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+27(0)11 517 3000 nkonki.com hello@nkonki.com

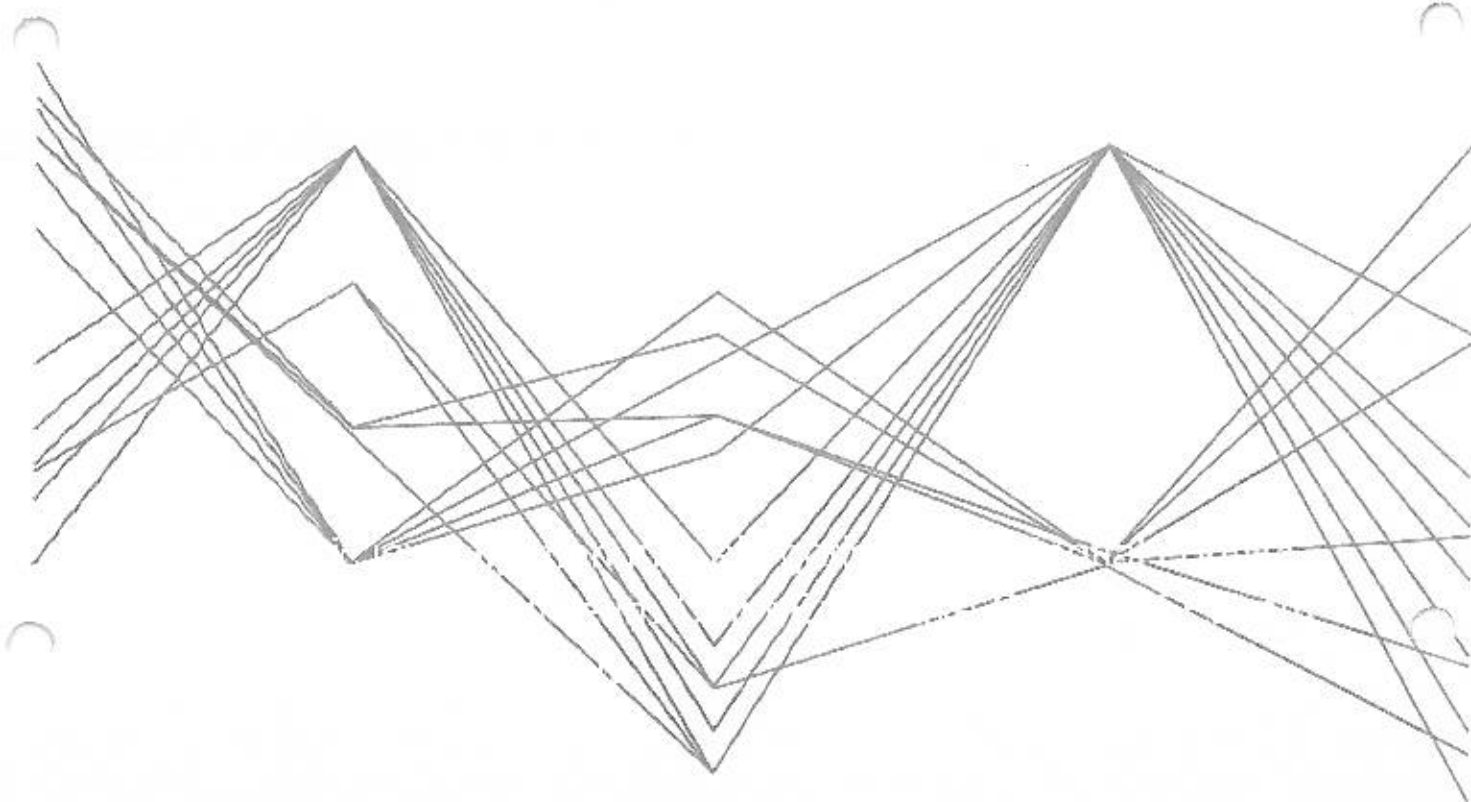
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Cliffe Dekker Hofmeyr Attorneys

Forensic investigation into allegations received *via* an
anonymous report regarding the Interim Group Chief
Executive of Eskom Holdings SOC Limited



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i) List of Abbreviations

Below is a list of abbreviations utilised in the report:

Abbreviation	Description
AMP	Advanced Management Program
ARC	Audit & Risk Committee
BCDTC	Board Tender Committee
BBBEE	Broad Based Black Economic Empowerment Act, no 53 of 2003
Capex	Capital Expenditure
CC	Close Corporation
CE	Chief Executive
CEO	Chief Executive Officer
CFO	Chief Financial Officer
C&I	Control and Instrumentation
CIPC	Company and Intellectual Property Commission
Constitution	Constitution of South Africa, no 108 of 1996
COE	Centre of Excellence
CPO	Chief Procurement Officer
CSD	Central Supplier Database
DE	Divisional Executive
DOA	Delegation of Authority
DCF	Delegation Consent Form
DOI	Delegation of Interest
DPC	Divisional Procurement & Tender Committee
DTC	Design To Cost program
Exco	Executive Management Committee
Excops	Executive Committee Procurement Sub- Committee



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Abbreviation	Description
FD	Finance Director
GCE	Group Chief Executive
GCF0	Group Chief Financial Officer
GE	Group Executive
Genl	General
GM	General Manager
HR	Human Resources
Interim GCE	Interim Group Chief
KET	Kusile Execution Team
MOI	Memorandum of Incorporation
MWP	Megawatt Park
NDA	Non-disclosure agreement
NEC	New Engineering Contract
NT Regulations	National Treasury regulations
PFMA	Public Finance Management Act, no 1 of 1999
PO	Purchase Order
PPPFA	Preferential Procurement Policy Framework Act, no 5 of 2000
PR	Purchase requisition
(Pty) Ltd	Propriety Limited
PTC	Procurement Tender Committee
RFP	Request for proposal
SAP system	Systems Applications and Products system
SCM	Supply Chain Management
SD&L	Supplier Development and Localisation
SGM	Senior General Manager



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ii) List of Role Players

Below is a list of abbreviations in respect of the role players referred to in this report and exhibits:

Abbreviation	Description of Person
Male individuals	
Mr Dames	Brian Dames, Former GCE, Eskom Holdings
Mr Govender	Prish Govender, Acting GE: Group Capital: Eskom Holdings
Mr T Govender	Thava Govender, GE Transmission, Eskom Holdings
Mr Hlakudi	Frans Hlakudi, Senior Manager, Contract Management: Eskom Holdings
Mr Koko	Matshela Koko, GE: Generation: Eskom Holdings
Mr Le Roux	Pieter Le Roux, GM: Project Sourcing Group Commercial, Eskom Holdings
Mr Masango	Abram Masango, GE: Group Capital: Eskom Holdings
Genl Martins	Joel Martins, Senior GM: Special Projects, Eskom Holdings
Mr Mazibuko	Sifiso Mazibuko, Project Director: Kusile
Mr Minnaar	Anton Minnaar, Executive in office of the GCE: Eskom Holdings
Mr Molefe	Brian Molefe, Former GCE: Eskom Holdings
Mr Mtshali	Thulani Mtshali, Senior Manager: Kusile
Mr Ndou	Freddy Ndou, DE: Strategy Support in the office of GCE: Eskom Holdings
Dr Ngubane	Baldwin Ngubane, former Chairman of the Board: Eskom Holdings
Mr Pepler	Wally Pepler, Procurement Manager: Kusile
Genl Rakau	Tebogo Rakau, DE: Security in the Office of the GCE, Eskom Holdings
Mr Rakgolela	Karabo Rakgolela, Acting GM, Real Estate Department: Eskom Holdings
Mr Rikhotso	Norman Rikhotso, Industrial Relations Officer: Eskom Holdings
Mr Sebola	Peter Sebola, GM: Contract Management, Eskom Holdings



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Abbreviation	Description of Person
Mr Singh	Anoj Singh, Group Chief Financial Officer: Eskom Holdings
Mr Sithole	Frans Sithole: Executive Line Manager (former Project Director: Kusile)
	Female individuals
Ms Daniels	Suzanne Daniels, Company Secretary: Eskom Holdings
Ms Klein	Venete Klein, ex non-executive Director of the Eskom Board
Ms Noah	Ayanda Noah, GE Distribution: Eskom Holdings
Ms Nyoka	Mildred Nyoka, Senior Contract Manager, Kusile
Ms Pule	Elsie Pule, Group Executive: Human Resources: Eskom Holdings



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iii) List of Entities

Below is a list of abbreviations in respect of the entities referred to in this report:

Abbreviation	Description of Entity
ABB	ABB South Africa (Pty) Ltd
Arup Tata	Arup Tata Power Engineers
CDH	Cliffe Dekker Hofmeyr Attorneys
Deloitte	Deloitte Touche Tohmatsu Limited
Eskom	Eskom Holdings SOC Limited
ERI	Eskom Rotek Industries SOC Limited
HBS	Harvard Business School
Kusile	Kusile Power Station
McKinsey	McKinsey & Company Inc
Nkonki	Nkonki Incorporated
NT	National Treasury
PDD	Project Development Division
NT	National Treasury
WBHO	Wilson Bayly Holmes Ovcon (Pty) Ltd



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iv) List of Exhibits

Exhibit No.	Description of Exhibits
1	Appointment of Mr Koko
2	Delegation of Authority – Kusile R100 million Projects
3	Submission Document 9 March 2016 & 13 April 2017
4	Generic Contract 9 March 2016
5	Submission 25 July 2016
6	Submission 25 July & 16 August 2016
7	Minutes Excops 29 July 2016 Submission Document 14 October 2016
8	Submission 14 October 2016
9	Mandate to Negotiate 14 October 2016
10	Minutes of Special Capex R300 Million – 20 October 2016
11	Engineering and Construction Agreement between Eskom & ERI
12	NEC3 Engineering and Construction Agreement between Eskom & ERI
13	Agreement between Eskom & ERI
14	Mandate to negotiate 25 July 2016
15	Extracts from Excops 29 July 2016
16	Minutes of Excops 2 August 2016
17	Extract of BODTC 16 August 2016
18	Kusile Variation 21 October 2016
19	Agenda Excops 19/ 24 May 2016
20	Minutes of Excops 24 May 2016
21	Financial Evaluation 3 June 2016
22	Mandate to negotiate 25 July 2016
23	Submission 16 August 2016
24	Minutes If Exco 29 Jul 2016
25	Mandate to negotiate 29 July 2016
26	Submission 29 July & 24 October 2016
27	Mandate to negotiate 29 July & 24 October 2016
28	Minutes Excops 2 August 2016
29	BODTC Agenda 29 September 2016
30	Email Correspondence 26 September 2016



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Exhibit No.	Description of Exhibits
31	Practice note 1 February 2016
32	Practice note 31 March 2017
33	Disciplinary Procedure 32-1113
34	Memorandum 4 January 2016
35	Email dated 14 February 2017
36	Notice to attend Disciplinary Hearing 14 February 2017
37	Letter of Intention to suspend 14 February 2017
38	Finding by Presiding Officer 18 February 2017
39	Closing Argument
40	Email dated 15 February 2017
41	Generation Division Performance - 2017
42	Letter dated 24 February 2017
43	Legal opinion 7 April 2017
44	Memo dated 24 March 2017
45	Appointment Mr Govender
46	Memorandum 15 March 2016
47	Copies of diary 20 & 26 February 2017
48	Letters dated 17 February 2017
49	Emails dated 6 March 2017
50	Submission to Exco 24 March 2017
51	Leadership Development program presentation
52	Legal Opinion obtained from Senior Counsel



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Executive Summary

1. Cliffe Dekker Hofmeyr Attorneys ("CDH") was instructed by Eskom Holdings SOC Limited ("Eskom") to conduct a forensic and legal investigation in relation to an anonymous report dated 1 March 2017 titled "Issues of concern regarding the interim CEO" which report was submitted to Eskom and addressed to "*Dr Ben Ngubane Chairman*".
2. Nkonki Incorporated ("Nkonki") was appointed on 3 April 2017 to conduct a forensic investigation into the allegations referred to in the anonymous report. The facts set out in this report are based on a limited fact-gathering and interviewing process. In the circumstances, without having interrogated the evidence gathered and based on the untested information and documentation made available during the investigation, we did not express an opinion on the interpretation of law or the legal effect of the facts or the guilt or innocence of any person or party, but have merely stated the facts as they have come to our attention.
3. The anonymous report referred to 8 (eight) specific issues namely:
 - i) Undermining the authority of other executives;
 - ii) Separation of politics and professionalism;
 - iii) Undermining of the Governance and Sub-Committees;
 - iv) Militarisation of Eskom;
 - v) Failure to follow process;
 - vi) Private meetings;
 - vii) Instruction to take leave with immediate effect; and
 - viii) Relationship with other Exco members.
4. We consulted with individuals regarding all the allegations made in the whistle blower's report. However, we summarised the salient facts per allegation hereunder and as referred to *supra*. We also indicated a list of individuals per allegation who were able to assist us with information and/or documentation relevant to the allegations made in the whistle blower's report.



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4.1 Allegation 1: Undermining authority of other executives

4.1.1 The following individuals assisted us with information and/or documentation regarding this allegation:

- Mr Sithole;
- Mr Masango;
- General Martins;
- Mr Mtshali;
- Mr Rakgolela;
- Mr Koko;
- Mr Pepler;
- Ms Nyoka; and
- Mr Sebola.

4.1.2 We sourced a document regarding the appointment of Mr Koko. There were no minutes recorded during any meetings as referred to in allegation 1.

4.1.3 The allegation refers to instructions given by Mr Koko on 1 February 2017. The information sourced during consultations revealed that Mr Koko did verbally request Genl Martins to communicate with Mr Sithole regarding the removal of Mr Kambi and Mr Hlakudi. Genl Martins contacted Mr Sithole and they met on the same day. Mr Sithole had a meeting with Mr Masango whereafter Mr Sithole and Mr Masango went to the office of Mr Koko. Mr Masango, Mr Sithole and Mr Koko had a meeting and Mr Sithole left the meeting at a stage. Mr Sithole informed Mr Kambi and Mr Hlakudi to leave Kusile as per the instruction of Mr Koko. We were unable to determine the detail of the GTC Company and none of the individuals consulted, could assist with detail regarding this entity. Mr Koko alleged that he received information where after he decided to instruct that the 2 (two) individuals be removed from Kusile. Mr Koko stated that he acted within his delegated authority as the Interim GCE.



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4.2 Allegation 2: Separation of politics and professionalism

4.2.1 The following individuals assisted us with information and/or documentation regarding this allegation:

- Mr Masango; and
- Mr Koko.

4.2.2 We sourced no documentation regarding allegation 2.

4.2.3 The allegation related to a meeting between Mr Masango and Mr Koko. There are conflicting versions regarding the alleged comment/s made by Mr Koko to Mr Masango. The date of the alleged meeting is unknown.

4.3 Allegation 3: Undermine Governance and Subcommittees

The appointment of ERI/ABB

4.3.1 The following individuals assisted us with information and/or documentation regarding this allegation:

- Mr Sithole;
- Mr Masango;
- General Martins;
- Mr Mtshali;
- Mr Rakgolela;
- Ms Noah;
- Mr Koko;
- Mr Pepler; and
- Ms Nyoka.

4.3.2 We sourced *inter alia* submissions, minutes of meetings, contracts and a mandate to negotiate from Kusile relevant to allegation 3.1

4.3.3 On 6 April 2011, approval was given that a contract be entered into with Siemens Limited for the electrical and auxiliary power construction at Kusile and relevant to units 1-6 over a period of 7 (seven) years.



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- 4.3.4 A submission to Excops on 9 March 2016 reflected that Siemens experienced challenges regarding resource constraints in terms of cable installation (electrical and auxiliary). It was agreed that the contractual obligations be reduced (de-scoped) from 6 units to 1 unit.
- 4.3.5 On 9 March 2016, Excops supported a mandate to negotiate and concluded a contract with ERI for the electrical and auxiliary power construction for units 2 to 6 to be presented to BODTC. It was alleged in some of the consultations that the submission to be presented to the BODTC was removed on the alleged instruction from Mr Koko, based on discussions between executives and senior management and a decision made regarding capacity risks in awarding units 2-6 scope of work to ERI. On 13 April 2016, the submission was withdrawn from the BODTC and a new strategy was formulated for ERI to be contracted for unit 2 only.
- 4.3.6 The contractual value of the scope of work for unit 2 only allowed for the submission to be presented to the Capex R50M-R300M PTC. On 14 October 2016, the Capex R50M-R300M PTC approved a mandate to negotiate and conclude a contract with ERI for the electrical and auxiliary power construction for unit 2. Eskom contracted with ERI for unit 2 during January 2017 and the contract was signed by the project director of Kusile.
- 4.3.7 Based on the cancellation of the initial C&I contract with Alstom for the C&I works, Eskom embarked on a risk mitigation strategy by engaging the market (Siemens and ABB) for an alternative C&I supply for Kusile. On 18 March 2015, the BODTC granted a request to place the contract with ABB for the C&I Systems for units 1-6 commencing 18 March 2015 and ending 8 March 2020. A submission to the Excops dated 25 July 2016 indicated that cabling work (power cable and C&I trunk cable) for Kusile was placed in a separate package and was contracted separately to Siemens, which contract experienced challenges in Siemens not meeting contractual obligations, i.e. resource constraints in terms of cable installation. To reduce Eskom's risk, a decision was taken to split the de-scoped works as follows:
- The electrical and auxiliary power construction for unit 2 at Kusile to ERI; and
 - Procurement and installation of the C&I trunk cable for unit 2 at Kusile to ABB.



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4.3.8 It was alleged in some of the consultations that the submission to have been presented to the BODTC was removed on the alleged instruction from Mr Koko, based on discussions between executives and senior management and a decision made regarding capacity risks in awarding units 2-6 scope of work to ERI. It was decided that:

- ERI only be awarded the electrical and auxiliary cabling construction works for unit 2; and
- ABB be awarded the trunk cabling construction works as a modification on its existing contract.

4.3.9 On 25 July 2016, Excops approved a mandate to negotiate and modify the contract with ABB for C&I Systems for units 1-6, to include the trunk cabling construction.

4.3.10 According to Mr Koko, a decision was made by Mr Molefe to remove the submissions as referred to above.

Appointment of WBHO

4.3.11 The following individuals assisted us with information and/or documentation regarding this allegation:

- Mr Sithole;
- Mr Masango;
- Mr Naidoo;
- Mr Sebola;
- Ms Noah;
- Mr Koko;
- Mr Pepler; and
- Ms Nyoka.

4.3.12 We sourced *inter alia* submissions, minutes of meetings, contracts and a mandate to negotiate from Kusile relevant to allegation 3.2.



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- 4.3.13 On 20 July 2011, Excops approved a mandate to negotiate and conclude a contract with WBHO for the combustion waste terrace construction at Kusile. Several submissions to the Excops during May 2016, July 2016, August 2016 and September 2016 indicated that approval was sought for modification of the existing contract with WBHO for the combustion waste terrace construction Phase 1 at Kusile Power Station Project to include Phase 2. It was later concluded that:
- A request for a Phase 1 modification of the contract with WBHO may be approved; and
 - The market be tested before awarding Phase 2 to WBHO.
- 4.3.14 A submission to the Excops on 25 July 2016 and to the BODTC on 16 August 2016 specified the reasons for modification of the contract with WBHO. The following 4 (four) scenarios on commercial contracting strategies were explored:
- Open Tender;
 - Preferred Supplier;
 - Closed Tender; and
 - Modification to the current contract (WBHO).
- 4.3.15 The preferred option was indicated to modify the existing contract with WBHO as it would minimize Eskom's risk of failure to co-dispose ash after December 2019. The scope of work for Phase 2 was similar to the scope of work for Phase 1.
- 4.3.16 On 29 July 2016, Excops resolved that the submission for the modification on the contract with WBHO for Phase 2 for Kusile was not approved. On 29 July 2016, a submission to the Excops was presented requesting approval of a mandate to negotiate and conclude a contract on a single source basis with WBHO for Phase 2, subject to National Treasury approval. The consideration and approval of the submission from the Excops on 29 July 2016 was placed on the BODTC agenda for 29 September 2016 with agenda item: Group Capital (Item 5.13) for a mandate to negotiate and conclude a contract with WBHO for Phase 2 at Kusile. The sponsor was reflected as Mr Masango.



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4.3.17 Consultations with role players indicated that the submission to have been presented to the BODTC was removed on the instruction from Mr Molefe, based on discussions he had with Mr Koko and Mr Masango. The consultations further indicate that:

- Mr Masango was of the opinion that the existing contract with WBHO be modified to include Phase 2;
- Mr Koko was of the opinion that Phase 2 be issued on open tender based on National Treasury that would not have approved the modification; and
- Mr Koko and Mr Masango confirmed that they had a meeting with Mr Molefe whereafter Mr Molefe made a decision relevant to the submission.

4.3.18 An e-mail correspondence sourced relevant to the agenda for the BODTC on 29 September 2016, contained correspondence from Mr Le Roux stating that the BODTC agenda item 5.13 be removed based on discussions between Mr Koko, Mr Masango and Mr Molefe.

4.4 Allegation 4: Militarisation of Eskom

4.4.1 The following individuals assisted us with information and/or documentation regarding this allegation:

- Genl Martins;
- Mr Koko;
- Mr Sithole;
- Mr Masango;
- Mr Govender;
- Mr Ntsokolo;
- Mr T Govender; and
- Genl Rakau.

4.4.2 We sourced no documentation in support of this allegation.



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4.4.3 The allegation refers wrongfully to Genl Martins as Head of Security. It was established that Genl Rakau is the Head of Eskom Security. The allegation further refers to allegation 1 regarding the instruction that was given to Genl Martins to communicate with Mr Sithole regarding the removal of individuals from Kusile. It was not disputed that Mr Koko requested Genl Martins to communicate with Mr Sithole regarding the removal of Mr Kambi and Mr Hlakudi from Kusile.

4.4.4 Mr Koko stated that he acted within his delegated authority as the Interim GCE requesting Genl Martins to communicate with Mr Sithole.

4.5 Allegation 5: Failure to follow process

4.5.1 The following individuals assisted us with information/documentation regarding this allegation:

- Ms Pule;
- Mr Majola; and
- Mr Koko.

4.5.2 We sourced the documentation relevant to the suspension, disciplinary hearing and sanction of Mr Majola as well as the applicable disciplinary policies and procedures.

4.5.3 Mr Koko stated that he acted in compliance with the disciplinary policy regarding the suspension and sanction of Mr Majola.

4.6 Allegation 6: Private meetings

4.6.1 The following individuals assisted us with information/documentation regarding this allegation:

- Mr Koko;
- Ms Pule;
- Mr Govender;
- Mr Masango;
- Mr Mazibuko;
- Mr Sebola; and
- Mr Rakgolela.



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4.6.2 We sourced documentation relevant to the design to cost strategy and individuals identified to undergo training at Harvard Business School.

4.6.3 Mr Koko denied that private meetings were held to discuss the removal of Mr Masango. He explained how he wanted to let Mr Masango go to Harvard Business School and thereafter take responsibility over the design to cost strategy. Mr Singh and Mr Govender also denied that private meetings were held as reflected in the whistle blower's report.

4.7 Allegation 7: Instruction to take leave with immediate effect

4.7.1 The following individuals assisted us with information/documentation regarding this allegation:

- Mr Masango;
- Mr Singh;
- Ms Pule;
- Mr Koko; and
- Mr Govender.

4.7.2 We sourced documentation relevant to the approval of training at Harvard Business School.

4.7.3 According to Mr Masango, he received information that he would be suspended unless he took up a new position at Eskom. We found no proof in support of an allegation that a suspension letter was drafted with the intention to suspend Mr Masango.

4.8 Allegation 8: Relationship with other Exco members

4.8.1 The following individuals assisted us with information regarding the allegation:

- Mr Koko;
- Mr Masango;
- Mr T Govender;
- Mr Govender;
- Mr Ntshokolo;
- Ms Noah;
- Ms Pule;
- Genl Rakau
- Mr Singh; and



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-
- Mr Majola.
- 4.8.2 We sourced no documentation in support of this allegation.
- 4.8.3 We reflected the comments made by individuals in the report. There were support for Mr Koko as the Interim GCE and some Exco members expressed concerns.
- 4.9 CDH, based on the contents of this fact finding report, has obtained a legal opinion from Senior Counsel and the findings are set out in **Exhibit 52** attached to the report. Senior Counsel has recommended that disciplinary action be instituted against Mr Koko which recommendation CDH concurs with.



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Chapter 1: Introduction

1.1 Background

- 1.1.1 Cliffe Dekker Hofmeyr Attorneys ("CDH") was instructed by Eskom Holdings SOC Limited ("Eskom") to conduct a forensic and legal investigation in relation to an anonymous report dated 1 March 2017 titled *"Issues of concern regarding the interim CEO"* which report was submitted to Eskom and addressed to *"Dr Ben Ngubane Chairman"*.
- 1.1.2 The anonymous report referred to 8 (eight) specific issues namely:
- i) Undermining the authority of other Executives;
 - ii) Separation of politics and professionalism;
 - iii) Undermining of the Governance and Sub-Committees;
 - iv) Militarisation of Eskom;
 - v) Failure to follow process;
 - vi) Private meetings;
 - vii) Instruction to take leave with immediate effect; and
 - viii) Relationship with other Exco members.
- 1.1.3 The objective of the investigation was to ascertain whether any of the 8 (eight) allegations could be corroborated and/or substantiated by evidence including *viva voce*, real and/or documentary evidence.
- 1.1.4 CDH informed Eskom on 28 March 2017 that it would be appointing an independent auditing firm to assist with the forensic investigation.
- 1.1.5 Nkonki Incorporated ("Nkonki") was appointed on 3 April 2017 by CDH to conduct a forensic investigation concerning the abovementioned allegations reflected in the anonymous report.

1.2 Mandate and scope of assignment

- 1.2.1 Nkonki was appointed on 3 April 2017 to conduct a forensic investigation into the allegations referred to *supra*.



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- 1.2.2 The scope of work included *inter alia* to perform the following tasks regarding the 8(eight) allegations:

Number	Procedure
1.	Undermining the authority of other Executives
1.1	Consult with Mr Frans Sithole (Mr. Sithole) in order to understand the detail of the instructions given by Mr Koko on 1 February 2017 with specific reference to Mr Kambi, GTC Company and Mr Hlakudi.
1.2	Consult with any other individuals which may be mentioned as persons of interest during the consultation with Mr Sithole and in respect of 1.1 above in order to test the veracity of the allegation made.
1.3	Source documentation which may be relevant or linked to the instruction given by Mr Koko to Mr Sithole regarding the three (3) individuals and/or entities (Mr Kambi, GTC Company and Mr Hlakudi).
1.4	Source any minutes if available of a meeting held on 2 February 2017 between Mr Koko, Mr Sithole and Mr Abram Masango (Mr Masango) relevant to the 3 (three) individuals and/or entities.
1.5	Consult with Mr Masango regarding the details of the alleged instruction received from Mr Koko and the meeting held on 2 February 2017.
1.6	Consult with any persons which may arise during the consultation Mr Masango.
2.	Separation of politics and professionalism
2.1	Consult with Mr Masango, the GE: Group Capital regarding the alleged discussion between him and Mr Koko wherein the latter said Mr Masango was aligned to the wrong politicians.
2.2	Consult with Mr Masango on the accuracy and truthfulness of the allegation that he went to the Mpumalanga Premier and that the Premier went to the President of the Republic.
2.3	Should there be truth in Mr Masango having approached the Premier of Mpumalanga, we would obtain the relevant details thereof as well as Mr Masango's knowledge of the information which was conveyed to the President.
3.	Undermining of the Governance and Sub-Committees
3.1	Cabling project of Unit 1 to 6
3.1.1	Investigate the allegation that Mr Koko allegedly removed the Kusile Tender Committee Submission (mandate to negotiate with ERI for cabling for Unit 1 to 6) and instructed that the scope should be awarded to ABB (C&I contractor at Kusile), despite



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	that the Exco Procurement Committee (Excops) recommended ERI to be appointed by the Board Tender Committee (BODTC).
3.1.2	Source the Kusile Tender Committee submission relevant to the mandate to negotiate with ERI.
3.1.3	Source the current contract of ABB (C&I contractor).
3.1.4	Source the resolution to negotiate with ERI and any resolution taken relevant to the cabling for Unit 1 to 6.
3.1.5	Consult regarding Unit 1 to 6 projects and whether any submissions were prepared for the Board Tender Committee.
3.1.6	Source the minutes of Excops meeting/s in order to ascertain whether the cabling matter was referred to it and the relevant resolution taken.
3.1.7	Consult with Mr Koko in order to obtain full details on the following allegations: <ol style="list-style-type: none"> 1. Contained in 3.1.1 above; and 2. The allegation that Mr Koko blocked the submission from reaching the BODTC as he was of the opinion that ERI is not capable of executing the scope.
3.2	Contract with WBHO for Phase 2
3.2.1	Source the Kusile Tender Committee submission relevant to the mandate to negotiate and conclude a contract with WBHO for Phase 2.
3.2.2	Source a copy of the instruction by Mr Koko that the scope must be issued on an open tender basis.
3.2.3	Source a copy of minutes of Excops meetings relevant to this project.
3.2.4	Source a copy of the resolution taken by the Excops and any recommendation made to the BODTC.
3.2.5	Source a copy of minutes of the regarding any discussion and/or resolution relevant to the project.
3.2.6	Consult with Mr Koko in order to obtain full details on the following allegations- <ol style="list-style-type: none"> 3.2.6.1 That Mr Koko removed the Kusile Tender Committee submission (mandate to negotiate and conclude a contract with WBHO for Phase 2; and 3.2.6.2 The allegation that Mr Koko blocked the Submission from reaching the BODTC as he was of the opinion that the scope must be issued to the open market.



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Number	Procedure
4.	Militarization of Eskom
4.1	Consult with General Martins relevant to instructions given to him by Mr Koko.
4.2	Consult with General Martins relevant to communication between him and Mr Sithole.
4.3	Consult with Mr Sithole regarding his discussion with General Martins.
4.4	Consult with Mr Koko regarding his discussion with General Martins.
5.	Failure to follow process
5.1	Source documentation relevant to the suspension of Mr Majola, Senior General Manager: Engineering and Acting Group Executive: Generation.
5.2	Source a copy of Eskom's policy regarding the process to be followed in respect of suspensions and the grounds for suspension.
5.3	Source electronic communication from Mr Koko relevant to his request to Mr Majola that the latter allegedly failed to adhere to.
5.4	Consult with Mr Majola regarding his suspension and the alleged information he failed to verify.
5.5	Consult with Mr Koko in relation to the allegation that he suspended Mr Majola, if so, the process followed and the reasons therefore.
6.	Private meetings
6.1	Ascertain whether any official meeting was held on 4 February 2017 wherein the removal of Mr Masango was discussed.
6.2	Ascertain whether there was a meeting between Mr Koko and Mr Govender held on 4 February 2017.
6.3	Ascertain who attended the meeting referred to above (if any meeting was held).
6.4	Ascertain what working relationship exists between Mr Koko and: <ul style="list-style-type: none"> • Mr Mazibuko (Deputy Project Director: Kusile Project) • Mr Rakgolela (Acting General Manager: Real Estate Department) • Mr Sebola (General Manager: Contract Management)
6.5	Consult with Mr Koko regarding the alleged meeting and his working relationship with the individuals in 6.4 above.
7.	Instruction to take leave with immediate effect



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Number	Procedure
7.1	Consult with Mr Singh (CFO) regarding the alleged discussion he had with Mr Koko requesting him to instruct Mr Masango to go on study leave and the reasons therefor.
7.2	Consult with Mr Singh regarding the alleged discussion he had with Mr Masango on 24 February 2017 regarding study leave.
7.3	Consult with Mr Singh regarding the alleged discussion he had with Mr Masango on 28 February 2017 following up on the study leave request.
7.4	Consult with Mr Singh regarding the appointment of an Acting GE: Group Capital.
7.5	Consult with Mr Koko regarding his discussion with Mr Singh.
8.	Relationship with other Exco members
8.1	Consult with all Exco members in order to get an understanding of their relationship with Mr Koko.
8.2	Consult with Mr Koko regarding his relationship with the Exco members.
9	Consider any additional information should the need arise before conclusion of the investigation.

1.3 Purpose of the report

- 1.3.1 The purpose of this report is to make known our findings emanating from the investigation conducted as described in the scope of work above.
- 1.3.2 The report is confidential and has been compiled for only the information of CDH.

1.4 Qualifications

- 1.4.1 This report is to be used solely for the purpose and subject to the limitations, set out in this section. The report serves as an information document and may not be used for any other purpose, without our prior consent.
- 1.4.2 Although we have, to the best of our professional ability, examined documentation made available to us, the information contained in this report is subject to the following:
- The conformity to the original documentation of all copied documents submitted to us has been assumed;



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- Except in instances where we deemed it necessary, we have not verified the authenticity or validity/veracity of the documentation made available to us; and
- Where we have not had sight of a document following a request, we were not able to verify its existence and assumed that a record thereof has not been kept.

- 1.4.3 We confirm our role as independent consultants and that our independence in conducting this investigation cannot be limited by any party. The report in its current format is not intended for use as submission in civil litigation, criminal litigation and disciplinary hearings.
- 1.4.4 Nkonki will not accept any responsibility should this report be disclosed or released to any party, other than the intended recipient.
- 1.4.5 Nkonki does not accept any liability for any loss, either directly or indirectly, suffered by any third party arising from the fulfilment of the mandate.
- 1.4.6 Although the work performed incorporates our understanding of the law as it stands, we do not express an opinion on the interpretation of the law or the legal effect of the facts or the guilt or innocence of any person or party, but have merely stated the facts as they have come to our attention. The procedures performed do not constitute an audit or a review in accordance with International Standards on Auditing or International Standards on Review Engagements (or relevant national standards or practices). Consequently, we do not express an audit or legal opinion thereon.

1.5 Limitations/Assumptions

- 1.5.1 During our investigation, the following encumbrances were experienced:
- We were limited to documentation provided to us by Eskom relevant to the allegations made in the whistle blower's report and we accepted the documentation at face value;
 - We were limited to a scoping period of 1 December 2016 to 1 March 2017 to source documentation and electronic information; and
 - We were limited to a fact finding investigation and consultations with role players and stake holders identified in the whistle blower's report and during the investigation in order to source information and evidence relevant to the whistle blower's report.



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- 1.5.2 We were limited to documentation provided by Eskom relevant to the allegations made in the whistle blower's report.
- 1.5.3 We received documentation from individuals who we consulted during the investigation and from individuals who wanted to remain anonymous. Our analysis was limited to procurement transactions as referred to in the whistle blower's report.
- 1.5.4 The facts as set out in this report are based on a limited fact-gathering and interviewing process. In the circumstances, without having interrogated the evidence gathered and based on the untested information and documentation made available to us, we did not express an opinion on the interpretation of the law or the legal effect of the facts or the guilt or innocence of any person or party, but have merely stated the facts as they have come to our attention.



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Chapter 2: Approach

2.1 Introduction

2.1.1 Our methodology and approach to conduct this investigation is reflected hereunder.

2.1.2 We were required to:

- Establish the veracity of the allegations made in the whistle blower's report dated 1 March 2017;
- Ascertain whether the allegations could be corroborated and/or substantiated by evidence including *viva voce*, real and/or documentary evidence.

2.2. Assignment scope

2.2.1 We were required to conduct a factual finding investigation to determine the veracity of allegations made in the whistle blower's report. We had to review and analyse documentation, conduct various consultations and analyse data relevant to the allegations referred to *supra*.

2.2.2 The assignment was divided in four (4) parts namely:

- Sourcing of documentation and data relevant to the matter;
- Analysis of documentation and data sourced;
- Conducting consultations with identified role players and stake holders; and
- Identifying the veracity of the 8 (eight) allegations referred to *supra*.

2.3 Procedures performed

2.3.1 Our procedures followed included *inter alia*:

- Information, documentation and data sourced and received during the investigation were perused and analysed;
- Consultations were conducted with Eskom employees;
- Consultation were conducted with external parties;
- Publicly available information was sourced regarding legal entities identified during the investigation; and



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- Publicly available information was sourced regarding individuals identified during the investigation.

2.3.2 We proceeded with a view to establish the correctness of the 8 (eight) allegations as reflected in the whistle blower's report.

2.3.3 The investigation focused on the analysis of documentation, information and data relevant to Eskom and where considered appropriate, supporting documentation and explanations.

2.3.4 We are, however, not able to certify that we received all the documentation that may be in existence or that the contents of any documentation at our disposal or any statements or information obtained by or made available to us are true and correct. If additional or further documentation is made available after the date of this report, our findings might change relevant to our current assignment.

2.4 Period under investigation

2.4.1 The period of our investigation extended from 1 December 2016 to 1 March 2017. In certain instances, we considered events and/or transactions and/or data outside of this period. The information contained in this report is based on prevailing conditions and documentation and information sourced as at 30 June 2017. This report and information contained herein shall not amount to any form of guarantee that Nkonki has determined or predicted future events or circumstances.

2.5 Consultations

2.5.1 Consultations were conducted with the following Eskom employees:

- Mr Abram Masango (two consultations);
- Mr Anoj Singh;
- Mr Frans Sithole;
- Mr Sifiso Mazibuko;
- Ms Elsie Pule;
- Mr Thulani Mtshali;
- Mr Matshela Koko;



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- Mr Prish Govender;
- General Rakau;
- General Martins;
- Mr Karabo Rakgolela;
- Mr Peter Sebola;
- Mr Willy Majola;
- Mr Thava Govender;
- Ms Ayanda Noah;
- Mr Mongezi Ntsokolo;
- Mr Brian Naidoo;
- Mr Wally Pepler; and
- Ms Mildred Nyoka.

2.5.2 We conducted consultations with 3 (three) individuals who wanted to stay anonymous and who alleged that they could assist with the investigation.

2.5.4 At the time of our report, we did not consult with:

- Dr Baldwin Ngubani;
- Mr Sean Maritz;
- Mr Frans Hlakudi; and
- Mr Brian Molefe.

2.6 Documentation sourced

2.6.1 We requested documentation from Eskom which included *inter alia* copies of policies and procedures, minutes of Executive Committee Procurement Sub-Committee ("Excops") and Board Tender Committee ("BODTC") meetings, contracts entered into between Eskom and the entities referred to in the whistle blower's report, minutes of the Kusile Tender Committee, financial transaction documentation, etc.

2.6.2 The list of documentation and data sourced from Eskom during the investigation is reflected hereunder:

- Copies of policies and procedures as referred to in the report;



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- Copies of DOA's authorised in 2013 and 2017;
- Copy of intention to effect suspension: Mr Majola;
- Practice Note approved on 1 February 2016;
- Practice Note (240 -109129776);
- Memorandum drafted by Ms Pule dated 4 January 2016;
- Internal legal opinion;
- Copy of a notice to attend a disciplinary hearing: Mr Majola;
- Findings in the matter between Eskom and Mr Majola;
- Minutes of Excops meetings for the period 1 April 2016 to 31 March 2017.

2.6.3 We sourced documentation from Kusile relating to ERI, ABB and WBHO in terms of the Kusile project. The documentation provided included the following:

- Extracts from the Excops minutes;
- Extracts from the BODTC minutes;
- Submissions to the Excops;
- Submissions to the BODTC;
- Submissions to Capex R50M-R300M Procurement Tender Committee;
- Mandate to negotiate modifications;
- Procurement and contracting strategy;
- Moratorium agreement and contracts; and
- Submission checklists.



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Chapter 3: Regulatory framework

3.1. Background

3.1.1 In terms of Schedule 2, Part A of the Public Finance Management Act ("PFMA"), no 1 of 1999, Eskom is listed as at 30 April 2015 as a major public entity and should therefore comply with the requirements applicable to supply chain management in the public sector. A review of the legislative framework that forms the premise of our findings has been conducted which framework includes *inter alia*, the following:

- The Constitution of South Africa, no 108 of 1996;
- The PFMA, no 1 of 1999;
- National Treasury Regulations/Instruction Notes;
- National Treasury Code of Conduct;
- Corporate Governance in the Public Sector;
- Preferential Procurement Policy Framework Act, 5 of 2000;
- Eskom's Procurement and Supply Management Procedure (32 - 1034);
- Eskom's Delegation of Authority Policy 2013 (240-62072907);
- Eskom's Delegation of Authority Policy 2017 (240-62072907);
- National Treasury Instruction SCM Instruction Note 3 of 2016/2017;
- Memorandum of Incorporation (240-65347859);
- Disciplinary Procedure (32-1113); and
- Learning Policy (32-1020).

3.2 The Constitution, no 108 of 1996

3.2.1 Section 217 (1) of the Constitution, no 108 of 1996 provides that "*when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.*"

3.2.2 Sub-section (2) thereof states that sub-section (1) does not prevent the organs of state or institutions referred to in that sub-section from implementing a procurement policy



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providing for (a) categories of preference in the allocation of contracts; and (b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

3.3 The PFMA, no 1 of 1999

- 3.3.1 The PFMA regulates financial management in the public entities as listed in inter alia Schedule 2 of the Act. The legislation empowers National Treasury ("NT") to issue guidelines and instructions or practice notes on various issues relating to procurement with the aim to ensure minimum norms and standards to government.
- 3.3.2 As already indicated, Eskom is defined as a major public entity in terms of Schedule 2, of the PFMA and should therefore comply with the requirements applicable to supply chain management in the public sector. Section 3 of the PFMA provides that "in the event of any inconsistency between this Act and any other legislation, this Act prevails".
- 3.3.3 In terms of section 49 of the PFMA every public entity must have an authority which must be accountable for the purposes of the PFMA. The Eskom Board is the accounting authority for purposes of the PFMA and the Board must exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity.
- 3.3.4 The Board must also take effective and appropriate steps against any employee of Eskom who contravenes or fails to comply with a provision of the PFMA, who commits an act which undermines the financial management and internal control system of Eskom or makes and/or permits an irregular expenditure or fruitless and wasteful expenditure.
- 3.3.5 In terms of section 76 (4) of the PFMA, the National Treasury ("NT") may make regulations or issue instructions applicable to all institutions to which the PFMA applies concerning, inter alia, the determination of a framework for appropriate procurement and a provisioning system which is fair, equitable, transparent, competitive and cost effective and any other matter that may facilitate the application of the PFMA.
- 3.3.6 The Board commits an act of financial misconduct in terms of section 83 of the PFMA if it willfully or negligently fails to comply with a requirement of section 50, 51, 52, 53, 54 or 55 of the PFMA or makes and/or permits an irregular expenditure or fruitless and wasteful expenditure.



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3.3.7 In terms of section 83 (2) of the PFMA, every member of the Board is individually and severally liable for any financial misconduct as referred to in paragraph 3.3.6.

3.3.8 Section 85 (1) of the PFMA provides that the Minister must make regulations prescribing-

(a) "The manner, form and circumstances in which allegations and disciplinary in criminal charges of financial misconduct must be reported to the National Treasury, the relevant Provincial Treasury and the Auditor General including –

(i) particulars of the alleged financial misconduct; and

(ii) the steps taken in connection with such financial misconduct;

(b) Matters relating to the investigation of the allegations of financial misconduct;

(c) The circumstances in which the National Treasury or a provincial treasury may direct that disciplinary steps be taken or criminal charges be laid against a person for financial misconduct;

The circumstances in which the findings of a disciplinary board and any sanctions imposed by the board must be reported to the National Treasury, the relevant provincial treasury and the Auditor General".

3.4 National Treasury Regulations/Instruction Notes

3.4.1 The NT Regulations published in March 2005 and promulgated in terms of section 76(4) of the PFMA, prescribes a procurement framework giving effect to section 217 of the Constitution. It applies to all public entities in Schedule 2, but only to the extent as indicated in paragraph 6.1.2 and regulations 24, 25, 27 to 29 and 31 to 33.

3.4.2 Accounting authorities are required to develop and implement an effective and efficient supply chain management ("SCM") system for the acquisition of goods and services. The SCM system is required to be fair, equitable, transparent, competitive and cost effective and to be consistent with the PPPFA and the Broad Based Black Economic Empowerment Act ("BBBEE"), no 53 of 2003.

3.4.3 All officials and other role players in SCM systems must comply with the highest ethical standards in order to promote mutual trust and respect and an environment where



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business can be conducted with integrity, and in a fair and reasonable manner.

- 3.4.4 The accounting authority must check NT's database before awarding contracts to ensure that no recommended bidders, or any of its directors, are listed as companies or persons prohibited from doing business with the public sector. The accounting authority must further reject a proposal for the award of the contract if the recommended bidder has committed a corrupt or fraudulent act in competing for the particular contract.
- 3.4.5 The accounting authority must cancel an awarded contract if the supplier committed any corrupt or fraudulent act during the bidding process or execution of the contract, as well as when official/other role player committed corrupt or fraudulent act during the bidding process to the benefit of such supplier. It may also disregard a bid of any bidder if that bidder, or any of its directors, have abused the institution's SCM system, committed fraud or any other improper conduct in relation to such system or have failed to perform on any previous contract.
- 3.4.6 Regulation 33.1 requires that if any employee is alleged to have committed financial misconduct, the accounting authority must ensure that an investigation is conducted into the matter and if confirmed, must ensure thereafter that a disciplinary hearing is held. This is also a requirement in terms of section 85 (1) of the PFMA.

3.5 National Treasury Code of Conduct

- 3.5.1 In terms of NT Practice Note 4 of 2003, SCM officials and other role players involved in the SCM process should adhere to the Code of Conduct for SCM practitioners. SCM practitioners and other role players involved in SCM processes:
- must disclose conflict of interests;
 - may not use positions for private gain or to improperly benefit another person;
 - may not compromise the integrity or credibility of the SCM system through acceptance of gifts or hospitality or any other act;
 - must be scrupulous in the use of public property;
 - must assist accounting authorities in combating corruption and fraud in the SCM system;
 - always disclose interests of family members, partner or associate and withdraw



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from participating in the process; and

- any breach or failure to comply must be reported to the accounting authority in writing.

3.6 Corporate Governance in the Public Sector

3.6.1 Although the PFMA as referred to above, should be considered in its entirety, sections 46 to 86 are of particular importance for financial governance issues. Accounting authorities must ensure that accurate books and records are kept and that financial statements and other statutory reports are prepared.

3.6.2 To ensure that public entities are achieving objectives set out in policies, corporate plans and other planning processes, the Department of Public Enterprises has designed a framework of compliance for the use of public entities as contemplated in inter alia Schedule 2 of the PFMA. This policy framework for State Owned Enterprises was published in August 2000.

3.6.3 Corporate Governance was further institutionalized by the publication of the King I Report in November 1994. The Report was later superseded by legislation as referred to hereunder and also the King II, King III and King IV Reports.

3.7 The PPPFA, no 5 of 2000

3.7.1 The Preferential Procurement Policy Framework Act, 5 of 2000 ("PPPFA") gives effect to section 217(3) of the Constitution. It, among others, provides that an organ of state must determine its preferential procurement policy and implement it within the prescribed framework. This also provides for the promulgation of regulations. The primary aim of the PPPFA is to address past discriminatory policies and practices in the government procurement system.

3.8 Eskom Procurement and Supply Management Procedure (32-1034)

3.8.1 This Procedure sets out procedures governing operational areas within the procurement and supply chain operations managed under Group Executive: Technology and



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Commercial within Eskom. It applies uniformly throughout Eskom, its Divisions, wholly-owned subsidiaries and entities wherein Eskom has a controlling interest, operating in terms of South African law, which are subject to the provisions of the PFMA.

- 3.8.2 The Procedure was compiled by Group Technology and Commercial: Risk & Governance and it was signed off on 19 May 2014 by Mr Koko, the Group Executive (Acting) Technology and Commercial. The revision date of this procedure was April 2017. Although we perused the complete procedure document, reference is made in the report to specific paragraphs applicable on the current investigation.
- 3.8.3 The Procedure *inter alia* states that the Chief Executive ("CE") delegated procurement authority to the Executive Committee ("Exco") and some authority has in turn been delegated to the Exco procurement Sub-Committee ("Excops") to approve procurement/disposals which exceed head office operational/capital expenditure procurement tender committee delegations. The Group Executive: Technology and Commercial as a member of the EXCO, is appointed to lead and manage the Technology and Commercial Group within Eskom.
- 3.8.4 The Delegation of Authority ("DOA") Policy forms part of the approved procurement framework and the core principle is that individual employees may be permitted by a written delegation of authority to bind Eskom into contracts of purchase/sale regarding assets, goods or services, either acting in a dual, triple or as part of a tender committee. DOA's for the procurement or disposal of assets, goods or services, must be exercised with the recommendation and approval of another delegated and accredited procurement practitioner as part of a dual or triple adjudication system of approval, or with approval from a delegated Procurement & Tender Committee ("PTC").
- 3.8.5 Sole adjudication or sole signature authorities are no longer permitted, except in the case of Local Purchase Order ("LPO") approvals granted by Cost Centre Managers, which are processed and authorised *via* workflow on the SAP system.
- 3.8.6 A dual transaction applies to commercial transactions not exceeding R1 million in value, excluding value added tax ("VAT") and not exceeding 1 year in contract duration. Triple adjudication applies to the approval of commercial transactions not exceeding R5 million, excluding VAT and not exceeding a contract duration of 2 years.



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- 3.8.7 Where the value and/or duration of a procurement or disposal exceeds the delegations of dual and triple adjudication, the procurement or disposal must be approved by a delegated tender committee. In all instances, a tender committee must comprise of Eskom employees. The DOA granted to the tender committee is distinct from budgetary approval which is obtained as part of the financial planning process. The delegation conferred to PTC's includes the specific approvals of condonations, ratifications and appointments of strategic and management consultants, all of which cannot be authorised within dual or triple adjudication, irrespective of value.
- 3.8.8 The delegations for Head Office PTC's have been delegated by the Board and are authorised by the Group Executive: Technology and Commercial. The Finance Director ("FD") or relevant Group Executive ("GE") will give effect to the stipulated DOA's by making nominations for the appointments of chairpersons and members to the various site-based tender committees in consultation with the Group Executive: Technology and Commercial and the Risk and Governance Department within Group Technology and Commercial.
- 3.8.9 The procurement process starts with the identification of a need by the end-user or the Inventory Optimiser in the case of stocked items. Irrespective of the value of the proposed purchase, the End-User is responsible to provide adequate information to the procurement practitioner to proceed with the transaction. The end-user generates a purchase requisition ("PR") which reflects the estimated value, duration and specification or scope of the assets, goods or services and other information as required.
- 3.8.10 The Cost Centre Manager approves the PR, taking into consideration the budget, scope of works and business need. After his/her approval, the PR will be released electronically to the relevant procurement department.
- 3.8.11 Eskom approved standard forms of contract and conditions of contract are used for placing all orders or contracts. The New Engineering Contract ("NEC") suite of contracts, the International Federation of Consulting Engineers ("FIDIC") suite of contracts and selected Eskom in-house contracts are used as conditions of purchase in Eskom. The procurement practitioner in consultation with the cross-functional team, where applicable, selects the appropriate contract to best mitigate the risks of the procurement



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as part of the approved strategy and such selection is confirmed prior to the issue of the tender.

- 3.8.12 Procurement practitioners may execute informal tendering for transactions between the value of R30 000 up to R1 million. Three quotations must be sourced by the procurement practitioner. A formal competitive tendering process must be followed for transactions greater than R1 million (including VAT) and/or greater than one (1) year in duration. This formal process may also be executed for orders or contracts less than R1 million and/or less than one year as a result of the complexity and nature of certain contracts below R1 million or where a request for proposal ("RFP") is required.
- 3.8.13 Procurement practitioners are the only employees in Eskom mandated to execute formal competitive tendering processes. It is Eskom's preferred position to publicly advertise tenders as far as possible to enable open market participation. It may be permissible to proceed with a tender on a closed/limited basis where only selected suppliers are targeted, provided that it is supported by an approved strategy, which motivates why use of an open tender process is not possible or not practically feasible.
- 3.8.14 All contracts/orders must be loaded onto the SAP system which facilitates the monetary and time-related control of contracts. The procurement practitioner must ensure that all conditions are loaded correctly and according to the original signed contract before an End-User or any other authorised official can place orders against the contract.
- 3.8.15 A contract file is opened for every PR that is executed *via* a formal or informal tender. Where only one supplier has been identified as being capable or available to supply the assets, goods or services, it may become necessary to deviate from competitive bidding and to follow the sole source process. A supplier can be appointed as a general sole source for a specified category of assets, goods or services for a maximum period of three years. The approval for the appointment of the supplier as a general sole source supplier for an identified category needs to be obtained from the relevant PTC.
- 3.8.16 Urgent procurement may be deemed foreseeable and not necessarily immediate in need and emergency procurement is defined as an imminent or immediate and unforeseeable requirement. Urgent procurement must still be administered *via* a PR in the SAP system, using the normal procurement methods and sourcing mechanisms. Urgent requirements



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may be approved *via* "special meetings", round robin approvals or within systems of general or EXCO dual/triple adjudication and should be immediately prioritised by the relevant procurement manager and the delegated approval authority.

- 3.8.17 When emergency arise and there is no procurement function immediately available or there is limited time to initiate a normal procurement process *via* one of the acceptable procurement methods or sourcing mechanisms, then the emergency procurement procedure may be used to resolve the emergency situation. This procedure is described in paragraph 3.5.2 of the Procedure document (32 – 1034).
- 3.8.18 A contract manager's primary role is to be the first and single point of contact between Eskom and the supplier during the execution and delivery phase of the contract. The contract value and time is used to execute the contract according to the approved scope of work or the description of the assets, goods or services according to the contract.
- 3.8.19 In the case of panel contracts, a task order committee may be appointed by the delegated approval authority to oversee and approve the issuing of task orders. The specific delegation to manage contractual claims is granted to the Eskom Agent on a Delegation Consent Form ("DCF") and must be approved by the relevant delegated approval authority. The DCF gives the Eskom Agent the authority to duly assess, manage and authorise claims relating to time and money in the contract, which may arise out of unforeseen or unplanned circumstances and which may result in amendments to the approved scope or specifications.
- 3.8.20 In terms of the Procedure, the appointment of a panel of service providers must be supported by a signed and approved strategy from a relevant PTC and approval for contract award, which must be obtained from the relevant PTC. Appointed contract managers are responsible for putting in place appropriate systems and controls to ensure that:
- Work/task orders are distributed fairly and equitably among the panel of service providers;
 - Criteria for the selection of a particular service provider for the allocation of work/task orders are defined and documented and made known to end-users;
 - The documented and approved task order approval process is utilised;



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- Task orders are placed against contracts with sufficient funds and time available for the completion of work/services;
- Task orders are supported by a SAP 45 number confirming the order/commitment; and
- Supplier Development and Localisation ("SD&L") targets and objectives are being monitored and tracked.

3.8.21 All invoice approvals and payments must be executed in accordance with the latest version of Eskom's Accounts Payable Procedure. The procurement manager does not get involved in the handling of invoices or any payment other than where he/she is assigned to be the contract manager. All payment certificates must be issued and certified by the contract manager. The contract may only be terminated in accordance with the termination clauses and reasons for termination as contained in the contract.

3.8.22 Supplier registration is described under paragraph 3.8.1 of the Procedure document. Every entity registered as a supplier on the Eskom Supplier Database are required at all relevant times to conduct themselves in a manner fully consistent and/or in accordance with the current Eskom Purchasing Pact with Suppliers and the General Conditions of Supplier Registration.

3.8.23 The delegated signing authorities for contracts are:

No	Approval Authority	Signing Authority
1	Board of Directors	GE – may nominate a DE, SGM or GM
2	BODTC	GE – may nominate a DE, SGM or GM
3	Exco	DE – may nominate a SGM or GM
4	Excops	DE – may nominate a SGM, GM or E-band Manager
5	Head Office and Site PTC's	E-band Manager
6	Triple Adjudication	Middle Manager
7	Dual Adjudication	Manager
8	Non-buyers (LPO's)	Cost Centre Managers



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- 3.8.24 Paragraph 3.12.2 refers to the managing of service providers' misconduct. According to the Procedure, every service provider will at all times be treated with fairness. Where a service provider's conduct becomes unacceptable and in breach of the necessary relationship of good faith required for purposes of maintaining and managing service provider relationships, Eskom will implement an internal administrative process to investigate reported acts of service provider misconduct, which may lead to a service provider being suspended and not being allowed to conduct any business with Eskom either directly or indirectly for a stipulated period of time.

3.9 2013 Delegation of Authority Policy (240-62072907)

- 3.9.1 This policy was compiled by M Adam, the Corporate Counsel/Divisional Executive – Regulation and Legal on 31 May 2013 and authorised by Mr Tsotsi, the Chairman of Eskom Board. The policy was effective from 1 April 2013 and the review date of the policy was March 2016. The policy was codified in two parts, namely the DOA policy principles and Annexure A, the DOA delegations.
- 3.9.2 The DOA addressed the delegation from the Board to executives and also addressed further delegations by the executives to employees in Eskom in terms of a standard Group/Divisional delegation.
- 3.9.3 All authority reflected in the policy could be exercised after an appropriate procurement process has been executed by a procurement practitioner assigned by Group Commercial. The Technology and Commercial Group was responsible for the procurement process and execution thereof.
- 3.9.4 The policy states that all sole source, condonation, ratification and modifications exceeding 20% in terms of time and value, had to be approved by the appropriate procurement committees and reported to the Excops if within the group/divisions. The sole source transactions had to be reviewed by the SD&L Department.
- 3.9.5 Dual and triple adjudication systems replaced sole adjudication systems with this revised DOA and sole adjudication was no longer applicable at any level of delegation.



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3.10 2017 Delegation of Authority Policy (240-62072907)

- 3.10.1 This policy was compiled and signed by Ms Daniels: Group Company Secretary on 16 January 2017. It was authorised by Dr B Ngubane, the Chairman of the Board on 17 February 2017. In terms of this policy, all authority set out in same, must only be exercised after an appropriate procurement process has been executed by a procurement practitioner assigned by the Procurement and SCM Department.
- 3.10.2 The commercial processes must be fair, equitable, transparent, competitive and cost-effective according to the policy. According to the policy, regional or site tender committees means committees that are established by the Chief Procurement Officer ("CPO"). The committees consist of at least 3 (three) members, collectively with technical, commercial and finance representatives or skills to approve procurement for a site or business unit (Site Committee) or across sites (Regional Committees) and must include a representative from the Procurement and SCM Department and take into account equity and transformation in its composition.
- 3.10.3 A Corporate Opex or Capex Procurement Committee means a committee established by the CPO at Head Office responsible for procurement matters.
- 3.10.4 All transactions with dual and triple adjudication must be reported to the committee authorised to deal with that level or decision for oversight. Transaction trends must be analysed and investigated to identify and manage risks and compliance on transactions lower than R5 million and all transactions reported to procurement committees below the divisional tender counsels, must be reported to the next level committee for oversight.
- 3.10.5 The procurement within Eskom, is subject to the Procurement and SCM policy, with reference number 32-1033 and procedure with reference 32-1034.
- 3.10.6 Groups/Divisions are required to develop DOA requirements in line with the applicable limits specified in this policy and *"no Group/Divisional DOA may be in conflict with the Eskom DOA nor may it delegate powers that are outside the parameters of this policy"*.
- 3.10.7 According to this policy, one aspect of good governance relates to an effective decision-making process and a clear DOA contributes to the applicability of an effective decision-making process.



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- 3.10.8 We were informed on 2 May 2017 that new divisional procurement and tender committees came into effect and that Excops had ceased to exist on 31 March 2017.

3.11 NT Instruction Note 3 of 2016/17

- 3.11.1 The objective of this Instruction Note is to provide guidance on measures to prevent and limit the abuse in the SCM system. It is required that an accounting authority must establish a system that deals with the management of complaints and/or allegations of abuse in the SCM system.
- 3.11.2 The Instruction Note further address the deviations from normal bidding processes. In terms of paragraph 8.1 the accounting authority must only deviate from inviting competitive bids in cases of emergency and sole supplier status. Emergency procurement may occur when *"there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which calls an agency to action and there is insufficient time to invite competitive bids"*.
- 3.11.3 Sole sourcing procurement may be done when there is evidence that only 1 (one) supplier possesses the unique and singularly available capacity to meet the requirements of the institution.
- 3.11.4 The accounting authority must further ensure that contracts are not varied by more than 20% or R20 million (including VAT) for construction related goods, works and/or services and 15% or R15 million (including VAT) for all other goods and/or services of the original contract value.

3.12 Memorandum of Incorporation (240-65347859)

- 3.12.1 The Board may, other than the statutory committees of the Audit Committee and the Social and Ethics Committee, establish Standing Committees and Ad Hoc Committees in terms of section 72 of the Companies Act, no 71 of 2008. Meetings of a committee of the Board, are governed by the provisions of this Memorandum of Incorporation ("MOI") regulating the meetings and proceedings of directors.



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3.13 Disciplinary Procedure (32-1113)

- 3.13.1 The disciplinary procedure outlines the process to be followed or utilised in the event of alleged misconduct as provided for in the Disciplinary Code/Standard. The purpose of the procedure is to correct behaviour that is unsatisfactory to Eskom and to encourage expected behaviour.
- 3.13.2 According to paragraph 4 of the procedure, *"no disciplinary action shall be instituted against an employee unless he/she is afforded a proper opportunity to state his/her case and to defence him/herself against any allegations that may be taken into consideration against him/her"*.
- 3.13.3 In terms of this procedure as authorised on 2 March 2011, the following disciplinary processes will be followed:
- Disciplinary enquiry: this is an inquisitorial process to be conducted by the manager or supervisor of the employee. The process will only be utilised for offences that, on the face of it, may not result in severe sanction.
 - Disciplinary hearing: this is an adversarial process to be chaired by an internal independent chairperson and will only be used for offences that may or have the potential to result in/or warrant a penalty of dismissal.
 - Pre-dismissal arbitration: this is an adversarial process to be chaired by an independent external chairperson and can only be used if the involved parties agree to utilise the process. This process is, *mutatis mutandis*, subject to be provision of section 188A of the Labour Relations Act, no 66 of 1995.
- 3.13.4 Suspension of an employee with pay pending disciplinary enquiry, hearing or pre-dismissal arbitration, may be decided upon by the manager if it is suspected that the employee have committed misconduct and that his/her continued presence on the premises of Eskom might interfere with the disciplinary investigations.
- 3.13.5 The decision to suspend an employee, must be considered in terms of paragraph 4.4.3 of the procedure, if one or more of the following factors are involved:
- Element of dishonesty in the alleged misconduct;
 - Possibility of tampering with evidence;
 - Possibility of interfering with the investigation process; and



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- Possibility of intimidating witnesses.

3.13.6 The procedure to issue a written notice advising an employee of the alleged misconduct, is reflected in paragraph 4.5 of the procedure. This notification must be furnished to an employee at least 5 (five) days prior to the hearing or 3 (three) days for enquiry or 10 (ten) days for the pre-dismissal arbitration.

3.13.7 The procedure further makes provision for an appeal procedure and states that an employee must lodge his/her appeal in writing with the employee relations practitioner (in case of a hearing) or the manager (in case of an enquiry) within five working days of receipt of the sanction.

3.14 Learning Policy (32 -1020)

3.14.1 This policy was authorised on 21 January 2015 by Ms Pule as the Acting GE: HR. According to the policy statement *"Learning objectives, strategies and plans are defined and aligned with human resource performance requirements to achieve strategic and operational objectives and targets. All learning related resources, systems, processes, procedures and intellectual capital are defined, established, maintained and managed. This is to be done in such a manner that appropriate learning opportunities and experiences will be available to afford employees the opportunity to acquire competencies for current positions as a first priority as well as future roles in line with Eskom's workforce plan. In certain instances, based on strategic and operational requirements, learning interventions might be declared compulsory for an entire organisation population or for a specific individual. This Policy states the principles relating to learning requirements"*.

Chapter 4: Allegation 1

4.1 Background

4.1.1 It is alleged by the anonymous writer of the whistle blower's report that *"On Wednesday 01 February 2017, Eskom's Interim CEO, Matshela Koko issued the following instructions:*

- 1) Gopal Kambi, a Project Manager for a consultant company at Kusile (ARUP TATA) must be removed from Kusile power station project*
- 2) GTC Company must be removed from Kusile power station project*
- 3) France Hlakudi, Senior Manager (Contract Management) be removed from Kusile power station project. He emphasized that he be exited from Eskom or at least Group Capital Division.*

The above instructions were issued to the Project Director (Frans Sithole) of Kusile power station project. The Project Director, Mr Frans Sithole reported this to his boss, Abram Mosango who went to Matshela Koko with Frans Sithole on 02 February 2017 to understand his reasons but Mr Koko's response was that Mr Frans Sithole must look for reasons for removing these people and if he can't do it, he (Interim CEO) will do it himself.

N.B. ARUP TATA is an Indian company and the removal of Gopal Kambi who is a senior member of the company may create unnecessary tension between India and South Africa in cas Arup Tata elevates the issue to Indian government".

4.2 Applicable policies and procedures

4.2.1 The Eskom Delegation of Authority Policy (240-62072907) approved during 2013 states inter alia the following regarding the GCE and Eskom business:

- The GCE is, in general terms and subject to what is set out herein, delegated with the full authority to manage and run the Eskom's business; and the provisions shall not be construed as in any way limiting the authority of the GCE, subject to the overall limitations to manage the day-to-day operations of the business in accordance with his/her performance compact.



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- The GCE shall be entitled to implement or give effect to a Board mandate in the manner he deems most effective and efficient for Eskom, and he shall not require Board approval for each aspect of a transaction or the structuring of transactions, falling within a Board mandate.

4.3 Summary of facts

- 4.3.1 This allegation refers to instructions given by Mr Koko on 1 February 2017 to Mr Sithole, the Project Director at Kusile. Mr Koko was appointed as the Interim GCE with effect from 1 December 2016 (see **Exhibit 1**).
- 4.3.2 Mr Sithole stated during a consultation on 25 April 2017 that he, as a mechanical engineer, was appointed as the project director at Kusile for the period 1 April 2015 to the end of March 2017 and he reported directly to Mr Masango, the GE: Group Capital.
- 4.3.3 Mr Sithole confirmed that Genl Martins, who was not known to him at the time, phoned him and enquired where he was on 1 February 2017. Genl Martins requested a meeting and he was introduced to Genl Martins at the College where he was at the time with Mr Masango. During the conversation, Genl Martins gave him an instruction to remove the individuals as reflected in allegation 1 of the whistle blowers report, which included Mr Kambi and Mr Hlakudi. Mr Sithole was uncomfortable with the instructions of Genl Martins and he approached Mr Masango at the College to discuss the instruction.
- 4.3.4 Mr Masango suggested that they go to Mr Koko regarding the instructions. During a meeting between Mr Masango, Mr Koko and himself, the instructions were mentioned and he was told to adhere to the instructions. No reason was given for the instruction to remove the two individuals from Kusile.
- 4.3.5 Mr Sithole stated during the consultation held on 25 April 2017 that he was not familiar with an entity styled GTC. According to Mr Sithole, Mr Koko said during the meeting that they will understand the reason for his decision one day in the future. Mr Sithole said that removing of the two individuals, particularly Mr Kambi, would impact the project negatively and the answer from Mr Koko was that *"the project will not drop down"*.
- 4.3.6 Mr Sithole informed Mr Kambi and Mr Hlakudi that they had to leave Kusile. At the time, Mr Kambi was a contract worker. Mr Hlakudi, an Eskom employee, left Kusile to return to



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Megawatt Park as he was seconded to Kusile in a support function. According to Mr Sithole, both Mr Kambi and Mr Hlakudi were replaced with other individuals to work at Kusile. At the time, he was not aware about any performance shortcomings relevant to Mr Kambi or Mr Hlakudi.

- 4.3.7 According to Mr Sithole, he was in the company of Mr Masango on 1 February 2017 at the College in Midrand and after he spoke to Mr Masango, they drove to the office of Mr Koko.
- 4.3.8 Mr Masango stated during a consultation held on 24 April 2017 that he is of the opinion that Mr Koko should have called him prior to issuing an instruction to remove individuals from Kusile. Mr Masango confirmed that Mr Sithole was removed from Kusile as the project director and Mr Mazibuko took over his responsibilities.
- 4.3.9 Mr Masango further stated that when Mr Molefe was still at Eskom, he was informed by Mr Koko that there was a problem with Mr Hlakudi and that Mr Koko was of the opinion that he was not doing things the right way. In actual fact, Mr Koko was saying to Mr Masango to remove Mr Hlakudi. Mr Masango refused to remove Mr Hlakudi and said that Mr Koko must give him evidence so that he could confront Mr Hlakudi and deal with any issue. Mr Koko did not provide him with evidence regarding Mr Hlakudi that warranted his removal.
- 4.3.10 Mr Masango was of the opinion that he was undermined when Mr Koko issued the instructions to remove the individuals. According to Mr Masango, he was approached by Genl Martins who informed him that Mr Koko gave him instructions to do certain things and he wanted to inform Mr Masango before going to Kusile. Mr Masango gave the phone number of Mr Sithole to Genl Martins. On the same day that he was approached by Genl Martins, he met Mr Sithole who informed him about the instructions to remove Mr Kambi, Mr Hlakudi and a company styled DTC. Mr Masango said to Mr Sithole "*Frans let us go to the chief*". They went to Mr Koko and the three of them discussed the instruction of Mr Koko.
- 4.3.11 Mr Koko, according to Mr Masango, responded by saying "*command and control*". Mr Masango asked Mr Sithole to leave the office and he and Mr Koko continued their discussion. At the time, Mr Masango was aware that Mr Kambi was appointed by the entity styled Arup Tata who rendered services to Eskom. Mr Masango stated that he did not know that the DTC Company was Mr Kambi's company. However later during the consultation, Mr



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Masango stated that *"I knew Gopal, but this DTC I did not know. So I asked who is this DTC and I never verify and confirm but I was told that this DTC is Gopal's company"*.

- 4.3.12 Mr Masango was of the opinion that the contracts manager should have removed a contractor from Kusile. He mentioned that governance processes relevant to the appointment of Arup Tata was followed. According to Mr Masango he instructed Mr Sithole to remove the individuals as per the instruction given to him by Genl Martins on behalf of Mr Koko. Mr Masango approached Arup Tata informing them about the removal of Mr Kambi on instruction of Mr Koko. Mr Masango also told Mr Sithole to release Mr Hlakudi and to let him go back to the division where he was seconded from. Despite the removal of Mr Kambi, no other individual was earmarked or replaced him at Kusile in his capacity as head of project controls according to Mr Masango.
- 4.3.13 Mr Masango stated during a second consultation on 21 June 2017 that *"I was told that Deon Gopal was contracted to Arup Tata through this GTC Company so it seemed if in my logic GTC was a company owned by Deon Gopal. That is how I in my mind closed the matter so the Deon Gopal and the GTC in my mind it was one issue"*.
- 4.3.14 Mr Mtshali, a Senior Manager at Kusile, stated during a consultation held on 8 May 2017 that he reported directly to Mr Sithole until Mr Mazibuko was appointed as the project director at Kusile. According to Mr Mtshali, Mr Kambi was the head of construction project controls contracted to Eskom via Arup Tata. He did not know the entity styled GTC.
- 4.3.15 Mr Rakgolela an Acting GM: Real Estate stated during a consultation held on 12 June 2017 that he was the deputy project director at Kusile. He started to challenge Mr Kambi as Mr Sithole worked very close to him. Mr Rakgolela was also of the opinion that Mr Sithole could not operate without Mr Kambi and he commented that Mr Kambi prepared the instructions and Mr Sithole implemented it. According to Mr Rakgolela he never heard of the GTC Company.
- 4.3.16 Mr Koko stated during a consultation held on 20 June 2017 that he does not know the GTC Company. Mr Koko asked Genl Martins to meet with Mr Sithole after he received unpleasant information. He decided to focus on the running of the business and not start a serious of investigations when he was the acting GCE. He asked that Mr Hlakudi and Mr Kambi be moved from Kusile. Mr Koko stated that he knew Mr Kambi very well as he was part of his



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engineering team as a planner. Mr Kambi has been with Eskom for close to 8 (eight) years and Mr Koko found it wrong that a foreigner's role did not diminish, but continued to be important for this period of time. Mr Koko confirmed that he gave this instruction to Genl Martins and he confirmed that it was on or about 1 February 2017. Mr Koko stated that he addressed this removal of individuals with Mr Sithole also prior to 1 February 2017 during a meeting held at his house.

- 4.3.17 Mr Koko stated that Mr Masango was aware of the fact that he wanted to remove Mr Kambi and Mr Hlakudi. He confirmed that he did not inform Mr Masango about the information he received about the channelling of contracts from Kusile. The person who phoned him said he is working with Mr Hlakudi and Mr Sithole in the channelling of contracts from Kusile.
- 4.3.18 According to Mr Koko he had a meeting with Mr Masango and Mr Sithole on the same day that he spoke to Genl Martins. He also stated that he spoke to Genl Martins and then Mr Masango and all what Mr Masango said is *"do not let General do it, let me do it for you"*. Mr Masango moved Mr Sithole immediately, but Mr Hlakudi is still at Kusile. According to Mr Koko, Mr Masango was aware of the fact that he wanted to remove people from Kusile.
- 4.3.19 Mr Masango stated on 21 June 2017 during the consultation that *"from my experience I must say this, the effect or the impact you don't see it immediately of this type of actions by right now I think there's huge impact right now that we see and is a result of all these things that went wrong"*. According to Mr Masango, people of Kusile are demoralised and he was receiving a lot of calls from the unions seeking help and he kept on advising the people that they must attend to the issues otherwise it would become a problem. He was also of the opinion that there are issues of instability in the area.
- 4.3.20 Mr Koko however stated on 20 June 2017 that Kusile is very stable and has synchronised Unit 4 and it meeting its milestones. According to Mr Koko when the project director was removed, Mr Mazibuko was a competent assistant who was also a GM and on the same level as Mr Sithole. According to him, he did not understand why Mr Hlakudi, who was not employed at Kusile, was working at Kusile. Mr Koko stated that the GMs are executives belonging to the GCE, that GCE deploys them and that they are appointed by the GCE. Mr Masango, according to Mr Koko, has no authority of appointing executives as the group



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executives have no authority of appointing executives. He stated that *"the GCE appoints executives and moves executives around"*.

- 4.3.21 Mr Koko was of the opinion during the consultation held on 20 June 2017 that he acted within his delegated authority as the Interim GCE to instruct the removal of the individuals from Kusile as indicated in the whistle blower's report.
- 4.3.22 Genl Martins stated during a consultation held on 24 April 2017 that he received the verbal instruction to approach Mr Sithole from Mr Koko and he contacted Mr Sithole. He stated that prior to engaging with Mr Sithole, he went to Mr Masango in order to inform him that he is to carry out the instruction from the GCE. According to Genl Martins, he received an alternative contact number for Mr Sithole from Mr Masango. He was of the opinion that there was nothing untoward about the instruction issued by the GCE and he conveyed same to Mr Sithole. According to Genl Martins, the meeting with Mr Sithole happened on the 7th February 2017 and he informed Mr Sithole that Mr Hlakudi must be moved from his current location in Kusile to somewhere else in Eskom.
- 4.3.23 Genl Martins stated that the meeting with Mr Sithole was not confrontational and that Mr Sithole did not object or resist to the instruction given to him regarding Mr Hlakudi. Genl Martins mentioned that the GCE was also not happy with a particular company or individual and he was unable to remember whether it was Arup Tata or Mr Kambi. He confirmed that a verbal instruction was given to Mr Sithole.
- 4.3.24 Mr Pepler stated during a consultation held on 27 June 2017 that he reports directly to Mr Mazibuko at Kusile who in turn reports to Mr Naidoo. Mr Pepler started to work at Kusile on 1 September 2015 and Mr Kambi was already working at Kusile. According to Mr Pepler, the task order for Arup Tata came to an end and that Mr Kambi was working for them. The extension on the task order was not approved by NT. Mr Pepler had no knowledge of or information about the GTC Company. He further stated that he knows Mr Hlakudi and the latter had an office at Kusile. Mr Hlakudi reports to Mr Sebola and he is still working with the modifications at Kusile.
- 4.3.25 Ms Nyoka was consulted on 27 June 2017 and stated that she was familiar with Mr Kambi who was contracted to Eskom by Arup Tata and he was an advisor to Mr Sithole. The task order of Arup Tata came to an end in March 2017 and Mr Kambi left Kusile prior to that



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where after another representative from Arup Tata replaced him until Arup Tata left when the task order came to an end.

- 4.3.26 Ms Nyoka had no knowledge or information regarding the GTC Company. According to Ms Nyoka, Mr Hlakudi is employed at the Centre of Excellence ("COE") office and she took over from him when he moved to the COE. Mr Hlakudi was overseeing contract management at Kusile and intricately involved in negotiations with contractors. Ms Nyoka continued with the negotiations when Mr Hlakudi left Kusile for the COE and he is still involved with Kusile and visits the site from time to time.
- 4.3.27 According to Mr Mtshali who was consulted on 8 May 2017, Mr Hlakudi was working at Kusile, but reported to Mr Sebola from Contract Management at Megawatt Park. Mr Hlakudi was based at Megawatt Park and visited Kusile once or twice a week to work there and he was on-site to support the contract managers at Kusile.
- 4.3.28 Mr Sebola stated during a consultation held on 7 June 2017 that Mr Hlakudi was a contract management employee placed at Kusile. Mr Sebola confirmed that Mr Hlakudi was still within his Contract Management department and reports to him directly. According to Mr Sebola, he and Mr T Govender were instructed by Mr Koko to move Mr Hlakudi to Mr T Govender's area, being Group Sustainability.
- 4.3.29 Mr T Govender stated during a consultation held on 20 June 2017 that he received a call from Mr Sebola with a request to place Mr Hlakudi in his department (at Sustainability within the Safety department). Mr Govender raised concerns with Mr Sebola regarding the request and informed him that he did not know Mr Hlakudi or his background. Mr T Govender arranged that 2 (two) of his managers meet with Mr Hlakudi to get a better understanding of his background. Before this meeting took place, Mr Koko called Mr T Govender in and enquired on the placement of Mr Hlakudi. Mr T Govender advised Mr Koko that he was in the process of arranging a meeting with Mr Hlakudi.
- 4.3.30 According to Mr T Govender the managers met with Mr Hlakudi and established that he was not fit for the Safety department. Mr T Govender requested that Mr Hlakudi's *curriculum vitae* be provided to hand over to management within the Transmission department in order to establish whether Mr Hlakudi could be utilised within the Contracts department. Mr Govender indicated that he had not received the document as requested. Mr T Govender



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did not know the whereabouts of Mr Hlakudi, or the reasons why he was to be moved from Kusile. Mr T Govender approached Mr Masango regarding the arrangements with Mr Hlakudi and advised Mr Masango that he was not prepared to take Mr Hlakudi. Mr T Govender believed matters relating to the transfer or moving of staff should have been communicated and discussed with other executives prior to a decision being made.



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Chapter 5: Allegation 2

5.1 Background

- 5.1.1 It is alleged by the anonymous writer of the whistle blower's report that *"The Interim CEO informed Group Executive Group Capital (Abram Masango) that he is aligned to wrong politicians. He alleges that Mr Abram Masango went to Mpumalanga Premier and the Premier went to the President of the Republic"*.

5.2 Applicable policies and procedures

- 5.2.1 In terms of paragraph 3.9.1 of the Code of Ethics Procedure (32-757), Eskom shall not support, directly or indirectly, any political party or candidate for political office. According to paragraph 3.9.2 of the Code of Ethics Procedure, directors and employees who attend political party rallies, meetings, conferences, etc do so in their private capacities.

5.3 Summary of facts

- 5.3.1 Mr Abram Masango stated during a consultation held on 24 April 2017 that during a confrontational meeting with Mr Koko, he was accused by Mr Koko of *"being affiliated with the wrong politicians"*. Mr Masango claimed that he was unaware of the reason for Mr Koko making accusations related to his political affiliation. Mr Koko accused Mr Masango of consulting with the Premier of Lephalale and alleged that the Premier thereafter consulted with the President. Mr Masango claimed that he denied the allegation related to consulting with the Premier of Lephalale and left Mr Koko's Office.
- 5.3.2 We consulted with Mr Koko on 20 June 2017 and he stated that he had a discussion with Mr Masango about work and it had nothing to do with politics. Mr Koko denied having the discussions with Mr Masango as reflected in the whistle blower's report and stated that *"the discussions I had in the room was only between me and Abram"*.



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Chapter 6: Allegation 3

6.1 Background

6.1.1 It is alleged by the anonymous writer of the whistle blower's report that:

"3.1 The Interim CEO removed Kusile Tender Committee Submission (Mandate to negotiate with ERI for Cabling for Units 1-6) and instructed that the scope should be awarded to ABB (C&I Contractor at Kusile). The mandate to negotiate and conclude a contract with ERI was already presented and supported by Exco Procurement Committee (Excops) and recommended for final approval by Board Tender Committee. The Interim CEO, blocked the Submission from reaching Board Tender Committee as he is of the opinion that ERI is not capable of executing the scope. The Group Executive Group Capital (Abram Masango) advised him that he must participate in Excops if he wish to influence these decisions.

3.2 The Interim CEO also removed another Kusile Tender Committee Submission (Mandate to negotiate and conclude a contract with WBHO for phase 2) and instructed that the scope must be issued on the open tender basis. The mandate to negotiate and conclude a contract with WBHO (single source) has already been presented and supported by Exco Procurement Committee (Excops) and recommended for final approval by Board Tender Committee. The Interim CEO, blocked the Submission from reaching Board Tender Committee as he was of the opinion that the scope must be issued to the open market. NB These incidences were brought to the attention of the former CEO as they accured during the last quarter of 2016,".

6.2 Applicable policies and procedures

6.2.1 According to the DOA with reference number 240-62072907 and dated 3 June 2013, the GCE is, in general terms, delegated with the full authority to manage and run Eskom's business. The provisions as set out in the DOA was not construed as in any way limiting the authority of the GCE, subject to the overall limitations set out therein, to manage the day-to-day operations of Eskom in accordance with his performance compact. The Eskom Board from time to time approves amendments to the Eskom-wide DOA Policy and the 2017 DOA policy with reference 240-62072907 was authorised on 17 February 2017.