**Minister Brown Speaking Notes at Parliament Portfolio Committee**

Chairperson Zukie Rantho

Members of the Portfolio Committee

Officials of my Department

Parliamentary Officials, journalists

South Africans…

Let me start by reporting that I have submitted my affidavit to court with regard to the Brian Molefe matter.

I have instructed my legal team to withdraw my opposition to Part A of the relief sought – that I set aside my appointment of Mr Molefe.

I have nonetheless deposed an affidavit as I believe the information I have will assist the court in determining its decision.

My initial advice was to oppose Part A on the basis that I neither appointed nor reinstated Mr Molefe, as well as on the basis of advice from Eskom’s Board that it had obtained an opinion from a Senior Council advocate on its handling of the matter.

But having had the opportunity to properly appraise the issues I have decided that I will abide by the court’s decision on the legality of Mr Molefe’s return to Eskom.

When Eskom’s Board approached me to inform me of its decision to bring Mr Molefe back, I said I would support it on the proviso that it was legal. I also made this point repeatedly when addressing media on the matter, though – curiously – none of them thought it worthy of reporting…

With regard to Part B of the motion, which seeks to stop Mr Molefe from conducting any work at Eskom, I have reserved my rights.

Madam chairperson…

One of the issues that the court will have to decide is a technical one relating to Eskom’s Memoranda of Incorporation.

Eskom is governed by various pieces of legislation, including the Eskom Conversion Act 13 of 2001. Section 6 (2) of the Act requires me, from time to time, to publish memoranda and articles of association. Two different Memoranda of Incorporation are relevant to Mr Molefe’s situation: One passed and adopted before his arrival at Eskom, and the other during his tenure.

Material differences between the two documents included that the 2014 version did not require the Minister to be noted as a party to the employment agreement of the Group Chief Executive (noting the Minister was required in the 2016 version); and the 2014 document did not provide the Minister with the power to remove the Chief Executive (as the 2016 version does).

The executive employment contract concluded by Mr Molefe and Dr Ngubane in March 2016 was concluded in terms of the 2014 agreement. It didn't have to be shown to me.

When Mr Molefe quit Eskom in November 2016 I was under the impression that he had resigned. I was not aware that he had applied for early retirement. This I only learned in April 2017, after reading in the media that Mr Molefe was receiving a R30m pay-out from Eskom, and asking Eskom’s Board to make a more prudent deal.

Again, on Eskom’s legal argument that Mr Molefe was appointed under the terms of the 2014 MOI, the early retirement agreement didn't have to be shown to me.

On 11 May 2017, after taking advice from a senior council, the Eskom Board reverted to me with options on the proposed R30m pay-out to Mr Molefe. As a courtesy, the Board indicated to me its preference was for the consensual recission of Mr Molefe’s early retirement, and that it was willing to accept Mr Molefe back as Group Chief Executive.

I said I would support the Board’s decision providing it was legal. As I told the media, I believed that Eskom would obtain more value from having Mr Molefe at work than simply paying out R30m.

Colleagues…

I didn't expect that society would universally welcome news of Mr Molefe’s return to Eskom following the allegations levelled against him in the Public Protector’s State of Capture report. But nor did I anticipate the level of vitriol.

I expected that his achievements as a technocrat, the fact that he would be under enormous scrutiny, and the presumption of innocence until proven guilty would bring some balance to the debate.

But there is a presumption of guilt – despite the Public Protector’s report being taken on review. As a society, as politicians, as media, we must beware of criminalisation by association. Particularly in the absence of anyone having been convicted of a crime…

There is almost a climate of hostility presently surrounding our state-owned companies that, incidentally, belies their actual performance. It is an environment complicated by strident voices ahead of the ruling party’s policy and elective conferences later this year, and by members of the opposition who view the State of Capture report as their ticket to Nirvana.

Chairperson…

I am not telling you this to try and make you feel sympathetic towards Brian Molefe, Dr Ngubane or Eskom, but because it is the truth.

Dr Ngubane is here. He will be able to answer whatever operational and technical questions you might have.

Let me say, in your and Dr Ngubane’s presence, that I have noted concerns that have been raised about the Board’s performance, to the extent that some have called for its dissolution. I don’t think it would be fair to jump to any conclusions while there is an important matter before court.

I have, however, taken legal advice on the process to follow to rotate the Board, if appropriate, while a discussion is underway in government.

Madame chairperson…

Our giant state-owned companies, including Eskom, are critical levers of the developmental, transformative state. Where they err we must fix them. But we must be very careful we don't allow our discourse to break them.

Later this week, when Deputy Minister Martins and I present the Department’s budget vote, we will provide a progress report on the State Owned Companies Reform Project and development of a shareholder policy.

Suffice to say, now, that the project will directly address some of the governance issues we are here to discuss today, including the appointment of chief executive officers and the creation of remuneration and pension standards.

I thank you for the time you have given me. I will try my best to answer questions you may have, and Dr Ngubane will do the same.

Ends

*For enquiries contact Colin Cruywagen on 082 3779916.*

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