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- 6.2.2 The GCE is *inter alia* authorised to prescribe the manner in which authority is exercised by delegees, and is entitled to revoke or amend any delegation granted to any delegee, provided that any such amendment shall not grant to any delegee any higher authority than that granted by the Board for that level of delegee. The authority of the GCE extends to EXCO sub-committees, but does not extend to the Board Committees.
- 6.2.3 The GCE is entitled to implement or give effect to a Board mandate in the manner he deems most effective and efficient for Eskom and he does not require Board approval for each aspect of a transaction or the structuring of transactions, falling within a Board mandate.
- 6.2.4 The GCE has delegated procurement authority to the EXCO and some of this authority has, in turn, been further delegated to the EXCO Procurement Subcommittee (Excops) to approve procurement / disposals which exceed head office operational / capital expenditure PTC delegations. It was however established that the Excops ceased to exist on 31 March 2017.
- 6.2.5 All tender committees are delegated by the Eskom Board to authorize purchases / disposals exceeding the delegations applicable to dual and triple adjudication delegations of authority. The constitution of regional and site-based PTC's are done with the written consent of the Financial Director (FD) or relevant Group Executive (GE) or Divisional Executive (DE), with prior consultation of the GE: Technology and Commercial. The operation of a PTC is governed by its terms of reference which must be regulated by the Risk and Governance Department within Group Technology and Commercial. A corporate Opex or Capex procurement committee means a committee established at head office by the GE: Technology and Commercial for procurement matters.
- 6.2.6 The commercial processes should be fair, equitable, transparent, competitive and cost-effective. All authority set out herein can only be exercised after an appropriate procurement process has been executed by a procurement practitioner assigned by Group Commercial. The Technology and Commercial Group is responsible for the procurement process and execution.

PFMA

- 6.2.7 Eskom is required in terms of the PFMA, to have *“an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective”*. The PFMA requires that Eskom is represented by accountable persons at every level, who must *“prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity”* and *“manage available working capital efficiently and economically”*.

Kusile Projects and Generation R100m Procurement Tender Committee (“KTC”)

- 6.2.8 The KTC has been established to approve commercial transactions controlled by the Group Commercial and provide adjudication to Eskom business units situated at Kusile in accordance with the latest version of the Eskom DOA (see **Exhibit 2**).

6.3 Summary of facts

Allegation 3.1

- 6.3.1 Mr Sithole stated during a consultation on 12 May 2017 *inter alia* that he was appointed as the project director at Kusile from 1 April 2015 to the end of March 2017 and he reported to Mr Masango, the GE: Group Capital. Mr Sithole was transferred in April 2017 to be a GM: Special Projects in ERI reporting to Mr Dladla.
- 6.3.2 Mr Sithole was unable to remember whether Mr Koko removed the submission relevant to the appointment of ERI. He confirmed that his financial delegation on site was R100 million. According to Mr Sithole, the Kusile tender committee consisted of a multi-disciplinary team, including the engineering manager, the procurement manager, the contracts manager and the projects control manager. There was a nominated chairperson and Mr Sithole was not part of the committee as he made final decisions as a representative of Eskom.
- 6.3.3 According to Mr Sithole, Mr Koko has always been concerned about productivity and he told them to reduce the number of people on site at Kusile. According to Mr Sithole he had a good relationship with both Mr Koko and Mr Masango. He accepted it when Mr Masango informed him that he was reassigned to the DTC project. Mr Masango told him *“you need to go and add value in other areas of the business, you are going to the DTC project”*.



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- 6.3.4 Mr Sithole became aware that the submission for presentation to the tender committee was removed as he was called by an official notifying him that the submission was removed by Mr Koko and not presented, which incident occurred during 2016.
- 6.3.5 Mr Sithole recalls the reason for the removal of the submission being that Mr Koko wanted competitive bidding and for it to go on open tender for price comparison reasons. This was done when Mr Koko was the GE: Generation and the submission was on behalf of Group Capital. According to Mr Sithole, an open tender process takes longer and would not be as cost effective as negotiating with a contractor already on the project.
- 6.3.6 During consultation with Mr Masango on 24 April 2017 he stated that his relationship with Mr Koko deteriorated before Mr Molefe left Eskom. He stated that *"when my team Kusile or Medupi give the submission they go to EXCOPS, EXCOPS recommend to go to the Board. You are supposed to sit at the EXCOPS, he did not and when these submissions go to the Board he will go and remove them from the Board"*. He stated further *"I kept quiet until he came to me"*.
- 6.3.7 According to Mr Masango, he and Mr Koko discussed this matter of the submissions with Mr Molefe. Mr Masango was not a member of Excops at the time as 80% of the transactions discussed at the forum came from Group Capital according to him. According to Mr Masango, he signed the submissions as well as the CPO. According to Mr Masango is was *"approved/appointed"* for Mr Koko to be part of Excops.
- 6.3.8 Mr Masango stated on 24 April 2017 that there was a cabling contract and Mr Koko said that it cannot be awarded to ERI and it must go to ABB. Mr Koko (according to Mr Masango) raised a technical argument that he had to entertain because he (Mr Koko) is an engineer and said ERI cannot do the work. According to Mr Masango, ERI delivered good work on Unit 1 and he wanted to continue to build on the skills as ERI is Eskom's subsidiary and therefore wanted them to continue on Unit 2 to 6. Mr Masango further stated that he was informed 4 (four) weeks ago that the contract was awarded to ERI.
- 6.3.9 Mr Masango stated during the consultation that *"Now I took it personal"*. He further stated that *"anybody that fiddle with this thing I take it personal because I feel that I would not be able to deliver. I have declared that I am going to save R14 billion out of these two projects, so anything/anyone that stands in my way that R14 billion I will not be able to save and I will*



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not meet the dates. So it gets personal and again it becomes a performance issue because I would not be able to deliver".

- 6.3.10 Mr Masango stated during a consultation on 21 June 2017 that *"those things happened when Brion was here"*. Mr Masango further stated that his guys went and presented the cabling contract for ERI to Excops am it got approved and recommended to the BODTC and it was removed at the BODTC by Mr Koko. According to Mr Masango, Mr Molefe did not discuss the cabling contract with him, but Mr Koko did discuss it with him.
- 6.3.11 Mr Koko stated during a consultation on 20 June 2017 that he cannot in his authority as a GE prevent a matter that was presented at the sub-committee of Exco, from going to the BODTC. He further stated that the only person who could do that, is the GCE and that it would have been misconduct on his part to say to a committee of EXCO who supported a project and referred it to the BODTC, to remove a submission. According to Mr Koko, the GCE and CFO intervene when they do not agree with a submission and he was in Mr Molefe's office when Mr Molefe gave instructions to remove this specific submission to Mr Masango.
- 6.3.12 Mr Koko stated that he had the option to go to Excops if he did not agree with a submission, but he also had the option to go to the GCE. He denied that he was part of Excops at the time. Mr Koko stated further that *"the job that was awarded to Siemens had the C&I control instrumentation portion and the electrical portion, so there is two of them. C&I and electrical portion"*. He added by stating that *"now Siemens is a competent electrical C&I company, so it makes sense why Siemens will do that job. Siemens build power stations. They do this job every day. Now Siemens fails to perform and starts impacting the project schedule. Why would you go and appoint another company that has less the competency of Siemens to do better than Siemens. It does not make sense"*. Mr Koko stated also that *"That is ERI. It just not make sense. They have never done this job before. The company that was doing this job before is Siemens that is competent, has failed to perform. Now you go and get somebody that has never done it before. These people report to me, ERI reports to me. So I am the executive in charge here. It is within my authority to say can I deliver or not"*.
- 6.3.13 Mr Koko further stated that *"there is two parts of this contract. It is the electrical port which ERI can do, because it has been doing. And then there is the C&I part which we have awarded ABB R2 billion contract on. Give it to it, it is their competence. Perfect sense. Now you are*



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taking it from Siemens that is very competent, you have got a R2 billion contract with ABB that it is in their scope, you are not giving it to the natural home, you are giving it to somebody that has never done it. Something is not right. Something is horribly wrong".

- 6.3.14 Mr Koko stated that he could recall the meeting he and Mr Masango had with the GCE. The GCE said to Mr Masango that he is not making sense and that he must *"take this thing off the agenda"*. The GCE listened to both of them and then made a ruling in the matter that the submission must be removed.
- 6.3.15 Mr Mtshali stated during a consultation held on 8 June 2017 that Siemens was appointed to do work on Kusile Unit 1, but their contract was cancelled due to poor performance. ERI was appointed and requested to conclude the remaining scope of work on Unit 1 and ERI did not have a contract with Eskom to provide services for the Kusile Units 1-6. A Kusile Tender Committee submission (Mandate to Negotiate and conclude a contract with ERI for Cabling for Units 2-6) was presented to Excops in turn to be submitted for final approval by the BODTC. A decision was made from a risk management and cost perspective that ERI should only be awarded Unit 2 and thereafter be considered for Units 3-6 if successfully completed. The submission to the Excops was retracted for purposes of compiling a new submission (Mandate to Negotiate and conclude a contract with ERI for Cabling for Units 2 and 3 only).
- 6.3.16 Mr Mtshali submitted a motivation to the Kusile Tender Committee for the utilization of ERI on Units 2 and 3. The contract awarded to ERI for Units 2 and 3 contained scope for power/electrical cabling. ABB was awarded a contract for Unit 2 relating to control and instrumentation services with the scope of work to include control cabling and trunking.
- 6.3.17 Mr Rakgolela stated during a consultation on 12 June 2017 that he was aware of discussions relating to ERI being approached and given a contract for the cabling at Unit 2 prior to him leaving Kusile. Initially this contract was awarded to Siemens who was a non-performer and he could attest to that. Mr Rakgolela however left Kusile and was not aware of a decisions made regarding the cabling contract.
- 6.3.18 Ms Noah stated during a consultation on 12 June 2017 that she could recall that there was a cabling contract which was recommended to be awarded to ERI. The Excops team recommended it to the BODTC for approval. At the time, she chaired the Excops meetings. Ms Noah recalled that 1 (one) or 2(two) submissions were withdrawn at BODTC level or



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before it could be tabled. Ms Noah stated that she usually prepared a summary of all the submissions that were going to be discussed at BODTC, provided an outline of what the submission was about, what was said at Excops and what the final recommendation was. She confirmed that a submission could be removed from BODTC or from Excops, should there be additional information that was not available at the time of compiling and issuing the submission. Her understanding of how the secretariat works was that, when they compile the agenda for Excops, the agenda for BODTC was compiled simultaneously. The items that were going to the BODTC would be amended if there were any changes. Ms Noah indicated that submissions not supported, actually go to the BODTC so that Excops can inform the BODTC of submissions not supported and the reasons for same for the BODTC to take note.

- 6.3.19 Mr Pepler advised during a consultation held on 27 June 2017 that, he heard the submission and strategy for Kusile Units 2-6 to have been submitted by Excops to the BODTC, for approval to award to ERI, was removed from the BODTC agenda the night before BODTC meeting. Mr Pepler was not certain, but indicated that he might have been informed of the removal of the submission by either Ms Nyoka or Mr Naidoo who heard that the instruction to remove came from Mr Koko. He was unable to recall the reason why the submission was removed from the BODTC, but recalled hearing that ERI did not have the capacity to complete the works on Units 2-6.
- 6.3.20 Mr Pepler stated during a consultation held on 27 June 2017 that ABB was awarded a contract for C&I System works, but he was not involved in or part of the decision making. The trunk cabling was included in the power and auxiliary cabling works for ERI. According to Mr Pepler, ABB is currently busy with the trunk cabling on Kusile Unit 2.
- 6.3.21 Ms Nyoka stated during a consultation held on 27 June 2017 that she was called to a meeting on Saturday, 16 January 2016 by Mr Sithole. The meeting related to Siemens and problems experienced with the cabling contract. During this meeting, an agreement was reached between Eskom and Siemens to de-scope the works.
- 6.3.22 It was further decided during the same meeting to approach ERI and establish whether they had capability to perform the cabling work, as de-scoped from Siemens. A strategy was

completed and presented to Excops to go to the BODTC on 13 April 2016 which included the full scope of Siemens for Units 1-6 power and trunk cabling.

- 6.3.23 On 13 April 2016, before presenting to the BODTC, Ms Nyoka received a call from Mr Sithole advising her to return to Kusile and not to attend the BODTC. Mr Sithole advised her that a decision not to proceed with presentation on ERI was made by Mr Koko. It was unknown at the time whether ERI could deliver on all the work, being Units 2-6 and that the full scope of work was not to be allocated to ERI and that only the power cabling was to be allocated to ERI on Unit 2.
- 6.3.24 The discussions and decisions made were not converted into writing. ERI was to provide a written commitment that they were able and capable of doing the work.
- 6.3.25 Nyoka stated that she found it strange that Mr Masango, as the GE: Capital, was not consulted or had no knowledge regarding the decisions made. Mr Sithole reported to Mr Masango and he informed Mr Masango of the decision taken by Mr Koko. The submission to Excops was rescinded and a new strategy was compiled to include the scope of work for ERI and ABB for Unit 2 only.
- 6.3.26 Mr Sebola acknowledged during a consultation held on 7 June 2017 that the submissions for the Capital Programmes comes through his office and in turn it is then presented to the tender committees. Mr Sebola explained that one might need to negotiate with ERI and therefor a submission was made for ERI to do trunk cabling. The submission was presented to Excops procurement. From Excops it was going to the BODTC, but that specific submission did not go to BODTC. According to him the submission was approved at Excops level and placed on the agenda for the BODTC. The submission, however, was not presented to the BODTC.
- 6.3.27 Mr Koko was part of the BODTC and during the meeting he came out and approached Mr Sebola where he raised concerns regarding the capability of ERI to do the work, especially the trunk cabling. Mr Koko said that the submission must not be tabled at the BODTC for discussion. Mr Koko did not indicate that ABB should be considered for the work, although ABB was doing C&I work, an established contractor on site and got the skills and the competencies.



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Appointment of ERI

6.3.28 We sourced procurement and project related documentation from Mr Msthalu, Ms Nyoka and Mr Pepler.

6.3.29 Submission Document: 9 March 2016 and 13 April 2016

a) According to a "Submission Document" addressed to the Excops dated 9 March 2016 and to the BODTC dated 13 April 2016, the following salient detail was noted (see Exhibit 3):

- On 6 April 2011, the BODTC approved a contract to be placed with Siemens Limited ("Siemens") for the electrical and auxiliary power construction for Kusile at a contract value of R1 157 132 399.24 excluding VAT over a period of 7 (seven) years. The submission reflected that: *"The current contract with Siemens for Kusile electrical has experienced a number of challenges with regard to meeting their contractual obligation i.e. schedule delays in terms of supporting synchronisation dates for Kusile Power Station Project, cost challenges in terms of BOQ rates tendered, and resource constraints in terms of cable installation"*.
- A meeting was held on 16 January 2016 which resulted in Siemens officially requesting that their current contractual obligations be reduced (de-scoped) from 6 units to 1 unit.
- Approval was sought to implement the contracting and procurement strategy for the electrical and auxiliary power construction for Kusile which is to utilise ERI at an estimated value of R1 165 482 271.00 excluding VAT; and
- Approval was sought to negotiate and conclude a contract with ERI.

b) The submission was signed by the following individuals:

- Mr Masango as GE: Group Capital on 23 March 2016;
- Mr Le Roux, GM: Project Sourcing: Group Technology and Commercial on 18 March 2016; and
- Mr Mabelane, Acting CPO on 24 March 2016.



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6.3.30 Generic Contract Strategy document: 9 March 2016 and 13 April 2017

- a) A submission to the Excops submitted on 9 March 2016 and to the BODTC submitted on 13 April 2016 contained the following detail (see Exhibit 4):
 - *"the Employer's need to limit the envisaged de-scope to Units 3, 4, 5 and 6... so that the Unit 2 related Works remain part of the Works, wholly or partly, until the Employer is in a position to appoint alternative contractors to execute the works related to Unit 2..."*
 - Approval was sought to implement a mandate to negotiate and conclude a contract with ERI for the electrical and auxiliary power construction at Kusile for a period of forty-eight (48) months.
- b) Utilising the services of ERI was motivated in line with the hierarchy of supplier preference being applied, in which internal suppliers must be given preference before considering external suppliers and therefor:
 - ERI, as an internal supplier, was recommended to execute the contract;
 - It has been established at the time that ERI could execute the proposed project;
 - ERI had confirmed their capability, capacity and readiness to execute the project; and
 - Kusile Execution Team ("KET") had performed a preliminary assessment on ERI and they concluded that ERI could execute the project.
- c) The submission was signed by the following individuals:
 - Mr Masango the GE: Group Capital on 23 March 2016;
 - Mr Le Roux, GM: Project Sourcing: Group Technology and Commercial on 18 March 2016; and
 - Mr Mabelane, Acting CPO on 24 March 2016.

6.3.31 Submission Document: 25 July 2016

- a) An executive summary was submitted to Excops on 25 July 2016 and contained the following remarks regarding the BODTC (see **Exhibit 5**).

"To rescind the recommendation made by Excops on 9 March 2016 for the procurement and contracting strategy and a mandate to negotiate and conclude a contract for the electrical and auxiliary power construction at Kusile".

"On 9 March 2016 Excops supported the procurement and contracting strategy including a mandate to negotiate and conclude a contract for the electrical and auxiliary power construction for the Kusile (P20A) to be presented to BODTC"

"On 13 April 2016 the submission was withdrawn from the Board Tender Committee (BTC) due to capacity risks associated with a scope of this magnitude. A complete new strategy has been formulated, i.e. that Rotek be contracted for Unit 2 only in order for them to establish themselves on site to successfully execute the Unit 2 works. This new strategy falls within the adjudication of the Capex R50M-R300M Procurement Tender Committee."

- b) The submission was signed by the following individuals:
- Mr Masango as GE: Group Capital on 4 July 2016;
 - Mr Esterhuyzen obo Mr Le Roux, GM: Project Sourcing: Group Commercial on 1 July 2016; and
 - Mr Mabelane, CPO on 10 July 2016.

6.3.32 Submission document: 25 July 2016 and 6 August 2016

- a) An executive summary submitted to the Excops on 25 July 2016 and to the BODTC on 16 August 2016 was sourced regarding the modification of contract 4600056682 with ABB (see **Exhibit 6**). The submission contained *inter alia* the following detail:
- The 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 to Siemens experienced many challenges with regards to Siemens meeting contractual obligations, i.e. resource constraints in terms of cable installation.



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- To reduce the risk to Eskom, 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.

6.3.33 Minutes of Excops: 29 July 2016

- a) The minutes of the Excops on 29 July 2016 contained *inter alia* the following detail pertaining to the contract for the electrical and auxiliary power construction (see **Exhibit 7**):
 - Group Capital – Rescind the recommendation of the procurement and contracting strategy and a mandate to negotiate and conclude a contract for the electrical and auxiliary power construction for the Kusile (P20A) by Excops.
 - The submission was tabled for approval, detail of which was included in the meeting pack.
 - Excops resolved that the following was approved:
 - To rescind the recommendation made by Excops on 9 March 2016 to negotiate and conclude a contract for the electrical and auxiliary power construction for the Kusile (P20A).

6.3.34 Submission Document: 14 October 2016

- a) A submission to the Capex R50M/R300M Procurement Tender Committee on 14 October 2016 contained the following detail pertaining to ERI (see **Exhibit 8**):
 - On 9 March 2016 Excops supported the procurement and contracting strategy including a mandate to negotiate and conclude a contract for the electrical and auxiliary power construction for Units 2 to 6 to be presented to BODTC, as follows:
 - To implement the contracting and procurement strategy to utilise ERI for the services; and
 - To negotiate and conclude a contract with ERI for a period of forty-eight (48) months.



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- On 29 July 2016, the Capex R50M-R300M PTC approved a mandate to negotiate and conclude a contract for the electrical and auxiliary power construction for Unit 2 to ERI. It was resolved that:
 - A contract be concluded with ERI; and
 - The contract be for a period of 24 (twenty-four) months with a contract value not exceeding R243 957 836.60 excluding VAT.
- b) Negotiations were held on 6 September 2016 and the outcome of the negotiations was outside of the ambit of the approved mandate due to the underestimation of the contract value. A revised mandate was requested to negotiate and conclude a contract with ERI for the electrical and auxiliary power construction for Unit 2 at Kusile (P20A) due to under estimation and emergency order being placed in September 2016. The contract would be for a total contract value not exceeding R259 523 918.87 excluding VAT and for a period of 5 (five) months with the anticipated commencement in November 2016. A decision was taken by management to contract with ERI to execute the works remaining on Unit 2 after 14 September 2016.
- c) The submission was signed by the following individuals:
 - Mr Sithole, Project Director: Kusile on 6 October 2016; and
 - On behalf of Mr Esterhuyzen, SM Commercial: Project Sourcing on 6 October 2016.

6.3.35 Mandate to negotiate – no prior tendering/sole source

- a) A mandate to negotiate was submitted to the Capex R50M-R300M Procurement Tender Committee dated 14 October 2016 reflecting the following (see **Exhibit 9**): *"A revised mandate was requested to negotiate and conclude a contract with ERI not exceeding the total contract value of R259 523 918.87 excluding VAT for the electrical and auxiliary power construction for Unit 2."*
- b) The mandate to negotiate was signed by the following individuals on 6 October 2016:
 - Mr Sithole, Project Director: Kusile;
 - On behalf of Ms Nyoka, Senior Contracts Manager: Kusile;
 - Mr Jingoo, Procurement Practitioner: Kusile; and



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- Mr Pepler, Site Procurement Manager: Kusile.

6.3.36 Minutes of Special Capex R300m Tender Committee: 20 October 2016

- a) According to the minutes a revised mandate was requested to negotiate and conclude a contract with ERI for the electrical and auxiliary power construction for Unit 2 and common plant. The minutes detailed *inter alia* the following (see **Exhibit 10**):
 - A submission was tabled by Kusile dated 14 October 2016 that was considered and discussed;
 - Negotiations were held on 6 September with the outcome being outside the ambit of the approved mandate; and
 - Work stoppages resulted from sub-contractors of Siemens.
- b) The Capex R300M Tender Committee resolved that a revised mandate was approved to negotiate and conclude a contract with ERI for the electrical and auxiliary power construction for Unit 2 and common plant at Kusile at a contract value not exceeding R247 165 637.02 excluding VAT due to underestimation and the emergency order being placed in September 2016.

6.3.37 Engineering and Construction Contract: Eskom and ERI

- a) A contract (4600061585) was entered between Eskom and ERI for Kusile Unit 2 with a total contract price of R247 165 637.02 excluding VAT, dated 7 November 2016 and signed by the following individuals (see **Exhibit 11**):
 - Mr Sithole, Project Director: Kusile; and
 - Mr Zulu, ERI Product Group Manager.

6.3.38 NEC3 Engineering & Construction Contract: Eskom and ERI

- a) A NEC3 Engineering and Construction Contract was entered between Eskom and ERI with contract number 4600061585 for Kusile Unit 2 with a total contract price of R247 165 637.02 excluding VAT, signed by the following individuals (see **Exhibit 12**):
 - Mr Sithole, Project Director: Kusile on 14 December 2016; and
 - Mr Zulu, ERI Product Group Manager on 11 January 2017.



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Appointment of ABB

6.3.39 Agreement between Eskom and ABB

- a) An agreement was entered into and signed on 29 April 2015 between Eskom and ABB during 2015 for the control and instrumentation ("C&I") works at Kusile for Units 1-6 with a contract value of R1 180 425 513.70 (see **Exhibit 13**).

6.3.40 Submission Document: 25 July 2016

- a) A submission (Executive Summary) to Excops dated 25 July 2016 and to the BODTC submitted regarding the modification of contract 4600056682 with ABB contained *inter alia* the following detail (see **Exhibit 6**):
 - To modify the contract for the design, manufacture, supply, installation, commissioning and testing C&I system for Units 1-6 at Kusile; and
 - To increase the contract value by R550 044 229.42 from R2 214 056 184.34 to R2 764 100 413.76.
- b) 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 as follows:
 - Place a contract with ABB for the C&I systems for Units 1-6;
 - To the value of R2 214 056 184.34 excluding VAT and contingency; and
 - For a period of 61 months, commencing on 18 March 2015 and ending 8 March 2020.
- c) The cabling work (power cable and C&I trunk cable) for Kusile was placed in a separate package and was contracted separately to Siemens. This contract experienced many challenges with regards to Siemens not meeting its contractual obligations, i.e. resource constraints in terms of cable installation. To reduce the risk to Eskom, 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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d) The submission was signed by the following individuals:

- Mr Masango as GE: Group Capital on 14 July 2016;
- Mr Le Roux, GM: Project Sourcing: Group Commercial on 14 July 2016; and
- Mr Mabelane, CPO on 15 July 2016.

6.3.41 Mandate to Negotiate – Modification: 25 July 2016

a) A mandate to negotiate was submitted to the Excops dated 25 July 2016 and to the BODTC dated 16 August 2016 reflecting the following (see **Exhibit 14**):

- A recommendation that the existing contract 4600056682 with ABB for C&I Systems for Units 1-6 be modified (Modification 1).

b) The reasons for the modification (C&I Trunk Cable additional scope) was provided as follows:

- The C&I scope of work excluded the procurement and installation of trunk cable from Distribution Control System (DCS) as this work was performed by another contractor.
- The contractor performing the installation of the C&I trunk cable had reached an agreement with Eskom to de-scope the contract of this requirement.
- The trunk cable remains a critical link between the field and DCS and therefore had to be installed.

c) The Mandate was signed by the following individuals:

- Mr Masango as GE: Group Capital on 14 July 2016;
- Mr Le Roux as GM: Project Sourcing: Group Commercial on 14 July 2016; and
- Mr Mabelane as CPO on 15 July 2016.

6.3.42 Extract from Excops Minutes 29 July 2016

a) An extract from the Excops meeting on 29 July 2016 resolved that (see **Exhibit 15**):

- The contract with ABB be modified for the design, manufacture, supply, installation, commissioning and testing C&I System for Units 1-6 at Kusile; and
- The contract and contingency values be increased.



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6.3.43 Minutes of Excops Meeting 2 August 2016

- a) The minutes of the Excops meeting held on 2 August 2016 contained the following detail pertaining to the contract for ABB for C&I System for Units 1-6 (see **Exhibit 16**):
 - Group Capital – Modification 1 of contract 4600056682 with ABB for C&I System for Units 1-6: The submission was withdrawn from the agenda as it was already adjudicated on 29 July 2016.

6.3.44 Extract from BODTC Minutes 16 August 2016

- a) An extract from the BODTC meeting on 16 August 2016 reflects that it approved the submission by the Excops (see **Exhibit 17**).

6.3.45 Kusile Variation: 21 October 2016

- a) A Kusile variation dated 21 October 2016 signed by Ms Seane reflected that ABB was instructed to carry out the Unit 2 trunk cable works. The scope of the variation included 120km supply of Unit 2 trunk cabling and complete installation of 320km Unit 2 trunk cabling and the accepted amount was R300 640 654.97 (see **Exhibit 18**).

Allegation 3.2

- 6.3.46 During a consultation with Mr Pepler on 27 June 2017 he stated that he is a member of the Kusile procurement tender committee and not a member of Excops. He explained that there are various procurement tender committees at Kusile. According to Mr Pepler the procurement for services from WBHO was administered by buyers at Head Office in Megawatt Park. The works related to Package P23A: combustion waste terrace construction (Ash Dump). WBHO was awarded the Phase 1 contract for the combustion waste terrace and a submission was presented to Excops and BODTC in request for a modification to award Phase 2 to WBHO. The decision made to request approval for the modification was based on business reasons according to Mr Pepler. He was of the opinion that there was no foul play in the decisions made and removal of the submission from the BODTC, as there is a NT Instruction that Eskom must go on open tender.

- 6.3.47 Mr Naidoo stated during a consultation held on 27 June 2017, that Phase 1 of the combustion waste terrace construction was issued on open tender and awarded to WBHO. Delays were experienced within Phase 1 and Kusile was pressed to commence with the works on Phase



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2. It was decided that the Phase 1 contract with WBHO be modified to include the works on Phase 2 to also be awarded to WBHO for the following reasons:

- Cost effectiveness;
- Timeline issues; and
- Stability.

6.3.48 The submission was presented to Excops and place on the agenda for approval by the BODTC. There were different views on the motivation for modification and the submission was withdrawn from the agenda before it could be presented. According to Mr Naidoo, the submission to be presented to the BODTC was withdrawn by Mr Koko. Mr Naidoo advised that the following comments were hearsay as this is what he heard regarding the matter:

- There were discussions the morning involving Mr Koko, Mr Masango and Ms Nyoka before the BODTC meeting.
- There were strategy differences between Mr Masango and Mr Koko.
- Mr Koko and Mr Masango approached Mr Molefe with their differences.
- Mr Molefe made the decision that, based on the differences between the executives and no decision being reached, the works be issued on open tender. Mr Naidoo stated that Eskom was busy with preparations to issue the Phase 2 works on open tender.

6.3.49 Ms Nyoka stated during a consultation held on 27 June 2017 that she presented the strategy and submission of this project to the BODTC together with various others. On the day of the BODTC meeting, Ms Nyoka presented one item and was awaiting to present in terms of WBHO. She was accompanied by Mr Sebola, Mr Naidoo and Mr Sithole. According to her, she went into the BODTC meeting and had a discussion with Ms Noah, Mr Koko, Mr Hlakudi and Mr Sebola. Mr Koko said the submission on agenda should be removed and Ms Noah enquired why Mr Koko would undermine the decisions by Excops. The outcome of the discussion was that the submission for WBHO was not to be presented to the BODTC. Ms Nyoka ended up not presenting the item for WBHO to the BODTC.

6.3.50 The submission for WBHO that should have been presented to the BODTC contained a request for modification to extend the scope for WBHO to do Phase 2. It was decided that the scope of work should be issued on open tender according to Ms Nyoka. According to Ms



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Nyoka the decision to remove the submission from the BODTC agenda was made by Mr Koko. Ms Nyoka indicated that the decision made was not wrong or irregular the market should be tested, but indicated that the discussions should have taken place and decisions made at an executive level and debated prior to concluding. The matter should not have escalated to the BODTC and a decision made on same day as having to present.

- 6.3.51 Mr Koko stated during a consultation held on 20 June 2017 that during the initial presentation to the BODTC no mention was made of a Phase 2. Later the BODTC was approached to request approval to award Phase 2 to the contractor who started Phase 1. Phase 1 was issued on open tender without referring to a Phase 2 of the project and now a request was made to give Phase 2 to the current contractor, without going on open tender.
- 6.3.52 According to Mr Koko, NT would not have approved the decision to modify the existing contract with WBHO to include Phase 2. Mr Koko had discussions with Mr Masango regarding the submission to the BODTC as well as the modification to extend the contract with WBHO to include Phase 2. The default strategy for the Phase 2 would be to issue on open tender.
- 6.3.53 According to Mr Koko, the decision to remove the submission from the BODTC agenda was based on a discussion between Mr Koko and Mr Masango in the presence of Mr Molefe who instructed the BODTC submission be removed. He stated that these things happened around August/October 2016. He is of the opinion that Phase 1 was depending on Phase 2 to complete the ash dam project and he stated that *"Eskom's default position is not a sole source, which is what they were trying to do. You have to motivate why in this case you kept quiet about the second phase"*.
- 6.3.54 Ms Noah confirmed during a consultation held on 12 June 2017 that the concerns raised by Mr Koko regarding Phase 2 related to NT and the fact that NT would also recommend an open tender process. According to Ms Noah, she advised Mr Koko that management should approach Excops with discussions on any concerns. She further advised Mr Koko that he cannot just remove a submission and at least should inform her of the intention. Mr Koko allegedly replied by stating that *"you guys at EXCOPS don't apply your minds, you know you should have seen that National Treasury is not going to support it"* and Ms Noah according to her, replied by saying to Mr Koko that he should have approached Excops. Ms Noah



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advised that Mr Koko should actually have engaged the GE: Group Capital with the concerns and the fact that NT may question the decision. She recalled that Mr Sebola and Ms Nyoka was present with the discussions.

6.3.55 Mr Masango stated in a consultation held on 21 June 2017 that *"Koko guy does not go and sit at Excops where the recommendation gets made but he goes to the Board tender committee and remove this submission, it is not acceptable, I told Brian I said it is not acceptable"*. According to Mr Masango, Mr Molefe told Mr Koko to go and sit at Excops and give his views so that if these submissions will not stand the test, then they get rejected there.

6.3.56 Mr Masango confirmed that there was a meeting between Mr Koko, Mr Molefe and himself. He said *"Brian did raise an issue say you know what Treasury might raise issues but I've said let them raise these issues. Because that is what Koko was saying, he was saying no Treasury would not allow this. I said but it's okay"*. According to Mr Masango, Mr Koko did not remove the submissions as it was already removed. He stated further that *"ja, it was already removed. And I never – I kept quiet, I never raised it when it was removed, I decided to keep quiet"*.

6.3.57 On a question whether allegation 3 in the whistle blower's report is factually incorrect as it referred to Mr Koko in his capacity as the Interim GCE, Mr Masango stated that: *"no no but you must – my view is that you must interpret it within the context you understand. It for example I've been working for Eskom as a group executive or as a project director now on the group executive, it is your duty to pick up the trend and that is the trend that you must pick up so say you know what this trend in actual fact it did not start here but this trend started here"*.

6.3.58 Mr Sebola stated during a consultation held on 7 June 2017 that he was aware of the submission for WBHO and was part of the team in presenting the submission to Excops. The submission was signed by Mr Sithole and Mrs Noah was the chairperson of the Excops. Mr Sebola indicated that it was not unusual for a GCE to raise concerns regarding a submission or requesting that the team re-think the matter before re-submitting to Excops. Mr Sebola indicated that the concerns of Mr Koko on the submission related to non-compliance with NT Instructions, as NT was enforcing compliance with competitive bidding. Mr Koko was not



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in favour of the mandate to negotiate and conclude a contract with WBHO, but rather go out on competitive bidding.

6.3.59 Agenda for Excops Meeting: 19/24 May 2016

- a) An Excops agenda for the dates 19 May 2016 and 24 May 2016 reflects the agenda item for Group Capital (Item 3.1) for modification number 2 on contract 4600042693 with WBHO for the combustion waste terrace construction (P23A) for Kusile Power Station Project (see **Exhibit 19**).

6.3.60 Minutes of Excops Meeting: 24 May 2016

- a) The minutes of the Excops on 24 May 2016 contained the following detail pertaining to WBHO (see **Exhibit 20**):
 - Condonation – Combustion Waste Terrace Construction Ash Dams at Kusile;
 - The condonation was tabled for consideration and recommendation to the BODTC with the following highlighted:
 - The procurement policy and procedure for combustion waste terrace at Kusile was breached to the extent that management was unable to compensate the contractor for work done;
 - The option of demobilising the contractor would have been counter-productive and expensive for Eskom;
 - Eskom did not suffer financial loss due to the breach; and
 - The contractor would be taken through a robust training intervention as part of a corrective measure.
 - Modification number 2 on contract number 4600042693 with WBHO for the combustion waste terrace construction (P23A). The submission was withdrawn from the agenda.

6.3.61 Financial evaluation: 3 June 2016

- a) A modification report was drafted for attention of the DE: Group Capital, signed by the Senior Manager: Business Analytics and dated 3 June 2016. It contained the following regarding the request for modification to increase monetary values and extension of the contract period with WBHO (see **Exhibit 21**):



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- The review was based on a submission to the BODTC on 9 June 2016, quantity surveying reports, existing contract with WBHO and WBHO invoices;
- Notwithstanding the fact that the modification amount could be verified, there were concerns about the following:
 - If the modification was approved, it would result in the total approved modifications being 256% more than the original amount of the tender; and
 - There was no evidence to prove that the awarding of Phase 2 to WBHO would be the most economical option as this was never tested in the market.
- Based on the information provided and the work described, it was 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.

6.3.62 Submission document: 25 July 2016 and 16 August 2016

- a) An executive summary as prepared as a submission to the Excops on 25 July 2016 and to the BODTC on 16 August 2016 regarding the modification of contract 4600042693 with WBHO and it contained inter alia the following detail (see Exhibit 6):
 - Modification 2: To modify the contract number 4600042693 with WBHO for the combustion waste terrace construction (P23A) at Kusile;
 - To increase the contract value by R1 077 930 111.77 excluding VAT22 from R1 280 394 254.02 to R2 358 324 365.80 excluding VAT; and
 - To extend the contract by 33 (thirty-three) months from 60 (sixty) months to 93 (ninety-three) months.
- b) The reasons for modification 2 was given as follows:
 - Re-measurement Phase 1: Eskom and WBHO engaged in a re-measure exercise (Phase 1) for all quantities within the bill of quantities which measurement indicated an increase to the final bill of quantities;
 - Additional scope of work Phase 2: Kusile 60 year ash dump facility was planned to be used for the disposal of ash when Phase 1 reached its capacity;

- A preliminary assessment of the status of Kusile 60 year dump showed that a delay would compromise Kusile;
 - To minimise risk to Eskom and Kusile, it was decided to implement Phase 2 of the ash dump;
 - Benefits to Eskom – The following 4 (four) scenarios on commercial contracting strategies were explored:
 - Open Tender;
 - Preferred Supplier;
 - Closed Tender; and
 - Modification to the current contract (WBHO).
 - 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 is similar to the scope of work for Phase 1 and the proposal from WBHO showed that some contractual rates were utilized in providing a quotation for Phase 2;
 - Construction risks would be minimized as WBHO is familiar with the work and site requirements;
 - WBHO has demonstrated capability in executing the Phase 2 works;
 - WBHO is fully established on site at Kusile and there would be scheduled savings (6 months) and cost savings (approximately R60 million);
 - Demobilising WBHO at this point would create stability challenges at Kusile; and
 - The same labour force would be utilised.
- c) The submission was signed by the following individuals:
- Mr Masango GE: Group Capital on 19 July 2016;
 - Mr Le Roux, GM: Project Sourcing: Group Commercial (did not sign); and
 - Mr Mabelane, CPO on 19 July 2016.



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6.3.63 Mandate to Negotiate – Modification: 25 July 2016

- a) A mandate to negotiate for a modification was submitted to the Excops dated 25 July 2016 and to the BODTC dated 16 August 2016 reflecting *inter alia* the following (see **Exhibit 22**):
 - A recommendation that the existing contract 4600042693 with WBHO for the combustion waste terrace construction at Kusile be modified (Modification 2).
- b) The recommendation for the modification was provided as follows:
 - To increase the contract value by R1 077 930 111.77 excluding VAT from R1 280 394 254.02 to R2 358 324 365.80 excluding VAT; and
 - To extend the contract by 33 (thirty-three) months from 60 (sixty) months to 93 (ninety-three) months.
- c) The Mandate was signed by the following individuals:
 - Mr Masango, Group Executive: Group Capital;
 - Mr Le Roux, General Manager: Project Sourcing: Group Commercial (did not sign); and
 - Mr Mabelane, Chief Procurement Officer.

6.3.64 Submission Document: 16 August 2016

- a) An executive summary was prepared for the Excops on 29 July 2016 and to the BODTC on 16 August 2016 regarding the modification of contract 4600042693 with WBHO contained the following detail (see **Exhibit 23**):
 - Modification 2: To modify the contract number 4600042693 with WBHO for the combustion waste terrace construction (P23A) at Kusile subject to NT approval as stipulated in the NT Instruction Note No. 3 (2016-2017; and
 - To increase the contract value by R213 972 010.48 excluding VAT from R1 280 394 254.02 to R1 494 366 263.50 excluding VAT.
- b) The submission was signed by the following individuals:
 - Mr Masango as GE: Group Capital on 18 August 2016;
 - Mr Le Roux, GM: Project Sourcing: Group Commercial 17 August 2016; and
 - Mr Mabelane, CPO on 6 September 2016.



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6.3.65 Minutes of Excops Meeting: 29 July 2016

- a) The minutes of the Excops meeting held on 29 July 2016 contained the following detail *inter alia* pertaining to the WBHO (see **Exhibit 24**):
- Modification number 2 on contract number 4600042693 with WBHO for the combustion waste terrace construction (P23A) for Kusile;
 - The submission was tabled for consideration and recommendation to the BODTC with the following highlighted:
 - That the team explored the options of closed tender, preferred supplier, closed tender and modification of the current contract with the current supplier and need in principle support to either modify the contract or follow the sole source process; and
 - A detailed discussion ensued on the matter and the team advised that they preferred modification process for Phase 1 of the project and single source for Phase 2 of the project.
 - The Excops resolved that the submission as tabled by the team was not approved. The Excops further resolved that the submission should be separated into two (2) as follows:
 - Modification document for Phase 1 of the project;
 - A single source submission for Phase 2 of the project;
 - A legal view on the issue must be sought; and
 - The team must revert to the committee at a special meeting in terms of sub-contracting the work for Phase 2 of the project to ERI as part of the SD&L requirements.

6.3.66 Mandate to Negotiate: 29 July 2016

- a) A mandate to negotiate a modification was submitted to the Excops dated 29 July 2016 and to the BODTC dated 16 August 2016 reflecting *inter alia* the following (see **Exhibit 25**):
- A recommendation that the existing contract 4600042693 with WBHO for the combustion waste terrace construction at Kusile be modified subject to NT



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approval as the value of the modification exceeds 20% of the original contract value.

- b) The recommendation for the modification was to increase the contract value by R213 972 010.48 excluding VAT from R1 280 394 254.02 to R1 494 366 263.50 excluding VAT.
- c) The Mandate was signed by the following individuals:
 - Mr Masango, Group Executive: Group Capital;
 - Mr Le Roux, General Manager: Project Sourcing: Group Commercial (did not sign); and
 - Mr Mabelane, Chief Procurement Officer.

6.3.67 Submission Document: 29 July 2016 and 24 October 2016

- a) An executive summary was submitted to the Excops on 29 July 2016 and to the BODTC on 24 October 2016 regarding a mandate to negotiate and conclude a contract with WBHO contained *inter alia* the following detail (see **Exhibit 26**):
 - To negotiate and conclude a contract on a single source basis with WBHO for the combustion waste terrace construction (Phase 2), subject to NT approval;
 - For an amount not exceeding R1 043 663 114.27 excluding VAT over a period of 44 (forty-four) months;
 - In addition, the following be approved:
 - To sub-contract 40% of the works to ERI;
 - A contingency amount of R104 366 311.44, being 10% of the contract value; and
 - The total value for approval not exceeding R1 148 029 425.70 excluding VAT.
- b) The submission was signed by the following individuals:
 - Mr Masango as GE: Group Capital on 2 September 2016;
 - Mr Le Roux, GM: Project Sourcing: Group Commercial 29 August 2016; and
 - Mr Mabelane, CPO on 5 September 2016.



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6.3.68 Mandate to Negotiate: 29 July 2016 and 24 October 2016

- a) A mandate to negotiate was submitted to the Excops dated 29 July 2016 and to the BODTC dated 24 October 2016 reflecting *inter alia* the following (see **Exhibit 27**):
 - A recommendation to request a mandate to negotiate and conclude a contract with WBHO for the combustion waste terrace construction (Phase 2) at Kusile for an amount not exceeding R1 043 663 114.27 excluding VAT for a period of 44 (forty-four) months;
 - To sub-contract 40% of the works to ERI; and
 - That the GE: Group Capital be authorised to take all steps to give effect to the above, including the signing of any agreements, contracts or other related documentation.
- b) The mandate was signed by the following individuals:
 - Mr Masango as GE: Group Capital;
 - Mr Le Roux, GM: Project Sourcing: Group Commercial (did not sign); and
 - Mr Mabelane, CPO.

6.3.69 Minutes of Excops Meeting: 2 August 2016

- a) The minutes of the Excops meeting held on 2 August 2016 contained *inter alia* the following detail pertaining to WBHO (see **Exhibit 28**):
 - Group Capital: Modification 2 of contract 4600042693 with WBHO for the combustion waste terrace construction (P23A) at Kusile;
 - The submission was tabled for approval by the BODTC;
 - The committee was satisfied with the contents of the modification and requested the team to include the phrase "*subject to National treasury regulations*" on the heading; and
 - The team advised that they had received legal advice from legal department.
 - Excops resolved that the following is recommended to the BODC for approval:
 - That the existing contract with WBHO be modified to increase the contract value with R1 077 930 014.00 excluding VAT from R1 280 394 254.00 to R2 358 324 268.00 excluding VAT; and



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- To extend the contract by a further 60 (sixty) months.

6.3.70 BODTC Agenda: 29 September 2016

- a) AODTC agenda for 29 September 2016 reflected that the agenda item was placed for Group Capital (Item 5.13) for a mandate to negotiate and conclude a contract with WBHO for the combustion waste terrace construction (Phase 2) for Kusile at a total value of R1,14 billion (see **Exhibit 29**). The sponsor was reflected as Mr Masango.

6.3.71 E-mail correspondence

- i. According to e-mail correspondence relevant "*BTC Meeting Pack – 29 September 2016*", an e-mail was forwarded by Mr Le Roux to Zininzi Manxiwa, Matabane Monama, Suzanne Daniels, Abram Masango, Edwin Mabelane on 26 September 2016 informing them that:
"Based on the discussions between Abram, Matshela and the GCE, please withdraw item 5.13 on the Kusile Combustion Waste Terrace from the agenda" (see **Exhibit 30**).



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Chapter 7: Allegation 4

7.1 Background

- 7.1.1 It is alleged by the anonymous writer of the whistle blower's report that *"The Interim CEO, uses the Head of Eskom security (General P Martin) to follow up on his instructions and this approach is often used in the military. The General phoned Kusile Project Director, Mr Frans Sithole to follow up on the Interim CEO's instruction"*.

7.2 Applicable policies and procedures

- 7.2.1 In terms of the DOA (240-62072907) compiled by Ms Daniels on 16 January 2017 and authorised by the chairman of the Board on 17 February 2017, the *"GCE shall be entitled to appoint any executives, in addition to EXCO members, to report directly to him/her and to allocate responsibilities to such executives, provided that the appointment of EXCO members and GEs/Des shall be approved by the People and Governance Committee"*.
- 7.2.2 In terms of the DOA (240-62072907) compiled by M Adam on 31 May 2013 and authorised by the chairman of the Board, the *"GCE shall be entitled to appoint any executives, in addition to EXCO members, to report directly to him/her, and to allocate responsibilities to such executives, provided that the appointment of EXCO members and Group Executives/Divisional Executives shall be approved by the People and Governance Committee"*.

7.3 Summary of facts

- 7.3.1 Genl Martins was consulted on 24 April 2017 and stated that he was appointed as a Senior GM in the office of the GCE at Eskom since September 2016. He was responsible for special projects within Eskom and was not appointed within the security portfolio. His role in Eskom is to serve as an international political liaison between Eskom and other countries within which Eskom planned to expand its operations.
- 7.3.2 His principal responsibility includes selling surplus electricity to multinationals, particularly within Africa and he was appointed at the behest of Mr Molefe based on his extensive



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international travel and his many relationships abroad. His role included *inter alia* advising technically skilled individuals about taking nuclear power into Africa.

- 7.3.4 According to Genl Martins allegation 4 (four) as made in the whistle blower's report is "nonsense". He did not see anything "untoward" with the instruction given to him by Mr Koko. He further confirmed that he may use the title as "General" due to a position that he held in the Department of Defence.
- 7.3.5 According to an executive summary prepared for a round robin resolution during July 2016, a request was forwarded for approval by the People & Governance Committee for the appointment of Genl Martins as Senior GM (Special Projects) in Eskom Enterprises. According to this summary, the People & Governance Committee previously approved the organisational position of Senior GM (Special Projects) in Eskom Enterprises. Fusion Consulting was contracted to headhunt a suitable candidate for this newly created position.
- 7.3.6 Genl Martins was identified as the most suitable candidate based on specific criteria including that of a seasoned manager with a track record of effective leadership, strategic planning and implementation in organisations.
- 7.3.7 Mr Molefe supported a request for approval by the People & Governance Committee to approve the position of Senior GM (Special Projects) in Eskom Enterprises with effect from 1 July 2016.
- 7.3.8 It was resolved by the People & Governance Committee to appoint Genl Martins in the position of Senior GM (Special Projects) in Eskom Enterprises and 6 (six) members of the committee supported the appointment including Mr Molefe during September 2016.
- 7.3.9 From the people who were consulted during this investigation, no evidence could be sourced supporting allegation 4.
- 7.3.10 Mr Koko confirmed during a consultation held on 20 June 2017 that he instructed Genl Martins to contact Mr Sithole regarding the removal of individuals at Kusile. He further stated that he did not appoint Genl Martins in the position of Senior GM (Special Projects).
- 7.3.11 Mr Govender stated during a consultation held on 26 April 2017 that he understood the portfolio of Genl Martins to be assisting with private sector participation. According to Mr Govender, Eskom was considering building power lines through Southern Africa. Genl



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Martins consulted with Mr Govender on several occasions in order to ascertain how Mr Govender would proceed with the planned expansions into Southern Africa.

- 7.3.12 Mr Govender further stated that he was of the opinion that Genl Martins was in the process of developing the Southern Africa market for Eskom's expansion. He was of the opinion that Eskom was not being operated like the military based on his observations and interactions on the Exco level and with the GCE.
- 7.3.13 Mr Sithole confirmed during a consultation held on 25 April 2017 that he received a phone call from Genl Martins and he met him later at the College in Johannesburg. Genl Martins conveyed an instruction to him to remove Mr Kambi and Mr Hlakudi from Kusile. According to Mr Sithole, this instruction was given by the GCE.
- 7.3.14 Mr Masango confirmed during a consultation held on 24 April 2017 that Genl Martins informed him about an instruction that he received from the GCE to contact Mr Sithole in connection with the removal of individuals from Kusile. He confirmed a discussion with Genl Martins and even provided an alternative contact number of Mr Sithole to Genl Martins.
- 7.3.15 Mr Ntsokolo stated during a consultation held on 8 June 2017 that Genl Martins was responsible for cross-border sales and he did not take instructions from people directly. He confirmed that Genl Rakau was an Exco member responsible for security issues. Genl Martins worked only in the office of the GCE and reported to the GCE. Mr Ntsokolo stated that *"I would not use the termination "militarisation". I mean we know Brian used to use a lot of military examples in his management style, for instance you know "march" in same direction, "no left turn and"*.
- 7.3.16 Mr T Govender stated during a consultation held on 11 May 2017 that he dealt mostly with Genl Rakau who is responsible for security, providing protection and drivers. He did not perceive any conduct as being militaristic in nature.
- 7.3.17 Genl Rakau stated during a consultation held on 9 June 2017 that he is Head of Security and not Genl Martins. He confirmed that Genl Martins is a Senior GM in the office of the GCE and Genl Martins is responsible for Special Projects.
- 7.3.18 Genl Rakau stated further that Mr Masango informed him that Mr Koko sent Genl Martins to give instructions for certain people to be removed and that did not *"sit"* well with Mr



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Masango. There was a lot of tensions according to Genl Rakau and he asked Mr Masango what is wrong. Genl Rakau tried to intervene so that there could be harmony between the individuals. Mr Masango told Genl Rakau about the matters as reflected in allegation 1 and allegation 2 of the report. Genl Rakau spontaneously said that the whistle blower is *"Abram – when I read these things because this issue of his memorandums – I mean submissions being rejected at the board by Matshela, he told me about it and he said he raised it with Brian while he was still the Group Chief Executive and Brian called him and Matshela. That would have been maybe August/September last year because Brian I think he left in November"*.

- 7.3.19 Genl Rakau stated that his background is from military and military is totally different. He stated that *"if you have got an SGM in the office I think you can task him even ad hoc tasks, that is my belief and it could have been anybody else"*.
- 7.3.20 Genl Rakau mentioned that most of the matters reflected in the whistle blower's report was discussed with Mr Masango during mid-March 2017. He further stated that Mr Masango also spoke to him about his security and it was noted that he has bodyguards. Mr Masango told Genl Rakau that he thinks that Mr Koko has hired people to kill him so he (Mr Masango) is protecting himself by way of the guards. Genl Rakau said he went to Mr Koko regarding allegation 2 and he was told that Mr Masango is not talking the truth.
- 7.3.21 Mr Masango said during a consultation held on 21 June 2017 that there are a lot of treats around him and he confirmed that he spoke to Genl Rakau about same. Mr Masango told Genl Rakau not to do anything about the treats and he indicated that he will deal with it himself.



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Chapter 8: Allegation 5

8.1 Background

- 8.1.1 It is alleged by the anonymous writer of the whistle blower's report that: *"On 15 February 2017, the Interim CEO, Mr Koko suspended Willy Majola (Senior General Manager Engineering and Acting Group Executive Generation). Apparently, Mr Willy Majola has been suspended due to him not verifying information that the interim CEO requested from the junior staff that reports to Mr. Majola"*.

8.2 Applicable policies and procedures

Practice Note on the Management of Occurrences of Trips, Slips, Recurring Partial Load Losses and Fatalities in the Generation Division (Approved on 1 February 2016)

- 8.2.1 According to this Practice Note, the Generation Power Station Management would take full accountability for technical performance of their plants. The Practice Note applied to Generation Group Executives and Management and was applicable from 12 January 2016 after it was approved by Mr Koko on 1 February 2016 addressing the management of unacceptable performance (see **Exhibit 31**).
- 8.2.2 The Practice Note was signed "Noted" by Ms Elsie Pule ("Ms Pule"), HR Generation Business Partner on 1 February 2016.

Practice Note on the Management of Occurrences of Trips, Slips, Recurring Partial Load Losses and Fatalities in the Generation Division (240-109129776)

- 8.2.3 The Practice Note was drafted by BS Ross-Jones, Chief Physicist Asset Performance & Management on 27 March 2017 and authorised by Mr Majola, the Acting Group Executive Generation on 31 March 2017 with an effective date of 1 April 2017 (see **Exhibit 32**).
- 8.2.4 This Practice Note is applicable to all Eskom Generation Executives/Managers in charge of production sites for periods of 100 (one hundred) calendar days or more irrespective of whether they were on site or not at the time of an occurrence.



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- 8.2.5 This Practice Note must be read with Eskom's Disciplinary Code (32-1112) and Procedure (32-1113). In the event of any conflict between the Practice Note and the Eskom's Procedure (32-1113), the Procedure would receive preference.
- 8.2.6 The Practice Note refers to the following Eskom Procedures:
- The disciplinary enquiry;
 - The disciplinary hearing; and
 - The pre-dismissal arbitration.
- 8.2.7 According to the Practice Note, discipline would be applied progressively with due regard to the nature and seriousness of infringement, but would not preclude dismissal for the first infringement. The purpose of the Disciplinary Procedure is to correct behaviour that is unsatisfactory and to encourage expected behaviour.
- 8.2.8 When an occurrence takes place on an Eskom Generation site, an accountable Generation Executive/Manager will accept this Practice Note as fulfilling the requirements of paragraph 8.2.6 as referred to above. He/she will immediately make representation to the Generation Group Executive or his/her delegated official stating reasons why a written warning as contemplated in section 4 of the Disciplinary Code should not be imposed.
- 8.2.9 In the event that a Generation Executive/Manager has been issued with 9 (nine) written warnings as defined above during a financial year and a 10th (tenth) occurrence takes place,, an accountable Generation Executive/Manager will accept this Practice Note as fulfilling the requirements of paragraph 4.2 an 4.5 of the Disciplinary Procedure and will immediately make representation to the Generation Group Executive or his/her delegated official stating reasons why a sanction of suspension without pay for a period of 7 (seven) days, as contemplated in terms of section 3 of the Disciplinary Code, should not be imposed.
- 8.2.10 Where an Executive/Manager is suspended, either in terms of the Practice Note or at the discretion of the GE Generation, for any other reason, then there will be a "cooling off" period of 2 (two) weeks (14 working days) starting from their first day on duty on site following the suspension, in which occurrences would not apply.
- 8.2.11 In the event that a Generation Executive/Manager has been issued with 2 (two) suspensions without pay in a financial year and a 3rd (third) suspension without pay occurs, then an



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accountable Generation Executive/Manager will accept this Practice Note as a formal notice for a pre-dismissal arbitration to be conducted in accordance with the Disciplinary Procedure.

- 8.2.12 In terms of this Practice Note, written warnings and suspensions would be reset to 0 (zero) at the end of each financial year or at any other time at the discretion of the Group Chief Executive or Group Executive Generation.
- 8.2.13 The Practice Note further introduced a credit system that would be used to encourage good behaviour and reward good performance. Specific parameters, when achieved, are reflected in the Practice Note.

Disciplinary procedure (32-1113)

- 8.2.14 According to the disciplinary procedure, no disciplinary action shall be instituted against an employee unless he is afforded a proper opportunity to state his case and to defence himself against any allegations that may be taken into consideration against him (see **Exhibit 33**).
- 8.2.15 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 continued presence on the premises of Eskom might interfere with the disciplinary investigations. 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
 - Possibility of intimidating witnesses.

8.3 Summary of facts

- 8.3.1 We sourced a memorandum "*Developments in Generation*" dated 4 January 2016 addressed to Mr Koko and drafted by Ms Pule. She stated in the memorandum that Mr Mabelane approached her seeking support for the process to card employees based on plant performance leading to the suspension of those involved (see **Exhibit 34**).



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- 8.3.2 As the Acting Group Executive: Human Resources ("HR"), she advised that an existing process could be considered for similar desired outcomes without creating unintended consequences and that the current Disciplinary Code and Procedure was sufficient to meet the needs indicated through the proposed card process.
- 8.3.3 According to Ms Pule, HR was in full support of line management's need to increase manager accountability and to improve performance. Any process that was however punitive in nature, should have been avoided as the need was to correct behaviours and to keep Eskom employees engaged.
- 8.3.4 According to this memorandum, the Disciplinary Code and Procured outlined circumstances under which an employee could be suspended and/or disciplined in the event that there were alleged misconduct against the specific employee. The Disciplinary Code outlined about (thirty five) misconducts and only 4 (four) sanctions. As the process was about correcting unsatisfactory behaviour, the sanctions ranged from:
- Six (6) months written warning;
 - Twelve (12) months final written warning;
 - Suspension without pay (minimum 7 (seven) days and a maximum of 14 (fourteen) days which also served as a disciplinary record for 12 (twelve) months; and
 - Dismissal with notice or summarily dismissal without notice.
- 8.3.5 According to Ms Pule, the above could only be meted out after following a fair disciplinary process in terms of Eskom's disciplinary procedure. Meting out sanctions without following a due process could result in employees challenging the procedure and the substance thereof, which Eskom might not have been able to defend in any tribunal.
- 8.3.6 Prior to 2009, employers could affect any suspension without giving an employee an opportunity to make representations before a decision to suspend was taken. After judgement in the case of *Mogothle versus Premier of the North West Province & Another (2009) 4 BLLR 331 (LC)*, the Labour Court held that employers need to apply the *audi alteram partem* rule, the *doctrine of case law* and the *doctrine of stare decisis* when suspending an employee pending an investigation and/or disciplinary process.



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- 8.3.7 Ms Pule indicated that Eskom reviewed their suspension processes in line with the decision by the Labour Court and developed a practice note that was tested at the Commission for Conciliation Mediation and Arbitration ("CCMA") and the Labour Court and it stood the so-called "test of time". In cases of poor performance, Eskom was guided by the Performance Management process.
- 8.3.8 Ms Pule recommended that:
- *"Instead of developing a Generation Group specific disciplinary process, you apply the current Eskom's disciplinary process as it addresses your concerns on progressive discipline.*
 - *Without trying to undermine your office as the Group Executive, I would like to advice that you reconsider the suspension of Mr van Niekerk by that you lifting the seven (7) days suspension as it is not in line with Eskom's processes.*
 - *In the interim as HR we commit to engage with yourselves on the alignment and the implementation of the process utilising the existing Disciplinary Code and Procedure.*
 - *The General Manager IR will facilitate a process with your office with regard to addressing the conduct of Mr van Niekerk".*
- 8.3.9 According to the Practice Note approved by Mr Koko on 1 February 2016 and referred to *supra*, Ms Pule also took note of the Practice Note on 1 February 2016. The Practice Note deviated from the Eskom Disciplinary Code and Procedure as it introduced a system that *inter alia* replaced a disciplinary inquiry, a disciplinary hearing and the pre-dismissal arbitration process utilised for misconduct/s.
- 8.3.10 We sourced an email dated 14 February 2017 from Mr Majola addressed to Ms Pule wherein he acknowledged receipt of Ms Pule's email also dated 14 February 2017. In the email drafted by Ms Pule, she attached a suspension letter as well as a hearing notification for his attention (see Exhibit 35).
- 8.3.11 The notice to attend a disciplinary hearing, signed by Ms Pule on 14 February 2017, reflected the alleged misconduct of Mr Majola as "Misconduct 2.30 Makes any false statement or representation that relates to or ensues from his/her. It is alleged you provided the Interim Group Chief Executive with incorrect information with regards to the Energy Availability Factor ("EAF") that was subsequently reported to the Eskom Board, the Shareholder and the



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general South African public. This has a potential to tarnish Eskom's reputation and image"
(see **Exhibit 36**)

- 8.3.12 In the letter of intention to suspend dated 14 February 2017, it was stated that allegations came to Eskom's attention that Mr Majola may have committed a serious misconduct or misconducts by amongst others, misled the Interim Group Chief Executive with regards to the report of Eskom's EAF (see **Exhibit 37**)
- 8.3.13 Mr Majola was informed via the letter referred to *supra*, that a decision has been taken to immediately, but temporarily suspend him with pay. Mr Majola was invited to submit written representations within 2 (two) working days of the date of receipt of the letter, as to why the temporary suspension should not be made final.
- 8.3.14 Mr Majola responded in the email dated 14 February 2017 and referred to *supra* that the Interim GCE told him that he was "*suspended without pay for 14 days*". Mr Majola understood that he should not report for work and he was of the opinion that it was not necessary to state why he should not be suspended. In the email, Mr Majola however contradicted himself as he further stated that: "*I must point out he did not say whether I am suspended with pay or not*".
- 8.3.15 It was established that a disciplinary hearing commenced on 16 February 2017 after Mr Majola was charged with an offence of misconduct. It was alleged that he was negligent in his duties in that he failed to exercise due care in ensuring the accuracy of the EAF information provided to the Interim GCE. The information was reported to Eskom's stakeholders and it had a potential to tarnish Eskom's reputation and image.
- 8.3.16 An external presiding officer, advocate Nazeer Cassim SC was appointed by Eskom and he provided his findings as signed 18 February 2017 wherein he summarised the material facts. Eskom called one witness to testify in support of its case, namely Mr Dhiraj Bhimma ("Mr Bhimma"), the General Manager: Production Engineering in the Technology Division of Eskom and relied on a 18-page bundle of documentation (see **Exhibit 38**). Mr Majola testified in support of his case and provided a written closing argument via email dated 18 February 2017 (see **Exhibit 39**).



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- 8.3.17 It was alleged during the hearing of Mr Majola, that Mr Bhimma requested Mr Bhongo Mdunge ("Mr Mdunge") on 3 February 2017 to provide him with the EAF figure for the month of January 2017, which Mr Mdunge provided at 80,71%. Mr Bhimma posted it on the GX whatsapp as the percentage was exceptional and he expected high figures for the specific month.
- 8.3.18 It was further alleged that Mr Koko issued 2 (two) green cards for all F&E Bands and employees in the maintenance department as well as the engineering managers, which cards signified positive performance which had an impact in the overall assessment of employees in the particular department.
- 8.3.19 Mr Majola discovered on 9 February 2017 that the correct EAF figure for January 2017 was 78,5%. Mr Majola informed the presiding officer that the custodian of the correct numbers was Ms Shireen Prins ("Ms Prins") and not Mr Mdunge. Mr Bhimma also confirmed that the figures fall within the responsibility of Ms Prins. Mr Bhimma contacted Mr Mdunge after he obtained the correct figures and Mr Mdunge apologised and assured him that he made an honest mistake.
- 8.3.20 On 9 February 2017, Mr Majola apologised on the whatsapp for having posted Mr Bhimma's incorrect previous message. Mr Majola and Mr Bhimma had a discussion and the latter maintained in his discussions that the 78,5% was nevertheless exceptional and merited recognition. Mr Bhimma considered it appropriate to discuss the incorrect posting of the EAF reading for January 2017 with Mr Koko, which discussion took place on 14 February 2017. Mr Koko was unhappy that wrong figures had been provided and it resulted in the charges being formulated against Mr Majola as Head of the Division.
- 8.3.21 Mr Majola was the most senior person in the Division and it was found that he was responsible to ensure that correct information was made available to Eskom, the Interim GCE and all people responsible for the performance of Eskom. Mr Majola relied on his second in command and according to him, he had no reason to doubt Mr Bhimma's *bona fides*.
- 8.3.22 The presiding officer found that Mr Majola's conduct was inept in not taking aggressive steps to address the publication and dissemination of incorrect information emanating from his department upon ascertaining the correct information. The presiding officer found that Mr



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Majola acted inappropriately and wrongfully. In his view, the appropriate sanction to be considered was a caution and reprimand.

- 8.3.23 According to an email drafted by Mr Bhimma and forwarded to Ms Pule on 15 February 2017, the information as sourced and provided to Mr Koko was discussed. In this email reference was made to the fact that Mr Bhimma only discussed the incorrect information with Mr Koko on 14 February. The email make reference to 14 March which is a clear error as feedback was given on 15 February to Ms Pule (see and the sanction of Mr Majola was dated 24 February 2017 (see **Exhibit 40**).
- 8.3.24 We sourced proof of the Generation Division performance for the 2017 financial year and it confirmed the performance was less than 80% during the relevant period (see **Exhibit 41**).
- 8.3.25 Despite the recommendation of advocate Nazeer Cassim SC relevant to sanction as referred to *supra*, Mr Koko informed Mr Majola per letter dated 24 February 2017 that he decided to impose a harsher sanction of 14 (fourteen) days suspension without pay for the period 15 February 2017 to 6 March 2017 (see **Exhibit 42**).
- 8.3.26 During a consultation with Mr Majola held on 14 June 2017, he confirmed that he is a Senior General Manager in the Generation Group and that Sustainability is the Head Office function within the Generation Group. Sustainability, according to him, deals with performance figures, assurance and the business plan and they are also responsible for the production plan that determines which power station is going to produce on which day and how much. He further confirmed that his reporting line since October/November 2015 is to Mr Koko.
- 8.3.27 Mr Majola explained that the red card, yellow card and green card disciplinary system was implemented in the Generation Group and he confirmed that it applied essentially to power station managers. He described the system as a performance management system where the Generation Group was self-regulating the performance of employees. He explained that after 10 (ten) yellow cards were issued to an employee for specific conduct like for instance when machines trips, a red card would be issued and the employee would be suspended for 7 (seven) days without payment.
- 8.3.28 According to Mr Majola, the arrangement regarding the card system, went further than only the tripping of machines at the power stations. He referred to a matter of Mr Zweli Witbooi



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("Mr Witbooi") who was a senior manager at Duvha power station and was suspended after Mr Koko allegedly also suspended the power station manager. This was, according to Mr Majola, not done in accordance with the card system.

- 8.3.29 Mr Majola mentioned that Mr Witbooi registered a case at the CCMA and that during the conciliation phase, the commissioner informed Eskom that there was no disciplinary process and that the matter was not dealt with in terms of the Eskom disciplinary procedure and that Eskom should reconsider to oppose an application by Mr Witbooi. He mentioned this to Ms Suzanne Daniels ("Ms Daniels") who appointed Ms Winnie Madonsela ("Ms Madonsela") to investigate the matter. Ms Madonsela spoke to Ms Prins from Sustainability who gave her background information regarding the card system and Ms Madonsela was of the opinion that Eskom would not be successful in the CCMA in the matter between Mr Witbooi and Eskom. According to Mr Majola, other employees were suspended after utilising the card system, but it was only Mr Witbooi who decided to approach the CCMA.
- 8.3.30 Mr Majola stated that no-one protested against the card system and that nobody approached him to complain about the card system. He confirmed that it is a rigid process without anybody participating in same and that it is still being utilised in the Generation Group.
- 8.3.31 Mr Majola confirmed during the consultation that Mr Bhimma got the incorrect information from Mr Mdunge. It was also Mr Bhimma who contacted Mr Koko informing him of the incorrect information that was forwarded. According to Mr Majola, Mr Koko phoned informing him that he was suspended for 14 days without pay. Ms Pule joined them on a conference call and Mr Koko informed her that he (Mr Majola) was suspended and that she *"must make it happen"*.
- 8.3.32 According to Mr Majola he received a note from Ms Pule later the same evening requesting him to provide reasons why he should not be suspended. He informed her that Mr Koko has already suspended him for 14 days so he did not know what letter to give to her. Ms Pule responded to Mr Majola and said that *"you have given away your right to suspension you are suspended"*. Mr Majola responded by saying *"fine"*.
- 8.3.33 Mr Majola stated further that an external lawyer was appointed as the chairperson and that a hearing took place where after he was found guilty *"because he said maybe when I*



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realised that the information was wrong I should have called Matshela immediately instead of saying Dhiraj since you are the one who started the whole thing ...". Mr Majola stated that the chairperson gave a warning as the sanction. When a letter was taken to Mr Koko, he refused to sign the warning and issued a letter that "simply says you are suspended for 14 days without pay". Mr Majola indicated that he signed receipt of the letter reflecting the suspension.

- 8.3.34 Mr Majola said that Mr Koko referred to the case of Mr Christo van Niekerk, another senior general manager who was also suspended although the Eskom process was not followed as an example. Mr van Niekerk allegedly went on suspension and returned to work without any problem.
- 8.3.35 According to Mr Majola, Mr Brian Molefe ("Mr Molefe") was aware of the card system and he said that *"I know he has got it and it might not necessarily be procedural but it seems to be working because the load-shedding is not taking place"*.
- 8.3.36 Ms Pule confirmed during a consultation held on 12 June 2017 that Mr Koko contacted her to suspend Mr Majola. She told Mr Koko that Mr Majola must first be informed about an intention to suspend him and she therefore forwarded a letter to Mr Majola informing him of the intention to suspend. They suspended Mr Majola and appointed an independent chairperson where after the matter proceeded.
- 8.3.37 According to Ms Pule she fought hard to ensure that the *"real process"* was followed. She explained that Mr Koko *"came with an innovative process"* which he referred to as red cards, green cards and yellow cards and it was not aligned to Eskom's processes. There was some altercations between Mr Koko and herself and she said that she support punishment and rewards fully, but then they have to follow a process. She confirmed that Mr Majola was responsible for the implementation of the card system on behalf of Mr Koko.
- 8.3.38 Ms Pule stated that at one awards event, Mr Koko got everybody on the stage and then people agreed that the card process worked. She stated that *"so if they exercise the right to be comfortable with the process, because by not challenging a process you are basically accepting the process"*.



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- 8.3.39 Ms Pule explained that when Mr Koko decided to discipline Mr Majola, he had to contact her and she was not going to "*perpetuate that wrong*". According to her, Mr Majola must have felt very conflicted in his own matter as he previously issued the suspension of other employees. She however forwarded an email to Mr Majola regarding his suspension on 14 February 2017 (see **Exhibit 35**).
- 8.3.40 Ms Pule confirmed that people accepted the card process that did away with their rights. According to her, a lot of individuals came to her and criticised the card system, but they failed to challenge the system.
- 8.3.41 Ms Pule also confirmed that Mr Molefe knew about the card system that had a punishment and reward. If the employees did well, they got an opportunity to celebrate and Mr Molefe gave them budget for the celebrations. She recalled that one of the parties was held at Tutuka power station.
- 8.3.42 According to Ms Pule, Mr Molefe and her knew about the card system, but they did not like it although the recipients were happy to comply with the card system.
- 8.3.43 Mr Masango explained during a consultation held on 24 April 2017 that he was informed about the suspension of Mr Majola. He was however only informed about the suspension and related events and was not involved in the matter himself.
- 8.3.44 We sourced a copy of a legal opinion by Ms Winile Madonsela dated 7 April 2017. In this opinion, she referred to a matter of Mr Witbooi and it was stated that Mr Majola issued the letter of suspension of Mr Witbooi. He was suspended for 7 (seven) days without pay from 16 December 2016 to 22 December 2016 and the deduction from his salary for the period was effected in February 2017 (see **Exhibit 43**).
- 8.3.45 Mr Witbooi addressed an email to Mr Majola on 27 February 2017 appealing the suspension. The basis for the appeal was that the suspension was unlawful, un-procedural and unfair as it was not implemented in accordance with Eskom's Disciplinary Procedure. Mr Majola responded that the suspension would not be rescinded and on 8 March 2017, Mr Witbooi referred the dispute to the CCMA challenging the suspension. The dispute was conciliated and was due at the time to be referred to arbitration.



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- 8.3.46 According to the legal opinion, Mr Witbooi was found guilty and sanctioned in an internal process without being given an opportunity to be heard. The Legal and Compliance Department stated that there was no prospects of success in defending the dispute at the CCMA. It was recommended that the dispute be settled on the basis that the sanction is overturned and that Mr Witbooi be subjected to a disciplinary process which would provide him an opportunity to be heard.
- 8.3.47 Mr Koko stated during a consultation on 20 June 2017 Mr Koko indicted that he was suspended during March 2015 when incorrect information was given to him by Mr Majola and the incorrect information was given to the Minister and Cabinet and in February 2017 Mr Majola gave him incorrect information again. According to Mr Koko, Mr Majola should not have given him information if it was not verified. According to Mr Koko, it was the responsibility of Mr Majola to give him the correct information and the stated that *"if it is wrong, I do not care where he found it"*.
- 8.3.48 Mr Koko stated that *"we sat at Eskom executives and we said to ourselves what is it that we need to turn Generation around. And we had a wish list, and I said to the team I have different view about some of the things – wish list, some of the things in your wish list but I am not going to query them. All that I am going to do is to go to Board and Exco and say my team need this so that they can perform and stop load shedding and we will give you whatever you want, just put it down. Whatever reasonable you need, we will give it to you. And Exco and the Board indulged us and gave us whatever we needed. And then I moved to the next question. I said now that we have received everything that we asked for, if we do not perform, what do we do. Because I cannot go back to the Board and Exco and say I was looking for this. They are going to say we gave you everything you wanted"*. He explained further that *"we said to ourselves let us write a protocol that is signed off by HR that has a carrot and a stick in it and then I called it a card system"*.
- 8.3.49 Mr Koko stated that the intention with the card system was that one had to know yourself and measure your own performance. A person therefore knew when a yellow or green card was necessary to be issued. According to Mr Koko, they got the HR division involved and Mr Majola set up the card process in Generation. Then Mr Majola acted in a manner that deserved a red card in February 2017.



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- 8.3.50 Mr Koko stated further that he did not set up the rules, but that the executives in Generation set up the rules and Mr Majola was the executor of the card process. All the executives signed acceptance of this disciplinary process that was referred to as the card process. He stated that nobody complained about the process except for 1 (one) person, Mr Witbooi. Mr Koko indicated that he suspended close to 10 (ten) executives in this process and that they left, they came back and they carried on with their work.
- 8.3.51 Mr Koko stated that Ms Pule signed off on the Practice Note drafted relevant to the card system. According to Mr Koko the card system was part of the internal disciplinary processes of Eskom and the HR executive was aware of the card system and utilisation thereof since it was implemented.
- 8.3.52 Mr Majola was suspended on 14 February 2017 and not on 15 February 2017 as per the whistle blowers report. Ms Pule became involved after she was contacted by Mr Koko and she forwarded an email to Mr Majola on 14 February 2017 confirming his suspension. Mr Koko stated further during the consultation that he was allowed to change a sanction recommended by the external chairperson appointed for Mr Majola's hearing, which he did.



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Chapter 9: Allegation 6

9.1 Background

9.1.1 It is alleged by the anonymous writer of the whistle blower's report that "on Saturday, 04 February 2017, Eskom's Interim CEO, Matshela Koko held private meetings with people perceived to be aligned to him including Prish Govender (General Manager Capital) who report directly to Finance Director (Anoj Singh). Leaked information reveal that Mr Koko want to remove Abram Masango (Group Executive Group Capital) and replace him with Prish Govender".

9.1.2 It is further alleged that "apparently the Interim CEO also indicated that he does not like the following people who are in Abram Masango's department:

- 1) Sfiso Mazibuko (Deputy Project Director, Kusile project)
- 2) Karabo Rakgolela (Acting General Manager, Real Estate Department)
- 3) Peter Sebola (General Manager, Contract Management)".

9.2 Applicable policies and procedures

9.2.1 We were unable to source any policies and procedures prohibiting private meetings between Eskom employees.

9.2.2 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.

9.2.3 The GCE is authorised to prescribe the manner in which authority is exercised by delegees, and is entitled to revoke or amend any delegation granted to any delegee, provided that any such amendment shall not grant to any delegee any higher authority than that granted by the Board for that level of delegee. The authority of the GCE extends to EXCO sub-committees, but does not extend to the Board Committees.



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

9.3 Summary of facts

- 9.3.1 We consulted with various individuals and the following information was sourced regarding the so-called private meetings. Ms Pule stated during a consultation held on 12 June 2017 that she was told that private meetings were held, but nobody informed her that he/she was attending private meetings.
- 9.3.2 We consulted with Mr Masango on 24 April 2017 and he gave a lengthy explanation as to the fact that he had to leave Group Capital. He did not confirm whether private meetings were held on 4 February 2017.
- 9.3.3 We consulted with Mr Govender on 26 April 2017 who stated that an official notification was sent out to the company on about the 22nd March 2017. Eskom was informed that he would be acting as GE: Group Capital. The notification stated further that Mr Masango was going to be responsible for the DTC programme as he was being seconded to the office of the GCE.
- 9.3.4 Mr Govender denied that he met Mr Koko on 4 February 2017. His discussed his appointment with Mr Koko approximately the 20th March 2017. Mr Koko called him to his office and informed him that there has been changes that the Board approved and that Mr Govender would be acting as the GE: Group Capital.
- 9.3.5 Mr Govender denied that he had a discussion with Mr Masango prior to his appointment as the acting GE: Group Capital. According to Mr Govender, he had a discussion after his appointment with Mr Masango where there was a hand-over process. Mr Govender stated that he was in the Group Capital environment since 2005 and that he reported to Mr Masango.
- 9.3.6 According to Mr Govender, he did not inform Mr Masango that he was going to be appointed as the acting GE: Group Capital. Their discussion took place after the announcement was made in Eskom and prior to that, he would have had no basis to inform Mr Masango about the appointment as he would not have known.



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- 9.3.7 According to a memorandum drafted by Ms Daniels and addressed to Mr Koko, dated 24 March 2017, it was stated that the current GE: Group Capital has been seconded to the office of the GCE. The Interim GCE appointed Mr Govender to act as GE: Group Capital from 22 March 2017 (see **Exhibit 44**).
- 9.3.8 Mr Koko confirmed the appointment of Mr Govender on 27 March 2017 and informed him that his delegation as GE: Group Capital was effective from 22 March 2017 (see **Exhibit 45**). The appointment of Mr Koko as the Interim GCE was signed by Dr Ngubane on 1 December 2016 (see **Exhibit 1**).
- 9.3.9 Mr Mazibuko confirmed during a consultation held on 8 May 2017 that he was appointed as the project director at Kusile after Mr Sithole left. He stated that he did not have any interaction with Mr Koko and is unaware that Mr Koko dislikes him.
- 9.3.10 Mr Rakgolela stated during a consultation held on 12 June 2017 that he left Kusile under some cloud. He was a deputy project director to Mr Sithole and he would not know whether the Interim GCE has got issues with him. The day when he was asked to leave Kusile, he was shocked as he was not aware of any problems with his performance. He was informed by Mr Sithole to leave Kusile and the word that was used in the discussion was that *"you are not aligned"*. He was told that Mr Masango appointed him, but Mr Sithole brought him to Kusile.
- 9.3.11 Mr Rakgolela further stated that he was asked by Mr Sithole to put in place a contract of R900 million with a company called Impulse. It was suspicious to him as they already knew how much the contract should be before they identified the scope of work. Mr Rakgolela approached a quantity surveyor who determined the contract value on R300 million. When he approached Mr Sithole regarding the contract, he was told *"no no no please do whatever you can to get it to R900 million"*. According to Mr Rakgolela this happened around February 2016 and he came back to work as an acting GM in Project Development.
- 9.3.12 Mr Rakgolela phoned Mr Masango after Mr Sithole informed him not to come back to Kusile to work there. It was during the Easter week 2016 that he had a discussion with Mr Masango who said *"look I'm not even going to talk to you about issues here at PDD and you being the guy who understand PDD I would like you to help me"*.



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- 9.3.13 Mr Rakgolela further explained the working relationship with Gopal Kambi (the individual referred to in allegation 1 of the report). According to Mr Rakgolela, Mr Kambi was competent and Mr Sithole's relationship with Mr Kambi was very close. When Mr Rakgolela left Kusile in April 2016, he told Mr Kambi *"I'm sure you made this decision, Frans is implementing"*.
- 9.3.14 Mr Rakgolela was not aware that Mr Koko did not like him as reflected in the whistle blower's report. He confirmed that construction was a Group Capital function at Kusile, whilst Group Generation was responsible for the maintenance. It happened that Mr Koko brought workers to Kusile without any prior arrangement with Mr Masango.
- 9.3.15 Mr Sebola stated during a consultation on 7 June 2017, that he was unaware that Mr Koko disliked him as stated in the whistle blower's report. According to Mr Sebola, he was considered for promotion by Mr Koko.
- 9.3.16 Mr Koko stated during a consultation held on 20 June 2017 that *"I never had a private meeting with Prish. I have never had a private meeting with Anoj about removing Abram. Let me tell you what I had a meeting with Anoj about. I had a meeting with Anoj and I said we need to strengthen the team that executes the design to cost strategy. We need to take our best performing executive and make him and lead our strategy. Take Abram send him to Harvard. When he comes back from Harvard to make him responsible – make him work with you to execute the design to cost strategy. That is the only discussion I had with Anoj"*.
- 9.3.17 Mr Koko stated further that *"in fact what is interesting is that I did not say send Abram to Harvard. It was signed by Brian already, he was due to go to Harvard. So I says let him go through to Harvard because he is due to go to Harvard in any case and when he comes back let him focus on design to cost"*. According to Mr Koko, he said that Mr Masango must go to Harvard in March and come back in April to focus on the DTC strategy.
- 9.3.18 Mr Koko confirmed that he had no meeting that excluded other individuals to discuss Mr Masango. He further stated that if he did not like Mr Mazibuko, he would not have let him continued as the project director of Kusile. According to Mr Koko, he has no issues with Mr Rakgolela and Mr Sebola.



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Chapter 10: Allegation 7

10.1 Background

- 10.1.1 It is alleged by the anonymous writer of the whistle blower's report that: *"On the 24th February 2017, the Interim CEO sent the CFO (Mr Anoj Singh) to instruct Group Executive Group Capital (Mr Abram Masango) to take a study leave with immediate effect. The CFO highlighted that even though the course is in April Mr Masango ought to have leave for the whole of March 2017 and couple that with study leave in April 2017. The reason given by the CFO is to ease the political tension. The CFO indicated that if Mr Masango does not take leave he (the CFO) is afraid the Interim CEO will suspend him (Mr Masango). On 28 February 2017, the CFO discussed with Abram Masango the subject again and Abram indicated that he is not going on study leave. NB During the meeting, the CFO also indicated that Prish Govender will be acting Group Executive Group Capital when Abram goes on leave".*

10.2 Applicable policies and procedures

- 10.2.1 The Eskom Learning Policy (32-1020) as authorised on 21 January 2015 states that *"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.*



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10.3 Summary of facts

- 10.3.1 According to a memorandum dated 15 March 2016 drafted by Ms Pule and addressed to Mr Molefe, she requested the GCE to approve the selected Harvard Business School (HBS) Advanced Management Program, selected participants and program schedule (see **Exhibit 46**). According to the memorandum, the first Eskom executives would attend the program in September 2016.
- 10.3.2 It was reflected in the memorandum that Eskom has in the past 4 (four) years partnered with various local leadership development service providers to render customised programs at various management levels. An advanced Management Program ("AMP") offered by HBS was selected to bolster the foundational leadership work done by the Eskom Leadership Institute in order to produce world class executives. This request as reflected in the memorandum was supported by Mr Singh on 23 March 2016.
- 10.3.3 According to the memorandum, the AMP was designed for senior executives who are on one or two levels below the GCE with 20 to 25 years of work experience from companies with annual revenues of at least \$250. The participants would spend 8 (eight) full weeks on Harvard Campus in Cambridge and the following executives were identified to attend the AMP:

AMP dates		Participants
1	September to October 2016	1) Mr Masango 2) Mr T Govender
2	March to May 2017	3) Mr Koko 4) Ms Noah
3	September to October 2017	5) Ms Pule 6) Genl Rakau 7) Ms Daniels
4	March to May 2018	8) Mr Singh 9) Mr Ntsokolo (have attended the course according to the memorandum)



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- 10.3.4 It was envisaged that the selected executives would emerge out of the program with skills, confidence and vision to drive change, innovation and performance across the organisation. The program provided opportunity to collaborate with more than 165 elite industry peers from 40 countries and upon completion of the AMP, the executives would become a lifelong member of the HBS alumni.
- 10.3.5 The program cost was estimated at R7 488 000 over two financial years which included tuition, accommodation and meals. The recommendation by Ms Pule as reflected in the memorandum was supported by Mr Singh and signed by Mr Molefe on 2 May 2016.
- 10.3.6 Ms Pule stated during a consultation on 12 June 2017 that Mr Minnaar holds an executive supporting post to the office of the GCE. He is responsible for the payroll related affairs and appointments. Ms Pule has been sending executives to HBS individually. When Mr Masango was due to go to HBS, he approached her and it was after *"they had asked him to take leave or whatever and they wanted him to go to Lufthansa for training and so on"*.
- 10.3.7 Ms Pule had done a submission at the same time to approve Mr Masango and Mr Ndou to go to HBS. They were going to leave on the 20th or 27th of March 2017 to go to HBS. Mr Koko asked her to remove Mr Masango from the list and Mr Ndou ended up going on his own. She was therefore surprised when Mr Masango informed her that he was asked to take leave or go to Lufthansa for training. According to Ms Pule, Ms Noah and Mr Masango swapped places on the schedule as reflected *supra*.
- 10.3.8 Ms Pule was of the opinion that if Mr Koko wanted Mr Masango out of the way, the process to let him attend HBS should not have been interfered with by Mr Koko as Mr Masango would have been out of the way. According to her it did not make sense what was reflected in allegation 7.
- 10.3.9 Ms Pule stated that Mr Masango approached her and stated that there was a suspension letter drafted/prepared for him. She recalled that there was a lot of commotion on a specific day and there was also going to be a Board meeting. She heard that *"an executive was going to be suspended tonight"* from informal discussions in the office. The next morning when Ms Pule came to work, no executive was suspended. She was not sure about the date of this incident or who was responsible for the leaking of the drafting of the suspension letter. Ms Pule was unable to confirm who gave Mr Masango information about the suspension letter.



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At the time, Ms Pule accepted that Mr Masango was merely “venting” and she did not take the matter further.

- 10.3.10 According to Ms Pule, Ms Daniels asked the Industrial Relations employee, Mr Rikhotso to prepare a suspension letter and it was not done as there was not a name given relevant to the letter. Mr Rikhosto phoned Ms Pule informing her about the letter and he said that he resisted to draft the letter as it could not be done without a name. Ms Pule did not know who the suspension letter was being requested for. She subsequently was approached by Mr Masango who informed her that he knows he was going to be suspended.
- 10.3.11 Ms Pule stated that Mr Masango spoke to her about various things that happened in the office including that Mr Koko and Mr Singh wanted him out of a job and that they wanted him to take leave, but that he refused. Mr Masango also complaint about Mr Koko interfering in his “area”.
- 10.3.12 Mr Masango asked Ms Pule to assist with access to a Board member, Ms Klein, which she did and Mr Masango had a meeting with Ms Klein. According to Ms Pule, she would have approached Mr Koko to address any issues if Mr Masango asked her to do so. Mr Masango said to her at the time: *“I have this under control, I just wanted to vent”*.
- 10.3.13 Ms Pule expressed an opinion that the contents of allegation 7 is similar to the discussion Mr Masango had with her. She recalled the date as being 2nd March 2017 when she was doing interviews for the CPO position.
- 10.3.14 Mr Singh stated during a consultation held on 3 May 2017 that he did not recall having any meetings specifically with Mr Masango on the dates as reflected in the whistle blower’s report. Mr Singh provided copies of his diary relevant to the 24th and 28th February 2017 (see Exhibit 47).
- 10.3.15 Mr Singh mentioned that there was an Exco break-away during January 2017 during which they have set themselves a set of challenges, targets and initiatives that they had to deliver on in order to realise success for both Eskom and the nation. He made available letters signed on 17 February 2017 relevant to the break-away (see Exhibit 48).
- 10.3.16 According to Mr Singh it would not have made sense for him to instruct Mr Masango to take leave whilst he had to attend a “course” that commenced in April 2017. He was unsure



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about what course was being referred to in allegation 7 as it lacked detail relevant to the course.

- 10.3.17 Mr Singh stated that he had a meeting with Mr Masango on a date that he cannot recall after he had a discussion with the Interim GCE regarding his concern about Eskom's ability to execute on their new corporate plan, given that it was significantly ambitious in comparison to 2016 coupled with the fact that the Interim GCE was newly appointed.
- 10.3.18 We sourced emails dated 6 March 2017 addressed to executives requesting them to identify five radical things that they would do in 2017/2018 financial year to ensure that Eskom achieves its corporate plan objectives (see **Exhibit 49**).
- 10.3.19 The Interim GCE did not want to be embarrassed for failing to execute Eskom's new corporate plan and he wanted to understand how Eskom was going to accomplish their new corporate plans as the new plan was significantly ambitious in comparison to 2016 so he requested Mr Singh's input. Mr Singh informed the Interim GCE that he need not be concerned as they were finalizing the way to execute the plan. At the time Deloitte and McKinsey were advising Eskom about how they ought to structure and reference was made to a performance management office or a performance execution office. The recommendation to Eskom from Deloitte and McKinsey was that Eskom had to identify individuals comprising between 25 (twenty five) or 50 (fifty) individuals from within Eskom that would form the core team or execution team that would be able to deliver the goals of the corporate plan.
- 10.3.20 We sourced a submission to Exco that was signed by Mr Singh on 24 March 2017 relevant to a Leadership Development Program (see **Exhibit 50**). According to this submission, all Exco members were requested to provide names by 31 March 2017 for potential candidates to join the Leadership Development Program. Mr Singh also provided us with a copy of a presentation made to Exco regarding the Leadership Development Program (see **Exhibit 51**).
- 10.3.21 Mr Singh told the Interim GCE that it was challenging to identify talented candidates that would be able to perform in relation to the objectives set-out for the performance management office and Eskom was simultaneously structuring a review for the Interim GCE. Mr Singh recommended that among all the people currently at Exco he was of the opinion



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that Mr Masango ought to be considered for the key role heading up the Performance Management Office. Mr Singh's opinion was based on Mr Masango's previous achievement for the new build of power stations at Eskom.

- 10.3.22 One of the key factors that Mr Singh and Mr Koko wanted to be able to use as a measurement, was the previous performance by the appointee, irrespective of who the candidate may have been in a specific function proving their performance ability and Mr Koko agreed that a discussion be held with Mr Masango regarding the above mentioned strategy/plan.
- 10.3.23 Mr Singh denied having a discussion with Mr Masango forcing him to take leave as alleged in allegation 7. He denied having any discussion with Mr Masango about taking leave to study as a mechanism to ease political tension.
- 10.3.24 Mr Singh could recall that McKinsey recommended a training course, but was unable to confirm whether allegation 7 referred to the same course. McKinsey recommended that a few candidates be selected to attend a training course at Lufthansa, as Lufthansa had successfully implemented the performance management strategy and had developed material that would be beneficial to the Eskom candidates. Part of the performance optimization program at Lufthansa was a massive digitization program coupled with performance driven execution that Eskom wanted to accomplish. Mr Singh recalled that he discussed the performance optimization options with Mr Koko. He was however unsure whether a discussion was held with Mr Masango individually regarding same. The training course with Lufthansa was supposed to occur during April 2017.
- 10.3.25 Mr Singh denied that it was his prerogative to suspend Mr Masango and stated that in the event that a decision to suspend Mr Masango had to be considered, it would have been the prerogative of the Interim GCE.
- 10.3.26 Mr Singh could not recall a meeting with Mr Masango dated 28 February 2017 and in relation to the appointment of Mr Govender replacing Mr Masango in Group Capital, he stated that it was a decision taken by the Interim GCE. He stated that he was not empowered to make appointments at Eskom executive level.



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- 10.3.27 According to Mr Singh, it was necessary for Mr Masango to remain at Eskom and at the time it was not necessary for him to go on leave. Mr Singh also stated that it might have been beneficial for Mr Masango to attend the training in anticipation of the performance optimization role that he would fulfil at Eskom. Mr Masango was already performing some of the performance optimization activities even before attending the training and after he was moved from Group Capital.
- 10.3.28 Mr Singh was not sure whether Mr Koko had discussed the program at Lufthansa with Mr Masango, but the intent / expectation for such discussion was between Mr Singh and Mr Koko. At the time the performance optimization program had already been initiated at Eskom and the Interim GCE received the performance optimization submission and returned it to Mr Singh advising that he was concerned about the candidates that were identified for key roles in the program. Mr Singh was in the process of amending the submission for return to the Interim GCE.
- 10.3.29 According to Mr Singh, Mr Masango accepted the move from Group Capital to the performance management environment that was under construction. Mr Singh was unaware of the possibility that Mr Masango may have been suspended if he did not accept the opportunity in the performance management environment and he denied that he was aware of any letter of suspension that was prepared or drafted omitting Mr Masango's details, in the event that Mr Masango refused to accept the role within the performance management environment. According to Mr Singh, Mr Masango's alleged suspension was not discussed with him before during or after the process of restructuring for performance management optimization.
- 10.3.30 Mr Govender stated during a consultation held on 26 April 2017 that an official notification was sent out to Eskom on 22 March 2017 informing all about his acting GE: Group Capital appointment. In the same communication, it was announced that Mr Masango was moving from Group Capital to the DTC based within the office of the GCE.
- 10.3.31 Mr Masango stated during a consultation held on 24 April 2017 that the CFO, Mr Singh, told him to go on study leave with immediate effect *"and the reason why I mention that, while we were discussing that Prish was called to act, so when we were in Cape Town that is where we concluded the issue and then Anoj told me that they have planned that Prish would*



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act and then I told them that I am not going and Prish was with us in Cape Town. Then we attended another meeting. After the meeting Prish came to me, Prish told me that he was called to a meeting that he is going to replace me and then when he asked – he said he asked them a question to say what is then going to happen to Abram, they said do not worry about Abram. So all I am saying is that whether private meetings or no private meetings but there were meetings that were taking place, Prish confirmed it to me that he was called and he was told that he is going to replace me and when he asked about me they said do not worry about that one”.

- 10.3.32 Mr Masango also stated that before Mr Govender told him about his replacement, a lady that used to work for Mr Govender, leaked information that “they” wanted Mr Masango out of Group Capital. The lady also informed Mr Masango that he was investigated and nothing was found against him and they could also not fault him on his performance as the group was performing.
- 10.3.33 According to Mr Masango he refused to go for training and he spoke to the CFO and said “ I said Anoj if I do not go to school what is going to happen, and I said Anoj you are part of the board member, advise me what I must do. Ajoy says hey Abram I do not know but this guy the way he does things he might suspend you as well. That is what Anoj saying and then Anoj was advising me and saying maybe Abram you must go because what if he suspend you. At the time Willy was – it was during that time when Willy was suspended. So me and Anoj, I was like trying to also seek advice from Anoj as a director in the company”.
- 10.3.34 On a question whether he has a good relationship with Mr Singh, Mr Masango responded by saying “yes, myself and Anoj we never had any bickering”.
- 10.3.35 According to Mr Masango, he refused to go to “school” and he was informed that there was a suspension letter prepared for him. He was unaware what the reason was for not suspending him. He proceeded to explain that the Interim GCE wanted to suspend him and stated that “and then he arranged a meeting with me, 07h00 the following day. It was Wednesday, the following day Thursday to give me that suspension letter, but I did not know at the time. Then I asked him to say look I cannot make the 07h30 meeting let us do it after EXCOPS, he says no that can wait and then it was Thursday and then Friday there was an executive forum. So many people knew that there is announcement that are coming because



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people I think who got it like were connecting the dots, they kept on phoning hey are you okay, are you okay, are you – and I was stressed to say but why people are phoning me”.

- 10.3.36 Mr Masango stated further that *“Friday after the executive forum I knew, somebody called me and say hey did you not get the suspension letter Thursday morning? And maybe I was slow, it is then I could say, jeez the 07h30 meeting he was going to suspend me”.*
- 10.3.37 Mr Masango also stated that *“all the EXCO members are damn scared”* and that the chairman of the Board called the Interim GCE and himself into a meeting to discuss their working relationship. Mr Masango said he supported Mr Koko one hundred percent, but he must not give instructions to Mr Masango’s subordinates.
- 10.3.38 According to a memorandum dated 24 March 2017 (and referred to in the report), Mr Govender was appointed by the Interim GCE to act as GE: Group Capital from 22 March 2017.
- 10.3.39 Mr Koko stated during a consultation held on 20 June 2017 that the brief he gave to Mr Singh was to swop arrangements for Mr Masango from September to March to go to Harvard so that he could come back and implement the DTC strategy. According to Mr Koko, Mr Masango said he did not want to go to Harvard in March and nothing happened after that. Mr Koko wanted him back in September.
- 10.3.40 Mr Koko stated further that *“I said to Anoj I have connections in Lufthansa, send Abram before the Harvard starts sends him to Lufthansa, second him to Lufthansa, let him go and appreciate what it means for the flight to take off on time and to land on time and to take off and never come back because this leaks and that leaks. Let him go and understand what goes through the cabin attendants when they receive you. Get him to spend that 4 weeks there and then let him go to Harvard and then come back and land on Eskom plane – the Eskom plane must land in the same way that Lufthansa lands, that we must treat our customers in the same way that cabin attendants treats you, that is must take off in the same way that Lufthansa plane takes off. That was my conversation with Anoj”.*



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Chapter 11: Allegation 8

11.1 Background

- 11.1.1 It is alleged by the anonymous writer of the whistle blower's report that: *"the relationship with between the Interim CEO and other Exco members is not good and this if not attended to, it may result in Eskom losing Executives.*
- 11.1.2 It is further stated by the anonymous writer of the whistle blower's report that: *"There is an allegation that the Interim CEO told some of the Exco members that they will be dealt with later".*

11.2 Applicable policies and procedures

- 11.2.1 Eskom Delegation of Authority Policy (240-62072907) was compiled by Ms Daniels on 16 January 2017 and authorised by chairman of the Board on 17 February 2017. This DOA is codified in two parts, namely the DOA principles and conditions in the body of the policy and the DOA framework in schedule A, which reflects the nature, extent and financial limits of the authorities delegated by the Eskom Board to delegees.
- 11.2.2 Paragraph 2.2.2 refers to the powers and authorities of the Board of Directors. It is stated that the Board is empowered to exercise all powers and authorities to lead, control and ensure the effective management of Eskom and to delegate any of such powers to an official/s, employee/s, any other person and/or committee/s of Eskom, subject to the provisions set out herein as well as the provisions of the Legislative and Policy framework.
- 11.2.3 The Companies Act, no 71 of 2008, the PFMA, no 1 of 1999 and the MOI set out instances that require shareholder approval. The following inter alia forms part of the instances where shareholder approval is required:
- The appointment or removal of directors to the Board, including the GCE and chairman; and
 - The policy and framework for the remuneration of directors and Eskom Exco members.



- 11.2.4 The GCE and Exco are responsible for the management of all delegations and authorisations granted in terms of the DOA to all executives and other employees and shall ensure that delegates act lawfully and within the scope of their powers and authorisation and in terms of the rules, policies, directives and procedures as reflected in paragraph 2.2.3.3 of the DOA.
- 11.2.5 In terms of paragraph 2.2.3.6 of the DOA the *"GCE shall be entitled to implement or give effect to a Board mandate in the manner s/he deems most effective and efficient for Eskom, and s/he shall not require Board approval for each aspect of a transaction or the structuring of transactions, falling within a Board mandate"*.
- 11.2.6 We were informed that new Divisionalised Procurement & Tender Committees were appointed in 2017 and which came into immediate effect. These committees further replaced Excops that ceased to exist on 31 March 2017.
- 11.2.7 The MOI with reference 240-65347859 refers to the various Board committees and states that standing committees include:
- People & Governance committee;
 - Tender committee;
 - Investment and Finance committee; and
 - Risk Committee.
- 11.2.8 In terms of the MOI, the shareholder shall have the exclusive power to appoint and remove the GCE as an employee of Eskom. The GCFO shall appointed by the Board after approval of the candidate by the shareholder.

11.3 Summary of facts

- 11.3.1 We consulted with the following Exco members:
- i) Mr Singh;
 - ii) Mr Koko;
 - iii) Mr T Govender;
 - iv) Mr Ntsokolo;
 - v) Mr Masango;
 - vi) Mr Govender;
 - vii) Mr Majola;



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- viii) Ms Noah;
- ix) Ms Pule; and
- x) Genl Rakau.

- 11.3.2 Mr Koko stated during a consultation held on 20 June 2017 that he has no issues with the executive and stated that *"I will not go to my boss and explain to him why things have not happened the way he expected them to do. Now the culture of Eskom and my other colleagues is that they find it okay to load shed for example and justify why there was load shedding and I take the view that says if the Minister does not want to load shed and the chairman does not want to load shed I will not load shed. Full stop. And I will not go to explain to the Minister why it is okay that tomorrow we must load shed. And if you cannot accept that we will not load shed then we will not work together. It is as simple as that"*.
- 11.3.3 Mr Koko further stated that Eskom's costs are running away and if Exco has to meet and does not discuss rand per kilowatt hour that is impacting the public or is not discussing why we should not stop load shedding then that Exco meeting is useless. According to him, Exco only met to discuss what is more important and *"I had no time to discuss what is going to happen in 20 years' time because it is strategic. I hold the view that says you protect tomorrow today by doing the right things today"*.
- 11.3.4 According to Mr Koko, he came in to assist Mr Molefe and at the time they were burning diesel at R1 billion a month and today they are burning zero. He stated further that *"so if we go into a meeting, Exco meeting and we do not discuss how to stop spending R1 billion of diesel a month and you have got what you think is important then I do not – it is not important to me"*.
- 11.3.5 Mr Koko further stated that there is unsaved energy of 500 megawatts and it costs R76 per kilowatt hour. If he looks at an agenda, it should deal with the 500 unsaved energy which is about R400 million a day lost. According to him if you are losing R400 million a day and you sit with Exco to discuss something else that has nothing to do with R400 million loss a day, you are wasting time as the focus is not on the core business.



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11.3.6 Mr Koko indicated that his colleagues each have an average of 20 years' experience and Mr Molefe started at Eskom in April and by the 8th August load shedding stopped. An external person came in and three months later load shedding stopped. Mr Koko further referred to the fact that he attended court and that the first time in his time at Eskom, the power supply to municipalities could be switched off if they failed to pay.

11.3.7 All the individuals as listed *supra*, responded to the various allegations in the whistle blower's report and some commented that they would like certain information to be kept confidential. For this reason, the summary hereunder merely reflects what the responses were:

Individuals	Comments
Person 1	All the Exco members are scared and I have been victimised left and right.
Person 2	We are a much divided Exco.
Person 3	Exco convenes once a month and due to the acting appointment, there was no meeting in December/January. All EXCO members meet every Monday on what they call Group Chief Executive Communication and that is where most of the time we met with Mr Koko. There are definitely tension between Mr Koko and Mr Masango.
Person 4	The Exco has issues. Mr Molefe shut them up and Mr Koko also. We lost credibility with the Board and we lost trust in the Board.
Person 5	Exco do their work. No issues were detected.
Person 6	Exco conduct their duties without much issues being raised.
Person 7	There was a difference in the way that the various executive operated at Eskom. The leadership during Mr Molefe and Mr Koko's tenure appear less communicative in relation to strategic decisions not being discussed at regular meetings with all the Executive. Many executives felt excluded from key strategic decisions.
Person 8	It is embarrassing to be a member of the executive at Eskom when some executive members speak to the media without consultation about what they intend saying to the media. There is a lack of communication within the executive, resulting in some executives hearing through the media first about certain developments within Eskom.
Person 9	The executive is effective. Even when Eskom was without a GCE for approximately 2 (two) weeks, work continued at every level of the organisation, with the remaining executive functioning properly.



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Chapter 12: Legal Opinion

- 12.1 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.

Our Contact Details

Johannesburg - Head Office

Physical Address:
Nkonki House
1 Simba Road
Sunninghill

Tel: +27 11 517 3000

Postal Address:
P.O. Box 1503
Saxonwold
2132

Durban Office

Physical Address:
131 Jan Hofmeyr Road
Westville
Durban

Tel: +27 31 2747 400

Postal Address:
P.O. Box 1427
Wardsbeck
3631

Stanger Office

Physical Address:
84 Balcomb Street
Stanger

Tel: +27 32 551 1111

Postal Address:
P.O. Box 501
Stanger
4150

Pretoria Office

Physical Address:
Crestway Office Park, Block E
20 Hotel Street
Perseus Park

Tel: +27 12 993 9500

Postal Address:
P.O. Box 1566, Garfontein East
Pretoria, Gauteng
0060

Bloemfontein Office

Physical Address:
958 Kellner Street
Westdene
Bloemfontein

Tel: +051 430 9290

Postal Address:
P.O. Box 11977
Universitas
Bloemfontein
9321

Cape Town Office

Physical Address:
1st Floor, Block A, Regent Square
Kensington

Tel: +27 21 791 4594

Postal Address:
P.O. Box 2526
Cape Town
8001

Alberton Office

Physical Address:
EVM Office Park, 1st Floor
16 Kingsfisher Crescent
Meyersdal

Tel: +27 11 867 1400

Postal Address:
P.O. Box 1363
Alberton
1450

Northwest Office

Physical Address:
48 Proctor Avenue
Golf View
Mafikeng

Tel: +27 18 381 1660

Port Elizabeth Office

Physical Address:
3 Radheart Crescent
Wavecrest
Jeffreys Bay

Tel: +27 81 788 3344

Postal Address:
P.O. Box 11977
Universitas
Bloemfontein
9321

STATEMENT

I, the undersigned

Ntokozo Dubazana

Identity Number: 8212295574084

....

State under oath as follows:

1. The facts contained herein are within my personal knowledge unless expressly stated otherwise, and to the best of my knowledge and belief both true and correct.
2. I am an adult male of 34 years old and a former Chief of Security at Makheda Protection Services. Makheda Protection Services is a security company based in Richard bay. My mobile number is 0640191116. X
3. I currently reside at 1172 Nthuzuma Township, Daimeny Street, My alternate mobile number is 0933949159. X
4. I am not forced, threatened or unduly influenced to make this statement. I opt to make this statement voluntarily.
5. I started working as head of Protection for a security team employed to protect France Hlakudi on 28 February 2017. France Hlakudi is known to me as an employee of Eskom who stayed at 30 Jamaican Music Ave, Mooikloof Estate, Pretoria East.
6. I confirm that between the period 28 February 2017 and 14 Nov 2017 I worked as one of the 4 body guards that protected France Hlakudi. Apart from protecting duties assigned to me I would also transport bags of money for France Hlakudi to Peter Sebola, Abram Masango and Collen Maine. Abram Masango worked for Eskom and stayed in Moolkloof as well. I knew Collen Maine as the President of the ANC Youth League and his mobile number is 0766070466. Collen Maine's wife's number is 0825293303. X
7. On 3rd November 2017 at around 06:00 In the morning, France Hlakudi gave me a bag full of cash amount and told me to take it to Collen Maine in his (Collen) house in Sunninghil. When I arrived at the house in Sunninghil I called Collen Maine and I couldn't get him on his mobile phone number 0766070466. I called Collen Maine colleague, Thandi Morake, on her mobile number 0825293303 but she also couldn't take my call. Collen Maine soon thereafter returned my call and told me to

give the bag full of money to his body guard. I know the body guard facially but forgot his name. I will be able to identify the body guard if I see him again. I gave the body guard a bag full of money and after that called France Hlakudi and asked him to confirm with Collen Maine that indeed the person I gave the bag full of money was sent by Collen. France returned the call and confirmed the body guard I gave the money to was the right person delegated with the task. I know the house to which I delivered bag full of money and I believed it belonged to Collen Maine.

8. France Hlakudi bought another house in Mooikloof in 2017 and fully renovated it recently. The house is situated at 682 Blouhaak road, Mooikloof, Pretoria East. France Hlakudi had indicated that he would move into the house in January 2018.
9. I earlier this year transported a bag full of money to an Eskom employee known as Peter Sebola. I met him at the back side of the Woodmead Retail Park next to the factory shops and Peter Sebola arrived driving a grey X5. I gave Peter Sebola a bag full of money (banknotes) and he left. I was given the bag full of money by France Hlakudi at his residence in Mooikloof to transport it to Peter Sebola. It was before Peter Sebola was allocated a body guard.
10. I have also took a bag full of cash to Mzilikazi Wa Afrika's car in Sandton next to an Embassy, from France Hlakudi's car. Mzilikazi arrived in his navy Mercedes Benz with registration number Ngoma GP. This bag full of money was given to me by France Hlakudi and I put it inside Mzilikazi wa Africa's car after Mzilikazi gave his car keys to me to put the money bag inside his car. I remember there was either an Engen or BP filling station in close proximity.
11. At another occasion France Hlakudi gave me a bag full of money to deliver to Abram Masango at Abram's Mooikloof Home. I will be able to identify Abram Masango's home where I delivered the money bags if asked to do so although I have not memorised the address. France Hlakudi told me that the bag had R2M in it. I delivered the bag full of money (banknotes) to Abram Masango's house in Mooikloof but when I arrived Abram Masango was not at home. I gave the bag containing banknotes money to Abram Masango's private body guard.
12. One day I went into France Hlakudi's residence at 30 Jamaican Music, Mooikloof and found him and his wife, Nadine, counting stacks of R200.00 banknotes on the bed. I walked out.
13. France Hlakudi had a Private Investigator known as Andre Botha. I suspect that Andre Botha helped France Hlakudi with communication listening devices and delivering classified documents. I would often be sent by France Hlakudi to deliver and receive stapled documents to and from Andre Botha. Andre Botha drove a double cab bakkie whose registration number I can't recall.

14. France Hlakudi is a close associate of Mike, a director of a company called Tubular. Every Tuesday France Hlakudi and Mike meet at Turner and Tender Restaurant, Bedfordview from 19:00 to 01:00 in the morning
15. France Hlakudi is protected by 4 body guards all the time. He hangs out at Boabah restaurant in Menlyn or Hatfield Garden Court. In the evening he liked going to Fire and Ice in Menlyn.
16. France Hlakudi paid the body guards salary of R16000.00 directly in cash amounts every month. Nadine, France Hlakudi's wife was the one who would put this salary cash amounts inside white envelopes and gives these to the security guards. Nadine was the one who handles cash more in the house
17. Peter Sebola, France Hlakudi and Abram Masango meet frequently at Tintswalo Restaurant, Waterfall Estate.
18. The Mooikloof house of France Hlakudi had more money than the farm in Limpopo.
19. France Hlakudi kept a good relationship with a lady known to me as Mrs Yaka (Mam ka Andile), an employee of a state intelligence services in KZN. I am not sure if Ms Yaka worked for the State Security Agency or SAPS Crime Intelligence. The two meet frequently in KZN. Mrs Yaka's mobile number is 0762547922. X

DECLARATION:

This statement consists of three (3) typed pages, each attested to by me. The content of this declaration is true to the best of my knowledge and belief. I am aware that should it be submitted as evidence and if I knowingly provide information which I know to be false or believe not to be true, I could be held for prosecution.

I read this statement before I signed it.

I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience.

I swear that the contents of this declaration are true, so help me God.

N. Hlakudi

SIGNATURE OF DEPONENT

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2017/11/21

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(PRINT NAME)
(PRINT NAME)

LEKWADU GAURA RATHOSH I

FULL FIRST NAMES AND SURNAME

01 FLOOR, SANTEX PIER, ORTIA

BUSINESS ADDRESS (STREET NAME AND NUMBER)

Sergeant

SA DEPT