
STATEMENT BY VENETE KLEIN

INTRODUCTION:

1. I have been approached by the evidence leader appointed by the Portfolio Committee on Public Enterprises (“**the Portfolio Committee**”) to provide input in respect of the matters which I am led to believe will form the focus of the Portfolio Committee’s Inquiry into the Eskom Board (“**the Inquiry**”). I have volunteered to provide a statement in respect of the relevant matters, in the interests of fully ventilating such matters and assisting the Portfolio Committee in the execution of its mandate. Although I have endeavoured to address all such matters as comprehensively as possible, this statement should not be construed as being conclusive of my position on the issues in question, nor should my failure to deal with any item in this statement be construed as a waiver of my rights in that regard, which rights remain reserved.
2. I have endeavoured to address all relevant matters (as conveyed to me by the evidence leader) thematically, and in a generally chronological manner. In order to deal fully with one theme at a time, this has required me occasionally to jump forwards and backwards in time when moving from one theme to another. I believe that this is the most efficient way in which to set out my statement.
3. By designation, I am a Chartered Director (CD) SA and have graduated from various international executive programmes, including the Senior Executive Programme at

Harvard University and the Executive Development Programme at the New School, in New York. In addition, I hold a number of international qualifications from MIT, INSEAD, IMD and Wits. I have served as an Executive Director and Non-Executive Director on various Boards, including the Barclays Group Ltd, the Reserve Bank and Old Mutual Wealth. Until recently, I served as the Chairperson of The Institute of Directors Southern Africa. I have garnered various achievements and awards as a result of my recognised performance in my career, including but not limited to the Business Woman of the Year Award; The Barclays International & Commercial Bank Leadership Award, the Nedcor People's Bank Top Managerial Performer Award and the Association of Black Investment & Securities Professionals Award.

4. On 11 December 2014, I was appointed by the Minister of Public Enterprises, Lynne Brown (**"the Minister"**) to serve as a non-executive member on Eskom's Board of directors (**"the Board"**), after being nominated to serve on the Boards of both Eskom and South African Airways. Eskom was at that point in dire straits, having faced going concern difficulties and with the country having been subjected to stage 3 load shedding. I felt impelled to make myself available to serve on the Board in order to lend my expertise to the cause of addressing the crisis facing Eskom and the country as a whole. I took up this position without any thought of financial gain.

ISSUES FACING ESKOM AT THE TIME OF MY APPOINTMENT

5. I was invited to a meeting with the Minister on 12 December 2014, where she outlined the challenges facing Eskom at the time and the things that she felt the Board needed to

focus its attention on. The meeting was attended by a number of new Board members as well as 2 members of the previous Board who had been reappointed to the Board, namely Ms C Mabude as well as Mr Z Tsotsi (as Chairman). My key take out from this meeting was that we, as a Board, urgently needed to apply ourselves to:

5.1. The issue of load shedding, which at that time had been ongoing for about 6 months and was at stage 3;

5.2. The going concern status of Eskom;

5.3. The fact that the Minister could not rely on the accuracy of any information provided by Eskom;

5.4. The “war room” which was being run by the Deputy President of the Republic of South Africa and supported by a number of high ranking government officials.

6. The first Board meeting following my appointment took place on 16 January 2015. The agenda items included, amongst others, a “war room” update, selective demand curtailment, a financial status update, consideration of Board committee handover reports, a media communication review, risk register consideration, debt management, turnaround strategy, Eskom fleet, panel of experts/International advisory committee and the Public Finance Management Act 1 of 1999 (“**PFMA**”) section 51 indemnity. I recall having left this meeting feeling rather concerned both by the enormity of the challenges which had correctly been highlighted by the Minister, and by the fact that Eskom did not appear to have concrete strategies in place to address these concerns.

7. On 29 January 2015 we received a report on plant performance, giving reasons for the continued load shedding. I recall that no real solutions were offered. Instead, the report seemed simply to harp on about how big the challenges were. I did not experience the comfort that would ordinarily be instilled by an executive which has a firm handle on these types of matters.

8. On 29 January 2015, I also received a letter from the Department of Public Enterprises (“DPE”), by way of which the Minister requested Eskom to provide the information mentioned below in respect of each of its directors by the close of business that day:

8.1. Directorships in the companies that they currently occupy;

8.2. Shareholding and/or investments;

8.3. Whether there are any current or potential contracts/dealings between any of these companies and Eskom;

8.4. Interests of related persons as contemplated in section 75 of the Companies Act 71 of 2008 (“**Companies Act**”);

8.5. Any additional information that may be relevant to the above; and

8.6. Certified copies of their main qualifications.

9. The DPE confirmed having received my declaration of interest in the following entities:

9.1. Centuria 400 (Pty) Ltd;

9.2. Klein Inc Management Consultants (Pty) Ltd;

9.3. Klein Family Trust;

- 9.4. Community Impact Trust;
- 9.5. Institute of Directors Southern Africa;
- 9.6. ACSIS;
- 9.7. Old Mutual Wealth (Pty) Ltd;
- 9.8. South African Bureau of Standards – SABS;
- 9.9. PG Group;
- 9.10. Governing Body Chartered Directors South Africa;
- 9.11. Ithala SOC Ltd.

10. I complied with the DPE's request within the specified deadline.

THE NEW AGE BREAKFAST DEAL

11. I understand that the issues emanating from the contract between Eskom and TNA Media (Pty) Ltd (“TNA”) relating to the so-called “The New Age breakfast deal” had been discussed by the Board in November and early December 2014, before my appointment to the Board. My first and only engagement on the issue came about on 2 March 2015, when a resolution proposing to ratify the expense incurred in this regard and resolving not to take any action against Mr Matjila (as he was no longer a member of the Board) was circulated for approval by way of round robin. I categorically refused to sign the resolution as I did not agree with its contents, particularly as Mr Chose Choeu was still employed by Eskom at the time, and I believed that action needed to be taken against him.

12. My position in relation to the proposed round robin resolution regarding the TNA matter is reflected in the minutes of the Board in-committee meeting of 19 March 2015. These minutes record that the Chairman of the Board indicated that he would speak to me regarding this issue, which never happened. Despite my disagreement, the round robin was accepted as (to my knowledge) I was the only Board member who refused to support and/or sign the resolution.

13. In addition to the aforesaid, it was noted by the Board that the contract with TNA was of a commercial nature, and therefore could not simply be rescinded by Eskom at its own volition. It was accordingly agreed that all future contracts of that nature should have an early termination clause included for Eskom's benefit. A resolution to this effect was ratified at the Board meeting of 28 May 2015.

14. My main consideration in taking the position that I did in relation to the TNA matter was that, owing to the information at hand, I did not believe that the approach proposed in the round robin resolution was in the best interests of Eskom.

GOVERNANCE ISSUES AT THE TIME OF MY APPOINTMENT AND THE DENTONS INQUIRY

15. Given the sheer enormity and complexity of the business, the Board's function is largely discharged through the efforts of various standing Board sub-committees, such as the Audit and Risk Committee ("**ARC**"), the People and Governance Committee ("**P&G Committee**") and the Board Tender Committee ("**BTC**"). Each of the board sub-committees has its own chairperson, delegation of authority and terms of reference,

which guide the functioning of the sub-committees in conjunction with Eskom's Memorandum of Incorporation ("MOI"), Board Charter, the King III and IV codes on Corporate Governance and applicable legislation.

16. A consequence of the aforesaid is that many matters falling within the delegated authority of the various sub-committees would not necessarily serve before the full Board. Only matters which meet the specified threshold in terms of the relevant materiality framework will serve before the Board. For example, the authority to approve contracts with a value up to R750 million is fully delegated to the executive, while the authority to conclude contracts with a value of over R750 million up to "Investment Decision" or "Budget level" is fully delegated to the BTC. As a result, only contracts with a value of above "Investment Decision" or "Budget level" will come before the full Board for approval. This means that multiple substantial contracts could be approved and concluded on the authority of the executive and the BTC, without the balance of the Board ever coming to know thereof.

17. As a result, members of the Board are required to trust that the checks and balances provided by the corporate governance structures are adhered to and adequately ensure the rigour of all decision making processes. In addition to the above, the Board members rely heavily on the institutional knowledge and guidance received from the executive in relation to all such decision making processes, including decisions made by the Board. This reliance is in accordance with the Companies Act. This, however, can result in difficulties from a corporate governance perspective, especially when decisions are taken based upon information and guidance received from the executive, only for it subsequently to

be disclosed to the media that pertinent information was omitted or inaccurately submitted to the Board.

18. In early 2015, I was appointed as Chairperson of the Social Ethics and Sustainability Committee, at which time I also served as a member of the Investment & Finance Committee and the P&G Committee. I later became the Chairperson of the P&G Committee and a member of the ARC. I am not certain of the exact date of my appointment as Chairperson of the P&G Committee, as during the first few months of the tenure of the new board there were a number of rotations of Board members within the Board sub-committees.

19. During the course of these rotations and after the suspension of 4 executives (I address the issue in relation to these suspensions below), Mr Khoza became Acting Chief Executive Officer and I was moved to chair the P&G Committee in or about March/April 2015. Later, in about June 2015, I was replaced as Chairperson of the P&G Committee by Ms Mabude, only to later be reinstated as Chairperson in or about August 2015.

20. The instability regarding the members of the committees also contributed to the governance issues, as Board members were always working with new people who were not familiar with the challenges that the Board faced.

21. Furthermore, the Board struggled with not having all the required information at hand when submissions were presented. It now appears that many of the submissions that were considered in my time contained misleading information or completely omitted

critical information. What compounded matters even further for me, is that there are now differing versions of matters that I previously thought that I fully understood.

22. I believed that I was part of a success story in that we went from stage 3 load shedding at a cost of *circa* R434 million per day to the economy to no load shedding in my tenure on the Board. I regarded this as one of my finest moments in terms of contributing to the country, which, after all, was my only motivation for agreeing to serve on the Board.

23. I understand my appointment to the position of Chairperson of the P&G Committee to have been motivated by the substantial experience I have acquired in this particular field of corporate governance during the course of my career, as demonstrated above. The primary mandate of the P&G Committee is to assist the Board in dealing with the nomination and remuneration of directors, senior executives, human resources strategies and policies. The P&G Committee is also the custodian of corporate governance to the benefit of Eskom. Following my re-appointment as Chairperson of the P&G Committee in August 2015, I served in that capacity until my resignation from the Board on Friday, 12 May 2017.

24. As chairperson of the P&G Committee, I was frequently called upon to mediate at executive level when matters could not be resolved. I always endeavoured to deal with these matters as discreetly as possible in the interests of the people concerned and the organisation as a whole. Similarly, I was called upon to deal with a number of “people management” issues that were escalated to the chairman of the Board, and which I handled with the same discretion. I attended to all of my functions as chairperson of the

P&G Committee with the rigour and efficiency demanded of anyone occupying a position of that importance.

25. On Sunday, 8 March 2015 the Board received a request to attend a Board meeting on Monday, 9 March 2015 in order to make decisions in accordance with a Board memorandum dated 9 March 2015. I found it concerning that we had been called to a critical meeting on less than 12 hours' notice. In any event, I had a prior engagement and I duly declined the invitation.

26. I understand that the issues raised at the meeting by Mr Tsotsi, in his capacity as Chairman of the Board, were of such a nature (for example, regarding an independent investigation into Eskom) that those who attended wanted the entire Board present. The meeting was therefore rescheduled for 11 March 2015. Since I had not attended the meeting on 9 March 2015, I had to rely on the minutes of this meeting as well as the aforementioned memorandum.

27. In terms of the memorandum, the Board was requested by Mr Tsotsi to take a resolution to commission an inquiry into the technical, commercial and structural status, as well as any acts and/or omissions which had contributed to the deficiency of generating and distribution capacity, of Eskom. Mr Tsotsi also proposed that this inquiry should be completed within a period of 3 months and that the Board subcommittee delegated to spearhead this inquiry should appoint an independent investigator, free of any influence or suspicion.

28. I found it concerning when reading the minutes of the meeting that the Chairman referred to the Presidency having expressed concern, presumably to the Chairman, regarding the performance of Eskom. The meeting agreed to invite the Minister to address the issues as articulated by the Chairman.

29. At the meeting of 11 March 2015 the erstwhile Group Chief Executive Officer, Mr Tshediso Matona, again outlined the problems facing Eskom, which included:

- 29.1. Exits of senior executives through resignations and retirements, which required him to reshuffle the team;
- 29.2. Engagement with labour as staff morale was a big challenge;
- 29.3. Gaps in information provided to the “war room”;
- 29.4. Unlikelihood of savings targets being met for the financial year due to serious leakage in primary energy costs;
- 29.5. The liquidity buffer of R20 billion had decreased to R4.9 billion as 2 expected loan amounts had not been received;
- 29.6. The non-payment of substantial amounts owing by Municipalities.

30. Minister Brown also addressed the Board that day, once again expressing her concern around the Board getting a handle on the business.

31. After the Minister left, the Board convened a Board in-committee meeting where Mr Tsotsi again presented his memorandum proposing an inquiry into corporate governance issues at Eskom, and sought the Board’s support in that regard. It was agreed that:

31.1. A forensic inquiry would be established, and would be driven by the P&G Committee and the ARC;

31.2. The ARC would be the custodian of the inquiry and would engage with other committees as and when necessary.

32. Mr Tsotsi proposed that those Executive Committee members who were supposedly implicated in the matters forming the focus of the inquiry should be asked to step down during such inquiry. However, the Board was concerned about the continuity challenges this would occasion, especially given the fragility of the company at the time. The members agreed that there was a trust deficit between the Board and the Executive Committee members allegedly implicated in the matters forming the focus of the inquiry and that it would therefore be in the best interest of the inquiry if they were asked to step aside for the period of the inquiry in order for it to be concluded within the proposed 3 month period.

33. The Board members expressed the view that they would prefer to do a fact finding exercise before asking the relevant executives to step aside. There was concern that acting with haste may result in Eskom finding itself in a position where it has to fight cases in the Labour Court. Mr Tsotsi explained that this would slow down the inquiry and that a lot of work had already been undertaken. Based on that, Mr Tsotsi then advised that the Group Executive: Commercial & Technology, Group Executive: Group Capital, Financial Director & Group Chief Executive would be suspended. The reasons provided by Mr Tsotsi were, *inter alia*, that the Financial Director had met with tenderers during a tender

process, while in respect of the Group Executive: Commercial & Technology there was an allegation of misconduct which included another staff member.

34. Mr Tsotsi had recommended that Mr Malesela Sekhasumbi act as Chief Executive Officer.

I found this recommendation to be concerning as Mr Sekhasumbi was on suspension and Mr Tsotsi did not share this with the Board when he made his recommendation. This did not sit well with me. Unfortunately, this matter was not recorded correctly in the minute of the Board in-committee meeting and reflects that it was Mr Tsotsi that advised the Board that Mr Sekhasumbi was not a suitable candidate as he was on suspension.

35. To my understanding, none of the suspended executives were given reasons for their suspensions. Instead, they were simply told that they were required to step aside in order for the inquiry to be speedily concluded and that they were not being formally charged.

36. At the Board in-committee meeting of 19 March 2015, Mr Tsotsi introduced Mr Nick Linnell as the independent consultant who was to work with the Board. It was of concern to the Board that no proper process was followed to engage Mr Linnell's services. The Board accordingly expressed discomfort with the engagement of Mr Linnell. Moreover, the Board felt that the Chairman's actions had compromised the Board as well as the integrity of the inquiry.

37. The Board unanimously agreed at the Board in-committee meeting on 19 March 2015 that it had lost confidence in the chairman (i.e. Mr Tsotsi) and would recommended his removal as a director due to:

- 37.1. His failure to seek or obtain Board approval for the appointment of a consultant (i.e. Mr Linnell);
- 37.2. His actions in terms of the suspensions;
- 37.3. Preparing and distributing a media release without Board approval.

38. This information was shared with Mr Tsotsi on his return to the meeting of 19 March 2015. Furthermore, the Board had resolved to inform the Minister regarding this breakdown between the Board and the Chairman.

39. At the meeting of 19 March 2015 the Board elected Dr Ngubane who at a later stage became the Chairman of the Board to act as chairperson until we had communicated our resolution with the Minister.

40. The Board subsequently had various meetings with Mr Tsotsi and his counsel. Mr Tsotsi ultimately agreed to resign as a member of the Board.

41. During this time several of the suspended executives indicated that they wanted to settle as they did not want to return to Eskom.

42. Mr Matona referred his matter to the labour court.

43. My reason for supporting Mr Matona's departure was that he did not appear to have a handle on the turnaround of the organisation, which was particularly critical at that point

in time. Dr Ngubane met with him and discussed his possible departure from Eskom. An agreement was reached with Mr Matona and he exited the services of Eskom.

44. Mr Morakane also requested an exit discussion, which was handled by Messrs Khumalo and Khoza.

45. Various meetings were held with Ms T Molefe, with Mr Khoza concluding her exit discussion.

46. I was present at a meeting with Mr Koko. He was the one executive who was not interested in leaving the employ of Eskom. He indicated that he wanted his job back. Upon objecting to this, I was mandated by the Board to engage with a senior partner of Dentons in order to establish whether or not Mr Koko had been, by way of the inquiry, found guilty of any wrongdoing. In this regard, I contacted Mr Noor Kapdi of Dentons, who indicated that they had not found any evidence of wrongdoing by any of the suspended executives. In order to satisfy my own discomfort, I decided to engage with Mr Jerry Kaapu of Bowman Gilfillan, who advised that Eskom could not keep someone on suspension if the inquiry did not find any evidence of wrongdoing. Dentons also provided a letter confirming the above.

47. It is worth remembering that none of the suspended executives were ever charged with specific wrongdoing – the reason for their suspension was purely as guided by Mr Tsotsi, namely that they might have interfered with the inquiry.

48. The haphazard manner in which the aforementioned suspensions were driven by Mr Tsotsi was consistent with the general corporate governance challenges faced by Eskom from before the time I joined the Board (as articulated in the media at the time and noted by the Minister in the new Board's initial interactions with her). For example, we often received meeting packs (sometimes consisting of two or more lever arch files of documentation) the day before the relevant Board meeting, which obviously did not allow adequate preparation time.

49. During May 2015, Ms Daniels was appointed as Senior General Manager ("**SGM**") in the office of the Chairman, and as such attended most board and committee meetings.

50. Initially, the erstwhile Company Secretary, Mr Malesela Phukubje, tried his best but it seems to me that he did not have adequate support from the staff employed in the secretariat department. Mr Phukubje left the employ of Eskom in September 2015. He was replaced by Ms Suzanne Daniels. She introduced more structure and efficiency to the operations of the office of the secretariat. The quality of documentation improved significantly at that time and the secretariat seemed to function much better on the whole. I believe this may, in part, have been the result of the engagement of an external support, Ms Annamarie Van der Merwe, to assist Ms Daniels in performing her functions. During that time, meetings were scheduled correctly, the general quality of secretariat work improved, the Board Charter and the various terms of reference were updated and the secretariat team appeared to be more motivated. However, concerns did later arise when Ms Daniels made herself available to also serve as Head of Legal in addition to fulfilling her other functions as Company Secretary and SGM in the office of the Chairman. I will address that slightly later on in my statement.

THE APPOINTMENT OF MR MOLEFE AS GROUP CHIEF EXECUTIVE OFFICER

51. Following Mr Matona's departure, Mr Brian Molefe was seconded to Eskom as Acting Chief Executive Officer on 17 April 2015, for a period of 3 months. Mr Molefe had, prior to this position, been employed as Group Chief Executive Officer at Transnet.

52. At the time of Mr Molefe's secondment, Eskom was understandably in an extremely unstable position. In addition to the crisis at executive and Board level, Eskom remained with going concern problems and stage 3 load shedding. During his tenure Mr Molefe successfully addressed the various key challenges faced by the Board viz:

- 52.1. Re-organised the Eskom team in order to address load shedding, which had already reached stage 3;
- 52.2. Addressed the financial challenges facing Eskom, which had been faced with going concern problems;
- 52.3. Dealt with the integrity of data, as most data produced by executives before then had been questionable;
- 52.4. Reduced the time spent and role played by the "war room" in "solutioning" Eskom's problems.

53. Bearing in mind that 4 senior executives had been suspended in March 2015, I was particularly relieved and pleased with the manner in which Mr Molefe had brought immediate stability to the organisation and taken control of the business with all the correct results.

54. Prior to Mr Molefe's secondment from Transnet, the Board had basically become operational and spent many late nights trying to stabilise the business. As mentioned above, there was a trust deficit between the Board and the executive team, which was largely due to the inability of the executives to get a handle on the issues which plagued Eskom at the time as well as various allegations of impropriety in conducting their duties. The Board viewed the situation as an exceptional circumstance which necessitated its "hands on" approach to the day to day running of the organisation. Mr Molefe's appointment to the position of acting Group Chief Executive Officer allowed the Board an opportunity to step back into its rightful role of fiduciary oversight.

55. Needless to say, the entire Board, including me, was in awe of what Mr Molefe had been able to deliver, especially as he had done so with substantially the same executive team who had previously not known how to turn the load shedding situation around.

56. Bearing in mind that the Board had been under severe public and media scrutiny and attack since its appointment in December 2014, the turnaround experienced under Mr Molefe's tenure had been particularly pleasing. In fact, such was his performance that Mr Molefe was nominated for the award of South African of the Year in 2015.

57. In his tenure as Acting Group Chief Executive, Mr Molefe assisted the Board with the turnaround of Eskom. Along with the rest of the Board, I was impressed by Mr Molefe's performance and the immediate and significant strides that Eskom made under his leadership. Mr Molefe demonstrated the expertise, urgent resolve and certainty of direction required to set Eskom on the right course.

THE APPOINTMENT OF MR MOLEFE AS CHIEF EXECUTIVE OFFICER

58. On 19 June 2015, Ms Daniels sent a letter to the Minister on behalf of Dr Ngubane, in his capacity as then interim Chairperson of the Board, in which he motivated for the appointment of Mr Molefe as Chief Executive Officer of Eskom. It appears however from correspondence between Dr Ngubane and Ms Daniels, during this time, that Dr Ngubane advised Ms Daniels that the motivation for the appointment of Mr Molefe was premature as he had not yet served 6 months as Acting Chief Executive Officer. He further advised that the correct approach would be to motivate for an extension of Mr Molefe's secondment to Eskom.

59. On 23 June 2015, Dr Ngubane, wrote to the Minister and requested her support and endorsement for the extension of the secondment of Mr Molefe as Chief Executive Officer of Eskom for a further period of 3 months, to be negotiated between Eskom and Transnet. In his letter, Dr Ngubane also advised the Minister that the P&G Committee had resolved to seek the appointment of Mr Molefe to the position of Group Chief Executive Officer, as soon as possible. He mentioned further that I was tasked with obtaining a legal opinion on the most optimal route to be followed to give effect to the appointment of Mr Molefe.

60. This opinion was obtained, from Bowman Gilfillan Attorneys, on 18 June 2015 and accordingly informed the contents of Dr Ngubane's aforementioned letter.

61. The P&G Committee decided to obtain this legal opinion as it was cognisant of the fact that its intention to recommend (to the Board, and ultimately, the Minister) the appointment of Mr Molefe without following the ordinary external search process may

amount to a deviation from the terms of the MOI. It was therefore agreed that the prudent approach would be to obtain a legal opinion regarding the permissibility of appointing a Chief Executive Officer without following the usual process of the Board providing the Minister with a shortlist of candidates from which the Minister would appoint the Chief Executive Officer.

62. As the Board, we strongly believed that Mr Molefe had done an outstanding job in turning Eskom around and was the ideal candidate to remain at the helm. It made no sense to risk destabilising the business by bringing in a different Chief Executive Officer, especially in circumstances where we had only just begun to stabilise the business. In fact, we considered Mr Molefe's retention as crucial to maintaining Eskom's new formed stability. The legal opinion concluded that Eskom could appoint a Chief Executive Officer without conducting an external search process and that the Board could provide the Minister with a shortlist of one candidate only, who the Minister could then decide to appoint or not.

63. In a letter dated 27 June 2015, the Minister responded to Dr Ngubane's letter. In her letter, the Minister agreed, in essence, with the request to extend the period of Mr Molefe's secondment. The Minister also requested that the Board deal expeditiously with the process of appointing a new Chief Executive Officer, in accordance with the MOI, the Labour Relations Act and Eskom's employment policies and procedures. The Minister ended her letter by requesting sight of the full legal opinion and recommendation on the optimal route to follow in the appointment of the Chief Executive Officer.

64. The legal opinion was sent by Ms Daniels to Ms Orcillia Ruthnam, the Chief Director: Governance of the Legal and Governance Department at DPE on 13 September 2015. Ms

Ruthnam responded to Ms Daniels on 14 September 2015 and requested clarification regarding whether Eskom's attorneys had considered the "*Guidelines for the appointment of a Chief Executive for a State Owned Enterprise*" ("**Guidelines**") which Guidelines were also attached to the email from Ms Ruthnam. We then forwarded the Guidelines to Eskom's attorneys for a supplementary opinion on whether the proposed process for appointing Mr Molefe as Chief Executive Officer remains competent in view of the guidelines.

65. The supplementary opinion was received on 15 September 2015 and forwarded to Ms Ruthnam at DPE on 16 September 2015. In brief, the supplementary opinion acknowledged that the Board is actually required to make recommendations to the Minister on the top 3 candidates in order of priority, and that any proposed deviation from that requirement required the Board to notify the Minister in writing and to provide reasons for the deviation.

66. In accordance with the legal advice received, I subsequently submitted a notification of Eskom's departure from the application of the Guidelines in the appointment of its Chief Executive Officer, by way of a letter to the Minister, which I understand was sent to her office by Ms Daniels on 16 September 2015 (the signed version following on 23 September 2015). The Minister did not object to the aforementioned departure.

67. On 9 September 2015, the P&G Committee met to discuss the issue of vacancies in the executive team. The meeting resolved that it was important to first address the vacancies in the office of the Chief Executive Officer and Chief Financial Officer and that approval in this regard must be sought from the Board.

68. On 10 September 2015, the Board resolved that the P&G committee should submit a recommendation to the Minister around the appointment of a Group Chief Executive Officer.
69. Pursuant to the aforementioned Board resolution, on 11 September 2015 Dr Ngubane, addressed a letter to the Minister in which he advised the Minister of the Board's resolution to propose permanently appointing Mr Molefe as Group Chief Executive Officer. Attached to the letter was a draft employment contract, for the Minister's consideration and approval.
70. We were confident that Mr Molefe was the right man to drive Eskom towards a successful future, given the turnaround already experience in a short space of time. Permanently appointing Mr Molefe was also identified as offering Eskom the leadership stability that had been so sorely lacking before then (it should be remembered that Eskom had appointed 7 different Group Chief Executive Officers in the prior 6 year period).
71. On 2 October 2015, the Minister approved the appointment of Mr Molefe as Group Chief Executive Officer. In this regard the Minister addressed a letter to Dr Ngubane, on which I was copied, enclosing copies of the letters she had addressed to Mr Molefe and Mr Singh. These letters confirmed Mr Molefe's and Mr Singh's appointments as Group Chief Executive Officer and Chief Financial Officer, respectively. Furthermore, the letters indicated that their appointments would be effective as at 1 October 2015. No indication of the terms of the respective appointments was made in the letters.

72. On 8 October 2015, I received an email from Ms Daniels drawing my attention to email correspondence between herself and Ms Ruthnam, in which:

72.1. Ms Ruthnam suggested that the Minister had approved a 5 year contract for Mr Molefe;

72.2. Ms Daniels had asked Ms Ruthnam to check this since the Minister's letter approving Mr Molefe's appointment had not specified a 5 year contract and all of Eskom's previous Eskom's previous Group Chief Executive Officers were permanent appointments;

72.3. Ms Ruthma advised that the 5 year term was a cabinet requirement but that she would revert as to whether the Minister must write back to the Board on the matter.

I received no further correspondence in this regard and believed the issue had been resolved.

73. On 16 October 2015, Dr Ngubane addressed a letter to the Minister regarding the proposed terms of Mr Molefe's appointment and remuneration. The contents of this letter were informed by various inputs received by the P&G Committee from Mercer, PE Corporate & DeLoitte on chief executive remuneration packages.

74. The Board was officially advised in November 2015 that Cabinet had approved the terms of Mr Molefe's appointment for a period of 5 years, but that Mr Molefe had already signed a contract permanently appointing him to the position of Group Chief Executive Officer. I understand that Dr Ngubane had presented a permanent contract of employment (and

not one for a 5 year term) to Mr Molefe on 9 November 2015, and that Mr Molefe had signed it on 11 November 2015.

75. On 12 November 2015 (after Mr Molefe had signed his permanent contract of employment), I received an email from Ms Daniels enclosing a draft offer of employment letter, dated 13 October 2015. The letter specified that Mr Molefe would enter into a fixed term employment contract with Eskom, however, the term of the contract was not specified.

76. I now understand that the Minister addressed a response to Dr Ngubane's letter dated 1 November 2015 (I am not sure on what date the letter was received by Dr Ngubane), in which she approved the proposed remuneration but confirmed that she required the term of employment to be specified as 5 years. I did not have sight of the Minister's response at the time that it was received, and was only informed after Mr Molefe had already signed the permanent contract that the Minister still insisted on a 5 year contract.

77. The Board was faced with the challenge of having to change the signed permanent contract to a 5 year fixed term contract in accordance with the Minister's instruction.

78. Until that point (i.e. of learning that the Minister and Cabinet remained insistent that Mr Molefe be appointed for a fixed term of 5 years) my understanding was that the contract had been approved as permanent, as per the Board's request and as informed by all previous Chief Executive Officer appointments. As a Board we relied heavily on guidance received from Mr Anton Minnaar, the Executive Remuneration Officer, regarding the standard terms of employment of Eskom Group Chief Executive Officers (Mr Minnaar had presented to the Board prior to Mr Molefe's permanent appointment the explanation that

all previous Group Chief Executive Officers had permanent contracts of employment). We placed confidence in Mr Minnaar's guidance as he had been involved in the appointment of 7 previous Chief Executive Officer's in the preceding 6 year period.

79. Mr Molefe was thereafter advised of the Minister's direction. I understand that Dr Ngubane had engaged with Mr Molefe in this regard, and that Mr Molefe had been quite concerned at the change that was required to be made to the terms of his appointment. The Board was advised by Dr Ngubane that Mr Molefe was willing to accept a 5 year contract, however, he had some concerns regarding the perceived pension benefit which he had understood would emanate from his permanent employment at Eskom.

80. Dr Ngubane and I, having considered the impact of losing Mr Molefe, if a resolution on the terms of his appointment could not be reached, and engaged Mr Minnaar for advice as to how the contracts of previous Chief Executive Officers were dealt with in the past and what benefits would Mr Molefe be losing in the case of a 5 year contract, as opposed to permanent contracts of employment. Mr Minnaar explained that all previous Chief Executive Officers at Eskom had been on a permanent contract and that Mr Molefe would not be able to accumulate an equivalent pension benefit during his service at Eskom. In light of this, we agreed that an arrangement could be put in place to ensure that he is not adversely affected in respect of his pension benefits.

81. Mr Minnaar assisted the Chairman in drafting and dispatching a letter to the Minister on 25 November 2015 to recommend that a retirement arrangement be reached with Mr Molefe in order to allay his concerns regarding his pension and to lock him in for the benefit of Eskom. The arrangement proposed by Dr Ngubane in this regard was as follows:

- 81.1. Regardless of Mr Molefe's age after the 5 year termination date, he would be allowed to retire from Eskom's service on the basis that he is aged 63.
- 81.2. The penalties prescribed by the Eskom Pension and Provident Fund ("EPPF") for retirement prior to age 63 will be waived (i.e. not paid by Mr Molefe).
- 81.3. That Eskom carries the cost of such penalties (to be paid over to the EPPF).
- 81.4. In the event that Mr Molefe's contract is not extended beyond the 5 year termination date, he will not be allowed to subscribe to any other State Owned Companies or government pension fund.
- 81.5. Should the contract be extended, however, it is important to note that the cost of any subsequent penalties (actuarial value) will decrease proportionately.

82. The effect of the retirement arrangement would be to place Mr Molefe in the same position that he would have been in had he retired from Eskom at the age of 63. The Board supported the arrangement as it was critical to securing Mr Molefe's long-term retention at Eskom. It was, at all times my understanding and what I understood as the intention of the Board, that Mr Molefe would only qualify for this benefit after serving an initial 5 year period.

83. The terms of the arrangement were communicated to the Minister for her noting in a letter from Dr Ngubane on 25 November, in accordance with advice received from both Legal and Executive support. I was not aware that the Board's proposal to the Minister, with regard to Mr Molefe's retirement arrangement had not received feedback from the Minister. I accepted that the P&G Committee had the right to recommend the resolution to the Board.

84. The P & G Committee met on 9 February 2016 to deliberate on the conclusion of the contract with Mr Molefe, including the aforementioned issue relating to his pension benefits. In order to better understand the distinction between appointing Mr Molefe on a fixed term versus permanent basis, and the options available to the Board for addressing Mr Molefe's concerns over the impact of a fixed term contract on his ability to grow an adequate pension benefit, the Board sought input and guidance from Mr Minnaar (in his capacity as Executive Remuneration Officer). Mr Minnaar explained to the P&G Committee at the meeting that as a result of Mr Molefe's short term contracts in the numerous public entities in which he had served at executive level, Mr Molefe had been deprived of the opportunity to grow a pension benefit in a single fund.

85. At the meeting of 9 February 2016, it was resolved that:

"7.5.1 the current Eskom Pension and Provident Fund (EPPF) rule that Employees may proceed on retirement from age 50 with 10 years' service, remains applicable;

7.5.2 in cases where an Executive Director (appointed on a fixed term contract) decide to take early retirement and there is a shortfall regarding the EPPF 10 years' service rule, Eskom shall:

- i. bridge the gap to make up for the 10 years;*
- ii. waive penalties applicable to early retirement; and*
- iii. refund EPPF actual cost for additional service added, plus penalties applicable to early retirement."*

7.5.3 *a proposal in respect of the Chief Financial Officer to be considered and submitted to the Committee in due course.”*

86. What the minute of the P&G Committee meeting of 9 February 2016 neglected to record, was the intention of the P&G Committee that the arrangement must be structured in such a way that the benefit would only accrue to Mr Molefe upon completion of his 5 year term, and that Mr Molefe would not be able to participate in any other government pension fund after qualifying as per the resolution. These intentions were clearly recorded in the letter to the Minister dated 25 November 2015 and are clear from the audio recording of the meeting

87. The resolution of the P&G Committee meeting of 9 February 2016 was approved by the Board on 19 April 2016.

88. On 7 March 2016, Mr Molefe signed a second contract of employment for a fixed five year term, with effect from 1 October 2015 and terminating on 30 September 2020.

DUVHA RECOVERY ACCELERATION:

89. During the meeting of 10 September 2015, the issue in relation to the Duvha recovery acceleration was discussed. The board resolved that Eskom does not accept the conditions and costs from the technology providers (Doosan-Babcock and Flour) and Insurers and that it must push back to get a resolution that restores the plant to *ex-ante* conditions, with like to like technology and with the required warrantees. The following resolution was made in this regard:

- 89.1. The Board approved the cash settlement offer of R4.906 billion, following which Eskom would receive a formal cash settlement offer. It was accepted that the executive's insistence on the restoration of the plant to *ex-ante* conditions, with like to like technology would result in a cash shortfall as the settlement offer of R4.906 billion was not based on a like for like technology.
 - 89.2. The outcome of the Bid Conversion Process should be presented to the BTC seeking formal closure of the current commercial process.
 - 89.3. Eskom should revert to the original BTC mandate approved on 4 August 2014, and the BTC mandates that were adopted on 9 December 2014 and May 2015 were revoked.
 - 89.4. Eskom should negotiate and conclude a cash settlement based on the insurer-offered technology (Posiflow) as opposed to like for like technology.
 - 89.5. The final investment of the settlement amount received was delegated to the Investment and Finance Committee. Commercial approvals were reserved for approval at the Board Tender and Procurement sub-committees.
90. The issues relating to the Duvha matter were delegated to the sub-committees as mentioned above. These issues were therefore never discussed before the Board again. I am therefore not aware of anything further in this regard than what I have set out above.

91. During March 2016, Amabhungane published the “spider gram” which showed alleged connections between Board members and the Gupta family. 4 Board members resigned pursuant to this. Coupled with the earlier departure of Mr Norman Baloyi and Mr Zola Tsotsi, this meant that the original full board of 14 members was now down to 8 members being the Group Executive Officer, the Chief Financial Officer and six non-Executive members, with one other living abroad. This instability affected the governance of the organisation and placed a disproportionate burden on the remaining members.

THE COAL SUPPLY CONTRACTS

92. In the meantime, issues around Eskom’s various coal supply contracts have been discussed at Board level on numerous occasions. The procurement process regarding the coal supply contracts had been identified as an area of concern in the Dentons report. At the Board meeting of 21 September 2015 a discussion took place regarding an article appearing in the media in respect of Eskom’s coal supply contracts, and specifically that concluded with Tegeta. The Board mandated the ARC to initiate an investigation into all contracts involving mines in the Delmas area, including but not limited to historical contracts with Tegeta, which predated my appointment to the Board to establish whether the correct procurement processes were followed. In addition, it was decided that coal samples should be collected from each of the relevant mines in accordance with the Standard Coal Quality Management process, and that such samples should be transported under supervision to the contracted laboratories and for the entire coal analysis process to be witnessed and video recorded. I considered the discussion and proposed actions to

constitute a reasonable and appropriate initial response to the concerns raised around the relevant coal supply contracts.

93. On 18 November 2015, the chairperson of the ARC, namely Ms Cassim, reported at a meeting of the Board that the ARC's investigation had revealed that the entire procurement process was flawed. In addition, she pointed out that the procurement process followed in that regard was so integrated that it was difficult to determine at what point in the process the controls had been inadequate and, hence, at what point the regularity and/or impropriety had been permitted to influence the process. Ms Cassim sought the Board's approval for "management" to conduct a thorough investigation. It was noted that the management would decide whether the Assurance and Forensics department would be commissioned to do this piece of work or whether an external resource should be involved. The Board determined that a two pronged approach should be followed which would, firstly, consider the current controls and identify weaknesses and, secondly, interrogate and understand the areas of apparent collusion which resulted in the current situation.

94. The Board was further advised that certain implicated staff had already been suspended on account of the ARC's investigation. It was agreed that the matter should remain a standing agenda item for the ARC, which would be required to provide regular feedback to the Board. The ARC was given 7 days to report back to the Board on the issues discussed at this meeting. On a personal level, I had been concerned that using internal staff to conduct the investigation could potentially compromise the process, but I was assured by

the Chief Executive Officer, Mr Molefe and the Chief Financial Officer, Mr Singh, that they would monitor the responsible Officers with the requisite oversight.

95. On 7 June 2016 I tendered my resignation as a member of the Board. My resignation was largely motivated by a potential impending conflict of interest that I expected to arise when the Twin Peaks legislation is enacted as a result of my position at the time as a member of the Boards of both the Reserve Bank and Eskom. Although my letter of resignation does not state this expressly, I was also experiencing huge pressure as a non-executive director and was concerned about the state of affairs at Eskom and the possible exposure and reputational risk this may have on my career. . However, I agreed, at the request of the Minister, to postpone my resignation until October 2016, as the Minister had advised that she would appoint additional members to the Board. From October 2016 I followed up with the DPE every month in regard to when the new Board members would be appointed.

MR MOLEFE'S EARLY RETIREMENT

96. Shortly after the release by the Public Protector of her report Mr Molefe enquired from me whether he qualified for the pension pay out benefit. I was not sure as I was of the view that the resolution only kicked in after he had served a period of 5 years or beyond. I therefore asked Mr Minnaar, who confirmed that Mr Molefe did indeed qualify. I was surprised by this, as I was of the understanding that Mr Molefe needed to serve out at least the 5 year term of his initial appointment in order to qualify for this benefit. I

accepted that this would be debated by the Board, which I believed would still have the final say on the matter

97. At a special board meeting on 7 November 16, the board asked Mr Molefe about the allegations in the State of Capture report. Mr Molefe shared with the board his side of the story and the impact it had on his family. After that meeting, Mr Molefe mentioned to me that he would be sending his letter that night. That did not happen.

98. During a press conference on 11 November 2016, Mr Molefe indicated that he had decided to leave his employ at Eskom. Mr Molefe indicated, in a press statement, that his decision to step down was motivated by the reputational risk to Eskom as a result of the findings made by the Public Protector in her report of 2 November 2016.

99. On 11 November 2016, Mr Molefe submitted a letter seeking approval for early retirement in terms of the Eskom Pension Fund rules read in conjunction with the resolution of the P&G Committee, dated 9 February 2016. This letter was not presented to me as chairperson of the P&G Committee, and was apparently only sent to Dr Ngubane (as chairman of the Board) and the Minister.

100. On 11 November 2016 Eskom issued its own press release in which it confirmed Mr Molefe's decision to step down.

101. On 21 November 2016 the P&G Committee met to deliberate on various issues, including the State Capture Report and Mr Molefe's decision to step down. I made it clear at the

commencement of the meeting that the meeting was not quorate and, therefore, that no decisions could be taken at the meeting. This is reflected in the recording minutes of the meeting.

102. This is when I first became aware of the contents of Mr Molefe's letter of 11 November 2016 (i.e. in terms of which he sought approval for early retirement). The Committee was advised by Mr Minnaar that Mr Molefe was entitled to receive his pension benefit pursuant to his early retirement. Mr Minnaar read to the meeting an extract from a letter he had prepared for Dr Ngubane to send to Mr Molefe, confirming the acceptance of his request for early retirement.

103. As the meeting was not quorate, the approval of Mr Molefe's pension benefit was only supported in principle by the P&G Committee. It was understood by me, and I believe the other members of the P&G Committee that were present, that:

103.1. the matter would be deliberated upon and a decision would be taken at a P&G Committee meeting with a quorum;

103.2. the decision would then be placed before the Board as a recommendation for approval. All decisions relating to the Group Chief Executive taken by the P&G Committee were subject to Board approval in terms of Eskom's Delegation of Authority;

103.3. the issue relating to the non-fulfilment of the 5 year tenure would also be deliberated upon and decided at the Board meeting;

- 103.4. only once approved by the Board would a letter be sent to Mr Molefe confirming the acceptance, or otherwise, of his request for early retirement.
104. Further to the above, I have now been advised that as the decision related to the removal of the Group Chief Executive Officer, the matter required the Minister's approval as per Eskom's Memorandum of Incorporation, adopted on 1 July 2016.
105. The minutes of the meeting of 21 November 2016 also reflect the Board members' concern over the combining of the role of the Company Secretary and the Head of Legal. In my view, the consolidation of the two roles disposed of a measure of the independence and accountability one would experience where the roles of the Company Secretary and the Head of Legal are kept separate. The Board did not have the benefit of having an independent Head of Legal against which it could test the advice received from the secretariat in this regard.
106. I, and I believe other members of the Board, was concerned about Ms Daniels' workload as Company Secretary, Head of Legal and SGM in the office of the Chairman. This concern was against the backdrop of the numerous challenges faced by Eskom at that point in time, and the risk created by Ms Daniels not being able to fully apply herself to matters requiring her attention, in her capacity as Head of Legal. Our concerns in that regard were compounded by the strong reliance which Dr Ngubane placed on Ms Daniels for supporting him in the performance of his role. Ms Daniels effectively functioned from within Dr Ngubane's office, accompanying him to most meetings in Parliament and on various international engagements. As a result, Dr Ngubane mostly interacted with the Board through Ms Daniels. This created tension amongst the Board

members, many of whom felt isolated in regard to certain issues and decision making processes. I was particularly concerned that this arrangement would make it difficult for Ms Daniels if a situation arose where the Board required action to be taken against Dr Ngubane, as has been done in respect of the previous chairmen.

107. I had also become concerned by that point that the workload being carried by the Board was too much to expect of the few remaining Board members. I accordingly asked the Company Secretary at the meeting of 21 November 2016 to write to the Minister to enquire into the status of the appointment of new Board members.

108. On 24 November 2016, and without having sought approval from either the P&G Committee, the Board or the Minister, Dr Ngubane addressed a letter to Mr Molefe communicating Eskom's acceptance of Mr Molefe's request for early retirement. Upon being made aware of this letter, I asked the Company Secretary, Ms Daniels, who had approved the acceptance communicated by Dr Ngubane. In response she advised that the decision to accept Mr Molefe's early retirement did not require Board approval (and had ostensibly been approved by Dr Ngubane on his own). This is contrary to what we were advised at the P&G committee meeting on 21 November 2016. Dr Ngubane claims to have been told by Mr Minnaar that the P&G Committee had approved the letter, which it clearly had not.

109. I understand that Mr Minnaar called for actuarial values of the amount to be paid out to Mr Molefe if he qualified for early retirement. I also recall Mr Minnaar mentioning the financial implications of Mr Molefe's early retirement to me at some point, however, this was done in passing and did not amount to a fully-fledged discussion with

respect to the amounts involved nor was this communicated to me in formal correspondence.

110. My understanding is that Mr Molefe chose to receive 30% of the pension benefit as a lump sum payment and that the remainder is to be paid out to him as a monthly pension of R100 000 per month.

MCKINSEY'S & TRILLION

111. I had been aware of McKinsey's prior appointment as a strategic partner, as this was noted at the Board meeting of 10 September 2015. Immediately upon that having been brought to the Board's attention, and at that same meeting, I declared a possible conflict of interest as I was in discussions with McKinsey at that point in time in regard to possibly assisting it on a consultancy basis in Africa (as this assignment did not materialise I did not receive any remuneration from McKinsey's). The issue was put to a vote and the Board members agreed that there was no conflict of interest and declined my request to recuse myself from the discussion.

112. At the meeting of 10 September 2015, the Board resolved:

112.1. to appoint McKinsey as the sole partner for the financial and strategic matters of:

112.1.1. Cash flow and profitability targets for the Financial Year 2016;

112.1.2. Updating the business cases for the Medupi and Kusile powerplants;

112.1.3. Development and dissemination of the new design to cost strategy;

112.1.4. Adapting Eskom's governance model to ensure delivery of the new strategy;

112.2. that McKinsey should be contracted on a fixed cost basis with a total contract value of R101 733 124.80 for a period of 8 months;

112.3. that the Group Executive for Commercial and Technology is given the necessary authority to execute this contract in line with Eskom's Delegation of Authority.

113. During 2016 parliamentary questions were put to the Minister regarding work done by Trillion as part of the McKinsey's contract. I was not aware that Eskom had done any work with Trillion, and I was therefore not uncomfortable when I read in the media that Eskom had apparently indicated to the Minister that Eskom had not paid any amount to Trillion. Trillion had never been mentioned as part of the McKinsey contract when same was presented to the Board for approval.

114. At a meeting of the Board on 29 November 2016 this issue was raised as a matter of concern and, in response, Mr Singh advised as follows:

114.1. An additional contract (i.e. to that mentioned above) had been awarded to McKinsey by the Board Tender Committee which resulted in the conclusion of a Master Service Agreement ("**MSA**");

- 114.2. The MSA gave McKinsey the authority to sub-contract. McKinsey had therefore sub-contracted Trillion;
- 114.3. Management had revisited the MSA with McKinsey, being concerned about procurement on a single source basis;
- 114.4. The MSA with McKinsey was subsequently terminated.
115. At this meeting we were also advised that Trillion had done work for the Eskom Finance Company as well as some work in risk assessment. These matters had not previously come to the Board.
116. The matter was not aired beyond this and certainly not to the extent to which it has been aired in the media recently. The full gravity of this matter surfaced with the Gupta leaked emails, which was after I had resigned from the Board.
117. It is important to note that there were two agreements, namely, the MSA and the fixed term contract of 8 months. In respect of the fixed term contract, which was deliberated on at Board level, I did not see the need to ask questions at the time as it related to work that had already been allocated.
118. Given the explanation provided by Mr Singh, I accepted that the Minister would be updated accordingly. However, judging by the media reports, it would now appear that the Minister was not provided with the explanation given to the Board at that point in time.

IMPULSE INTERNATIONAL (PTY) LTD

119. At a Board in-committee meeting on 2 March 2017, Dr Ngubane shared information that he had received from a source as well as through an anonymous letter from the staff regarding, amongst other things, the so-called “Impulse matter” and various other allegations of misconduct by Mr Koko, the Acting Chief Executive Officer at the time. At the same meeting, I shared concerns which had been raised with me by members of staff regarding how Mr Koko was managing them. The Board determined to meet Mr Koko for purposes of addressing the issues that had been raised by the staff. I pointed out that, since Mr Koko had been warned upon his appointment as Acting Chief Executive Officer not to become embroiled in any issues or allegations of impropriety, the allegations concerning his conduct could constitute grounds for suspension on account of him having ignored the Board’s precaution. Ms Daniels also shared allegations which had come to the attention of the Minister, and which the Minister wanted a formal investigation to be conducted in respect of.

120. The Board accordingly met with Mr Koko to share the issues indicated above and to request his comments in response. Mr Koko agreed to respond to Dr Ngubane in writing. I did not see a copy of Mr Koko’s response, however, the matter was further addressed with Mr Koko at a meeting of the Board of 28 March 2017. At the Board meeting of 28 March 2017, Mr Koko agreed that the allegations against him were serious and could give rise to his suspension, as previously noted by me. The Board accordingly agreed that Cliffe Dekker Hofmeyer Attorneys be appointed to fully investigate the allegations concerning Mr Koko. Terms of reference were subsequently

agreed upon and Cliffe Dekker Hofmeyer Attorneys was instructed to complete the investigation and produce a report within 30 days. During this time, the Board was required to deal with a number of media queries in regard to Mr Koko. I had stepped down from the Board before the report was completed.

121. On 14 April 2017 I was requested by Mr Koko, the acting Chief Executive Officer at the time, to call the Minister to discuss the matter of Mr Molefe's pension payout, after a media article was published in this regard. The Minister wanted to know if the R60m value that she had picked up in the papers was correct. I explained to her that it did not sound right but that I was sure we had done everything by the book (as had been done previously).

REINSTATEMENT OF MR MOLEFE

122. The following Wednesday, 19 April 2017, we were summoned to the Minister's office to discuss Mr Molefe's pension payout. At the Meeting, the Minister enquired as to why Mr Molefe had qualified for the pension payout, considering that he was on a 5 year contract. In response to the Minister's query, we explained that this was the first time that any Eskom Group Chief Executive Officer was on a fixed term contract and that the Board was in quandary when advised (after signing the permanent contract on 11 November 2015) that there ought to have been a term attached to Mr Molefe's contract. We further explained that Mr Molefe had some concerns regarding the perceived loss of the pension benefit which he understood would have emanated from his permanent employment at Eskom, which is what led to us recommending a solution

to the Minister in Mr Ngubane's letter dated 25 November 2015. It was only at this point (at the meeting with the Minister on 19 April 2017) that I became aware that our recommendation was never accepted by the Minister.

123. The Minister expressed her dissatisfaction with the early retirement arrangement reached with Mr Molefe and instructed the Board to engage with Mr Molefe with the view to renegotiate the terms of his early retirement. At that meeting the Minister advised that her team had given input in response to the Board's recommendation of 25 November 2015 and that the Director General had given the DPE's feedback to Eskom's Chief Financial Officer, Mr Singh. Whatever the discussions were, the outcome was never communicated back to the Board.

123.1. The Board had also been advised by Ms Daniels that we did not require the Minister's approval in respect of the acceptance of Mr Molefe's retirement; and

123.2. Neither I nor the Board had received any feedback from Mr Singh as articulated by the Director General of the DPE to suggest that our recommendation was not supported.

124. At that meeting it became clear that there were quite a few issues where I had been led to be of one view – on account of feedback from either Mr Minnaar, Ms Daniels or the Chairman - and the DPE was of another, viz:

- 124.1. the Fixed term contract of the Chief Executive Officer versus the full-term contract, given that this was the first time that Eskom had adopted a fixed term contract in respect of the Chief Executive Officer.
 - 124.2. The request of the change of Eskom policy in order to secure Mr Molefe's appointment on a 5 year contract and the DPE's handling of this matter.
 - 124.3. The question of whether Mr Molefe qualified to be a member of the EPPF notwithstanding the fact that he was only on a 5 year fixed term contract (I believed that he did, whereas the DPE contends that he never).
125. I was surprised by the events of the day as my colleagues and I had been led to believe that we had acted within the rules of the EPPF and that the transaction had met all the governance protocols as confirmed by Ms Daniels, who was both the Company Secretary, and the Head of Legal at the time.
126. The main point of contention was that we were operating under the previous Memorandum of Incorporation ("**MOI**"), in terms of which the Minister was not required to sign off on the exit of the Chief Executive Officer. Also, according to Ms Daniels, the resolution of the P&G Committee adopted on 9 February 2016 stood. According to her, this had the effect that Dr Ngubane did not require approval from the Board to affect the signing of the application for early retirement by Mr Molefe. This, coupled with the feedback from the EPPF to the effect that Mr Molefe qualified for early retirement in terms of the EPPF rules, gave me comfort that we had acted completely within the rules and the mandate of the Board. It therefore came as a surprise to me to learn that the pension arrangement didn't carry the Minister's blessing.

127. The Minister gave the Board 7 days to renegotiate with Mr Molefe, as she advised that she simply could not support a payout of R30 million. To my mind, the money had not yet been paid over, so looking for an alternative solution was workable.

128. As we were under pressure for time, Ms Daniels and I were mandated to go and meet with Mr Molefe to explain the Minister's position on the matter. At that meeting on the evening of 19 April 2017 we explored all the possible ways in order to resolve the impasse, and the following alternatives emerged:

128.1. Mr Molefe abandoning the pension benefit;

128.2. Agreeing on a more acceptable benefit;

128.3. Mr Molefe returning to Eskom.

129. It has to be noted that Ms Daniels and I did not have the requisite mandate to agree on anything with Mr Molefe; we were merely engaging with him in order to explore possible resolutions – which still required Board approval.

130. At this meeting with Mr Molefe we learnt that 30% of the pension benefit had already been paid over in January 2017, and that Mr Molefe has been receiving monthly pension payments of *circa* R100 000 since then.

131. Early the next morning (i.e. on 20 April 2017]) Mr Molefe called me and explained that he had been thinking about how best to resolve the matter, and that if he agrees to forego all retirement benefits he would effectively still be in the employ of Eskom. I

shared the information conveyed in the call with both the Company Secretary and the Chairman, Dr Ngubane.

132. Dr Ngubane and I met with Mr Molefe that Friday morning (i.e. on 21 April 2017) in order to look at workable solutions to what had by now become a matter of immense public interest. Nothing came of the meeting, as it remained unclear how best to address the impasse.

133. That next Sunday (i.e. 23 April 2017]), before any of our discussions had been properly explored, the Minister publicly expressed her view that the Board had acted improperly in the award of the R30 million pension benefit and that she had instructed the Board as articulated above. This created additional pressure as I, for one, was hopeful that we could resolve the matter amicably – albeit that this would be very difficult to achieve at that time.

134. On 24 April 2017, the Board met to discuss the events as published in the media as well as the Minister's concerns in the meeting of 19 April 2017. The board was also updated on the discussions with Mr Molefe on 19 April and 21 April 2017. The meeting was attended by Mr Adiel Patel of Cliffe Dekker Hofmeyer attorneys. Mr Patel explained to the Board that the EPPF Board had the option to decline the request by Mr Molefe in respect of his early retirement.

135. At the meeting of 24 April 2017 Ms Daniels further advised that the Minister's approval for the pay out of retirement benefits was not required. I also confirmed with Mr Patel

whether the proper decision making process had been followed. He confirmed that it was his view that the required decision making process had been followed.

136. At this meeting I raised the following points:

136.1. The pension arrangement only arose as a result of the introduction of a fixed term contract of 5 years. It was initially the intention of the Board to provide Mr Molefe with a permanent contract as was the case with the previous Chief Executive Officers;

136.2. Mr Molefe had advised previously that he wanted to retire from Eskom as he had been on various 5 year assignments and that was the biggest attraction to him and the reason that he agreed to be seconded from Transnet to Eskom.

137. The Board met on Tuesday, 2 May 2017 in order to look at the various options at its disposal, at which point we also considered the upshot of the legal opinion received from senior counsel on 28 April 2017. Ms Daniels prepared a summary of the legal opinion, which she submitted to the Board for consideration at its meeting of 2 May 2017. We were informed that senior counsel's advice was that Mr Molefe's return was the most plausible resolution to the dilemma faced by the Board.

138. On 2 May 2017, the Board took the view that, subject to confirmation by another Senior Counsel, should Mr Molefe be amenable to returning to Eskom and if it was plausible

(given that he was by now a Member of Parliament), his return to Eskom could solve more than just the issue of the R30 million.

139. Eskom had by that time engaged a Search Firm, Woodburn Mann, and had agreed on a shortlist for the appointment of the next Group Chief Executive Officer. We were also faced with extreme media challenges regarding the acting Group Chief Executive Officer (i.e. Mr Koko) regarding contracts awarded to a company in which his step-daughter had a substantial interest (Impulse International (Pty) Ltd) were being investigated at the time.

140. On 2 May 2017, the Board resolved that the best of the options presented by senior counsel was to rescind the decision to accept Mr Molefe's early retirement and to reinstate Mr Molefe. A decision was accordingly taken to rescind the acceptance of Mr Molefe's early retirement. The Board understood this to be entirely lawful and acceptable based on the opinion received from senior counsel.

141. At the meeting the Board again considered that it had acted within the rules of the EPPF and Eskom's MOI, and agreed that its decisions and actions had been reasonable and rational considering all the factors and dynamics at the time of the request for early retirement as well as when it was trying to conclude the contract of employment with Mr Molefe in February 2016.

142. I appreciate now that the mere rescission (if that is legally possible) of the acceptance of Mr Molefe's application for early retirement does not necessarily automatically mean

that he ought to have been reinstated to the position of Group Chief Executive Officer. I say so as Mr Molefe's public statements were to the effect that he would be stepping down, and not that he would only do so if his application for early retirement was approved. Therefore, even if the acceptance of Mr Molefe's application for early retirement was rescinded, I now understand that it shouldn't necessarily follow that he should be reinstated to the position of Group Chief Executive Officer, as the position remained that he had *de facto* stepped down from that position. The Board, however, was never advised of this. On the contrary, the Board was advised that this was entirely lawful and acceptable. The Board was also not advised whether Mr Molefe's reinstatement required the approval of the Minister, which I now understand that it did.

143. I was not privy to the negotiations around Mr Molefe's reinstatement. In this regard, the Chairman and Company Secretary attended a range of meetings with different stakeholders.

144. To my mind, we were solving quite a few problems with Mr Molefe's return. I could not have imagined the outrage of "SA Inc" on this decision. Having viewed the impact of this when Mr Molefe's return was announced on 12 May 2017, I decided immediately to affect my resignation (which I had first tendered on 7 June 2016 and later postponed until October 2016 at the request of the Minister, as she needed support for the Eskom board until she appointed additional members – which of course only happened in June 2017 at the AGM).

145. In so far as I have referred to documents above, they are documents within the possession of Eskom and which I believe may be made available to the evidence leader, if so required.

19 October 2017