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Background and Context

April 2015

- Load shedding crisis
- Diesel usage at all time high
- Liquidity crisis
- Spiraling price of Primary Energy (Coal Cost)
- “Gun to the head” attitude of suppliers
- Negotiations with National Treasury for the Equity injection
- Poor Generation plant performance
- Eskom purchases approximately 120 MT of coal per annum

Context of this presentation

- The aim of this presentation is to be fact based
- Eskom disputes the observations of the Public Protector’s Report as it is not based on fact
- Based on Public Protector requests, the facts contained in this presentation had been submitted
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### Business need and Justification

- Coal acquired under the 2008 coal mandate approved by Eskom Board
- Two-year due diligence process conducted by Eskom
- Contract concluded 10 March 2015
- All contractual documentation, information and approvals have been provided by Tegeta

### Procurement Outcome

- Eskom’s view is that the transaction was in accordance with the PFMA and Eskom’s policies and procedures
- All potential suppliers in the market had an equal opportunity to approach Eskom on an unsolicited basis to provide coal supply to Eskom
- The functionality of coal supply from Tegeta was assessed during the two year due diligence process conducted by Eskom
- An independent legal opinion indicates that the transaction concluded with Tegeta in relation to the Brakfontein supply agreement, is in compliance with the PFMA

### Approval authority/date

- Approved by: Senior General Manager Primary Energy
- Approved on: 10 March 2015

### Conflict conclusion

- All directors were appointed on 11 December 2014
- None of the directors of this contract were involved in the approval of this contract
- No need for declaration of interest consequently no conflict, either direct or indirect
Hendrina Power Station - Optimum Coal Mine BRP
August 2015 (5.5 Mt per annum)

Business need and Justification

- Coal Supply Agreement (CSA) to Hendrina Power Station is valid and enforceable by Eskom until December 2018 @ a price of approximately R150/ton
- Optimum Coal Mine (OCM) declared hardship in terms of the CSA and proposed R442/ton
- In addition, a coal quality dispute existed between Eskom and OCM valued at R2 billion
- Eskom refused to accept the proposed price by OCM and demanded settlement of the penalty
- OCM was placed in business rescue (BRP) by their Holding company Glencore in August 2015 after suspending supply to Eskom
- BRP also attempted to cancel the CSA, as part of the BRP process
- To ensure security of coal supply and mitigate load shedding, Eskom scavenged for coal from other suppliers
- Subsequent to business rescue, a number of potential buyers, including Tegeta, approached Eskom to relax the price and quality penalty for which Eskom refused
- This process was wholly and solely under the control of the BRP who then requested approval from Eskom to cede the CSA to the new owner
- Contracts ceded to Tegeta was on the same terms and conditions as those for OCM, therefore coal was being supplied at R150/ton

Procurement Outcome

- The decision to put OCM into BRP was taken by the shareholder of OCM and not Eskom
- Eskom had no influence over this decision
- The purchase of OCM by Tegeta was a BRP process and Eskom had no influence in this regard

Conflict conclusion

- The approval body was the Board Tender Committee (BTC) not the Board of Directors
- Members of the BTC recused themselves where potential conflict existed and were not part of the decision
- BTC approved the cession of the CSA to Tegeta only as Eskom could not unreasonably withhold approval
### Business need and Justification

- A 40 year CSA was signed with Exxaro expired on 31 December 2015
- A contractual three month notice period was provided to Exxaro on 30 September 2015
- At the time of expiry the CSA pricing was R1132/ton
- Exxaro offered to extend the contract at an average price of R737/ton excluding capex and closure costs
- The comparative export parity price of coal is much lower
- No commercial justification to continue or renew the contract
- Poor operational performance by Exxaro resulted in under delivery of non-contractual volumes

### Procurement Outcome

- Eskom had justifiable reason for not renewing the contract with Exxaro

### Conflict conclusion

- Not Applicable
### Business need and Justification

- The tonnages supplied under the contract were below contractual volumes necessitating Eskom to supplement the supply with other contracts to mitigate security of supply which was a continuous challenge.
- In anticipation of the expiry of the contract, a Request for Proposal (RFP) 3264 was issued to the market in August 2015.
- The rationale for issuing a RFP to the market is based on the expiry of the Arnot contract and the then exorbitant cost of coal from the expired contract.
- Five suppliers being shortlisted and negotiations concluded with four of the shortlisted suppliers.
- This RFP process was conducted in parallel to previous events detailed previously.

### Procurement Outcome

- In terms of PPPFA instruction notes Eskom is required to report this transaction to National Treasury prior to award.
- National Treasury has indicated that a closed process is to be followed.
- Contract terms are still being finalised.

### Conflict conclusion

- All perceived conflicts were deliberated on and no conflict of interests were identified.
Business need and Justification

- An assessment of the winter supply plan was conducted and this indicated a shortfall of 2 million tons of coal to meet production requirements at Arnot.
- All existing suppliers as noted above was approached to mitigate the above volume risk.
- Time and quality of coal were the overriding factors that would have determined the successful suppliers.
- Only two suppliers namely Tegeta and Umsimbithi were able to increase volumes and meet the time and quality requirements.
- 1.2 Mt of coal from Tegeta was procured under the 2008 Coal mandate to ensure security of supply and to prevent load shedding during winter.
- The prepayment was made in terms of the Board approved 2008 coal mandate in respect of coal prepayments - R659 million (incl. VAT).
- Several other prepayments to suppliers have been made since 2008 - ranging from R100 million to R400 million.
- Cost plus mines also enjoy upfront investments of capital into their mining operations - Future investment requirement R 38 billion.
- The latest cost plus request for capital approval by the Board on 27 September 2016 was for Exxaro – Matla mine – R1.8 billion.
- Other than coal prepayments, Eskom had prepaid other suppliers an amount of R3.5 billion at 31 March 2016.
- Commercial and financial risks associated with the prepayment were adequately mitigated by Eskom.
- An internal audit verification conducted revealed that the quantum of the prepayment was fully recovered by coal delivered by Tegeta by 31 August 2016.
- Successful enabled Eskom to overcome the winter challenge without load shedding and very expensive diesel usage.

Procurement Outcome

- Procurement complied with relevant procurement policies of Eskom.
- Prepayment complied with relevant Eskom policies and is not exceptional in nature.
- Commercial and financial risks of the transaction were mitigated.
- Prepayment completely recovered with no risk to Eskom.
- Eight potential suppliers were considered for coal supply, concluding a contract with 2 due to quality and timing constraints.
- Consequently the market was appropriately tested.

Conflict conclusion

- The approval body was the Board Tender Committee (BTC) not the Board of Directors.
- Members of the BTC recused themselves where potential conflict existed and were not part of the decision.
Business need and Justification

- Komati was established as a "mouth of the mine" power station, earmarked for the surrounding Koornfontein coal resources to ensure minimal transport costs for the coal. Koornfontein is therefore best positioned to supply coal to Komati at a cost effective rate.

- The Koornfontein contract was approved for extension on the 8th August 2016.

- Approval for the modification was obtained from the National Treasury on the 17 August 2016.

- Subsequent to this approval the contract extension was signed on the 2 September 2016 for a seven year period.

- The Eskom Coal Supply Plan indicates that Komati requires 200 000 tons per month supply of coal for financial year 2017 and beyond. To mitigate this shortfall a contract for the supply of coal was sought.

Procurement conclusion

- Procurement complied with relevant procurement policies of Eskom.

Approval authority/date

- Approved by: Board Tender Committee (BTC)
- National Treasury approval
- This was obtained on 17 August 2016 from Chief Director SCM: Governance Monitoring and Compliance.

Conflict conclusion

- The approval body was the Board Tender Committee (BTC) not the Board of Directors.
- Members of the BTC recused themselves where potential conflict existed and were not part of the decision.
Shareholder value created by various coal agreements

<table>
<thead>
<tr>
<th>Mine</th>
<th>The value derived</th>
<th>Real benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hendrina Optimum BRP</strong></td>
<td>• The benefit of the Tegeta owned Optimum Colliery compared to the Glencore owned Optimum Colliery is calculated based on the difference between the Tegeta real coal price and the revised Glencore offered price for the from 01 April 2016 until the contract expiry period on 31 December 2018.</td>
<td><strong>R 3.385 billion</strong></td>
</tr>
<tr>
<td><strong>Prepayment for Arnot coal</strong></td>
<td>• The financial benefit of this transaction is compared to the export parity price of coal delivered to the Arnot Power station</td>
<td><strong>R 61 million</strong></td>
</tr>
<tr>
<td><strong>Prepayment for Arnot coal</strong></td>
<td>• Had Eskom’s anticipated risk materialised and should Eskom have not purchased the 1.26 MT coal, the extreme worst case would have been to run OCGTs to make up for the production shortfall of 2.2 million MWh</td>
<td><strong>R 5.5 billion</strong></td>
</tr>
</tbody>
</table>
| **Arnot Contract Expiration**     | • At the time of expiry the CSA pricing was R1132/ton  
• Exxaro offered to extend the contract at an average price of R737/ton excluding capex and closure costs  
• The comparative export parity price of coal is much lower                                                                                     | **R 7.743 billion** |
Summary and latest developments

- Demonstrated the facts relating to all transactions
- Significant value was obtained by Eskom in concluding these various business transactions
- Hard decisions taken to reverse “Gun to the head” attitude resulted in value
- Value demonstrated in Interim Results of Eskom to 30 September 2016 with primary energy costs decreasing by 1.5% compared to an average increase of 18% over the last 5 years resulting in a 23% increase in EBITDA
- All contracts were concluded in line with Eskom Procurement Policies
- All transactions have a clear commercial rationale
- Tegeta supplies only 9.3Mt of the 120Mt that Eskom purchases annually (7.7%)
- Arbitration proceedings between Eskom and Tegeta have commenced regarding the Optimum penalty and are progressing well
- On 3 October 2016, Tegeta advised Eskom of its intention to reach a mutual agreement on specific terms to terminate all their contracts with Eskom namely:
  - Brakfontein
  - Hendrina
  - Koornfontein
- It should be noted that Tegeta did not respond to the open RFP for supply to Arnot
## Declaration of Interest

<table>
<thead>
<tr>
<th>Director</th>
<th>DoI Compliance</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>B Ngubane</td>
<td>Yes</td>
<td>• The alleged Conflict of interest attributed to Dr Ngubane is of no consequence because he did not preside over any transactions relating to Tegeta</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• We further note that Mr Essa resigned as director of GADE Oil and Gas Pty Limited on 13 August 2014 after a period of 3 months</td>
</tr>
<tr>
<td>Z Khoza</td>
<td>Yes</td>
<td>• No specific issues raised</td>
</tr>
<tr>
<td>G Leonardi</td>
<td>Yes</td>
<td>• No specific issues raised</td>
</tr>
<tr>
<td>C Mabude</td>
<td>Yes</td>
<td>• No specific issues raised</td>
</tr>
<tr>
<td>P Naidoo</td>
<td>Yes</td>
<td>• No specific issues raised</td>
</tr>
<tr>
<td>M Pamensky</td>
<td>Yes</td>
<td>• Mr Pamensky was never a member of BTC and consequently could have not influenced the outcome of any decision in respect of Tegeta</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Mr Pamensky was a member of the Investment and Finance Committee (IFC) of the Board and it can further be confirmed that no transactions relating to Tegeta has served before the IFC since his appointment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• In addition, Mr Pamensky recused himself when necessary when the Board considered matters relating to Tegeta</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The only instance in this case was on 27 September 2016 as it relates to the Board considering management’s responses to a National Treasury request relating to their draft findings in relations to the Brakfontein contract with Tegeta</td>
</tr>
</tbody>
</table>
## Declaration of Interest (continued)

<table>
<thead>
<tr>
<th>Director</th>
<th>DOL Compliance</th>
<th>Comments</th>
</tr>
</thead>
</table>
| N Carrim   | Yes            | • In terms of the policy only lineage conflict of interest would need to be declared her husband’s alleged association with Mr Essa. Consequently it is our considered view that Ms Carrim did not breach any obligations.  
• Resigned from the Eskom Board on the 30 June 2016                                 |
| M Cassim   | Yes            | • Ms Cassim was never employed by Sahara Computers. A correction was sent to the Public Protector but this does not seem to have found its way into the report.  
• Ms Cassim was not a member of the Board Tender Committee during her tenure  
• The alleged Conflict of interest attributed to Ms Cassim is of no consequence because Ms Cassim did not preside over any procurement transactions.  
• She resigned from the Eskom Board on the 14 April 2016                             |
| D Naidoo   | Yes            | • Ms Naidoo recused herself from this decision of the BTC on 10 February 2016 declaring her potential conflict – her husband being the advisor to the Minister of Mineral Resources  
• As it relates to the meeting of 7 March 2016, Ms Naidoo declared a potential conflict of interest as noted above. In terms of the policy, the Chairman invited comments from other members of the Committee and concluded that due to the nature of the items being considered not no potential or perceived conflict of interest exists. Thus Ms Naidoo complied with her obligations  
• Ms Naidoo’s non-recusal at the BTC meeting on 11 and 13 April 2016 was justified as the potential conflict declared previously had now been resolved. This had been resolved by her husband resigning as advisor to the Minister of Minerals and Resources  
• Ms Naidoo therefore complied with her obligation to declare  
• Ms Naidoo resigned from the Eskom Board on the 15 June 2016                        |
## Declaration of Interest (continued)

<table>
<thead>
<tr>
<th>Director</th>
<th>Dol Compliance</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>R Khumalo</td>
<td>Yes</td>
<td>• Mr Khumalo was not a member of the Board Tender Committee.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The alleged conflict of interest attributed to Mr Khumalo by the Public</td>
</tr>
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<td></td>
<td></td>
<td>Protector is of no consequence because he did not preside over any</td>
</tr>
<tr>
<td></td>
<td></td>
<td>transactions related to Tegeta</td>
</tr>
<tr>
<td>V Klein</td>
<td>Yes</td>
<td>• No specific issues raised</td>
</tr>
<tr>
<td>B Molefe</td>
<td>Yes</td>
<td>• Mr Molefe is not a member of any subcommittee of the Board and cannot</td>
</tr>
<tr>
<td></td>
<td></td>
<td>influence Board decisions.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• No specific issues raised</td>
</tr>
<tr>
<td>A Singh</td>
<td>Yes</td>
<td>• Mr Singh is not a member of any subcommittee of the Board and cannot</td>
</tr>
<tr>
<td></td>
<td></td>
<td>influence Board decisions.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• No specific issues raised</td>
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Conclusion

- All transactions complied with Eskom’s Procurement Policies and Procedures which are consistent with the requirements of the PFMA
- All transactions are based on sound commercial rationale
- The Board has complied with its duties to manage conflicts of interest as and when this arose in terms of its applicable Policies and governing legislation
- External audit, Internal Audit and independent external legal firm have reviewed the contents of this presentation
- External audit, Internal Audit and independent external legal firm have not identified any non-compliance on the part of the Eskom Board of Directors
- The Eskom Board of Directors complied with it fiduciary duty towards the company
- The Board of Directors acted in the best interest of Eskom by ensuring significant value was created for the company
It is not clear how the conclusion that the Eskom Board acted unethically and unlawfully can be made.

The Board of Directors is concerned that the findings make general observations and refers to these as evidence implicating Eskom and the Board.

Eskom has co-operated with the Public Protector by providing all the required information however it has to be noted that Eskom was not afforded a right of reply or the opportunity to cross examine the Public Protector’s evidence – this under threat from the Public Protector stating non-compliance with the unrealistic deadlines “may well result in adverse findings against the Eskom Board.”

Consequently the Board does not believe any fruitless and wasteful expenditure has been incurred as value has been demonstrated and it has exercised a duty of care.

Eskom’s Board of Directors is considering to take the report of the Public Protector on review.
Thank you