



ESKOM GAP ANALYSIS: EXISTING REPORTS AND THEIR RELEVANCE

February 2019

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1. State of capture report

Report name:

State of capture, Report No: 6 of 2016/17

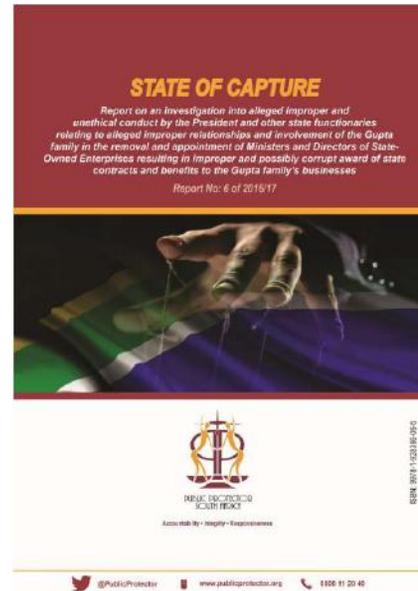
Date: 14 October 2016

Pages: 355

Relevance to Terms of Reference:
Sections 1.1, 1.2, 1.3, 1.4, 1.5, 1.9

Author:

Public Protector



Mandated by:

N/A

1. State of capture report

Summary of mandate/publication:

An investigation into complaints of alleged improper and unethical conduct by the (now former) President and other state functionaries relating to alleged improper relationships and involvement of the Gupta family in the removal and appointment of Ministers and Directors of State Owned Enterprises resulting in improper and possibly corrupt award of state contracts and benefits to the Gupta family's businesses

1. State of capture report

Key findings include:

1. There seems to be no evidence of action taken by anyone to verify Ms Mentor's allegation(s)
2. There seems to be no evidence showing that Mr Jonas' allegations that he was offered money and a ministerial post in exchange for favours were ever investigated by the Executive
3. It appears that the conduct of the Eskom board was solely to the benefit of Tegeta in awarding contracts to them and in doing so funded the purchase of OCH and is thus in severe violation of the PFMA
4. It appears that the Board at Eskom was improperly appointed and not in line with the spirit of the King III report on good Corporate Governance
5. It appears as though no action was taken on the part of the Minister of Public Enterprise as Government stakeholder to prevent these apparent conflicts
6. Minister Zwane's conduct with regards to his flight itinerary to Switzerland appears to be irregular
7. It appears that Minister Zwane's conduct may not be in line with section 96(2) of the Constitution and section 2 of the Executive Members Ethics Act

1. State of capture report

Key findings include:

8. There appears to be a clear line of communication between Mr Molefe, the Gupta family, and directors of Tegeta (Ms Ragavan and Mr Howa). These communications were made during a critical period and cannot be ignored
9. Mr Howa and Tegeta appear to have made a misrepresentation which resulted in the prepayment being made
10. The prepayment in the amount of R659,558,079.38 appears to never have been used to fund OCM or service the Arnot contract but has been utilised by Tegeta solely to fund the purchase of OCH
11. It appears that the prepayment possibly amounts to fruitless and wasteful expenditure as it appears that the prepayment was not used to meet production requirements at OCM, and was thus made in vain and it appears that it could have been avoided by Eskom had they exercised reasonable case
12. It appears that the conduct of the Eskom board was solely to the benefit of Tegeta in awarding contracts to them and thus it appears to be inconsistent with the PFMA

1. State of capture report

Key findings include:

13. The conduct of the Eskom Board further does not seem to be in line with section 4 of PRECCA
14. The conduct with regards to the administration of the rehabilitation fund, appears to not be in line with the provisions of the MRPDA, NEMA or the Income Tax Act
15. It is unclear as to why the Department of Mineral Resources authorised the transfer of these funds to the Bank of Baroda
16. Mr Molefe's relationship with the Gupta family as well as the directors of Tegeta cannot be ignored, there was a firm line of communication between Mr Ajay Gupta and Mr Molefe

1. State of capture report

Can the report or the evidence be placed before/accepted by the DCJ:

Yes

Outstanding issues/gaps/procedures:

1. Investigate a possible dispute between a private company co-owned by the President's friends and his son
2. Interview Minister Zwane in order to obtain his version of events
3. Investigate whether Minister Zwane's used his official position to unfairly and unduly influence a contract for a friend or boss's son at the expense of the State
4. Investigate the conduct of the Bank of Baroda in relation to the purchase of all shares in OCH by Tegeta and the rehabilitation fund
5. Investigate further whether any state functionary in any organ of state or other person acted unlawfully, improperly or corruptly in connection with exchange of gifts in relation to Gupta linked companies or persons
6. Phase 1 of the investigation did not touch on the award of licences to the Gupta family and superficially touched on the state financing of the Gupta-Zuma business while only selecting a few state contracts, further investigation is required

1. State of capture report

Other commentary:

The report that guides this Commission was key in identifying areas of investigation pertaining to Eskom

2. Report on challenges experienced by Eskom

Summary of mandate/publication:

To conduct a Forensic fact finding enquiry into the status of the business and challenges experience by Eskom in the areas identified by the Board of Eskom

The investigation addressed:

1. The poor performance of Eskom's generation plant
2. Delays in streamlining Eskom's new generation programme
3. High costs relating to primary energy
4. Eskom's financial challenges
5. Integrity of Eskom's procurement processes and compliance with relevant legislation and procurement policies
6. The effectiveness of Eskom's contract management systems
7. Security failures and accountability at Eskom as a Key National Point
8. The credibility and correctness of information Eskom's EXCO provides in their reports relating to points 1 to 6 above

2. Report on challenges experienced by Eskom

Key findings include:

Status and recommendations on:

1. Poor performance of the generation plant
2. Delays in bringing the new generation plant on-stream, including cost overruns
3. High cost of primary energy
4. Financial challenges
5. Integrity of procurement processes and compliance with legislation as well as Eskom's procurement policies
6. Contract management, in particular high costs escalation, frequent modifications, penalty costs including capacity within Eskom to manage contracts generally
7. Security failures and accountability at Eskom as a National Key Point

Can the report or the evidence be placed before/accepted by the DCJ:

No. The report is inconclusive as it provides a snapshot. Limited information was reviewed. Numerous limitations were highlighted

2. Report on challenges experienced by Eskom

Outstanding issues/gaps/procedures:

Limitations included the following:

1. Challenge in accessing other documents
2. Emails not provided for review
3. No interviews with suspended employees
4. They were unable to interview all members of EXCO or the Board
5. No interviews with ex-employees due to them entering into confidentiality agreements with Eskom
6. Could not investigate matters related to Koeberg steam generator upgrade due to conflict of interest
7. Limitation in the methods available to obtain, test and verify the information

2. Report on challenges experienced by Eskom

Other commentary:

1. The report represented a snapshot of the investigation at the midpoint of the investigation period (about 18 June 2015) and was provided to Eskom on the specific request of Eskom
2. As part of its conclusion it stated that the contents of the report were subject to further testing, verification and corroboration
3. The correctness of the technical information was not assessed due to time constraints
4. The opinions, views, findings, recommendations, observations, inferences and conclusions set out in this report were a matter of professional opinion and not a guarantee of result

3. Portfolio Committee on Public Enterprises

Report name:

Portfolio Committee on Public Enterprises Final Report on the Eskom Inquiry

Date: Not specified

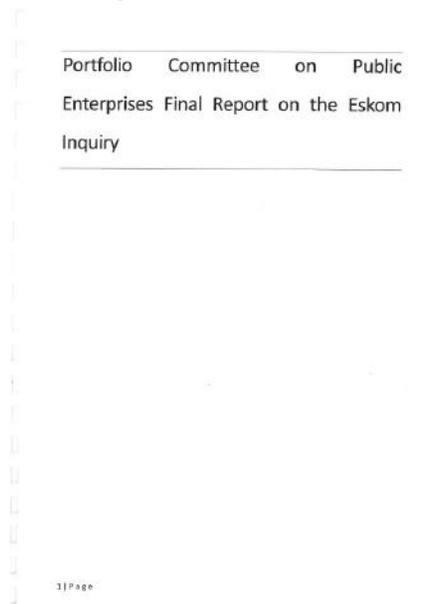
Pages: 182

Relevance to Terms of Reference:

Sections 1.5 and 1.9

Author:

Portfolio Committee on Public Enterprises



Mandated by:

Parliament of South Africa

3. Portfolio Committee on Public Enterprises

Summary of mandate/publication:

1. Assess the Eskom Board's ability to discharge its fiduciary duties, including:
 - a) Overseeing the financial health and sustainability of Eskom
 - b) Oversight of or ratification of appointments, including reinstating former CEO, Mr Brian Molefe
2. The issues raised and persons implicated in the Public Protector's State of Capture report
3. Allegations of state capture based on evidence in leaked emails and other reports
4. Assess Eskom's governance and performance
5. Make findings and recommendations that address issues of *inter alia* governance, reporting and accountability, remuneration, executive and Board appointments, procurement practices and decisions
6. Create a list of implementable actions monitored by the Committee

3. Portfolio Committee on Public Enterprises

Key findings include:

1. There were several attempts to halt the Committee's work, authority and function
2. Access to information, including inordinate secrecy and misleading and/or false information that was submitted or relayed to Parliament and the Committee
3. Governance, Board and executives were not held accountable for collapse of good governance or poor financial performance. Laws, regulations, codes, frameworks and other agreements were distorted, circumvented, misused, applied in a non-uniform and non-transparent manner. The governance framework has failed to protect Eskom from political interference and state capture leading to financial and governance crisis
4. Numerous procurement contracts were irregular, unauthorised, involved corruption and/or was otherwise unlawful
5. A culture of fear and mistrust and unethical decision-making flourished at Eskom
6. A list of individuals and entities suspected to have been "captured" were provided

Can the report or the evidence be placed before/accepted by the DCJ:

Yes. It was also a recommendation of the Committee that the report be referred to the DCJ for further investigation

3. Portfolio Committee on Public Enterprises

Outstanding issues/gaps/procedures:

N/A

Other commentary:

The report's findings were mainly based on oral evidence, statements and submissions, and various reports issued. There was no independent review of documentation per se. In light of this and the fact that the report was referred for further investigation, the areas of focus in the report do require further forensic investigation

4. Portfolio Committee on Public Enterprises

Report name:

Report of the Portfolio Committee on Public Enterprises on the Inquiry into Governance, Procurement and the Financial sustainability of Eskom, dated 28 November 2018

Date: 28 November 2018

Pages: 142

Relevance to Terms of Reference:

Sections 1.5 and 1.9

Author:

Portfolio Committee on Public Enterprises



Mandated by:

Parliament of South Africa

4. Portfolio Committee on Public Enterprises

Summary of mandate/publication:

Investigate governance, procurement and the financial sustainability of Eskom

1. Appointment of board members and executive management
2. Early retirement/reappointment of Mr Brian Molefe
3. Alleged procurement irregularities
 - a) Eskom's alleged role in ensuring Tegeta was able to buy Optimum Coal Holdings
 - b) Eskom's conclusion of a R43m contract with TNA
 - c) Eskom's payment to Trillian Capital Partners of R400m
4. Allegations of impropriety regarding Eskom's acting CEO, Mr Matshela Koko
5. Financial stability of Eskom
6. Any other related matter
7. Assess compliance to applicable legislation

4. Portfolio Committee on Public Enterprises

Key findings include:

1. The Inquiry confirmed possible contraventions of the Eskom Conversion Act, the PFMA, internal and external governance requirements as well as other relevant legislation, regulations and internal processes
2. It also found that there was undue influence by private individuals and companies over the appointment of Eskom Board members as well as procurement decisions
3. The evidence painted a picture of capture and repurposing of Eskom
4. The actions taken by the Board and Executives allowed successive unusual or irregular procurement, undermined investigations into wrongdoing and failed to hold individuals accountable which amounted to a failure to uphold their fiduciary responsibility
5. The Committee welcomed judgment relating to Mr Brian Molefe

Can the report or the evidence be placed before/accepted by the DCJ:

Yes. It was also a recommendation of the Inquiry that the report be referred to the DCJ for further investigation

4. Portfolio Committee on Public Enterprises

Outstanding issues/gaps/procedures:

N/A

Other commentary:

The report findings were mainly based on oral evidence, statements and submissions, and various reports issued. There was no independent review of documentation per se. In light of this and the fact that the report was referred for further investigation, the areas of focus in the report do require further forensic investigation

5. Transnet and Eskom Tender Number NT 022-2016 RFQ 026-2017

Report name:

Final Report: Forensic Investigation into Various Allegations at Transnet and Eskom: Tender Number NT 022-2016 RFQ 026-2017

Chapter II: McKinsey, Trillian and Regiments, dated November 2018

Date: November 2018

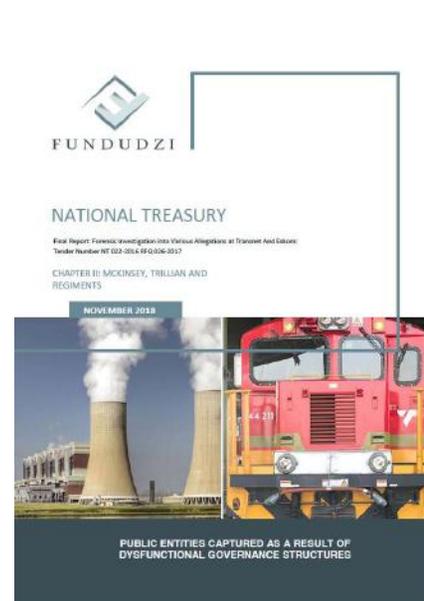
Pages: 268

Relevance to Terms of Reference:

Section 1.5 - Deals with corruption related matters

Author:

Fundudzi



Mandated by:

National Treasury

5. Transnet and Eskom Tender Number NT 022-2016 RFQ 026-2017

Summary of mandate/publication:

Fundudzi was mandated to investigate allegations of irregularities pertaining to the following appointments:

1. McKinsey and Company South Africa
2. Regiments Capital Management
3. Trillian Capital Partners or Asset Management

5. Transnet and Eskom Tender Number NT 022-2016 RFQ 026-2017

Key findings include:

Appointment of McKinsey - TOP Engineers Programme:

1. During July 2015, Singh was still an employee at Transnet and had no authority to negotiate contracts with McKinsey on behalf of Eskom. Singh was seconded to Eskom from 1 August 2015
2. The appointment of McKinsey did not follow an open tender process
3. Mabelane proceeded to appoint McKinsey and disregarded concerns raised by Eskom's Corporate Finance Department relating to the said appointment
4. Mabelane and Govender contravened section 57 of the PFMA in that they failed to act in the best interest of Eskom when motivating for the appointment of McKinsey resulting in irregular and wasteful expenditure of R1.6 billion
5. Govender contravened section 57 of the PFMA by instructing Khomola to facilitate Trillian's registration as an Eskom Vendor knowing fully well that Trillian did not have a contract with Eskom
6. Eskom failed to seek permission from National Treasury in line with section 79 of the PFMA; in respect of the risk based contract concluded with McKinsey

5. Transnet and Eskom Tender Number NT 022-2016 RFQ 026-2017

Key findings include:

7. The appointment of McKinsey for the Top Engineer Programme was not in line with the provisions of Section 217 of the Constitution of Republic of South Africa
8. Eskom cancelled the MSA with McKinsey and negotiated a settlement resulting in a payment of R1.6 billion to McKinsey and Trillian six months into the contract
9. McKinsey cut ties with Trillian following a failed due diligence conducted by McKinsey in March 2016
10. Eskom continued to engage with Trillian even though McKinsey had cut ties with the entity
11. Trillian issued various invoices to Eskom even though Trillian had no formal mandate or contract with Eskom
12. Payments made to Trillian Management Consulting were irregular as Trillian did not have a contract with Eskom
13. The resolution to negotiate a further settlement with McKinsey and Trillian was *inter alia* based on a recommendation by Oliver Wyman

5. Transnet and Eskom Tender Number NT 022-2016 RFQ 026-2017

Key findings include:

14. Oliver Wyman appears to have favoured Trillian in their recommendations to Eskom
15. There was a possible conflict of interest between Oliver Wyman and Trillian as Trillian had previously arranged business meetings for Oliver Wyman with *inter alia* COGTA and Transnet
16. Singh misled the Parliament Portfolio in his submission that Eskom had not paid Trillian for the Duvha 3 Power Station Insurance claim negotiations
17. Fundudzi was not provided with confirmation of work done by Trillian on behalf of Eskom to the value of R122 208 000
18. The appointment of McKinsey into Eskom was initiated by Singh at the time that he was still a GCFO at Transnet
19. McKinsey paid back more than R1 billion to Eskom including interest of R99.5 million earned on the R903 million paid in 2016 and 2017
20. Nkhabu failed to perform his duties diligently and to the best of his abilities as he failed to identify that the processes followed in the appointment of McKinsey were flawed and exposed Eskom to risk. Nkhabu further exonerated Singh of any involvement or wrong doing in the appointment of McKinsey

5. Transnet and Eskom Tender Number NT 022-2016 RFQ 026-2017

Can the report or the evidence be placed before/accepted by the DCJ:

Yes, a final report is available but there are recommendations for additional procedures to be performed

Outstanding issues/gaps/procedures:

The report recommends *inter alia* the following additional procedures:

1. Recover the irregular payments made to Trillian during 2016 and 2017
2. DPCI to investigate if any role players received gratification for facilitating the appointment and payment of McKinsey/Trillian
3. DPCI to investigate if role players received gratification or contravened section 34(1) of PRECCA
4. DPCI to investigate possible criminal conduct for fraud against certain Transnet executives and the directors of Trillian Asset Management

Other commentary:

N/A

6. Transnet and Eskom Tender Number NT 022-2016 RFQ 026-2017

Report name:

Final Report: Forensic Investigation into Various Allegations at Transnet and Eskom: Tender Number NT 022-2016 RFQ 026-2017

Chapter III: Report relating to Eskom Investigations, dated November 2018

Date: November 2018

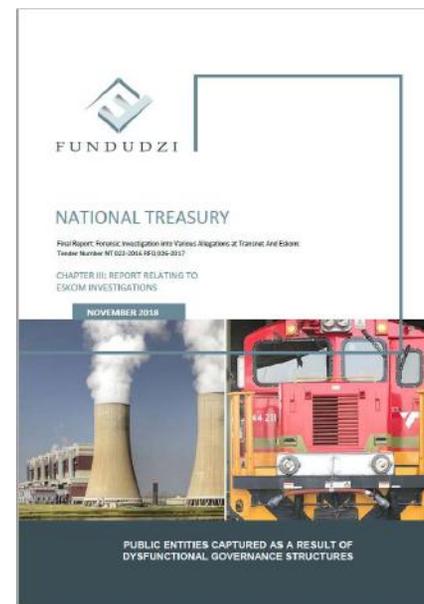
Pages: 194

Relevance to Terms of Reference:

Section 1.5 - Deals with corruption related matters

Author:

Fundudzi



Mandated by:

National Treasury

6. Transnet and Eskom Tender Number NT 022-2016 RFQ 026-2017

Summary of mandate/publication:

1. Eskom's processes followed in the appointment of Tegeta for the supply of coal for a period of ten years
2. Issues of fruitless and wasteful expenditure relating to the CSA which may include *inter alia* the advance payment of funds to Tegeta
3. Whether there were possibilities of corruption on the Eskom officials involved in the said payment
4. Establish the role played by the former Chief Executive Officer of Eskom, Mr Brain Molefe regarding CSA entered into between Eskom and Tegeta
5. Fundudzi was required to also investigate whether Eskom Executives may have leaked confidential information to third parties through an email styled infoportal1@zoho.com

6. Transnet and Eskom Tender Number NT 022-2016 RFQ 026-2017

Key findings include:

Conclusions relating to Optimum Coal Holdings Limited (“OCH”):

1. Eskom management prejudiced Glencore by refusing to sign the negotiated CSA, giving advantage to Tegeta to acquire all assets in OCH and which amounted to the abuse of a position of authority, a breach of trust, and a violation of a legal duty or a set of rules in terms of the Prevention and Combating of Criminal Activities Act
2. Eskom management prejudiced Glencore by fining OCM R2.1 billion for supplying allegedly poor quality coal, which prejudice amounted to the abuse of a position of authority, a breach of trust, and a violation of a legal duty or a set of rules in terms of the Prevention and Combating of Criminal Activities Act
3. Eskom was prejudiced by the reduction of R2,1 billion penalty imposed for supplying allegedly poor coal quality which amounted to the abuse of a position of authority, a breach of trust, and a violation of a legal duty or a set of rules in terms of the Prevention and Combating of Criminal Activities Act
4. Eskom acted in bad faith when the Company, represented by Koko, refused to waiver the historical penalties levied against OCM which led to OCM going into business rescue, but reduced the said penalties through arbitration after Tegeta purchased the assets in OCH

6. Transnet and Eskom Tender Number NT 022-2016 RFQ 026-2017

Key findings include:

Conclusions relating to the prepayment of R659 558 079:

5. Tegeta and Eskom officials (Nteta, Koko, Mabelane, Daniels and Mboweni) discussed the prepayment of R659 558 079 well before 11 April 2016
6. Nteta engaged Tegeta about the prepayment through discussions, telephone calls and emails from at least 8 April 2016
7. Nteta sent an e-mail relating to the Tegeta prepayment to *inter alia* Koko, on Monday 11 April 2016 at 07:22. It is improbable that the said e-mail was the first time that Koko learnt about the Tegeta prepayment
8. Nteta would not have sent the SBTC submission documents to Koko for signature without a prior discussion about the prepayment request from Tegeta
9. Eskom's Special Board Tender Committee ("SBTC") meeting of 11 April 2016 rubber stamped the conditions and terms of the prepayment that were agreed by Eskom and Tegeta officials
10. Red flags raised by V Naidoo were ignored by Eskom's management and SBTC

6. Transnet and Eskom Tender Number NT 022-2016 RFQ 026-2017

Key findings include:

Conclusions relating to the prepayment of R659 558 079:

11. The SBTC approved the Tegeta prepayment request on 11 April 2016 in a meeting held by teleconference at 21:00
12. The SBTC approved the prepayment before the Tegeta shareholders took a resolution to request the prepayment and provide guarantee, which resolution was taken on 13 April 2016; Nteta drafted the letter that was used by Tegeta on 11 April 2016 as an offer to supply additional coal to Eskom
13. Tegeta issued a pro-forma invoice and e-mailed it to Nteta day after the SBTC approved the prepayment
14. The pro-forma invoice issued by Tegeta on 12 April 2016 could not have been the basis for the drafting of the prepayment agreement as the memorandum submitted to the SBTC on 11 April 2016 contained all the relevant information that was eventually used in the agreement
15. Ragavan e-mailed a copy of the Tegeta invoice to Singh two days after the SBTC approved the prepayment to Tegeta

6. Transnet and Eskom Tender Number NT 022-2016 RFQ 026-2017

Key findings include:

Conclusions relating to the prepayment of R659 558 079:

16. Singh and or Eskom did not negotiate the 3.5% discount as the said discount was offered by Tegeta prior to the BTC's approval of the prepayment
17. Singh misrepresented facts to the Parliamentary Portfolio Committee on Public Enterprises when he indicated that he negotiated the 3.5 % discount as the documents indicated that he did not do so
18. There is no evidence that Singh provided the assurance that the transaction was economically viable for Eskom as requested by the BTC
19. Koko misrepresented facts to the Parliamentary Portfolio Committee on Public Enterprises when he indicated that Eskom negotiated the 3.5 % discount as the documents indicated that it was Tegeta that offered the said discount
20. Eskom and/or Nteta gave Tegeta preferential treatment in that Eskom/Nteta assisted Tegeta in the drafting of the prepayment application letter
21. Eskom suffered a loss because it paid R19.68 per gigajoule for six months and later offered R15,50 per gigajoule for the same coal

6. Transnet and Eskom Tender Number NT 022-2016 RFQ 026-2017

Key findings include:

Conclusions relating to the prepayment of R659 558 079:

22. Eskom's SBTC gave Tegeta preferential treatment in that an urgent SBTC was scheduled and took place at 21:00, with the sole purpose of approving the R659 million prepayment to Tegeta
23. SBTC members, Koko, Nteta, Daniels, Singh, Mboweni and Mabelane may have received gratification for assisting Tegeta to receive the prepayment from Eskom
24. Koko, Nteta, Daniels, Singh, Mboweni and Mabelane contravened Section 57 of PFMA in that:
 - a) They failed to carry out within their areas of responsibilities, the system of financial management and internal control established for Eskom
 - b) They failed to use the financial and other resources within their areas of responsibilities, effectively, efficiently, economically and in a transparent manner
 - c) They failed to take effective and appropriate steps to prevent irregular expenditure and fruitless and wasteful expenditure within their areas of responsibilities

6. Transnet and Eskom Tender Number NT 022-2016 RFQ 026-2017

Key findings include:

Conclusions relating to the prepayment of R659 558 079:

- d) Nteta's conduct in assisting Tegeta in completing Tegeta's application documents for the prepayment as well as deletion of critical information in the said document unfairly benefited Tegeta
- e) Nteta misrepresented facts to SBTC by deleting of the sentence relating to the 3.5% discount offered by Tegeta

Conclusions relating to the leaking of information:

25. Koko, Daniels and Ngubane may have leaked confidential information which amounted to:

- a) Abuse of their positions of authority; a breach of trust
- b) Violation of a legal duty or a set of rules in terms of PRECCA

6. Transnet and Eskom Tender Number NT 022-2016 RFQ 026-2017

Can the report or the evidence be placed before/accepted by the DCJ:

Yes, it is a final report, however it makes recommendations for certain additional procedures to be performed by other law enforcement agencies

6. Transnet and Eskom Tender Number NT 022-2016 RFQ 026-2017

Outstanding issues/gaps/procedures:

1. In relation to OCH and Tegeta, Fundudzi recommended that this report be provided to the DPCI to institute criminal investigations for possible receipt of gratification and contravention of section 34(1) of the Prevention and Combating of Corrupt Activities Act against the following:
 - a) Matshela Koko, Ayanda Nteta, Anoj Singh, Edwin Mabelane and Suzanne Daniels
 - b) The following Eskom SBTC Board Members:
 1. Zethembe Khoza
 2. Nazia Carrim
 3. Viroshini Naidoo
 4. Chwayita Mabude
 - c) Ravindra Nath, Ronica Ragavan and Tegeta Directors
2. Fundudzi also recommend that this report be provided to the DPCI to investigate possible criminal conduct against Singh and Koko for misrepresentation to the Parliamentary Portfolio Committee on Public Enterprises

6. Transnet and Eskom Tender Number NT 022-2016 RFQ 026-2017

Outstanding issues/gaps/procedures:

3. Fundudzi also recommend that this report be provided to the DPCI to investigate possible criminal conduct against Nteta for misrepresentation to SBTC
4. Board to consider cancelling the Tegeta contract for abusing the supply chain management system
5. Restricting Tegeta and its directors from doing business with any organ of state
6. Cabinet to consider restricting the officials who resigned from Eskom from employment from an organ of state for a period of five years
7. Fundudzi furthermore recommends DPCI should investigate if Daniels, Koko and Ngubane did not leak confidential information to benefit a third party
8. With regard to Singh, Fundudzi recommended that DPCI should investigate if Singh did not use other sources of income to service his personal accounts; DPCI should investigate if Singh did not use trust accounts of attorneys to service his personal accounts and procuring valuable assets; DPCI should investigate if Singh deposited/transferred to any beneficiary mentioned in identified suspicious emails

Other commentary:

N/A

7. Trillian Management Consulting payments

Report name:

Investigation into allegations that Trillian Management Consultants were paid in alleged contravention of procedures, policies or practice of Eskom

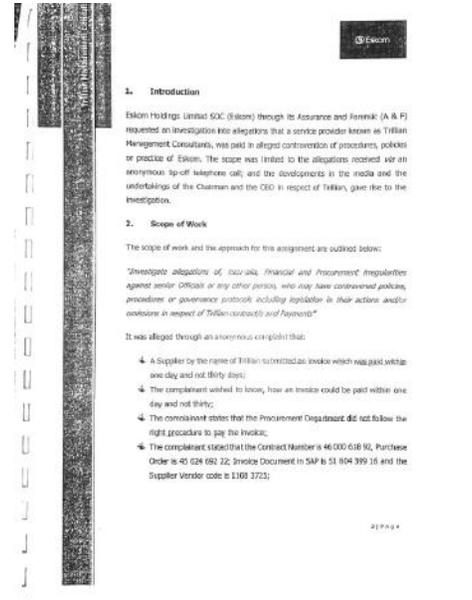
Date: Not dated

Pages: 21

Relevance to Terms of Reference:
Sections 1.4, 1.5 and 1.9

Author:

G9 Forensics



Mandated by:

Eskom

7. Trillian Management Consulting payments

Summary of mandate/publication:

In line with an anonymous tip-off, investigate allegations of, *inter alia*, financial and procurement irregularities against senior officials or any other person, who may have contravened policies, procedures or governance protocols including legislation in their actions and/or omissions in respect of contract(s) and payments made to Trillian

7. Trillian Management Consulting payments

Key findings include:

1. Eskom had no contract with Trillian
2. Mr Edwin Mabelane and Mr Prish Govender (Eskom officials) ignored and bypassed advice to seek and obtain Treasury Approval for the deviation in the remuneration model with McKinsey
3. Both officials accepted Trillian as an SD & L Partner for McKinsey even though the contract with McKinsey had no SD & L element
4. Both officials approved payments to Trillian irregularly and inconsistent with policies and procedures

Can the report or the evidence be placed before/accepted by the DCJ:

Yes

7. Trillian Management Consulting payments

Outstanding issues/gaps/procedures:

Furthermore investigative procedures would entail *inter alia* the following:

1. Analysis of email records, minutes and audio recordings of BTC, Steerco and negotiation team meetings
2. Interviews with individuals from McKinsey, Trillian and additional Eskom officials (current and former)
3. Both officials approved payments to Trillian irregularly and inconsistent with policies and procedures

Other commentary:

N/A

8. Final Report on Koko and Impulse

Report name:

Final Report on Koko and Impulse, dated
23 June 2017

Date: 23 June 2017

Pages: 85

Relevance to Terms of Reference:
Section 1.9

Author:

CDH-Nkonki



CDH Nkonki
Final Report
23 June 2017

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Mandated by:

Eskom

8. Final Report on Koko and Impulse

Summary of mandate/publication:

Ascertain who the directors and shareholders of Impulse International were. Furthermore, determine:

1. Whether Mr Matshela Koko disclosed that Ms Choma (Mr Koko's step daughter) had an interest in Impulse
2. Contracts awarded to Impulse

8. Final Report on Koko and Impulse

Key findings include:

1. Ms Choma was appointed as a director and shareholder of Impulse
2. Impulse received more than R200 million worth of contracts after the appointment of Ms Choma
3. Mr Koko disclosed a potential conflict of interest months after learning of Ms Choma's interest in Impulse
4. Impulse did not declare (to Eskom) the existence of a conflict of interest at the time contracts were awarded by Eskom
5. Majority of contracts awarded to Impulse were sole and/or emergency purchases

Can the report or the evidence be placed before/accepted by the DCJ:

No

8. Final Report on Koko and Impulse

Outstanding issues/gaps/procedures:

1. Coincidental increase in contracts awarded to Impulse after Ms Choma's appointment
2. Commercial terms under which Ms Choma acquired an interest in Impulse
3. Disclosure of interest by Mr Koko, why did it indicate that a conflict could exist instead of indicated that a conflict had already arisen
4. Whether Mr Koko received a benefit for the contracts issued to Impulse
5. Establish why the majority of contract were procured via sole source and/or emergency

Other commentary:

N/A

9. Eskom payments to McKinsey and Trillian

Report name:

Interim report back to Eskom Holdings SOC Limited on an investigation of alleged irregularities in connection with the procurement of services from and payments to McKinsey and Company Africa (Pty) Ltd and Trillian Capital Partners (Pty) Ltd, dated 2 August 2017

Date: 2 August 2017

Pages: 39

Relevance to Terms of Reference:

Sections 1.4, 1.5 and 1.9

Author:

Bowmans



Mandated by:

Eskom

9. Eskom payments to McKinsey and Trillian

Summary of mandate/publication:

Mandate could not be ascertained based on the interim report

Key findings include:

1. Payments to Trillian and McKinsey under the 2016 contract totalled R1 593 155 413.01
2. There was *prima facie* evidence of breaches of fiduciary duties, unauthorised expenditure, fruitless and wasteful expenditure and financial misconduct which breached the PFMA
3. Individuals that motivated for and approved settlements to Trillian and McKinsey should be placed on suspension, include Matshela Koko, Anoj Singh and Edwin Mabelane

9. Eskom payments to McKinsey and Trillian

Can the report or the evidence be placed before/accepted by the DCJ:

No. Report was an interim report. Bowmans has subsequently finalised its report and a copy has been requested

Outstanding issues/gaps/procedures:

Investigation was ongoing but has subsequently been finalised. The terms of reference of the interim report were unclear and copy of the final report has been requested

Other commentary:

N/A

10. Trillian Group of Companies

Report name:

Allegations with regard to the Trillian Group of Companies, and related matters, dated 29 June 2017

Date: 29 June 2017

Pages: 71

Relevance to Terms of Reference:

Section 1.4, 1.5 and 1.9

Author:

Geoff Budlender SC



Mandated by:

Mr. T M G Sexwale,
Chairperson of Trillian Capital
Partners (Pty) Ltd

10. Trillian Group of Companies

Summary of mandate/publication:

Investigate allegations that *inter alia* include:

1. Trillian CEO, Dr Eric Wood, had prior knowledge of President Zuma's impending dismissal of Finance Minister Nene and his replacement with Minister Van Rooyen
2. Trillian invoices related to SOC/E work that was performed without contracts
3. Role of Salim Essa (principle Trillian shareholder) in the acquisition of Optimum Coal Holdings by Tegeta
4. Role of the Gupta family, or persons associated with the family, in Trillian
5. Matters arising in the Public Protector's State of Capture report in respect to the conduct of Trillian

10. Trillian Group of Companies

Key findings include:

1. A definitive finding could not be made on whether Dr Wood had prior knowledge of the dismissal of Minister Nene
2. Eskom denied having made payments to Trillian and this denial was false
3. R160m was withdrawn from the Trillian account held with Bank of Baroda on the same day that Werksmans Attorneys paid for Tegeta's portion to the loan consortium, namely 14 April 2016
4. The Gupta family had a link with Trillian through its close associate and majority shareholder of Trillian, Salim Essa. This is also further enhanced by the R160m withdrawal from the Trillian account on the day that Tegeta had to pay its portion of the loan consortium during its purchase of Optimum Coal Holdings

Can the report or the evidence be placed before/accepted by the DCJ:

No. The investigation was incomplete and Adv Budlender SC found the Trillian management to be non-cooperative and did not provide all information which was required for investigative purposes

10. Trillian Group of Companies

Outstanding issues/gaps/procedures:

1. Analysis of electronic records (emails and mobile devices) to ascertain whether Dr Wood was in contact with the Former CEO of Regiments prior to the dismissal of Minister Nene. Dr Wood did not agree to his devices and emails being analysed as part Adv Budlender's investigation
2. Investigation of Trillian management responses to the matters that were being investigated by Adv Budlender SC

Other commentary:

N/A

11. Verification of compliance with SCM legal framework – Tegeta appointment

Report name:

Report on the verification of compliance with SCM legal framework - Appointment of Tegeta Exploration and Resources (Pty) Ltd

Date: Assumed March 2017
(based on electronic document name)

Pages: 22

Relevance to Terms of Reference:

Section 1.5 - Deals with irregular procurement and non-compliance with SCM policy

Author:

National Treasury



REPORT ON THE VERIFICATION OF COMPLIANCE WITH SCM LEGAL FRAMEWORK - APPOINTMENT OF TEGETA EXPLORATION AND RESOURCES (PTY) LTD.

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Mandated by:

N/A

11. Verification of compliance with SCM legal framework – Tegeta appointment

Summary of mandate/publication:

1. National Treasury conducted a review of the processes followed leading to the appointment of Tegeta Exploration and Resources (Pty) Ltd

11. Verification of compliance with SCM legal framework – Tegeta appointment

Key findings include:

Water Use License

1. The Water Use License for Tegeta Exploration and Resources (Pty) Ltd was issued on 22 December 2014 with additional conditions to be complied with by the supplier
2. Eskom failed to enforce clause 22.10 of the Coal Supply Agreement which requires drainage tests to be conducted by not later than 30 days after the first delivery of contract coal
3. The compliance audit conducted by the Department of Water and Sanitation from 20 to 22 July 2016 identified non-compliance with the water use license conditions. The following were identified:
 - a) Final groundwater monitoring program was not submitted within six months of the issuance of license
 - b) The mine is using potable water for washing machineries which is not its intended purpose
 - c) Some monitoring points have been changed without notification and approval by the Provincial Head; An acceptable ground water monitoring network was not established within six months of the issuance of the license

11. Verification of compliance with SCM legal framework – Tegeta appointment

Key findings include:

Water Use License

- d) An acceptable ground water monitoring network was not established within six months of the issuance of the license
- e) The mine did the geochemical report after 12 months of the issuance of the license and did not submit it to the Department
- f) Material with pollution generating potential was used in construction activities
- g) The Pollution Control Dam protection layer of sand on the geo-textile of the wall was not removed

11. Verification of compliance with SCM legal framework – Tegeta appointment

Key findings include:

Coal Supply agreement

4. Eskom allowed the Coal Supply Agreement to commence before the supplier had completed and reported a successful combustion test for coal supply to Majuba Power Station. This irregularity was also reported in a PwC report dated 10 November 2015. Eskom may have acted negligently by not enforcing this requirement
5. Eskom failed to enforce clause 22.10 of the Coal Supply Agreement which required drainage tests to be conducted by not later than 30 days after the first delivery of contract coal. The minutes of the monthly technical liaison meeting dated 13 May 2015 confirmed the non-compliance with the Coal Supply Agreement. Eskom may have acted negligently by not enforcing this requirement
6. Eskom failed to enforce clause 22.2 read together with clause 20.8.1.1 of the Coal Supply Agreement which requires the supplier to have acceptable auto mechanical sampling equipment for sampling of coal. The minutes of the monthly technical liaison meeting dated 10 February 2016 confirmed the non-compliance with the Coal Supply Agreement. Eskom may have acted negligently by not enforcing this requirement

11. Verification of compliance with SCM legal framework – Tegeta appointment

Key findings include:

Coal Supply agreement

7. Eskom failed to enforce clause 21.5.3 of the Coal Supply Agreement which does not allow manual resampling of stockpiles – including re-processed/out of specifications stockpiles. Eskom may have acted negligently by not enforcing this requirement
8. There is no evidence that Eskom took appropriate steps after receiving the report from Dr Alphen dated 5 October 2015 which concluded that variations in dry base ash between laboratories and samples are probably attributed to change in coal characteristics, poor blending, poor sampling and possibly poor sample preparation (splitting and crushing)
9. There is no evidence that Eskom took appropriate steps after receiving the report from Dr Alphen dated 5 October 2015 which concluded that the frequency of high total Sulphur coals increased significantly during September 2015 even though the contract laboratory has changed from Sibonisiwe to SABS. Changing the contract laboratory did not influence the result and the coal technically should have been rejected and a sample submitted to the dispute laboratory to confirm if the elevated total Sulphur was correct

11. Verification of compliance with SCM legal framework – Tegeta appointment

Key findings include:

Coal Supply agreement

10. Eskom signed a 10 year Coal Supply Agreement expiring in 2025 knowing that the mining license of Brakfontein and Brakfontein Extension will expire in 2020. Eskom may have acted negligently by disregarding the condition of the mine license
11. The CEO gave an assurance that Brakfontein Colliery supplied and continues to supply coal that conforms to the Coal Supply Agreement despite ample evidence available to Eskom that there was non-compliance
12. Eskom made payments to Tegeta Exploration and Resources (Pty) Ltd before correcting the non-compliance with conditions of the Coal Supply Agreement; Payments made to Tegeta Exploration and Resources (Pty) Ltd for Brakfontein coal should be regarded as irregular expenditure
13. The base price of coal increased from R13:50 per GJ to R13.63 per GJ one month after signing the Coal Supply Agreement, and, in July 2015, the cost of coal per GJ rose again to R13.68 per GJ
14. In the absence of any valid explanation, any cent paid above R13.50 should be regarded as fruitless and wasteful expenditure and be recovered from the relevant Eskom officials or Tegeta Exploration and Resources (Pty) Ltd

11. Verification of compliance with SCM legal framework – Tegeta appointment

Key findings include:

Advance Payment Tegeta Exploration and Resources (Pty) Ltd

16. The conditions relating to the discount and the assurance to the Board Tender Committee that the transactions are economically viable were not met because Eskom paid R19.69 per GJ for the coal that should have cost it R18.68 and R13.50 per GJ
17. There is no evidence that the Chief Financial Officer submitted any assurance report to the board tender committee assuring the committee that the transactions are economically viable
18. There is no evidence that the Chief Financial Officer conducted any due diligence to establish whether it would be economical to procure coal direct from Optimum Coal Mine or from Tegeta Exploration and Resources (Pty) Ltd
19. There is no evidence that the Chief Financial Officer conducted any due diligence to establish whether Tegeta Exploration and Resources (Pty) Ltd was meeting its monthly targets from the Brakfontein Colliery
20. The difference between R19.69 and R18.68 per GJ (R1.01 per GJ) should be regarded as fruitless and wasteful expenditure and be recovered from the relevant Eskom Officials or Tegeta Exploration and Resources (Pty) Ltd

11. Verification of compliance with SCM legal framework – Tegeta appointment

Key findings include:

Advance Payment Tegeta Exploration and Resources (Pty) Ltd

21. The advance payment of R659 558 079 should be regarded as a loan because there is no evidence that Optimum Coal Mine or Tegeta Exploration and Resources (Pty) Ltd used the funds to procure any equipment for increasing the volume of the coal or further processing the coal
22. The interest due and payable on the loan amount of R659 558 079 should be recovered from the relevant Eskom Officials or Tegeta Exploration and Resources (Pty) Ltd
23. There is no evidence that the Chief Financial Officer and the Acting CEO advised the Board Tender Committee that Tegeta Exploration and Resources (Pty) Ltd had a shortfall of more than 150 000 tons for only two months
24. There is no evidence that the Chief Financial Officer and the Acting CEO advised the Board Tender Committee that it would be economical for Tegeta Exploration and Resources (Pty) Ltd to supply its shortfall coal for the period April 2015 to March 2016

11. Verification of compliance with SCM legal framework – Tegeta appointment

Key findings include:

Advance Payment Tegeta Exploration and Resources (Pty) Ltd

25. Eskom would have benefited if it requested Tegeta Exploration and Resources (Pty) Ltd to supply its shortfall coal for the period April 2015 to March 2016 at R13.50 per GJ
26. The delivery of the shortfall coal by Tegeta Exploration and Resources (Pty) Ltd would have reduced the additional 250 000 tons required per month and would have been economical to Eskom

11. Verification of compliance with SCM legal framework – Tegeta appointment

Can the report or the evidence be placed before/accepted by the DCJ:

Yes, it is a final report, however it recommends further remedial action by the Accounting Authority

11. Verification of compliance with SCM legal framework – Tegeta appointment

Outstanding issues/gaps/procedures:

The report recommended the following remedial actions:

1. The Accounting Authority investigates reasons why Eskom gave and continues to give preferential treatment to Tegeta Exploration and Resources (Pty) Ltd by not enforcing key conditions of the Coal Supply Agreement
2. The Accounting Authority investigates whether Eskom acted negligently by not enforcing key conditions of the Coal Supply Agreement particularly the Conditions Precedence of the Agreement
3. The Accounting Authority investigates why Eskom concluded a 10 year contract expiring in 2025 disregarding that the mining license given to Tegeta Exploration and Resources (Pty) Ltd will expire in 2020
4. The Accounting Authority investigates why Eskom through its former CEO gave an assurance that Brakfontein Colliery supplied and continues to supply coal that conforms to the Coal Supply Agreement despite ample evidence that there was non-compliance

11. Verification of compliance with SCM legal framework – Tegeta appointment

Outstanding issues/gaps/procedures:

5. The Accounting Authority investigates whether the Chief Financial Officer and the Acting CEO acted negligently when implementing the directives of the Board Tender Committee
6. The Accounting Authority determines fruitless and wasteful expenditure arising out of payments made to Tegeta Exploration and Resources (Pty) Ltd for coal from Brakfontein and Brakfontein Extension
7. The Accounting Authority determines fruitless and wasteful expenditure arising out of payments made to Tegeta Exploration and Resources (Pty) Ltd for coal from Optimum Coal Mine
8. The Accounting Authority determines interest due and payable arising out of loan given to Tegeta Exploration and Resources (Pty) Ltd for coal from Optimum Coal Mine
9. The Accounting Authority recognizes payments made to Tegeta Exploration and Resources (Pty) Ltd for coal from Brakfontein and Brakfontein extension as irregular expenditure

Other commentary:

N/A

12. Betrayal of the Promise

Summary of mandate/publication:

The State Capacity Research Project provides a conceptual framework that draws from literature on the political economy of development and neopatrimonialism in Africa and democratic governance to assist in making sense of a “silent coup”. They collate published and unpublished material on the “repurposing” of state institutions to redirect funds from development to an increasingly confident power elite that operates in extra-legal and anti-constitutional ways

Key findings include:

To determine who received bribes and to resolve the current crisis, the following is required:

1. The Gupta-Zuma network that holds the symbolic relationship between the constitutional and shadow state together needs to be broken and the recommendation by the Public Protector that a Judicial Commission of Inquiry be established must be an urgent priority
2. A new national economic consensus is required. This has never been given serious attention beyond setting out multiple policy frameworks, and bureaucratic processes
3. All stakeholders, especially the political actors that will replace the Zuma-centred power elite must commit to realising the vision of a new economic consensus within the framework of the Constitution and relevant legislation

12. Betrayal of the Promise

Can the report or the evidence be placed before/accepted by the DCJ:

No. This is not a forensic report but rather a research document. It is useful as a point of reference. Furthermore, this report was included in the evidence collected by the Portfolio Committee to be handed over to the Zondo Commission of Inquiry for further investigation

Outstanding issues/gaps/procedures:

N/A

Other commentary:

The report was based on other investigation reports and publicly available information

13. Unplugging corruption at Eskom

Report name:

Unplugging corruption at Eskom. A report by the Organisation Undoing Tax Abuse (OUTA) to the Portfolio Committee on Public Enterprises, dated 18 October 2017

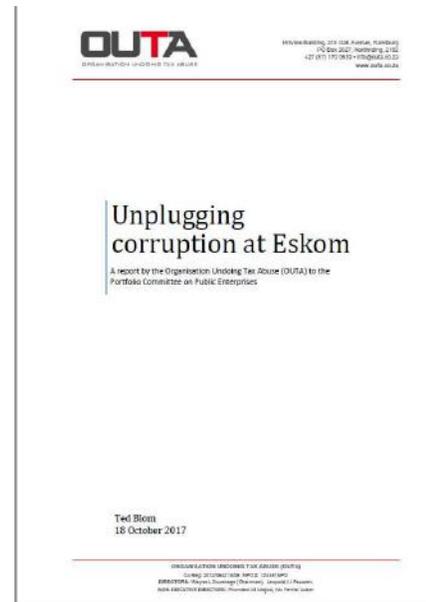
Date: 18 October 2017

Pages: 86

Relevance to Terms of Reference:
Sections 1.5 and 1.9

Author:

OUTA



Mandated by:

N/A

13. Unplugging corruption at Eskom

Summary of mandate/publication:

The supplementary report set out the chronological narrative on the proliferation of corruption within Eskom

The report was published to supplement the initial findings as set out in the “No Room to Hide” report by OUTA to assist the Parliamentary Portfolio Committee on Public Enterprises

13. Unplugging corruption at Eskom

Key findings include:

1. The Eskom executive management and the Eskom board of directors have failed disastrously to block corruption and in key instances, have encouraged or even participated in it

Can the report or the evidence be placed before/accepted by the DCJ:

No. It is not an investigative report but an opinion based narrative

13. Unplugging corruption at Eskom

Outstanding issues/gaps/procedures:

No investigation was done by OUTA

Other commentary:

1. The report was based on other investigation reports and publicly available information
2. It makes reference to the following reports:
 - a) Dentons report
 - b) PwC report
 - c) Public Protector's Report
 - d) G9 report

14. Eskom Inquiry Reference Book – Aug 2017

Report name:

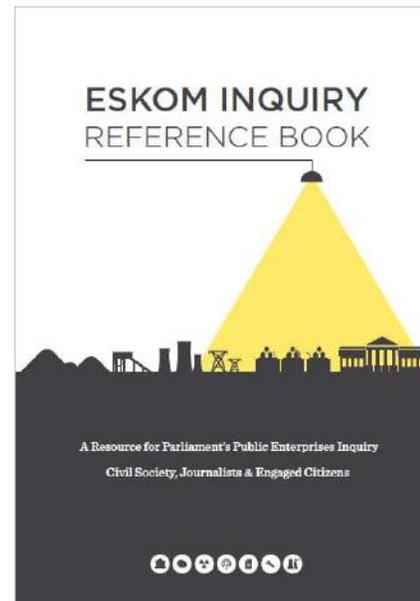
Eskom Inquiry Reference Book, dated August 2017

Author:

PARI

Date: August 2017

Pages: 24



Relevance to Terms of Reference:

Sections 1.4, 1.5, 1.6 and 1.9

Mandated by:

N/A

14. Eskom Inquiry Reference Book – Aug 2017

Summary of mandate/publication:

To provide an independent, accessible, concise, and fact-based account of some, but not all, of the alleged instances of governance failure and corruption at Eskom

14. Eskom Inquiry Reference Book – Aug 2017

Key findings include:

The document makes no specific findings but rather highlights and raises questions that ought to be dealt with pertaining to certain areas of possible corruption relating to the following matters:

1. Questions on Eskom's Governance in relation to the processes for Ministers Gigaba and Brown's new appointments of Board members in 2011 and 2014
2. Possible procurement irregularities relating to the Koeberg Generators tender awarded to Areva and Minister Gigaba's veto of the Boards earlier decision to award the bulk of the tender to Westinghouse
3. The New Age breakfast deal (this is currently being looked at by the SCC)
4. Procurement irregularities regarding the retention of T-Systems as IT service provider
5. Procurement irregularities relating to the appointment of Dongfang regarding the Duvha Power station accidents
6. Gupta Coal deals re Brakfontein, Hendrina, Arnot and Optimum
7. Trillian matter
8. Impulse

14. Eskom Inquiry Reference Book – Aug 2017

Can the report or the evidence be placed before/accepted by the DCJ:

No, since it is not a forensic report but rather a research document. It is however useful as a point of reference

Outstanding issues/gaps/procedures:

See questions raised and additional matters not yet addressed under key findings

Areas to be investigated:

1. Allegations that Matshela Koko colluded with the Coal Transporters Forum and Unions to plan protests against possible closures of coal mines and the inroads of Independent Power Producers (IPPs)
2. Allegations that Eskom gave diesel contracts at inflated prices to companies that clearly had no prior experience and acted merely as intermediaries
3. Replacement contracts for the Duvha Unit 4 generator or the Majuba coal silo
4. The lucrative maintenance contracts have not been adequately investigated by independent parties

14. Eskom Inquiry Reference Book – Aug 2017

Outstanding issues/gaps/procedures:

5. The motivations for blocking renewable IPPs while pushing nuclear has been cause for suspicion
6. Eskom debt and financing ballooned costs
7. Eskom's audits

Other commentary:

Recommendations included the following:

1. The Inquiry is a unique opportunity to force implicated individuals to answer, under oath and publicly, to widely publicised incidents of administrative and financial malfeasance, and blatant corruption

15. Eskom Inquiry Reference Book – Oct 2017

Report name:

Eskom Inquiry Reference Book, dated October 2017

Date: October 2017

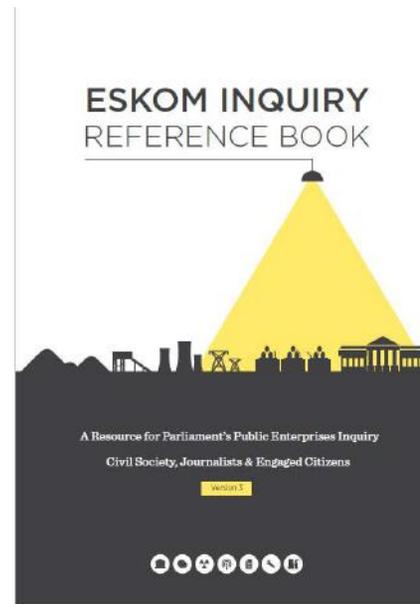
Pages: 24

Relevance to Terms of Reference:

Sections 1.4, 1.5, 1.6 and 1.9

Author:

PARI



Mandated by:

N/A

15. Eskom Inquiry Reference Book – Oct 2017

Summary of mandate/publication:

Updated reference book on the Eskom Inquiry Reference Book dated August 2017

Key findings include:

Refer to the Eskom Inquiry Reference Book, dated August 2017, sections with more significant updates include Koeberg Generators Tender, Duvha Boiler and Trillian

Can the report or the evidence be placed before/accepted by the DCJ:

No, since it is not a forensic report but rather a research type document. It is however useful as a point of reference

Outstanding issues/gaps/procedures:

N/A

Other commentary:

The report was based on other investigation reports and publicly available information

16. National electricity supply shortage and load shedding

Report name:

Inquiry into the National electricity supply shortage and load shedding, dated 12 May 2008

Date: 12 May 2008

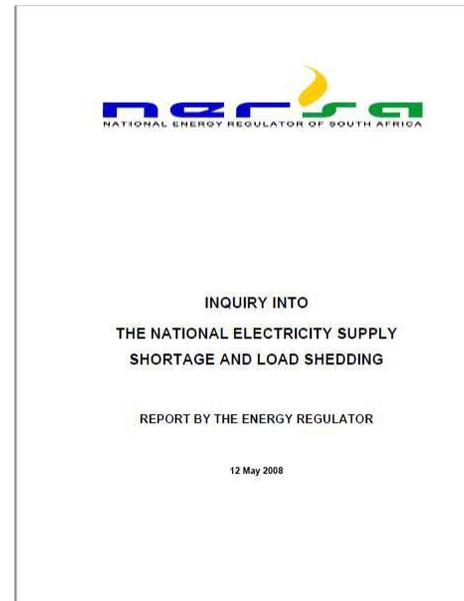
Pages: 51

Relevance to Terms of Reference:

Not relevant

Author:

National Energy Regulator of South Africa (NERSA)



Mandated by:

N/A

16. National electricity supply shortage and load shedding

Summary of mandate/publication:

Inquiry intended to:

1. Establish or understand reasons for the electricity supply shortage (at the time) that resulted in the national load shedding of electricity
2. Recommend measures to mitigate against the electricity supply shortage and to reduce the impact thereof

16. National electricity supply shortage and load shedding

Key findings include:

1. Previous load forecasts had anticipated the growth rate that occurred. The implementation of measures to provide for the growth had been inadequate and slow
2. Eskom's new build programme was experiencing slippage of at least a year caused by delays
3. Electricity exports to neighbouring countries exceeded contractual obligations during the load shedding period
4. Customers were caught unaware of the loading shedding
5. The impact of all the events resulted a major increase in Eskom's primary energy cost

Can the report or the evidence be placed before/accepted by the DCJ:

No

16. National electricity supply shortage and load shedding

Outstanding issues/gaps/procedures:

The inquiry recommended further investigation into:

1. Whether some findings constitute a breach of legislation or licence conditions
2. The legal implications of load curtailment without customer consent
3. Amendments required to Eskom's shareholder compact to prioritise security of electricity supply above Eskom's commercial decisions in order to avoid national crises
4. Primary energy procurement and management and in particular coal management in Eskom
5. The availability, adequacy and optimum utilisation of Eskom's generation plants

Other commentary:

The report was based on other investigation reports and publicly available information

17. Eskom submission from OUTA

Report name:

OUTA: State Capture Inquiry submission, dated September 2018

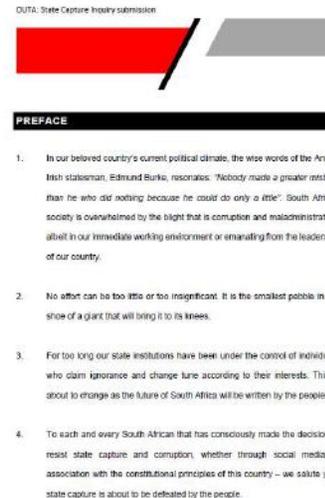
Date: September 2018

Pages: 58

Relevance to Terms of Reference:
Section 1.5

Author:

OUTA



Mandated by:

N/A

17. Eskom submission from OUTA

Summary of mandate/publication:

To illustrate instances of state capture that transpired (and likely persists) within one of South Africa's most crucial national assets namely Eskom

Areas covered included the following:

1. Eskom's irregular awarding of business to third parties such as McKinsey and Trillian
2. Eskom's coal supply agreements with:
 - a) Brakfontein Colliery
 - b) Optimum Coal Holdings
3. Eskom's business with affiliates to the National Executive
4. Eskom's business with New Age Media
5. Testimony by Zola Tsotsi at the Eskom Inquiry by the Portfolio Committee on Public Enterprises
6. Eskom's disregard for the rules of Eskom pension and provident fund
7. Mosebenzi Joseph Zwane

17. Eskom submission from OUTA

Key findings include:

1. It is apparent that Eskom has been captured through systematic engagements with the Gupta family, particularly stemming from coordinated procurement practices – which are not only irregular, but criminal
2. Individuals such as Singh, Koko and members of Gupta family contributed to Eskom's demise

Can the report or the evidence be placed before/accepted by the DCJ:

No, it is not an investigative report but an opinion based narrative

Outstanding issues/gaps/procedures:

None. The report gave a narration of what had already been reported

Other commentary:

The report was based on other investigation reports and publicly available information

18. Awarding of contract to TNA

Report name:

Report: Review of the process undertaken in awarding the sponsorship contract to TNA Media (Pty) Ltd, dated 6 November 2014

Date: 6 November 2014

Pages: 28

Relevance to Terms of Reference:
Section 1.9 and possibly 1.4 and 1.5

Author:

Sizwe Ntsaluba Gobodo (SNG)



Mandated by:

Eskom

18. Awarding of contract to TNA

Summary of mandate/publication:

Investigation into the three-year contract awarded to TNA during 2014 in order to:

1. Determine whether the processes followed adhered to applicable SCM processes and the PFMA
2. Determine whether the Eskom DOA was adhered to
3. Determine whether there were any deviations in processes and whether these were approved in accordance with the relevant prescripts

Key findings include:

1. A decision was taken by Exco to reduce the Group and Divisional sponsorship budget across the board
2. Revised budgets were present to Exco after the 2014 contract with TNA had been signed
3. Mr. Collin Matjila, then Interim Chief Executive Officer (“CEO”) signed the TNA contract as prescribed by the DOA. However, Exco had not yet approved the 2014/2015 sponsorship budget and the CEO could only approve sponsorships above R3 million subject to budget approval

18. Awarding of contract to TNA

Key findings include:

4. The 2014 contract with TNA was for sponsorships and not an investment as suggested by Mr. Collin Matjila
5. The contract that was signed by Mr. Collin Matjila did not have a termination clause which was not in keeping with the advice from Eskom Legal
6. At the time of the report, irregular expenditure worth R3.6 million had been incurred against the contract that was signed by Mr. Collin Matjila

Can the report or the evidence be placed before/accepted by the DCJ:

Yes

Outstanding issues/gaps/procedures:

N/A

Other commentary:

N/A