



Eskom submission to the Standing Committee on Public Accounts (SCOPA)

for

Oversight Visit to Eskom Holdings SOC Limited: 26 to 30 August 2019

Quarterly Progress Report on SCOPA Recommendations

30 September 2022

## Table of contents

### Contents

1. Contracts management by skilled and qualified people .....	5
2. Employment of suitable employees and contractors for Medupi and Kusile .....	5
3. Proper document management systems.....	6
4. Employment of skilled personnel in the Supply Chain Management Unit at head office.....	7
5. Vetting of all supply chain practitioners, managers, and the Board.....	8
6. Compulsory declarations of interest (DOIs) for senior managers and directors.....	9
7. Finalised internal investigations .....	10
8. Recovery of financial losses to Eskom .....	13
9. Consequence management .....	22
10. Capacitating the Internal Audit Unit of Eskom .....	23
11. Institution of criminal charges against former employees of Eskom .....	24
12. Implementation of controls on payments to suppliers .....	48
13. Managing the extension of existing contracts that are due to expire.....	48
14. Correction of defects identified at Medupi and Kusile Power Stations.....	50
15. Holding contractors responsible for costs related to defects.....	51
16. Management of coal quality .....	52
17. Use of retention bonds against contractors .....	54
18. Stability of project managers at Kusile Power Station.....	54
19. Construction of weighbridges and offloading facilities at Kusile Power Station .....	55
20. The “take-or-pay” system .....	58
21. The production of gypsum.....	59
22. Holding contractors accountable for substandard work .....	60
23. Completion of Medupi and Kusile Power Stations at the revised times .....	60

## Summary

The Standing Committee on Public Accounts (SCOPA), having undertaken an oversight visit to Eskom and its new build infrastructure projects, Medupi and Kusile, in Lephalale and Witbank, respectively, from 26 to 30 August 2019, in terms of Part 13, section 245(1)(d), of the Rules of the National Assembly, reported its findings and recommendations.

During the SCOPA oversight visit to Medupi, Kusile, and Eskom head office at Megawatt Park on 20 to 22 April 2022, Eskom reported that, out of 23 recommendations made to Eskom, nine had been implemented successfully, while implementation was in progress for 14 due to the nature of the recommendations and the time required to complete, for example, investigations.

This report provides an update and feedback to the committee on the progress made by Eskom in giving effect to, and complying with, the 14 outstanding recommendations and also highlights those that have been implemented successfully.

This submission was prepared solely for the intended purpose, benefit, and regulated use by the intended recipient(s) to whom it is directly delivered. This report may contain commercially sensitive data, sensitive personal information, and proprietary and/or third-party information that is confidential and should not be used, published, or disseminated for purposes other than those for which it is intended. This is to ensure that any ongoing legal, employee relations, criminal, and/or civil investigations are not compromised and that any named individuals' legal rights are protected on the presumption of innocence, as internal investigations may not have been completed or outcomes may not necessarily have been legally tested in the courts or through a disciplinary process. In compiling this submission, Eskom has relied on representations from, among others, its respective business units, audits, and investigative support partners. It has proceeded on the assumption that the documentation collated and relied on is authentic and, to the best of Eskom's knowledge, considered reliable as at the date of compilation hereof. While Eskom has taken all reasonable steps to verify the facts, any person intending to rely on any part

of this submission should take such independent verification and other legal steps and seek such advice as may be deemed appropriate. Eskom, its directors, and its employees shall have no, and hereby disclaim all, liability whatsoever for any unauthorised, negligent, or unintended use of, or reliance on, this document by its intended recipient(s) or third parties, including, but not limited to, the accuracy and completeness of any information, facts, and/or opinions contained herein, as this submission was based on information provided at the time of its commissioning. It may not have been possible to ascertain the accuracy of this information.

## 1. Contracts management by skilled and qualified people

### Recommendation 6.1

Contracts must be managed properly by suitably skilled and qualified people to ensure that expiring contracts are identified timeously and that the appointment of contractors is made through an open market process.

### Response to the recommendation

The Procurement and Supply Chain Management Procedure sets out the requirements for the training of contract managers. The Contracts Management Office (CMO), in partnership with the Eskom Academy of Learning (EAL), provides focused training on new engineering contract (NEC), Fédération Internationale des Ingénieurs-Conseils (FIDIC), and other required training. Continuous ad hoc training, as well as training in terms of the Contract Management Development Programme (CMDP), takes place. A fourth intake for the CMDP was finalised and commenced in May 2022. A supplier has been sourced to conduct training on the NEC and the FIDIC, while the other required training is done internally.

Contractors are appointed in line with Eskom's Procurement and Supply Chain Management Procedure, which follows processes that are legally, commercially, financially, and technically sound and, in addition, supports the constitutional principles of fairness, equitability, transparency, competitiveness, and cost-efficiency. This recommendation has been implemented successfully.

## 2. Employment of suitable employees and contractors for Medupi and Kusile

### Recommendation 6.2

There must be no restrictions for Eskom to employ suitably qualified and skilled employees and contractors to ensure that the Medupi and Kusile projects are completed on time and are operated at maximum efficiency.

## **Response to the recommendation**

The appointment of experienced/skilled staff members on fixed-term contracts at Medupi and Kusile Power Stations has been completed, and additional recruitment will take place as and when required. This recommendation has been implemented successfully.

### **3. Proper document management systems**

#### **Recommendation 6.3**

Proper document management systems must be in place to create a paper trail for all transactions in compliance with the Companies Act.

#### **Response to the recommendation**

Documents and records are being managed in line with Eskom's Procedure 32-6: Documentation Management Policy and supporting document management standards and will be monitored through periodic ISO 9001:2015 audits. A documents management review of contract documentation was initiated in December 2021. The reviews (peer reviews by sites and oversight reviews by the Contracts Management Office and Eskom Project Management Office) were completed by March 2022 as planned. Gaps were identified, and detailed reports were handed to sites to address the recommendations and corrective actions. The status of closing gaps at sites is at 96%, and further oversight is being done to verify that the gaps are closed. This is still in line with the document management procedure and continuous improvement according to ISO standards. Sites have action plans in place to ensure that documents are correctly registered, stored, and accessible. The actions contain items for improvement. A deadline has been set for completion of the actions, and continuous monitoring is taking place. A new Eskom system is also being implemented, which will further enhance document management at sites. The sites are fully aware of the requirements. In the absence of the system, sites remain committed to ensuring that effective document management is maintained.

## **4. Employment of skilled personnel in the Supply Chain Management Unit at head office**

### **Recommendation 6.4**

Skilled personnel must be employed in the Supply Chain Management Unit at head office and at different projects where procurement takes place.

### **Response to the recommendation**

After the divisionalisation, the relinking of existing personnel, and the approval of the new/revised structures, the Procurement and Supply Chain Management (P&SCM) function resumed recruitments to capacitate various functional areas at both head office and divisional level. The new chief procurement officer was appointed. In collaboration with Human Resources, the P&SCM recruitment process was preceded by a skills audit exercise to determine the core and critical skills that were required. Subsequently, two executive managers were appointed, with one being the head of the Supplier Development, Localisation, and Industrialisation (SDL&I) Unit and the other being in core procurement. In addition, there are other vacancies for which the process has been concluded, with 40 new candidates having been appointed within the Supply Chain Management Department and 25 placements in the pipeline.

Parallel to this process of recruiting new personnel is the closing of identified skills gaps by offering procurement training sessions, which are rolled out by the Eskom Academy of Learning and government institutes such as the Construction Industry Development Board (CIDB) and the Broad-Based Black Economic Empowerment (B-BBEE) Commission, with the Competition Commission having recently offered to conduct workshops for Procurement employees to ensure that the current staff members across the business are upskilled to execute procurement operations and to be able to generate more competitive tension in bids, as the divisions are now assuming a semi-autonomous status.

Specific to Generation Procurement, a procurement augmentation project is under way, which will ensure that the Generation Procurement Department has skilled personnel in the Procurement space across all the Generation sites. This is also accompanied by a warehouse augmentation project that is aimed at improvement of the warehousing function, removal of stock obsolescence, and implementation of

different stock management approaches such as consignment stock management. These two projects will lead to an effective and streamlined Supply Chain Management. Over and above the two augmentation projects, there is continued upskilling of existing P&SCM staff.

## **5. Vetting of all supply chain practitioners, managers, and the Board**

### **Recommendation 6.5**

Vetting of all supply chain practitioners, managers, and the Board must be implemented immediately for head office and other centres where procurement takes place. A report on this must be sent to SCOPA within 60 days from the adoption of this report by the National Assembly.

### **Response to the recommendation**

Eskom's vetting programme was progressing well until disrupted by the Covid 19 Pandemic. Eskom is in consultation with the State Security Agency (SSA) to kick start the programme again looking into various priority areas and roles. With Divisionalisation and Business Separation underway, some level of vetting will be handled in these business areas.

The establishment of the Eskom Vetting Fieldwork Unit (VFU) has not gained traction, and this will be prioritised in the coming months.

The Department of Public Enterprises (DPE) has proposed the inclusion of the Risk and Integrity Management Framework, which must be incorporated for vetting and screening of employees. An Eskom Work Group has been established to assess the framework for inclusion in key policies in Eskom, such as vetting, ethics management, declarations of interest (DOIs), etc.

See the table below for the status of Exco member vetting.



Table 1: Exco members vetted as at 30 June 2022

Surname	Initials	Job description	Comments
De Ruyter	A	Group Chief Executive (GCE)	In progress
Pule	E	Group Executive: Human Resources	Top secret clearance granted
Dukashe	P	Group Executive: Generation	In progress
Etzinger	A	General Manager: Risk and Sustainability	Secret clearance granted
Mabena	P	General Manager: Office of the GCE	Awaiting feedback from SSA
Scheppers	S	Group Executive: Transmission	Top secret clearance granted
Cassim	C	Chief Financial Officer	Awaiting feedback from SSA, evaluation of application in progress
Oberholzer	J	Chief Operating Officer	Awaiting approval of the SSA Vetting Board
Bakardien	R	Chief Nuclear Officer	In progress
Singh	N	General Manager: Africa Strategy (Acting)	Clearance issued 29 November 2019 to 31 December 2024
Sankar	J	General Manager: Procurement (Acting)	In progress
Nxumalo	B	Group Executive: Group Capital (Acting)	In progress
Pather	K	General Manager: Sustainability	Awaiting feedback from SSA
Bala	M	Group Executive: Distribution	Awaiting feedback from SSA
Pillay	K	General Manager: Security (Acting)	Top secret clearance granted
Minyuku	N	Group Executive: Government and Regulatory Affairs	In progress
Burn	F	Chief Information Officer	In progress
Gafoor	N	General Manager: Assurance and Forensic	In progress
Manjingolo	M	Company Secretary	In progress
Mflathelwa	M	General Manager: Strategy and Planning	In progress
Govender	M	Group Executive: Legal and Compliance	In progress

*(All officials who have exited Eskom have been removed from the list.)*

## 6. Compulsory declarations of interest (DOIs) for senior managers and directors

### Recommendation 6.6

Compulsory DOIs must be made by all senior managers and directors, at the very least annually, and declarations must be enforced immediately in instances where they have not been done in order to avoid employees and directors and their family members doing business with Eskom.

### Response to the recommendation

In the past two financial years (FY2020/21 and FY2021/22), 100 percent of Eskom directors and Exco, including extended Exco members, have been declaring their interests, while in FY2020/21, 98% and in FY2021/22, 99,7% of employees declared their interest respectively. This recommendation has been implemented successfully.

## 7. Finalised internal investigations

### Recommendation 6.7

Internal investigations must be sped up and finalised by 31 March 2020.

### Response to the recommendation

#### Forensic investigations

The Forensic and Anti-Corruption Department of Eskom's Assurance and Forensic Division conducts investigations into all allegations of fraud and corruption as requested either directly by Eskom employees or by external stakeholders through the Fraud Hotline facility. The Fraud Hotline was created in compliance with the Protected Disclosures Act and the Companies Act, as amended.

The Forensic and Anti-Corruption Department operates according to a co-sourced model, where forensic investigations are conducted through in-house forensic investigators and outsourced forensic service providers.

The impact of the declaration of a national state of disaster in March 2020 because of COVID-19 exacerbated the chronic backlog of forensic investigations.

The table below depicts the caseload in respect of forensic investigations for the previous four financial years (FYs) and the current year to date (YTD).

Table 2: Overview of caseload

Balances	FY2018/19	FY2019/20	FY2020/21	FY2021/22	FYTD2022/23
Active cases – opening balance	200	340	256	238	253
+ New cases added during financial year	257	118	105	128	109
- Cases completed during financial year	-117	-202	-123	-113	-123
Active cases – closing balance	<b>340</b>	<b>256</b>	<b>238</b>	<b>253</b>	<b>239</b>

The table below depicts the progress made on the above caseload for the last several quarters.

Table 3: Quarterly balances

Balances	2021/09/30	2021/12/31	2022/03/31	2022/06/30	2022/09/30
Active cases at beginning of quarter	226	226	222	253	270
+ New cases added during quarter	14	24	80	71	38
- Cases completed during quarter	(14)	(28)	(49)	(54)	(69)
Active cases as at end of quarter	226	222	253	270	239

### Lifestyle audits

ENS and Mazars Gauteng Inc. were appointed to conduct lifestyle audits on senior management. The first phase, which consisted of 383 executives and senior managers and their partners, where applicable, has been completed. The process highlighted 34 high-risk cases, which have been handed over to the Special Investigating Unit (SIU) for further investigation.

Of the 34 high-risk cases handed over to the SIU for further investigation\*, 16 referrals were closed (that is, no contraventions identified or employee resignations). One case was closed on the basis that the employee was dismissed on unrelated charges. Eleven resulted in referrals to Eskom for disciplinary action. The remaining six cases are still under investigation.

With regard to the 11 cases that were referred to Eskom for disciplinary action, the status is as follows:

- Seven executives were found guilty, and sanctions were imposed, ranging from six- to 12-month written warnings to suspension for 14 days.
- Two\*\* executives were found not guilty.
- One executive had resigned on 30 November 2018, before the disciplinary case was referred to Eskom.
- One executive had retired from Eskom on 31 March 2020, before the disciplinary case was referred to Eskom.

\* Note: updated as at 30 September 2022.

*\*\* Note: Industrial Relations (IR) previously (November 2021) reported that management had decided not to take any disciplinary action against one executive. However, this executive was later taken through a disciplinary enquiry process and was found not guilty.*

Apart from the above, we also conducted (September 2020) limited data-analytics testing on **73 SSE/PPE** executive-band grade employees, including fixed-term contractors (FTCs) at this level, that is, “corporate/professional specialists”. **Seven** possible exceptions were identified from the group of 73 SSEs/PPEs/FTCs relating to the non-disclosure of business-related interests (five) and those who were flagged in certain SIU investigations (two).

### **M-, P-, S-, G-, and T-Band-level employees and fixed-term contractors (management exceptions identified through data analytics)**

After completing the lifestyle audits on all executives and senior management, Assurance and Forensic (A&F) performed a data-analytics assessment of all managerial and bargaining unit employees and FTCs for the period between 1 April and 19 May 2020.

All Eskom employees are expected to declare their business interests, and those who are involved in business operations outside Eskom are expected to have permission for involvement in these businesses. This process aims to ensure that employees maintain the highest ethical standards and do not engage in illicit activities in the performance of their duties.

The results of our data-analytics testing revealed that **3 812 employees** at M-, P-, S-, G-, and T-Band grading levels, including FTCs, had not declared their business-related interests. Similarly, there were no records that these employees had applied for permission to perform private work. This was for the period 1 April to 19 May 2020. These anomalies suggest non-compliance with Eskom’s Conflict of Interest and Private Work Policies. These exceptions account for 8,6% of the total employee target population.

Table 4: Total exceptions regarding targeted population

<b>Total of Eskom Exceptions</b>	<b>3812</b>
Total Full Time Managerial Level Employees Exceptions	564
Total Full Time Bargaining Unit Level Employees Exceptions	3248

A total of 3 799\* exceptions were referred to management and IR for assessment of consequence management actions. Of the 3 799 exceptions, 3 651 had been dealt with and closed as at the end of September 2022, and a total of 148 cases are still awaiting action. The Ethics Office continues to work with Head Office IR to ensure that all of these actions reported by the divisions are loaded and closed on SAP IR.

*\* The difference between 3 812 and 3 799 is as a result of 13 employees who left the organisation prior to the process.*

Three Eskom Group employees (Technology, Customer Services, and Risk and Sustainability) were referred to the Forensics Department for further investigation, as the data results indicated that they had business-related interests in active Eskom vendors that had not been declared in their latest DOIs. We could not find supporting information that they had applied for permission to perform private work. Two employees' businesses had provided services to Eskom, and payments had been made in this regard. The forensic investigations into these employees have been concluded. Of the three employees, one resigned, and no action could be recommended, one received 12 months' written warning, and no evidence was found to support any collusion or corrupt activities on the part of the third employee.

## 8. Recovery of financial losses to Eskom

### Recommendation 6.8

Financial losses to Eskom must be recovered from those responsible where wrongdoing has been established.

## **Response to the recommendation**

In its efforts to recover financial losses from suppliers and former employees, Eskom is working closely with the South African Revenue Service (SARS), the SIU, the Directorate for Priority Crime Investigation (the DPCI, also known as the Hawks), and the Head of Investigations at the Office of the National Director of Public Prosecutions (NDPP).

Below, we provide a list of the matters where Eskom is pursuing the recovery of financial losses.

### **1. Actions against suppliers**

#### **ABB**

- In December 2020, ABB repaid approximately R1,5 billion to Eskom.
- Eskom is working with the SIU to set aside the R2,2 billion control and instrumentation contract that had been irregularly awarded to ABB. Court papers in this regard are being finalised.
- Eskom will ensure a seamless transition between the setting aside of the contract and the execution of a new contract between Eskom and ABB.
- Eskom will also institute supplier disciplinary proceedings against ABB in due course.

#### **Tegeta Exploration and Resources (Pty) Ltd (Tegeta)**

- **SIU v Tegeta; Eskom and Others (Case No. 90171/2018)**
  - Application for equitable relief in which the SIU seeks an order that Tegeta repay Eskom an amount of approximately R734 million, which was paid to Tegeta for supply of reject coal.
  - Tegeta is under business rescue, and Eskom submitted a claim of approximately R359 million against the business rescue practitioners (BRPs) for post-business-rescue penalties. The underlying Tegeta coal supply agreement was set aside in terms of a court order handed down on 4 March 2020.

- The SIU has instituted proceedings against Tegeta and the BRPs for just and equitable relief to repay the sum of approximately R734 million to Eskom. The BRPs have opposed the relief sought. Eskom filed a notice to abide in June 2021. This matter is being driven by the SIU and remains ongoing.
  
- **NDPP v Kurt Robert Knoop NO and 15 Others (Case No. 62604/2021): Optimum Coal Mine**
  - An application for the preservation of all Tegeta's shares in Optimum Coal Mine (Optimum) and the business of Optimum Coal Mine was instituted by the NDPP in terms of the Prevention of Organised Crime Act 121 of 1998. Eskom is supporting the NDPP in this process. The application was heard on 8 March 2022. Judgment was handed down in favour of the NDPP on 23 March 2022.
  - The National Union of Mineworkers and the BRPs appealed this order.
  - Templar Capital Ltd (Templar Capital) and Liberty Coal (Pty) Ltd (Liberty Coal) filed an application for leave to intervene in the application and be allowed to argue their own appeal.
  - The above applications were argued on 15 June 2022, and judgment was reserved.
  - On 4 July 2022, the NDPP filed an application in terms of the Prevention of Organised Crime Act for a forfeiture order in respect of all claims held by Templar Capital against Optimum.
  - The forfeiture application is presently under consideration.
  - On 22 August 2022, the BRPs launched an application in the High Court in terms of which they seek an order declaring that the operation and execution of the judgment and preservation order granted in favour of the NDPP on 23 March 2022 be suspended pending the outcome of their appeal to the Supreme Court of Appeal.
  - Eskom is engaging with the NDPP and SIU on the next steps to ensure that Eskom can apply for equitable relief as a victim of crime.

## **Impulse International**

- Impulse International instituted action against Eskom for claims of approximately R61 million and Eskom Rotek Industries (ERI) for claims of approximately R22 million in respect of payment for contracts suspended by Eskom and ERI.
- *Eskom litigation*: Eskom has filed a special plea, plea, and counterclaim and is continuing in its efforts to have the contracts with Impulse declared void, unlawful, and unenforceable.
- *ERI litigation*: a court date is yet to be set by Impulse International, as it is *dominus litis* in the matter.
- *SIU/National Prosecuting Authority (NPA) process*: the SIU has considered instituting civil proceedings. However, it has decided that civil proceedings will be futile, based on the following:
  - SARS has a judgment (and preferent claim) of R200 million against Impulse International, but has only found R16 million, to date, to execute against. SARS is continuing in its endeavours to recover further funds.
  - The Asset Forfeiture Unit (AFU) has progressed with its forfeiture application against the directors of Impulse International and related parties.
  - The matter has been referred to the NPA for criminal prosecution, and the SIU will support the NPA in this regard.

## **PwC Task Order SM003 – capital scrubbing**

- On 16 March 2021, Eskom filed an application for an order declaring the award of a contract to PwC unlawful, unconstitutional, and invalid, for reviewing and setting aside the award, for reviewing and setting aside the contract concluded with PwC following the award, and for claiming repayment of R108 million paid by Eskom to PwC.
- PwC is opposing the application, and pleadings are under way.
- Eskom has amended the court record it had initially filed and written to the Deputy Judge President (DJP) requesting the matter to be transferred to the



Commercial Court. The matter has been certified as a commercial matter. The parties are awaiting allocation of a judge from the Deputy Judge President.

### **Trillian Management Consulting (Pty) Ltd (Trillian)**

- On 2 October 2019, Eskom obtained an interim enforcement order directing Trillian and Mr Eric Wood to repay the sum of R595 million to Eskom, which had been paid on the pretext of Trillian being a supplier development and localisation partner to McKinsey.
- Trillian and Mr Wood did not honour this order, and Eskom instituted liquidation proceedings.
- SARS intervened as a party to the liquidation proceedings, claiming that Trillian owed it approximately R600 million in unpaid taxes. SARS has a preferent claim in this regard.
- Accordingly, Eskom has submitted a claim for R595 million to the liquidators, but has not contested the SARS preferent claim.
- Eskom's taxed bill of costs for bringing the liquidation application has been submitted to the liquidators, who have indicated that there are no funds to settle the bill at this stage, but that it will be included in the first liquidation and distribution account.
- The hearing of the liquidation enquiry, during which the liquidators and Mr Wood presented evidence, commenced on 20 January 2022.
- The liquidators stayed the enquiry process until further notice, and the Commissioner will be requested to postpone the enquiry while the liquidators consider the status of pending litigation and further steps to be taken. Eskom has been engaging SARS to understand the next steps in order to ensure that its interests are protected.
- If reinstated, Eskom will continue participating in the insolvency enquiry to the extent that this will facilitate the tracing and recovery of funds. Eskom is also actively monitoring and assisting the NPA and related authorities to secure criminal convictions in this matter, which may give rise to further opportunities for victim recovery proceedings against the implicated parties.

### **AfricaWide Consulting**

- Eskom awarded a contract to AfricaWide without undertaking an open and competitive tender process. The original contract value was modified to R17 million without National Treasury approval.
- AfricaWide is in liquidation and final liquidators were appointed on 8 February 2022. The liquidators report confirms that there are no assets in AfricaWide's estate.
- In light of the above, Eskom is reviewing its position regarding civil recovery.

### **T-Systems South Africa (TSSA)**

- An investigation was undertaken to determine whether the contract between TSSA and Eskom was awarded irregularly. The investigation report identified instances where due process was not followed, resulting in potential wasteful expenditure to Eskom.
- An assessment is under way regarding the wasteful expenditure incurred, following which appropriate legal action will be instituted.

### **Econ Oil & Energy (Pty) Ltd (Econ Oil) – overcharging**

- On 14 December 2020, Eskom received an interim forensics report on the quantification of possible overcharging by Econ Oil in the amount of approximately R1,2 billion over a five-year period (2012 to 2017).
- On 17 December 2020, Eskom instituted arbitration proceedings against Econ Oil to recover this sum.
- Econ Oil is opposing the application and has served its plea and a special defence based on prescription. In the dispute on whether the issue of prescription had to be heard separately or together with the merits, the arbitrator ruled in Eskom's favour that the issue of prescription would be heard together with the merits. On 17 September 2021, Econ Oil filed a notice of appeal against the arbitrator's ruling on separation. The appeal has since been dismissed.

A timetable for submission of pleadings has been agreed to.

## **Econ Oil Bid Corp 4786**

- On 25 February 2021, Econ Oil launched an application against Eskom at the South Gauteng High Court to review and set aside the Eskom Board's decision of March 2020 to approve the cancellation of Bid Corp 4786 for the procurement of fuel oil or, alternatively, to review and set aside the decision of the Eskom Board to cancel Bid Corp 4786. Eskom is opposing the review application.
- In light of the review instituted by Eskom against Econ Oil on the same set of facts, the parties agreed to await the judgment before deciding on how to proceed further with Econ Oil's review against Eskom. Despite an undertaking to respond within 10 days following judgment in Eskom's review application, Econ Oil has not responded on the way forward on this matter.
- The matter remains pending.

## **2. Actions against directors and executives**

### **Financial recovery against former Eskom directors and executives implicated in state capture**

- Eskom is pursuing civil action for R3,8 billion against several former Eskom directors and executives to recover losses as a result of state capture and the involvement of the former directors and executives in it.
- In August 2020, combined summons and particulars of claim were issued against 12 defendants, with the SIU cited as co-plaintiff.
- Of the 12 defendants, Eskom is only pursuing claims against seven former Eskom executives and directors (the late Dr Ngubane, Mr Pamensky, Mr Molefe, Mr Singh, Mr Koko, Ms Mabude, and Ms Daniels) based on breach of fiduciary duties and breach of contract.
- Eskom had the matter placed under judicial case management, and the first meeting was held on 13 September 2021 to deal with the defendants' objections and delays. It was resolved that a day would be set aside to ventilate the issues to be dealt with in terms of the interlocutory applications, after which the remainder of the issues would be dealt with.

- There has been difficulty securing a date with the judge, and efforts to do so are ongoing.
- An executor has yet to be appointed for the estate of the late Dr Ngubane.

**Recovery of monies irregularly spent on behalf of directors and executives for legal fees**

- Eskom instituted an action to recover monies advanced regarding legal fees to five former directors and executives. To date, R27 000,00 has been recovered from Ms V Naidoo. Mr M Pamensky (R500 000,00) has entered into a payment arrangement, although he has defaulted on that arrangement. Eskom has applied for default judgment. Mr Pamensky has advised that he wishes to settle this matter.
- Three directors (the late Dr Ngubane: R706 000,00; Ms V Klein: R595 000,00; and Mr Khoza: R201 000,00) are defending the action.
- Default judgment has been applied for against Mr Marokane and Mr Pamensky. A trial date for the claims against Ms Klein, Mr Khoza, and the estate of the late Dr Ngubane has been applied for.
- As per the directives issued by the Deputy Judge President (DJP), all amendments to the pleadings were filed by 31 May 2022. Eskom's attorneys are in the process of preparing a discovery affidavit to be filed.
- Once the formalities have been concluded, the parties can again approach the DJP for direction on the way forward. Eskom has been seeking an audience with the DJP for such direction but has been unsuccessful thus far.

**Eskom Pension and Provident Fund (EPPF) v Brain Molefe, Eskom Holdings SOC Ltd, and the Commissioner for the South African Revenue Service**

- On 25 January 2018, the High Court handed down judgment declaring the agreement concluded between Eskom and Mr Molefe, placing him on early retirement, invalid. Mr Molefe was ordered to pay back all amounts paid to him in terms of this agreement, amounting to R31,5 million (plus interest still to be calculated). No agreement could be reached on the quantum payable.
- On 4 July 2022, the High Court handed down judgment as follows:

- Mr Molefe is to pay the EPPF the difference between the pension benefits paid to him and the lump sum pension benefits payment he had transferred from the Transnet Retirement Fund to the EPPF (inclusive of accruals up to 31 October 2019).
- The EPPF is required to calculate the difference between these amounts and inform Mr Molefe of the calculation. Mr Molefe is required to pay this amount within 10 days of receipt of the calculation.
- The EPPF is to pay Eskom the employer and employee contributions made on behalf of Mr Molefe (with interest calculated until 30 October 2019).
- The EPPF is to pay Eskom Mr Molefe's performance bonus contributions (inclusive of interest accrued by the EPPF on such contributions), less the EPPF's administration costs.
- The EPPF is to pay Eskom the amount of R30 103 915,62 (with interest calculated until 30 October 2019), being the amount paid for his future pensionable service until age 55 and the waiving of penalties, in order for Mr Molefe to be placed on early retirement.
- People and Governance Committee on 23 and 24 August 2022 on the EPPF's proposal. Both Committee's rejected the proposal and a letter confirming Eskom's position has been sent to the EPPF.
- On 22 August 2022, the EPPF filed a conditionally cross appeal i.e., the appeal is subject to the granting of leave to appeal to Mr. Molefe. In the application the EPPF seeks the following:
  - That the interest payable on the amount of R30 103 915.62 should only start running from 25 January 2018, (being the date of the judgement which found the payment to have been unlawful and not as at the date of payment by Eskom to the Fund) and not from 30 October 2019.
  - The interest rate on all capital amounts to be paid to Eskom to be changed from mora interest to fund interest.
  - The payment to Eskom be subject to the EPPF receiving all amounts owed to it by Mr. Molefe.

- Mr Molefe's application for leave to appeal was heard and judgment was reserved. The judgment is expected to be delivered on 11 October 2022.

### **Wilge Residential Development Project and former general manager (GM) for Facilities**

- Following an investigation into various allegations of fraud, corruption, and misconduct relating to the Wilge Housing Project, disciplinary proceedings were instituted against Mr Mamorare, the GM for Facilities, for his failure to perform his duties, causing significant financial losses to Eskom. He was subsequently dismissed, and a decision was taken to recoup losses attributable to his conduct from him.
- Investigations have been concluded, and in addition to Mr Mamorare, there are potentially other individuals from whom funds can be recovered, however this is subject to further assessment from a civil litigation perspective. The value of the claim is being determined; however, initial estimates reflect approximately R840 million as fruitless and wasteful expenditure.

## **9. Consequence management**

### **Recommendation 6.9**

Consequence management must be followed through where wrongdoing has been proven. Quarterly reports in this regard should be submitted to SCOPA.

### **Response to the recommendation**

Eskom's Code of Ethics, "The Way", gives effect to the direction of ethics throughout the organisation. It is underpinned by Eskom's core values and is intended to promote an ethical culture and inform practices, policies, procedures, and behaviour across all areas of the organisation. No Eskom official or employee is permitted to do business with Eskom while employed by Eskom or its subsidiaries. All transactions in Eskom are governed by an approved delegation of authority (DOA) framework, which sets the required limits and approval authorities per transaction based on the nature of the transaction.

Any employee who is found to have contravened the stipulated policies, procedures, and DOA will be subjected to disciplinary action.

### **Overview of disciplinary action following from investigations**

- As at YTD 30 September 2022, the Eskom People Relations Department had registered 389 employees who underwent disciplinary processes. Of these, 361 were completed, and 28 are in progress.
- The completed disciplinary cases resulted in 183 employees terminating Eskom employment through resignations, abscondments 157 and 26 retirements during
- There was a total of 41 employees who were dismissed due to fraud and corruption.

## **10. Capacitating the Internal Audit Unit of Eskom**

### **Recommendation 6.10**

The Internal Audit Unit must be capacitated and fully functional at head office and other cost centres, so that early warning signs of corruption and maladministration are picked up.

### **Response to the recommendation**

Fourteen specialist resources were appointed to assist with the effective execution of A&F's mandate:

- Five senior advisors for forensic investigations
- One support function (T09 assistant officer)
- For internal auditing:
  - Three senior advisors with knowledge of supply chain management and experience
  - One senior advisor with treasury skills
  - One quantity surveyor to assist with audits for major projects
  - One senior advisor dedicated to running commercial data analytics
  - One Chief Advisor: Technical Auditing who will also assist with major technical investigations
  - One Chief Advisor: Auditing with information technology (IT) security skills

The Forensic and Anti-Corruption (“Forensic”) Section’s management team has a full complement. There are, however, three vacancies that arose through natural attrition, namely, 2 x G15 Senior Advisor Investigations and 1 x T12 Officer Forensic Investigations. Recruitment for these positions is under way.

The Forensic team continues to deal with a high number of cases reported, including a significant backlog, and the appointment of the additional five forensic investigators and 11 fixed-term contractors has been insufficient to address this. Therefore, approval was received to appoint an additional 10 fixed-term contractors to assist in addressing the high number of cases received and the existing backlog. The recruitment process for these positions has commenced, and three investigators will be starting on 1 October 2022.

## **11. Institution of criminal charges against former employees of Eskom**

### **Recommendation 6.11**

All previous employees who have left the employ of Eskom and who have been implicated in malfeasance of any sort must, in collaboration with law enforcement agencies such as the NPA and the Hawks, have criminal charges instituted against them.

### **Response to the recommendation**

All previous and current employees, including suppliers, against whom evidence of criminal conduct was found are reported to law enforcement agencies with relevant jurisdiction to investigate such conduct.

- As at 30 September 2022, 131 criminal cases had been opened with the South African Police Service (SAPS) for further investigation.
- Thirteen of the above 131 have been through the criminal proceedings provided for under the Criminal Procedure Act.

The above numbers include the following matters, which are under investigation by the specialised units of the SAPS:



- Impulse
- Tegeta/Brakfontein
- McKinsey/Trillian
- Dongfang

#### Special Investigation Unit investigations

The SIU, in accordance with Government Proclamation R. 11 of 2018 as extended by R. 3 of 2020, is conducting investigations on, among other things, maladministration in the affairs of Eskom and any losses or prejudice suffered by Eskom as a result in relation to the following:

- Medupi Power Station Project
- Kusile Power Station Project
- Ingula Pumped-Storage Scheme
- High-voltage transmission projects associated with the Medupi Power Station, Kusile Power Station, and Ingula Pumped-Storage Scheme
- The appointment of McKinsey, Trillian, and Regiment
- The contracting for the procurement of coal, coal transportation services, and diesel
- Cloud computing services, software licences, and support services
- Engineering and project management consulting services in respect of Contract No. 4600061859 and Contract No. 4600062636
- Any undisclosed or unauthorised interest that employees, officials, and/or Eskom's agents may have had in contractors, suppliers, or service providers bidding for work or doing business with Eskom

Note: The SIU is in the process of applying for a new proclamation that will allow it to investigate the matters/entities affected and reported by the Zondo Commission of Inquiry. However, this is still subject to approval by the office of the Presidency.

## The State Capture Commission of Inquiry investigation

Eskom has established a task team (the State Capture Task Team) to manage potential legal, business, financial, and reputational risks following the findings and recommendations in the report issued by the Judicial Commission of Inquiry into Allegations of State Capture, Corruption, and Fraud in the Public Sector, including Organs of State. Through its dedicated State Capture Task Team, Eskom has prepared, and is implementing, an action plan to address the findings in the report. The plan was approved by Eskom's Board on 14 July 2022 and submitted to the Department of Public Enterprises (DPE) on 17 July 2022. Eskom has also been working closely with the DPE, other state-owned enterprises (SOEs), and law enforcement agencies to ensure that it either directly addresses the recommendations or, where recommendations such as criminal prosecutions that are not within its control occur, supports law enforcement agencies in taking appropriate action against delinquent suppliers, former employees, former executives, former Board members, and associated perpetrators.

## Employees terminating Eskom service by resignation, abscondment, and retirement, while implicated in wrongdoing

The employer and employee relationship is a contractual relationship that affords either party the right to terminate the relationship on notice or with immediate effect in terms of the provisions of the Basic Conditions of Employment Act (BCEA) and the Labour Relations Act (LRA). The BCEA contains no provision that prevents an employee from resigning when faced with disciplinary action. Similarly, the BCEA contains no provision giving employers the power to refuse to accept a resignation.

The uncertainty as to whether an employee who resigns with immediate effect pending a disciplinary hearing can avoid disciplinary action and subsequent dismissal was addressed in *Naidoo and Another vs Standard Bank SA Ltd and SBG Securities (Pty) Ltd* (Case No. J1177/190). The Labour Court ruled that an employer had no power to discipline employees who had resigned with immediate effect before the date of their disciplinary hearings. The court, furthermore, ruled that the correct way to hold the employee to his or her contract was by seeking an order for specific performance. This was done by instituting a civil claim against such employee(s).

Some employees resigned in the face of allegations of impropriety and others during investigations of allegations of impropriety, while yet others resigned before disciplinary proceedings commenced. Table 5 below lists the employees who resigned between **1 April 2017 and 30 September 2022** while implicated in wrongdoing, and Table 6 tabulates the cases that have been handed over to the law enforcement agencies.

Table 5: Employees who resigned while implicated in wrongdoing

No	Unique number	Name and surname	Exit	Exit date
1	4018201	Olpha Malomane	Absconded	2019/05/28
2	4332839	Thabiso Mataboge	Absconded	2021/11/30
3	6091981	Etheane Ryno Petersen	Resignation	2017/09/30
4	3995473	France Hlakudi	Resignation	2017/11/13
5	4619345	Anoj Singh	Resignation	2018/01/22
6	952231	Prish Govender	Resignation	2018/01/31
7	676209	Matshela Koko	Resignation	2018/02/16
8	660402	Sean Maritz	Resignation	2018/03/01
9	4045241	Puso Moloji	Resignation	2018/03/14
10	4076955	Ayanda Nteta	Resignation	2018/04/30
11	3995510	Charles Kalima	Resignation	2018/04/30
12	668192	Patrick Mthethwa	Resignation	2018/05/28
13	4131616	Michael Sibiya	Resignation	2018/05/31
14	1252347	Thulile Njapha	Resignation	2018/06/21
15	1098192	Lorian Norton	Resignation	2018/07/11
16	4344597	Cornelius Lesito	Resignation	2018/08/01
17	1264012	Gugu Ntshangase	Resignation	2018/08/01
18	4565516	Lindelwa Nqobile Mgwabe	Resignation	2018/08/01
19	1100439	Caroline Basiamisi	Resignation	2018/09/14
20	4154664	Thulani Mahobe	Resignation	2018/09/27
21	1300475	Diana Mbili	Resignation	2018/09/30
22	1002313	Maya Naidoo	Resignation	2018/09/30

No	Unique number	Name and surname	Exit	Exit date
23	4686437	Jay Pillay	Resignation	2018/10/17
24	1223264	Gloria Sibongile Shongwe	Resignation	2018/10/18
25	1063059	Abram Masango	Resignation	2018/11/16
26	6843984	Bandile Jack	Resignation	2018/12/01
27	4141378	Ntozamo Twetwa	Resignation	2018/12/20
28	4420729	Tumelo Molatudi	Resignation	2019/01/01
29	4688716	Sibusiso Ndlovu	Resignation	2019/01/21
30	3985650	Karabo Musa	Resignation	2019/03/01
31	4340717	Emmanuel Sebola	Resignation	2019/04/01
32	4256614	Ndumiso Mncube	Resignation	2019/04/01
33	939412	Masedi Skosana	Resignation	2019/04/06
34	4461461	Bright Mukhahvuli	Resignation	2019/04/23
35	1216945	Buyiswa Bee Spayile	Resignation	2019/05/01
36	3970023	Judy Bothma	Resignation	2019/05/01
37	998381	Ntshabo Waldina Malebana	Resignation	2019/05/01
38	1082333	Joseph Koeberg	Resignation	2019/05/06
39	987053	Peter Sebola	Resignation	2019/05/31
40	4277635	Mzimkulu S Fatyi	Resignation	2019/07/31
41	909985	Nonhlanhla Dalia Kraai	Resignation	2019/07/31
42	4562302	Amanda Poncana	Resignation	2019/09/01
43	4113212	Obakeng Phakosi Mokwena	Resignation	2019/09/23
44	4271682	Tumelo Movundlela	Resignation	2019/09/30
45	3858192	Gert Opperman	Resignation	2019/10/15
46	3975127	Prince Khumalo	Resignation	2019/10/16
47	1112470	Thembeke Ndaba	Resignation	2019/10/28
48	910534	Mildred Nyoka	Resignation	2019/11/30
49	4198138	Natasha Kotze	Resignation	2019/12/01
50	3960248	S Ncedani	Resignation	2019/12/31
51	1047743	Vuyo Mcethe	Resignation	2020/01/01

No	Unique number	Name and surname	Exit	Exit date
52	1278929	Thembi Sylvia Cordelia Buthelezi	Resignation	2020/01/21
53	4230049	M Bidi	Resignation	2020/01/28
54	3989904	Granny Busisiwe Maseko	Resignation	2020/10/30
55	4131890	Lydia Diniso	Resignation	2020/11/26
56	4011248	Luvuyo Mgolodela	Resignation	2020/12/01
57	4423087	Pulane Sikhudo	Resignation	2020/12/01
58	1172120	Boipelo Molema	Resignation	2021/01/01
59	4371360	Asakundwi Mbevhana	Resignation	2021/01/01
60	4542186	Wandile Litheko	Resignation	2021/01/01
61	4419484	Phumudzo Ravhuhali	Resignation	2021/01/01
62	1282515	Bongiwe Ngiba	Resignation	2021/02/01
63	4146816	Frans Mathobela	Resignation	2021/02/01
64	4582153	Seshibe Makgatho	Resignation	2021/02/01
65	3875999	Andiswa Hlazo	Resignation	2021/02/05
66	4342140	Nonhlanhla Tshabalala	Resignation	2021/03/01
67	1254411	Vusi Silawu	Resignation	2021/04/26
68	4469717	Muvenda Khomola	Resignation	2021/08/31
69	4531988	Thato Senosi	Resignation	2021/06/25
70	4531643	Katlego Rantsieng	Resignation	2021/03/31
71	4020952	M. Kgamedi	Resignation	2021/06/04
72	3896088	Nolan De Vos	Resignation	2021/11/01
73	4463788	Hombakazi Lopes Das Dores	Resignation	2020/09/30
74	4523000	Humbulani Mudau	Resignation	2021/11/21
75	1294327	Sakhile Magcakini	Resignation	2021/10/15
76	4404383	Olwethu Zazini	Resignation	2021/10/06
77	4524379	Bandile Adams	Resignation	2021/09/30
78	4102007	Lulamile Mdleleni	Resignation	2021/11/30
79	4366139	Asanda Sityata	Resignation	2021/12/31
80	4521882	Oduetse Thomas Mokolobe	Resignation	2021/05/31

No	Unique number	Name and surname	Exit	Exit date
81	1292512	Agnes Matthews	Resignation	2021/06/05
82	612182	Renae De Jager	Resignation	2018/10/31
83	533760	Eugene Cloete	Resignation	2018/12/01
84	6096702	Arnot Daniels	Resignation	2019/04/01
85	3713237	Frans Mangope Maisela	Early retirement	2019/08/01
86	337566	Allan Greyvensteyn	Resignation	2019/10/01
87	3393534	Isaac Thabethe	Resignation	2019/10/01
88	466389	Antonie Van Heerden	Resignation	2019/12/01
89	718202	Marie Michelle George	Resignation	2020/01/01
90	638252	Ne Dikgale	Resignation	2021/01/01
91	1217702	Logan Govender	Resignation	2021/02/01
92	4257488	Nhlakanipho Brian Ncayiyana	Resignation	2020/12/01
93	4410593	Vhutshilo Helen Mukwevho	Resignation	2021/10/01
94	4282859	Fakazile Nyembe	Resignation	2021/06/01
95	4198299	Kwanga Colio Dotwana	Resignation	2018/06/05
96	394170	Petrus Johannes Van der Merwe	Early retirement (63 years)	2020/12/01
97	4607458	Benjamin Mabasa	Resignation	2022/02/01
98	1288889	Ncedo Utility Tele	Resignation	2021/09/11
99	4665843	Xolani Mtekwana	Resignation	2018/12/31
100	4688297	Malesela Peter Mabela	Absconded	2021/02/24
101	4247719	Rhulani Kenneth Chabalala	Resignation	2018/02/08
102	335751	Margaret Stroebe	Early retirement (penalties)	2020/08/01
103	4735940	Sibongiseni Jerome Mthembu	Resignation	2020/01/01
104	1175006	Loyiso Tyabashe	Resignation	2021/01/01
105	3862207	Eccles Thabo Mogashoa	Early retirement (penalties)	2022/03/01
106	519085	Nico Grobler	Early retirement (63 years)	2022/01/01
107	703934	Hannes Kleynhans	Normal retirement	2021/07/01
108	1100231	Venjula Sithole	ILL Health retirement	2021/12/01
109	1208463	Kgalabje Letsiki	Resignation	2021/05/29

No	Unique number	Name and surname	Exit	Exit date
110	3500950	Greyvis Mokoena	Early retirement (63 years)	2021/07/01
111	3538375	Themba Masemula	Resignation	2021/02/01
112	3678112	Phillipus Selepe	Early retirement (63 years)	2021/09/01
113	3680269	Kenneth Ndyebo	Early retirement (penalties)	2020/10/01
114	3701807	Jacob Maseko	Early retirement (penalties)	2021/04/01
115	3710207	Matsebe Nkadimeng	Early retirement (63 years)	2021/12/01
116	3749328	Billy Raseemela	Normal retirement	2021/12/01
117	3782493	Nhlanhla Madi	Early retirement (penalties)	2021/08/01
118	3814932	Eskian Magolo	Early retirement (63 years)	2021/04/01
119	4011996	Motsoako Maredi	Ill health retirement	2021/09/01
120	4046763	Dan Korope	Resignation	2021/02/27
121	4103550	Pieter Van Wyk	Resignation	2022/01/01
122	4194150	Clement Andries	Resignation	2022/01/01
123	4236009	Itumeleng Sekgololo	Resignation	2021/10/11
124	4265458	Bongani Nyamakazi	Ill health retirement	2021/11/01
125	4322832	Daryn Ewen	Resignation	2022/01/08
126	4322924	Quinton Diedericks	Resignation	2021/04/01
127	4368074	Rauwe Matloga	Resignation	2021/08/07
128	4372776	Cornelius Scheepers	Resignation	2021/12/25
129	4430870	Mapalakanye Peta	Resignation	2021/09/01
130	4448802	Anzil Maree	Resignation	2021/05/14
131	4515528	Calvin Maseko	Resignation	2021/10/01
132	4528203	Dive Baloyi	Resignation	2021/09/01
133	4534987	Lehlohonolo Leeuw	Resignation	2021/05/07
134	4624989	Gideon Mokonoto	Resignation	2021/08/01
135	4651356	Collen Mashiane	Resignation	2022/01/01
136	7854567	Steve Hansen	Normal retirement	2020/10/01
137	1340893	Petrus Rademan	Resignation	2021/10/01
138	3956859	Tumelo Mokoari	Resignation	2021/02/12

No	Unique number	Name and surname	Exit	Exit date
139	4280471	Snathi Lushozi	Absconded	2020/07/30
140	4471857	Fhatuwani Sibanda	Resignation	2020/08/01
141	1021734	Anura Perera	Retirement	2021/01/01
142	4062031	Sithembiso Sibonelo Tshangase	Resignation	2020/09/01
143	4141811	Mandla Michael Ngubane	Resignation	2021/08/01
144	1184031	Lea Macy Mpe	Resignation	2019/07/01
145	1132818	Khangela Richard Nkuna	Resignation	2020/01/01
146	4274926	Alfeo Phiri	Resignation	2022/04/01
147	4182805	Boiketlo Rabson Mashila	Resignation	2022/05/23
148	1163560	Nthabiseng Patricia Malebo	Resignation	2021/12/01
149	1213328	Inge Loreal Fortuin	Resignation	2022/06/01
150	4090777	Tambani VT	Resignation	2019/06/01
151	4017147	Tshunungwa TC	Resignation	2018/09/01
152	4654874	Sikhulume B	Resignation	2020/12/01
153	4276991	Ntje Kenneth Segooa	Resignation	2022/06/01
154	3930964	Jeanette Mmamoloko Mmampotoko Seabe	Resignation	2019/05/12
155	1148592	Patrick Themba Ndlovu	Resignation	2019/03/01
156	4020112	Mahlatsi Simon Maphoto	Resignation	2019/04/01
157	3918148	Lisa Cochius	Resignation	2019/08/23
158	4447601	Grant Quentin Meredith	Resignation	2019/08/23
159	4397874	Hector Nkosinathi Masilela	Resignation	2020/02/01
160	4559146	Thamsanqa Patrice Sibiya	Resignation	2020/11/24
161	4119449	Thozamile-Botha Ntokozo Magubane	Resignation	2018/08/09
162	4091794	Siyabonga Linose	Resignation	2021/05/01
163	4216487	Sibusiso Jeffrey Makofane	Resignation	2020/08/28
164	3948590	Rachel Charlotte Bam	Resignation	2021/01/21
165	4114802	Ismail Mahomed Farouk Lambat	Resignation	2020/12/01
166	558233	Carolynn Iris Koekemoer	Resignation	2018/06/30



No	Unique number	Name and surname	Exit	Exit date
167	1065277	Sydney Mahlatse Mashigo	Resignation	2018/06/30
168	4291686	Lehlohonolo Figs Khanye	Resignation	2020/01/18
169	329732	Pieter Willem Coetzer	Separation package	2020/05/01
170	3978164	Anele Wilberforce Kwayimani	Resignation	2020/09/11
171	4337124	Glen Maluka	Resignation	2021/12/11
172	3761205	Madimetja Samuel Molekwa	Retirement	2020/01/02
173	3921953	Andrew John Peters	Resignation	2022/08/05
174	434436	Martn Visser	Retirement	2022/06/01
175	1271942	Wellington Billy Maduna	Resignation	2018/07/01
176	1057887	Patricia Noluthando Marah	Retirement	2019/02/01
177	634168	Johan Pieter Wannenburg	Resignation	2018/07/14
178	1109108	Mohamed Fayaz Khan	Resignation	2022/05/01
179	1050084	Monica Lindiwe Mthombeni	Retirement	2022/03/01
180	4084628	Muziwenhlanhla Sosibo	Resignation	2019/06/01
181	3731969	Morris Mankwe Sekonya	Deceased	2020/11/28
182	981000	Tumiso Lucas Leola	Retirement	2022/02/01
183	961648	Sifisosethu Blessing Cele	Resignation	2019/07/27

Table 6: Criminal cases under investigation by the SAPS (118 cases)

No.	Forensic Case No.	Criminal Case No.	Criminal case outcome	Criminal case status	Police station name	Amount involved * The value is derived from the value deemed to be at risk
1	10/04/2016	106/11/2019	Investigation in progress	Under investigation	Sandton	R15 000 000,00
2	32/04/2016	53/7/2016	Investigation in progress	Under investigation	Ermelo	To be determined
3	13/02/2017	147/6/2017	Investigation in progress	Under investigation	Sandton	No amount involved; submission of fraudulent document
4	03/03/2017	44/04/2017	Investigation in progress	Under investigation	Beacon Bay	R93 014,34
5	33/10/2017	138/4/2018	Investigation in progress	Under investigation	Dannhauser	R4 394 672,00
6	40/10/2017	102/11/2019	Investigation in progress	Under investigation	Sandton	R95 000 000,00
7	20/12/2017	233/11/2019	Investigation in progress	Under investigation	Sandton	R46 800,00
8	17/02/2018	03/04/2019	Investigation in progress	Under investigation	East Rand Organised Crime	To be determined
9	25/02/2018	103/11/2019	Investigation in progress	Under investigation	Sandton	R260 000 000,00
10	20/03/2018	456/5/2018	Investigation in progress	Under investigation	Sandton	R5 196 991 857,35
11	2019-12952	07/09/2020	Investigation in progress	Under investigation	Beacon Bay	R2 959 971,72
12	2019-12970	298/02/2021	Investigation in progress	Under investigation	Sandton	R8 917 202,00

No.	Forensic case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Amount involved * The value is derived from the value deemed to be at risk.
13	15/03/2016	64/02/2020	Investigation in progress	Under investigation	Sandton	R112 833,96
14	27/10/2017	114/11/2019	Investigation in progress	Under investigation	Sandton	R731 064,30
15	15/01/2018	01/04/2018	Investigation in progress	Under investigation	Melkbosstrand	R526 119,41
16	20/05/2017	507/09/2017	Investigation in progress	Under investigation	Sandton	R134 000 000,00
17	19/04/2017	59/7/2017	Investigation in progress	Under investigation	Lephalale	R3 251,00
18	16/12/2016	409/05/2017	Investigation in progress	Under investigation	Sandton	R318 432,67
19	38/10/2016	55/02/2018	Investigation in progress	Under investigation	Hendrina	R851 000,00
20	30/09/2016	294/02/2017	Investigation in progress	Under investigation	Stellenbosch	R190 890,00
21	21/01/2016	58/04/2017	Trial in progress	The matter is before the Palm Ridge Special Commercial Crimes Court. During the last sitting, the case was postponed to 23 November 2022.	Cleveland	R1 818 689,54
22	24/07/2015	385/10/2015	Investigation in progress	Under investigation	Boksburg North	R5 000,00

No.	Forensic case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Amount involved * The value is derived from the value deemed to be at risk.
23	27/05/2015	15/9/2015	Trial in progress	The matter is before the Middelburg Regional Court. Warrant of arrest issued against Accused Number 3. Case postponed to June and July 2023.	Komati	R1 591 249,47
24	15/05/2015	37/10/2016	Investigation in progress	Under investigation	Kriel	R1 713 674,95
25	08/05/2015	991/03/2017	Investigation in progress	Under investigation	Witbank	R3 252 344,76
26	12/02/2015	654/11/2019	Investigation in progress	Under investigation	Witbank	No amount involved; submission of fraudulent document
27	25/10/2014	1485/8/2015	Investigation in progress	Under investigation	Bloemfontein	R6 914 600,00
28	13/10/2014	215/6/2015	Investigation in progress	Under investigation	Bloemfontein	R271 585,92
29	20/05/2014	692/7/2014	Investigation in progress	Under investigation	Pinetown	To be determined
30	30/03/2014	203/03/2020	Investigation in progress	Under investigation	Sandton	R83 236,26
31	2018-12221	115/11/2019	Investigation in progress	Under investigation	Sandton	R200 000 000,00

No.	Forensic case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Amount involved * The value is derived from the value deemed to be at risk.
32	2018-12267	03/04/2019	Investigation in progress	Under investigation	Germiston Organised Crime	R19 700 000,00
33	2018-12386	571/11/2019	Investigation in progress	Under investigation	Brooklyn	R718 694,45
34	2018-12400	103/11/2019	Investigation in progress	Under investigation	Sandton	R52 764 793,80
35	2018-12423	96/02/2020	Investigation in progress	Under investigation	Sandton	R49 752 013,88
36	2018-12424	567/11/2019	Investigation in progress	Under investigation	Brooklyn	R80 876 283,80
37	2018-12451	50/11/2019	Investigation in progress	Under investigation	Hendrina	R2 216 713,00
38	2018-12522	495/7/2019	Investigation in progress	Under investigation	Witbank	R15 592 500,00
39	2018-12622	452/05/2018	Investigation in progress	Under investigation	Sandton	To be determined
40	2018-12623	453/05/2018	Investigation in progress	Under investigation	Sandton	To be determined
41	2018-12624	454/05/2018	Investigation in progress	Under investigation	Sandton	To be determined
42	2018-12625	455/05/2018	Investigation in progress	Under investigation	Sandton	To be determined
43	2018-12626	456/05/2018	Investigation in progress	Under investigation	Sandton	To be determined
44	2019-12821	520/11/2019	Investigation in progress	Under investigation	Witbank	R4 119 830,00

45	2019-12897	108/11/2019	Investigation in progress	Under investigation	Sandton	R17 000 000,00
46	2019-12897	108/11/2019	Investigation in progress	Under investigation	Sandton	R17 000 000,00
47	2019-12938	17/11/2019	Investigation in progress	Under investigation	Ogies	R3 320 200,00
48	2019-13023	03/04/2019	Investigation in progress	Under investigation	Germiston Organised Crime Unit	R8 800 000,00
49	2020-13143	40/02/2020	Investigation in progress	Under investigation	Sandton	R51 152 582,97
50	19/01/2018	394/8/2020	Investigation in progress	Under investigation	Sandton	R730 449,28
51	78/10/2017	14/08/2020	Investigation in progress	Under investigation	Blinkpan	R140 800,40
52	2019-12891	07/04/2020	Investigation in progress	Under investigation	Commercial Crime Unit Middelburg with Hawks	R2 861 093,57
53	09/10/2016	141/10/2020	Investigation in progress	Under investigation	Hendrina	R2 939 140,50
54	20/06/2015	23/11/2020	Investigation in progress	Under investigation	Sandton	To be determined
55	2018-12290	205/11/2020	Investigation in progress	Under investigation	Westenburg	R128 801,13
56	2019-12661	24/10/2020	Investigation in progress	Under investigation	Hendrina	R800 000,00
57	2018-12398	413/07/2020	Investigation in progress	Under investigation	Sandton	R45 294 922,14

No.	Forensic case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Amount involved * The value is derived from the value deemed to be at risk.
58	2020-13142	424/07/2020	Investigation in progress	Under investigation	Sandton	R114 362 778,20
59	2020-13195	08/10/2020	Investigation in progress	Under investigation	Germiston	R3 306 875,22
60	2020-13145	529/11/2020	Investigation in progress	Under investigation	Middelburg	R2 077 900,00
61	2020-13192	131/10/2020	Investigation in progress	Under investigation	Nigel	R126 601,57
62	05/12/2016	77/4/2021	Investigation in progress	Under investigation	Sandton	R14 700 000,00
63	2020-13226	625/5/2021	Investigation in progress	Under investigation	Sandton	R750 000,00
64	2020-13227	23/06/2020	Investigation in progress	Under investigation	Ogies	R192 344,40
65	2020-13186	102/3/2021	Investigation in progress	Under investigation	Sandton	No amount involved; submission of false information
66	2020-13232	206/5/2021 New case 83/5/2021	Investigation in progress	Case transferred from Sandton to Sawoti Police Station in KZN	Sawoti KZN	R3 742 144,00
67	2020-13234	56/08/2021	Investigation in progress	Under investigation	Boschkop Police Station, Pretoria East	R756 575,99
68	2021-13480	147/8/2021	Investigation in progress	Under investigation	Sandton SAPS	R17 466 600,10

No.	Forensic case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Amount involved * The value is derived from the value deemed to be at risk.
69	2019-12898	527/11/2020	Investigation in progress	Under investigation	Middelburg (Hawks)	R6 053 421,36
70	2019-13132	469/02/2021	Investigation in progress	Under investigation	Germiston Commercial Crime Unit	To be determined
71	2020-13146	10/04/2020	Investigation in progress	Under investigation	Middelburg Commercial Crime Unit	R4 016 270,50
72	2021-13800	763/11/2013	Trial in progress	The matter is before the Nelspruit Magistrate Court. The trial was postponed to 12-14 December 2022 for final arguments and judgement.	Nelspruit	R2 549 106,00
73	39/07/2014	53/8/2021	Investigation in progress	Under investigation	Sandton SAPS	R433 500,00
74	08/11/2016	82/3/2022	Investigation in progress	Under investigation	Beacon Bay	To be determined
75	92/11/2017	16/02/2022	Investigation in progress	Under investigation	Viljoensdrif	R 774 600,00
76	20/02/2016	13/02/2022	Investigation in progress	Under investigation	Kriel	To be determined
77	49/05/2016	26/03/2022	Investigation in progress	Under investigation	Sandton	To be determined



No.	Forensic case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Amount involved * The value is derived from the value deemed to be at risk.
78	22/08/2016	338/2/2022	Investigation in progress	Under investigation	Pinetown	To be determined
79	04/11/2016	16/03/2022	Investigation in progress	Case to be transferred to Giyani Police Station – 10 March 2022	Sandton	To be determined
80	43/04/2016	158/03/2022	Investigation in progress	Under investigation	Standerton	To be determined
81	2018-12443	13/3/2022SAS Case No. (old) 56/06/2022	Investigation in progress	Under investigation	Ogies	R25 478 577,53
82	2020-13218	307/9/2021	Investigation in progress	Under investigation	Sandton	To be determined
83	2021-13461	305/2/2022	Investigation in progress	Under investigation	Sandton	To be determined
84	2021-13500	107/10/2021	Investigation in progress	Under investigation	Hendrina	To be determined
85	2022-13856	01/02/2022	Investigation in progress	Under investigation	Germiston	To be determined
86	20/02/2016	13/02/2022	Investigation in progress	Under investigation	Kriel	To be determined
87	2020-13212	142/3/2022	Investigation in progress	Under investigation	Sandton Police Station	To be determined
88	2020-13215	435/2/2021	Investigation in progress	Under investigation	Midrand Police Station - to be transferred to Kriel Police Station	To be determined

No.	Forensic case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Amount involved * The value is derived from the value deemed to be at risk.
89	2020-13217	246/11/2021	Investigation in progress	Under investigation	Boschkop Police Station	To be determined
90	2022-13847	123/09/2019	Investigation in progress	Under investigation	Phola	To be determined
91	2022-13852	37/11/2021	Investigation in progress	Under investigation	Hendrina	To be determined
92	2022-13904	2021/09/321	Investigation in progress	Under investigation	DPCI IR 2021/09/321	To be determined
93	2018-12267	13/04/2019	Investigation in progress	Under investigation	Germiston Organised Crime	R 1 700 000,00
94	2018-12522	495/7/2019	Investigation in progress	Under investigation	Witbank	R15 592 500,00
95	2020-13218	114/8/2021	Investigation in progress	Under investigation	Kriel	To be determined
96	2020-13218	92/10/2021	Investigation in progress	Under investigation	Kriel	To be determined
97	2021-13326	33/04/2022	Investigation in progress	Under investigation	Ogies	To be determined
98	2021-13520	350/6/2022	Investigation in progress	Under investigation	Midrand	To be determined
99	2022-13923	04/2022/369	Investigation in progress	Under investigation	Germiston SAPS	To be determined
100	2022-13949	345/8/2017	Investigation in progress	Under investigation	Bedfordview	To be determined

No.	Forensic case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Amount involved * The value is derived from the value deemed to be at risk.
101	2022-13989	38/05/2022	Investigation in progress	Under investigation	Kriel SAPS	To be determined
102	2022-14018	200/06/2022	Investigation in progress	Under investigation	Cleveland	To be determined
103	16/03/2018	2022/09/251	Investigation in progress	Under investigation	DPCI	To be determined
104	23/04/2018	2022/08/284	Investigation in progress	Under investigation	DPCI Newcastle Office	To be determined
105	2019-12924	2020/09/270	Investigation in progress	Under investigation	DPCI	To be determined
106	2019-13093	2022/09/292	Investigation in progress	Under investigation	To be confirmed	To be determined
107	2021-13327	2022/08/302	Investigation in progress	Under investigation	DPCI	R240 000,00
108	2022-14037	89/9/2021	Investigation in progress	Under investigation	Kriel Power Station	R130 076,24  This amount was recovered from the supplier. Criminal case registered against the supplier's employee.
109	18/03/2018	2022/09/28	PRECCA referral: 2022/09/163	Under investigation	DPCI	To be determined

No.	Forensic case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Amount involved * The value is derived from the value deemed to be at risk.
110	05/04/2018	70/06/2022	Investigation in progress	Under investigation	To be confirmed	To be determined
111	2020-13283	274/03/2022	Investigation in progress	Under investigation	DPCI	To be determined
112	2020-13293	164/7/2022	Investigation in progress	Under investigation	Sandton	To be determined
113	2020-13296	566/6/2022	Investigation in progress	Under investigation	Sandton	To be determined
114	2021-13317	220/03/2022	Investigation in progress	Under investigation	Midrand Police Station	To be determined
115	2021-13318	36/7/2022	Investigation in progress	Under investigation	Ogies	To be determined
116	2021-13319	9/8/2022	Investigation in progress	Under investigation	JHB DPCI	To be determined
117	2021-13380	48/05/2022	Investigation in progress	Under investigation	DPCI	To be determined
118	2021-13560	609/6/2022	Investigation in progress	Under investigation	Midrand	To be determined

*Note: the names of the people and entities against whom the cases have been opened will be disclosed once they have appeared and tendered pleas in court in line with the general restrictions on naming people before court appearances.*

Table 7: Criminal cases completed by SAPS (13 cases)

	Forensic case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Amount involved * The value is derived from the value deemed to be at risk.
1.	23/05/2017	266/11/2019	The DPP issued a <i>nolle prosequi</i> certificate – decline to prosecute – the reason for declining to prosecute being insufficient evidence to link the suspect(s) to any criminal conduct. <b>Employee:</b> 1. Etheane Ryno Petersen <b>Suppliers:</b> 1. Zweni Projects CC 2. Mercury Electrical 3. Leroy’s Construction	Completed	Sandton	R39 478 485,07
2.	05/01/2018	797/01/2019	The Prosecuting Authority declined to prosecute the matter, in that there was no prospect of a successful prosecution. Forensic has reviewed the evidence and agreed. Involved: Suppliers: i. Maison Investments; ii. Sihambise Transport; and iii. TIW Transport and Proj Amount involved: R 355,114M Criminal case registered at Witbank SAPS	Completed	Witbank	R355 114 000,00
3.	69/07/2017	92/4/2018	The case was provisionally withdrawn from the court roll. Supplier involved: Fabor Engineered	Completed	Lephalale	R300 390,00
4.	12/07/2015	170/11/2017	The docket was transferred to the Commercial Crime Unit and we await the appointment of an Investigating Officer. Meanwhile the case is withdrawn.	Completed	Cleveland	R990 944,00

5.	25/03/2018	183/01/2018	1) Phumlani Dube was convicted of fraud and sentenced to two years' imprisonment, which was wholly suspended for five years. 2) Lucky Bhembe was convicted of fraud and sentenced to two years' imprisonment, which was wholly suspended for five years.	Completed	Volksrust	R6 000,00
6.	27/02/2015	170/11/2017 23/05/2017	Withdrawn; investigated by Captain NP Masuku	Completed	Cleveland	R990 944,00
7.	07/12/2014	24/08/2015	Suspect was found guilty and case was closed.	Completed		To be confirmed
8.	16/11/2014	330/03/2015	Case was withdrawn by court on 9/12/2020 Reasons for withdrawal to be confirmed with the investigating officer.	Completed	Hendrina	R307 874,80
9.	2018-12276	1216/4/2015	The docket has been filed with a warrant of arrest. This means that it is closed and will be brought forward to determine whether the suspect has been arrested for another matter, and if so, CAS 1216/04/2015 will be reopened.	Completed	Sandton	R54 000 000,00
10	2018-12568	152/11/2019	The case was closed. The whistle-blower could not be traced.	Completed	Cleveland	R140 000,00

	Forensic case no.	Criminal case no.	Criminal case outcome	Criminal case status	Police station name	Amount involved * The value is derived from the value deemed to be at risk.
11	2019-12768	464/11/2018	This matter was finalised in the Palm Ridge Commercial Crimes Court. Mr Moraka (former Eskom employee) and Mr Tshabalala (Eskom service provider) were found guilty on 53 counts of fraud and theft and sentenced to 20 years in prison. Eskom stands to recover over R4 million from the proceeds of the property preserved by the Asset Forfeiture Unit. The process to recoup this money is ongoing.	Completed	Sandton	R31 000 000,00
12	2019-12764	94/5/2019	The case was closed at the SAPS in 2019. The case was closed due to lack of evidence.	Completed	Mount Frere	The cost of material was not determined.
13	23/04/2018	138/4/2018	SAPS case closed. Referral in terms of section 34 of PRECCA - Reference Number 2022/08/284	Completed	Newcastle	Submission of fraudulent compliance certificates, no amount involved,

## 12. Implementation of controls on payments to suppliers

### Recommendation 6.12

Before payments to suppliers are made, proper controls must be implemented through documented checks and balances. This is to ensure that payments are made for value received and are not advance payments for which non-commensurate value or, worse, no value is received.

### Response to the recommendation

All payments are made in line with the Eskom payment controls on SAP, and invoices are assessed and scrutinised to ensure that they are aligned with the service delivered and with the provisions of the contract according to the process described in the previous report. Payment controls are continuously exercised for each transaction.

It is a common requirement for advance payments, especially on long-lead components, to only be processed once the contractor has provided a bond according to the Eskom procedural requirements. This mitigates the risk if the contractor does not perform according to the contract conditions. This recommendation has been implemented successfully.

## 13. Managing the extension of existing contracts that are due to expire

### Recommendation 6.13

Existing contracts that are due to expire must not be extended through variation orders without proper due diligence being done, which due diligence records must be kept on file for audit purposes.

### Response to the recommendation

As part of monitoring the expiry of the existing contracts, the annual procurement plans are constantly monitored monthly and quarterly. The divisions are provided with a contract expiry report, advising of all contracts that are about to expire in zero to



12 months so that they can update their respective plans. The periodic notification given to the business of expiring contracts is intended to ensure that the process of placing new contracts commences well in advance before the expiry of preceding contracts. Furthermore, this is intended to eliminate any poor planning that might lead to any unnecessary modification or expansion of contracts and deviation from the plan.

The Procurement and Supply Chain Management (P&SCM) Functional Leadership Steering Committee has been established with, among other duties, the task of ensuring adherence to the approved procurement plans and introducing interventions where instances of non-compliance have been identified. The intervention seems to be effective. The steering committee members are accountable to their divisional heads for any procurement spend that is not within the confines of contract coverage.

In instances where expansion or variation is inevitable, the variation is approved by the relevant delegated authority to eliminate any elements of possible manipulation and then reported to National Treasury in accordance with the newly enacted PFMA Instruction Note No. 03 of 2021/2022. All necessary procurement processes are being followed before submission to the relevant Delegated Adjudication Authority for approval if the expansion thresholds are exceeded or in cases of scope variation. In accordance with the newly enacted PFMA Instruction Note No. 03 of 2021/2022, all such transactions are reported to National Treasury and AGSA as per the prescribed reporting system with Deviations and procurement by other means having to be reported within fourteen (14) days of approval and expansions and variations having to be reported on a monthly basis.

Additionally, status reports on procurement plans are submitted to the National Treasury quarterly to ensure that there is adherence to the approved plans and that unnecessary deviations are eliminated. In line with the principles of fairness, transparency, and cost-effectiveness, these plans are published on the National Treasury database to create visibility for all potential suppliers so that they can plan accordingly.

Finally, as part of the Ministerial Equity Conditions, Eskom developed the Procurement Roadmap, which includes compliance with, and adherence to, procurement plans, as

well as monitoring of contract performance against the project budgets to reduce contract variations and expansions. Then reporting in terms of the progress made is submitted to the Eskom/DPE/National Treasury Forum on a monthly basis. However, it must be noted that the deviations mechanism has been broadened to include other categories on which SOEs were not required to report previously. These categories include procurement by other means, namely, written price quotation within the NT prescribed threshold, urgent procurement, and sole source, as well as variation of the original scope of work.

## 14. Correction of defects identified at Medupi and Kusile Power Stations

### Recommendation 6.14

Defects identified at Medupi and Kusile must be corrected expeditiously to avoid further project delays and cost escalations.

### Response to the recommendation

The major plant defects at Medupi and Kusile are tracked under the Eskom Operations Recovery New Build (9 Point Plan). Major plant defects are defined as plant system or equipment defects that result in or have the potential to, significantly reduce the Energy Availability Factor of multiple units at the new build power plants and where the available contractual defect resolution remedies have not been effective. The five (5) major plant defects at Medupi and Kusile include the following:

- Medupi and Kusile Pulse Jet Fabric Filter Plant (PJFF) poor performance due to inadequate pulsing system and flue gas flow entry;
- Medupi and Kusile Gas Air Heater (GAH) mechanical performance, erosion, and operational performance in terms of ash carry-over and outlet temperature stratification;
- Medupi and Kusile Furnace Exit Gas Temperature resulting in excessive Reheater Spray Water flow;
- Medupi and Kusile Milling plant defects; and
- Medupi and Kusile Air and Flue Gas ducting erosion.

Eskom is making steady progress in developing and implementing effective technical solutions to the major plant defects at Medupi and Kusile power stations. Subsequently, the availability and reliability of the commissioned units at Medupi and Kusile are improving. The effective correction of the major plant defects at Medupi and Kusile will ensure that the plants achieve their contractual performance, with improved reliability and availability factors. At Medupi, the energy availability factor (EAF), excluding the impact of Unit 4 which is currently offline for repairs, has improved from 64% to 85%, since the effective correction of the major plant defects. This plant performance improvement of 21 percentage points in EAF, translates to a significant improvement in the energy output for the station in support of the currently constrained national grid.

The completion of the first phase of the effective correction of the major plant defects at Medupi and Kusile is forecast for 2023. Additional plant defect corrections, undertaken by Eskom in-house with or without third-party involvement, are forecast for completion after 2027, depending on the extent of technical solutions and unit outage availability as per the Eskom outage plan.

The costs of executing the major defects correction plan are managed within the current Eskom Board-approved Medupi and Kusile project budgets (i.e., execution release approval - ERA). The liable parties/contractors are held to account within the provisions of the relevant contracts and are fully responsible for the related major plant defect costs.

## **15. Holding contractors responsible for costs related to defects**

### **Recommendation 6.15**

The issue of responsibility of contractors for defects must be followed up, and the contractors must be held responsible for costs, where necessary.

### **Response to the recommendation**

Eskom continues to implement strict contractual processes to manage defects. Eskom's senior management and Mitsubishi Hitachi Power Systems Africa (MHPSA)

engage with each other and hold frequent meetings to ensure that the defects are being addressed. Progress is as reported under Recommendation 6.14.

Eskom has reached an upfront agreement with the boiler contractor, MHI. The total boiler defect correction costs will be split on a 50%-share basis between Eskom and MHI at both Medupi and Kusile. Meanwhile, a contractual process is under way, including contractual-level discussions (CLDs) and possible future Dispute Arbitration Board (DAB) referral, to determine liabilities for the liable party to be fully responsible for the related defect costs. This recommendation has been implemented successfully.

## **16. Management of coal quality**

### **Recommendation 6.16**

Coal quality must be prioritised and checked regularly.

#### **Response to the recommendation**

All coal contracts have a coal quality-management procedure (CQMP) annexure that governs the coal quality determination process, covering the coal quality specification, coal sampling, coal sampler calibration, coal sample handling and transportation, coal analysis, coal results management, coal quality deviations management, and remedies.

Coal quality analysis is conducted by Eskom-owned laboratories, third-party-constructed laboratories, and mine laboratories. Additionally, Eskom analyses and verifies the coal quality at the power station after delivery which is known as verification coal sampling and analysis.

#### **Quality audits**

The CQMP is a systematic process management system, which is subject to an audit process. The purpose of the audit is to ensure the integrity of the coal sampling and laboratory analysis to ensure the measurement, accuracy, and validity of the results.

Coal quality audits were conducted with various service providers in FY2023 Q2 (July to September 2022). To mitigate non-conformances (NCs), Eskom requires service providers to submit their corrective action plans to address the non-conformances and

monitor them effectively. All major and minor NCs should be addressed, and a corrective action plan must be submitted within a 24-hour timeline. The challenge of load shedding is mitigated by heavy-duty generators however it is causing damage to the sensitive sampling equipment such as AFT and TS. This risk is mitigated by subcontracting the sample to ensure that the required turnaround time for the reporting of analysis results is met.

Below is a summary of laboratory technical audit findings for Quarter Two of FY2023.

Table 8: Summary of laboratory technical audit findings for FY2023 Q1

Closed
Follow up

Service providers	July 2022		August 2022		September 2022	
	Non-conformances	Status	Non-conformances	Status	Non-conformances	Status
Laboratory 1			6 Major NCs issued.	Follow-up audit conducted and all 6 NCs were closed.	6 major NCs were issued.	6 NCs are still open, remedial actions, root cause analysis and corrective actions submitted to Eskom, and will be verified and closed during the follow-up audit.
Laboratory 2					6 Major NCs were issued.	Follow-up audit was conducted and all 15 NCs from Q1 audit were closed. All 6 NCs - Corrective action plan submitted to Eskom
Laboratory 3					5 NCs from Q1 audit	Follow-up audit was conducted, and 3 NCs were closed. 2 major NCs is still open as Eskom was not satisfied with the implemented corrective actions.
Laboratory 4					6 NCs from Q1 audit	Follow-up audit was conducted, and all 6 major NCs were closed
Laboratory 5					1 major NC recorded from Q1 audit.	Follow-up audit was conducted, and 1 major NC was closed
Laboratory 6					6 major NCs were recorded in Q1.	Follow-up audit was conducted, and 4 major NCs were verified and closed. The other 2 major NCs are still open.

## **Piloting of new technologies**

Eskom is currently investigating certain technologies related to measuring coal qualities at the power station or receiving site, using auger technology. The intention of the auger technology is to take a sample of coal from a delivering truck and instantaneously measure certain quality parameters for an indication of whether the coal quality is within acceptable limits compared to that which was contracted and pre-certified before delivery.

## **17. Use of retention bonds against contractors**

### **Recommendation 6.17**

Retention bonds must be used against contractors as a recourse for delays and substandard work that has been performed.

### **Response to the recommendation**

Eskom will continue to enforce the contractual clause on retention bonds, in accordance with the report of 10 June 2020, where a contractor fails to remedy defects.

Retention bonds to the value of R3,43 billion are in force for the boiler contracts at both Medupi and Kusile. Eskom will exercise its rights to use these bonds if MHPSA does not rectify the defects. This recommendation has been implemented successfully.

## **18. Stability of project managers at Kusile Power Station**

### **Recommendation 6.18**

There must be stability of project managers at Kusile to avoid delays.

### **Response to the recommendation**

The Project Management function at Kusile has been stable for more than a year, and critical positions have been filled. At the end of 2021, a permanent Eskom appointment

was made in the position of project director. This recommendation has been implemented successfully.

## **19. Construction of weighbridges and offloading facilities at Kusile Power Station**

### **Recommendation 6.19**

Weighbridges and offloading facilities must be constructed at Kusile to transport coal from the mine to the plant. Negotiations for the development of the adjacent New Largo coalfield must be fast-tracked and concluded without further delay. A monthly executive summary on progress in this regard must be submitted to SCOPA.

### **Response to the recommendation**

#### Coal offloading facility

Construction of the coal offloading facility started in 2015 and is continuing. The project is being executed in five phases. The first three phases have now been completed (with the third phase comprising civil works for permanent weighbridges, the inspection building, and the control room).

The outstanding phases are the coal hopper civil construction (Phase 4) and west access road (Phase 5). The coal hopper contract was awarded on 11 February 2022. Construction is underway, with mass earthworks (excavations) for the hopper structure completed. The next activity of construction piles resumed in August 2022 and to date, as of 5 October 2022, 103 piles have been done. Construction completion for the hopper structure is forecast to be at the end of 2023. Work on the west access road (Phase 5) will be executed in the same timeframe. The commercial process to obtain a single source contractor through an Eskom subsidiary is in progress.

#### Additional weighbridges

The management of the Kusile Project decided to install four additional weighbridges in the strategic coal stockyard area to enable the station to process more than 80 coal trucks per hour to meet the burn rate of 2 280 tonnes/hour for supply to six units. The installation of the four additional weighbridges in the coal stockyard has been

completed, and they are now operational. Six weighbridges have been installed in the stockyard, and all are operational.

#### Additional feed conveyor (AFC)

The installation of the additional feed conveyor in the coal stockyard has been completed, and is currently operational.

#### Progress on the New Largo coalfield project

Eskom decided on the Kusile Power Station location mainly based on the availability of a coal resource of sufficient volume and quality to supply 17 Mtpa for at least 50 years. A tied colliery coal supply of approximately 14 Mtpa was originally planned from New Largo, at that time owned by Anglo American Inyosi Coal (AAIC). The New Largo Mine was subsequently sold to the New Largo Coal Company (Pty) Ltd, with Seriti Resources Holdings (Pty) Ltd (Seriti) as the majority shareholder.

#### New Largo Mini-Pits D, F and H

Negotiations between Eskom and Seriti for the New Largo Pit D, Pit H, Pit F and the New Largo main mine for coal supply to Kusile are advancing. It is anticipated that the contracts will be entered into, in tranches, for the different blocks of coal set out above, which will eventually see at least half of Kusile's coal requirement being supplied by conveyor. The first of a suite of coal supply agreements (CSAs) for a three-year supply from Pit D to Kusile Power Station has been concluded by the parties. This is the forerunner of a suite of CSAs from the various mining pits to Kusile. The parties are currently in negotiations for the second tranche, namely, the long-term 10 year CSA from New Largo Pit D, and are targeting the conclusion of this tranche by December 2022

Given the readiness of New Largo as the anchor mine to supply Kusile and the then impact of a short-term oversupply of coal to Kusile, Eskom is working on diverting some of the existing coal contracts currently supplying Kusile by truck to other power stations. The diversion project is currently being reconsidered due to the increasing need for coal at Kusile. A technical review and a readiness assessment have been completed. Four suppliers are earmarked to have some of the volumes diverted away



from Kusile. Furthermore, Eskom's draft updated coal burn plan indicates a possible increase in the burn requirement at Kusile, which will be factored into the negotiations with Seriti to increase volumes where technical assessments support the increased volumes.

Current engagements with Seriti, based on the revised production schedule from the New Largo plan, indicate that Mini-Pit D will be the first to be contracted during 2022, followed by Mini-Pit F and Mini-Pit H and then New Largo main mine, expected during the course of Q1 of 2024.

#### Coal conveyor to Kusile

In accordance with the 2018 Board mandate, Eskom requested Seriti to develop a business case to build, operate, and maintain the conveyor belt under the already existing New Largo Coal environmental approvals, including the possible off-site offloading facility to minimise the number of trucks coming into the station.

Due to the current proposition to contract with Seriti in tranches, Seriti presented a revised case of building a conveyor belt to connect its beneficiation plant with the Kusile coal stockyard conveyor belts. Seriti has indicated that it is willing to raise the capital required for the conveyor belt and its associated infrastructure; however, it needs at least a coal supply agreement to be signed with Eskom to advance the conveyor belt build programme, as it will be raising the capital required at risk. The signing of the long-term Pit D coal supply agreement by 31 December 2022 will then allow Seriti to build a conveyor, which will be commissioned 18 months after the signing of the coal supply agreement. It is anticipated that the conveyor will be in operation by 30 April 2024.

#### New Largo main mine

Due to, among others, the delay in concluding a coal supply agreement with Eskom, Seriti has advised that it has earmarked the New Largo coal for supply to the export market and has advised Eskom of its intention to supply a middling product from the coal beneficiation process to Eskom for use at the Kusile Power Station.

Eskom’s position on the Kusile long-term coal quality specification, specifically with regard to the technical challenges being experienced at Kusile, has been concluded within Eskom and Eskom’s coal quality requirements have been confirmed and agreed to by Seriti.

## 20. The “take-or-pay” system

### Recommendation 6.20

The “take-or-pay” system must be revisited, and a cost-benefit analysis must be conducted to determine the viability of the system. A report on this must be sent to SCOPA within 60 days of the adoption of this report by the National Assembly.

### Response to the recommendation

If Medupi Power Station had been built on time and the mine had not been constructed in time, Eskom would have claimed money from the coal supplier. Unfortunately, Eskom is late in this case. Eskom previously tried to renegotiate the contract but was unsuccessful. Given the location of the power station, Eskom does not have other supply options at a more competitive price than the current agreement. Any renegotiation of the contract could result in an even higher price than currently paid.

In August 2020, Eskom wrote a formal letter to Exxaro, requesting the renegotiation of the take-or-pay contractual clause to make it applicable on an annual basis instead of the current monthly applicability. Exxaro responded formally in November 2021, declining Eskom’s request for renegotiation.

- As of the end of August 2022, the Medupi take-or-pay penalty amounted to R9,7 billion.

Table 9: Medupi take-or-pay penalty breakdown

Fin. Year	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22	TOTAL
Rands	633.89	1 806.58	1 825.84	839.58	1 576.66	1 040.66	844.28	702.25	346.07	90.97	9 706.78

- For FY2023, no Medupi take-or-pay penalties have been paid.

### **Update on evacuating coal**

Eskom explored the use of coal in the Mpumalanga area, but because of the high inherent sulphur quality of the coal and the cost to transfer the coal to Mpumalanga, the option was found to be unsuitable.

### **Medupi stockyard project**

The construction of the Medupi coal strategic stockyard was completed in August 2019, and the stockyard was at 17,3Mt as of 31 August 2022. Eskom will, thus, incur further take-or-pay penalties if Medupi Power Station cannot burn the minimum contractual volumes.

## **21. The production of gypsum**

### **Recommendation 6.21**

The production of gypsum should be processed further in order to capitalise on beneficiation for additional revenue for Eskom.

### **Response to the recommendation**

Following the ERI Board's approval of the gypsum commercialisation strategy, a request for proposals (RFP\ERI\2020\BMS\01) was issued to the market on 3 August 2020 for the disposal of gypsum at Kusile Power Station. The gypsum enquiry closed on 30 October 2020 after an extension of the closure date had been granted.

The transaction is currently with Audit and Forensic for assurance after an anonymous complaint or request was received. The assurance report will provide guidance on whether the process followed in the tendering process is compliant or not. If compliant, a mandate to negotiate will be sought from the delegated committee for the negotiations and conclusion of the contract with the successful bidder. Due to delays in the conclusion of the investigation by Audit and Forensic, the anticipated conclusion of the transaction has been delayed to October 2022. The successful bidder will have to construct a separation plant in order to extract gypsum from the system.

## 22. Holding contractors accountable for substandard work

### Recommendation 6.22

Contractors must be held accountable for substandard work.

### Response to the recommendation

The inspection of work in progress is ongoing, and NCs are being raised for contractors to rectify the defective work. Monthly reviews to track contract expiry and bond and guarantee validity/expiry are ongoing. This recommendation has been implemented successfully.

## 23. Completion of Medupi and Kusile Power Stations at the revised times

### Recommendation 6.23

The Medupi and Kusile power stations must be completed at the revised times of 2020 and 2023, respectively. The Eskom Board must, jointly and severally, be held accountable for any further delays, given the massive state bailouts that have been made available to Eskom over the medium-term budget period. Quarterly reports on progress and expenditure must be submitted to SCOPA.

### Response to the recommendation

The remaining investment/cost to complete Medupi is R18.95 billion. All six (6) Medupi units are in commercial operation. Current focus is on completing the balance of plant and remedial works.

The remaining investment/cost to complete Kusile is R14 billion. Four (4) out of six (6) Kusile units are in commercial operation. The current focus is on completing the commissioning of the remaining two units.

Eskom's intention is to complete the remaining scope of works at Medupi and Kusile within the current Eskom Board-approved project budgets and schedule.

**Key progress at Medupi:** all six units are in full commercial operation (CO), connected to the national grid, and supplying energy. The last unit achieved CO on 31 July 2021. The current focus is on the completion of the remaining balance-of-plant scope and conclusion of all commercial claims to ensure proper project close-out. The target for full project completion is November 2023.

**Key progress at Kusile:** four units are in full commercial operation (CO), connected to the national grid, and supplying energy. The fourth unit, Unit 4, achieved CO on 31 May 2022. Construction and commissioning activities are in progress on the remaining two units, units 5 and 6, respectively. CO of Unit 5 and Unit 6 is targeted for December 2023 and May 2024, respectively. The target for full project completion is May 2026.

The current Eskom Board-approved business cases for Medupi and Kusile remain valid. To date, no additional cost has been incurred in the completion of Medupi and Kusile.

The costs of executing the major defects correction plan are managed within the current Eskom Board-approved Medupi and Kusile project budgets (i.e., execution release approval - ERA). The liable parties/contractors are held to account within the provisions of the relevant contracts and are fully responsible for the related major plant defect costs. However, the outcome of the current corruption investigations at Kusile, some commercial challenges and the past COVID-19 pandemic impacts are risks that are negatively impacting the Kusile business case.

The table below provides the inception-to-date (ITD) project budget values, project expenditures and the investment/cost to complete the remaining scope of works at Medupi and Kusile; all costs exclude interest during construction (IDC).

<b>Project</b>	<b>Eskom Board-approved budget, as of April-June 2020 (excl. IDC)</b>	<b>Project Expenditure, as of Aug 2022 (excl. IDC)</b>	<b>Remaining Investment/Cost (excl. IDC)</b>
Medupi	R145.00 billion	R126.05 billion	R18.95 billion
Kusile	R161.40 billion	R147.40 billion	R14.00 billion

**Important Note:** The abovementioned Medupi budget does not include the cost of installing the Flue Gas Desulphurisation (FGD) plant at Medupi. The Medupi FGD

plant is expected to cost between R35bn and R40bn, and will be commissioned by 2027/28. Eskom is required to install the FGD plant in order to comply with the minimum emissions standards as promulgated by the Department of Fisheries, Forestry and the Environment (DFFE). The FGD has already been installed at Kusile, and the abovementioned Kusile budget includes FGD costs.