PUBLIC ENTERPRISES PORTFOLIO COMMITTEE

INQUIRY INTO ESKOM, TRANSNET AND DENEL

WRITTEN STATEMENT OF MXOLISI MGOJO, THE CHIEF EXECUTIVE OFFICER OF EXXARO RESOURCES LIMITED

INTRODUCTION

1. I make this statement on the invitation of the Portfolio Committee and in my capacity as chief executive officer of Exxaro Resources Limited ("*Exxaro*").

2. Exxaro was invited by this Committee and requested to address two issues:

2.1 The first issue is the manner in which Eskom has unlawfully pushed Exxaro out of the coal supply space, and contracted with a third party/ies at a considerably higher cost to the fiscus.

2.2 The second issue is Exxaro's understanding and experience of Eskom's alleged practice and policy regarding pre-payments or pre-purchases.

3. Exxaro accepted this invitation and intends sharing information on the above issues in good faith and to the best of our knowledge and recollection. Furthermore, Exxaro has been mentioned several times before this Committee and in the media. Accordingly, Exxaro has a responsibility and an obligation to make this statement in order to clarify matters and set the record straight.

4. This statement is supported by agreements, letters, minutes and other documents, some of which are attached for ease of reference. Should the Committee require further documents (other than those attached to this statement), Exxaro would be most happy to provide them, subject to appropriate confidentiality undertakings, if required.

5. This statement also refers to statements made by other persons before this Committee, especially where they diverge with our understanding of certain events, Eskom policies and historical practices.

6. In addressing the two questions set out above – namely Exxaro being pushed out of the coal supply space, and Exxaro's experience and understanding of prepayments – we do the following in this statement:

6.1 We differentiate between the cost-plus coal supply agreements ("*CSAs*") and the commercial CSAs.

6.2 We explain the cost-plus mine contracts (Arnot and Matla) and certain of the commercial contracts with Eskom.

6.3 We set out a chronology of some of the key events that led to this enquiry.

6.4 We explain the *modus operandi* between Exxaro and Eskom in the execution of the CSAs, before Brian Molefe was appointed CEO at Eskom, and thereafter.

7. I started working at Eyesizwe Coal, one of Exxaro's predecessors, as its Marketing and Logistics Manager in 2001. From 2006, I held the position of Executive General Manager for Base Metals and Industrial Minerals in Exxaro. I then became the Executive Head for Coal Operations in August 2008. In May 2015, I was appointed Chief Executive Officer Designate and became Chief Executive Officer for Exxaro in April 2016. I have therefore worked within Exxaro in various capacities for over a decade.

8. Today I am accompanied by the following five Exxaro representatives:

8.1 Dr Nombasa Tsengwa. She is Exxaro's Executive Head Coal Operations. Dr Tsengwa managed Exxaro's cost-plus mines between 2010 and 2015. She also managed its commercial mines in Mpumalanga from 2014 to 2015.

8.2 Mr Bram van Stelten. He is Exxaro's General Manager of Mpumalanga and Ferro Alloys. He manages the cost-plus and commercial mines in the Mpumalanga area. (He took over that responsibility from Dr Tsengwa in 2015.)

8.3 Mr Sakkie Swanepoel. He is Exxaro's Group Manager of Marketing and Logistics. His department is responsible for managing and negotiating the coal supply agreements with Exxaro's customers, which include Eskom SOC Limited ("*Eskom*").

8.4 Mr Mellis Walker. He is Exxaro's Group Manager of Financial Performance Coal Operations. He has been with the coal business since 2012. He handles all the financial aspects of that business and its CSAs.

8.5 Ms Yvette Cluver. She drafts and negotiates Exxaro's contracts with our customers, who include Eskom.

9. Exxaro was formed in 2006 pursuant to a merger between the non-iron ore assets of Kumba Resources and Eyesizwe Coal. It is one of the largest black-empowered, South African-based diversified resources companies. It has business interests in South Africa, Europe, the United

States of America and Australia.

10. Since its incorporation in 2006, Exxaro has been a pioneering force for black-economic empowerment in the mining industry.

11. Exxaro has a diverse coal product portfolio. It operates in all domestic-market segments in South Africa and also exports coal to the international market.

12. Eskom is one of Exxaro's biggest customers. The coal that Exxaro supplies to Eskom generates approximately 35% of the coal-fired electricity produced by Eskom. Eskom thus remains a very important customer for Exxaro, and Exxaro hopes to build and maintain a solid relationship with Eskom in the future.

COST-PLUS MINES VERSUS COMMERCIAL MINES

13. We deal separately with Exxaro's cost-plus and commercial mines in explaining the prejudice caused to Exxaro by Eskom's conduct over the last few years. In doing so, we hope to remove any confusion around so-called prepayments for coal. Prepayments for coal are not envisaged in the CSAs between Exxaro and Eskom for either cost-plus or commercial mines.

14. Before turning to the issue of prepayments and prejudice, we briefly explain the distinction between cost-plus and commercial mines.

15. At cost-plus mines:

15.1 the power stations were typically built next to the existing mine

reserves;

15.2 historically, mining was facilitated by Eskom. Eskom invited industry players to use their skills and resources to establish the cost-plus mines and, in doing so, to assist in building South Africa's economy;

15.3 Eskom is contractually obliged to provide the capital and operating expenditure ("*capex*" and "*opex*"). The coal reserves, mining expertise and skills, and human resources at the cost-plus mines are, in turn, dedicated exclusively to Eskom for the duration of the CSA. Exxaro thus sacrifices its ability to supply coal to any other party. The mining house receives a management fee for its services, expertise, and the risks it bears. These risks include those associated with being the mineral-right owner and in contracting in Exxaro's name with third parties;

15.4 all surface land rights, equipment and plant costs are funded and owned by Eskom, whilst the mineral rights are owned by the mining house. Eskom is required by the CSAs to purchase this land to enable Exxaro's mining at the cost-plus mines;

15.5 Eskom is also required to pay for all rehabilitation costs, pollution-control measures and environmental costs at the cost-plus mines; and

15.6 penalties and bonuses on the coal specification are provided for in the CSA.

16. Cost-plus mines offer a number of benefits to Eskom. These include the

following:

16.1 The CSAs offered security of supply of coal to Eskom as coal was guaranteed over a long period of time (i.e. more than 20 years). They also mitigated the risk of coal being exported from South Africa in the event that other more competitive markets opened abroad.

16.2 The cost-plus mines dedicate their coal reserves and human resources, mining expertise and skills to Eskom.

16.3 The cost-plus mines reduce logistical costs, and minimise damage to roads, as coal at these mines is typically delivered to the power station by way of a conveyor belt.

16.4 Eskom has transparency regarding the price of coal sold from a cost-plus mine.

16.5 The margin charged on the coal at the cost-plus mines is usually less than 5% compared to more than 20% at a commercial mine.

16.6 The price of coal at cost-plus mines remains relatively constant as it is not linked to fluctuations in the coal market. The cost of coal is affected only by normal production cost increases.

16.7 The price of the coal supplied to Eskom in terms of the cost-plus CSAs is the actual cost of production, which is approved by Eskom, plus a management fee. This management fee is calculated by way an agreed formula. The price is escalated annually in accordance with PPI.

17. Commercial mines stand on a different footing:

17.1 In terms of their CSAs, the commercial mines supply coal to Eskom at a fixed price, which escalates annually at an agreed formula. The term of the agreements can be classified as (i) short term, being between one to three years; (ii) medium term, being above five years; and (iii) long term, being above 10 years.

17.2 The terms of the CSAs that commercial mines conclude with Eskom are different to those concluded for cost-plus mines. The relationship is at arms-length and is based on commercial principles. The mining house provides capital for the mine and is responsible for all capital and operational expenditure, coal reserves, mining expertise, skills, human resources and rehabilitation costs. The mining house thus has more control over the capital it employs and how it utilises the available ore body. But it also needs to charge a commercial price to ensure a minimum return on its investment is realised for its shareholders.

17.3 The land rights, equipment, plant and mineral rights are owned by the mining house.

17.4 The risk and obligation for all closure obligations is borne by the mining house.

17.5 Penalties are payable when the volumes supplied by Exxaro or taken by Eskom are below the contractual tonnage. Where the delivered coal quality is below the requirements provided in the CSA penalties

are also payable by Exxaro. Bonuses are payable where the coal quality is above the specification provided in the CSA.

THE SO-CALLED "PRE-PAYMENT" FOR COAL

18. Mr Anoj Singh, the former Chief Financial Officer of Eskom, states, in justifying Eskom's so-called pre-payment for coal to Tegeta, that a "*[p]repayment of this nature is not unique and was done in the past and will continue to be done going forward*" (Mr Singh's written statement: page 28, para 107).

19. He further contends that "pre-payments" were made to cost-plus mines to the tune of R11.3 billion in terms of a 2008 procurement mandate of the Board Tender Committee (Mr Singh's statement page 29, paras 107-111; pages 65-68, paras 37-47). Mr Singh refers to cost-plus mines enjoying "*prepayment of capital into their mining operations*" and cites Eskom's approval of a capital prepayment of R1.8 billion to Exxaro's Matla mine (Mr Singh's statement pages 67-68, para 46). Mr Matshela Koko, Eskom's Group Executive for Generation, similarly suggests that prepayments to suppliers for coal was common place and in line with Eskom policy (Mr Koko's written statement: pages 33-34, para 89; page 35, paras 96-97).

20. The process for funding capital projects at the cost-plus mines is clearly defined in the CSAs. This is Eskom's contractual obligation. The funding of such capital projects does not, however, contemplate any pre-payment.

21. Should the relevant cost-plus mine need capital, it is first discussed and agreed with Eskom that the item should be investigated. After it is

investigated and found to be necessary, the item goes through a project-development and approval system at both Exxaro and Eskom. The project must then be approved by various committees and, if necessary, by the Eskom Board. Funding is then released in partial payments for work approved and done.

22. These approved funds are, in other words, not prepaid to Exxaro. They are only paid as and when the work is done and Exxaro incurs the capital costs and then only against the presentation of an invoice. The process often leaves Exxaro out of pocket when contractors demand immediate payment and Exxaro must wait for Eskom's monthly payment to defray the expense. Therefore, to describe the capital payments in this context as pre-payments, as Mr Singh does, is misleading.

23. In short, the so-called pre-payments for capital to which Mr Singh refers, were not pre-payments at all.

24. In addition, no pre-payments of any sort are made to Exxaro's commercial mines.

25. Furthermore, Exxaro's staff have conducted a reasonably diligent and thorough check and, as far as Exxaro is aware, Exxaro has not at any point in time received any pre-payments or pre-purchases of any nature, including in relation to coal or for capital. Exxaro has no knowledge of any Eskom policy dealing with pre-payments or pre-purchases. As far as Exxaro is aware, Eskom does not make pre-payments to any other major miners in the industry. The so-called pre-payment to Tegeta for coal, of which Exxaro learned through the media, is the only instance to our

knowledge where such so-called pre-payment was made.

PREJUDICE TO EXXARO'S COST-PLUS MINES AND MAFUBE

Introduction

26. Exxaro Coal Mpumalanga (Pty) Ltd ("*Exxaro Coal Mpumalanga*") is a wholly owned subsidiary of Exxaro. It holds licences for two cost-plus mines, Arnot and Matla. These mines supply Eskom's Arnot and Matla power stations respectively in terms of CSAs. The Arnot mine is no longer in operation for reasons described below. Exxaro is presently litigating against Eskom in relation to both mines at Arnot and Matla, as is referred to below.

27. The Matla and Arnot CSAs were concluded in the 1970s and were later revised. The agreements have also been amended on a number of occasions.

28. The mines are required to meet an agreed annual tonnage. The Arnot mine was required to provide 4.02 million tons per year to the Arnot power station while the Matla mine is required to provide 10.066 million tons per year to the Matla power station. Penalties are incurred if lower volumes than those agreed are supplied, and premiums are charged for delivery of coal above the agreed amount. Similarly, penalties and premiums are payable for coal below and above an agreed quality specification.

29. The arrangement established by the CSAs requires close co-operation between Eskom and Exxaro. This is reflected in the execution and implementation of the CSAs in a number of respects. We cite three:

29.1 First: Eskom is permitted to inspect and audit the records and books of account at the Arnot and Matla mines.

29.2 Second: there are structures in place, from operational level upwards, to address any issues and matters that arise from the supply of coal from the mines to the power stations. At mine level, Eskom and Exxaro hold: (i) operational/technical meetings to deal with month to month planning; (ii) risk meetings, which address any operational risks that could potentially impact coal supply to Eskom; and (iii) cost meetings. At a senior-executive level, a joint management committee considers material issues, issues that the operational teams cannot resolve, and any issues of a strategic nature.

29.3 Third: the mines provide weekly reports to the power station and vice versa.

Arnot mine

30. A constant refrain before this Committee has been the high cost of coal supplied by Exxaro's Arnot mine. We explain below how Eskom caused this cost escalation and how its conduct led to the termination of the Arnot mine's CSA.

Eskom's failure to fund land acquisition

31. The Arnot mine was obliged to provide the Arnot power station with 4.02 million tons per annum, mined from both the underground and opencast areas.

32. The life of the mine depended on the acquisition by Eskom of the land forming part of Arnot mine's mining rights. This included Mooifontein portions 1, 4, 5, 6 and 7 and the Mooifontein remaining extent (which we collectively refer to as "*the Mooifontein land*"). The coal to be mined from the Mooifontein land, which was to be mined by the opencast method, was needed to augment the tons of coal coming from underground, especially with the underground areas becoming more difficult and expensive to mine.

33. Exxaro was scheduled to start mining the Mooifontein land in 2005. This was later rescheduled to 2012 after Eskom failed to purchase the land. Had Exxaro been able to mine the land as intended, it would have significantly reduced the cost per ton of coal supplied to Eskom.

34. Eskom was contractually obliged to procure this land. From 2004 onwards, Exxaro persistently and repeatedly pointed out to Eskom the necessity and urgency of doing so. However, apart from procuring portion 5 of the Mooifontein land, Eskom either failed to procure the land timeously or at all.

35. The history of Eskom's conduct in this regard is set out in a letter which was sent to Mr Brian Molefe, the then Group Chief Executive of Eskom, on 22 February 2016. A copy of this letter is attached to this statement as annex "**A**".

36. The letter notes, among other things, the following:

36.1 Eskom failed to reach agreement with the relevant farmers for the

acquisition of Mooifontein portions 4 and 6; and

36.2 Eskom only acquired portions 1, 7 and the Mooifontein remaining extent in 2012 and 2013. The delay in acquiring these surface rights prevented the Arnot mine from obtaining the requisite environmental approvals to mine. These authorisations can take over three years to obtain, and the land-owners refused to sign the necessary consent documents before Eskom acquired the land.

37. A copy of selected correspondence between Exxaro and Eskom in relation to the acquisition of the Mooifontein land is attached to this statement as annex "**B**".

38. Because of Eskom's failure to acquire the Mooifontein land, from 2011, the mine was only able to deliver to Arnot power station approximately 1.6 million of the agreed 4.02 million tons of coal per year.

39. The decreased production capacity of the Arnot mine also increased the coal's cost per ton. Please see attached as annex "**C**" the letter to Mr Molefe, dated 4 February 2016, which attached a graph indicating the volumes produced, and the associated unit costs thereof, from 2007 until 2015 at the Arnot mine. It shows clearly that the reduction in the volume of coal that the Arnot mine was able to produce caused a significant increase in the cost of coal supplied by the mine.

Non-funding of operational capital at Arnot

40. Eskom further limited Arnot mine's production capability by not providing capital for the replacement of critical equipment in terms of the mine's

equipment-replacement strategy.

41. Following numerous requests from Exxaro regarding the non-funding of capital for Arnot, we received a letter from Eskom informing us of a moratorium on capital spend. In some cases, Eskom advised us to spend the capital as operational costs which further exacerbated the cost of production on a rand per ton basis.

42. We addressed a letter in this regard to Ms Kiren Maharaj, the then Divisional Executive of Eskom's Primary Energy Division, on 4 July 2014. A copy of our letter is attached to this statement as annex "**D**". The letter describes the consequences of Eskom's failure to approve capital projects for the Arnot mine, including the replacement of shuttle cars and the maintenance of battery haulers.

43. As forewarned in the letter, the effect of Eskom's inaction was to dramatically reduce Arnot mine's ability to perform and meet its obligations in respect of the CSA. In addition to the absence of land, the non-funding of essential equipment (i.e. low seam continuous miners, low seam shuttle cars etc.) resulted in the significant reduction in volumes from 4.02 million tons to below 1.8 million tons.

The termination of Arnot's CSA

44. We request that this section is read with annex "**E**". This document is a timeline mapping the history leading up to Eskom's termination of the Arnot mine CSA in 2015.

45. Exxaro was of the view that the Arnot CSA was to expire by the end of

2015. By contrast, Eskom held the view that the CSA expired in 2023. Given these differing positions, we wrote a letter to Eskom on 3 May 2013 reminding Eskom of the end of the contract. A copy of this letter is attached as annex "**F**".

46. On 13 August 2013, Exxaro and Eskom held a meeting. The disagreement on the end date of the CSA was set aside as Exxaro and Eskom decided to open negotiations to find a "win-win" solution. The intention was to agree on an outcome that would benefit both parties and optimise the unit cost of production at Arnot. Arnot mine was uniquely placed to do so as it was located adjacent to the power station and could deliver coal by conveyor belt. Eskom and Exxaro thus signed a memorandum of understanding that set out the parameters for the negotiation.

47. In furtherance of its discussions with Eskom relating to the future of Arnot, Exxaro finalised a new life-of-mine plan for the Arnot mine in 2014. It also mapped various scenarios to optimise the cost of production and the supply from Arnot up until the end of the life of the Arnot Power station.

48. Eskom stated that it supported these plans in principle but that it would need to engage an independent party to test the scenarios and assumptions Exxaro made to motivate for the approval of Exxaro's plan. Eskom's support was garnered as Eskom knew that Exxaro had prior experience in mining the opencast Mooifontein reserves. Thus, Eskom requested Exxaro to provide it with three independent contractors that could assist it in this regard. Exxaro did so, but never received any

response from Eskom on its plans. Up until end March 2015, Exxaro was still engaging in good faith with Eskom.

49. After April 2015, we continued to urge Eskom to provide us with the scope of work for the vetting required by Eskom on Exxaro's scenarios, as promised by Eskom.

50. Then, on 8 September 2015 – whilst the parties were still engaging on a "win-win" solution – Eskom suddenly announced its decision to terminate the CSA at the end of the year. This stance was surprising given Eskom's previous stance that the CSA expired in 2023 and that Eskom was engaging with Exxaro in terms of a memorandum of understanding. A copy of Eskom's letter to this effect, and Exxaro's response on 18 September 2015, are attached as annexes "**G**" and "**H**" respectively.

51. Exxaro then attempted to engage Eskom on whether it was serious about ending the Arnot CSA. A copy of one such piece of correspondence that was sent to Mr Brian Molefe on 2 March 2016 is attached as annex "**I**". Exxaro constantly requested to meet with Brian Molefe – a request to which the then chief executive officer never acceded.

52. The National Union of Mineworkers ("*NUM*") then approached the Department for Mineral Resources ("*DMR*") and advised that Arnot mine was going to be closed. The NUM threatened to block trucks from bringing in coal to the Arnot power station.

53. On the back of this, the DMR advised that it would facilitate an interaction between Eskom, Exxaro and its employees in December 2015. Mr Edwin

Mabalane led the Eskom group at this meeting on 22 December 2015. Then, in February 2016, we wrote to Mr Mosebenzi Zwane, the Minister of Mineral Resources, and asked for his intervention (we note that we had already written to him on 2 December 2015 and did not receive a response). Copies of both letters are attached as annex "**J**" to this statement. The Minister did not respond to our second letter either.

54. Eskom's dramatic turnaround with respect to the termination date of the CSA occurred despite the fact that there are coal reserves (of approximately 70 million tons) that could still be economically mined as per the original plan. The termination of the CSA also led to the closure of the Arnot mine and to the loss of around 1500 jobs.

55. Eskom did not provide any notice of its intention to end the CSA. It did not, as it was obliged to by the CSA, make financial provision for the closure of the mine. It furthermore failed to hold discussions with Exxaro as it was required to have done over the 24-month period preceding closure. On the contrary, it gave Exxaro every impression that the contract would continue post-2015, including by approving a budget for Arnot that ran into March 2016 and expressly authorising the construction of a change house which had already progressed to an advanced stage. Exxaro seeks to hold Eskom to providing the financial provision obligations in the current arbitration proceedings.

56. The Arnot mine is still capable of being re-opened within a certain period and could supply the Arnot power station with at least 4 million tons of coal per annum for at least an 8 year period. This would also defer the mine-

closure costs. However, reopening the mine will become more difficult and costly as time progresses, due to the cost re-establishment.

57. Steps are being taken to close the mine, with the effect that certain underground areas will be irreversibly lost and will not be able to be reopened, thereby sterilising coal resources. Exxaro has taken all necessary steps to minimise sterilisation in the event that the mine could be re-opened, but this would have to take place within a certain time-frame otherwise it will become economically unviable to mine the coal resources.

Conclusion of the Arnot matters

58. Eskom's non-performance of its contractual obligations has thus prevented Exxaro from delivering the quantity of coal required by the Arnot CSA, and increased the cost of coal. Its termination of the CSA then ended the supply of coal provided by Exxaro. This reduction in supply provided the rationale for Eskom to supplement its reserves with coal provided by third-party commercial mines.

Mafube mine

59. We now turn to explain what happened at Exxaro's Mafube mine (which is a commercial mine). It demonstrates that Eskom adopted a similar *modus operandi* at many of Exxaro's mines – and, in particular, at Arnot and Mafube. Arnot mine, Mafube mine and Optimum mine are situated in close proximity, within an approximately 25 km radius of each other.

60. The Mafube mine is a 50-50 joint venture between Anglo Operations and Exxaro Coal Mpumalanga. The joint venture mines coal from the

Springboklaagte reserves which are situated between Middelburg and Belfast near Eskom's Arnot power station. Coal is delivered to the power station by conveyor belt. The Mafube mine charged the lowest price for coal delivered to Eskom in the country and could, critically, provide the power station with security of coal supply until the mine's reserves are exhausted.

61. Mafube was supplying coal to Eskom in terms of a CSA which was evidenced by correspondence between the parties. Eskom and the mine disagreed on the end date of the agreement. Eskom contended that the agreement terminated after 2023. However, the mine stated that the agreement terminated in December 2015.

62. On the back of this disagreement, however, Exxaro and Anglo Operations (as shareholders) agreed to supply coal to Mafube power station into 2018, when the coal reserves at Springboklaagte would be depleted. This is proposed in a letter from Anglo Operations to Mr Vusi Mboweni, the then acting Divisional Executive of Eskom's Primary Energy Division, dated 21 July 2015. A copy of this letter is attached as annex "**K**".

63. Despite this, and the fact that the Mafube mine delivered the cheapest coal in the country, Eskom terminated the CSA in 2015. A copy of the letter that Mafube received from Eskom on 3 November 2015 regarding the termination of the CSA is attached as annex "**L**". The termination of the CSA created a need for coal at the Arnot power station. This need for coal was fulfilled by third parties who continue to truck coal into Arnot power station.

Matla mine

Non-funding of capital of R1.8 billion for mine 1

64. Matla power station is a baseload power station. It contributes significantly to the grid. Exxaro's Matla mine has 1 billion tons of coal resources and 250 million tons of coal reserves. This is one of the largest coal resources left in Mpumalanga under one mining right. If it is managed properly and funded optimally, it could, to the benefit of South Africa, provide Eskom with security of coal supply for many years to come.

65. Matla mine consists of three mines: mines 1, 2 and 3. All three mines need to operate optimally and must be mined in a synchronised manner for Exxaro to meet the contracted specifications in terms of volume of coal and qualities to Eskom.

66. The qualities of the coal produced by the three mines are very different. The coal from all three mines needs to be mixed together so that the contractually required volumes and qualities are able to be supplied to the Matla power station. The contractual volumes are 10.06 million tons per annum and the calorific value is 19.5 Mj/kg.

67. Exxaro informed Eskom as early as 2004, and persistently thereafter, that capital was needed to sink a new shaft for mine 1 as it was becoming unsafe to mine at the existing shaft. The capital required for this project was R1.8 billion in 2016.

68. Eskom delayed and has, to date, not provided Exxaro with the capital. We explained the adverse impact of the failure to fund the sinking of a new

shaft for mine 1 to Eskom on a number of occasions. One such example is a letter that we sent to Mr Molefe dated 15 September 2016. A copy of our letter is attached as annex "**M**".

69. In October 2016, the Eskom Board approved Exxaro's request for funding. However, the request was made subject to the approval of the Minister of Public Enterprises, Ms Lynne Brown, who then declined the request in a letter to Mr Ben Ngubane, the then Chairperson of Eskom, in April 2017. A copy of the Minister's letter is attached as annex "**N**". Exxaro is only privy to the letter because Eskom was ordered to disclose the letter in arbitration proceedings.

70. Minister Brown required Eskom, before she would grant approval, to "*demonstrate how [Eskom] would use this opportunity to give [sic] socio-economic transformation imperatives of the Government*" as the CSA was "*signed pre-1994*". The Minister's stance is most surprising in circumstances where the CSA has been amended and affirmed on numerous occasions after 1994 and where Exxaro is one of the largest and foremost black-empowered mining companies in South Africa. In any event, there are no such conditions provided for in our CSA with Eskom.

71. In October 2016, Eskom did not formally advise Exxaro that the capital had been approved. Nor was Exxaro informed in April 2017 that the Minister had declined to approve the funding. We are, to date, still awaiting a written response from Eskom on these issues.

72. Exxaro in subsequent letters to Eskom repeatedly indicated the impact of the non-approval of major capital projects at Matla and the detrimental

effect this had on qualities, production, and cost of coal at Matla mine over time. An extract of the relevant correspondence is attached as annex "**O**".

73. As the R1.8 billion has still not been approved, Exxaro has thus, after unsuccessful mediation proceedings, been forced to seek to compel Eskom to provide the funding as per their CSA obligations through arbitration proceedings.

74. The failure of Eskom to provide funding resulted in the stoppage of mine 1 in February 2015 because of irredeemable underground deterioration and serious safety concerns for the miners. A letter that was addressed to Eskom notifying it of the closure and its consequences on 5 March 2015 is attached as annex "**P**". The stoppage of mine 1 and the lack of capital approval has increased the cost per ton of the coal supplied to the Matla power station because of, among other things, the loss of economies of scale at the Matla mine.

75. Furthermore, with non-funding of capital in general, as was the case at the Arnot mine, Eskom has, not provided sufficient capital for the replacement of mine equipment. This has led to the failure of equipment and to ageing equipment needing repair more frequently, causing a decrease in the production capability of the Matla mine.

Conclusion on the Matla issues

76. With the loss of Mine 1, Matla mine has been mined out of sync. This has resulted in a sub-optimised extraction, a sub-optimal quality mix of coal and less volumes produced.

77. With the loss of Mine 1, 40% of the volume of the coal that was supplied to the Matla power station has been lost (until the capital is provided to allow the mine to continue). This means that Matla mine without Mine 1 will never be able to deliver more than approximately 7 Million tons of coal and will never again meet the contractually agreed 10.06 million tons per annum nor will it be able to meet the contractually required quality specification. This also has a negative implication on the rand per ton cost (as a result of lower volumes supplied).

78. If the status quo continues, Matla will have to permanently close Mine 1. If the mine needs to be opened again, the cost of re-establishment will be exorbitant.

79. The Matla mine is, as a result of Eskom's conduct described above, able to supply the Matla power station with only 7.5 million of the 10.066 million tons per year it is contractually obliged to supply.

80. The decrease in the volume of coal available from the Matla mine has provided the rationale for Eskom to purchase imported coal from third parties as a substitute. Since 2015, Eskom imports around 3.6 million tons of coal a year which is delivered to the mine in approximately 120 000 truck-loads per annum. This translates to on average over 400 truck-loads per day with the concomitant traffic congestion, damage to the road and risk to other road users, when this coal could otherwise be delivered by conveyor belt directly from the Matla mine. It obviously also increases the delivered rand per ton cost of the coal.

81. This means that, assuming a price of R500 per ton, Eskom has paid more

than an estimated R5 billion for imported coal from third parties from 2015 to 2017. This inflated cost is impossible to justify when, if the necessary capital were supplied for mine 1, Matla Mine would be able to supply coal at competitive rates for at least the next 20 years (Matla's remaining coal reserves are in excess of 250 million tons). While the relocation of mine 1 remains unfunded, one must assume that Eskom will continue to purchase coal from third parties at exorbitant prices. Even if Eskom were to approve the funding at this stage, due to the construction time, it will still take two years before the first coal could be produced.

82. The additional expenditure Eskom has incurred in procuring expensive coal acquired from third parties (which is not comparable to coal supplied from Matla by conveyor belt) would have paid for the capital expenditure required at mine 1 many times over. A graph indicating the significant expense of the acquisition of this coal compared to the cost of coal from the Matla mine is attached as annex "**Q**" to this statement.

83. Exxaro is very concerned that this situation is unsustainable. We are also concerned that the situation at Matla – where Eskom has increased the cost of coal per ton by starving the mine of capital – may encourage Eskom to allege, as it did at Arnot, that the mine's coal is too expensive. This could provide ostensible justification, as it did at Arnot, for Eskom to terminate its CSA with Exxaro's mine.

84. It is thus difficult for Exxaro, with our experience at Arnot, and Eskom's recent conduct at Matla, not to draw parallels between what happened at the Arnot mine and what is happening at the Matla mine.

PREJUDICE TO EXXARO'S COMMERCIAL MINES

Introduction

85. In addition to the cost-plus mines and the Mafube mine, within the Mpumalanga area there are two other commercial mines that either supply or supplied coal to Eskom, namely NBC and Leeuwpan. In addition to these, we have another mine in Lephalale, called Grootegeluk mine, which supplies coal to the Medupi and Matimba power stations.

86. I consider below the situation at Leeuwpan and Grootegeluk. Leeuwpan is relevant to issues raised in the Committee's letter of invitation. It is necessary for us to touch on the situation at Grootegeluk in light of unjustified statements made by other persons who have appeared before this Committee.

Leeuwpan mine

87. The Leeuwpan mine was connected to the Majuba power station by a very effective rail system. The system obviated the need to transport coal to the power station by road which was more expensive.

88. Exxaro and Eskom concluded a CSA commencing on 1 January 2010 which ended in March 2015. In terms of the CSA, the Leeuwpan mine supplied Majuba power station with approximately 170 000 tons of coal per month.

89. In September 2014, 6 months prior to the expiry of the existing CSA, the parties entered into negotiations for the continued supply of coal beyond

March 2015. The parties reached agreement on a price for the new agreement by February 2015. However, after reaching this agreement, Eskom continued to shift the goalposts by persistently raising new requirements which Exxaro was required to meet. As soon as Exxaro complied with a certain set of requirements, Eskom imposed further requirements.

90. The existing contract had expired in March 2015, but was extended on a month-to-month basis to allow the parties to conclude the new agreement. The final agreement was agreed to and ready for signature by September 2015.

91. Despite various requests from Exxaro that Eskom sign the new agreement, Eskom did not do so. It preferred instead to extend the existing agreement on a month-to-month basis.

92. Eskom ultimately did not sign the new CSA, which would have extended Leeuwpan mine's supply to Eskom for a further three years.

93. The volumes supplied to Eskom were a substantial part of the Leeuwpan production. A month-to-month CSA is not sufficient for a coal mine to make investment decisions on, and Exxaro was therefore forced to secure a longer-term CSAs to support the mine's investment decisions for its extension plans.

94. Therefore, on 29 February 2016, Exxaro wrote to Eskom to say that we could not run the mine on a month-to-month basis and that, given Eskom's refusal to sign the agreement, we could not continue supplying it with coal.

Leeuwpan mine's supply of coal to Eskom thus ended March 2016. A copy of the letter that Exxaro sent to Eskom is attached as annex "**R**".

95. Having had such an effective supply route to the power station, it is hard to understand why it took so long for Eskom to complete the contract. Eskom's failure to timeously conclude a contract diverged from its historical practices. Eskom's conduct was even more unusual considering that, during this period, other CSAs were concluded by Eskom with third parties for supply to the Majuba power station.

96. Given the efficiency of the Leeuwpan contract in terms of the logistics channel, price, volumes and the relationship that was built up over the years, we question the reasons why our CSA was delayed for almost a year after having agreed on price already in February 2015. In contrast, it appears from the evidence given before this Committee during the testimony of former Eskom CEO Mr Tshediso Matona and some of the questions that were put to him that:

96.1 the Brakfontein CSA between Eskom and Tegeta was concluded in March 2015. This was seemingly at a higher price than what Exxaro had agreed with Eskom;

96.2 the contract was allegedly concluded soon after Mr Matona left Eskom, having refused to sign the Brakfontein agreement due to issues with price, qualities and compliance; and

96.3 furthermore, it appears that the Brakfontein tons were ramped up over the same year that Exxaro was painstakingly trying to resolve

the additional requirements from Eskom - which is the same period that Eskom took coal from us on a month to month basis.

97. Exxaro is still willing and able to supply coal to Eskom from its Leeuwpan mine.

THE "FRUITLESS AND WASTEFUL EXPENDITURE" INCURRED BY ESKOM UNDER THE MEDUPI CSA

98. This section does not address either of the two questions posed to Exxaro by the Portfolio Committee. However, we deem it necessary to address the issues considered below in light of a number of misleading statements that have been made before this Committee.

99. Exxaro's Grootegeluk mine supplies coal to Eskom's Medupi and Matimba power stations in terms of long-term commercial CSAs which extend for over 30 years. Grootegeluk has been supplying the full burn demand of the Matimba power station since the early 1980s at an average rate of 14.6 MT (equivalent to 300MGj) per annum.

100. On 19 September 2008, Eskom and Exxaro entered into a commercial CSA which would amongst other things regulate the coal supply to the new Eskom Medupi power station.

101. Pursuant to the Medupi CSA, the initial "ramp-up period" (i.e. the period during which the power station would be brought online and incrementally begin to take off coal until the full offtake is reached) was agreed to commence on 1 October 2011 and would end on 31 December 2013. The "ramp-up period" was designed to coincide with the completion of Medupi

power station's units 1 to 6. Upon the completion of these units, Eskom's off-take would be at full volume.

102. To supply the required quality and volume of coal to the Medupi power station, Exxaro had to expand its own operations. In doing so, it established the Grootegeluk Medupi Expansion Project ("*GMEP*"). GMEP included, among other things, the establishment of a new coal beneficiation complex (referred to as the GG7 and GG8 plants), blending beds and reclamation facilities. This entailed associated in-pit expansion, including the purchase of trucks, shovels, crushers and discard facilities at an estimated cost of R10.25 billion.

103. The Medupi CSA was concluded on an arms-length commercial basis as Grootegeluk is not a cost-plus mine and does not operate on cost-plus principles. GMEP was funded on Exxaro's balance sheet. The Medupi CSA is, accordingly, based on accepted commercial principles, including the following:

103.1 the CSA included take-or-pay provisions in favour of both Eskom and Exxaro. These provisions protect both parties from losses caused by the non-performance by the other party of its obligations in terms of the CSA. For example, take-or-pay provisions are included in the CSA in favour of Eskom in the event that Grootegeluk does not supply the required volumes of coal to Medupi. They are also included in favour of Exxaro where Eskom does not offtake the required volumes. The intent of the latter penalty was to recover Exxaro's costs relating to servicing the debt, cost of capital and

return on capital (i.e. the fixed costs actually incurred) in the event that Eskom could not take and pay for Exxaro's coal. This provision is common-place in supply contracts and is not unique to Exxaro; and

103.1 the CSA also included bonuses and penalties based on the consistency of the coal quality supplied by the mine.

104. Mr Singh states that the penalties Eskom paid to Exxaro in terms of the Medupi CSA "*should be fruitless and wasteful expenditure in terms of the PFMA*". He implicitly criticises Exxaro for the consequent high cost per ton of the coal supplied by Grootegeluk.

105. We agree that the penalties for which Eskom is liable under the Medupi CSA, and which were caused by Eskom's non-performance, constitute fruitless and wasteful expenditure.

106. In any event, Exxaro accommodated Eskom on multiple occasions in order to minimise the financial impact of Eskom's non-performance. This is described in further detail below. We note that Mr Singh failed to mention the cost of Eskom's non-performance to Grootegeluk and the numerous measures Exxaro took, in good faith, to limit the penalties Eskom paid to it.

107. In this regard, Exxaro concluded several addenda to the Medupi CSA with Eskom. It did so in light of the delays experienced in the construction of the Medupi power station.

108. In terms of addenda 1 to 6 of the CSA, the ramp-up period was amended

to commence on 1 May 2012 and to end at 31 December 2014. To accommodate the delays at Medupi, further addenda (7 to 9) were concluded to change the ramp-up period and expected off take schedules of coal. The mandate from the Exxaro Board to its Eskom negotiation team was that Exxaro should accommodate Eskom as far as possible. However, it remained important that Exxaro protected its shareholders' return on capital.

109. We itemise below Exxaro's endeavours to accommodate Eskom:

109.1 First: due to Eskom's inability to take off the coal volumes agreed to in terms of the addendum 6 ramp-up schedule, Eskom requested Exxaro to explore the stoppage or slow-down of construction at Grootegeluk to allow Eskom to catch up with the agreed schedule.

109.2 Exxaro explored this possibility, but our GMEP construction was too far advanced. The stoppage or slow-down of or GMEP could not be accommodated without Exxaro incurring significant contractual liabilities and forfeiting process guarantees due to ramp-up delays. At this stage, Exxaro had already staffed the expansion project to more than 60% of the full requirement.

109.3 Eskom and Exxaro thus agreed that stoppage or slow-down of construction was not a viable option. Exxaro was thus told to continue with its construction program.

109.4 Eskom agreed that it would build a strategic stockpile with a maximum of 30Mt capacity to store additional coal not burnt at

Medupi. This measure was taken so that Eskom could off-take coal as agreed and to minimise the penalties it incurred. To further assist Eskom, Exxaro delayed some capital expenditure and implemented various cost-reducing measures. These measures enabled Exxaro to afford Eskom a 25% discount on its contractual penalties. The fully ramped-up date was also extended from 31 December 2014 to 31 December 2016 in terms of addendum 7.

109.5 Second: barely six months later, on 28 February 2013 Eskom notified Exxaro that it was experiencing labour unrest and could not comply with the required coal offtake agreed to under addendum 7.

109.6 To accommodate Eskom, Exxaro agreed in addendum 8 to Eskom reducing its offtake in terms of the Matimba CSA to the contractual minimum and to Eskom nominating Matimba as an alternative point of supply under the Medupi CSA from 2014 to 2016. This led to the addendum 1 of the Consolidated Matimba CSA.

109.7 In permitting this transfer, Exxaro enabled Medupi power station to reduce its 30MT strategic stockpile to 10MT.

109.8 Exxaro once again afforded Eskom a 25% discount on the resulting contractual penalties.

109.9 Third: Eskom once again approached Exxaro stating that it was not able to take coal according to the offtake schedules agreed to in Addendum 8. Exxaro again agreed to accommodate Eskom. Exxaro agreed to extend the fully ramped-up date from 31 December 2016

to 31 December 2017. This agreement is reflected in addendum 9.

109.10 Fourth: after the conclusion of addendum 9, Eskom approached Exxaro to pursue initiatives to move Medupi Coal from Lephalale to Mpumalanga or to Richards Bay Coal Terminal.

109.11 Exxaro investigated numerous stockpiling options for the coal as well as the possibility of evacuating coal from the Waterberg. Exxaro incurred costs for consulting and design work associated with considering these options. Exxaro did not pass on these costs to Eskom. To date, Eskom has not responded to Exxaro's input on their mooted options or on a mandate to proceed with either option, despite Exxaro following up with Eskom on a number of occasions.

109.12 Fifth: Exxaro has, moreover, and at a significant reduction Eskom's off-take, agreed to extend the transfer of coal from Medupi to Matimba until 2018. This results in a loss of about 2MT per annum of the contractually agreed offtake under the Matimba CSA. This causes a revenue loss that Exxaro incurs which is not passed on to Eskom.

110. Exxaro accordingly acted in good faith and accommodated Eskom as far as was possible during the difficult construction and ramp-up phase at the Medupi power station. Exxaro's accommodation of Eskom has gone beyond that which is contractually required of Exxaro. Exxaro has investigated alternative plans, changed agreed plans, afforded Eskom's material discounts on contractual penalties Eskom owed to Exxaro, and allowed Eskom to transfer tonnage that they could not take at the Medupi

power station to the Matimba power station.

111. Mr Singh's implied criticism of Exxaro in relation to the contractual penalties incurred by Eskom under the Medupi CSA is incorrect and without any foundation.

CONCLUSION

112. Looking back on the history set out above, Exxaro is concerned by at least the following questions:

112.1 Why, when Mr Brian Molefe assumed the position of chief executive officer, did Exxaro's relationship with Eskom deteriorate so markedly? Eskom's agreements with Exxaro were in certain instances not adhered to or, where they were being finalised, were frustrated. Despite this, and the fact that Exxaro is the biggest supplier of coal to Eskom, Mr Molefe refused to meet with Exxaro throughout his tenure at Eskom.

112.2 Why were Exxaro's efforts to optimise Arnot mine and its escalating costs (due to the non-purchase of land) ignored, when a CSA with Tegeta was concluded with such haste?

112.3 Why did Eskom summarily terminate negotiations on the extension of Arnot's CSA?

112.4 Why was the Mafube CSA terminated despite the mine delivering the cheapest supplies of coal in Mpumalanga to Eskom?

112.5 Why was Eskom unconcerned about the premature termination of

the Arnot CSA despite the fact that Eskom was aware that it would lead to (i) the loss of 1500 jobs and (ii) an emergency with respect to the coal supply for the Arnot power station? We note that we have learned from testimony before this Committee that this emergency (as well as the termination of the supply from Mafube) was used as a basis for procuring coal from another supplier with a concomitant pre-payment in April 2016.

112.6 Why did the Minister of Mineral Resources remain silent when Exxaro requested him to intervene despite the fact that 1500 jobs were at stake?

112.7 Why did Eskom avoid paying R 1.8 billion for the mine 1 shaft at Matla for so long, opting instead to procure coal for over R 5 billion and thereby posing safety risks, traffic congestion and damage to the roads in respect of a mine that was not designed for stock piling?

112.8 Why does Mr Singh use the high cost of diesel to run the open cycle gas turbines to justify the purchase of expensive coal from Tegeta when Eskom could simply have continued to procure coal under its CSA from the Arnot mine and Mafube mines at a lower cost?

112.9 Why did Eskom suddenly adopt the practice of making pre-payments for coal to a certain miner?

113. I thank the Portfolio Committee for this opportunity to present this statement before it and pledge my and Exxaro's continuing assistance to the Committee.

MXOLISI MGOJO
Chief Executive Officer
Exxaro Resources Limited

"A"

22 February 2016

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Mr B Molefe
Group Chief Executive
Eskom Holdings
Megawatt Park
1 Maxwell Drive
SUNNINGHILL
PO Box 1091
JOHANNESBURG
2000

Dear Mr Molefe,

FAILURE BY ESKOM TO PURCHASE REQUIRED SURFACE RIGHTS FOR ARNOT

1. Over the years, Exxaro has both engaged with Eskom and sent various letters regarding Eskom's failure to acquire the surface rights for farms which were and still are required for Exxaro's Arnot colliery to mine in order to satisfy its obligations in terms of the coal supply agreement between the parties.

2. Notwithstanding numerous and timeous requests for Eskom to purchase the said surface rights, Eskom did not consummate its negotiations with certain of the farmers and in other instances to date, Eskom has been unable to purchase some of the land required for Arnot to continue mining due to a dead lock reached with the farmer. This has led to Eskom being in non-compliance with its obligations under the coal supply agreement for Arnot and furthermore, Exxaro is unable to mine those areas that it would have mined, but for Eskom's inability to buy the properties.

3. It is perhaps an apposite time to by way of summary set out the history of this matter so as to inform your understanding of this issue. Please see below. I have also attached for your ease of reference, a few pieces of correspondence on this issue, sent to Eskom, starting in 2010. Please note that there are more letters than those attached, but the said letters will provide you with the necessary background.

4. It is well documented and understood by all parties that the life of mine plan for Arnot Coal is reliant on the successful acquisition of surface rights of Mooifontein Portion 1, 4, 6, 7 and Remaining Extent by Eskom. Portion 4 of Mooifontein belongs to a Mr Cas and Eskom had been negotiating with this farmer for a number of years to purchase this portion without success. Opencast mining operations at Mooifontein were planned to start at Portion 4 in June 2007 but due to the inability of Eskom to acquire the surface rights for portion 4 the mining operations were moved to Portion 5. Portion 5 has since been mined out and all opencast mining activities on Mooifontein Portion 5, ceased in March 2011 due to the failure of Eskom to acquire such rights and therefore the failure by Eskom to enable Exxaro Arnot Coal to further exploit the Mooifontein reserves. At that stage given the said set-back, Exxaro Arnot Coal was left with no alternative but to assume that opencast mining operations would resume at Mooifontein early in 2013. Therefore the surface rights and the requisite environmental approvals needed to be in place well before this date.

5. The Mooifontein mine was intended to start at Portion 4 but due to the surface rights at Portion 4 not being purchased, the Mine started at Portion 5. It seems from interaction with Eskom, that the price that was offered to Leon Cas at the time, was in the vicinity of R8m and was accepted by Mr Cas. The offer was subsequently withdrawn by Eskom since they believed the price was excessive. This portion has to date not been purchased by Eskom.

6. Portion 6 of Mooifontein belonged to Mr Ehlers and Eskom had also been in the process of negotiating a land swap deal with the farmer in order to access the surface rights for Portion 6. In 2011 Exxaro Arnot Coal was advised by Eskom that the farmer indicated he no longer intended to go ahead with the swap deal and would instead like to sell Portion 6. The concern at this stage was that Eskom then had to obtain a changed mandate to negotiate for the purchase of Portion 6 hence delaying the process.

7. The three farmers above all refused to sign the consent documents for the environmental applications for the said Mooifontein portions. Consequently Exxaro Arnot Coal were unable to proceed with the environmental applications until Eskom had successfully negotiated with the farmers and acquired the surface rights for Portion 1,4,6 and 7 of Mooifontein.

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8. Please note that notwithstanding our letters to Eskom and numerous interactions with Eskom on the urgency of acquiring the Mooifontein portions, the properties were only transferred to Eskom on the following dates:

   8.1. Mooifontein portion 1: 20 July 2012;

   8.2. Mooifontein remaining extent: 16 July 2013;

   8.3. Mooifontein portion 7: 20 July 2012;

   8.4. Please note that Mooifontein (portions 4 and 6) and Grootlaagte (portions 2, 3, 7, 9 13, 14 and 15) land purchases are still to be acquired by Eskom.

9. The delay in the acquisition of these surface rights prevented Arnot Coal from obtaining the environmental licenses required to mine and from delivering the contractual tonnages as per the coal supply agreement. Exxaro Arnot Coal also lost possible profits due to the inability of Eskom to honour their commitments as reflected in the coal supply agreement.

10. Exxaro would like to record once again, that its inability to perform resulting from Eskom's failure to procure the required surface rights, is not a breach of Exxaro's obligations in terms of the agreement. To this end, Exxaro hereby records that Eskom's inability to purchase the required surface rights has resulted in a breach by Eskom of the agreement and Exxaro's rights in this matter remain fully reserved.

Yours sincerely,

M D M MGOJO
CHIEF EXECUTIVE OFFICER DESIGNATE

Cc: A Singh, FD Eskom Holdings;
SA Nkosi, CEO Exxaro Resources;
WA de Klerk, FD Exxaro Resources
N Tsengwa, Act Executive Head Coal

1 December 2010

Dan Marokane
Eskom
PO Box 1091
JOHANNESBURG
2000

Dear Dan

IMPACT OF SURFACE RIGHTS FOR PORTION 4 MOOIFONTEIN ON COAL SUPPLY FROM 2011 CALENDAR YEAR

Our letter dated 3rd November 2010 requested an update on Eskom's progress in acquiring portion 4 of Mooifontein. To date we have not yet been favoured with a response thereto from yourselves. As you are well aware, this portion is critical in the execution of the LOM plan from 2011 and beyond. In this regard it is necessary to record that, as Eskom has failed to provide us with the said surface rights, Arnot Colliery will only be able to provide 2.8 M tons of coal which is below the minimum contractual arrangement for at least the next two calendar years 2011 and 2012 respectively.

If this matter remains unresolved then this level of provision will persist, worsened by long leading periods required to acquire environmental permits and authorizations for this particular portion. However Exxaro will not under these circumstances be accountable for any breach of agreement and reserve all its rights concerning the apparent failure by Eskom to facilitate performance by Exxaro. Exxaro will, however, endeavour to assist Eskom to the extent that it can to mitigate the impact thereof.

We therefore further reserve our rights with respect to your inability to obtain the said surface rights and we reserve our rights so far as it may pertain to any claims that we may have herein and furthermore specifically reserve our right to address this issue with you again in the future in view of your response.

Yours faithfully

MXOLISI MGOJO
EXECUTIVE GENERAL MANAGER
EXXARO COAL (PTY) LTD

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COAL

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Company Secretary: CLS Consulting Services (Pty) Ltd

CONFIDENTIAL

Eskom

Mr MDM Mgojo
Executive General Manager
Exxaro Coal (Pty) Ltd
P O Box 9229
PRETORIA
0001

Date:
13 December 2010

Enquiries:
Neo Ntseke
Tel +27 800 2969

Dear Mxolisi

IMPACT OF SURFACE RIGHTS FOR MOOIFONTEIN PORTION 4 ON COAL SUPPLY FROM 2011 CALENDAR YEAR

Your letter dated 1 December 2010 refers. Please note that Eskom has no record of your letter dated 3 November 2010 and consequently denies failing to respond thereto.

Eskom and Exxaro ("the parties") commenced with negotiations to purchase Mooifontein Portion 4 with owner, Mr Leon Cass in 2006. The negotiations came about as a result of the parties acknowlegement that the acquisition of the surface rights in respect of Mooifontein Portion 4 was critical to ensuring the continous supply of coal to Arnot Power Station from 2007.

Regrettably, these negotiations failed to yield a positive result for the purposes intended in that Mr Cass has, to date, not accepted Eskom's offer to purchase the land; hence Exxaro proceeded to mine Mooifontein Portion 5 in 2007. Currently, negotiations have been deferred at Mr Cass's insistance to a time after the 2011 harvest is complete. This deferement has affected the land survey, which is necessary to enable Exxaro to respond to Mr Cass's request for a quantification of the land required for mining operations.

During the negotiations, Exxaro acted as the lead negotiator and, as such, is privy to the chronology of events leading to the deferment of negotiations. Be that as it may, Eskom has requested Exxaro, as owners of the mineral rights, to initiate the process of expropriating Mooifontein Portion 4, to which Exxaro has refused.

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Notwithstanding the above, in 2009 Mr Cass advised the parties that he would consider selling Portion 4 on condition that the mined out areas at Mooifontein Portion 5 are rehabilitated and a contamined dam cleaned. The Arnot Coal mine manager at the time, Mr Jan Britz, commited to cleaning the dam and ensuring that future contamination is prevented.

As a result of the ongoing delays in finalising the acquisition of Mooifontein Portion 4 and the fact that negotiations with Mr Cass may not yield favourable results, the parties identified Mooifontein Portion 6 an alternative for mining purposes. Eskom then proceeded to secure the surface rights and Eskom confirms that the acquisition of Mooifontein Portion 6 from the owner, Mr Ehlers, is at an advanced stage i.e, Eskom and Exxaro have reached an agreement on the purchase of the Grootlaagte 449JS Portion 6 and Nooidgedacht 493JS Portions 3 and 10. This transaction will be finalised when Mr Ehlers signs the heads of agreement. Mining activities on Mooifontein Portion 6 can only commence after Exxaro has met all the legal requirements, which is estimated to be in October 2011.

Similarly, the same process as that of Portion 6 will have to be followed for Mooifontein Portion 4 before the commencement of mining activities, which is expected to be in February 2012. Both Portion 4 and Portion 6 are also subject to the Exxaro envrionmental approval programme.

In summary, Eskom expects Exxaro to meet its obligations to supply the minimum contractual tonnage in terms of the Coal Supply Agreement.

Please be advised that Eskom's failure to respond to some of the issues or allegations raised in your letter under reply should not be construed as an admission thereof. Eskom's rights in respect to such issues or allegations are fully reserved.

Yours faithfully

Dan Marokane
CHIEF COMMERCIAL OFFICER

Our Ref: 714364

General Manager
Generation Primary Energy
Megawatt Park
P O Box 1091
Johannesburg
2000

Ref: L/cp CCB 04/03/11

Attention: Mr S Mac Dougall

22 March 2011

Dear Sir

PURCHASE OF MOOIFONTEIN PORTIONS 4, 1 AND 7

The Life of Mine Plan (LOM) for Arnot Coal assumes that mining will commence at Mooifontein Portion 4, 1, 6 and 7 from 2011 onwards. It is our understanding that Eskom have not yet been able to acquire the surface rights for Portion 4, 1 and 7 and we would like to enquire as to the progress and expected timing of this process. Portion 4, 1 and 7 of Mooifontein is critical in the execution of the LOM plan and failure by Eskom to secure the surface rights for this section of the mine lease area will negatively impact on the ability of Arnot Coal to supply the required tonnage of 4 million tons per annum as per the coal supply agreement, for periods post 2010, for as long as this issue remains unresolved.

Although the detailed Life of mine plan has not been completed, it is currently clear that these surface rights must be obtained, and that any delay to wait for the completion of the detailed plan is not necessary, and will not be accepted as cause for delays.

The applications for all applicable licensing and approvals, environmental and other, are receiving due attention. It is therefore of the utmost importance that Eskom commences with land procurement for all these areas, as per their contractual obligation. Any delays to do so will directly lead to Arnot being unable to provide 4 million tons per annum.

We hereby reserve our rights with respect to your inability to obtain the said surface rights and furthermore specifically reserve the right to address this issue with you again in light of your response to this letter.

Regards

CC Ballot
MINE MANAGER: ARNOT COAL

N Tsengwa
GENERAL MANAGER: CAPTIVE MINES

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Company Secretary CLS Consulting Services (Pty) Ltd

8 August 2011

Mr S Mac Dougal
General Manager Coal Operations
Eskom Primary Energy Division
PO Box 1091
JOHANNESBURG
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Dear Mr Mac Dougall

MOOIFONTEIN PROJECT

As you know, our environmental team is busy with authorization studies at Mooifontein. From their recent site visit it appears that Mr. Van Eeden has started to relocate the Mill from their fathers' farm to portion 7 of the farm Mooifontein 449 JS.

Eskom is obligated to purchase the said properties for the colliery to mine. We were under the understanding that this matter was being addressed by Eskom during the negotiations with the Land Owner in order for Eskom to acquire portions 1 and 7 of the said farm. We confirm that Exxaro has commenced environmental studies on this property and this activity will not only be problematic for mining but will also hamper obtaining of environmental permits.

We have grave concerns that Mr Rudolf Van Eeden has a different understanding of Eskom's interest on this matter with potential negative effects on the Mooifontein Project. We request that you please advise as to how Eskom intends dealing with this matter.

Your urgent response will be appreciated

Kind regards

NOMBASA TSENGWA (DR)
GENERAL MANAGER CAPTIVE MINES

exxaro

COAL

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Company Secretary: Cliffe Dekker Hofmeyr, Inc Ltd

Tsholofelo Motlhaping

From: Kim Amos [MAT] <Kim.Amos@exxaro.com> on behalf of Nombasa Tsengwa [HQP] <Nombasa.Tsengwa@exxaro.com>
Sent: 14 May 2013 12:18 PM
To: Kim Amos [MAT]
Subject: FW: Land Purchase Challenges

exxaro COAL

KIM AMOS - PA to General Manager Captive Region
Tel + 27 13 658 3511 I Fax + 27 86 210 9335 I Mobile +27 83 418 3583
E-mail kim.amos@exxaro.com I www.exxaro.com

From: Nombasa Tsengwa [WIT General Manager]
Sent: 14 May 2013 10:56 AM
To: kiren.maharaj@eskom.co.za
Cc: Mxolisi Mgojo [HQP SBU Coal]; Petros Mazibuko
Subject: Land Purchase Challenges

Dear Kiren
I hope this mail finds you in good health.

We have been reviewing all our pending land to be procured for both Matla and Arnot operations. These challenges experienced in this regard still pose a major risk for us to ensure sustained production at these collieries.
A while ago Yvette Cluver and I met with you at Eskom offices to discuss the dead-lock that Eskom had apparently reached with some farmers in negotiating for the purchase of land at Arnot captive colliery. Our view at the meeting was that Eskom officials had been the cause of the dead-lock and as a result of this, the sale of the properties were not able to progress. You advised us then that you would investigate the matter with the view to collectively evaluate a mutual solution. While we don't expect you to share the precise details of the outcome with us, we would like to understand what the outcome of this process was- as it is important in our assessment of the problem and to what extent we can support your efforts.

Kind regards,

exxaro COAL

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Mr Petros Mazibuko
Senior Manager: Coal Supply
Eskom Primary Energy Division
P O Box 1091
Johannesburg
2000

Ref: ka/AC 21/05/13

24 May 2013

Dear Sir

ACQUISITION OF SURFACE RIGHTS BY ESKOM – MOOIFONTEIN PORTION 1, 4, 6 & 7

We refer to the various letters that have passed between Exxaro and Eskom regarding Eskom's failure to acquire the surface rights for farms which are required for Exxaro's Arnot colliery to mine in order to satisfy its obligations in terms of the coal supply agreement between the parties.

In numerous written requests Exxaro has stressed the importance of the Acquisition of Portion 1, 4, 6 and 7 of Mooifontein and the impact on Exxaro's ability to execute its obligation according to the Coal Supply Agreement (CSA). Subsequent to our requests Eskom were only successful in acquiring Portion 1 and 7 of Mooifontein late in 2012. Negotiations for the acquisition of Portion 4 and 6 with Mr L Cass having reached deadlock.

The fact that Eskom were not successful in acquiring Portion 6 of Mooifontein resulted in delays in the application for the Water Use License (WUL). The WUL for Mooifontein was split into two. The one application was for Portions 1, 6, 7 and Remainder and the other application was for Portions 4 and 5. Exxaro had already prepared the application for the WUL for Portions 1, 6 ,7 and Remainder for submission in September 2010. The landowners however refused to sign the application and only the owner of the remaining extent signed the application form. The WULA was therefore not accepted by DWA.

When Eskom were not able to secure the surface rights for Portion 6, the WULA for Portion 1, 6, 7 and Remainder had to be amended to exclude Portion 6 (L Cass) from the application. To accommodate this change the applications had to be amended which also resulted in all the studies required for the application, to be performed again. The applications for the EIA and EMPR which had already been completed and submitted also had to be amended and resubmitted.

exxaro
COAL

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Exxaro Coal (Pty) Ltd. Reg No. 2000/011078/07 | Directors: MDM Mgojo PE Venter MR Walker
Company Secretary: CLS Consulting Services (Pty) Ltd

4 February 2016

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Mr B Molefe
Group Chief Executive
Eskom Holdings
Megawatt Park
1 Maxwell Drive
SUNNINGHILL
PO Box 1091
JOHANNESBURG
2000

Dear Brian,

TERMINATION OF ARNOT COAL SUPPLY AGREEMENT (CSA)

At our last meeting with Eskom and Labour on 22 December 2015, we understood that Exxaro will have to re-submit an optimised proposal for the supply of coal to the Arnot power station. This scenario emanated from our discussions in 2013 whereby Exxaro informed Eskom about options that could lower production costs on a rand per ton basis at Arnot. A changed policy environment at Eskom, and changes of senior managers necessitates that we re-submit our initial proposal taking all new and emerging implications into account, as per this letter (and the detail attached hereto).

Over the past three years and after the signature of an MOU with Eskom in 2013 which encapsulated the desire of both parties to work together and investigate alternative models of supply from the Arnot colliery to Eskom, we looked at various scenarios that would culminate in a 'win-win' situation for both parties. The new scenario, as per the MOU, was meant to form the basis of negotiations with Eskom for a 'new' coal supply agreement.

It is our understanding that Eskom's major concern is the cost of coal per ton at Arnot. The scenarios presented by way of this letter almost halves Eskom's cost of coal on a R/t basis and makes the price competitive to the price at which Eskom is acquiring coal from other suppliers on a delivered cost basis at Arnot Power Station. Please note that the attached scenario has been updated and optimised further since its last presentation to Eskom and it is important to bear in mind that this scenario is at a conceptual level and requires more work to bring it to a bankable level.

Whilst we understand the urgency to conclude discussions that may ensue from this re-submission, the nature of such discussions may take some time, which time could be longer than the section 189 process underway which will result in a loss of a considerable number of our employees due to retrenchments. To circumvent this loss, whilst in discussion and executing the proposal (i.e. verification of the scenario including acquisition of Mooifontein, etc.), we suggest that we agree with yourselves to a rollover of the current supply agreement. This would enable the parties to actively engage each other in reaching a new solution for Arnot and would ensure preservation of jobs at Arnot.

Given the interactions between the parties in December and the rate at which we are progressing with the mine closure activities, we would like your in-principle response by close of business on 12 February 2016.

Yours truly,

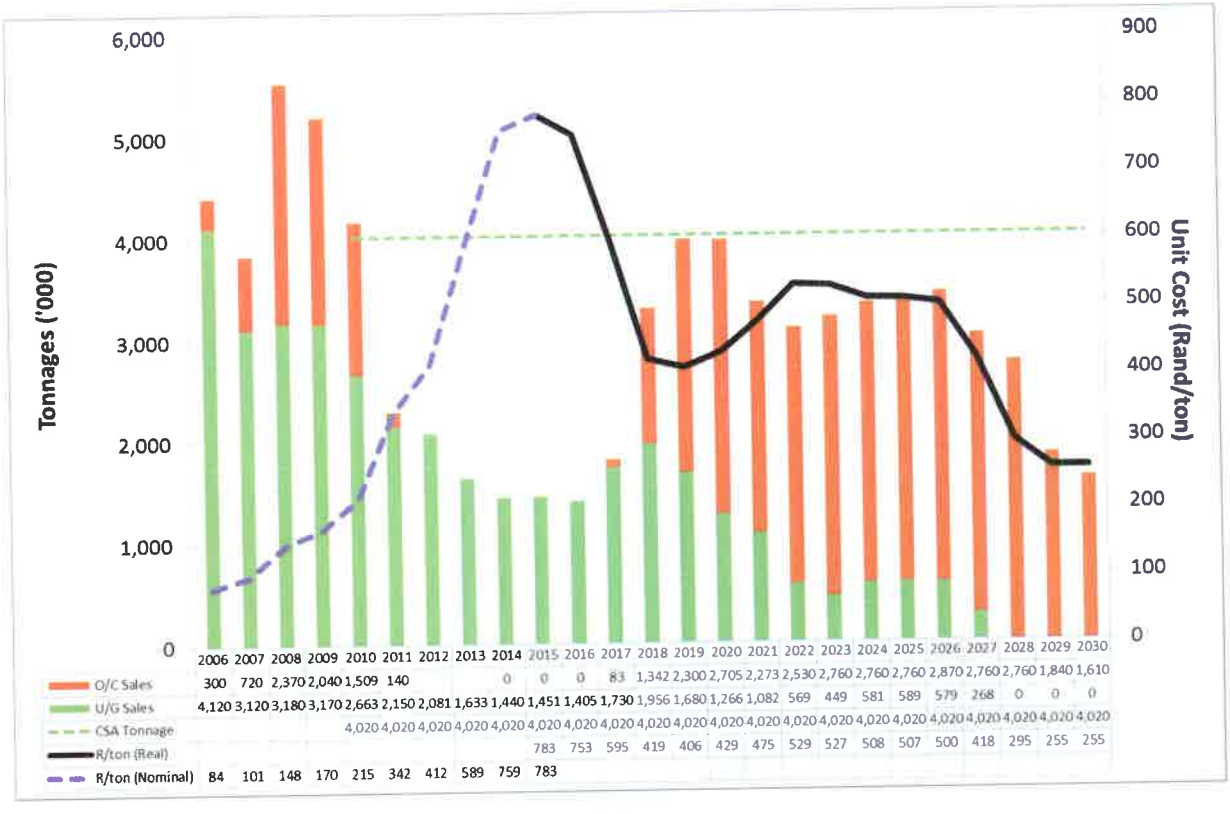
M D M MGOJO

CHIEF EXECUTIVE OFFICER DESIGNATE

cc: Mr Anoj Singh, FD, Eskom Group;
Mr S A Nkosi, CEO, Exxaro Resources;
Mr W A de Klerk, FD, Exxaro Resources

Annexure A

High Level Overview of Optimised Scenario



** Exxaro will be available to unpack technical detail behind this scenario*

Summary:

- Capex is excluded
- Opex not escalated and stated in real terms where mentioned
- Despite notification to Eskom to purchase the land, which Mooifontein area was needed for mining to commence in 2013, only certain of the Mooifontein reserves required for mining were only purchased by Eskom:
    - Mooifontein ptn 1: 20 July 2012
    - Mooifontein remaining extent: 16 July 2013
    - Mooifontein portion 7: 20 July 2012
- Outstanding Mooifontein (portions 4 and 6) and Grootlaagte (portions 2, 3, 7, 9 13, 14 and 15) land purchases still to be acquired by Eskom
- Environmental approvals delayed as land purchase delayed
- Timeous environmental approvals (already submitted) still outstanding for Mooifontein 1, 7 and remaining extent
- Tons per annum at or near contractual levels till 2027 when underground reserves are depleted
- Unit cost (rand per ton) drastically reducing from R783.00 per ton in 2015 to below R300.00 per ton in 2030
- Costly underground areas excluded from operations

Kiren Maharaj
Divisional Executive
Eskom Primary Division
Megawatt Park
PO Box 1091
Johannesburg
2000

Ref. no.: L03/07/2014

Attention: Kiren Maharaj

4 July 2014

Dear Kiren

IMPLICATIONS OF MORATORIUM ON CAPITAL FOR EXXARO ARNOT COAL

The purpose of this letter is to highlight the risks that are associated with the moratorium placed by Eskom on capital expenditure at Arnot Coal. Eskom are delaying capital expenditure for projects going forth. As a result of this, we are forced to place a number of vital projects, critical to the continued operation of Arnot Colliery, on hold due to insufficient capital.

In addition, there are certain projects that if not completed shall have a negative effect on the Mine's rand per ton. These include machine replacements which, due to a lack of capital, shall have to be overhauled on OPEX costs thus driving up the rand per ton.

The current mining conditions at Arnot Coal necessitated the replacement of mid seam shuttle cars with low seam units. As stated in letter, L04/11/13, the current fleet of shuttle cars are not suited for the mining conditions at Arnot due to their physical size and the decreasing seam height. This limitation will mean that 3 (three) sections at Arnot Coal, Sections 3, 4 and 7, will have to shut down as a result of the size constraints by the end of 2014.

Secondly, the rebuild schedules for the battery haulers have been put on hold pending the approval of this project. The delays have caused the fleet to run over their scheduled rebuild cycle which will lead to a decrease in machine availability and reliability thus resulting in associated production losses.

Arnot mine will therefore have to take the following steps to mitigate the risks associated with the delay in the Capital approval for the new shuttle cars:

- Nine (9) shuttle cars will have to be modified to low seam cars to prevent Section 3 and 4 from having to stop production. The cost of these modifications amount to R 54.18M excluding VAT (R 6.02M per unit); and

- The three battery haulers have to each be sent for a major overhaul at a cost of R 10.95M per unit, a total of R 32.85M excluding VAT.

These actions are necessary to ensure stability in coal supply to Eskom Arnot Power Station. The total cost of these actions amount to R 87.03M. This in turn relates to an increase of R39.56/ton in the budgeted Rand per ton for 2015.

Furthermore, any mining at Mooifontein is dependent on the successful implementation of the ROD requirements for Mooifontein, including the haul road and pollution control dam. No mining can take place without compliance to these requirements. All the Mooifontein reserves will have to be written off if there is no Capital available.

Conclusion:

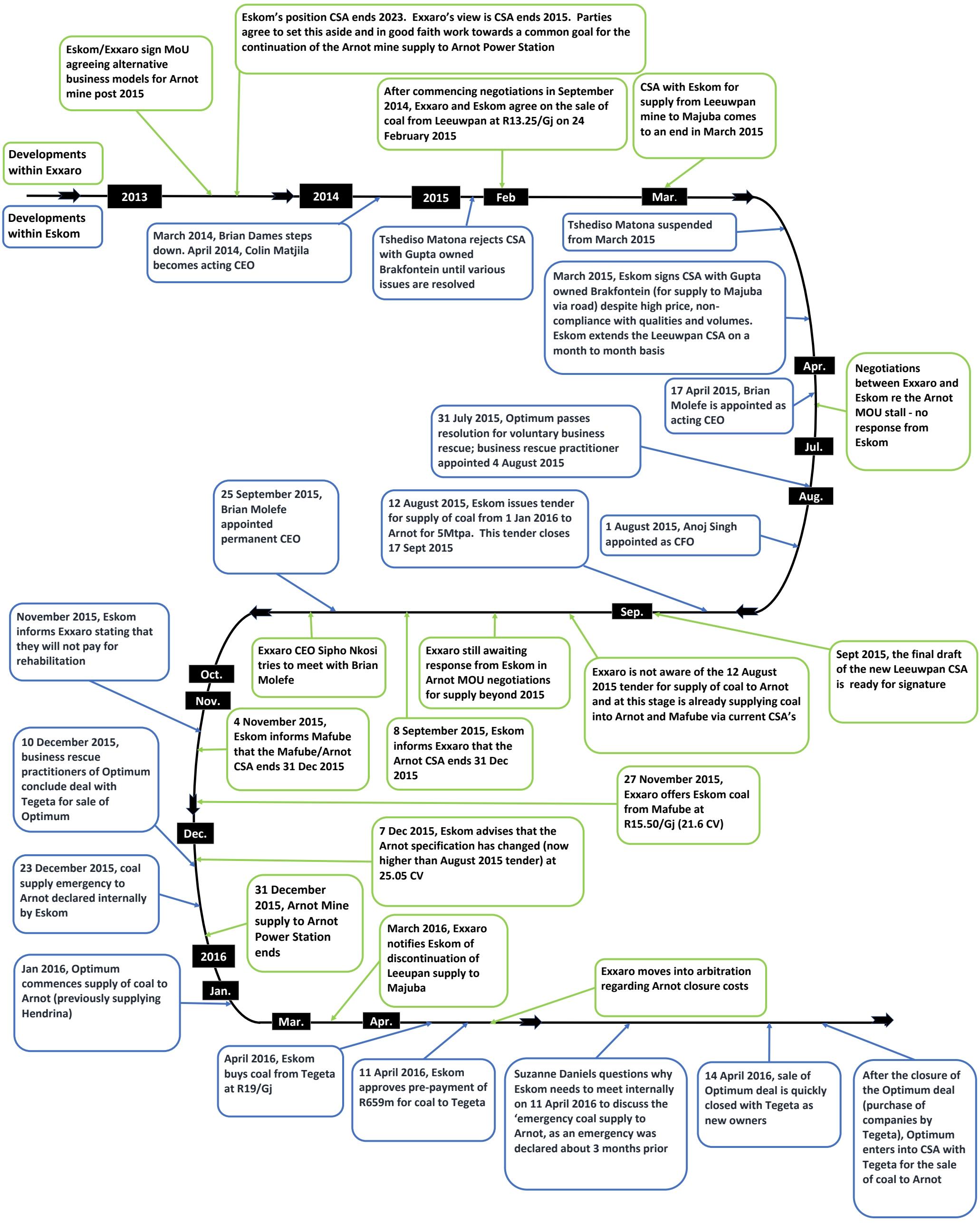
If capital is not approved, Arnot shall be operating with less sections and a drastic downturn in coal production amounting to approximately half of what the current operating tonnages are. This would result in exorbitantly high rand per ton values, making it financially unviable to continue production at Arnot thus forcing the mine to have to shut down.

We are therefore left in a position where we need to reserve our rights in this matter, to *inter alia*, hold Eskom liable for breach of the coal supply agreement and the pending impossibility of performance that Eskom's inactions in this matter are driving us into.

Regards,

Mr Mxolisi Mgojo
Executive Head: Coal

2013 - 2016 Chronology of events: Eskom squeezing Exxaro out



"F"

Kiren Maharaj
Divisional Executive
Eskom Primary Energy Division
PO Box 1091
JOHANNESBURG
2000

Ref: ka/AC 19/05/13

3 May 2013

Dear Kiren

ARNOT COAL SUPPLY AGREEMENT ('CSA')

At a meeting between Eskom and Exxaro on 8 May 2011, the parties discussed on a high level, certain issues relating to the Arnot Coal Supply Agreement ('CSA') and the difficulties in applying the CSA due, inter alia to ambiguities. The expiry date of the CSA is imminent and we welcome the opportunity to commence discussions with your team regarding the new CSA

Would you be so kind as to per return advise me of your team and who will head your negotiation team?

We look forward to the process.

Yours sincerely

Mr Mxolisi Mgojo
Executive Head: Operations

exxaro
COAL

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Exxaro Coal (Pty) Ltd. Reg No. 2000/011078/07 | Directors: MDM Mgojo PE Venter MR Walker
Company Secretary: CLS Consulting Services (Pty) Ltd

Eskom

Mr Bram van Stelten
General Manager: Captive Mines
P O Box 9229
PRETORIA
0001

Dear Mr van der Stelten

RE: EXXARO RESOURCES (PTY) LIMITED AND ESKOM HOLDINGS SOC LTD - ARNOT MINE COAL SUPPLY AGREEMENT (CSA) EXPIRY – REF 724914

This letter serves as a reminder that the expiry date of the CSA is 31 December 2015. Eskom would like to bring to Exxaro's attention the following matters related to the CSA that will have to be addressed:

- Mine closure and other related costs.
- Status of all reserves dedicated to Eskom as per provisions of the contract.
- All land purchases done whilst the agreement was effective.
- Updated asset registry of all mining and related equipment.
- Reconciliation of tonnage supplied versus contractual obligation.
- ROI payments done to Exxaro as per our letter dated 06 May 2006.

Eskom further reserves its rights as per provisions of other related obligations on the CSA not mentioned in this letter pertaining responsibilities of either party during the termination of this agreement.

I hope you find the above in order.

Yours sincerely

Petros Mazibuko
SENIOR MANAGER: COAL OPERATIONS

Date: 02/09/2015

Primary Energy Division
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Mr Petros Mazibuko
Eskom Primary Energy Division
P O Box 1091
JOHANNESBURG
2000

18 September 2015

Re: Arnot CSA and termination

Dear Sir

1. We refer to your letter dated 8 September 2015, with reference 724914. You will note that in May 2013, a letter was sent to Eskom (Mrs Kiren Maharaj) from Exxaro (Mr Mxolisi Mgojo) highlighting the end of the Coal Supply Agreement between Exxaro and Eskom signed in November 2000 ('CSA'). It was with this in mind that the parties needed to commence discussions.

2. We would like to remind you that for the past two years, following the letter of 2013, Exxaro and Eskom have been in discussions, in terms of which the parties sought to analyse scenarios and optimise the Arnot asset to the benefit of both parties. Up to a month ago in fact, Eskom was still in discussions with Exxaro in this matter. We are, as a result, somewhat surprised at Eskom's about turn in this matter. We have had no prior indication that this is what Eskom intended to do; in fact Eskom has to the contrary stated that the CSA only ends in 2023. In accordance with the Terms of Reference that was signed between the parties, Exxaro was committed, in good faith, to reaching a joint solution that would suit both parties. It seems now that Eskom had no such intention.

3. You are quite right in your letter that due to the expiry of the CSA there are matters within the CSA that need to be addressed. The CSA is specific on the manner in which the parties should interact in order to commence and effect closure of the Mine, properly so, as the Mine cannot be closed overnight and closure plans and costs must be developed in detail. Exxaro will supply Eskom with the information required in terms of the CSA, as set out below in paragraph 4.

4. The CSA holds that should the colliery close upon termination of this agreement by the effluxion of time, Eskom shall pay all costs associated with the closure of the colliery. Such cost shall be assessed by Exxaro in consultation with Eskom and shall be provided for in a provision account as set out in Clause 15 over the two years prior to closure or over such other period as is practical taking account of the reasons for closure. As you are aware, this has not been performed. However, we advise that the closure costs that Eskom will be liable for will have to be calculated in detail and the costs should be linked to the closure plan and measures to be taken to close the mine – which must be developed. Please note that in addition to the closure costs, there is an amount immediately due and owing to the rehabilitation trust.

5. Exxaro will commence with this analysis, planning and costing of the closure costs and as this information is technical and detailed (and needs to go through the relevant formal approval channels within Exxaro and relevant authorities), Exxaro hopes to be in a position to advise Eskom of how long it will take to develop the plan and calculate the costs thereof and the time that it will take to implement the plan, in a months' time (for clarity this is the plan only and will not be the actual implementation of the plan and costs). Please note that all of the costs involved in the compilation of this plan and the calculation of the costs, shall be borne by Eskom as part of the closure costs of the colliery. Exxaro shall also advise Eskom of the cost of this planning. We will also advise Eskom of the duration of the closure measures to be undertaken.

6. We therefore refer you to clause 37 of the CSA which we will now implement. The clause envisages a two year period in which provision is to be made for all costs associated with the closure of the Mine. As stated above, we will revert to you with our estimates for when we will be ready with the closure plans. Please note for example that the MPRDA dictates that plans relating to retrenchments must be submitted to the DMR 24 months prior to the commencement of the downscaling process. Eskom is in breach of the CSA in that it has not allowed for the said two year closure period. We will honour our obligations under the CSA and for the next two years up until December 2017, we will continue to produce coal for Eskom as per the CSA, while the closure is planned properly as envisaged in the CSA.

7. Some of the areas that Exxaro will be working on and compiling the plans and costings, relate to (but are not limited to) the rehabilitation trust and the immediate funding by Eskom of R676,009,629.00 (excluding VAT), as well as the cost of retrenchments of approximately 1050 permanent employees (we are of the view that this will impact more employees, but this will be analysed and confirmed) and approximately 400 contractors, staffing and costing a closure labour structure, determining the reclamation and rehabilitation time frames, sealing of shafts, identifying supply chain related cancellation costs and penalties, equipment, draft and obtain government approval for closure EMP and SLP, cost of security, mine works programme, etcetera.

8. Eskom is in fact liable to fund all of the costs associated with the closure of the colliery. Furthermore, in addition to these costs, Eskom is liable to pay immediately the deficit into the rehab trust fund in the amount of R676,009,629.00 (excluding VAT) relating to Arnot portion of the rehab trust fund. As you know, the DMR is already of the view that the rehab trust fund is under-funded and Exxaro cannot and will not take any further risk in this area that the existing directive be implemented against it for under-funding of the trust. Please see attached for an invoice in this regard for payment.

9. In regard to your six bulleted sentences in the letter under reply, we require the following clarification from you per return where required and we provide the following responses (where noted):

    a. First bullet: Please see above in this letter. We will commence the plans and costing thereof and advise you of same, as outlined under paragraph 4 above
    b. Second bullet: Please clarify are you referring to reserves used to supply Eskom under the term of the CSA?
    c. Third bullet: Exxaro was not responsible for procurement of land – this was Eskom's responsibility; please accordingly consult your own records.
    d. Forth bullet: As stated in 4 above in this letter, we will perform this but it will take time.

"I"

2 March 2016

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Direct Fax: +2712 307 4364

Mr B Molefe
Group Chief Executive
Eskom Holdings
Megawatt Park
1 Maxwell Drive
SUNNINGHILL
PO Box 1091
JOHANNESBURG
2000

Dear Mr Molefe,

ARNOT PROPOSAL

Your letter dated 22 February 2016 refers.

We wish to reiterate that Exxaro has had previous experience in mining the Mooifontein opencast reserves as was highlighted in the previous letter to yourself. We have a full understanding of the mining methods and associated costs of mining thereof. We are confident that the future mining costs shown in our proposal can be achieved based on past experience and performance.

The proposal presented to yourself stems from various engagements between Eskom and Exxaro that were preceded by an MOU signed between the parties. The purpose of the MOU was for the parties to jointly investigate an optimized Arnot mine production scenario. Eskom did however insist that this would require an independent technical assessment for the viability of the proposal before it could be proposed for Executive support. This independent technical assessment never materialized subsequent to tabling our proposal.

exxaro

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Whilst we believe that there is ample historical evidence of our ability to mine Mooifontein and underground mining areas in a cost effective manner, we note your response which indicates that there is insufficient technical information for you to make a decision on our proposal. We still believe that an independent technical assessment would highlight and verify our capability to mine Arnot in a cost effective manner as per our proposal. We are still open to further engage on such suggestion. In the meantime, we thank you for your time in this matter, and advise that we will continue with the closure and section 189 process as per Eskom's request.

Yours sincerely,

M D M MGOJO
CHIEF EXECUTIVE OFFICER DESIGNATE

Cc: A Singh, FD Eskom Holdings;
SA Nkosi, CEO Exxaro Resources;
WA de Klerk, FD Exxaro Resources
N Tsengwa, Act Executive Head Coal

2 December 2015

Direct Tel: +12 307 4314
Direct Fax: +12 307 4364

The Honourable Mr Mosebenzi Zwane
Minister of Mineral Resources
Trevenna Campus
Building 2C
C/O Meintjies and Francis Baard Street
Sunnyside
PRETORIA

Dear Minister

TERMINATION OF THE ARNOT COLLIERY COAL SUPPLY AGREEMENT WITH ESKOM (CSA)

In May 2013, Exxaro formally notified Eskom that the Arnot CSA would be expiring on 31 December 2015 and requested Eskom as per the CSA, to renegotiate a new coal supply agreement from Arnot coal mine to the power station beyond the expiry of the CSA, by considering certain scenarios to optimize output. Eskom was in disagreement with the 2015 expiry date, stating that the expiry date was linked to the end of the life of the power station, being 2023. To resolve this impasse, and to address Exxaro's willingness to continue to supply Eskom post 2015, it was agreed by both parties to jointly investigate options to achieve a win-win solution for both companies. The parties entered into an MOU which governed the parties jointly for investigating an optimised Arnot mine scenario.

Exxaro presented numerous scenarios to Eskom and an optimised scenario was identified and subsequently Eskom requested that an independent party be appointed to interrogate assumptions made in the scenario. Exxaro submitted three names of independent parties as requested by Eskom and Eskom was to provide Exxaro with the scope of work to enable Exxaro to appoint the expert as required by Eskom. On numerous occasions, Exxaro requested Eskom's response on this issue to avoid delays, but did not receive any response. Exxaro then received a surprise letter from Eskom dated 8 September 2015, stating that Arnot CSA is ending at the end of December 2015.

It has never been Exxaro's intention to go into closure, but understood that an optimized scenario on the cost of operating Arnot mine had to be evaluated with Eskom. This scenario included the Mooifontein reserves (portion 1, 7 and remainder as well as related approvals for portion 5) which are still awaiting IWUL approvals from the Department of Water and Sanitation and the consolidated EMP from the DMR. These reserves would have ensured that Exxaro is able to meet its contractual obligations to Eskom and would have significantly reduced unit cost. The mining of these reserves are also behind schedule due to Eskom's delay to timeously procure the surface rights which to date have not been concluded. It must also be noted that the approval of the IWUL will in all likelihood be the subject of an appeal by affected and interested parties which may further delay the scheduling of the reserves into our mine plans. An immediate approval, without protracted appeals lodged, of this IWUL will

enable Exxaro to schedule these reserves within the next 12 months. Regarding the Arnot mine's life of mine and the remaining reserves, there are approximately 45 million tons of which 34 million tons are underground and 11 million tons are opencast and attributable to Mooifontein and there are also future reserves that exist within the Arnot mining area that could in the future extend the life of the mine.

Therefore Exxaro believes that we have sufficient current and future reserves which can be mined at cost effective levels to meet Eskom's requirements (at competitive rates and increased volumes) and the life of mine will, if realized, exceed the life of the Arnot power station as outlined below, which options were presented and discussed in meetings with Eskom:

- the current underground reserves of 11.5 million tonnes, mined at a rate of 1,5 million tons per annum, giving a life of mine of 7.5 years at an estimated cost of R788.00 per ton (at today's money terms);
- the current underground reserves combined with the Mooifontein reserves, is in total 22.7 million tons, mining at 4,02 million tons per annum, the life of mine is 5.5 years at an estimated cost of R479.00 per ton;
- future reserves comprising of underground and opencast reserves of 31,1 million tons, mined at 4,02 million tons per annum, the life of mine is 7,7 years at a cost that has not yet been determined.

The current unit cost is approximately R788.00 per ton and the estimated unit cost of coal shall reduce to approximately R479.00 should the Mooifontein reserves be included. In the absence of Eskom's willingness to continue with the agreement post 2015, Exxaro is left with no other alternative but to embark on a closure process. The timing of this closure process is still under discussion with Eskom and once we have further clarity of this process we will contact your office and engage you in accordance with our legal requirements.

The possible closure of Arnot mine could impact on more than 1800 jobs.

Yours faithfully,

S A NKOSI
CHIEF EXEUCUTIVE OFFICER

cc Dr Thibedi Ramontja, DG of DMR
Mr Joel Raphela, DDG of DMR (Mineral Regulations)
Mr Aubrey Tshivhandekano, Regional Manager of DMR

Direct Tel: *012 3074314*
Direct Fax: *012 307 4364*

Date: 04 February 2016

The Honorable Mr. Mosebenzi Zwane
Minister of Mineral Resources
Trevenna Campus
Building 2C
C/O Meintjes & Francis Baard Street
Sunnyside
PRETORIA

Dear Honorable Minister,

EXXARO COST MITIGATION MEASURES IN SAVING THE JOBS BY SUSTAINING ARNOT COAL

In May 2013, Exxaro formally notified Eskom that the Arnot CSA would be expiring on 31 December 2015 and requested Eskom as per the CSA, to renegotiate a new coal supply agreement from Arnot coal mine to the power station beyond the expiry of the CSA, by considering certain scenarios to optimize output. Eskom was in disagreement with the 2015 expiry date, stating that the expiry date was linked to the end of the life of the power station, being 2023. To resolve this impasse, and to address Exxaro's willingness to continue to supply Eskom post 2015, it was agreed by both parties to jointly investigate options to achieve a win-win solution for both companies. The parties entered into an MOU which governed the parties jointly for investigating an optimised Arnot mine scenario.

Cost reduction measures

Exxaro presented numerous scenarios to Eskom and an optimised scenario was identified and subsequently Eskom requested that an independent party be appointed to interrogate assumptions made in the scenario. Exxaro submitted 3 names of independent parties as requested by Eskom and Eskom was to provide Exxaro with the scope of work to enable Exxaro to appoint the expert as required by Eskom. On numerous occasions, Exxaro requested Eskom's response on this issue to avoid delays, but did not receive any response. Exxaro then received a surprise letter from Eskom dated 8 September 2015, stating that Arnot CSA is ending at the end of December 2015.

It has never been Exxaro's intention to go into closure, but understood that an optimised scenario on the cost of operating Arnot mine had to be evaluated with Eskom. Exxaro has now taken its last submission to Eskom, revised and updated same and has submitted this to Eskom for its consideration. This scenario includes the Mooifontein reserves (portion 1, 7 and remaining extent as well as related approvals for portion 5) which are still awaiting IWUL approvals from the Department of Water and Sanitation and the consolidated EMP from the DMR.

These reserves would have ensured that Exxaro is able to meet its contractual obligations to Eskom and would have significantly reduced unit cost. The mining of these reserves are also behind schedule due to Eskom's delay to timeously procure the surface rights which to date have not been concluded.

Reserves statement

Exxaro believes that we have sufficient current and future reserves which can be mined at cost effective levels to meet Eskom's requirements (at competitive rates and increased volumes), should the Mooifontein reserves be included.

Regarding the Arnot mine's life of mine and the remaining mineable reserves, there are approximately 70 million tons of which 34 million tons are underground and 36 million tons are opencast (as per the 2015 resource and reserve statement) and the opencast tonnages are attributable to Mooifontein and Grootlaagte. There are also future reserves that exist within the Arnot mining area that could in the future extend the life of the mine.

In the absence of Eskom's willingness to continue with the agreement post 2015, Exxaro is left with no other alternative but to embark on a closure process. The timing of this closure process is still under discussion with Eskom.

EMP and Mooifontein IWUL and Arnot consolidated EMP as a barrier to these measures

It is important to note that the EMP for Mooifontein 1, 7 & Remaining Extent and the consolidated EMP, have all been submitted for approval to the various responsible departments. We therefore plead with the honourable Minister that the licences submitted for the Mooifontein portions be granted speedily and any potential appeals that may arise from the approval of the above be dealt with by April 2016, as without these licences approved Exxaro will not be able to implement its scenario at Arnot.

We are also waiting for Eskom to fund the Rehab trust fund shortfall and it is important that Eskom purchases Mooifontein portion 4 and 6 which is required for mining.

Preservation of jobs as overarching imperatives

The possible closure of Arnot mine could impact on more than 1800 jobs. Exxaro is showing its continued commitment to reaching a solution that could (if accepted by Eskom) preserve a large amount of the jobs at Arnot. However, we cannot absorb the Arnot labour force within the other Exxaro mines as we have filled all vacancies from our other mines. By government assisting with the approval of the licences referred to above, this will greatly help in the preservation of jobs at Arnot.

In light of the above, the DMR is humbly requested to fast track the Arnot EMP approval to preserve the jobs and sustain mining operations.

Your consideration of this request as well as your written response will be greatly appreciated.

Yours sincerely,

M D M MGOJO
CHIEF EXECUTIVE OFFICER DESIGNATE

cc: Mr David Msiza, Acting Director-General, Department of Mineral Resources

CONFIDENTIAL

AngloAmerican

THERMAL COAL

Anglo Operations Proprietary Limited

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Johannesburg
2001
South Africa

Zd/Nr/

Mr V Mboweni
Acting - Divisional Executive
Primary Energy Division
Eskom
PO Box 1091
Johannesburg
2000

21 July 2015

Dear Vusi

RE: NOTIFICATION OF SUPPLY AVAILABILITY FOR PERIOD 2015 TO 2018 AND CONCLUSION OF ANGLO OPERATIONS PROPRIETARY LIMITED (AOPL) COAL SUPPLY COMMITTMENT

Augmenting the earlier correspondence dated 27th June 2014 (Ref: Zd/Nr/1114), and 16th September 2014 (Zd/Nr/1132), AOPL has completed the assessment on the mining impact of the pans on the volume and tenure of supply. As a result of the mining of the pans, AOPL is expecting to produce approximately 430kt, 508kt, 547kt and 91kt of middlings coal, from the Springboklaagte reserves, during 2015, 2016, 2017 and 2018 respectively.

As communicated in the above-mentioned correspondence, the Springboklaagte reserves have in effect entered the ramp down phase from 2014. The anticipated depletion of the Springboklaagte reserves would therefore conclude the supply commitment of AOPL to Eskom under the terms embodied in the correspondence between AOPL and Eskom dated from 16th July 1999 to 22nd February 2008.

As previously mentioned ultrafines and/or briquettes are available for supply.

Yours sincerely

Zaheer Docrat
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Eskom

Mr Zaheer Docrat
Head of Marketing and Sales
Anglo Operations Proprietary Ltd
P O Box 61587
MARSHALLTOWN
2107

Dear Mr Docrat,

Re: NOTIFICATION OF SUPPLY AVAILABILITY FOR PERIOD 2015 TO 2017 AND CONCLUSION OF ANGLO OPERATIONS PROPRIETARY LIMITED (AOL) COAL SUPPLY COMMITMENT – REF 724992

Our letter refers to your letter dated 22 October 2015 and the contents thereof, Eskom would like to bring to AOL's attention that the aforementioned supply agreement is valid until 31 December 2015. Therefore any coal supply from AOL post the expiry will be treated as a new supply and will be subject to Eskom procurement policies.

For any future potential supply post the contract expiry date, you are kindly requested to respond to Eskom's Request For Proposals as normally issued under our tender bulletin.

We hope you find the above in order.

Yours sincerely

Petros Mazibuko
SENIOR MANAGER: COAL OPERATIONS

Date: 03/11/2015

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15 September 2016

By Hand

Mr B Molefe
Group Chief Executive
Eskom Holdings
Megawatt Park
1 Maxwell Drive
Sunninghill

Dear Sir

Eskom's failure to comply with its funding obligations in terms of the Coal Supply Agreement (CSA)

1 We act for Exxaro Coal Mpumalanga (Pty) Ltd, which owns Exxaro Matla Coal ("**Matla**"). We are instructed to address you concerning your breach of your funding obligations in terms of the CSA.

Introduction

2 Matla is a tied mine operating under a Coal Supply Agreement ("**the CSA**") with Eskom. Matla supplies coal, from its coalfield, to the adjacent Eskom Matla Power Station ("**the power station**") in terms of the CSA.

3 The CSA establishes a symbiotic relationship between Matla, as the miner of the coalfield, and Eskom, as the owner of the power station to be supplied from the coalfield. Two key principles of the CSA are; i) the exclusive nature of the supply arrangement; and ii) the reciprocal nature of the parties respective rights and obligations - having regard to the demands of the power station and the available coal reserves in the coalfield.

4 Matla supplies exclusively to Eskom (the power station) from the coalfield and, as you are aware, different qualities of coal are available in the different parts of the coalfield – extracted through three mines operated by Matla. While coal from mine 1 and mine 2 is currently predominantly of better quality than the coal extracted from mine 3, if coal supplied from mine 3 is mixed with coal from mine 1 and mine 2, Matla is, through production from all three mines, able to meet both the quality and the quantity requirements of the CSA. Disruption of planned production by Matla, from any of mine 1, mine 2 or mine 3, directly affects Matla's ability to meet the quality and quantity required by the CSA.

5 In order to enable Matla to extract and supply coal of the necessary quality and quantity, Eskom is required, in terms of the CSA, to provide the capital and operational expenditure necessary to support all three mining operations. As appears from what is set out below, as a direct result of Eskom's failure to meet its funding obligations, particularly in relation to the funding of capital expenditure: mine 1 has been closed and its coal has not been available to mix with coal from the other two mines; the life of mine 2 has been negatively affected; the coal supply to the power station has been adversely affected; the life of mine plan (to produce a consistent quality and quantity of

coal for the life of mine) has been negatively impacted upon; and, the matching of the life of mine plan to the life of the power station has been detrimentally affected.

6 In 2015, Eskom personnel began insisting that coal extracted from mine 3 be stockpiled, on account of the fact that there was no coal from mine 1 and the qualities of mine 3 coal were negatively dominating the resultant feed quality to the power station. If this continues, the size of the stockpiles are likely (by November 2016) to exceed the area available in the stockyard for the stockpiling of materials. This will have a significant and direct negative effect on the operation of the mine and the power station.

7 The reason for the closure of mine 1, resulting in the reduction in quantity and quality of coal supplied to the power station, and the growing unused stockpiles (among other things) is that Eskom has failed, despite repeated demand, to meet its obligations in relation to at least four capital projects at Matla ("**the four projects**"). Our client has repeatedly brought to Eskom's attention the fact that such failure would materially and negatively affect Matla's ability to perform as required under the CSA. Unfortunately, the longer Eskom fails to meet its obligations under the CSA, the worse the position at Matla becomes, thus precipitating actual and potential adverse consequences in relation at least to the following:

7.1 Matla's ability to supply coal to the power station in terms of the CSA;

7.2 the cost of coal from Matla;

7.3 the power station's ability to ensure consistent and reliable energy output;

7.4 the cost and reliability of supply of energy from the power station to the public;

7.5 the job security of many employees at Matla; and

7.6 Matla's life of mine plan and the future economic viability of its coal reserves.

8 This letter serves as a letter of demand. It also serves to notify you that our client hereby triggers the dispute resolution process in terms of clause 36 of the CSA.

9 This letter is accompanied by an indexed and paginated file of documents containing a series of annexures referred to below.

The four projects

10 We deal in this communication with four capital projects only. We do so without prejudice to our client's rights to add further projects or issues to this list, or to deal with them as separate disputes.

11 We list the four projects in the chronological order in which you have been requested to fund them:

11.1 the mine 1 relocation project;

11.2 the interseam project;

11.3 the shortwall replacement project; and

11.4 the electrical upgrade project.

12 The projects, their timing and their impact on the life of the mine are interlinked. In this regard, we point out at least the following:

12.1 The mine 1 relocation project has an anticipated duration of approximately 24 months from the date of Eskom's funding approval. But the mine 1 relocation project depends on the shortwall replacement project for the provision of an additional three sets of continuous miner equipment;

12.2 The interseam project has an estimated duration of approximately twelve months, if undertaken in parallel with the other projects, but must be completed by the end of 2018 in order to minimise the impact on production levels. The interseam project is, in turn, dependant on the shortwall replacement project for the replacement of the short wall sections, to maintain production levels for mine 2 and mine 3.

12.3 The short wall replacement project in turn also has an anticipated duration of 24 months from the date of Eskom's funding approval and has to be aligned with requirements of mines 1, 2 and 3. In particular, the short wall replacement project needs to be aligned with the timing of the new continuous miner sections on mine 1 and the timing of the replacement of the shortwall equipment on mine 2 and mine 3; and

13 Eskom's obligations (including funding) in relation to the four projects remain outstanding despite our client:

13.1 complying with all of its obligations under the CSA, and

13.2 doing everything reasonably possible to accommodate and comply with Eskom's changing, sometimes adhoc and inconsistent internal processes.

14 As demonstrated below, extensive correspondence has been addressed and technical submissions submitted to Eskom (in many cases repeatedly, and in some cases over a duration of several years), requiring that Eskom fund the four projects. Based on Eskom's responses and conduct, the only reasonable conclusion to draw is that Eskom refuses to do so and, in many instances, has sought to frustrate the project concerned for no legitimate reason.

15 We have trawled through relevant documentation and consulted with key personnel and having taken our client's instructions, we record hereunder some of the important facts pertaining to each of the four projects. Where relevant, we also attach the relevant completed formal submissions which Eskom required Matla to complete, and which were sent to Eskom (in some instances, repeatedly).

Mine 1 relocation project

16 We refer to our client's letter to Eskom dated 28 April 2016, (item 68, page 488) which dealt , *inter alia,* with the mine 1 relocation project. We suggest that Eskom have regard to that letter as the latest missive in a series of correspondences sent to Eskom over the last few years by our client, demonstrating *inter alia* the following:

16.1 As per the CSA, Matla comprises three mines: mine 1, mine 2 and mine 3. They are geared to produce coal as per the quantities and specifications set out in the CSA, but only if all the mines are operational.

16.2 During the last ten years, Matla has experienced deteriorating underground conditions at mine 1 as well as long travelling distances from the shaft to the coal face, causing loss in production due to less cutting time. This necessitated the sinking of a new mine shaft at mine 1 with associated infrastructure requirements. Matla repeatedly requested Eskom's approval for such capital funding, in order to ensure continued coal supply in terms of the CSA. Despite all attempts by Matla to secure funding from Eskom, Eskom has frustrated and effectively refused Matla's requests. In this regard, we point out the following:

16.2.1 From about 2001 to 2006 a study was undertaken by Matla to consider various alternatives available, due to the deteriorating conditions in mine 1. The study concluded that for various reasons it was most advantageous for Matla to construct a new mine 1 shaft;

16.2.2 Matla was scheduled to sink a new mine shaft in mine 1 from about 2004;

16.2.3 On about 7 February 2005 Matla submitted an Execution Release Approval ("**ERA**") requesting funding from Eskom to implement a new proposed shaft in mine 1, (item 1, page 1). A more detailed study was sought to determine the best mine shaft position;

16.2.4 In about May 2007 Matla obtained an initial pre-feasibility study to determine the most economic shaft position (both ventilation and access) for the remaining coal reserves at mine 1, (item 2, page 2);

16.2.5 In about August 2007 Matla obtained a more detailed pre-feasibility study to investigate the alternatives (of seven different locations for an up-cast ventilation shaft and labour access shaft) for relocating mine 1 to an optimum position closer to the remaining economic reserves (item 3, page 39);

16.2.6 In about November 2007 Matla concluded yet a further investigation into various options to allow for an incline shaft scenario, (item 28, page 222). Due to Eskom's capital constraints, it opted for a position closer to the power station ("option 2");

16.2.7 On or about 28 January 2008, Matla and Eskom agreed in a meeting to split the mine 1 relocation project into two project phases, phase 1 (mine 1 ventilation shaft) and phase 2 (mine 1 box cut and infrastructure), (item 4 page 92);

16.2.8 In about early 2008 a pre-feasibility study for the mine 1 relocation project was completed, (item 8, page 97);

16.2.9 On about 11 December 2008, it was agreed that the ventilation shaft phase would be managed as an urgent project, (item 60, page 455);

16.2.10 On or about 23 September 2009 Eskom approved the construction of the mine 1 ventilation shaft to a maximum value of R143 749 246, as requested by Matla, (item 5, page 93). It was executed;

16.2.11 From about 2008 until about December 2011 option 2 was developed further to a bankable feasibility level, (item 11, page 112);

16.2.12 On or about 22 July 2011 Eskom introduced a further requirement to its approval process. Eskom requested that Matla submit a Project Definition Readiness Assessment ("**PDRA**") (to determine whether Matla had an adequate level of detail to submit a DRA), before it could submit a Definition Release Approval ("**DRA**"). This had the effect of further delaying the approval process of the mine 1 relocation project;

16.2.13 On 19 August 2011 Matla requested *inter alia* written permission from Eskom to proceed with a detailed design for the Mine 1 relocation, (item 6, page 94);

16.2.14 On or about 12 September 2011 Eskom indicated *inter alia* that it "*supports the Mine 1 relocation project and the detail design phase*", and effectively insisted on a split between the detail design phase and the implementation phase, (item 7, page 96). In this same letter Eskom refused Matla's request for R20 million funding for the detail design of the mine 1 relocation project;

16.2.15 In about November 2011 Matla finalised a bankable feasibility study for the mine 1 relocation project for Eskom;

16.2.16 In about November or December 2011 Eskom requested a high level reassessment of some of the pre-feasibility options, (item 11, page 112);

16.2.17 In about the first quarter of 2012 Matla submitted an ERA to Eskom together with the bankable feasibility study, (item 23, page 181). Eskom did not approve this;

16.2.18 In or about January 2012, Eskom's consultants performed a PDRA on the project (as requested by Eskom in July 2011). The project did not meet the Eskom set hurdle rate – therefore the project was PDRA re-assessed in September 2012;

16.2.19 On about 4 April 2012, in a technical review of the design criteria meeting with Matla, Eskom requested a change in scope of the mine 1 relocation project and a re-investigation of the proposed vertical mine shaft option, (item 9, page 107);

16.2.20 On about 8 May 2012, Matla explained to Eskom the impact of delay, should the vertical shaft be reconsidered as Eskom sought, (item 10, page 110);

16.2.21 On or about 12 June 2012 Matla completed its reassessment. It concluded that Matla should proceed with the current design of option 2 in accordance with the bankable feasibility study design. Matla also communicated to Eskom, yet again, the dire implications of delaying the mine 1 relocation project (for Eskom's then ostensible purpose of re-evaluating a vertical mine shaft as a main entrance), (item 11, page 112);

16.2.22 On or about 10 July 2012 Matla made a detailed presentation to Eskom indicating the impact of the scope change requested by Eskom and explained that it effectively delayed the implementation of the mine 1 relocation project, but Eskom insisted that the scope of the mine 1 relocation project be re-evaluated and the vertical mine shaft be removed as an option, (item 12, page 120);

16.2.23 On or about 9 September 2012 Eskom requested Matla to again PDRA assess the project for the second time, with an updated scope, to determine whether Matla has an adequate level of detail to submit a DRA and before it could submit a DRA, (item 12, page 120);

16.2.24 On or about 25 September 2012 Matla electronically submitted the PDRA, DRA and ERA to Eskom. Matla submitted a DRA to request funds of R45 million to optimize the bankable feasibility study and to continue with the detail design phase for the mine 1 relocation project. The R45 million was to form part of the total project capex of R1,98 billion, (item 13, page 123);

16.2.25 On or about 10 October 2012, Matla submitted hard copies of the documents (PDRA, DRA and ERA) to Eskom, (item 14, page 137). The DRA for the mine 1 relocation project was essentially another bankable feasibility study for the detail design for the mine 1 relocation project. On or about 24 October 2012 Matla set the scope with Eskom in a scope setting meeting, (item 15, page 138);

16.2.26 On or about 29 January 2013 Eskom conducted a PDRA audit, in terms of which Eskom measures a project's readiness for implementation, for the mine 1 relocation project;

16.2.27 On or about 28 March 2013 Matla resubmitted the DRA to Eskom to amend a geological conclusion, (item 16, page 142);

16.2.28 On or about 17 April 2013 Eskom informed Matla that the mine 1 relocation project had to be taken through a PDRA in order for it to be considered further by Eskom, (item 17, page 156). On or about 19 April 2013 Matla responded that it was well on the way to complying with Eskom's PDRA requirement and the process was only being held up because of delays by Eskom, (item 18, page 157);

16.2.29 On or about 23 July 2013 Eskom indicated that the mine 1 relocation project (and the associated capital expenditure) was not feasible because the CSA ended in 2023, (item 19, page 158);

16.2.30 On or about 19 August 2013 Eskom questioned the economic benefit of the mine 1 relocation project, and Matla cautioned Eskom of the consequences of delaying the mine 1 relocation project (item 20, page 159). Discussions with Eskom in regard to the economic evaluation required for the ERA were first commenced in August 2013. The various options and approach were discussed in September 2013. All the while Matla was working on the PDRA requirements, as part of the bankable feasibility stage optimisation exercise which, as indicated below, was completed in December 2013;

16.2.31 On or about 15 October 2013 Matla requested that Eskom expedite the long-delayed registration of 70 hectares of land for purposes of proceeding with the mine 1 relocation project, (item 22, page 179);

16.2.32 In about December 2013 Matla obtained an optimisation report which upgraded and optimised both the detail design and procurement phase, as well as the project execution phase of the mine 1 relocation project, and consequently achieved an estimated accuracy confidence level of between 10-15% for capital estimates, (item 31, page 263);

16.2.33 On or about 10 December 2013 the ERA PDRA was assessed by Eskom in preparation for the ERA process. Eskom awarded the mine 1 relocation project a favourable readiness score of 143 (compared to Eskom's internal required maximum threshold of 150 to 250), (item 23, page 181);

16.2.34 On or about 4 February 2014, after documentation verification, Eskom provided a PDRA assessment report (item 23, page 181) in which it provided the mine 1 relocation project with an even more favourable rating of 110 (Eskom's target was between 150 and 250 at most for that internal stage), and concluded that "*the documentation verification shows the project is well defined for the current stage gate and confirms the outcome of the ERA PDRA held in December 2013. The project should have minimal difficulty in appropriately proceeding with Eskom investment committee recommendations*";

16.2.35 On or about 25 February 2014 Matla submitted an updated DRA for the detail engineering and design phase of the mine 1 relocation project, (item 23, page 181);

16.2.36 On or about 6 May 2014 Matla submitted a further DRA to Eskom (taking into account Eskom's input and requests over the preceding months);

16.2.37 On or about 24 May 2014 Eskom was again cautioned about the consequences of delaying the mine 1 relocation project, (item 25, page 215);

16.2.38 On or about 19 June 2014 Matla revised the budget for the DRA for the detail engineering and design phase of the mine 1 relocation project (from R89,71 million to R85,45 million) and stated that its rights are reserved as a result of the delays experienced in this matter, (item 26, page 220);

16.2.39 On or about 25 June 2014 Eskom approved the DRA for the detail engineering and design phase of the mine 1 relocation project, to the maximum value of R76,55 million, (item 27, page 221);

16.2.40 On or about 27 June 2014 Matla submitted to Eskom a final project ERA, for the construction leg of the mine 1 relocation project, (item 28, page 222);

16.2.41 On or about 6 August 2014 Matla requested that Eskom provide it with a progress report on the mine 1 relocation project ERA (indicating *inter alia* which committees it has gone through and the targeted board dates), (item 30, page 262);

16.2.42 On or about 16 September 2014 Eskom was again informed about the critical nature of the mine 1 relocation project, (item 32, page 270);

16.2.43 From at least about October 2014 Eskom suspended all sitting capital expenditure committees;

16.2.44 On or about 18 November 2014 Eskom was again cautioned of the consequences of delaying the mine 1 relocation project in terms of its impact on the coal requirements under the CSA, (item 34, page 272);

16.2.45 On or about 8 December 2014 Eskom was again cautioned about the consequences of delaying the mine 1 relocation project in terms of its impact on the requirements under the CSA, (item 35, page 276);

16.2.46 On or about 12 December 2014 Eskom was yet again cautioned about the consequences of delaying the mine 1 relocation project in terms of its impact on the coal requirements under the CSA, (item 36, page 280);

16.2.47 In February 2015 Matla shut down mine 1 as a result of irremediable underground deterioration and serious safety concerns, (item 49, page 333);

16.2.48 On or about 5 March 2015 Matla declared the closure of mine 1 a *force majeure* event beyond its control in terms of clause 33 of the CSA, (item 38, page 300);

16.2.49 On or about 11 March 2015 Eskom indicated to Matla that Eskom intended submitting the mine 1 relocation project to its relevant decision making committee/s in April 2016, one year hence, (item 39, page 303);

16.2.50 On or about 12 March 2015 Matla requested from Eskom *inter alia* the immediate approval of the mine 1 relocation project ERA, and highlighted the danger of mine 1 being permanently closed, (item 40, page 304);

16.2.51 On or about 6 May 2015 Eskom notified Matla (item 43, page 327) that: i) the implementation of the mine 1 relocation project can only occur once the project has been fully approved by the relevant Eskom investment committees, ii) no activities associated with the project should be undertaken before Matla receives an approval letter from Eskom, and iii) "*Eskom is in the process of taking the ERA through its approval governance process and will keep Exxaro Matla Mine informed of the progress*";

16.2.52 On or about 25 May 2015 Eskom informed Matla (item 47, page 331) *inter alia* that "*there has been a turn of events which requires that over and above the current Mine 1 capital cost of R1,577 M, the capex for CM's is now required to be added there-on to reflect the total project cost. This was deemed necessary in order for Eskom to know and also to find funding for the total project which we can estimate around R5billion*";

16.2.53 On or about 21 August 2015 Matla sought guidance from Eskom in relation to the impact of the shutting down of mine 1 on the CSA and also sought "*confirmation by Eskom … on the status of the fund approval process*", (item 50, page 338);

16.2.54 On or about 26 January 2016 Eskom notified Matla *inter alia* that "*Eskom has now put as a priority the Mine 1 project for funding. Unfortunately, this means that we will need to engage with PCC again to obtain reliable cost estimates*", (item 58, page 453);

16.2.55 On or about 2 February 2016 Eskom notified Matla *inter alia* that "*Eskom is still working on the process to secure funding for the [mine 1 relocation] project. We can only be certain of the full outcome on early April 2016*", (item 59, page 454);

16.2.56 On or about 3 March 2016 Eskom indicated to Matla that it was unable to provide Matla with any firm anticipated dates by which Eskom would approve *inter alia* the mine 1 relocation project, but that "*with little confidence*" it might be considered in the financial year 2018, (item 65, page 476);

16.2.57 On or about 13 May 2016 at a meeting between the parties, Eskom *inter alia*: i) indicated to Matla that the mine 1 relocation project is going through the internal Eskom approval process and still has to be presented to the Eskom board, and ii) expressed its concern that the project would require large capital spend in the face of the CSA coming to an end in 2023, (item 70, page 496);

16.2.58 In early June 2016 Matla provided Eskom with a detailed presentation (item 71, page 498) regarding *inter alia* the mine 1 relocation project valued at R1,768 billion (excluding equipment costs), and on 10 June 2016 Matla provided Eskom with the slides of that presentation; and

16.2.59 At various points in time since then, until the end of June 2016, Matla provided Eskom with further information regarding the ERA it submitted for the mine 1 relocation project and dealt with all of Eskom's various requests and queries in that regard.

16.3 The coal sourced from mine 1 plays a critical role in keeping up with the power station burn. The absence of coal production from mine 1 results in operational performance of Matla below the requirements of the CSA, in relation *inter alia* to quantities of coal supplied and the calorific value of the coal supplied. This sub-optimal operational performance becomes increasingly dire the longer that Eskom delays funding the mine 1 relocation project. This is particularly so because the role of mine 1 in the life of mine plan is expected to increase in the future from three to six sections. The closure of mine 1 also results in other adverse effects, including increased unit costs at Matla, impairment of the life of mine plan and placement of a greater strain on the production and infrastructure in mine 2 and mine 3. (All of these consequences were repeatedly, and in great detail, communicated to Eskom well prior to mine 1 being shut down in February 2015 and several times subsequently.)

17 In summary:

17.1 Eskom accepted the need for the mine 1 relocation project and has never meaningfully or lawfully disputed its liability for the mine 1 relocation project (nor can it do so);

17.2 Our client has gone through the various stages of pre-feasibility, feasibility and bankable studies, including optimisation studies between 2007 and 2013. Our client has also complied with every single reasonable request by Eskom (which had, and was in many instances intended by Eskom to have, a dilatory effect on the authorisation process);

17.3 In June 2014 the execution of the detailed design leg of the mine 1 relocation project was eventually approved by Eskom, but the approval and funding by Eskom was limited to the cost of the detail design phase and excluded the construction phase. Eskom failed and refused to provide the balance of funding for the mine 1 relocation project;

17.4 Eskom was repeatedly and consistently over the years warned of the many consequences of its delay and failure to fund the mine 1 relocation project, including that production operations at mine 1 would be stopped due to the unacceptable risk associated with the deteriorating underground conditions (as in fact occurred in February 2015); and

17.5 Eskom has to date, inexcusably and unlawfully in contravention of the CSA, failed and effectively refused to provide capital that is required for the mine 1 project.

The interseam project (also referred to as the North-West project)

18 Our client has in various correspondence and meetings over the last two years indicated to Eskom the following:

18.1 Our client is currently one of two mining houses in South Africa which utilise the short wall mining method. The benefit of this mining method is that large volumes of coal are produced at a lower cost per ton. The current life of mine plan indicates that the two shortwall sections located at mine 3 and at mine 2 will mine out the designated shortwall mining area in 2018. The production shortfall will then be made up by board and pillar continuous mining sections.

18.2 The current life of mine plan indicates that mine 3 will produce coal from seam 2, and mine 2 will produce coal from seam 4. To ensure that sufficient mining area is available for future production under the CSA, it is necessary that seam 4 and seam 2 areas be accessible within two years, in 2018, in order to offset the decline in production following the shortwall sections being phased out at different stages. The interseam project is intended to enable such access by creating an interseam between seam 4 and seam 2, in order to access the North West reserve block for mine 3 (seam 2) and the North East reserve Block at mine 2 (seam 4).

18.3 Failure to implement the interseam project timeously, or at all, will result in operational performance of Matla falling below the requirements of the CSA in relation *inter alia* to quantities of coal supplied and the calorific value of the coal supplied. It will also result in other adverse effects, including increased unit costs at Matla and impairment of the life of mine plan. Such adverse consequences will become increasingly dire the longer that Eskom delays funding the interseam project.

19 Despite all attempts by our client to secure funding and co-operation from Eskom in relation to the interseam project, Eskom has frustrated and effectively refused our client's requests. In this regard, we point out the following milestones:

19.1 On or about 23 March 2015, at Eskom's request, Matla submitted to Eskom the CRA in relation to the interseam project, (item 41, page 306);

19.2 On or about 28 April 2015, at Eskom's request, Matla submitted to Eskom its second revision of the CRA for the interseam project, (item 42, page 307);

19.3 On or about 14 May 2015 Matla requested feedback from Eskom on the CRA for the interseam project but was met with no answer, (item 44, page 328);

19.4 On or about 19 May 2015 Matla again requested feedback from Eskom, concerning the CRA for the interseam project, but was met with no answer;

19.5 On or about 22 May 2015 Matla yet again requested feedback from Eskom on the CRA for the interseam project (which was then approved in a meeting with Eskom) and indicated that it would be proceeding with the DRA for the interseam project, (item 46, page 330);

19.6 On or about 8 September 2015 Matla submitted to Eskom a DRA in relation to the interseam project requesting approval and release of total capital funds in the amount of R4,489 million for a bankable feasibility study and R273,5 million for construction, (item 52, page 342);

19.7 On 4 November 2015 at Eskoms' request Matla re-submitted to Eskom the DRA in relation to the interseam project, (item 54, page 383);

19.8 On or about 22 February 2016 Matla requested feedback from Eskom, *inter alia* concerning the interseam project, but this was not forthcoming, (item 61, page 458);

19.9 On or about 24 February 2016, at Eskom's request, Matla re-submitted to Eskom a DRA for the detail design phase in relation to the interseam project, requesting approval and release of R4,8 million, (item 63, page 460);

19.10 On or about 26 February 2016 Eskom provided its first feedback to Matla regarding *inter alia* the DRA in relation to the interseam project. Eskom indicated that it would provide its "*inputs back to the mine [Matla] latest next week Friday if we have any*" and that Matla should "*in the meantime prepare for presentation in March 2016*", (item 64, page 474);

19.11 On or about 1 March 2016 Eskom provided comments for Matla to incorporate into the submitted DRA (both for the interseam project and the shortwall project), (item 65, page 476);

19.12 On or about 2 March 2016, Matla resubmitted the DRA incorporating the comments from Eskom, (item 65, page 476);

19.13 On or about 3 March 2016 Matla requested anticipated Eskom board approval dates for *inter alia* the interseam project. Eskom replied, stating that it was unable to provide Matla with any firm anticipated dates by which Eskom would approve the interseam project, but also stating that "*with little confidence*" the interseam project might be considered by Eskom in the 2022 financial year, (item 65, page 476);

19.14 At about the beginning of May 2016 Matla indicated the impact of the delay at a risk meeting (*via* a presentation) with Eskom, as well as a *via* a modified DRA application submitted on 6 May 2016, (item 69, page 494);

19.15 On or about 10 May 2016, at Eskom's request, Matla resubmitted its DRAs for the shortwall project and the interseam project, (item 69, page 494). Eskom also indicated to Matla that the parties agreed "*that we need to assume the capital for the projects will be available when the mine [Matla] needs it for any project*" and that Eskom would endeavour to ensure that this was so;

19.16 On or about 13 May 2016 at a meeting between the parties, Eskom *inter alia*: i) indicated to Matla that the interseam project is going through the internal Eskom approval process and still has to be presented to the Eskom board, ii) pointed out that there are likely to be project delays due to capital constraints at Eskom, and iii) requested Exxaro to investigate implementing this project through opex with predominantly internal resources, (item 70, page 496); and

19.17 In about early June 2016 Matla provided Eskom with a detailed presentation regarding *inter alia* the interseam project valued at approximately R548,1 million (dated in February 2016), and on 10 June 2016 Matla provided Eskom with the slides of that presentation, (item 71, page 498).

20 In summary:

20.1 Eskom has never disputed the need for the interseam project or its liability for the interseam project (nor can it do so);

20.2 Our client went through the various stages required by Eskom's internal processes for capital expenditure approval and has complied with every single reasonable request by Eskom over the last two years in relation to the interseam project;

20.3 Eskom failed and refused to properly or at all consider the interseam project over this period or provide the funds requested;

20.4 Eskom was repeatedly and consistently warned of the consequences of its delay and failure to decide on and fund the interseam project; and

21 Eskom has to date, inexcusably and unlawfully in contravention of the CSA, failed and effectively refused to provide capital that is required for the interseam project.

The shortwall replacement project

22 Our client has in various correspondence and meetings over the last two years indicated to Eskom the following:

22.1 The shortwall reserves at mine 2 and mine 3 will become depleted due to geological conditions and sustained higher production levels. This will result in the need to implement an alternative mining section, utilising an alternative method, to sustain production at Matla to accord with the requirements of the CSA; and

22.2 The imminent closure of the Matla shortwalls, therefore, is an inevitability that will arise shortly. If the shortwall replacement project is not implemented soon, and by 2018 at the latest, the coal production requirements under the CSA will not be met for this additional reason.

23 Despite all attempts by Matla to secure funding and co-operation from Eskom in relation to the shortwall replacement project, Eskom has frustrated and effectively refused Matla's requests. In this regard, we point out the following milestones:

23.1 On or about 17 March 2014 Matla proposed to Eskom "*that a concept study is undertaken to develop a proposal for approval by the relevant Exxaro (IRC) and Eskom Governance (CRA) committees to commence with a Pre-feasibility study*" in relation to a shortwall replacement project, (item 24, page 214);

23.2 On or about 16 July 2014 Eskom granted approval to Matla for a project concept study for the shortwall replacement project, (item 29, page 261);

23.3 On or about 16 September 2014 Eskom was informed about the critical nature of the shortwall replacement project, (item 32, page 270);

23.4 From at least approximately October 2014 Eskom suspended all sitting capital expenditure committees;

23.5 On or about 18 November 2014 Eskom was cautioned about the consequences of delaying the shortwall replacement project in terms of its impact on the coal requirements under the CSA, (item 34, page 272);

23.6 On or about 8 December 2014 Eskom was again cautioned about the consequences of delaying the shortwall replacement project in terms of its impact on the coal requirements under the CSA, (item 35, page 276);

23.7 On or about 12 December 2014 Eskom was yet again cautioned about the consequences of delaying the shortwall replacement project in terms of its impact on the coal requirements under the CSA, (item 36, page 280);

23.8 On or about 14 May 2015 Eskom granted Matla permission to proceed with the DRA for the shortwall replacement project;

23.9 In or about October 2015 Matla submitted a DRA for the shortwall replacement project, requesting approval and funds (of R3,8 million), *inter alia* for optimising the pre-feasibility study and developing a definitive cost estimate, (item 53, page 367);

23.10 On or about 22 February 2016 Matla re-submitted an updated DRA to Eskom and requested feedback from Eskom, *inter alia* on the shortwall replacement project, but this was not forthcoming, (item 61, page 458);

23.11 On or about 24 February 2016 Matla submitted an updated DRA for the shortwall replacement project requesting approval and funds (of R3,805 million), *inter alia* for optimising the pre-feasibility study, developing a definitive cost estimate and preparing an ERA submission, (item 62, page 459);

23.12 On or about 1 March 2016, Eskom provided comments for Matla to incorporate into the submitted DRA (both for the interseam project and the shortwall project), (item 65, page 476);

23.13 On or about 3 March 2016 Matla requested anticipated Eskom board approval dates for *inter alia* the shortwall replacement project. Eskom replied, stating that it was unable to provide Matla with any firm anticipated dates by which Eskom would approve the shortwall replacement project, but also stating that "*with little confidence*" the shortwall replacement project might be considered by Eskom in the 2020 financial year, (item 65, page 476);

23.14 At about the beginning of May 2016 Matla indicated the impact of the delay at a risk meeting (*via* a presentation) with Eskom, as well as a *via* a modified DRA application submitted on 6 May 2016, (item 69, page 494);

23.15 On or about 10 May 2016 at Eskom's request Matla resubmitted its DRAs for the shortwall project and the interseam project. Eskom also indicated to Matla that the parties agreed "*that we need to assume the capital for the projects will be available when the mine [Matla] needs it for any project*" and that Eskom would endeavour to ensure that this was so, (item 69, page 494);

23.16 On or about 13 May 2016 at a meeting between the parties, Eskom *inter alia*: i) indicated to Matla that the shortwall project is going through the internal Eskom approval process and still has to be presented to the Eskom board, ii) pointed out that there are likely to be project delays due to capital constraints at Eskom, and iii) expressed some reservations and concerns regarding the assumptions and details of the shortwall replacement project, (item 70, page 496); and

23.17 In about early June 2016 Matla provided Eskom with a detailed presentation regarding *inter alia* the shortwall replacement project valued at approximately R1,293 billion (dated at December 2015), and on 10 June 2016 Matla provided Eskom with the slides of that presentation, (item 71, page 498).

24 Eskom has to date, inexcusably and unlawfully in contravention of the CSA, failed and effectively refused to provide capital that is required for the shortwall replacement project.

The electrical upgrade project

25 The high tension electrical equipment at Matla was installed in 1978 and has been in operation for the past 38 years. The electrical equipment has reached the end of its lifespan. It is increasingly difficult to find spares to maintain the electrical equipment, due to the technology becoming obsolete and outdated. Furthermore, the existing electrical equipment does not comply with relevant Mine Health and Safety legislation and standards. It consequently raises the real risks of fire hazards, explosions, and consequent injury or death to personnel.

26 This necessitated the equipment upgrade project. A CRA or DRA is not required for such a project in terms of Eskom's internal process; only an ERA is required.

27 Matla submitted an ERA for the electrical upgrade project on 26 August 2013. To date, Eskom has not considered and reverted, (item 20, page 159).

28 During the course of 2015 Eskom requested that Matla undertake a study on the current and future electricity demand needs when the life of mine plan is implemented. This study was submitted to Eskom in about December 2015, (item 57, page 419).

29 On or about 9 December 2015 Matla compiled a memorandum which was submitted to Eskom indicating the urgency of the electrical upgrade project and Eskom requested Matla to re-submit the ERA, (item 56, page 410).

30 On or about 10 February 2016 Matla re-submitted to Eskom the ERA requesting approval for and funds of R76 million, accompanied by a detailed presentation made to the Exxaro IRC regarding this project.

31 On or about 10 February 2016 Matla re-submitted to Eskom the economic evaluation.

32 On or about 3 March 2016 Eskom indicated that funds would be made available for this project in Eskom's 2017 financial year.

33 In about June 2016, at a liaison meeting, Eskom indicated to Matla that the ERA submitted on 10 February 2016 was sufficient and in order to allow for Eskom approval.

34 On or about 21 June 2016 Eskom requested that Matla re-submit an updated ERA document with updated values. This was required due to the lapse of the values in the ERA submitted in February 2016. An updated ERA was re-submitted on 29 July 2016, (item 72, page 516).

35 The ERA and economic evaluation were repeatedly submitted to Eskom, in July 2016 and on about 5 August 2016, (item 73, page 518), pursuant to Eskom's requests to Matla to update information and to provide more recent quotations (the previous quotations having expired due to Eskom's failure to act timeously).

36 Our client has dealt with all of Eskom's queries since then. To date Eskom has not made a decision on the ERA, despite several requests for it to do so.

Eskom's refusal to accept coal from mine 3 and the resultant threat of closure of Matla

37 As noted above, Matla relies on a balanced feed volume of coal from all three of the Matla mines (mine 1, mine 2 and mine 3) to make up the supply of coal to the power station in terms of volume and quality. As coal from the three mines is required to be mixed to ensure an appropriate supply to the power station, if one of the mines does not perform or is not up and running, the resultant coal supply to the power station, the life of mine plan (to produce a consistent quality and quantity of coal

for the life of mine), and the matching of the life of mine plan to the life of the power station is detrimentally affected.

38 As a result of the shutdown of mine 1 in February 2015, following Eskom's failure to provide the necessary capital expenditure for a new mine shaft and associated infrastructure, Matla has supplied coal to the power station only from mine 2 and mine 3. This has affected the resultant coal feed to the power station.

39 It seems that Eskom attempted to counter the losses of production following its failure to provide capital for mine 1, by importing additional coal. Eskom adopted the stance that, provided that import coal qualities and quantities were in line with what mine 1 would have produced, once the coal from the mines was mixed (as contemplated in the CSA, in the manner in which Matla has since inception been run), the resulting mix would be in line with the quality parameters required by the power station. Initially and till very recently it seemed as if the imports did not fulfil this expectation.

40 On or about 5 June 2015 Eskom informed our client that the power station was experiencing load losses due to the poor quality of coal supplied to the power station. Eskom requested that Matla immediately stack out all mine 3 coal to the coal stockyard, and only supply the power station with mine 2 coal and other coal imported by Eskom, (item 48, page 332).

41 On or about 8 July 2015 Eskom instructed Matla to temporarily stack out a portion of coal from mine 3 so as to ensure that the coal fed to the power station was as close as possible to the contractual 19,5 calorific value requirement.

42 On or about 4 September 2015 Matla informed Eskom that it was experiencing major challenges relating *inter alia* to: i) stacking of the excess coal from mine 3 in the increasingly full coal stockyard, and ii) unknown quality coal being imported by Eskom, preventing accurate mixing of coal for purposes of supply to the power station. Matla repeated the point that obtaining the correct coal quality for supply to the power station would remain a challenge until the new mine shaft at mine 1 was approved by Eskom, and constructed, and until the quality of Eskom's coal imports improved and became consistent, (item 51, page 341).

43 On or about 1 December 2015 Eskom again complained to our client about the load losses at the power station attributed to coal quality. Eskom, since that date, has accepted into the power station coal supplied from the mine 3 continuous miner sections, but refused to accept into the power station the coal from the mine 3 shortwall, (item 55, page 408).

44 On or about 15 March 2016 Eskom complained that Matla was continuing to mine the shortwall in mine 3 and supplying the power station with coal from that source. Eskom notified our client that it would not pay for the coal produced from the mine 3 shortwall area- but Matla has continued to supply this coal to Eskom notwithstanding - albeit in much reduced quantities, (item 66, page 485).

45 On or about 18 March 2016 our client responded to Eskom and pointed out, in essence, that Eskom was both legally and factually mistaken. Our client noted *inter alia*, that: the CSA required a mix of coal from all three mines, that the closure of mine 1 caused by Eskom's failure to meet its obligations under the CSA, affected the quality and quantity of coal supplied by Matla to the power station, Eskom's coal imports to remedy its failure to fund mine 1 were of inconsistent and insufficient quality, and that by breaching its obligations Eskom was making performance by Matla impossible, (item 67, page 486).

46 Our client has, since then repeatedly conveyed to Eskom the fact that the situation at the coal stockyard is becoming increasingly difficult to manage. The constant and ever-increasing build up of coal from the mine 3 shortwall that has been stacked (and which continues to be stacked) coupled with the existing stacks of coal (including from Eskom's imports) is increasing the risk to personnel and equipment and, worse still, will see the coal stockyard being completely full by late October or November 2016 - with the result that all mining operations at Matla will then be required to be drastically curtailed.

47 In summary:

47.1 In terms of the CSA, and as per practice from inception of Matla, a mix of coal from mine 1, mine 2 and mine 3 has been provided to the power station to meet the coal quantity and quality specifications.

47.2 Eskom has failed and refused to meet its obligations to fund a new mine shaft in mine 1. This necessitated the shutting down of mine 1 in February 2015.

47.3 Eskom has unlawfully refused to accept coal from mine 3 at Matla, complaining about its low calorific value. Eskom instead has sought to cherry pick coal from parts of mine 3 and from mine 2, coupled with Eskom's own inconsistent-quality coal imports (which it commenced importing to offset the consequences of its failure to fund the building of the new mine 1 shaft).

47.4 Eskom's refusal to accept coal from the mine 3 shortwall operations is unlawful. Of immediate concern, however, is that it has caused (and continues to cause) a capacity problem at the Matla coal stockyard which, if not remedied urgently, will drastically and further reduce the coal that can be sent through to the power station from the mine. The consequences of this for the power station, Matla's operations and its employees, and for the general public, are dire. There is therefore considerable urgency in resolving the mine 3 issue and the stockyard dispute, and the underlying disputes dealt with herein.

Conclusion: the relief that our client seeks

48 The information provided in this letter is not intended to be exhaustive. We anticipate that it may be necessary to place additional information and further documentation before a mediator (and, if that process is not fruitful, thereafter before an arbitrator) who is to be appointed.

49 Our client seeks the following unqualified admissions from Eskom, on record, which can be provided at the latest during any mediation process, failing which an arbitrator will be requested to grant an award in such terms:

49.1 Eskom is required in terms of its obligations under the CSA to fund the four projects;

49.2 Our client is entitled to payment by Eskom of the necessary funds, to commence and complete the four projects;

49.3 Eskom is ordered immediately to make the necessary funds available to our client to enable it to commence and complete the four projects;

49.4 Eskom is required to accept delivery of all coal mined from mine 3 and take all reasonable steps to assist our client in reducing the size of the stockpiles currently established at the stockyard;

49.5 Eskom's failure to comply with its obligations under the CSA, as set out above, timeously or at all, has rendered our client unable to comply with its obligations under the CSA;

49.6 Our client may not be penalised by Eskom in terms of the CSA, or otherwise, by reason of any inability by our client to meet its contractual obligations under the CSA, caused by Eskom's failure to comply with its obligations under the CSA as set out above; and

49.7 Eskom is obliged to pay our client's management fee calculated on the basis that it would have been calculated without regard to any inability by our client to comply with its obligations under the CSA.

50 We point out that the scope of the mediation and arbitration may be widened to encompass further related issues, including but not limited to the issue of the ventilation shaft at mine 3.

51 We hereby request, on behalf of our client, in terms of clause 36.1 of the CSA, that Eskom:

51.1 agree that this dispute be referred to Mr Phillip Ginsberg SC, alternatively Mr Azhar Bham SC, of the Johannesburg Bar, as a mediator.

51.2 provide a response to this letter, concerning the appointment of a mediator, by no later than Friday, 23 September 2016.

52 We look forward to receiving your response.

Yours faithfully

Tony Chappel
Director
Norton Rose Fulbright South Africa Inc

MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Dr. Ben Ngubane
Eskom Chairperson
Eskom Holdings SOC Limited
PO Box 1091
Johannesburg
2000

Tel: 011 800 2030
Fax: 011 800 5803

Dear Dr Ngubane

Application for Approval for Relocation of Matla Mine 1 in terms Of Section 54(2) Of the Public Finance Management Act and the Significance and Materiality Framework

Thank you for your application regarding the relocation of the Matla Mine 1 in terms of section of the Public Finance Management Act (PFMA). The Department is aware of the impact of the project on Eskom Generation sustainability, the mine and surrounding communities. Eskom has not provided a strategy and business case for all capital investments in cost plus mines which were signed pre-1994 and how the objective of the democratic Government find expression in these arrangements.

Eskom must therefore demonstrate how the company will use this opportunity to give socio-economic transformation imperatives of Government, given the evolution of policy since 1994.

I therefore decline this PFMA until such time that Eskom responds to issues raised above

Yours sincerely

MS. LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 18/04/2019

Eskom

CONFIDENTIAL

Dr Nombasa Tsengwa
General Manager: Captive Mines
Exxaro Resources Limited
P O Box 9229
PRETORIA
0001

Date:
17 April 2013

Enquiries:
Mr John Mamabolo
+27 11 800 6343

Our Ref: 719556

Dear Dr Tsengwa,

PROJECT DEFINITION READINESS ASSESMENT: MINE 1 RELOCATION

Eskom requires that all major projects are taken through a project definition readiness assessment (PDRA) to ensure that the projects are at a state of sufficient definition and readiness for further consideration by Eskom.

Eskom hereby request Exxaro Matla Colliery to conduct a PDRA for the Mine 1 Relocation project to assess the readiness of the project.

Yours sincerely

17/04/2013

Petros Mazibuko
SENIOR MANAGER: COAL OPERATIONS

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Eskom Holdings SOC Limited Reg. No 2002/015527/06

1923-2013

Mr Petros Mazibuko
Senior Manager: Coal Supply
Eskom Primary Energy Division
P O Box 1091
Johannesburg
2000

Ref: ka/MC 22/05/13

24 May 2013

Dear Mr Mazibuko

RE: MATLA COAL, MINE 1 RISKS

1. The purpose of this letter is to inform Eskom that the dayshift of the Matla Mine 1 shaft will be stopped for a period of approximately (6) six weeks, from 23 May 2013 to 04 July 2013. This will allow Mine 1 to take measures in an attempt to reduce certain immediate risks identified to an acceptable level. Thereafter a medium and a long term strategy will be put in place to continue with production until such time the relocation of the shaft can take place.

2. There is a possibility that the current conditions could deteriorate further after this intervention. Should this happen then Matla will revisit and evaluate the issues and take the necessary actions.

3. In consultation with Eskom over the past 9 years, it has been agreed that the Mine 1 shaft should relocate their current shaft due to a number of challenges and risks.

4. The schedule of Mine 1 shaft project is as follows:-

   4.1 Approval phase:

DRA Approval (for Detail Design and EIA)	-	11 Sept 2013
IWUL Approval	-	03 Dec 2013
EIA Approval (target)	-	07 May 2014
Detail Design Complete	-	22 Jul 2014
ERA Approval (8 months)	-	03 Jun 2015

*Assumption: Dates set out above are based on normal Eskom approval process following EIA approval.

4.2 Schedule for implementation once all approvals obtained:

ERA Approved by Eskom	-	23 Jun 2015
Construction Start	-	01 Jan 2016
Start Operation	-	24 Jan 2018
Project Closure	-	17 Apr 2018

5. Current indications are that the sinking of the planned shaft for Mine 1 will only commence on or about January 2016. Discussions with Eskom to fast track the project approval processes is in progress.

6. This delay in the relocation of the shaft has resulted in the manifestation of significant risks to the employees and equipment. These risks are as follows:-

6.1 Possible collapse of the main intake near the current shaft complex given that subsidence has already taken place on two occasions. The impact of this is as follows:

- The risk of collapsing the main return to the workings was alleviated with the sinking of a new ventilation shaft during 2010.
- Due to the geological conditions in this area, access to this area is restricted.

6.2 Areas supported by point anchor roof bolts that were used as primary support since the start of the mine until late 1999. The impact of this is as follows:
Deterioration of roof conditions due to:

- Skin failure between roof bolts;
- Bed separation with in strata taking place resulting in severe roof collapse;
- Support work done in the past are no longer effective. Matla no longer make use of mechanical roof anchors.

6.3 The geological conditions of a portion of the current returns back bye areas and the access thereof as required by law. The impact of this is as follows:

- Areas cannot be inspected as required by law;
- Stone dusting of these areas as required by law is not possible.

6.4 The deterioration of areas already re-supported during the past 5 years.

6.5 The application of stone dust in both the returns and the belt roads due to inaccessibility. The impact of this is as follows:

- Due to low application levels of stone dust in the returns, a coal dust explosion can be secondary to any explosion that might take place in the sealed areas or sections.

6.6 The risk associated with working in the belt roads due to scaling of the roof and rib sides. The impact of this is as follows:

- Conveyor belts (especially given the distances at Mine 1) are of utmost importance for the purpose of fire prevention.

- Belt patrollers and maintenance employees are at risk when working or walking in the belt roads.

6.7 Deterioration and collapse of single walls that were built to seal off worked out panels. Most of these walls were built during the eighties and early nineties. The impact of this is as follows:

- Due to the deterioration of the workings a number of the walls sealing the old panels are no longer efficient and some have even collapsed. The risk associated with possible explosions in these areas are high due to oxygen entering and in the case of high methane content can cause the area to enter into the explosive range.
- The inspection of walls and the monitoring of the environment inside these panels are not taking place due to the risk of poor roof conditions.

6.8 Distances to sections are in access of 17km. The impact of this is as follows:

- Low morale of employees;
- Infrastructure to manage and prevention of fires taking in consideration 34 km of conveyor belt, 17 belt drives and 76 000 idlers in motion on a daily basis not taking in consideration the section conveyors;
- Although refuge bays are in place as required by law escape during emergencies will be challenging.

7. Matla management received a section 55 from the DMR on 05 November 2012 which pointed out unsafe areas as a result of scaling taking place and poor roof conditions in the travelling roads. Matla subsequently presented their initial action plan addressing the risks at Mine 1 and the DMR was satisfied. The initial plan was then further enhanced and will be handed to the DMR after Exxaro Exco's consent, as proof that Matla is in the process of addressing certain of these risks.

8. In addition stone dust application levels as required by law in the back bye areas and returns was pointed out by the DMR as non compliance.

9. The actions and work required to reduce the above mentioned risks to an acceptable level will be done in three phases as follows:

9.1 **Phase 1 - Short term: (duration up to 2 months)**
Will be to reduce risks to an acceptable level and are as follows:

- Sounding and Barring;
- Installation of Stone dust barriers;
- Re – Applying of stone dust;
- Drilling of two rescue holes into the workings.

9.2 **Phase 2 - Medium term: (duration up to 5 months)**

- Installation of netting;
- Re-apply stone dust;
- Continuous monitoring and sealing of panels.

9.3 **Phase 3 - Long term: (duration up to five years)**

- Cutting incompetent roof with CM and re – support;
- Re-support beam failures that has occurred;
- Construct 400kpa walls;
- Continue with shaft relocation project.

10. In all three phases listed above, emergency evacuation procedures are of utmost importance. As required by law Mine 1 has two entrances to the workings for the purpose of entry and escape if an emergency arises.

11. In addition to this a decision was taken to drill two rescue holes in areas identified. The first hole was drilled and a second will take place as soon as casing for the hole is delivered.

12. After evaluating the current risks and the effect they will have on employees it was decided to stop the operation on the dayshift and allow for production to continue on the afternoon shift only. This should allow for additional time in order to address the risks especially in the areas that cannot be accessed when the mine is producing. These areas relate to the risks that were identified in the belt roads and due to legislation, work on these issues are not allowed to take place when conveyors are in motion. A directive from the DMR during 2009 was given that prevents any person to work in the vicinity of a conveyor in motion.

13. The work planned to eliminate and reduce the risks to an acceptable level as set out in this letter (as phase 1), will take place over a period of six (6) weeks. Production loss during this period is currently estimated at 324 000 tons.

14. It is important to note that the conditions responsible for causing these risks at Mine 1 as mentioned will need continued attention and monitoring. Therefore a medium and long term strategy Phase 2 and 3 as set out above in this letter) was included to further reduce and keep the risks to an acceptable level after the six (6) weeks. Please note that the implementation of these further measures may result in further production losses.

Yours sincerely,

NOMBASA TSENGWA (DR)
GENERAL MANAGER CAPTIVE MINES
EXXARO COAL

Johann Bester
Divisional Executive Acting
Eskom Primary Energy Division
PO Box 1091
JOHANNESBURG
2000

19 August 2013

Ref: ka/MC 32/08/13

Dear Johann

MATLA COAL: MINE 1 RISKS

The current shaft at Mine 1, Matla, was scheduled for closure for the sinking of a new shaft in 2004. Due to technical differences on the option, the project was delayed, only to be revived in 2011. It is anticipated that sinking and construction of the new shaft complex will only resume in the second quarter of 2015. The sinking of the new shaft at Mine 1, is the only remedy that Exxaro has at its disposal to remedy the safety issues currently faced by Mine 1, this has resulted in non-compliance with legislative requirements. To this end, Matla management received a section 55 from the DMR on 5 November 2012 which pointed out unsafe areas as a result of scaling taking place and poor roof conditions in the travelling roads. The DMR expects the shaft to be implemented by 2015.

The interim and urgent work planned to reduce the risks to an acceptable level as set out in this letter (as phase 1), will take place over a period of 6 weeks, staggered over the next few months. Production loss during this period is currently estimated at 324 000 tons. Further delays in the approval of the ERA required by Eskom for the sinking of the new shaft, will render the risks at Mine 1 untenable and will force the mine to close as we will not be able to mitigate the risks on an interim basis to a proper safety level.

Eskom has now requested that Exxaro hold back on taking the project into the Eskom approval system as Eskom have questioned the economic benefit of this project. Should the internal approval from Eskom for this project not be furnished to Exxaro by the end of August 2013 then the Matla Mine 1 Shaft Area project will be further delayed. Matla is experiencing major safety risks as a result of the delay of this project. Eskom is hereby notified that the mine may be closed due to the severity of the safety risk. As a further result of this delay Matla will not be able to produce the tons required in terms of the coal supply agreement between the parties and there may be an additional cost per ton of coal. Exxaro's rights in this matter are reserved.

Yours sincerely,

Regards

Mr Mxolisi Mgojo
Executive Head: Operations

exxaro
COAL

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Exxaro Coal (Pty) Ltd. Reg No. 2000/011078/07 | Directors: MDM Mgojo PE Venter MR Walker
Company Secretary: CLS Consulting Services (Pty) Ltd

Mr. Vusi Mboweni (Acting)
Divisional Executive
Primary Energy Division
Megawatt Park
PO Box 1091
JOHANNESBURG
2000

Ref: ka/MC 39/11/2014

18 November 2014

Dear Mr. Mboweni,

IMPACTS TO THE MATLA LIFE OF MINE PLAN DUE TO POSSIBLE DELAYS IN THE EXECUTION OF THE MINE 1 RELOCATION AND SHORT WALL REPLACEMENT PROJECTS

1. PURPOSE

The purpose of this letter is to highlight the risks to the Matla Life of Mine Plan due to possible project funding delays of the Mine 1 Relocation (MM1R) and the Short wall replacement projects.

2. INTRODUCTION

Matla Coal is currently undertaking two projects supporting the Life of Mine Plan; Mine 1 Relocation and the Wall Replacement project.

2.1. Mine 1 Relocation Project

The current mining front is approximate 17 km from Mine 1 access. Relocation of mine 1 to a new position closer to the current reserves, is currently in the detail design phase with the primary view of reducing the safety risk, inter alia, injury to underground personnel and loss of equipment.

2.2. Wall Replacement Project

The short wall reserves at Mine 2 and Mine 3 are nearing the end of its life and is estimated in LOM Plan to start closing Q1 2018. A Pre-feasibility study is currently underway to develop a suitable mining alternative to sustain production at Matla aligned with the Life of Mine plan.

3. DISCUSSION

3.1. Mine 1 Relocation Project

The following impacts will probably escalate in severity should this project be delayed:

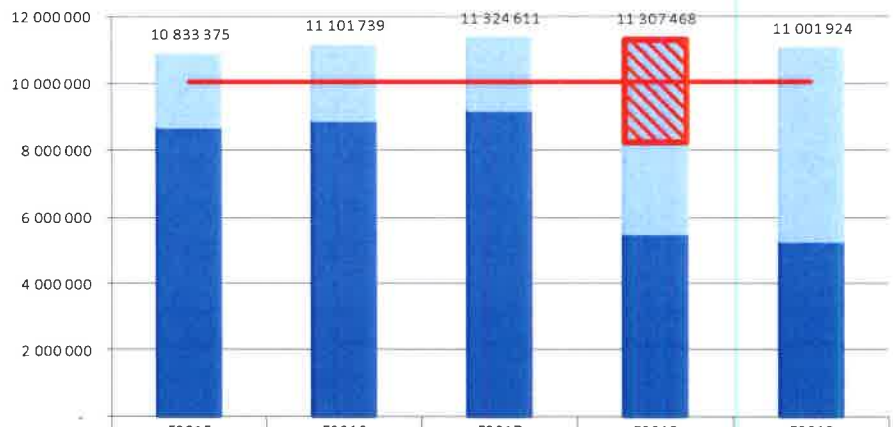
1. Risk to the safety of our people – Due to the deteriorating underground conditions and the long travelling distances (exceeding 12 km) the safety risk to underground personnel is problematic and the total closure of the Mine 1 shaft might become a reality should the conditions be deemed unacceptable by Management or an incident occurs resulting in a forced closure by the DMR. This would result in zero production from this shaft until the implementation of the new access shaft.

2. Project cost escalation – A further cost escalation of R108 million will result from the proposed 9 month delay in the execution phase of this project. This will increase the implementation estimate to R1.7 bn.

3. LOM production shortfall - Apart from the safety risk and additional cost due to escalation, it should be noted that a shortfall of 3,058m tons in supply of coal is projected in 2018 should the project be delayed.

   As part of the Short Wall replacement project, it is envisaged to establish three additional continuous miner sections in the Mine 1 development which would coincide with the Mine 1 access relocation. The current underground conveying infrastructure does not allow for the increase from three CM (Continuous Miner) production sections to six. This infrastructure would form part of the underground development during the implementation of the additional CM sections.

   Should the new shaft access not materialize in time, the whole of the old conveyor infrastructure to the old access would have to be upgraded to cater for the increased production from Mine 1. See below the predicted production impact should the underground infrastructure not be capable of handling the additional production.



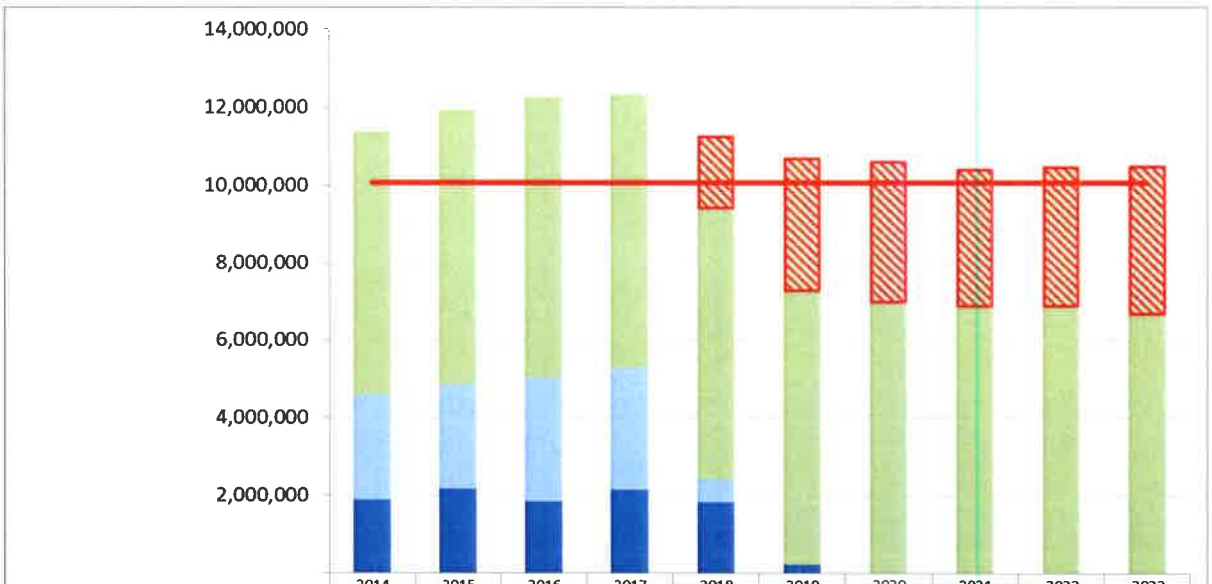
	F2015	F2016	F2017	F2018	F2019
Baseline Matla Mine 1 Tons	2 111 311	2 184 896	2 099 849	5 771 334	5 706 938
Baseline Matla Mine 2/3 Tons	8 722 064	8 916 843	9 224 762	5 536 134	5 294 986
Matla Mine 1 # Relocation Delay Gap				3 058 500	
				8 248 968	
Matla CSA Target	10 066 000	10 066 000	10 066 000	10 066 000	10 066 000
Baseline Matla Total Tons	10 833 375	11 101 739	11 324 611	11 307 468	11 001 924

3.2. Short Wall replacement project

The short wall reserves at Mine 2 & Mine 3 will become depleted due to geological conditions and will start to close from Q1 2018. This is a long known fact and cannot be avoided. This will result in the need to implement an alternative mining method to sustain production at Matla according to the Coal Supply Agreement.

The project schedule for the Short Wall replacement project indicates a tight timeline until execution is required. The study phases are fast tracked to ensure the project timeline coincides with the enabling works provided by the Mine 1 Relocation project before the wall closures. Long delivery lead times are expected for the replacement equipment. This will require the necessary approvals to initiate the order process through Supply chain Management. Should the Mine 1 Relocation project be delayed it will also prevent the opening of the three additional continuous miner sections with an increased loss in production to approximately 5mt/annum.

The following graph below illustrates the full impact of the delayed execution of the Mine 1 Relocation including the loss of production as a result of not being able to replace the two short wall operations.



	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Tons - CM ROM	6,697,008	6,999,214	7,156,546	6,954,324	8,805,766	10,419,567	10,599,100	10,408,057	10,474,423	10,476,745
Tons - Mine 3 S/W ROM	2,701,440	2,682,892	3,171,780	3,137,961	586,452					
Tons - Mine 2 S/W ROM	1,923,462	2,196,863	1,894,988	2,188,462	1,861,300	260,304				
Gap					1,832,202	3,397,944	3,605,489	3,517,168	3,587,595	3,783,337
Tons - Indicative LOMP, w/o add CM's	11,321,910	11,878,969	12,223,313	12,280,747	9,421,317	7,281,927	6,993,611	6,890,888	6,886,828	6,693,407
Tons - 2014 LOMP, Base Case	11,321,910	11,878,969	12,223,313	12,280,747	11,253,519	10,679,871	10,599,100	10,408,057	10,474,423	10,476,745
Tons - CSA Target	10,066,000	10,066,000	10,066,000	10,066,000	10,066,000	10,066,000	10,066,000	10,066,000	10,066,000	10,066,000

4. CONCLUSION

From the above mentioned it is clear that should the Matla Mine 1 Relocation and Short Wall Replacement projects be delayed it could have catastrophic consequences with an estimated potential shortfall of up to 3.5mt/annum against the CSA until such time as the projects are approved to be executed. The total drop from the current production level will be approximately 5mt/annum. It is therefore critical for Matla to implement the Mine 1 shaft relocation project and the Short Wall Replacement project during the 2016 to 2018 scheduled timelines to avoid definite shortfall against the Coal Supply Agreement by 2018.

Yours sincerely

Mr. Mxolisi Mgojo
Executive Head: Coal
Exxaro Coal

Mr. Vusi Mboweni
Acting Divisional Executive
Primary Energy Division
P.O Box 1091
Johannesburg
2000

Ref: ka/MC 52/11/14

8 December 2014

Dear Mr. Vusi Mboweni

IMPACTS TO THE MATLA LIFE OF MINE PLAN DUE TO POSSIBLE DELAYS IN THE EXECUTION OF THE MINE 1 RELOCATION AND SHORT WALL REPLACEMENT PROJECTS

1. PURPOSE

The purpose of this letter is to highlight the risks to the Matla Life of Mine Plan due to possible project funding delays of the Mine 1 Relocation (MM1R) & the Short wall replacement projects.

2. INTRODUCTION

Matla Colliery is currently undertaking two projects supporting the Life of Mine; Mine 1 Relocation and the Wall Replacement project.

2.1. Mine 1 Relocation Project

The objectives of relocating Mine 1 access, which is currently in the detail design phase, primarily are to reduce the safety risk of, inter alia, injury to underground personnel and loss of equipment and to relocate Mine 1 shaft and infrastructure to a new position closer to the current reserves to reduce operating cost to economical levels.

2.2. Wall Replacement Project

The short wall reserves at Mine 2 & 3 are nearing the end of its life and a Pre-feasibility study is currently underway to develop a suitable mining alternative to sustain production at Matla aligned with the Life of Mine plan.

3. DISCUSSION

3.1. Mine 1 Relocation Project

The following impacts are becoming probable should this project be delayed:

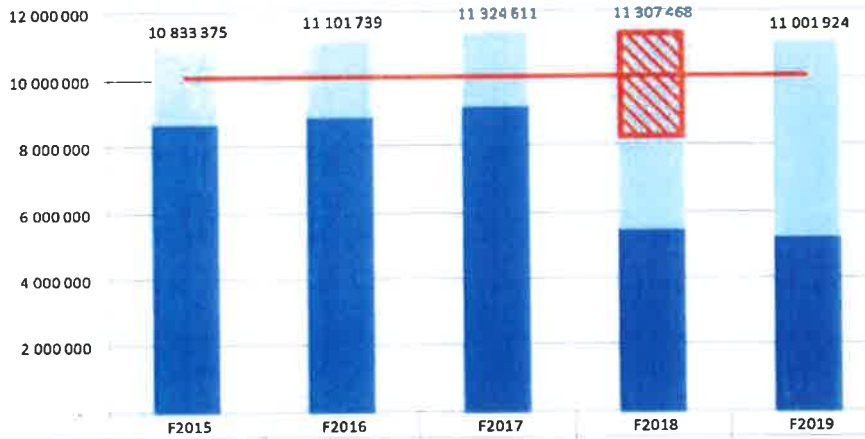
1. Risk to the safety of our people – Due to the deteriorating underground conditions and the long traveling distances the safety risk to underground personal is problematic and the total closure of the Mine 1 shaft might become a reality should the conditions be deemed unacceptable by Management or an incident occurs resulting in a forced closure by the DMR. This would result in zero production from this shaft until the implementation of the new access shaft.

2. Project cost escalation – A further cost escalation of R108 million will result from the proposed 9 month delay in the execution phase of this project.

3. LOM production shortfall - Apart from the safety risk and additional cost due to escalation, it should be noted that a shortfall in supply of coal is projected in 2018 should the project be delayed.

   As part of the Wall replacement project, it is envisaged to establish three additional continuous miner sections in the Mine 1 development which would coincide with the Mine 1 access relocation. The current underground conveying infrastructure does not allow for the increase from three CM production sections to six. This infrastructure would form part of the underground development during the implementation of the additional CM sections.

   Should the new shaft access not materialize in time, the whole of the old conveyor infrastructure to the old access would have to be upgraded to cater for the increased production from mine 1. See below the predicted production impact should the underground infrastructure not be capable of handling the additional production.



	F2015	F2016	F2017	F2018	F2019
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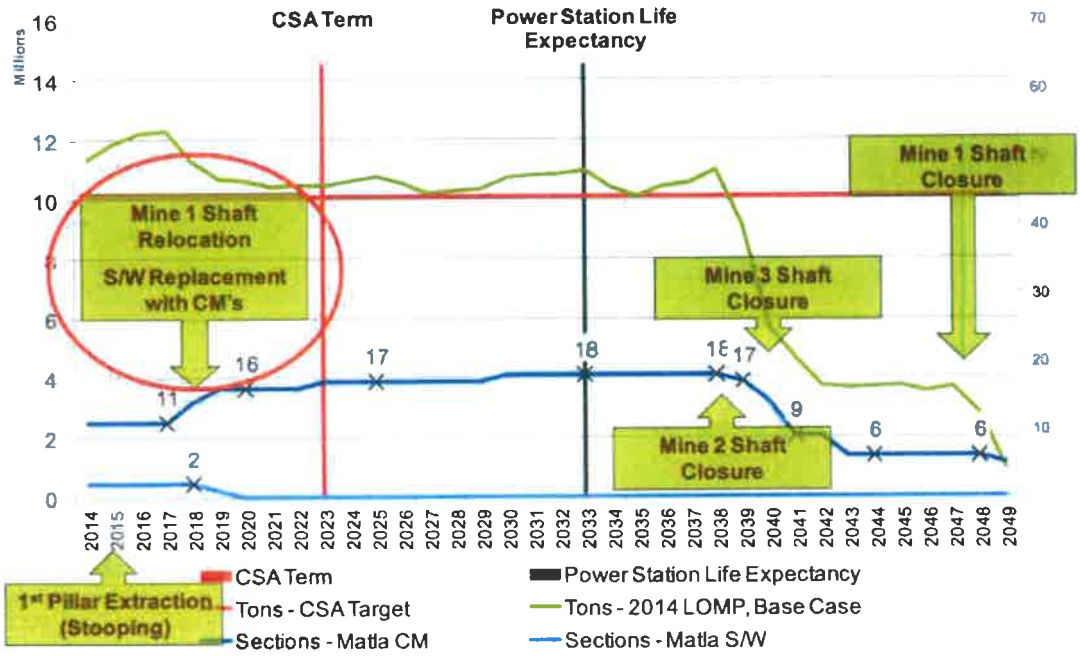
Matla CSA Target	10 066 000	10 066 000	10 066 000	10 066 000	10 066 000
Baseline Matla Total Tons	10 833 375	11 101 739	11 324 611	11 307 468	11 001 924

3.2. Short Wall replacement project

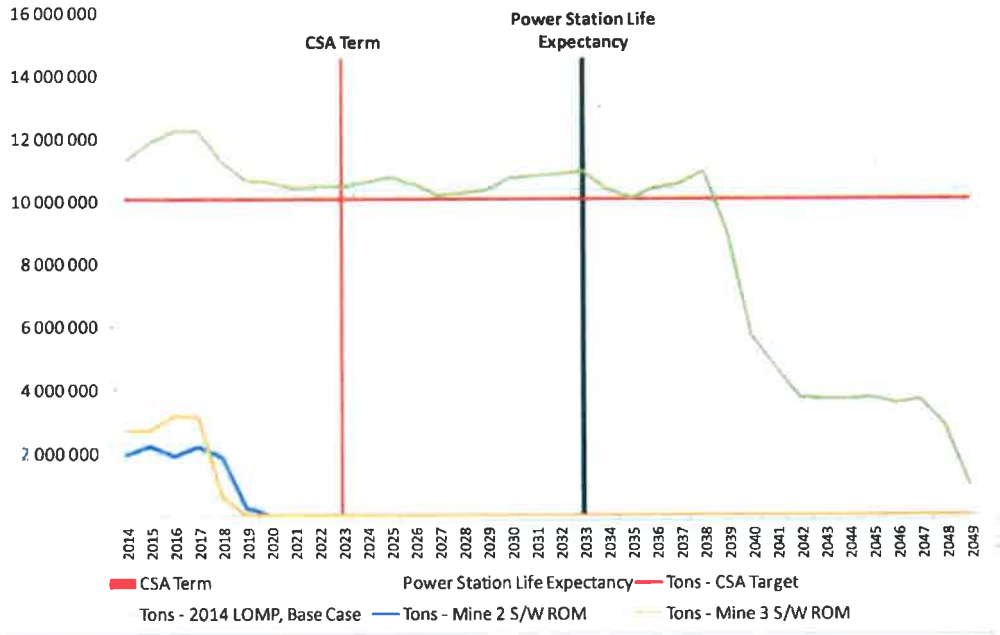
The short wall reserves at Mine 2 & Mine 3 will become depleted due to geological conditions. This will result in the need to implement an alternative mining method to sustain production at Matla according to the Coal Supply Agreement. See below a graph indicating the timing of this according to the latest Life of mine forecast.



The project schedule for the wall replacement project indicates a tight timeline until execution & the study phases are fast tracked to ensure the project is in time ahead of the wall closures.

The closure of the Matla short walls is an established fact and will realize rather sooner than later due to geological conditions and sustained improved production levels. In the event that the mining alternative is not operational by the time of the depletion of the short wall reserves, a substantial reduction (±5mt / annum) in production output will result.

The graph below indicates the phasing out of the short walls:



4. CONCLUSION

From the above mentioned it is clear that Matla faces significant production impacts if there are delays in the implementation of its Life of Mine Projects. It is critical for Matla to implement the Mine 1 shaft relocation project & the Wall Replacement project during the 2016 to 2018 scheduled timelines. If this is not achieved, the production requirements of the Coal Supply Agreement will not be met.

Yours sincerely

MR. MXOLISI MGOJO
Executive Head: Coal
Exxaro Coal

Mr. Vusi Mboweni (Acting)
Divisional Executive
Primary Energy Division
Megawatt Park
PO Box 1091
JOHANNESBURG
2000

Ref: Ka/MC 59/12/14

12 December 2014

Dear Mr. Mboweni,

IMPACTS ON THE MATLA LIFE OF MINE PLAN AND COAL SUPPLY AGREEMENT AS A RESULT OF POSSIBLE DELAYS AND CURRENT MINING CONDITIONS

1. PURPOSE

The purpose of this letter is to supplement the previous communication with reference "**ka/MC 39/11/2014**", in specific the implication for the Matla Mine Coal Supply Agreement with Matla Power Station.

2. INTRODUCTION

Matla Coal is currently undertaking two projects supporting the Life of Mine Plan in the form of the Mine 1 Relocation and the Wall Replacement projects. The detail of this have been discussed in the previous communication referred to above.

3. DISCUSSION

Exxaro would like to put the following risks to the Coal Supply Agreement on record in addition to the points discussed in the previous communication.

- Exxaro hereby formally records that due to safety risks reaching untenable levels of danger, Exxaro may be forced to close Mine 1 (which in itself will have a significant impact on the quantities and qualities of coal that is delivered to Eskom). Exxaro records that it will not be held liable for any

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Exxaro Coal (Pty) Ltd. Reg No. 2000/011078/07 | Directors: MDM Mgojo AM Mukhuba PE Venter MR Walker
Company Secretary: EOH Legal Services (Pty) Ltd

costs, damages, liabilities or alleged breaches of contract resulting from such closure or part closure of the Mine.

- Should the Matla Mine 1 Relocation and Short Wall Replacement Projects be delayed, this could have a catastrophic consequence in that there will be a shortfall of up to 3.5 million tons per annum for approximately 3 to 4 years- until such time as the said projects are fully operational. Exxaro hereby further records that it will not be held liable for any costs, damages, liabilities or alleged breaches of contract resulting from Eskom's delay of the implementation of these projects.

4. CONCLUSION

In conclusion Exxaro wishes to highlight again that it is critical for Matla to implement the Mine 1 shaft relocation project and the Short Wall Replacement project during the 2016 to 2018 scheduled timelines to avoid definite shortfall against the Coal Supply Agreement by 2018.

Yours sincerely

Mr Mxolisi Mgojo
Executive Head: Coal
Exxaro Coal

Mr Petros Mazibuko
Eskom Primary Energy Division
P O Box 1091
JOHANNESBURG
2000

Ref: ka/MC 04/03/15

Copy to: Mr Vusi Mboweni

12 March 2015

Sirs

STATUS AND WAY FORWARD WITH REGARDS TO STOPPAGE OF MINING AT EXXARO MATLA COAL MINE 1

This letter seeks to further address the stoppage of mining at Exxaro Matla Coal Mine 1 as per letter submitted on the 5 March 2015 with reference number ka/MC 02/03/15.

In summary the stoppage at Exxaro Matla Coal Mine 1 was a result of an unsafe environment (Pillar stability and Roof conditions) as confirmed by an independent external Rock Engineering Company, Stable Strata Consulting (Mr Nielen Van Der Merwe). The temporary solution to make the above area safe again has been supported by the above independent company and is well under way. It is still expected that mining will re-commence at Exxaro Matla Coal Mine 1 towards the end of April 2015.

The concern is that the above solutions are only a temporary measure for mining to continue at Exxaro Matla Mine 1. The risk that other areas' in the R14 Back Bye area will become unstable and unsafe in the near future is a serious threat. Recent communication with the Department of Mineral Resources in relation to the Exxaro Matla Mine 1 stoppage has indicated their concern for the safety of the employees in the area and that any signs of unsafe conditions in the area will lead to an immediate S54 (1) stoppage instruction. This will effectively have disastrous consequences for electricity generation at the Eskom Matla Power Station.

In light of the above it is clear that a more permanent solution is critical. The Exxaro Matla Mine 1 Shaft Relocation project is the solution to continued operations at Matla Mine 1 for the foreseeable future. The project is currently in the detailed design phase and the Eskom ERA has been submitted for approval. It is also important to note at this point that with the Matla Short walls at Mines' 2 and 3 reaching the end of their life in 2017 and 2018 respectively, that the Life of Mine Plan of Matla coal indicates that a substantial amount of coal will be produced by Exxaro Matla Coal Mine 1 to continue supply to the Eskom Matla Power Station in line with the current CSA between Eskom and Exxaro for Matla.

Eskom should take note that Mine 1 permanent closure could take place if any or all of the following events occur:

- Any Fall of Ground Incidents;
- Any further deterioration of pillars will result in reduced pillar safety factors;
- Possible 54 (1) instruction to stop operations at Mine 1 due to current safety factors;
- Deterioration of the main developments in current back bye areas;
- Any negative outcomes from legal compliance audits and inspections; and
- Any other risks associated with old underground workings e.g. Fire, Spontaneous combustion etc.

The outcome of the above events would lead to severe consequences which include:

- Demotivation of employees;
- Possible injury or fatalities;
- Permanent operational stopped;
- CSA commitments not being achieved;
- Considerable coal imports to Matla Power Station (Approx. 2.4mt in 2015 & 2016 increasing in line with the approved LOMP);

We would also like to bring to your attention that many letters have been submitted by Exxaro Matla Coal over the past 12 years to highlight the high risk conditions at Mine 1. The result of this has been the Matla Mine 1 Relocation project initiation. It is thus critical that the ERA for the implementation of this project be immediately approved.

Due to safety reasons, Exxaro has reached consensus that the implementation of the Matla Mine 1 relocation project will continue with immediate effect. This decision is based on the risk of the immediate permanent closure of Exxaro Matla Mine 1 due to unsafe conditions, requirements in terms of the CSA between Exxaro Coal and Eskom as well as responsibilities to ensure that the Eskom Matla Power Station continues to be able to generate electricity for South Africa.

Eskom should be aware that Exxaro will recover all costs spent on the Matla Mine 1 relocation shaft starting 1 August 2015 from Eskom as per the cost plus principles enunciated in the CSA. The detailed design phase for the box cut area will be completed by end April 2015. The tender process for the appointment of a contractor to carry out site works will begin thereafter with site establishment activities expected to start 1 August 2015. The remainder of the project works will thereafter follow.

Exxaro is currently in urgent discussions with the Department of mineral Resources and Department of Water Affairs to ensure that the EIA and IWULA are issued to facilitate project implementation. It is expected that these will be obtained before 1 August 2015.

We will endeavour to keep you informed of the Force Majeure event as well as the project status on a regular basis.

Regards,

DR N TSENGWA
GENERAL MANAGER
MPUMALANGA COAL OPERATIONS

CONFIDENTIAL

Eskom

Dr Nombasa Tsengwa
General Manager: Captive Mines
Exxaro Resources Limited
PO Box 9229
PRETORIA
2000

Date:
06 May 2015

Enquiries:
Mr John Mamabolo
+27 11 800 6343

Our Ref: 723476

Dear Dr Tsengwa

STATUS AND WAY FORWARD WITH REGARDS TO STOPPAGE OF MINING AT EXXARO MATLA COAL MINE 1

Your letter dated 12 March 2015 referenced ka/MC/04/03/15 regarding this matter refers.

Eskom takes note of the challenges at Matla Mine 1 and the subsequent production stoppage at the shaft. Eskom would like to notify Exxaro Matla Mine that the implementation of the Matla Mine 1 Relocation project can only take place once the project has been fully approved by the Eskom Investment committees and that no activities associated with this project should be undertaken before Exxaro Matla Mine receives a project approval letter from Eskom. Eskom is in the process of taking the ERA through its approval governance process and will keep Exxaro Matla Mine informed of the progress.

Eskom reserves its rights in terms of the supply agreement accordingly.

Yours sincerely

06/05/2015

Petros Mazibuko
SENIOR MANAGER: COAL OPERATIONS

Primary Energy Division
Megawatt Park Maxwell Drive Sunninghill Sandton PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 8111 Fax +27 11 800 5555 www.eskom.co.za

Eskom Holdings SOC Ltd Reg. No 2002/015527/30

Mr Vusi Mboweni
Divisional Exectuive (Acting), Eskom Primary Energy
P O Box 1091
JOHANNESBURG
2000

Ref: he/MC/30/07/2014

Copy to: Mr Petros Mazibuko

30 July 2015

Sirs

STATUS AND WAY FORWARD WITH REGARDS TO STOPPAGE OF MINING AT EXXARO MATLA COAL MINE 1

1. Over the past 12 years, many letters have been submitted by Exxaro Matla Coal to Eskom to highlight the high risk conditions at Mine 1. We want to bring to your attention, the last and most recent letters, where we have again stated the urgency of Eskom providing the capital required for the Mine 1 shaft to ensure that CSA obligations are met and address the safety risks, as per our letter submitted on 5 March 2015 with reference number ka/MC 02/03/15 and letter submitted on 12 March 2015 with reference number ka/MC 04/03/15.

2. We take note of your letter dated 06 May 2015 with reference number 723476 notifying Exxaro that the implementation of the project cannot start until fully approved by the Eskom investment committees, which in our view is untenable under the circumstances and makes the operation of the Mine very difficult in light of Eskom's requirements.

3. Due to the delay and/or inability by Eskom in approving the capital required for the Mine 1 project, Mine 1 has become unsafe. Due to these developments, Exxaro Matla Coal is left with no alternative but to close (as it has done) Matla Mine 1 shaft, as instructed by the Board.

4. After closure of Mine 1, only essential services will continue at Mine 1, we will also re-deploy employees and reclaim assets. However these actions will not mitigate the impact on lost tons, caused by the closure of Mine 1. We have tried to evaluate mechanisms to assist with the mitigation of these lost tons, however these possible mitigation strategies are not tested and we do not know whether they are feasible or not. Furthermore, for the duration of the period in which the approval and implementation of the project is delayed and there is no alternative access to Mine 1, employees who are performing essential services are exposed to the deteriorating conditions at Mine 1.

5. The Mine 1 issue will impact on the LOM plan as areas planned to be mined later will now be brought forward and geological information, with specific reference to coal quality, relating to these areas brought forward might not be to the same confidence level – this could result in an impact on quantities and qualities of delivered product into the future life of the coal supply agreement ("CSA"). We currently estimate that for the 2016 FY there will be a loss of at least 1.8 million tons of coal.

6. Furthermore, if Mine 1 is not up and running at the time of the short wall replacements, the production volumes will reduce even more than is currently experienced and Matla Mine could also experience quality issues.

7. Given the history of this matter, and that we have been notifying Eskom of the risks of the non-provision of capital required for the Mine 1 project and the negative impact of this on the contractual tons as per CSA, Exxaro records that it will not be held liable for any non-conformance caused with the coal supply agreement, due to Eskom's inactions.

8. The impact of this is that Mine 1 closure has and will continue to result in contractual tons as per the CSA not being delivered until the Matla Mine 1 Relocation project is completed.

We await to urgently hear from you regarding the approval of the Mine 1 project.

Regards,

DR N TSENGWA
EXECUTIVE HEAD
EXXARO COAL (ACTING)

Mr P Mazibuko
The Coal Supply Unit Manager
Primary Energy Division
Eskom
P O Box 1091
Johannesburg
2000

18 March 2016

Dear Mr Mazibuko

Re: Stoppage of the short wall production at Matla Colliery- your ref 725390

The contents of your letter under reply, do not deal with the correct facts of this matter. As you are well aware, Matla relies on a balanced feed volume from all three of the Matla mines to make up the supply of coal to the Matla Power station in terms of volume and quality. Exxaro is concerned with what purports to be a disregard by Eskom of the coal supply agreement that clearly sets out both parties' obligations. Exxaro has been and continues to be committed to the tenets of the coal supply agreement.

As coal from the three mines are required to be mixed, if one of the mines does not perform or is not up and running, then consequentially the resultant feed to the Power station is affected. We have sent numerous letters to Eskom with regards to the situation that Eskom has caused at Mine 1 by not timeously investing capital to enable Exxaro to continue with safe production, thereby leaving Exxaro no alternative but to cease operations at Mine 1 due to the safety risk. In an attempt to stem the damage that Eskom is causing Exxaro, we have no alternative but to continue to supply coal to Eskom from the current sources at our disposal.

exxaro
COAL

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Exxaro Coal Mpumalanga (Pty) Ltd. Reg No. 1999/010289/07 | Directors: MDM Mgojo N Tsengwa MR Walker
Company Secretary: EOH Legal Services (Pty) Ltd

To counter the loss of production and to remedy its failure to provide capital for the Mine 1 shaft project, Eskom decided to import coal to make up for the losses of coal produced from Mine 1, with the intention that the import coal qualities should be in line with what Mine 1 would have produced had it been operational - which would mean that once the coal from the mines was mixed (as is the manner in which the mines are run) the resulting mix would be in line with the quality parameters required by the Matla power station. However, it would seem that the import qualities are on average poorer than the qualities that would have been produced at Mine 1.

By breaching Eskom's obligations under to CSA to fund the required capital expenditure Eskom is in effect making performance for Exxaro impossible at Matla Mine and Exxaro fully reserves its rights in this matter and furthermore, its rights to further address Eskom in this regard.

Yours sincerely,

Mr AA Van Stelten

cc. Dr Nombasa Tsengwa

Mr Vusi Mboweni

"P"

Mr Petros Mazibuko
Eskom Primary Energy Division
P O Box 1091
JOHANNESBURG
2000

Ref: ka/MC 02/03/15

Copy to: Mr Vusi Mboweni

5 March 2015

Sirs

FORCE MAJEURE EVENT RESULTING IN THE STOPPAGE OF MINING AT EXXARO MATLA COAL MINE 1 AS A RESULT OF UNSAFE CONDITIONS

Exxaro Matla Coal recently procured the services of Stable Strata Consulting (Mr Nielen Van Der Merwe) to provide an external assessment of the roof conditions and the safety thereof at Matla Mine 1. The findings from this report has led to Exxaro Matla Management stopping all operations at the Mine 1 shaft till the area can be made safe for employees to enter in line with the Mine Health and Safety Act.

The services of Stable Strata Consulting were procured to provide an independent 2nd opinion and audit on the long term stability of the entries (Back Bye) at the R14 area at Mine 1 after concern was raised by the Mine's Rock Engineering Department as well as previous findings reported from Matla Management.

The following key findings were noted in the Stable Strata Consulting report:

- Two areas were identified where it was apparent that significantly more scaling had occurred than in the rest of the area under consideration, namely an area close to the shaft (referred to as the Shaft Area) and the area leading into Refuge Bay 1 (called the Rescue Bay Area);
- The amount of scaling in those two areas were measured by the mine's Survey Department, and found to be indeed in excess of the expected amounts;
- In the case of the Rescue Bay Area, the excessive scaling is most probably due to the adjacent pillars, where floor coal was mined, being in state of failure with consequent load transfer to the pillars leading to the Rescue Chamber;

- There is an example immediately to the north-east of the development where pillars had failed previously and where the collapse grew in extent over time, thus resulting in a new collapse in an area immediately adjacent to it even though separated by a row of larger pillars;
- There are 5 other zones in the area investigated where the current safety factors and Pillar Life Indix (PLI) are lower than in the area that had already collapsed; and
- Numerical modelling indicated that once initiated, pillar failure can be expected to progress. This is confirmed by the example of the collapses in the vicinity of the area investigated.

Exxaro Matla Coal therefore decided to immediately stop mining at the Matla Mine 1 shaft based on the findings above and as a priority, give attention to the unsafe areas' before any mining activity can resume. It is expected that the mine will be declared safe and production from this area resumed towards the end of April 2015.

It should be noted that the above contingency plans are an emergency plan, and will only provide a temporary solution to the unsafe conditions currently experienced. Mine 1 Shaft Relocation needs to be constructed as a matter of urgency.

The Mine 1 Shaft Relocation project was initiated a number of years ago as a direct result of risk mitigation caused by deterioration of the above back bye areas, as well as to reduce travel distances to mine workings. The delay in approval of this project by Eskom exposes Matla Coal to serious safety risks that directly affect coal supply to Eskom Matla Power Station as is evident in this letter.

The above stoppage will directly impact on coal supply to the Eskom Matla Power Station in the short to medium term. The estimated impact on coal supply to Eskom Matla Power Station from Exxaro Coal Mpumalanga – Matla Coal as per the coal supply agreement between these parties as a result of the Mine 1 Stoppage is estimated as follows in the table below:

Calender Month	Metric Tons
February 2015	40 080
March 2015	160 320
April 2015	144 288

This will be especially critical for supply over the March to April 2015 periods as Short Wall Moves at Mine 2 and 3 respectively are planned to take place.

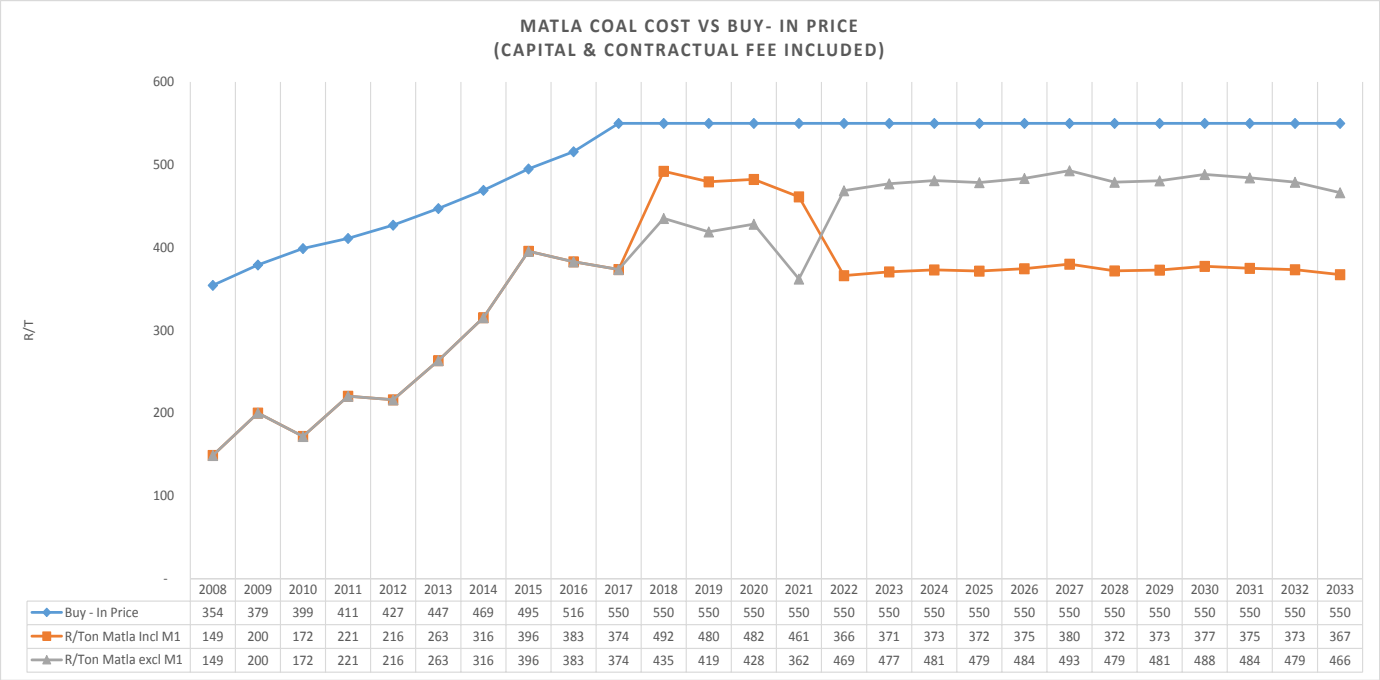
An immediate contingency plan will be to reclaim from current stockpiles at the Matla Power Station Stockyard. This plan is however at great risk due to high volumes of coal to be reclaimed (In excess of normal reclaim requirements, reclaiming contractors current and contractual capacities) as well as coal moisture levels being high due to the current rainfall season together with current higher reclaiming levels due to the S54(1) Zama Stoppage issued by the Department of Mineral Resources in December 2014.

In terms of clause 33 of the Coal Supply Agreement between Exxaro Coal Mpumalanga (Pty) Ltd and Eskom the above mining stoppage at Exxaro Matla Coal Mine 1 constitutes a Force Majeure event preventing Exxaro from coal production and thus supply to Eskom Matla Power Station over the February to April 2015 calendar months. This event is beyond the control of Exxaro Coal Mpumalanga – Matla Coal as it is not safe to allow employees to continue work in line with the Mine Health and Safety Act as well as other related legislation.

We will endeavour to keep you informed of the Force Majeure event on a regular basis.

Regards,

DR N TSENGWA
GENERAL MANAGER
MPUMALANGA COAL OPERATIONS



	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
Buy - In Price	354	379	399	411	427	447	469	495	516	550	550	550	550	550	550	550	550	550	550	550	550	550	550	550	550	550
R/Ton Matla Incl M1	149	200	172	221	216	263	316	396	383	374	492	480	482	461	366	371	373	372	375	380	372	373	377	375	373	367
R/Ton Matla excl M1	149	200	172	221	216	263	316	396	383	374	435	419	428	362	469	477	481	479	484	493	479	481	488	484	479	466

The graph depicts the cost per ton for Matla Coal production versus the price of buy-in coal by Eskom. The costs of the buy-in coal includes the transport costs and is thus on a landed basis and is based on numbers that were published in Finance Week.

The costs of Matla Coal production includes the total costs of operating the mine, the contractual fee payable to Exxaro and the capital expenditure. The capital expenditure until 2017 is included in the year that the capital is spent whereas the LOM capital is smoothed over the life of the power station, i.e. 2032 in this instance. The costs that are not included are the direct costs which do not form part of the cost of coal. The cost of the Environmental Rehabilitation Funding is also not included but the cost of ongoing rehabilitation is included in operational costs. The two scenarios for Matla Coal is Mine 1 is funded and brought back into operation again in 2021. The other scenario is when Mine 1 is never brought back into operation again.

The increase in the cost per ton (2018 – 2021) for the scenario where Mine 1 is brought in again is due to the capital spending on the LOM projects while Mine 1 is not yet producing.
The drop in the R/ton in 2021 on the scenario where Mine 1 does not come back is due to the Interseam project which increases production as well as Mine 2 wall which also still produces for part of the year. When Mine 2 wall goes down in this year the R/ton again increases in 2022.
The numbers in the graph are in real terms and in 2017 money terms.

Direct Tel: (012) 307 7589

29 February 2016

Mr Vusi Mboweni
Divisional Executive (Acting)
Primary Energy Division
Eskom Holdings SOC Limited
P O Box 1091
Johannesburg
2000

Dear Vusi,

COAL SUPPLY TO MAJUBA POWER STATION FROM LEEUWPAN MINE

Exxaro has been in negotiations with Eskom on a new Coal Supply Agreement (CSA) from Leeuwpan to Majuba since mid-2014. As of September 2015, the final draft of this CSA has been ready for signature. To date Eskom have not approved nor signed the CSA and as such the existing Agreement had to be extended on a month-to-month basis. Exxaro has repeatedly requested Eskom to commit to and sign the CSA to enable Exxaro to plan its business.

The latest extension to the existing Agreement is to provide coal until 31 March 2016.

Given the long delays in concluding this CSA and in order to provide certainty for the LOM for Leeuwpan, Exxaro hereby gives notice to Eskom that no coal will be made available for supply from Leeuwpan to Eskom beyond 31 March 2016, as alternative markets have been sourced.

We thank you for the opportunity to have supplied Majuba power station.

Yours sincerely,

Nombasa Tsengwa
Executive Head: Coal (Acting)

exxaro
COAL

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Company Secretary: EOH Legal Services (Pty) Ltd