



Eskom submission to the Standing Committee on Public Accounts (SCOPA)
for

Oversight Visit to Eskom Holdings SOC Limited: 26 to 30 August 2019

Quarterly Progress Report on SCOPA Recommendations

31 March 2020

Revised for resubmission: 10 June 2020

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Summary

The Standing Committee on Public Accounts (SCOPA), having undertaken an oversight visit to Eskom and its new build infrastructure projects, Medupi and Kusile, in Lephalale and Witbank, respectively, from 26 to 30 August 2019, in terms of Part 13, section 245(1)(d) of the Rules of the National Assembly, reported its findings and recommendations. This report will provide an update/feedback to the committee on progress made by Eskom in giving effect to, and complying with, the 23 recommendations made to Eskom.

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1. Contracts management by skilled and qualified people

Recommendation 6.1

Contracts must be managed properly by suitably skilled and qualified people to ensure that expiring contracts are identified timeously and that the appointment of contractors is done through an open market process.

Response to the recommendation

Contracts management has been identified as a specific weakness in numerous investigations, and it was also found that people with inappropriate or no contracts management skills and experience were appointed to manage contracts.

- People with inappropriate skills/no contracts management skills have been removed, and others have been identified for further training.
- The Group Capital Contracts Management Office (CMO) initiated a contracts manager development programme in 2017 to improve the commercial and contracts management skills of people appointed to manage both new engineering contract (NEC) and Fédération Internationale des Ingénieurs-Conseils (FIDIC) contracts. The programme has a duration of 18 months. The training includes the understanding and use of specific conditions of contract, Eskom processes, contract law, and forex training. The fourth intake of the programme is in the screening process, and the programme will start in the next quarter. All contracts managers at Kusile and Medupi will be measured against this programme to confirm that they are suitably skilled for their roles as contracts managers. All contracts managers at Kusile have completed the specific FIDIC/NEC training.
- Approval has been given to appoint experienced project-related resources on a fixed-term-contract (FTC) basis. The process has been initiated, and to date, more than 150 people have been recruited on an FTC basis for the project.
- Experienced commercial and contracts managers are now supporting less experienced contracts managers.
- Monthly reviews take place to track contract expiry dates and bond and guarantee expiry dates.

- In addition to capacitating the business and upskilling the current workforce, Procurement Plans Steering Committee has been established to engage Divisions on the importance of ensuring that procurement spend is confined within contract coverage.
- Lessons learnt on Contract Management are being shared on monthly basis to ensure alignment and adopt best practices. This is to ensure that there is alignment across the business.

2. Employment of suitable employees and contractors for Medupi and Kusile

Recommendation 6.2

There must be no restrictions made for Eskom to employ suitably qualified and skilled employees and contractors to ensure that the Medupi and Kusile projects are completed on time and are operated at maximum efficiency.

Response to the recommendation

Both teams on site have been assessed to identify the experience/skills gaps and measures put in place to fill these identified gaps. Approval was obtained from the Eskom Board to appoint staff on a fixed-term-contract basis, and the process to appoint them has commenced. To date, more than 150 appointments have been made. The process is ongoing, and it is expected to be completed by mid-year 2020.

3. Proper document management systems

Recommendation 6.3

Proper document management systems must be in place to create a paper trail for all transactions in compliance with the Companies Act.

Response to the recommendation

Eskom has a policy and supporting standards for managing and controlling document management.

- The document management for the Kusile and Medupi projects complies with Eskom Procedure 32-6: Documentation Management Policy and supporting documentation management standards applicable to set the direction and controls applicable to business documentation to assure standardisation, optimisation, and simplification.
- Medupi implemented SmartPlant for Owner Operators (SPO) for all documentation. SmartPlant is specific software available commercially to maintain the integrity of information through the project life cycle into operations.
- Kusile is using SPO for engineering documentation and implementing Hyperwave for document storage.
- Further, Procurement is investigating document management systems which can be integrated with various Acquisition systems/databases to provide seamless access to business records with an audit trail that cannot be tampered with and to ensure easy retrieval of records.

4. Employment of skilled personnel in the Supply Chain Management unit at head office

Recommendation 6.4

Skilled personnel must be employed in the Supply Chain Management unit at head office as well as at different projects where procurement takes place.

Response to the recommendation

Due to the divisionalisation and the relinking of the existing personnel, Eskom has currently placed a moratorium on external recruitment. This partially affects the resourcing of the Supply Chain Management division with skilled personnel, as the skills gaps can only be identified once this process has been concluded.

As part of preparedness, P&SCM has embarked on a pre-skills audit exercise to determine the core and critical skills which might be required post Divisionalisation both at Holdings as well as Division level.

5. Vetting of all supply chain practitioners, managers, and the Board

Recommendation 6.5

Vetting of all supply chain practitioners, managers, and the Board must be implemented immediately for the head office as well as other centres where procurement takes place, and a report on this must be sent to SCOPA within 60 days from the adoption of this report by the National Assembly.

Response to the recommendation

Eskom's vetting programme is progressing well, and for 2020, the following areas have been prioritised for purposes of vetting:

- Supply Chain Management (Commercial)
- Senior managers
- Middle managers
- National key point sites
- Primary Energy Department
- Security
- Assurance and Forensic
- A Vetting Field Unit was established to assist the State Security Agency (SSA) in fast-tracking Eskom applications and investigations.
- A lifestyle audit assessment for the total workforce is also being conducted, in conjunction with the SAPS Crime Intelligence Division, through the initiatives of the Presidential Joint Technical Task Team.

Below is the status of Exco member vetting:

Table 1: Exco members vetted as at 31 May 2020

Surname	Initials	Job Description	COMMENTS
De Ruyter	AM	Group Chief Executive	Z204 issued - In progress
Pule	E	Group Executive (HR)	Top Secret clearance granted
Etzinger	A	General Manager: Risk & Sustainability	Secret clearance granted
Mabena	P	General Manager - Office of the GCE	Awaiting feedback from SSA
Scheppers	S	Group Executive: Transmission	Top Secret clearance granted
Cassim	C	Chief Financial Officer	Application with SSA Vetting Board
Oberholzer	J	Chief Operating Officer	Application with SSA Vetting Board
Hewu	B	Group Executive - Legal & Compliance (Acting)	Awaiting feedback from SSA
Bakardien	R	Chief Nuclear Officer	Awaiting feedback from SSA
Singh	N	General Manager: Africa Strategy (Acting)	Completed- No clearance granted (dual citizenship)
Tshitangano	S	General Manager: Procurement	Awaiting feedback from SSA
Nxumalo	B	Group Chief Executive: Generation	Awaiting feedback from SSA
Pather	K	General Manager: Sustainability	Awaiting feedback from SSA
Bala	M	Group Executive: Distribution	Awaiting feedback from SSA
Pillay	K	General Manager: Security (Acting)	Top Secret clearance granted
Burn	F	Chief Information Officer	New appointment- Z204 issued

6. Compulsory declarations of interest for senior managers and directors

Recommendation 6.6

Compulsory declarations of interest must be done by all senior managers and directors, at the very least annually, and declarations must be enforced immediately in instances where they have not been done in order to avoid employees and directors and their family members doing business with Eskom.

Response to the recommendation

Eskom has a Conflict of Interest Policy that sets out the requirement for all employees and directors of Eskom to disclose their interests on an annual basis. Historically, it was not compulsory for employees at Task Grade 09 and below to declare their interests to Eskom, however, if they were have interests they were required to declare such in a similar manner as employees above these Task Grades. This scenario has

since been corrected by the Board, such that all employees of Eskom, irrespective of their task grade, must declare their interests.

Below, we provide a quantitative update on the completion of declaration forms, including compliance of the information submitted with the provisions of the policies.

- 1) Rate of completion of the employee, director and Exco declaration of interest forms and
- 2) Compliance of the information submitted with Eskom's Conflict of Interest (COI) Policy and Declaration of Interest (DOI) Procedure:
 - a. Have all interests been disclosed?
 - b. Have all actual, perceived, or potential conflicts of interest for employees and directors, as well as related and interrelated parties, been disclosed?
 - c. Are there any links with suppliers?

1) Rate of completion

At the beginning of each financial year, all employees and directors are required to review and submit their annual declaration of interest, irrespective of their task grade; previously this requirement was limited to Task Grade T09 and above only, but the change was implemented in 2019 when the COI policy was revised. The risk that the change in policy aims to address is that a large category of employees that fall within the Task Grade T09 and below did not disclose their interests that they have focusing on the requirement not being compulsory for them, which resulted in conflicts of interest not being identified and managed effectively.

Current employee disclosure rate and compliance with the submission of annual disclosure process:

- Employees at all levels as at 31 March 2020 had reached 98% submission. From 1 April 2020 to date the submission rate is 64% lower compared to last year same period which was 81%. This is due to challenges experienced by employees with lockdown.

- Exco, including the extended Exco in both of the above mentioned for employees periods 100%
- Eskom Board in both of the above mentioned for employees periods 100%

2) Quality of information

Board and Exco compliance

The Assurance and Forensic (A&F) Department conducted a review of the declared interests made by the members of the Board and Exco. Concerns identified in the reviews were addressed with the respective members via the office of the Acting Company Secretary.

The review included a comparison of the declared interests by Board and Exco members, firstly, to Companies and Intellectual Property Commission (CIPC) records, secondly, to entities that are on the Eskom supplier database, and finally, to entities that are key customers of Eskom.

7. Finalised internal investigations

Recommendation 6.7

Internal investigations must be sped up and finalised by 31 March 2020.

Response to the recommendation

Background

The Assurance and Forensic Department of Eskom (A&F) conducts investigations into allegations of fraud and corruption referred to it, either directly by Eskom employees or through the third-party-managed whistle-blower hotline and the ministerial hotline.

A&F continuously receives new allegations, which are reviewed through initial verification of information, and if sufficient facts are available, these are registered as

cases to be investigated. It is, therefore, never possible to adhere to a specific deadline to close all cases.

Since FY2017/18, A&F's resources have been augmented by external service providers to assist with completing internal investigations, as a strong increase in caseload was experienced, and no recruitment of staff was possible. The previous panel contract expired during 2019 and was replaced by a new panel of 12 external forensic service providers during October 2019. These service providers were on-boarded late in the last quarter of 2019, following the verification of their credentials. Awarding of work to this panel only commenced during January 2020, which process requires mini-tendering for each case among panel members before being assigned as per Eskom's strengthened procurement processes. The new panel members have expertise in the areas of digital and cyber forensics, fraud and corruption investigations, handwriting, and lie detection.

Progress on further outsourcing and all investigations are currently being restricted due to the COVID-19 lockdown.

Table 2: Overview of caseload

	Active	New Cases	Completed
Carried forward from before 1 April 2017		16	
Balances as at 01 April 2017	129	-	-
+ New cases added during FY2017/18	-	231	-
- Cases completed during FY2017/18	-	-	(160)
Balances as at 31 March 2018	200		
+ New cases added during FY2018/19		257	-
- Cases completed during FY2018/19	-	-	(117)
Balances as at 31 March 2019	340		
+ New cases added during FY2019/20	-	118	-
- Cases completed during FY2019/20	-	-	(202)
Balance of active cases as at 31 March 2020	256		
Total cases to date		622	
Total cases completed to date			479

- As at 1 April 2017, A&F had 129 cases under active investigation and a further 16 new cases were carried over from prior years.
- Up to 31 May 2020, Eskom had registered a total of 622 new cases for investigation, while 480 investigations were completed as at this date. The

latter number includes 367 cases related to new registrations since 1 April 2017, completed during this period. The balance of 113 completed investigations relates to the old cases carried forward into FY17/18.

- As at 31 May 2020, there were 255 cases in various stages of progress under investigation.

Table 3: Quarterly balances

Balances as at beginning of quarter ending	31/03/2020	31/05/2020
Active cases at beginning of quarter	261	261
+ New cases added during the quarter	10	10
- Cases completed during the quarter	(15)	(15)
Active cases as at end of quarter	256	255

- Of the balance of 255 active cases as at 31 May 2020, 102 are being investigated in-house, while 19 have been outsourced. The remaining balance of 134 are cases being prepared for outsourcing.

Overview of criminal cases following from investigations

- To date, Forensic has registered a total of 76 criminal cases from investigations.
- Of these, 59 have been registered (43 since 1 April 2018). These are being pursued through other law enforcement agencies, including the SAPS, Hawks, Special Investigating Unit (SIU), and Commercial Crimes Unit.
- While 4 cases have been closed, 15 of the other cases are still in progress of registration and 2 taken on review of evidence.
- The details on the four completed cases are as follows:

Table 4: Closed criminal cases

Criminal case no.	Forensic case no.	Amount involved	Case category	Criminal case outcome
92/4/2018	69/07/2017	R300 390,00	Alleged corruption	Provisionally withdrawn from the court roll.
183/01/2018	25/03/2018	R4 272,40	Alleged fraud	The former employee was convicted of fraud and sentenced to two years'

				imprisonment, which was wholly suspended for five years.
183/01/2018	25/03/2018	R4 272,40	Alleged fraud	The former employee was convicted of fraud and sentenced to two years' imprisonment, which was wholly suspended for five years.
797/01/2019	05/01/2018	R355,114M	Alleged irregularity	The Prosecuting Authority declined to prosecute the matter, in that there was no prospect of a successful prosecution (refer below).

- Forensic has reviewed the allegations behind the last case listed above and established that this case was registered under instruction from senior management (who have since resigned from Eskom's service) and that the findings from this investigation did not warrant registration of a criminal case against the implicated individual. Other recommendations related to employee discipline and supplier discipline are however continuing, the latter part since 2018
- Two dossiers on further matters, one related to a single supplier (three cases) and another related to misappropriation of funding (two cases), have been handed over to the SIU/Hawks for further investigation and determination of criminality within their respective mandates.

Lifestyle audits

The first batch of lifestyle audits was targeted at the senior management of Eskom, Task Grades F-Bands and E-Bands (383 people in total). In order to obviate any potential conflicts of interest and also to ensure confidentiality and data credibility, an independent third party, ENSafrica Inc (ENS), was appointed through an open competitive bid process to conduct the lifestyle audits. Mazars Advisory (Pty)Ltd was appointed via the panel to conduct an additional 8 audits post the above appointment.

The employees were required to provide their bank statements, as well as their spouse's bank statements, for a period of five years. The bank statements were then analysed, looking at inflows and outflows of funds against the salary employees

received from Eskom and other declared sources of income. Deed searches and CIPC searches, including eNaTIS searches, were also conducted.

During the lifestyle audit, ENS/Mazars contacted the employees and their spouses, asking them to explain certain transactions that appeared on their bank statements. After the investigation, a report was prepared, which indicated whether the employee was a low, medium, or high risk. This information was communicated by Eskom to the affected employees.

Recurring deposits of funds into employees' bank accounts (over and above their salary) without any plausible explanation would be classified as high risk. It is such matters that have been referred to the SIU (34 people) due to the fact that the SIU has powers to subpoena the bank statements directly from the banks to ascertain the source of the recurring funds deposited into the employees' bank accounts.

Of the 34 case files, 7 have been closed with no issues, 6 employees resigned and 21 are still work in progress.

Eskom and A&F do not have these powers, hence the referral to the SIU. A lifestyle audit assessment for the total workforce is also being conducted, in conjunction with the SAPS Crime Intelligence Division, through the initiatives of the Presidential Joint Technical Task Team.

The next phase of the lifestyle audit is in progress focusing on **M, P, S, T, G** band employees and **fixed term contractors**.

The population of **44060** employees and contractors were compared to the following internal records (platforms) to determine possible risk profiles which can be considered as a starting point to initiate the lifestyle audit:

- **Procure-check Information:** To establish how many employees/contractors from the population of data we extracted were linked to any businesses or suppliers doing business with Eskom (registered/active vendors).
- **Private Work Information :** To determine which employees from the population data had not applied for permission to conduct private work in relation to their business interests.
- **Status of the Employee's last DOI Form:** To determine which employees/contractors answered "Yes" to questions in the DOI form relating to :

personal interests, shareholding, directorships, close family members or associates having interests involving Eskom suppliers or sub-contractors and also whether they perform private work.

The above analysis has resulted in a phase 1 list of employee exceptions of 3812. This list is being actioned via the Corporate Ethics Office with a due date of 1 September 2020.

8. Recovery of financial losses to Eskom

Recommendation 6.8

Financial losses to Eskom must be recovered from those responsible where wrongdoing has been established.

Response to the recommendation

In its efforts to recover financial losses against suppliers and former employees, Eskom is working closely with the South African Revenue Service (SARS), the Special Investigating Unit (SIU), the Directorate for Priority Crimes (Hawks), and the Head of Investigations at the Office of the National Director of Public Prosecutions.

Below, we provide a list of matters where Eskom is effecting recoveries of financial losses.

Tegeta Exploration and Resources (Pty) Ltd (Tegeta)

- Tegeta is currently under business rescue and Eskom has submitted a claim of R5bn against the business rescue practitioners for the pre and post business rescue penalties.
- Given the fact that Tegeta has other creditors, it is apparent the full R5bn may not be realised and Eskom could end up receiving only R1.24bn.

Deloitte Consulting (Pty) Ltd (Deloitte)

- Eskom launched court proceedings against Deloitte in October 2019 to recover the sum of R207m arising from task orders that were awarded irregularly without an open and competitive tender process.
- Pursuant to a settlement agreement concluded between Eskom and Deloitte on 20 March 2020, Deloitte paid Eskom the sum of R171m (incl VAT) on 12 May 2020.

Trillian Management Consulting (Pty) Ltd

- Eskom is recovering R600m that was unlawfully paid to Trillian on the pretext that Trillian was the BBBEE partner of McKinsey & Company. Eskom did not have any contractual relationship with Trillian and the latter was not registered as a supplier to Eskom.
- Liquidation proceedings against Trillian are under way and Eskom is joined by the South African Revenue Service in this matter.

Meagra Transport CC (Meagra)

- Meagra submitted fraudulent invoices with the assistance of a former Eskom employee to the tune of R35m to Eskom for coal transport between 2016 and 2018. Eskom recouped R3m of the R35m from Meagra and we are pursuing the balance of R32m.
- The owner of Meagra and a former Eskom employee are facing 53 counts of fraud before the Specialised Commercial Crimes Court in Johannesburg

PriceWaterhouseCoopers (“PWC”)

- Eskom issued a letter of demand against PWC in April 2020 demanding the repayment of the sum of R95m that was unlawfully paid to PWC. PWC was contracted by Eskom on a risk based contract to realise capex savings on its generation projects. But for the lockdown, Eskom would have issued court papers to recover the sum of R95m.

ABB

- Eskom is working with the Special Investigating Unit (SIU) to set aside the contract that was irregularly awarded to ABB

Wilge Housing Project

- Eskom suffered financial losses of approximately R75 839 738.50 due to the negligence of its former General Manager: Facilities. Eskom dismissed the employee after a disciplinary hearing process and instructed Attorneys to recover the sum of R75 839 738.50 from the former employee.

Africawide Consulting (Pty) Ltd (“Africawide”)

- Africawide was awarded a contract by Eskom without an open and competitive tender process. The original contract value was R9m and was modified without National Treasury approval to R17m. Eskom is recovering the R17m from Africawide.

Impulse International (Pty) Ltd (“Impulse”)

- Impulse was awarded contracts worth billions of Rands by Eskom. It was later discovered that a step-daughter of a former Eskom Executive was a shareholder in Impulse, which was a conflict of interest that was not disclosed by the former Executive.
- Eskom has instructed Attorneys to set aside the unlawful contracts and recover the full values of all the contracts that were awarded to Impulse. The SIU, SARS and the DPCI are also involved in this matter.

9. Consequence management

Recommendation 6.9

Consequence management must be followed through where wrongdoing has been proven; quarterly reports in this regard should be submitted to SCOPA.

Response to the recommendation

Eskom's Code of Ethics, "The Way", gives effect to the direction of ethics throughout the organisation. It is underpinned by Eskom's core values and is intended to promote an ethical culture and also to inform practices, policies, procedures, and behaviour across all areas of the organisation. No Eskom official or employee is allowed to do business with Eskom while being employed by Eskom or its subsidiaries. All transactions in Eskom are governed in terms of an approved delegation of authority (DOA) framework, which sets required limits and approval authorities per transaction, based on the nature of the transaction.

Any employee who is found to have contravened the stipulated policies, procedures, and delegation of authority will be subjected to disciplinary action processes.

Overview of disciplinary action following from investigations

- As at 31 March 2020, Eskom Industrial Relations Department (IR) had registered 141 disciplinary cases emanating from forensic investigations. Of these, 133 had been completed and eight are in progress.
- The completed disciplinaries resulted in 60 employees resigning during disciplinary processes and a further 18 being dismissed as a result of fraud and corruption.
- Prosecution related to two former Eskom executives who were arrested on corruption-related charges in December 2019 is still in progress.

Due to the slow progress being made on expediting employee discipline from completed investigations, the Audit and Risk Committee of Board has requested that the following matters be reviewed:

- Training of disciplinary chairpersons and case presenters
- Incentives for closing out on cases in predetermined time frames, and with appropriately harsh punishment
- Reconsidering the terms of 'Suspension with pay' to remove any incentives for those implicated to allow cases to drag on.

Eskom Forensic has also revised its previous stance and no longer terminates any investigations where implicated employees have resigned, but follows through on investigating such cases, where financially justified and recoveries / criminal prosecution appears likely.

A&F has also recommended that all suppliers recommended for disciplinary action be flagged on the Eskom procurement system so that buyers can be alerted to the fact and not award further contracts to such suppliers until the disciplinary processes have been completed.

10. Capacitating the internal audit unit of Eskom

Recommendation 6.10

The internal audit unit must be capacitated and fully functional at head office and other cost centres, so that early warning signs of corruption and maladministration are picked up.

Response to the recommendation

The process for capacitating A&F is in progress.

- At the start of COVID-19 Lockdown (26th March 2020) a decision was taken to stop recruitment (advertising new positions) in the interest of fairness to all potential candidates with or without remote access to advertised opportunities. Though the lockdown rules were reviewed and relaxed with effect from 01 May 2020, Eskom maintained most of the conditions set during level five (lockdown) resulting in most employees still working remotely from home.
- In the interest of business continuity, the decision to stop recruitment (new adverts) was reviewed as follows from 09 May 2020:
 - Internal recruitment for managerial vacancies (new adverts) can go ahead as majority of employees in this category have remote access to Eskom systems.

- The A & F positions (auditors and investigators) are non-managerial. However, the position for vacant Senior Manager Forensic Investigation is currently being shortlisted/set for interviews.

Currently, internal Audit and Forensic investigations are managing workload through internal secondments, a panel of service providers, and engagement with guest auditors from line divisions independent of the area being audited.

11. Institution of criminal charges against employees who left Eskom

Recommendation 6.11

All previous employees who have left the employ of Eskom and who have been implicated in malfeasance of any sort must, in collaboration with law enforcement agencies such as the NPA and the Hawks, have criminal charges instituted against them.

Response to the recommendation

The Directorate for Priority Crime Investigation (DPCI) is conducting criminal investigations regarding the following matters:

- Mr Brian Molefe's pension payout
- Mr Matshela Koko and Impulse International
- Mr Anoj Singh, Mr Matshela Koko, and Tegeta Exploration and Resources (Pty) Ltd Eskom coal contract, prepayment, and bank guarantee

The State Investigation Unit (**SIU**) is conducting investigations on Medupi and Kusile, focusing on procurement contracts, claims brought by contractors, variations, and dispute adjudication assessments, including coal contracts.

The **State Capture Commission of Inquiry** is conducting investigations into procurement matters at head office and power stations: McKinsey/Trillian, Huarong Energy Africa, Deloitte Consulting (Pty) Ltd, SAP and T-Systems IT contracts, Aveng Africa (Pty) Ltd, General Electric (GE), and Group Five.

Employees resigning while implicated in wrongdoing

The employer and employee relationship is a contractual relationship that affords either party the right to terminate the relationship on notice or with immediate effect in terms of the dictates of the Basic Conditions of Employment Act (BCEA) and the Labour Relations Act (LRA). The BCEA contains no provision that prevents an employee from resigning when faced with disciplinary action, and similarly, the BCEA contains no provision giving employers the power to refuse to accept a resignation.

Some employees resigned in the face of allegations of impropriety and others during investigations of allegations of impropriety, while yet others resigned before disciplinary proceedings commenced. Table 5 below lists employees who resigned between 1 April 2019 to 29 February 2020 while implicated in wrongdoing and Table 6 below tabulates cases that have been handed over to the law enforcement agencies.

Table 5: Employees who resigned while implicated in wrongdoing

UN	Name	Division	Reason for Investigation	Amounts	Resigned date
909985	Nonhlanhla Kraai	PRIMARY ENERGY	Impropriety	Do not have the actual amounts	2019/07/31
939412	Masedi Skosana	COMMERCIAL	Impropriety	Do not have the actual amounts	2019/04/06
998381	Ntshabo Waldina Malebana	COMMERCIAL	Impropriety	Do not have the actual amounts	2019/05/01
1047743	Vuyo Mcethe	COMMERCIAL	Impropriety	Do not have the actual amounts	2020/01/01
1082333	J KOEBERG	TECHNOLOGY	Impropriety	Do not have the actual amounts	2019/05/06
1112470	Thembeke Ndaba	ASSURANCE & FORENSICS	Impropriety	Do not have the actual amounts	2019/10/28
1216945	Buyiswa Bee Spayile	HUMAN RESOURCES	Impropriety	Do not have the actual amounts	2019/05/01
1278929	TSC BUTHELEZI	HUMAN RESOURCES	Impropriety	Do not have the actual amounts	2020/01/21
3858192	Gert Opperman	PRIMARY ENERGY	Impropriety	Do not have the actual amounts	2019/10/15
3960248	S NCEDANI	TELECOMS	Impropriety	Do not have the actual amounts	2019/12/31
3970023	Judy Bothma	SECURITY	Impropriety	Do not have the actual amounts	2019/05/01
3975127	PRINCE Khumalo	GENERATION	Impropriety	Do not have the actual amounts	2019/10/16
4113212	Obakeng Phakosi Mokwena	DISTRIBUTION	Impropriety	Do not have the actual amounts	2019/09/23
4198138	Natasha Kotze	PRIMARY ENERGY	Impropriety	Do not have the actual amounts	2019/12/01
4230049	M BIDI	TELECOMS	Impropriety	Do not have the actual amounts	2020/01/28
4271682	Tumelo Movundlela	COMMERCIAL	Impropriety	Do not have the actual amounts	2019/10/01
4277635	MZIMKULU STANLEY FATYI	PRIMARY ENERGY	Impropriety	Do not have the actual amounts	2019/07/31
4461461	Bright Mukhavhuli	GENERATION	Impropriety	Do not have the actual amounts	2019/04/23
4562302	Amanda Poncana	COMMERCIAL	Impropriety	Do not have the actual amounts	2019/09/01

Table 6: Cases handed over and to be reported to law enforcement agencies

Case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Criminal case against individual/supplier	Amount involved * The value is derived from the value deemed to be at risk.	Comments
23/05/2017	266/11/2019	Case registered. Investigation ongoing.	Case registered.	Sandton	Etheane Ryno Petersen, Zweni Projects CC, Mercury Electrical, Leroy's Construction	R39 478 485,07	
69/07/2017	92/4/2018	Provisionally withdrawn from the court roll.	Completed.	Lephalale	Fabor Engineered	R300 390,00	
33/10/2017	138/4/2018	Warrant Officer TA Mncube is yet to revert to us with feedback regarding the investigation.	Case registered.	Dannhauser	Dookies Electrical CC	R4 394 672,00	
40/10/2017	102/11/2019	Case registered. Investigation ongoing.	Case registered.	Sandton	Anoj Singh, Prish Govender, Poobie Govender	R95 000 000,00	
92/11/2017	00/00/000	Consideration should also be given to reporting the conduct of Rockent to the SAPS for further investigation, as it is a potential contravention of PRECCA.	Case to be registered.	TBC	Rockent	R774 600,00	
20/12/2017	233/11/2019	Case registered. Investigation ongoing.	Case registered.	Sandton	Mamoraka Linah Tjale	R46 800,00	
20/03/2018	456/5/2018	Earlier, a criminal case with case number 456/5/2018 was opened by Assurance and Forensic (Molefi Nkhabu) at Sandton Police Station in relation to the hardship agreement and inflation of coal quantities.	Case registered.	Sandton	Renae de Jager, Gert Opperman, Maserati Lesolang	R5 196 991 857,35	

Case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Criminal case against individual/supplier	Amount involved * The value is derived from the value deemed to be at risk.	Comments
17/02/2018	03/04/2019	An inquiry has been registered with the Organised Crime Unit of the SAPS for the purpose of obtaining financial and banking records in terms of section 205 of the Criminal Procedure Act, which will enable the SAPS and Eskom to determine the alternative source of income for both Mr Ncube and Mr Nelufhangani.	Case registered.	East Rand Organised Crime	Sibusiso Ncube		SAPS to define amount involved.
25/02/2018	103/11/2019	That a criminal case be registered for the investigation into this contract and the service providers, with a view to determining whether: <ul style="list-style-type: none"> • services were actually provided; • these were value for money; • these were corruptive or collusive practices; and/or • these included fraud. 	Case registered.	Sandton	Lebelwane Justice Ramanyoga	R260 000 000,00	
25/03/2018	183/01/2018	Phumlani Dube was convicted of fraud and sentenced to two years' imprisonment, which was wholly suspended for five years.	Completed.	Volkstrust	Phumlani Dube	R4 272,40	
25/03/2018	183/01/2018	Lucky Bhembe was convicted of fraud and sentenced to two years' imprisonment, which was wholly suspended for five years.	Completed.	Volkstrust	Lucky Bhembe	R4 272,40	

Case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Criminal case against individual/supplier	Amount involved * The value is derived from the value deemed to be at risk.	Comments
09/04/2017	00/00/0000	Allegation 3 – Terminating the services of African Dawn, as per clause Z4.1 of the NEC3 Professional Services Contract, in that African Dawn and/or Mashigo and/or King offered cash and gift vouchers to Reyneke and Frey, which could be construed as illegal or corrupt practice. Criminal action against African Dawn and/or Mashigo and/or King. Allegation 4 – Disciplinary action and criminal action against Pulane Sikhudo for misrepresenting the contractual arrangements that existed between Eskom and African Dawn whereby African Dawn was entitled to handle claims on behalf of Eskom which occurred after 31 March 2017. This misrepresentation lead Eskom to pay African Dawn R3 467 750.04 via Guardrisk.	Evidence under review.	TBC	African Dawn, Pulane Sikhudo	R3 467 750,04	
27/10/2017	114/11/2019	Case registered. Investigation ongoing.	Case registered.	Sandton	Supplier: Get There Security Employees: Godfrey Rambuda, Lincoln Mofokeng, Edward Sithole	R731 064,30	

Case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Criminal case against individual/supplier	Amount involved * The value is derived from the value deemed to be at risk.	Comments
15/01/2018	01/04/2018	Case registered. Investigation ongoing.	Case registered.	Melkbosstrand	Arnot Daniels, Puso Moloji	R526 119,41	
19/01/2018	00/00/0000	Eskom should consider registering a case of corruption with the South African Police Service for further investigation.	Case to be registered.	TBC	Supplier: Vanedi Employees: Ndumiso Mncube, Jabulani Clinton Mkhathswa	R730 449,28	
20/05/2017	507/09/2017	Case registered. Investigation ongoing.	Case registered.	Sandton	Charles Kalima, Prish Govender, Edwin Mabelane	R134 000 000,00	
19/04/2017	59/7/2017	Case registered. Investigation ongoing.	Case registered.	Lephalale	Selena Batlhaodi	R3 251,00	
2018-12221	115/11/2019	We submit that this report should be directed to the Eskom Legal Department for further action and investigation, including consideration of instituting criminal and/or civil proceedings, specifically against former Eskom executives and the service providers cited in this report. G9 does not suggest guilt of any party or stakeholder, but believes that there is prima facie information and/or evidence for this matter to be ventilated further, which includes a full and complete investigation.	Case registered.	Sandton	Magma, Buzz Tracers, Foresight Advisory Services, Open Waters	R200 000 000,00	

Case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Criminal case against individual/supplier	Amount involved * The value is derived from the value deemed to be at risk.	Comments
2018-12290	00/00/00	Institute criminal proceedings against Ms Ledwaba, Ms Mothata, and Mr Mangena of RA Motors for the alleged fraud pertaining to the issuing and subsequent payment by Eskom of the invoices submitted to SBFM.	Case to be registered.	TBC	Supplier: RA Motors	R128 801,13	
2018-12424	567/11/2019	The case was handed over to the SIU (Eskom 11/2018/LN). The SIU issued a report and will not pursue a criminal case. A criminal case has been registered with Brooklyn SAPS. The matter has been referred to the Commercial Crimes Unit (Lt Col. OM Cele, DPCI Serious Commercial Crime Unit, 228 Visagie Street, House 2, Peterson Bothongo Building, Office 2F10, Pretoria, cell 082 778 9151, tel. 012 401 3369).	Case registered.	Brooklyn	Employee: Lucky Ngobeni Suppliers: Oxior, Nugenex, MTK, Iqhawe	R80 876 283,80	
2018-12443	00/00/2019	Case registered. Investigation ongoing.	Case to be registered.	Middelburg	Supplier: Huntrex 116 (Pty) Ltd Employee: Themba Phungwayo	R25 478 577,53	2018-12443

Case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Criminal case against individual/supplier	Amount involved * The value is derived from the value deemed to be at risk.	Comments
2018-12451	50/11/2019	Registered a criminal case with the SAPS for fraudulent transaction 52326, which was processed on 3 October 2018 by Mr Mohlahlo; the transaction resulted in a loss of R403 994,00 to Eskom.	Case registered.	Hendrina Police Station	Patrick Mohlahlo	R2 216 713,00	
2018-12267	13/04/2019	Continuous engagement with the SAPS Organised Crime Unit to assist the SAPS Organised Crime Unit to conduct a financial analysis of the bank records of URS and prepare further section 205 subpoenas to identify the source and beneficiaries of the funds flowing through the URS bank accounts. An A1 (complainant affidavit) from an appropriate Eskom representative has been submitted to formally report the suspected corrupt activity and introduce full particulars of the suspects. A supplementary affidavit will be required once all suspects have been verified through the financial analysis. The A1 will also suffice in terms of and for Eskom's duties in terms of section 34 of the Prevention and Combating of Corrupt Activities Act.	Case registered.	Germiston Organised Crime	Criminal case registered for section 205 subpoena and further financial analysis by Organised Crime Unit.	R19 700 000,00	

Case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Criminal case against individual/supplier	Amount involved * The value is derived from the value deemed to be at risk.	Comments
2018-12276	152/11/2019	Case registered. Investigation ongoing.	Case registered.	Cleveland	Supplier: Mukhuli and CM Developments Supplier: Sishi Business Enterprises Employees: Raylene Hattingh, Zama Nxasana	R160 000,00	
2018-12386	571/11/2019	A criminal case was registered with Brooklyn SAPS. The matter was referred to the Commercial Crimes Unit (Lt Col. OM Cele, DPCI-C25 Serious Commercial Crime Unit, 228 Visagie Street, House 2, Peterson Bothongo Building, Office 2F10, Pretoria, cell 082 778 9151, tel. 012 401 3369). Forensic put the laying of charges at the SAPS on hold pending the outcome of the investigation by the SIU (Eskom 11/2018/OM). The SIU stopped the investigation once the employee had resigned.	Case registered.	Brooklyn	Employee: Obakeng Mokwena Supplier: Bekisisa	R718 694,45	
2018-12522	495/7/2019	Case registered. Investigation ongoing.	Case registered.	Witbank	Supplier: Uys Cages Manufacturing	R15 592 500,00	

Case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Criminal case against individual/supplier	Amount involved * The value is derived from the value deemed to be at risk.	Comments
2018-12568	464/11/2018	A criminal case of fraud and corruption was opened at the Sandton Police Station on 13 November 2018 against Meagra Transport and Mr Mosia Barnard (C36Moraka). Lt Col. PC Kubeka is the investigating officer (011 870 5300).	Case registered.	Sandton	Supplier: Meagra Transport CC Employees: Barnard Moraka	R31 074 717,33	
2018-12622	452/05/2018	Case registered. Investigation ongoing.	Case registered.	Sandton	Edwin Mabelane, Anoj Sing		Legal Department to define amount involved, as Forensic does not have access to these records.
2018-12623	453/05/2018	Case registered. Investigation ongoing.	Case registered.	Sandton	Anoj Sing		Legal Department to define amount involved, as Forensic does not have access to these records.
2018-12624	454/05/2018	Case registered. Investigation ongoing.	Case registered.	Sandton	Matshela Koko, Edwin Mabelane, James Cummings, Dhiraj Bhimma, and Mr Choudary, a director.		Legal Department to define amount involved, as Forensic does not have access to these records.

Case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Criminal case against individual/ supplier	Amount involved * The value is derived from the value deemed to be at risk.	Comments
2018-12625	455/05/2018	Case registered. Investigation ongoing.	Case registered.	Sandton	Charles Kalima, Edwin Mabelane, Matshela Koko		Legal Department to define amount involved, as Forensic does not have access to these records.
2018-12626	456/05/2018	Case registered. Investigation ongoing.	Case registered.	Sandton	Ayanda Nteta, Edwin Mabelane, Maserati Lesolang, Gert Opperman		Legal Department to define amount involved, as Forensic does not have access to these records.
2019-12661	00/00/0000	Case registered. Investigation ongoing.	Case to be registered.	TBC	Suppliers: Bkue Kwanda, Dr Zone and Dine, Le Press Employees: Nontobeko Mhlongo	R800 000,00	
2019-12764	94/5/2019	Case registered. Investigation ongoing.	Case registered.	Mount Frere	Employees: Ayanda Khwela, Lucky Mbambo	R4 400 000,00	

Case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Criminal case against individual/supplier	Amount involved * The value is derived from the value deemed to be at risk.	Comments
2019-12821	520/11/2019	Case registered. Investigation ongoing.	Case registered.	Witbank	Supplier: Phoenix Motion Enterprise Employee: Nozipho Ntuli	R4 119 830,00	
2019-12891	11/11/1111	The Matla matter was an inquiry; they said they would do some work on it and would transfer it to the Hawks and allocate a case number when it went to the Hawks. On several occasions, I tried to follow up, but no concrete feedback was received. To be registered. Forensic to register a criminal case against Seriti Sa Basotho and Mr Maisele for a possible relationship of corruption and to refer the matter to the Hawks for further investigation.	Case to be registered.	With Hawks.	Supplier: Seriti Sa Basotho Employee: Frans Maisele	R2 861 093,57	
2019-12897	108/11/2019	That Mr Prish Govender and Mr Dave Gorrie be charged with violation of, inter alia, section 45(c) of the PFMA and, furthermore, that the complicit conduct of Mr Charles Kalima, Mr Edwin Mabelane, Mr Abram Masango and Mr Shaun Maritz be probed.	Case registered.	Sandton	Supplier: AFRICA WIDE Employees: Prish Govender, Dave Gorrie	R17 000 000,00	

Case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Criminal case against individual/supplier	Amount involved * The value is derived from the value deemed to be at risk.	Comments
2019-12938	17/11/2019	Case registered. Investigation ongoing.	Case registered.	Ogies	Suppliers: CTN Catering Cleaning, Ulunga Trading, Ithemba Lakhe Trading Employee: Siphon Ntuli	R3 320 200,00	
2018-12400	103/11/2019	It is recommended that this case be disposed of as unproven and unsubstantiated. However, it is suggested that this case be coupled with the case of C27 Mr Ramonyoga for criminal investigation. The climate and conduct in Security raises significant suspicion to warrant a criminal investigation.	Case registered.	Sandton	Justice Ramanyoga	R52 764 793,80	
2018-12423	96/02/2020	Case registered. Investigation ongoing.	Case registered.	Sandton	Touch Africa Telecoms (Pty) Ltd	R49 752 013,88	
2019-13023	03/04/2019	Case registered. Investigation ongoing.	Case registered.	Germiston Organised Crime Unit	Supplier: Black Rock Employees: Sibusiso Ncube, Nomonde Diniso and Robert Mateba	R8 800 000,00	

Case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Criminal case against individual/supplier	Amount involved * The value is derived from the value deemed to be at risk.	Comments
2020-13143	40/02/2020	Case registered. Investigation ongoing.	Case registered.	Sandton	All Semfra Construction Pty Ltd Directors, Lebudi Kgatelopele Trading Pty Ltd Directors, Mr Tebogo Lebudi and Mr Thabo Medupe	R51 152 582,97	
05/01/2018	797/01/2019	The Prosecuting Authority declined to prosecute the matter, in that there was no prospect of a successful prosecution	Completed	Witbank	i. Maison Investments; ii. Sihambise Transport; and iii. TIW Transport and Projects	R355 114 289.20	
Total						R6 307 370 784,71	

During this quarter this list will be followed up and confirmed.

12. Implementation of controls on payments to suppliers

Recommendation 6.12

Before payments to suppliers are made, proper controls must be implemented through documented checks and balances. This is to ensure that payments are made for value received and are not advance payments for which non-commensurate value or, worse, no value at all is received.

Response to the recommendation

The payment process in Eskom is controlled in SAP and requires verification by more than one person. All historical contracts have been reviewed, and all advance payments for contracts previously placed have been recovered or are being recovered.

- The next two figures depict the process flow for payments as implemented. This process is used to confirm validity of payments and to control payments.
- The advance payment guarantee for the air-cooled condensers contractor at Kusile has been “called on” and was encashed on 25 April 2020. This action has been taken in order to recover the advance payment made to the contractor; the advance payment should have been recovered during the execution of the contract.

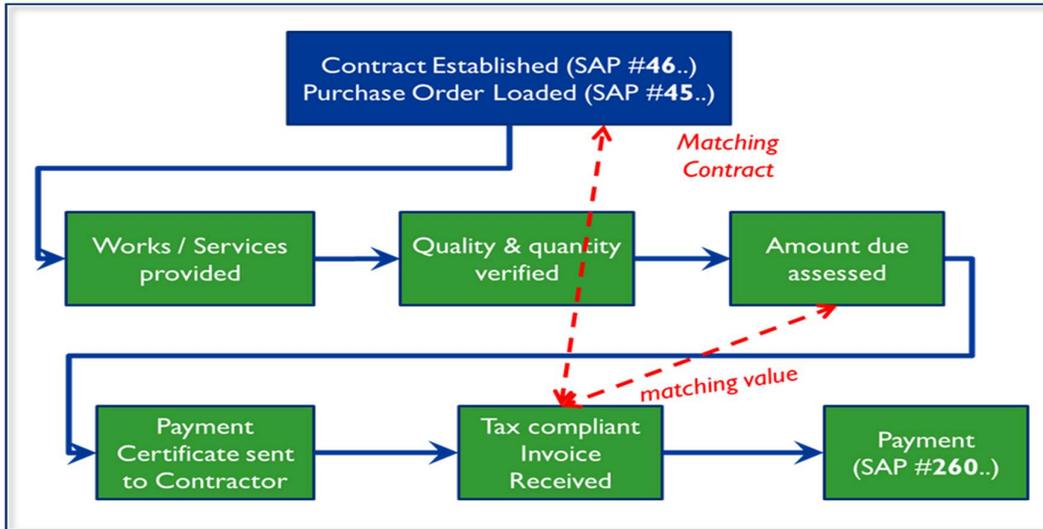


Figure 1: Contract and management process flow using SAP

Figure 2 below illustrates the standard FIDIC process flow for payments to be certified and effected.

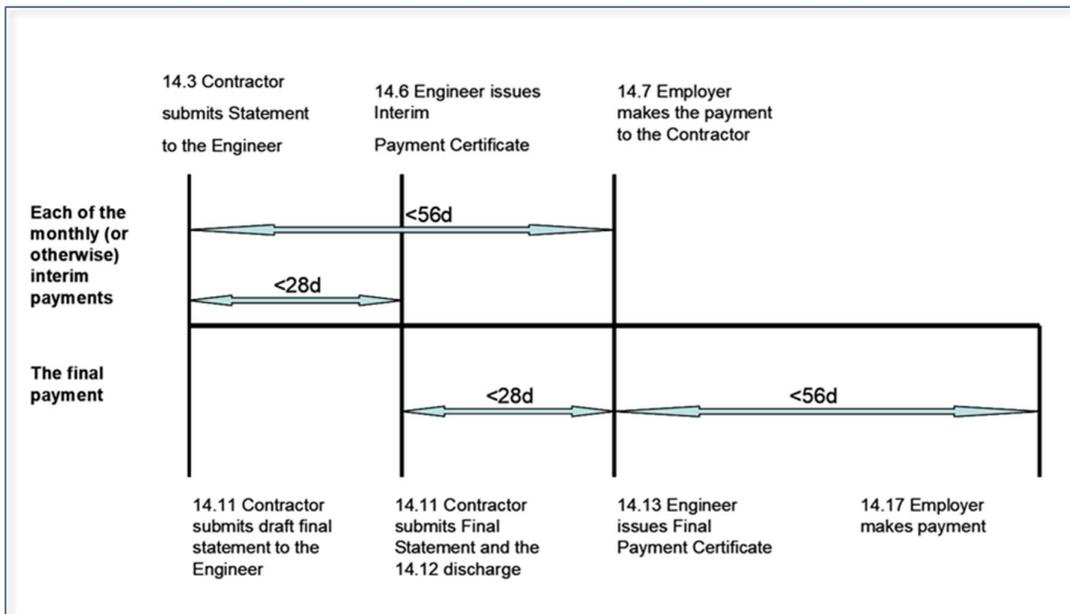


Figure 2: Standard FIDIC contractual payment process flow

13. Managing the extension of existing contracts that are due to expire

Recommendation 6.13

Existing contracts that are due to expire must not be extended through variation orders without proper due diligence being done, which due diligence records must be kept on file for audit purposes.

Response to the recommendation

As part of monitoring expiry of the existing contracts, procurement plans are developed and agreed on by the business before being submitted to the National Treasury for approval on an annual basis. Subsequently, these procurement plans are constantly monitored quarterly.

Divisions are advised of all contracts that are about to expire in the next six months in order for them to update their respective plans. The periodic notification to the business of expiring contracts is to ensure that the process of placing a new contract commences well in advance before the expiry of preceding contracts. Furthermore, this is to eliminate any poor planning that might lead to unnecessary modification or expansion of contracts. A Procurement Plan Steering Committee has been established to interrogate the plans and emphasise the importance of ensuring that Divisional spend is within the confines of contract coverage.

In instances where an expansion is inevitable, due diligence is conducted to ensure that there is no deviation from the original scope of work and to eliminate any elements of possible monopoly, which will delay the commencement of a new contract. All necessary internal approval processes are followed prior to submission to the National Treasury for approval if the expansion thresholds are exceeded as per the revised Instruction Note 5 of 2020/2021 – 25% for services contracts and 30% for construction contracts.

Additionally, status reports on procurement plans are submitted to the National Treasury on a quarterly basis as part of ensuring that there is adherence to the approved plans and that unnecessary deviations are eliminated. In line with the principle of fairness, transparency, and cost-effectiveness, these plans are published on the National Treasury database to create visibility in order for all potential suppliers to be able to plan accordingly.

14. Correction of defects identified at Medupi and Kusile Power Stations

Recommendation 6.14

Defects identified at Medupi and Kusile must be corrected expeditiously to avoid further project delays and cost escalations.

Response to the recommendation

All defects are being dealt with in accordance with the contractual conditions. Specific to the Mitsubishi Hitachi Power Systems Africa (MHPSA) boiler defects, the FIDIC clause 3.5 process contract-level discussions (CLD) process is being followed under the guidance of Eskom and MHPSA senior/executive management. The process allows the senior executives of both Eskom and MHPSA to track and monitor the resolution of the defects on a monthly basis. The process also allows for effective and efficient decision-making with regard to the resolution of the boiler defects.

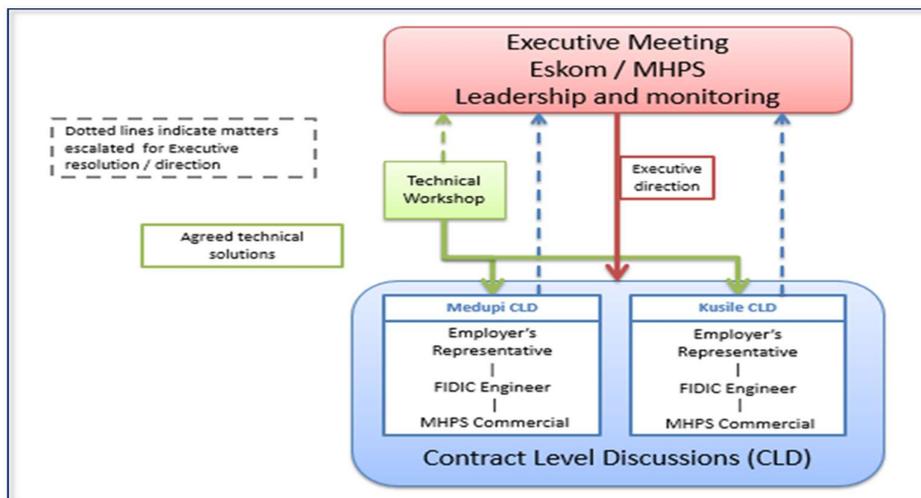


Figure 3: Process for tracking boiler defect resolution

Latest status of Medupi and Kusile major plant defects

- The availability and reliability of the synchronised units at Medupi, Kusile, and Ingula are steadily improving. This is a result of the current interventions that are under way in correcting major plant defects and improving operational inefficiencies. Currently, the six units at Medupi and three units at Kusile contribute energy to the national grid. All six units at Medupi (rated at 794 MW each) and all three units at Kusile (rated at 800 MW each) have achieved the maximum output.
- Since December 2018, a new plant defect correction plan, endorsed at Eskom Exco level, has been executed and closely monitored to effectively resolve all the major new plant defects and improve the inefficiencies in the operation and maintenance of the new plants. The liable contractors are being held to account, within the provisions of the contract, to correct the new plant design deficiencies at the contractors' cost, within the defect correction period as per the contract.

The table below provides the latest status of Medupi and Kusile major plant defects.

Table 7: Medupi and Kusile major plant defects

Major new plant defect	Site	Progress
Pulse-jet fabric filter plant (PJFF)	Medupi and Kusile	<ul style="list-style-type: none"> • Eskom has started the process of redesigning the pulsing system and the inlet flow of the flue gas. • Technical collaboration with the contractor is continuing in parallel. • Contractor design has been completed. Implementation on Kusile Unit 2 has been completed and has been started on Medupi Unit 3 during the general inspection outage from 25 January 2020 to 9 April 2020. Implementation for Medupi Units 1 and 4 are planned for May and July 2020, respectively.

Major new plant defect	Site	Progress
Milling plant	Medupi and Kusile	<ul style="list-style-type: none"> • Eskom and the mill original equipment manufacturer (OEM) are collaborating to redesign, manufacture, and install the mill equipment. • Solutions are being implemented on Medupi Unit 3 (25 January 2020 to 9 April 2020) in various combinations and tested before a decision is taken to do further in-house designs. • Current mitigations include removal of foreign material from coal supply, increased inspections and maintenance spares holding. • Rolled-out technical solutions include new dam rings and throats, feeder drive pulleys, labyrinth seals, scrapers, hydraulic oil filters, slide gate dampers, and installation of differential pressure measurement.
Dust handling plant, ash silos, and conditioning plant	Medupi and Kusile	<ul style="list-style-type: none"> • Contracts have been placed for repairs, maintenance, and the completion of the construction work, as a result of which plant conditioning has significantly improved. • The scope has been developed for further improvement of components.
Furnace exit gas temperatures (FEGTs)/reheater spray flow	Medupi and Kusile	<ul style="list-style-type: none"> • The reheater spray flows exceed the boiler contractual requirements due to poor evaporator heat absorbance, which results in high furnace exit gas temperatures, which will negatively affect the future Medupi flue gas desulphurisation (FGD) project's design in terms of water usage and other factors. • A reheater spray flow solution was being implemented on Medupi Unit 3 during the January 2020 outage, after which a performance verification test will be done. • Computational assessments indicate that the lifetime of the convection envelope pressure-part components will still meet the 200 000-hour design life.
Gas air heater (GAH)	Medupi and Kusile	<ul style="list-style-type: none"> • The contractor and Eskom's third party have scheduled a test programme on Medupi Unit 3, starting during the general inspection (GI) outage, to determine the root cause. • The contractor has done computational fluid dynamics (CFD) modelling of inlet flows into the GAH, which needs to be verified through tests. No input has been received from the OEM to date. • Eskom is to complete an independent third-party review of the GAH performance. The solutions and recommendations from the external party will be used to make a business decision on the way forward.

Major new plant defect	Site	Progress
Control and instrumentation (C&I)/distributed control system (DCS)	Medupi	<ul style="list-style-type: none"> The engineering recommendation is to replace the DCS for Units 6, 5, and 4 and balance of plant (BoP) to match the DCS for Units 3, 2, and 1. Short-term mitigations include maintaining environmental conditions of C&I equipment rooms within specification, upgrading DCS firmware, and increasing maintenance and monitoring. Concept release approval (CRA) funding has been approved, and stakeholder requirements definition has been completed by Engineering. Design release approval (DRA) is planned by the second quarter of the 2021 financial year.
Western fill water treatment plant laboratory (WTPL) and demineralised water storage tanks (DWSTs)	Kusile	<ul style="list-style-type: none"> The monitoring of the demineralised water storage tanks has shown no new settlement. A new proposal for the remedial work on the demineralised water storage tanks will be presented at the Technical Governance Committee meeting in March 2020. After that, the technical specification will be issued to the market.

15. Holding contractors responsible for costs related to defects

Recommendation 6.15

The issue of responsibility of contractors for defects must be followed up, and the contractors must be held responsible for costs, where necessary.

Response to the recommendation

All contracts at Kusile and Medupi have a clause according to which Eskom is allowed to address the defects. This is being implemented as per the contract, and the contractors have been instructed to rectify defects accordingly. It must be noted that, specifically regarding the boiler defects, strict contractual processes have been enforced.

Eskom senior management and Mitsubishi Hitachi Power Systems Africa (MHPSA) have embarked on a process of engagement and have frequent and regular meetings to ensure that the defects are being addressed and/or following the contractual process to be resolved. It must also be noted that the correction of defects is taking place in parallel while the contractual process is unfolding. Boiler defect rectification has been implemented on Medupi Unit 3, plant optimisation is currently in progress.

16. Management of coal quality

Recommendation 6.16

Coal quality must be prioritised and checked regularly.

Response to the recommendation

All coal contracts have a coal quality management procedure (CQMP) annexure that governs the coal quality determination process, covering coal quality specification, coal sampling, coal sampler calibration, coal sample handling and transportation, coal analysis, coal results management, coal quality deviations management, and remedies.

Coal quality analysis is conducted by Eskom-owned laboratories, third-party-constructed laboratories, and mine laboratories. Additionally, Eskom analyses and verifies coal quality at the power station after delivery, known as verification coal sampling and analysis.

For power stations that receive coal from a tied mine via a conveyor system, coal deliveries are governed by the coal supply agreement (CSA) between Eskom and the supplier. The conveyor system has an auto-mechanical sampling plant, which takes coal samples at regular intervals. A cumulative sample is collected over a 24-hour consignment period, and the average for each coal quality parameter is calculated over a monthly period. The sample is collected by representatives of both Eskom and the mine for sample preparation at the relevant laboratories. Each party conducts its

own analysis, and the results are compared to within the contract-specified repeatability limits.

Coal delivered through road and rail is on precertified basis at the source mine before dispatch to the power stations, as per the coal qualities management procedure (CQMP).

The precertification process involves the production of coal stockpiles at the mine in the presence of Eskom-contracted monitors. Coal samples are taken at regular intervals by an auto-mechanical sampler while the stockpile is being produced. These coal samples are then transported by Eskom-contracted service providers to Eskom-contracted coal laboratories for analysis. The results of a stockpile being produced are communicated simultaneously through email to both Eskom geologists and mine representatives within 24 hours. In the event that the power station coal qualities specification is met, the stockpile is loaded and trucked to the power station. If the specification is not met, the stockpile is either reprocessed or the mine lodges a dispute for the reference sample to be analysed at another laboratory.

Every consignment of coal is analysed as per the specific CQMP for all modes of delivery as shown in Figure 4 below.

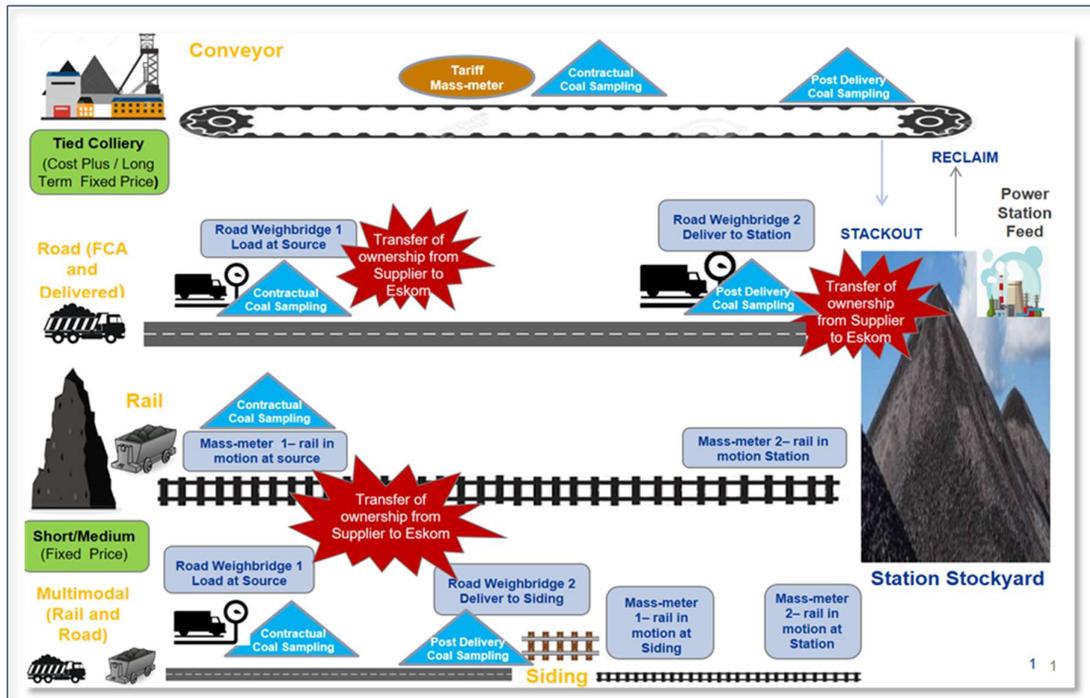


Figure 4: Schematic diagram depicting coal quality determination

The precertification process explained and referred to above is graphically summarised in Figure 5 below.

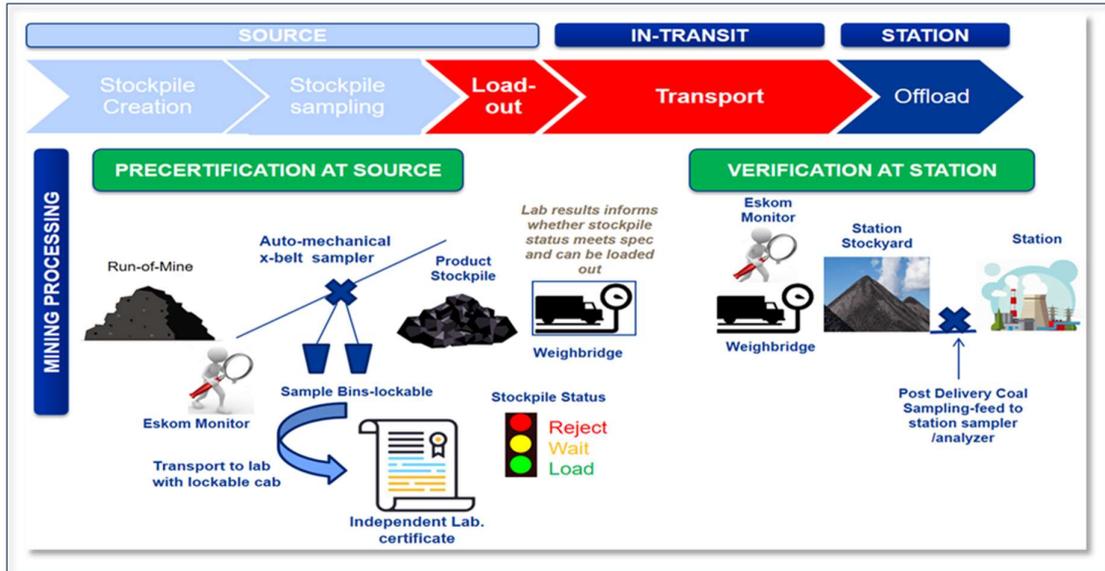


Figure 5: Schematic representation of the coal precertification process

Quality audits

The coal quality management procedure is a systematic process management system, which is subject to an audit process as shown Figure 6 below. The purpose of the audits is to ensure the integrity of the coal sampling and laboratory analysis to make sure of the representivity and accuracy of the results.

The following are a number of the controls in place to secure the integrity of coal supplied to the power stations before the audit process kicks in:

- **Coal laboratories audits:** laboratories contracted by Eskom to analyse Eskom coal samples are ISO 17025:2017 accredited. Primary Energy Department (PED) conducts quarterly audits at these laboratories as well as regular inspections in-between audits. Less-than-expected performance levels led to the suspension of services from some laboratories in the past 12 months until the identified levels had been improved.

- **Bias tests:** the auto-mechanical samplers at mines supplying coal to stations are tested annually (and when a major change has occurred on the sampler) to determine whether they are operating as expected. “Bias is a systematic error, which leads to the average value of a series of results being persistently higher or persistently lower than those which are obtained using a reference sampling method.” In the event that the level of bias is outside the acceptable limits, investigations are conducted to find the cause of bias, and the test is repeated until bias is within acceptable limits. Operations serviced by the failed auto-mechanical sampler are suspended until the bias detected is within accepted limits.
- **External audit:** the Assurance and Forensic (A&F) section of Eskom commissioned an external auditing firm to audit the precertification process. Administrative gaps were identified and have since been addressed.
- The **Monthly Technical Liaison Meetings** are held for all mines supplying coal to stations and for all service providers involved in the precertification process for coal supply.

Figure 6 below summarises the coal quality assurance audit process undertaken on all laboratories playing a role in the coal quality determination. This audit process is, however, not limited to contractual laboratories, but includes other mine laboratories that are used for process control.

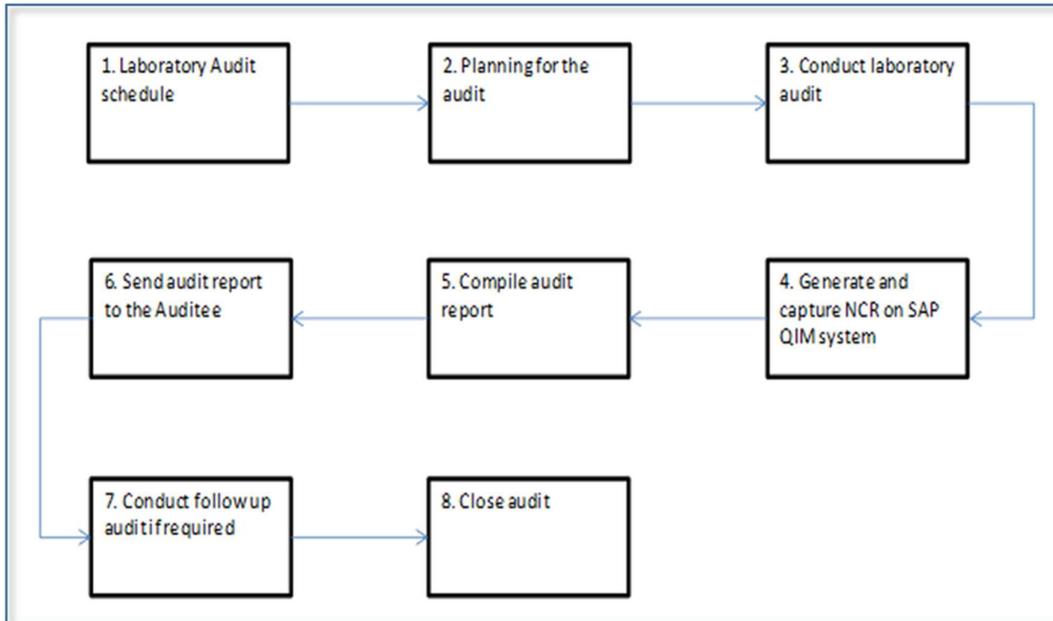


Figure 6: Coal quality assurance audit process

Table 8 below is a 12-month detailed coal quality assurance audit schedule executed as per the coal quality management procedure annexure of the coal contract.

Table 8: Eskom internal audit schedule

ESKOM INTERNAL AUDIT SCHEDULE YEAR 2019-2020													
ESKOM POWER STATION & CONTRACTUAL LABORATORIES AUDITS													
DAY OF AUDIT	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20
1			UAS Technical Coal Lab							SGS Technical coal lab			
2													
3										UAS Technical coal lab			
4						Siza Kinross Follow up						Matla Power Station follow up	
5											Siza Kinross Technical Coal Lab		
6						SGS Technical Coal Lab		UAS Technical Coal Lab			Duvha Power Station Coal Lab		
7		Grootegeeluk/Medupi Follow up	Siza Kinross Technical coal lab			UAS Technical Coal Lab					Noko Technical Coal Lab		
8			Matla Mine Coal Lab	Grootvlei Power Station Coal Lab				Siza Technical Coal Lab					
9									South32/SGS Coal Lab				
10							OVC/VAS Joint audit		SGS Technical Coal Lab				
11													Noko follow up
12		Matla Power Station Coal Lab							Matimba Power Station coal lab		Camden Power Station Coal Lab		
13													
14		South 32 Coal Lab											
15		SGS Technical Coal Lab					Duvha Power Station/S32 follow up						
16									Khuthala Mine Coal Lab	Kriel Power Station coal lab			
17	Seriti New Vaal Colliery Coal Lab Audit								Tutuka Power Station Coal Lab				
18							Grootegeeluk Coal Lab			SGS Follow up			Matla Power Station Coal Lab
19		South32(SGS Lab)						Noko Technical Coal Lab	New Denmark Colliery Coal Lab		UAS Technical Coal Lab		
20								Dorfontein/UAS joint	VAS Technical Coal Lab				
21		Noko/Dorsfonte in joint Audit									Grootegeeluk Mine Follow up _and Siza follow up		
22	Noko Technical Coal Lab		Noko/Komati verification assessment					Medupi Power Station Coal Lab		Msobo/VAS Joint			
23						Siza Kinross Technical Lab							
24	Matla Mine Coal Lab					Duvha Power Station follow up							
25										South32 /SGS Coal Lab			
26		Medupi Power Station Coal Lab		Kendal Power Station Coal lab assessment									
27								UAS Follow up					
28					Noko Technical Lab			Siza Technical coal lab		VAS follow up	UAS Follow up		
29	Arnot Power Station Coal Lab		NCC/UAS joint Audit							Noko Technical Coal Lab			
30													
31	South32 Coal Lab												VAS Technical coal lab
	LEGEND												
			CONTRACTUAL SERVICE PROVIDERS										
			ESKOM POWER STATION										
			COAL SUPPLIERS										

17. Use of retention bonds against contractors

Recommendation 6.17

Retention bonds must be used against contractors as a recourse for delays and substandard work that has been performed.

Response to the recommendation

The FIDIC standard form of contracts, under which Medupi and Kusile have concluded contracts, provides for retention money. The contract provides that retention money shall be retained and released in instalments based on the taking-over certificates. The proportions for release are clearly provided for in each contract. The first proportion of the retention money is released when the taking-over certificate is issued to the contractor. The remaining proportion of the retention money is released at the end of the defects notification periods. If the works/defects still have to be executed or remain incomplete, the retention money may be withheld and not released to the contractor.

Retention bonds to the value of R3,3 billion are in force for the boiler contracts at both Medupi and Kusile. Eskom will exercise its rights to step in using these bonds if MHPSA does not rectify the defects.

The retention money deducted from payment certificates or retained by a retention bond can only be used where the contractor is not correcting defects as notified by the employer. In most cases, the contractors have not indicated that they will not be fixing a defect. Within the contracts, as contractors fail to remedy defects, 15% of the monthly invoicing is being withheld.

18. Stability of project managers at Kusile Power Station

Recommendation 6.18

There must be stability of project managers at Kusile to avoid delays.

Response to the recommendation

A new project director (with vast related project experience, including 20 years of Eskom experience on related projects) was appointed for Kusile on 23 January 2020 due to the resignation of the previous project director in October 2019.

The overall project team has been stable with respect to key positions in the structure for the past 12 to 24 months, and multiple vacancies have been filled since the SCOPA visit to Kusile Power Station.

19. Construction of weighbridges and offloading facilities at Kusile Power Station

Recommendation 6.19

Weighbridges and offloading facilities must be constructed at Kusile to transport coal from the mine to the plant. Negotiations for the development of the adjacent New Largo coalfield must be fast-tracked and concluded without further delays. A monthly executive summary on progress in this regard must be submitted to SCOPA.

Response to recommendation

Coal offloading facility:

Construction of the coal offloading facility started in 2015 and is still being executed. The project was scheduled to be executed in five phases. Two phases have been completed, and the third phase is currently being executed and will be completed in June 2020. The coal hopper and west access road are the outstanding phases. The

Coal Hopper enquiry has been delayed mainly due to Legal review. The enquiry will now be issued to the market on the 29 June 2020, with contract award by October 2020 and construction completion by October 2022. The west access road will be executed in the same time frame. The delay in the coal hopper execution emanated from the National Treasury not supporting the approach adopted by the project to execute the civil and mechanical scope of work as a variation order.

Additional weighbridges:

Kusile Project took a decision to install four additional weighbridges in the strategic coal stockyard area to enable the station to process more than 80 coal trucks per hour to meet the burn rate of 2 280 tons/hour to supply six units. The scope is being executed by Eskom Rotek Industries (ERI) under an existing contract. Work has started, 2 x Weighbridges have been delivered to Site and installation will resume on the 17 June 2020. Completion has since been delayed due to COVID-19 and procurement delays internally to ERI, completion will now be Dec 2020 instead of August 2020 as planned.

Additional feed conveyor (AFC):

The AFC is an additional conveyor that the project is erecting to enable coal feed to the Section 1 and 3 coal stockyard machines, namely, Stacker 1 and Drum Reclaimers 1 and 3. Work was underway and was impacted by COVID-19. Construction Work is about 80% complete on this conveyor, Electrical Cabling and Outdoors Switchgear (Kiosk) installation then Commissioning is outstanding. AFC planned completion is by October 2020 instead of August 2020

Progress on New Largo coalfield project:

Eskom decided on the Kusile Power Station location mainly based on availability of a coal resource of sufficient volume and quality to supply 17 Mtpa for at least 50 years. A tied colliery coal supply of approximately 14 Mtpa was originally planned from New Largo, then owned by Anglo American Inyosi Coal (AAIC).

Date	Development
March 2007	The Eskom Board Tender Committee (BTC) approves a mandate to negotiate with Anglo for coal supply from New Largo Colliery for 14 Mtpa to 17 Mtpa for Kusile Power Station ("Kusile").
Oct. 2010	Due to mine development lagging Kusile construction, the parties enter into a capital sharing agreement for certain long-lead items on 13 October 2010.
2011-2012	New Largo Mine development feasibility studies are completed by the Anglo American team.
Date	Development
2012	<ol style="list-style-type: none"> 1. AAIC and Eskom (the parties) begin negotiations on the New Largo coal supply agreement (New Largo CSA) and the Phola conveyor agreement (the agreements). 2. Eskom receives section 54 PFMA approval for the capital risk sharing agreement with the following conditions: <ol style="list-style-type: none"> i. To ring-fence the New Largo Colliery project. ii. To increase the B-BBEE ownership of New Largo by community members in close proximity to the projects and the B-BBEE-owned companies, including junior B-BBEE mining companies. iii. To provide a detailed funding model that minimises Eskom risk and ensures project viability.
2014	After approximately two years of trying to align PFMA approval conditions, Eskom signs an MoU to invest 66,67% of initial capital, with AAIC contributing the balance of 33,33% of the required capital.
2015	<ol style="list-style-type: none"> 1. The Eskom CE advises of the intention to move away from cost-plus contracts and indicates inability to fund the required 66,67% investment in New Largo Colliery. 2. AAIC responds by indicating that Anglo intends to reduce cost-plus mine ownership and later officially informs Eskom that it will be diversifying out of the South African coal market and that, as a result, the New Largo project will be sold.
2016 and 2017	<ol style="list-style-type: none"> 1. Eskom develops a long-term Kusile coal procurement strategy and later issues an open enquiry to the market for the supply of coal to Kusile for the life of the power station, estimated at 50 years, with 17 Mtpa requirements. 2. AAIC responds to the Eskom open tender with the New Largo project.
2018	<ol style="list-style-type: none"> 1. Eskom finalises the tender evaluations and obtains Board approval to negotiate and conclude agreements with the shortlisted suppliers. 2. The Board mandate is to negotiate both the cost-plus and fixed price of the coal supply agreement (CSA) with AAIC or the new owners of the New Largo project for the possible supply of coal by conveyor belt, including an option of negotiations with the interested third party to build, own, operate, and maintain (BOOM) the conveyor. 3. AAIC concludes the sale of the New Largo project to New Largo Coal Pty Ltd (NLC). NLC is a majority black-owned and -controlled company whose key shareholders are Seriti (45%), the Industrial Development Corporation (22,5%), and Coalzar (22,5%). Seriti is the lead negotiator and the developer of the New Largo project.

	<p>4. Preliminary engagements between Eskom and Seriti take place, but Seriti requests time to finalise the sale of all the other major Anglo assets, including fulfilling all the conditions of the sale and the cession with Eskom and the funders.</p>
2019	<ol style="list-style-type: none"> 1. Negotiations with Seriti on the New Largo project gain traction. Seriti, the lead negotiator, requests that Eskom allows it to do the following: <ol style="list-style-type: none"> a. Be given time to review the feasibility study that was completed by AAIC in order to optimise and update it, where possible; at the time, it estimates that the review will be completed by October 2019. It has since experienced delays, and the new timeline for completion is the end of March 2020. b. Offer mini-pits to be negotiated and developed within the Kusile tender, as the pits are part of the New Largo reserve and part of the mining right. It is envisaged that the coal contract will be concluded by the end of 2019; with delays, this date has been revised to May 2020, with coal delivery six months from the signature date. Given current discussions on Seriti meeting the Kusile revised coal qualities, the date of May 2020 to sign a contract is at risk, with further delays. c. The Kusile Power Station coal quality envelope is revised to the upper corridor of the plant design performance guarantee thresholds for an estimated five-year interim period. The changes are to improve the Kusile boiler performance. d. The technical evaluation of the New Largo reserve indicates that it will be difficult for New Largo to meet the current increased qualities. The team will continue engagement to find a solution suitable for Kusile. 2. As per the 2018 Board mandate, Eskom has also requested Seriti to develop a business case to build, operate, and maintain the conveyor belt under the already existing New Largo Coal environmental approvals, obtained as part of the Phola conveyor environmental impact assessment (EIA) application. Seriti presents preliminary results, with some work still in progress.

Date	Development
2020	<ol style="list-style-type: none"> 1. The technical evaluation of the resource is continuing. Seriti will find it difficult to meet the Kusile revised coal qualities without changing the mining and coal processing plans. 2. The site visit/due diligence for the mini-pits project has been completed. 3. Negotiations for Pits D & H are at an advanced stage; the conclusion of the CSA is dependent on Eskom and Seriti resolving the offtake start date due to Kusile being fully contracted up to 2026, based on the current ramp up and production plan. Parties are still engaging to resolve the offtake start date due the New Largo cost of coal advantage, being in close proximity to the power station. 4. May 2020: <ol style="list-style-type: none"> a. Seriti is expected to present to Eskom the result of the feasibility study review and the proposed way forward on the main New Largo project, including confirmation of the coal volume New Largo will be able to supply to Kusile at the expected qualities. b. The parties are expected to finalise the conveyor business case study; construction of the conveyor is estimated to be 18 months after the Pits D & H agreement has been concluded. 5. June 2020: <ol style="list-style-type: none"> a. Negotiations of the New Largo main mine are to commence; negotiations are expected to take between 12 and 18 months.

New Largo coalfield project – how far are the negotiations because no further delays will be allowed?

Eskom is engaging with Seriti, the lead negotiator for New Largo engagements. When the negotiations for the long-term supply to Kusile commenced, Seriti requested time to review the feasibility study completed by Anglo American, to optimise and update. Seriti experienced some delays in the review and revised the completion date of the review to March 2020. Seriti has undertaken to revert to Eskom with a proposal on the mine development six weeks after the completion of the review. They experienced some delays, currently estimating to present the review outcomes to Eskom by end May 2020, but this has not been received as yet

In the interim, New Largo offered two mini-pits from the same New Largo coal reserve, namely, Pit H and Pit D, to supply approximately 30 Mt (3.0 Mt per annum) to Kusile. Seriti predict to commence mining of these mini-pits immediately after concluding negotiations with first coal supply is expected six months after signing the contract. Seriti has indicated that it is advancing the mini-pits development at risk, that is, prior to contract finalisation. The technical evaluation of the pits and the commercial

negotiations are at an advanced stage with coal quality issues resolved for Pits D & H.

Latest Negotiation progress update for New Largo Pits D & H

Negotiations	Status
Coal Supply Agreement (CSA)	<ul style="list-style-type: none"> • Final draft CSA done with all the key terms and conditions agreed • Draft to be sent to Corporate Legal for final review
Price	<ul style="list-style-type: none"> • Price has been negotiated and agreed.
Coal Qualities	<ul style="list-style-type: none"> • Coal Quality agreed as per the Kusile RFP Coal Quality parameters
Contract start date	<ul style="list-style-type: none"> • This coal is destined for Kusile and with an option to supply Kendal. • The parties deadlocked on the contract start date due to the two stations being fully contracted up to Financial Year 2026 and coal stockpiles exceeding their expected levels as prescribed by the Eskom coal stockholding policy. • Parties still engaging to resolve the offtake start date due the New Largo cost of coal advantage being in close proximity to the power station.

Will the project seriously deliver coal on time?

There were delays in the New Largo resource development due to (1) Anglo selling the project to New Largo Coal Pty Ltd and (2) the subsequent review of the feasibility study. Eskom also experienced delays in the Kusile development. It is planned for New Largo mine to deliver coal to Kusile, especially with the mini-pits envisaged to start in 2020, to supply approximately 3,0 Mt per annum for 10 years.

At what quality?

The Kusile coal quality envelope has been narrowed to the upper corridor of the plant design performance guarantee thresholds for an estimated five-year interim period. The changes are for boiler performance improvement and performance acceptance tests. The interim technical evaluation of the New Largo reserve indicates that it will be difficult for New Largo to meet the revised specification; however, the team is confident that a suitable solution for Kusile by all the parties will be found.

At what quantity?

Kusile's burn requirement at the design load factor of 90% is approximately 17 Mt per annum. It is historically known that the New Largo Colliery resource cannot satisfy the full Kusile coal quantity requirements. According to the mine plan, New Largo can supply approximately 12 Mt per annum (Mtpa) at steady state. There will always be the balance of the requirement, estimated at about 5 Mtpa, that will need to be sourced from other third-party suppliers.

What is the actual coal cost?

Seriti is still reviewing the bankable feasibility study and is yet to present the coal price to Eskom for negotiations. It is expected that, by virtue of close proximity to the power station and the conveyor mode of delivery, the coal should be the cheapest delivered to Kusile.

Pits D & H delivered coal cost are amongst the lowest for Kusile due to the proximity advantage of the mine.

Coal supply at Kusile Power Station

Short term

Additional feed conveyor at the strategic coal stockyard (CSY) revised completion is October 2020, to increase the capacity to feed the units with coal. Two additional weighbridges have been delivered completion revised to end December 2020, to reduce congestion and speed up coal delivery. Additional yellow plant has been mobilised. Delays experienced due to COVID19 lockdown

Medium term

An additional coal hopper to feed the transfer house is under construction, and the commissioning of Drum Reclaimer 1 will increase the capacity to feed the units with coal. This will be completed in the fourth quarter of 2021.

- The Coal Hopper enquiry has been delayed due to Legal review. The enquiry will be issued on 29 June 2020 and construction estimated completion end October 2022

Tracking of tampering with coal truck cargo and consequence management

When trucks arrive at the power stations with faulty tamper-proof seals or missing tamper-proof seals, they are returned to the supplier at the supplier's cost. All subsequent trucks from the affected colliery are also turned back, regardless of whether the tamper-proof seals are properly in place or not, at the supplier's cost. The affected mine coal offtake agreement is suspended until the supplier has provided corrective actions to deal with inadequate tamper-proof sealing.

The following are the preventative measures to deal with coal quality assurance:

- Deployment of monitors at the mines, rail sidings, and power stations
- Enforcement of installation of tamper-proof cargo seals
- Auditing of the laboratories conducting coal analysis
- Undertaking of bias tests of sampling plants at the mines and power stations
- Tracking of trucks en route from mines to stations

20. The “take-or-pay” system

Recommendation 6.20

The “take-or-pay” system must be revisited, and a cost-benefit analysis must be conducted to determine the viability of the system; a report on this must be sent to SCOPA within 60 days from the adoption of this report by the National Assembly.

Response to recommendation

- ❑ As at end May 2020, the Medupi take-or-pay penalty amounted to R9,3 billion.

Payments (RM) (Excluding VAT) 1									
Fin. Year	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20	TOTAL
Rands	633 891 356.37	1 806 584 194.00	1 825 840 756.00	839 581 881.00	1 576 658 662.00	1 040 660 827.66	844 280 065.40	702 246 896.37	9 269 744 638.80

Exxaro invoiced Eskom for failure to take, which was followed by Eskom declaring *force majeure*. The matter was rejected by Exxaro, and Eskom has processed the payment since November.

In most industries dealing with large value trades, suppliers and buyers require some kind of performance guarantee. This becomes more prevalent when a supplier or buyer of a product invests up-front capital to establish its plant or manufacturing facility.

The above statement has an impact on Eskom to the extent that Eskom has invested major capital in the build of its power stations. These power station have long tenures of operation, that is, 40 years plus. The power stations require certainty of coal volume at a specified rate/tempo and quality. The suppliers of coal similarly invest in a mining operation to supply coal to Eskom. Those suppliers also require certainty of offtake in order to meet the buyer's supply requirements, run their operations, repay their capital and operating expenses, and earn a shareholder return. Eskom's power stations should be operating on the same commercial principle in terms of supplying electricity to its suppliers.

Therefore, in most procurement deals, suppliers and buyers require a minimum or guaranteed offtake/supply in order to hedge their investments and ensure performance between the respective parties. All of Eskom's coal supply agreements have some level of performance guarantees. The Eskom long- and short-term fixed-price contracts have monthly/quarterly and annual volume targets. Should these not be met, a take-or-pay penalty is levied against the supplier. The terms and conditions of this penalty are as per the underlying agreement. Should Eskom not be able to take this coal, the supplier is paid a take-or-pay penalty. This payment to suppliers rarely occurs in the Witbank area, as Eskom has options to deliver coal that possibly cannot be taken at a specific power station to other power stations where that coal is required and suitable. In the Lephalale area, where Medupi and Matimba Power Stations operate, any issues that hamper the ability to offtake coal potentially result in a take-or-pay penalty being levied, as there are not many commercially favourable options available to Eskom. Eskom has built additional coal stockpiles to stockpile the coal while the build of the power station and ramp-up of production continue to increase.

The additional stockpiles mitigate the take-or-pay penalty to a large extent. However, they do not completely eliminate the risk, as other production issues could stop the procurement of coal, for example, the breakdown of conveyor belts or labour strikes, etc.

Similarly, Eskom also pays a take-or-pay-type arrangement to the cost-plus mines. Although this is not stipulated in the contract, Eskom is liable for all the operating costs of those collieries. Should Eskom not take the contracted volumes as with New Vaal Colliery and Lethabo Power Station, Eskom still pays for the operating cost of running the mine, while the production of the mine has been reduced to accommodate the reduced Lethabo Power Station production. The payment of the running of the colliery is, in essence, a take-or-pay arrangement.

The contract entered into with Exxaro Coal (Pty) Ltd is a long-term fixed-price contract, linked to an escalation index contract. The contract was signed in September 2008 for supply to Medupi Power Station. The duration of the coal supply agreement (CSA) is approximately 49 years.

However, due to the delays in the commissioning of Medupi Power Station, Eskom and Exxaro engaged with each other to modify the contract to account for the delays in Medupi coming online. Subsequently, nine addendums to the CSA were concluded. Exxaro commenced production of contract coal as per the CSA and associated addendums, but Eskom could not offtake the coal due to the delays at Medupi. Hence, contractually, Eskom became liable for take-or-pay penalties as per the provisions of the CSA. A summary of the addendums to the CSA is given in the table below.

Table 9: Addendums to the Medupi CSA

Addendum	Date	Reasons
First	19 August 2009	Extension of the unfulfilled conditions to 15 June 2009.
Second	29 September 2009	Extension of suspensive conditions to 4 December 2009.
Third	1 December 2009	Extension of suspensive conditions to 26 February 2010.

Addendum	Date	Reasons
Fourth	26 February 2010	Extension of the unfulfilled conditions to 12 March 2010.
Fifth	12 March 2010	Extension of the unfulfilled conditions to 26 March 2010.
Sixth	26 March 2010	Contract period terminating on 31 December 2054. Amendments to the ramp-up period and first coal delivery date.
Seventh	7 August 2012	Further amendments to the ramp-up period. Ramp-up period: contract commencing on 1 May 2012 and ending on 31 December 2016. A few changes to the minimum and maximum weekly deliveries; this was to resolve operational matters, but the monthly and annual contractual volumes remained. Additional stockpile: Eskom would build an additional stockpile with a capacity of 30 Mt. Capital clawback was to be from 1 January 2018 to 31 December 2024. Consolidated agreement: the parties agreed to consolidate all the addendums and sign a new CSA. The ramp-up quantities were renegotiated, with first coal only expected in July 2012 for three months and, after that, deliveries then only starting in March 2013. Eskom would be ready to fulfil its contractual obligation from January 2016.
Eighth	15 August 2013	Further amendments to the ramp-up period concluded. The parties agreed that Eskom would only be liable to pay 75% of the normal penalty payable for under-offtake. The ramp-up quantities were renegotiated, with first coal only expected in July 2012 for three months. The March 2013 date was moved forwards to November 2013. The clause restricting Eskom from using Medupi coal at Matimba during the ramp-up period was removed. It was limited to 55 MGJ after Matimba had used its contractual volume of 260 MGJ.
Ninth	26 August 2014	Contract period terminating on 31 December 2057. Ramp-up period: contract commencing on 1 July 2014 and ending on 31 December 2017. Another shortfall was negotiated in this addendum, but the monetary values were amortised in the first addendum of the Matimba CSA. The shortfall was paid in monthly instalments as part of the Matimba coal deliveries.

The take-or-pay clause is a common clause in contractual agreements that safeguards or protects the counterparties to an arrangement, especially if that arrangement is long term and requires up-front capital investment by either or both parties. If Medupi Power

Station had been built in time and the mine had not been constructed in time, Eskom would have been claiming money from the coal supplier. It is unfortunate that Eskom is late in this case. Eskom has historically previously tried to renegotiate the contract. This exercise was, however, unsuccessful. Given the location of the power station, Eskom does not have other supply options at a competitive price to the current agreement. Any renegotiation of the contract could result in an even higher price than currently paid.

Update on evacuating coal

Eskom and Exxaro have explored various ways of evacuating Medupi coal for use at Kendal and Kusile Power Stations in Mpumalanga. The parties have been negotiating a 12-month interim contract, where Exxaro uses its infrastructure at the mine while a long-term solution is being developed. During the negotiations, Exxaro has been insisting on a cancellation clause in the contract if the interim solution has an impact on its business. This position poses a risk to Eskom because there will be other contracts signed with TFR for railing and offloading the trains in Mpumalanga. The negotiations with Exxaro to find a way forward are in progress, but were affected by COVID19 due to Exxaro prioritising coal supply and placing projects on hold.

Medupi stockyard project

Delays were experienced when the contractor was placed under business rescue. Attempts to cede the contract did not succeed, and the decision was made to engage Eskom Rotek Industries (ERI) to complete the works (currently going through the procurement process). The projected completion date is 159 days from contract placement.

21. The production of gypsum

Recommendation 6.21

The production of gypsum should be processed further in order to capitalise on beneficiation for additional revenue for Eskom.

Response to the recommendation

Eskom Rotek Industries (ERI) has been assigned to deal with the commercialisation of gypsum. Market research has been conducted, and there is appetite for the product, mainly in the construction, building-related application, and agriculture sectors.

The approval of the commercial strategy has been initiated and is going through the internal governance processes for approval. The strategy has been approved by the ERI Board and the commercial process will proceed and anticipated to be concluded no later than end January 2021.

22. Contractors must be held accountable for substandard work

Recommendation 6.22

Contractors must be held accountable for substandard work.

Response to the recommendation

The FIDIC standard form of contract provides for **performance security** for proper performance. Eskom shall ensure that the performance security is valid and enforceable until the contractor has executed and completed the works and remedied any defects. The contract provides for the circumstances under which the employer may make a claim against the performance security for any poor performance.

A system of monthly reviews has been implemented from January 2019 to track contract expiry, bond, and guarantee validity/expiry.

The FIDIC contract, furthermore, provides for **delay damages**, which are compensation to be paid by the contractor to the **employer** if the **works** are not completed within the time for completion. The contractor may prevent this deduction by submitting claims for extension of time. The amount payable may be limited by provisions of the contract/tender where a maximum amount that cannot be exceeded is stated (limitation of liability).

All works are being inspected as the work progresses, and non-conformances (NCs) are being raised for contractors to rectify the defective work. These NCs are,

furthermore, being tracked to ensure that the defect is officially closed out. Many of these defects additionally require outages, hence the delay in rectification in some instances.

Contracts also have a defect notice period (DNP), which is being used where Eskom has a period of 12 months, on average, in most contracts, where the contractor is notified to correct its work, and failure to do so is where Eskom will use the retention money to rectify it.

23. Medupi and Kusile Power Stations must be completed at the revised times

Recommendation 6.23

Both the Medupi and Kusile Power Stations must be completed at the revised times of 2020 and 2023, respectively. The Eskom Board must, jointly and severally, be held accountable for any further delays, given the massive State bailouts that have been made available to Eskom over the medium-term budget period. Quarterly reports on progress and expenditure must be submitted to SCOPA.

Response to the recommendation

The Eskom Board takes note of the recommendation made by SCOPA to complete Medupi and Kusile Power Stations by the revised dates and has been applying its energy and efforts to drive the completion of these projects through the executives to meet these target dates. The priority has been to unlock and resolve the issues hindering completion of these power stations.

Significant and major risk exists that the current corruption investigation outcomes and the COVID-19 impacts will delay completion at Kusile. There also is a significant and major risk that COVID-19 impacts will delay the completion at Medupi.

The latest project forecast to completion schedule of financial years 2020/21 and 2023/24 as referenced in recommendation 6.23 above for both Medupi and Kusile

Projects has been through the Eskom governance processes for time extension approval. The revised business cases were recently approved at Investment Finance Committee (IFC) for recommendation to Board for time extension only with no associated cost impact. The revised dates are as follows:

- Medupi – Unit 1 (last unit): the latest forecasted CO date is December 2020 (P50) and February 2021 (P80).
- Kusile – Unit 6 (last unit): the latest forecasted CO date is December 2023 (P50) and May 2024 (P80).

The current total approved project cost for Medupi and Kusile remains unchanged at R145.0 billion and R161.4 billion, excluding interest during construction (IDC), respectively.

Medupi and Kusile Power Stations progress update

Key terminology and clarifications:

- The Medupi and Kusile mega infrastructure projects are covered in what is referred to as **business cases and/or execution release approval (ERA)**.
- The business case for each of the projects is a detailed and comprehensive justification for the execution of the projects in terms of cost, schedule, and scope (engineering, technical, commercial, procurement, safety, health, quality, environment, risk, and socio-economic impacts).
- The business cases, as per Eskom governance requirements, are subjected to the relevant Eskom governance structures (that is, investment committees, Eskom Exco) and are finally approved by the Eskom Board before execution can commence.
- The latest project forecast to completion (schedule) of 2020 and 2023 (referenced in sections 2 and 3 below) for Medupi and Kusile Projects has been through the Eskom governance processes for final approval. The revised Medupi and Kusile business cases have been approved by the Eskom Board on 29 April 2020 and Eskom Board IFC on 09 June 2020.

Acronyms and abbreviations (used in tables below):

IDC: interest during construction; this is an allocation of interest/borrowing cost to a project during the construction phase

Bn: billion rand

Rev.: revision

Sync: synchronisation of a unit to the grid, which is a plant commissioning milestone

COD: commercial operation date; when the unit is fully connected to the grid after the successful implementation of all the commissioning tests and Grid Code requirements

EPC: engineering, procurement, and construction contract

P50: risk-adjusted project schedule, where 50% of the project risks are forecasted to be realised

P80: risk-adjusted project schedule, where 80% of the project risks are forecasted to be realised

ERA: execution release approval; the approval of the project for construction by the delegated authority

IFC: Investment Finance Committee

1. Budget for the Medupi and Kusile Projects

Medupi business case: current revision

ERAs (business cases)	ERA value (excluding IDC)	Approved date	Approved by
ERA Rev. 4	R135Bn (P50) R145Bn (P80)	April 2020	Eskom Board
Schedule breakdown	Last unit commercial operation: February 2021 (P50) Last unit commercial operation: July 2021 (P80)		

Kusile business case: current revision

ERAs (business cases)	ERA value (excluding IDC)	Approved date	Approved by
ERA Rev. 4	R 156.0Bn (P50) R 161.4Bn (P80)	June 2020	Eskom Board IFC (still need to be tabled at Eskom Board)
Schedule breakdown	Last unit commercial operation: December 2023 (P50) Last unit commercial operation: May 2024 (P80)		

2. Current status, budget, and schedule (of Medupi and Kusile construction)

The ERA's of both Medupi and Kusile were approved at Eskom Board Investment and Finance Committee for time extension only.

Current Status: Budget and Expenditure, as at February 2020



	Current ERA Budget: P80 (EPC)	Current ERA Budget: P50 (EPC)	Inception to date expenditure (EPC)	Remaining ERA Budget (P50)	Overall Budget Expenditure (P50)	Overall Completion	
						Construction	EPC
Medupi	R145.0bn	R135.0bn	R117.6bn	R17.4bn	87%	99.9%	98%

Kusile	R161.4bn	R156.0bn	R137.4bn	R18.6bn	89%	87%	94%
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Current Status: Ingula, Medupi and Kusile

Construction Schedule: Actual and Forecast-to-Completion (P50)



as at June 2020

● Commercial Operation Achieved
 ● Commercial Operation Forecast
 ■ First Synchronisation Achieved

		Unit 6	Unit 5	Unit 4	Unit 3	Unit 2	Unit 1
Medupi (P50)	Unit Completion	100%	100%	100%	99.99%	99.97%	99.49%
	Commercial Operation	Aug 2015	Apr 2017	Nov 2017	July 2019	Nov 2019	Feb 2021
		●	●	●	●	●	■

		Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
Kusile (P50)	Unit Completion	100%	99.50%	97.60%	91.96%	82.98%	74.15%
	Commercial Operation	Aug 2017	Aug 2020	Sep 2020	Jun 2022	Jun 2023	Dec 2023
		●	■	■	●	●	●

3. Projected timelines for completion

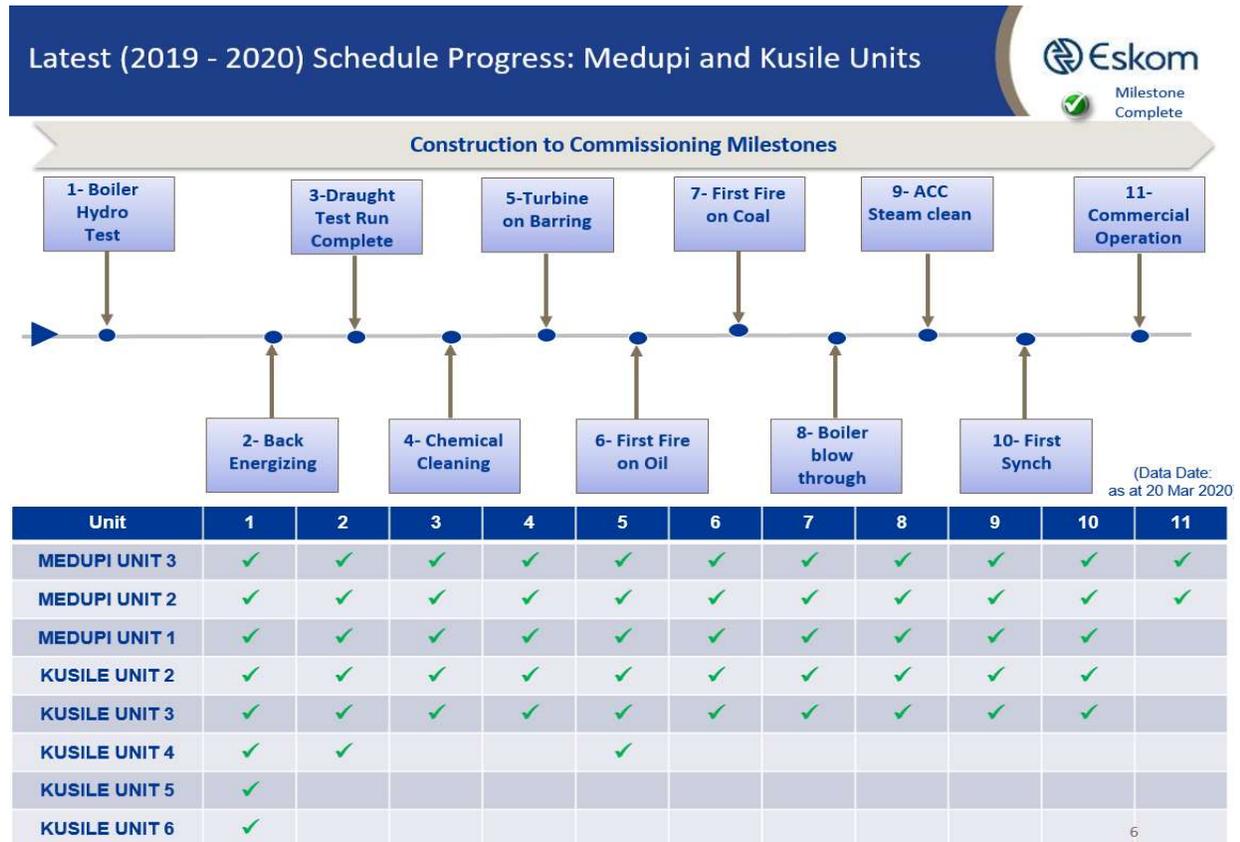
Table 10: Medupi schedule timelines (commercial operation dates)

Medupi	Commercial operation	
	Target late date	Actual completion date
Unit 6 (794 MW)	-	August 2015
Unit 5 (794 MW)	-	April 2017
Unit 4 (794 MW)	-	November 2017
Unit 3 (794 MW)	-	June 2019
Unit 2 (794 MW)	-	November 2019
Unit 1 (794 MW)	December 2020 (P50) February 2021 (P80)	

Table 11: Kusile projected schedule timelines (commercial operation dates)

Kusile	Commercial operation	
	Target late date(P50)	Actual completion date
Unit 1 (800 MW)	-	August 2017
Unit 2 (800 MW)	July 2020	
Unit 3 (800 MW)	September 2020	
Unit 4 (800 MW)	June 2022	
Unit 5 (800 MW)	June 2023	
Unit 6 (800 MW)	December 2023 (P50) May 2024 (P80)	

4. Latest schedule progress: Medupi and Kusile units



Commentary

- **Medupi Unit 3:** Eskom is pleased to announce that since its return to service following a 75-day outage to repair major design defects, Medupi's Unit 3 has on Tuesday, 05 May 2020, reached the full generation capacity of 793 MW

The major focus of the outage was to implement the technically agreed solutions for the boiler issues that hobbled the performance of the unit; these being the boiler plant modifications of the re-heater spray flow, pulse jet fabric filter plant, gas air heater, milling plant, duct erosion, and dust arrestors

The Unit is currently undergoing optimisation and performance testing prior to conducting the boiler performance verification tests, which require inspections and equipment tests to be conducted after 2 500 hours of operation in order to verify the success of the modifications

Eskom is currently implementing similar modifications for which the level of confidence of success is high on Units 6 and 1. Unit 4 will also be taken off the grid in July 2020 for similar modifications, where after Unit 2 will follow late August 2020 and Unit 5 in November 2020

5. Salient points: Medupi progress

- **Medupi Unit 3 and Medupi Unit 2:** Achieved commercial operation (CO) in the 2019/20 financial year, each adding 794 MW installed capacity to the national grid.
- **Medupi Unit 1:** Commissioning is progressing well, with control and instrumentation (C&I) optimisation in progress. The contractor responsible for the dust handling plant (DHP) is in business rescue; therefore, construction of the DHP is incomplete. Vacuum trucks are currently used to remove ash, with limited success. Commissioning and optimisation of the unit have been delayed. Unit load losses have been experienced due to issues with milling plant reliability. The milling plant forms part of the major defect correction plan, which is under way.

Focus is also on completion of excess coal stock yard and 2 – 4 years ash dump facility.

Full commercial operation (P50) of the unit is currently forecasted for December 2020; this is, however, dependent on the resolution of contractual challenges with the existing DHP contractor and placement of the new DHP contract, which has been further delayed due to contractors being non-responsive

The unit is on load, intermittently supporting the national grid at an average of 500 to 600 MW

- **EAF Improvement:** The EAF is at 55.08% with Unit 6 currently on outage.

6. Salient points: Kusile progress

- **Kusile Units 2 and 3:** Optimisation work of the units is currently on schedule to achieve the latest forecasted commercial operation (CO) dates. Unit 2 reached full load (808 MW) on 23 February 2020 and is supporting the national grid intermittently at a monthly average of between 400 MW to 500 MW. Unit 3 is also on load and is supporting the national grid intermittently, at a monthly average of 550 MW.

Kusile Unit 2: The forecasted date has been influenced by mill performance, peak season, unknowns, plant performance, gas air heater (GAH) left-hand side (LHS) outage, and ID fan repairs (August 2020).

Kusile Unit 3: Coal mill failures, gas air heater leaks outages, and pulse-jet fabric filter (PJFF) blocked bags have caused CO delays. Contractor liquidity challenges are, furthermore, exacerbating CO delays, that is, CBZ being in business rescue (September 2020).

- **Kusile Units 4 to 6:** Progress on Units 4 to 6 has been delayed due to contractor(s) financial, commercial, and/or contractual issues.

Indications are that the current planned commercial operation (CO) dates of Units 4, 5, and 6 will be difficult to meet. The project team is pursuing schedule recovery plans for those milestone achievements that are at risk.

- **EAF Improvement:** the EAF at Kusile has improved from 44.67% in March 2019 to 51.08% in March 2020.