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**BASIC CONDITIONS OF EMPLOYMENT  
AMENDMENT BILL,  
B15-2012**

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**COMMENTS BY ESKOM HOLDINGS SOC  
LTD (ESKOM)**

**DATE: 27 JUNE 2012**

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# **COMMENTS BY ESKOM ON THE BILL**

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## **AS INTRODUCED IN THE NATIONAL ASSEMBLY (PROPOSED SECTION 75); EXPLANATORY SUMMARY OF BILL PUBLISHED IN GOVERNMENT GAZETTE – NOTICE 35212 OF 5 APRIL 2012 (“BILL”)**

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### **1 INTRODUCTION**

On 20 March 2012 Cabinet approved the submission of the Basic Conditions of Employment Act Amendment Bill [B15-2012] to Parliament, where it is to be considered by the Portfolio Committee on Labour. Once considered by the Portfolio Committee, the Bill will be submitted to the National Assembly and the National Council of Provinces for adoption.

These submissions are made in response to an invitation from the Portfolio Committee on Labour for written comments by interested parties and stakeholders.

### **2 GENERAL COMMENTS**

Although Bill 15-2012 has retained certain amendments which appeared in the draft bill released in December 2010, some of the current amendments are being presented to

the public for the first time. Eskom Holdings SOC Ltd's specific comments to the amendments are set forth below.

### **3 SPECIFIC COMMENTS**

#### **Insertion of Section 33A – Clause 2**

It is submitted that the definition of "*prohibited conduct*" is too broad, particularly the words "*in respect of the employment of.*" This may be construed as prohibiting the recovery of monies from the employee in respect of money lawfully due to the employer, e.g. over-payments. Further, it could also be construed as prohibiting the employer from accepting the payment of rental from its employees in respect of property that it may lease to its employees.

#### **Amendment to Section 55 – Clause 8**

This amendment deals with sectoral determinations, and *inter alia* allows the Minister to prohibit or regulate sub-contracting. It is submitted that this wide power to prohibit sub-contracting could be construed as unconstitutional because it interferes with the right to trade. The amendment could mark the death knell for sub-contracting arrangements, and as a result could result in the operational costs of a business increasing drastically.

### **CONCLUSION**

Eskom would like to extend its appreciation to the Portfolio Committee for the opportunity to influence the provisions of the Bill. We trust that our comments have been constructive and that they are of assistance in finalising the Bill. In the event that further clarification or information is required, Eskom would be more than happy to provide same.