

**DEPARTMENT: PUBLIC ENTERPRISES**

**REPUBLIC OF SOUTH AFRICA**

**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**QUESTION NO.: PQ 1544**

**QUESTION:**



**1544.    Mr V Zungula (ATM) to ask the Minister of Public Enterprises:**

(1) Whether he will disclose the recipient(s) of the R5 billion allegedly paid to an Eskom service provider by mistake; if not, why not; if so, what are the relevant details;

(2)      What steps has he taken to:

(a) Bring those persons responsible for the reckless conduct to book and

(b) Retrieve the R5 billion?                                         NW1918E

**REPLY:**

According to the information received from Eskom

1. The R5.5 billion is the total value of Eskom’s claim against Tegeta Resources and Exploration, which is in business rescue.

Relevant details are as follows:

Tegeta is a company owned by Oakbay which is a Gupta related company. Tegeta owns the Optimum coal mine.

The Business rescue proceedings of the Optimum coal mine commenced in February 2018 when the Optimum Board of Directors resolved to place the company under voluntary business rescue and proceeded to file a notice of commencement of business rescue proceedings with the Companies and Intellectual Property Commission on 19 February 2018. The Optimum coal mine had been supplying coal to Hendrina Power Station.

Eskom has submitted a claim of approximately R5.5 billion against Optimum in these proceedings, composed of undelivered coal and poor quality of delivered coal:

1. pre - commencement (of business rescue) September 2016 to January, 2018 = R1,1 billion ( 1,1 million tons)
2. post – commencement (of business rescue process) February, 2018 to December, 2018

= R4.4 billion (3.8 million tons of Coal)

At a meeting of creditors convened on 10 December 2019, the quantum of Eskom’s claim was challenged and it was resolved to refer Eskom’s claim for determination by an independent expert. Creditors contended that Eskom’s claim is inflated and as such Eskom should not have been afforded voting rights on the contingent and disputed part of its claim in Optimum. Eskom’s disputed claim was determined by way of an expedited arbitration presided over by retired judge Fritz Brand, jointly appointed by the creditors.

At the arbitration hearing held in March 2020, the majority of creditors (excluding Oakbay – also a creditor in Optimum), Eskom and the BRPs reached an agreement regarding the quantum of Eskom’s claims. Eskom’s claim, both pre- and-post-business rescue, was determined to be the sum of R1 276 031 278.48 (one billion two hundred and seventy six million thirty one thousand two hundred and seventy eight rand and forty eight cents). Eskom’s voting share was determined at 24% to be exercised by Eskom in any manner it wishes to do.

Current Status of BR proceedings:

During the arbitration hearing in March it was also agreed that the revised business rescue plan would be published on or before the 2 April 2020. It was further agreed that the meeting of creditors, to vote on the preferred offer and adopt the business rescue plan, would be convened on or about 20 April 2020. The BRPs did not publish the plan in April due to the 2 remaining bidders, namely Lurco and IZM, failing to secure funding to acquire the mine.

In light of the above, in May 2020 the BRPs invited other prospective bidders to submit proposals to acquire the mine. Bids were submitted mid-June 2020 and the BRPs are currently reviewing the offers received from the 3 bidders. Eskom currently awaits the outcome of the review. Preferred bidders will be incorporated in the revised BR plan to be published in due course.

Towards the end of June 2020, the BRPs also received an alternative proposal to rescue the mine. The alternative offer was submitted by Centaur Ventures Ltd, one of the largest creditors of Optimum. According to the BRPs, the alternative plan, if supported by the BRPs and creditors, will also be incorporated in the revised business rescue plan and be triggered in the event that the preferred bidders fail to secure sufficient funding to acquire the assets. Eskom has not yet been furnished with the alternative proposal for consideration.

The BRPs have not committed to a specific date for publication of the revised business rescue plan. In the event that the revised plan is published end July, 2020 then the meeting of creditors for purposes of voting and adopting the plan would have to be convened early August i.e. within 10 days of the date of publication of the plan.

1. (a) Not applicable.

(b) As explained in (1) above, Eskom submitted a claim in the business rescue proceedings which are still underway.