

PORTFOLIO COMMITTEE  
ON MINERAL RESOURCE

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ATTENTION: MS AYANDA BOSS  
EMAIL: [aboss@parliament.gov.za](mailto:aboss@parliament.gov.za)

Enquiries:  
NEO TSHOLANKU  
Tel+27 11 800 2560

Dear Ms Boss

RE: SUBMISSION ON THE 2<sup>nd</sup> DRAFT MINERALS AND PETROLEUM RESOURCES DEVELOPMENT BILL, 2013

We thank you for granting Eskom an opportunity to comment on and influence the Draft Minerals and Petroleum Resources Development Bill, 2013.

Amongst our submission the following are issues Eskom considers critical to inform the mineral resources regulatory framework:

- The Amendment Bill must promote economic growth, energy security and mineral and petroleum resources development in the Republic of South Africa.
- The Amendment Bill should seek to manage the national coal resource for domestic energy use, with due consideration of price, volume, timing and quality. This in essence means that coal exploration and mining rights should be awarded giving due consideration to domestic coal supply for power generation. Furthermore, access to mineral rights for the Underground Coal Gasification (UCG) demonstration and commercial plants will ensure the success of UCG as a viable energy supply option in South Africa.
- Coal must be declared a "strategic mineral" that is required to firstly support domestic energy security and secondly to ensure that South Africa can maximize its export potential once domestic energy security is assured.
- The Amendment Bill should accommodate new technology investigation and/or research.
- Development of Black Emerging Miners (BEMs) for the security of coal supply and growth of South African's economy.
- Mechanisms need to be introduced in the Amendment Bill such that African Exploration Mining Company partner with other State Owned Entities in the identification of mining assets for power generation.

Regulation and Legal  
Legal Department  
Megawatt Park Maxwell Drive Sunninghill Sandton  
P O Box 1091 Johannesburg 2000 SA  
Tel +27 11 800 0000 Fax +27 11 800 6084 [www.eskom.co.za](http://www.eskom.co.za)  
Eskom Holdings SOC Limited Reg No 2002/015527/06

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## Eskom's Comments on the Draft Mineral and Petroleum Resources Development Amendment Bill 2013

Eskom provided comments on the draft Mineral and Petroleum Resources Development Bill 2012 to the Department of Mineral Resources on 7 February 2013. The submitted comments which are discussed below were not taken into consideration by the Department in the development of the draft Mineral and Petroleum Resources Development Amendment Bill 2013.

The following key policy enablers for securing coal for power generation are recommended and the Amendment Bill should be amended accordingly:

1. It is important that DMR benchmark the Coal Regulatory Environment with other international players who have implemented policy changes as a reference for dedication of coal resources in Mpumalanga and Waterberg. The focus to secure coal supply for power generation will continue with sourcing from Mpumalanga. The Waterberg is a strategic resource that needs to be optimally used for a domestic and the export coal market.
2. Pricing, volumes and quality principles are key to securing coal for domestic power generation needs. Pricing principles need to be based on an efficient and transparent cost with a fair return and must not be related to export parity prices. Independent Power Producer's requirements, if applicable must be considered. It is proposed that the pricing principles must be implemented through commercial agreements with suppliers and off takers.
3. The Amendment Bill should accommodate new technology investigation and / or research. The new technology which should include amongst others, coal blending, will reduce quality variability. Coal blending requires a blending system to take several sources of coal with different qualities and mix the varying components together in such a manner that the coal emerging will be relatively consistent and meet a power station's specification. This new technology may result in the management of electricity generation load losses due to inconsistency.
4. Furthermore, access to mineral rights for the Underground Coal Gasification (UCG) demonstration and commercial plants will ensure the success of UCG as a viable energy supply option in South Africa.
5. The Amendment Bill needs to promote economic growth, energy security and mineral and petroleum resources development in the Republic of South Africa. The concept of energy security should be included in the Amendment Bill and should give effect to section 24 of the Constitution by ensuring that the nation's mineral and petroleum resources are developed in an orderly and economically sustainable manner while promoting energy security, justifiable social and economic development. The constraint of orderly and economic development imply that a long term energy plan is required to enable the reservation of energy resources for the benefit of future generations, but must develop the resources in a way that is economic.

a process where mining rights granted on the basis of supply to Eskom and other domestic utilities are made transparent to Eskom and other domestic utilities at the time of being granted and are monitored for compliance to the conditions set out.

10. In relation to price determination, South Africa is a developing economy and given the importance of electricity as an enabler of growth, it is prudent to consider the price of domestic coal and its impact on the price of electricity. Eskom therefore believes that the price of domestic coal should be based on efficient production costs plus a risk adjusted return and not be linked or 'indexed' in any way to the global thermal coal prices, Export Parity Price, a 'market price' or global coal price. Eskom proposes that policy and regulatory mechanisms be explored to facilitate this outcome but that investment returns must encourage continued investment in the sector, and should provide a fair return for the capital and skills that they contribute that is linked to the price of capital and the risk that the miner assumes. Two of the key objectives in this regard should be to keep primary energy costs (and ultimately electricity costs) and price escalations as low as possible and to avoid coal price volatility as this cannot be easily absorbed or passed onto the electricity consumer.
11. To ensure timeous development of projects, a mechanism is required which is stronger than the "use it or lose it" provisions. Several strategic coal resources must be urgently dedicated and developed for domestic power generation and a mechanism found to encourage the development of new coal mines for the supply of domestic energy. Strategic coal resources assets could be housed within either of the state owned mining companies (AEMFC or Alexkor) or other emerging mining entities or in partnerships with established miners to be developed in conjunction with domestic utilities.
12. To support the timely development, mechanisms need to be found to limit speculation on the costs of land for resources that are of strategic importance to domestic supply, these costs must be controlled and the rights and process for expropriation of land must be made more effective and comprehensive to be executed in very short time frames.
13. In terms of section 22, a provision which will effectively enforce BEE participation at prospecting application stage is seen as problematic since at prospecting stage, most prospecting companies are not generating any income but are expending cash. Smaller BEE shareholders such as community participants find it confusing to be shareholders in a company which generates no income and this apparently often leads to disputes. It is preferable to remove this requirement entirely or to provide for a "warehousing" approach to BEE at prospecting stage. Mechanisms should be developed to manage the practicalities involved, whether through innovative funding or stakeholder engagement.
14. Clear timelines have been removed in favour of "prescribed periods". This allows for inconsistency between different right holders and applicants. Certain individuals may be granted far lengthier periods to comply, or

It is unclear whether or not the Bill intends to remove the FIFO ("First in, First Out") principle entirely from the MPRDA. If it does, this would fundamentally alter South Africa's mineral licensing regime, which has followed the FIFO principle for many years. That said, the changes effected by the Mineral and Petroleum Resources Development Amendment Act 49 of 2008, (Amendment Act) to sections 16 and 22 of the MPRDA effectively require the Department of Mineral Resources ("DMR") to adhere to the FIFO principle. As the Bill envisages the enactment of the Amendment Act 49 of 2008, it is unlikely that, despite the proposed deletion of section 9, the Bill intends to remove the FIFO principle from the MPRDA. If the FIFO principle is shelved, applicants for mining rights could effectively "jump the queue" and certainty is required on the issue. Given the problems the DMR has experienced with potential manipulation of the system, its removal is a concern.

Applications for prospecting and mining rights can still be made at any time and must be accepted if no prior application has been accepted over the relevant property and mineral, however, it does not deal with what happens if a prior application is pending but has not yet been accepted or rejected. It is proposed for the previous provisions of section 9 regarding the order of processing applications to be reinstated. Not doing so will place the Regional Offices in a difficult position when it comes to processing applications.

20. The effect of the proposed section 11 if such a provision is imposed will mean that it will not be possible to trade in shares in listed companies which hold Prospecting and Mining Rights, without the Minister's consent and conditions that may be imposed. This protracted and laborious process poses a threat to the security of supply where capital investment is necessary. A structure needs to be established to assist the Minister in evaluations; this could have an impact on Eskom's business transformation agenda if not properly regulated.

The concept of a company which "holds and interest in such rights" is unclear, this requires further elaboration.

21. In relation to section 43 and the enhanced regulatory framework on the liability of mining and prospecting rights holders which endure indefinitely notwithstanding the issuing of a closure certificate by the Minister, this can prove problematic for Eskom as it will be difficult to quantify its liability on cost-plus coal supply contracts as the liability period will not be certain. It is unclear as to what the Bill aims to achieve by the substitution of section 6 with the provision that the Minister when issuing a certificate he or she may retain any portion of such financial provision for latent and residual safety, health or environmental impact which may become known in the future for a period of 20 years after issuing a closure certificate if the holder of a prospecting right, mining right, retention permit, mining permit, or previous holder of an old order right or previous owner of works that has ceased to exist, remains responsible for any environmental liability, pollution, ecological degradation, the pumping and treatment of extraneous water, compliance notwithstanding the issuing of a closure certificate. It is proposed that there should be no retention after the closure certificate is issued and further that the rehabilitation fund should be

## **Development of Black Emerging Miners (BEMs) for the security of coal supply and growth of SA's economy**

Developing Black Owned Emerging Miners to create more suppliers, grow the economy and secure resources is dependent on the following pillars:

- Invest in the fund in monetary terms and cede resources into the fund.
- Assist with the development of skills of the mining industry.
- Work with coal traders in terms of requirements for Eskom contracts.
- Consider black companies to collaborate with on the existing Eskom contracts.
- Assist BEMs that have resources contiguous to large reserves i.e. shared infrastructure.

The success of the Emerging Miner Strategy lies in the collaboration and formation of industry wide partnerships to tackle the challenges that continue to confront Emerging Miners.

In order to ensure that black ownership is achieved, the Mining Charter should be amended to align it with B-BBEE Legislation and Codes of good practice, especially relevant to the levels of stipulated black ownership, black woman ownership, black youth ownership, and ownership by black people living with disabilities, skills development and local content.

## **Partner with AEMFC or Alexkor and other State Owned Entities to contribute to Long Term security of low cost coal supplies**

Underpinning coal for dedication to power generation is directed to ensure national coal reserves are optimised in the country's best interests.

Potential levers to assist in this regard will be through:

- Pursuing stage exploration of 'white spaces';
- Holding resulting mineral rights for energy grade deposits until required; and
- Sourcing and securitisation of suitable partners to mine the properties on behalf of the energy entity.

Mechanisms need to be introduced such that State Owned Entities partner with Eskom in the identification of mining assets for power generation. Further proposal is that the Bill should incorporate a clause relating to automatic inclusion of national infrastructure companies as interested and affected parties in all applications.

The Regional Mining Development and Environmental Committee should include representation from the Mineral Resource & Mining industries. Similar with the Ministerial Advisory Council should include State Owned Companies.