated that he did not accept that the e-mail address belonged to Essa. Koko further indicated that the infoportal email address was provided to him Daniels.
- 9.10.4. As reflected above, Koko sent emails to the infoportal1 address as early as July 2015. We determined that Seleke was a Transnet Board member at the time, appointed on 11 December 2014 to 27 November 2015. If the infoportal1@zoho.com e-mail address belongs to Seleke, then both Daniels and Koko sent Eskom related e-mails to an individual outside Eskom.
- 9.10.5. It should be noted that in his response to our questions Koko did not make any comments regarding the documents he sent to the infoportal1 e-mail address.
- 9.10.6. As discussed above, we determined the minutes of the meeting that took place at Eskom on 24 November 2015, reflected inter alia that Koko told Glencore that Eskom wanted OCH and its subsidiaries to be included in the sale. The said subsidiaries included OCM and Koornfontein mine. Tegeta subsequently purchased OCH and its subsidiaries for the amount of R2.1 billion.

Daniel's version

- 9.10.7. We understand that in giving testimony at her disciplinary hearing, Daniels testified that she believed the infoportal1@zoho.com e-mail address belongs to Seleke.
- 9.10.8. During our consultation with Daniels, she was adamant that the infoportal1@zoho.com e-mail address belongs to Seleke

Seleke's version

- 9.10.9. In his response to our question about the infoportal1 email address, Seleke indicated the following:
- 9.10.9.1. *"I hereby attach for your attention the recent finding in the Disciplinary Hearing between Eskom and Suzanne Daniels. The attachment in this regard will help you understand that I have no relationship with the email address concerned, should you be satisfied that a competent finding has been made of the probable owner of the that email address".*

9.10.10. **Ngubane's version**

9.10.10.1. In his response to our questions Ngubane denied any knowledge of an e-mail address styled infoportal1@zoho.com. This regardless of the fact that he forwarded several e-mails, including Eskom confidential information, to the said e-mail address. (**Annexure E85**)

10. CONCLUSION

10.1. Koko may have leaked confidential information which amounted to:

10.1.1. Abuse of his position of authority;

10.1.2. A breach of trust; and

10.1.3. Violation of a legal duty or a set of rules in terms of PRECCA.

10.2. Daniels may have leaked confidential information which amounted to:

10.2.1. Abuse of her position of authority;

10.2.2. A breach of trust; and

10.2.3. Violation of a legal duty or a set of rules in terms of PRECCA.

10.3. Ngubane may have leaked confidential information which amounted to:

10.3.1. Abuse of his position of authority;

10.3.2. A breach of trust; and

10.3.3. Violation of a legal duty or a set of rules in terms of PRECCA.

11. RECOMMENDATIONS

DPCI should investigate if Daniels, Koko and Ngubane did not leak confidential information to benefit a third party.

Should you have any queries relating to this report please do not hesitate to contact Ernest Nekhavhambe on 011 403 2526.

Yours faithfully



Ernest Nekhavhambe

Managing Director: Fundudzi Forensic Services (Pty) Ltd