

**MINISTRY**

**MINERAL RESOURCES AND ENERGY**

**REPUBLIC OF SOUTH AFRICA**

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**Memorandum from the Parliamentary Office**

**National Assembly: 622**

Please find attached a response to Parliamentary Questionfor ***written reply*** asked **by Ms P Madokwe (EFF) to ask the Minister of Mineral Resources and Energy:**

**Ms Patricia Gamede**

**Deputy Director General: Corporate Services**

**………………/………………/2021**

Recommended/ Not Recommended

**Adv. T.S Mokoena**

**Director General: Department of Mineral Resources and Energy**

**………………/………………/2021**

Approved / Not Approved

**Mr. S.G Mantashe**

**Minister of Mineral Resources and Energy**

**………………/………………/2021**

**622. Ms P Madokwe (EFF) to ask the Minister of Mineral Resources and Energy:**

Given that departmental entities are stuck in litigation matters that were started by persons who are no longer in his department and have never been held accountable, what (a) is the (i) breakdown of all legal matters against the various entities of his department and (ii) cost to the taxpayer in each case and (b) are the reasons that his department has not, to date, used its own internal processes against those individuals who offset the specified cases, such that they are personally liable for the specified legal costs? NW738E

**Reply**

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| **ENTITY** | **what (a) is the (i) breakdown of all legal matters against the various entities of his department** | **(a)(ii) cost to the taxpayer in each case** | **(b) are the reasons that his department has not, to date, used its own internal processes against those individuals who offset the specified cases, such that they are personally liable for the specified legal costs** |
| NECSA | On or about 12 August 2019, Mr Vusi Malebana, erstwhile Necsa Chief Legal Advisor filed an urgent application seeking a declaratory and interdicting order setting aside his suspension and stopping the disciplinary proceeding against him. The Labour Court ruled that the suspension of Mr. Malebana by the South Africa Nuclear Energy Corporation (Necsa) was declared to be unlawful and constitutes an occupational detriment. | Necsa was ordered to pay the costs of Mr. Malebana in pursuing the urgent application, which costs were to include the costs of two (2) counsel. The bill of costs as per the Taxing Master certificate were R352 486.14 which Necsa honoured in full in January 2021. | Following the court interdict, Mr. Malebana was subjected to a disciplinary hearing and eventually dismissed. He took the matter to the CCMA whereby the CCMA ordered that his dismissal was procedurally and substantively unfair and awarded six months compensation amounting to R679 444.86.  Mr Malebana subsequently served Necsa with a Notice of Motion together with the founding affidavit on 12 December 2020 in essence outlining his intentions to review the arbitration award issued by CCMA on 26 October 2020. |
| CGS | The Council for Geoscience has no pending legal matters emanating from the scenario outlined in the question. | N/A | N/A |
| MINTEK | Mintek does not have any litigation matters that were started by persons who are no longer at the company. The only legal matters currently active relates to labour issues such as unfair dismissal and unfair labour practice. | N/A | N/A |
| NNR | No outstanding litigation against NNR | N/A | N/A |
| NRWDI | The National Radioactive Waste Disposal Institute (NRWDI) is not involve in any litigation matters and therefore the questions are not applicable to NRWDI. | N/A | N/A |
| SDT | The SDT has no litigation matters at present. No such matters were dealt with in the past. Consequently, the entity has incurred no costs in this regard. | N/A | N/A |
| SADPMR | The SADPMR has no former or current employees who were involved in any litigations of which the Regulator was responsible for paying their legal costs. | N/A | N/A |
| SANEDI | SANEDI is currently opposing one labour relation matter | R253,998.25 | Matter is still pending |

**CEF (SOC) and its subsidiaries, NERSA and the MHSC responses listed separately below:**

**CENTRAL ENERGY FUND AND SUBSIDIARIES**

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| **ENTITY** | **what (a) is the (i) breakdown of all legal matters against the various entities of his department** | **(a)(ii) cost to the taxpayer in each case** | **(b) are the reasons that his department has not, to date, used its own internal processes against those individuals who offset the specified cases, such that they are personally liable for the specified legal costs** |
| CEF (SOC) Ltd | CEF SOC Ltd and SFF jointly handled the stock rotation litigation matter | R11, 922, 752.15. | After the A&O Report, Application was made for a declaratory order declaring that the sale of strategic stock was invalid. |
| SFF | Stock Rotation already reported as stated above.  Krone is suing SFF for payment, which they allege, is due in terms of the contract. Krone was required to install a metering system, which was aimed at improving accuracy levels of measuring of oil volumes.  In the recovery of proceeds for the sale of diesel to Line Petroleum, a default judgment was granted in favour of SFF, | R4 500 685.00  R 43, 400.43 | SFF is withholding payment on the grounds of non-performance under the contract.  A legal opinion is being sought because Line Petroleum does not have attachable assets in South Africa. |
| iGas | No litigation to report on. | N/A | N/A |
| PetroSA | PetroSA is claiming damages from Odjfjell for the pipeline damages.  PetroSA has instituted liquidation proceedings against Two Oceans for failing to honour payments for product sold  PetroSA has obtained judgment against Fantastic View and a writ of execution has been issued | R 11,462, 280.93  R 1,457,266.26  R 738,755.57 | Judgment is pending |
| AEMFC | The supplier being Innovent was found to have misrepresented AEMFC on registration with the Financial Service Board.  AEMFC concluded a settlement agreement with NUM in 2017 at the CCMA which was made an Arbitration award and amongst the item agreed upon was that AEMFC will pay the 13th cheque each December. In 2019 there was another agreement which states that it supersedes all the previous agreements and a new bonus scheme which was performance bonus was introduced. Bargaining employees in 2019 as per the new agreement received 50% of their CTC as performance bonus and the 13th Cheque was not paid. NUM has now obtained an Arbitration award against AEMFC demanding the 13th Cheque for December 2019. Persuant to the Arbitration award, NUM applied for enforcement order of R2.9M which was granted and AEMFC property was attached by the sheriff. AEMFC has applied to the Labour Court to stay the enforcement order pending the rescission of the of the Arbitration award. The argument by AEMFC is that, the 2017 agreement was superseded by the 2019 agreement and further that the 13th Cheque must be from the employee’s salary and not at employers costs.  An AEMFC former Senior Employee concluded a collecting Agreement with NUM in terms of which AEMFC will pay the risk allowance to employees who worked during the lockdown. In terms of the AEMFC LOA the collective agreement must be recommended by EXCO to the board for approval. The submission to the board by the former employed did not disclose that a collective agreement is already signed but created the impression that AEMFC must make a once off payment of R2.6 million for 5 weeks lockdown. AEMFC made a once off payment and the union lodge a grievance with the CCMA to enforcement the collecting agreement signed with the former employee. AEMFC disputed the validity of the collective agreement since it was not approved by EXCO and board and an urgent court application was filed to interdict CCMA to proceed with the matter pending review of the decision by AEMFC former employee to sign a collective agreement without authority. | R 241 016.43  R 192, 510.00  R 283,496. 62 | The contract was classified as Irregular expenditure by National Treasury. |

**NATIONAL ENERGY REGULATOR OF SOUTH AFRICA (NERSA)**

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| **No.** | 1. **Type of Litigation Matter** | 1. **Breakdown of Legal Matters** | 1. **Related Costs** | 1. **Reasons for not using own internal processes** |
| 1. | Judicial review | **ESKOM**- Case arises from the decision of the Energy Regulator approving the MYPD3 RCA5 and Eskom is unhappy with the outcome. Eskom has taken the decision on judicial review. | R1 750 000.00 | Only lawyers in the practising roll can appear in court. Despite NERSA legal advisors are all admitted attorneys/advocates, they cannot appear in court. |
| 2. | Judicial review | **AFGRI/PHILAFRICA**- The judicial review case arises from the decision of the Energy Regulator not to amend or revoke the distribution licence of Maluti a Phofung Local Municipality licence. | 2 900 000.00 | Only lawyers in the practising roll can appear in court. Despite NERSA legal advisors are all admitted attorneys/advocates, they cannot appear in court. |
| 3. | Judicial review | **Drakenstein Local Municipality**. The judicial review arises from the decision of the Energy Regulator not to approve some of the tariffs of the municipality during 2019/20 because of the impact that it would have had on the customers. | R2 200 000.00 | Only lawyers in the practising roll can appear in court. Despite NERSA legal advisors are all admitted attorneys/advocates, they cannot appear in court. |
| 4. | Judicial review/ Implementation of order pending appeal/ leave to appeal | **Eskom-** The appeal follows the judgement of the Pretoria High Court to substitute the decision of the Energy Regulator on the Eskom MYPD4 Year 3. This case has already had three judgements (review judgement, leave to appeal judgement and implementation of review judgement pending appeal judgement) | R7 400 000.00 | Only lawyers in the practising roll can appear in court. Despite NERSA legal advisors are all admitted attorneys/advocates, they cannot appear in court. |
| 5. | Judicial review | **Sunrise-** the matter arises from the judicial review brought by Sunrise against what they call improper formulation and reading of the Petroleum Pipelines Operating licence issued by NERSA to Avedia | R2 200 000.00 | Only lawyers in the practising roll can appear in court. Despite NERSA legal advisors are all admitted attorneys/advocates, they cannot appear in court. |

**MINE, HEALTH AND SAFERY COUNCIL (MHSC)**

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| **what (a) is the (i) breakdown of all legal matters against the various entities of his department** | **(a)(ii) cost to the taxpayer in each case** | **(b) are the reasons that his department has not, to date, used its own internal processes against those individuals who offset the specified cases, such that they are personally liable for the specified legal costs** |
| Investigation into allegations of financial misconduct | 1 006 475,00 | The matter is not finalised |
| Dispute at the Labour Court between employer an employee | 233 770,00 | Recovery if any will be based on outcome of the labour court |
| Challenging the recruitment process of the HR head at the Labour Court | 45 007,55 | Recovery if any will be based on outcome of the labour court |
| Termination of the Contract and recovery due to non performance | 456 046,00 | The matter is not finalised |
| Dispute at the Labour Court between employer an employee | 301 357,44 | Recovery if any will be based on outcome of the labour court |
| Dispute at the Labour Court between employer an employee | 86 766,63 | Settlement paid by MHSC |
| Dispute over employment Contract | 153 060,00 | Assessment still to be done pending the outcome of disciplinary hearing- employee on suspension |