ESKOM INQUIRY
REFERENCE BOOK

A Resource for Parliament's Public Enterprises Inquiry

Civil Society, Journalists & Engaged Citizens

August 2017

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PREFACE

In August 2017, Parliament's Public Enterprises Committee will begin its inquiry into the alleged abuse of public resources in three of South Africa's state owned enterprises: Eskom, Transnet and Denel. The Committee will be under considerable pressure to drive a targeted inquiry that ultimately brings to light the information necessary to more fully understand the manner in which key institutions may have been corrupted and to make recommendations around strengthening and reforming governance in the future.

This reference book, which has been independently produced by the authors, sets out to provide an accessible, concise, and fact based account of some, but not all, of the alleged instances of corruption at Eskom, which taken together are what have led to considerable concern among ordinary South Africans and parliamentarians, ultimately resulting in this inquiry. This booklet touches on Eskom's coal procurement controversies (squeezing out the coal majors and making room for the Gupta-linked Tegeta and Optimum 'heist'), large refurbishment contracts (such as the Koeberg steam generators and Duvha's Unit 3 boiler), new build sub-contracts (Impulse), advisory services (Trillian), ICT (T-Systems), and media (New Age). Suggested areas for further investigation are flagged, as well as key lines of questioning and possible recommendations.

The aim of this reference book is to assist Committee members with objective, research-based facts on some of the deeply complex challenges facing the power utility. As academics, our job is to make sense of complex situations and explain these. We are acutely aware that ongoing revelations of corruption can lead to general public fatigue but we hope that by joining the dots this booklet will contribute to the empowerment of civil society, journalists, and concerned members of the general public, so that they can follow and support the inquiry.

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STATE OF STATE CAPTURE

It has been a year since then Public Protector Thuli Madonsela's *State of Capture* report first provided a deep analysis of systemic corruption perpetrated through state owned companies (SOCs), shedding light on the modus operandi of a network of individuals allegedly connected to President Jacob Zuma. The past year has also witnessed the rallying of civil society, investigative journalists, academia, and concerned citizens, who have come together through groups such as the South African Council of Churches (SACC), the State Capacity Research Project (SCRP), and the Organisation Against Tax Abuse (OUTA).

Most recently, the Portfolio Committee on Public Enterprises has initiated an Inquiry into allegations of governance failure and the abuse of public resources at Eskom, Transnet, and Denel.

An overwhelming and growing body of evidence, including that contained in the #guptaleaks, suggests that the political power vested in the President, certain Ministries, and the boards and executives of SOCs has been misused to benefit the interests of connected individuals and entities – most prominently the Gupta family. This has been to the detriment of the functioning of Government and those entities within the ambit of state governance. We also now know that such instances of the misuse of power are neither random nor unconnected, as would be the case with generalised corruption. Instead, a clear political project has emerged, whereby governance structures are repurposed through the centralisation of decision-making power, infiltrated by certain incompetent or corrupt individuals, and reinforced through the establishment of new formal and informal institutions that foster fear and mistrust, and erode institutional capacity. There is evidence that such practices have been intentionally waged across a range of government institutions and within SOCs - the full ramifications of which have yet to be felt.

This inquiry is critical, given the important role that Eskom plays in powering the economy and the extent to which a compromised utility might expose the fiscus to potentially disastrous financial risk. The inquiry will be challenging, given the complexity of Eskom's governance structures and lack of clarity around its inner workings, which could be used by complicit parties to obstruct justice.

This booklet sets out to increase clarity around the primary forays that have been made into Eskom and to distil the most urgent and relevant questions emerging from existing knowledge and research.

SETTING SIGHTS ON ESKOM

Eskom is by far the largest State Owned Company (SOC) in South Africa, with annual revenues nearly three times that of Transnet and six times SAA's. This has made the utility vulnerable to corrupt interests.

Eskom is dominant in the power sector. It generates more than 90 per cent of South Africa's electricity, controls the entire national high voltage transmission grid, and distributes around half of electricity directly to consumers, with the remainder going to municipalities. Eskom's assets are valued at R710 billion and its capital expenditure programme amounts to around R350 billion over the next five years.

Eskom is building amongst the largest coal power stations in the world – Medupi and Kusile – each 4800 MW in capacity, and has recently completed the 1332 MW Ingula pumped storage facility. The late commissioning of these power stations contributed to severe load-shedding with huge costs to the economy in recent years. In addition, these power stations have cost more than double their original budgets. There were more than 40 construction contracts for each power station, none of them in the public domain, with allegations of inflated prices and corruption, although the veracity of many of these claims remains unproven.

What has come to light, however, is evidence that would suggest corruption in Eskom's operating expenditure - which totals around R140 billion per annum (excluding finance costs, depreciation and taxes). The operating budget includes maintenance, refurbishment, staffing costs, consulting and service contracts, but the largest component is for primary energy purchases - specifically coal, which is used to generate the bulk of Eskom's power. It is here that the most blatant acts of corruption appear to have been perpetrated - through the awarding of over-priced coal contracts, the squeezing out of incumbent coal majors, and the questionable acquisition of coal mines by the Gupta family, financed by Eskom.

Average coal costs are now close to R400 per ton, up from R190 per ton in 2011. During load-shedding years, diesel fuel costs for Eskom's peaker plants were as high as R10 billion per annum, also allegedly inflated by corruption.

Burgeoning costs, arguably propelled by rent-seeking and corruption, have resulted in electricity tariffs increasing by more than 400% over the past decade while electricity services have deteriorated. The effects of this on the South African economy and prospects for economic development and transformation hardly need to be stated and reinforce the urgent need for governance and structural reforms at the utility.

Eskom's assets, revenue and expenditure 2016/7 (Rands)

Assets	710 009 000 000 (710 billion)
Capital expenditure	55 823 000 000 (55.8 billion)
Revenue	177 136 000 000 (177 billion)
Net operating expenses	139 604 000 000 (139.6 billion)
Coal purchases	50 100 000 000 (50.1 billion)
Staffing costs	33 178 000 000 (33 billion)
Other expenditure	25 239 000 000 (25.2 billion)

Source: Eskom Annual Financial Report 2017

GENERATING CONTROVERSY

2009–2017

Governance | Advisory | Coal | Maintenance/Repair/Refurbishment | Nuclear | IT & Media

BTC - Board Tender Committee

2009 May – Jacob Zuma becomes President of South Africa

2009 Nov – Eskom CEO Jacob Maroga resigns having lost President Zuma's protection, Eskom Chair steps down to make Maroga's resignation acceptable to the ANC

2010 July – Brian Dames welcomed in as Eskom CEO

2010 Sept – All Eskom procurment cetralised with creation of Group Commercial

2010 Nov – Respected Public Enterprises Minister Barbara Hogan pushed out, having resisted President Zuma's interest in SOC Board Appointments

President Zuma appoints Malusi Gigaba Minister of Public Enterprises

2011 March – Duvha Turbine destroyed

2011 April – Minister Gigaba intervenes in Koeberg Procurement, pushing Westinghouse aside

2011 June – Minister Gigaba overhauls Eskom Board - all but two replaced

Zola Tsotsi becomes Chairman of Eskom Board

2013 July – Glencore invokes 'hardship clause' on Optimum Coal Holding's coal supply agreements. Price negotiations begin

2013 Aug – BTC, headed by Collin Matjilla announces IT tender

2013 Dec – BTC Paris trip sposored by Areva Shareholder

2014 March – Eskom CEO Brian Dames steps down

Duvha Boiler Explodes

2014 April – Zola Tsotsi appoints Collin Matjilla Acting CEO Eskom, subverting earlier Board recommendation

2014 May – Acting CEO Matjila signs R43mil deal with Gupta's New Age

Acting CEO Matjila sabotages IT tender contract that could save Eskom almost R1bn

President Zuma appoints Lynne Brown Minister of Public Enterprises

Matshela Koko takes over Group Technology & Commercial

2014 Aug – Eskom awards Koeberg steam generator tender to Areva

2014 Sept – President Zuma signs Nuclear deal with Russian Rostom

2014 Oct – Previous Public Enterprises DG Tshediso Matona appointed Eskom CEO

2014 Nov – Nationwide load-shedding begins

2014 Dec – Minister Brown flips Eskom Board, 6 of 8 appointments linked to Gupta Cabal

Three experienced and respected top Eskom executives step down

2015 Jan – IT tender scrapped, T-Systems (with new connection to Guptas) contract extended

2015 Feb – Eskom recieves R23bn equity bailout & R60bn subordinated loan converted to equity

2015 March – Eskom signs coal contract with Gupta owned Tegeta Brakfontein - frequent extensions of contract length, coal volumes and prices, despite coal not meeting required specifications

Allegedly under pressure from President Zuma, Zola Tsotsi's Board suspends four of its top officials. Chairman Tsotsi then pressured to resign

Ben Nugubane is appointed Eskom Chairman despite allegations of unethical and improper conduct

2015 April – Minister Brown seconds Brian Molefe from Transnet to take over as Eskom CEO

2015 May – CEO Brian Molefe refuses to sign new agreement with Glencore, forcing Optimum Holdings into business rescue later in the year

2015 Aug – Nationwide load-shedding ends

Anoj Singh seconded from Transnet, taking over as Eskom CFO

2015 Sept – President Zuma appoints Mosebenzi Zwane Minister of Mineral Resources

2015 Dec – Minister Brown instructed to appoint Richard Seleke DG of Public Enterprises

President Zuma fires Finance Minister Nhlanhla Nene, inserting Des van Rooyen

President Zuma appoints Pravin Gordhan Finance Minister under pressure across Government

Minister Zwane joins Guptas in Switzerland to consumate sale of Glencore's Optimun to Tegeta. Flies back to Dubai on Gupta plane. Other Gupta allies also in Dubai on Gupta expense, including Koko and Singh

2016 Starts Jan – Tegeta given lucrative contracts, relaxed terms on supply agreements, and on April 13 a prepayment of R659mil

2016 April – Tegeta transfers funds to buy Optimum 14 April

Eskom pays Trillian R495mil for consulting services, including R30.7mil paid 14 April

2016 Oct – Nuclear Procurement shifted to Eskom

Public Protector releases State Capture Report – Eskom appears 913 times

2016 Nov – Eskom CEO Brian Molefe resigns in the wake of the State Capture Report, Matshela Koko takes over as Acting CEO

2016 Dec – Minister Brown tells parliament that Eskom has no contractual engagements with Trillian

2017 March – Trillian conduts "high-level cost benefit analysis over a two-day period" in which Dongfang emerges as the preferred bidder for Duvha boiler

Dongfang awarded tender of R4bn, including R600mil advance plus R800mil contingency fee – R1bn more expensive than internally recommended GE and M&R bids

2017 April – Constitutional Court rules nuclear deal unlawful and unconstitutional on procedural grounds

2017 May – Matshela Koko steps down as Eskom CEO pending investigation into over R1bn contracts channeled to Impulse, in which his step-daughter was a Director and had a financial iterest

2017 June – Minister Brown forces resignation of some Board members, much reduced interim Board headed by Zethembe Khoza

Johnny Dladla Acting CEO

2017 July – Anoj Singh admits that Eskom has paid Trillian R495mil since 2016

Anoj Singh suspended

REPURPOSING ESKOM GOVERNANCE

Despite Apartheid's legacy of low transparency and accountability in the energy sector, Eskom was able to establish relatively high levels of technocratic expertise, capacity, and competence through the years of the democratic transition. This was exemplified in the calibre of the boards (which included CEOs of international utilities) and executives they were able to attract. This endured at least into the mid-2000s, alongside relative stability in the Department of Public Enterprises and the Department of Minerals and Energy.

However, towards the end of the 2000s, political interest increased in the boards and executive appointments of SOCs in general and in Eskom and Transnet, in particular. Minister of Public Enterprises, Barbara Hogan, resisted this emerging undue influence, which likely accounted for her dismissal only 18 months after her appointment.

Malusi Gigaba replaced Hogan as Minister of Public Enterprises in November 2010. In June 2011, Minister Gigaba instituted the most radical board change in Eskom's then recent history – all but two non-executive board members were replaced. Zola Tsotsi was appointed Eskom chairman and maintained a close relationship with Minister Gigaba through this period. It was not only the loss of so many experienced board members that contributed to a skills and expertise drain at the utility, however. Many of Eskom's most respected executives left during this period, apparently feeling disenchanted by the changing institutional culture and early onset of coordinated corruption and political interference.

This pattern was reiterated in the appointment of the next board in December 2014, under Lynne Brown as Minister of Public Enterprises. This time the hollowing out of Eskom's board and executive governance appears to have been more severe. Six out of eight appointees had unambiguous connections with the Gupta family and questions have been raised about the apparent lack of balance in skills, expertise, and experience on the board. During the course of the year, Eskom's two top executives – CEO Brian Dames and CFO Paul O-Flaherty – also resigned. Then, in the first quarter of 2015, the Eskom executive was stripped to the bones when Zola Tsotsi suspended four executives before stepping down himself – allegedly at the behest of President Zuma. Minister Brown then made secondments from Transnet, instating Brian Molefe as CEO in May and Anoj Singh as CFO in August of the same year. Minister Brown also appointed Ben Ngubane as chairman, despite being publicly renowned for his poor performance and actions at the SABC and Land Bank. Eskom's governance structures were thus impaired – demonstrated in high turnover, volatility, and disharmony in and across the board, executive, and senior management – during a high-risk period of debt financed capital expansion. It is during this period, that the most serious of the alleged instances of capture of Eskom leadership, procurement, and operations took place.

In July 2017, in the wake of a dramatic wave of resignations and suspensions, the first qualified audit of Eskom was released. In addition to exposing R3 billion in irregular expenditure, the audit revealed the devastating impact that weak and arguably corrupt governance has had on the institutional integrity and financial sustainability of South Africa's most critical SOC.

Protecting the governance of Eskom, through reviewing systems of appointment and the structure of the utility itself, is thus likely to be a key avenue where recommendations will be critical going forward.

Questions on Eskom Governance

What were the processes for Ministers Gigaba and Brown's appointments of new Eskom boards in 2011 and 2014 respectively? What were the nature and content of the Ministers' interactions with the Eskom board? Did Ministers Brown and Gigaba ever give the board instructions to take any decisions incongruent with the rules of independence and good corporate governance? Were board members suitably qualified? How did the Ministers satisfy themselves that the board appointments they made fulfilled the requirements from a skills, integrity, experience and transformational perspective? Why were members a) associated with the Guptas and/or b) with dubious histories in previous positions granted access to Eskom through board appointments? Were links of the relevant board members to the Gupta family known at the time of their appointment? If so, was this a cause for concern? If not, what might this imply about the use of due diligence checks? What role did the board Chairs, Zola Tsotsi and Ben Ngubane, and individual board members play in procurement processes? Why did certain members of Eskom's board resign in 2016/7 and what processes governed the appointment of new board members by Minister Brown?

Did Minister Brown, the Eskom board and management undermine the Eskom War Room, instituted by Cabinet and the Deputy-President to reverse load-shedding and improve Eskom's technical and financial performance, and to what extent were key reports, such as the Dentons investigation withheld from the War Room and Cabinet?

What is the role of the Board Tender Committee? What is and is not in their remit? Have these rules changed since 2009, including the changes in the rand amount that they have the discretion to make decisions on? Can the board override decisions/outcome of the Executive Procurement Committee? Interrogate instances where the Board Tender Committee unduly influenced processes.

What were the circumstances of the appointment & resignation of key Eskom executives between 2009 and the present?

What role did Eskom chief executives Maroga, Dames, Matona, and Molefe, acting chief executives Matjila and Koko, and Chief Financial Officers Tsholofelo Molefe and Anoj Singh, as well as key executives in power generation, primary energy and commercial (procurement), play in major procurement processes where there have been allegations of corruption?

Questions for Eskom executives and managers

Were you put under pressure to approve decisions that you did not feel comfortable with? Did you experience anything untoward taking place that would put procurement operations in jeopardy of interference? Did you at any time during your leadership at Eskom take instructions from third parties? Did you ever declare your close relationship with these parties? Were you involved in the award of any tenders to these parties? Did members of the executive ever exert, or threaten to exert, power beyond their mandate? Do you know of any cases where sensitive information was shared with the Guptas, associates or others who had not been cleared to receive such information?

Were you given any instructions by the Guptas? Did you feel under pressure at any stage to take or comply with demands from them, and if so, how did this play out? What was your understanding at the time of the Gupta's relationship with Eskom, and with other SOCs, and the executive? Describe your relationship with the Gupta family, Salim Essa and senior executives of the Gupta companies? Why was sensitive information shared with the Guptas and associates? Did you ever accept any gifts from the Guptas and associates?

Potential Interviewees: Eskom Executives and Managers

CHIEF EXECUTIVES
Brian Dames (2010-14)
Collin Matjila, acting (2011)
Tshediso Matona (2014-15)
Brian Molefe (2015-16&17)
Matshela Koko, acting (2016-17)
Johnny Dadla (2017-)

FINANCE DIRECTORS / CFOS
Paul O' Flaherty (2010-14)
Tsholofelo Molefe (2014-15)
Anoj Singh (2015-17)

OTHER ESKOM EXECUTIVES
Matshela Koko (2010-17)
Dan Marokane (2010-14)
Erica Johnson (2007-2014)
Steve Lennon (2007-2014)
Abram Masango (2014-)
Mongezi Ntsokolo (2010-)
Thava Govender (2010-)
Ayanda Noah (2012-)
Kannan Lakmeeharan (2012-2014)
Edwin Mabelane (2015-)
Prish Govender (2016-)

PRIMARY ENERGY
Johann Bester
Kiren Maharaj
Ayanda Nteta

PROCUREMENT
Charles Kalima
Pieter le Roux
Mandla Gobingca
Malesela Sekhasimbe

ESKOM BOARD UNDER **MALUSI GIGABA**

Minister Public Enterprises

November 2010 to May 2014

Director General Public Enterprises

Tshediso Matona
Dec 2010 – Sept 2014

Advisors to the Minister

Siyabonga Mahlangu
Dec 2010 – May 2014

Eskom Board Chair

Mpho Makwana
Nov 2009 – June 2011

Zola Tsotsi
June 2011 – March 2015

Eskom Board Members

Bernie Fanaroff
Queendy Gungubele
Neo Lesela *
Bejabulile Luthuli *
Chwayita Mabude
Yasmin Masithela
Collin Matjila *
Boni Mehlomakulu *
Mafika Mkwanazi *
Phenyane Sedibe
Lily Zondo
MJ Husain *
MM Matutu

Eskom CEO

Brian Dames
July 2010 – March 2014

Financial Director

Paul O'Flaherty *
Nov 2009 – July 2013

Caroline Henry (Acting)
July 2013 – Jan 2014

Tsholofelo Molefe
Jan 2014 – June 2015

ESKOM BOARD UNDER **LYNNE BROWN**

Minister Public Enterprises

May 2014 to Present

Director General Public Enterprises

Richard Seleke
Nov 2015 to Present

PA to the Minister

Kim Davids
May 2014 – July 2017

Eskom Board Chair

Zola Tsotsi
to March 2015

Ben Ngubane
April 2015 - June 2017

Eskom Board Members

Chwayita Mabude*
Zethembe Wilfred Khoza*
Nazia Carrim*
Suzanne Margaret Daniels
Venete Jarlene Klein
Giovanni Michele Leonardi (Swiss)
Devapushpum Viroshini Naidoo*
Pathmanathan Naidoo
Mark Vivian Pamensky
Romeo Khumalo
Mariam Cassim

Eskom CEO (including Acting CEOs)

Collin Matjila (Acting)*
April 2014 – Oct 2014

Tshediso Matona
Oct 2014 – March 2015

Brian Molefe
April 2015 – Nov 2016

Matshela Koko (Acting)**
Nov 2016 – May 2017

Financial Director

Tsholofelo Molefe
Jan 2014 – June 2015

Anoj Singh
Aug 2015 – July 2017

** On tender Committee*

*** (Group Executive for Technology and Commercial/ Generation 2014 - 2016)*

KOEBERG GENERATORS TENDER

Minister Gigaba

Collin Matjila

Minister Brown

2010	2011	2011	2012	2013	2013	2014	2016
Eskom begins tender process for 6 Steam Generators	February: Westinghouse awarded bulk of tender with board sign off	April: Minister Gigaba scraps tender process	Tender process reopened, Westinghouse again recommended	Board rejects recommendations, initiates direct negotiations	BTC trip to Paris, sponsored by Areva shareholder	August: Acting CEO Collin Matjila pushes through Areva award	ConCourt rules in Eskom/ Areva's favour on procedural grounds

In 2010, the Eskom board approved the business case for extending Koeberg's lifespan. The plant life extension plan includes the once-off replacement of Koeberg's six steam generators. A tender, consisting of three parts, was issued the same year. At the start of 2011, the Eskom board signed off on the Eskom Executive Procurement Committee's (EXCOPS) recommendation that Westinghouse (US) should be awarded the bulk of the tender – with a smaller part apportioned to Areva (France).

Areva then signed letters of intent with Eskom during President Zuma's visit to France in March 2011. The next month, newly appointed Minister Malusi Gigaba vetoed the board's earlier decision to award Westinghouse the bulk of the tender. This was one of Minister Gigaba's first interventions into Eskom procurement. It was followed by – and has been linked to - Minister Gigaba's purge of the Eskom board just three months later.

In 2012, the tender bidding process was reopened. The EXCOPS again undertook a technical evaluation of bids, reaching a similar conclusion to that of the 2011 tender process. However, Board Tender Committee (BTC) chairman Collin Matjila curiously blocked EXCOPS from presenting their recommendations to the board – effectively stalling the official process.

Meanwhile, Matjila initiated a parallel process - contracting Swiss firm AF Consult to undertake a bid evaluation review. Following the recommendations of the AF Consult report, Westinghouse and Areva were asked to resubmit bids in July 2013. The board rejected the EXCOPS recommendations on this bid and instead invited the two companies into parallel negotiations.

In December 2013, once negotiations were already underway, members of the BTC were flown to France for a 'nuclear training' trip funded by Électricité de France (EDF) – which had a stake in Areva at the time and the same majority shareholder.

In April 2014, Collin Matjila became Acting CEO of Eskom. Though the EXCOPS, BTC, and board had not yet reached agreement on the matter, Matjila and new BTC Chair Neo Lesela took a decision in favour of Areva, signed by Matshela Koko, to Minister Lynne Brown. Areva was awarded the tender on 12 August, 2014.

Westinghouse challenged the decision through the courts. Initially it succeeded, but ultimately, the Constitutional Court ruled in Eskom/Areva's favour on (incidental) procedural grounds.

The cost of this protracted process goes beyond the higher price tag of the Areva bid. Given lead times for the manufacture of the generators, the replacement will no longer be possible in the scheduled window, raising concerns around reliability and safety.

1. **Why did Minister Gigaba prioritise this procurement with Eskom's board and executive management?**
2. **Did Collin Matjila and others subvert the procurement process in order that Areva be awarded the tender, against the advice of Eskom staff?**
3. **Which provisions of the PFMA or other relevant legislation or regulations were breached?**
4. **Have any Eskom board members or staff received material benefits as a result of this tender award?**

NEW AGE BREAKFAST DEAL

Collin Matjila

Salim Essa

Zola Tsotsi

December: New Age Newspaper first publication — 2010

Eskom spends R12-million on 10 New Age business breakfasts — 2011–2014

May: Acting CEO Matjila exceeds his mandate - signs 3-year R43-million deal with New Age — 2014

November: Auditors state New Age deal is irregular expenditure — 2014

December: Matjila leaves Eskom board, no known remedial action taken — 2014

The first edition of the New Age (TNA Media) newspaper was published in December 2010. Since then, the newspaper has garnered a reputation for pushing a specific political agenda. Though the New Age neither publishes nor audits its circulation figures, it has been able to attract millions of rands from government departments and state owned companies (SOCs) through bulk subscriptions, business breakfast sponsorships, and advertising budgets.

During Collin Matjila's tenure as Board Tender Committee chairman (2011-2014), Eskom spent R12 million on just 10 TNA business breakfasts – more than the going rate for more established media groups and not including the profit that was made off ticket sales. According to publicly available information, then Minister Malusi Gigaba's advisor Siyabonga Mahlangu, pushed the New Age and TNA deals with SOCs over this period.

Following Brian Dames' exit as Eskom CEO, Matjila was appointed Acting CEO on 28 March, 2014. It has since come to light, via the #guptaleaks, that his appointment might have been the result of mutual business associate, Salim Essa, circulating his CV to Tony 'Rajesh' Gupta and Duduzane Zuma just six days before the appointment was made. A month later, the Gupta's New Age secured a three-year, R43 million business breakfast deal and a R4 million newspaper subscription package with Eskom. Matjila had initially only broached the idea of a one year, R14 million deal with the Eskom executive.

When the contract ballooned, members of the board and executive tried to stop him. Matjila then allegedly acted outside of the scope of his authority and against the council of the executive management and legal department, by signing the contract with New Age in May.

In November that year, Eskom auditors stated that the New Age deal was a reportable irregularity that should be disclosed in the interim results. A number of board members, including Chair Zola Tsotsi, motivated against disclosing the irregularity. The audit and risk committee reported directly to Minister Lynne Brown on this issue.

Collin Matjila did not survive Minister Brown's replacement of the board in December that year – but the New Age deal did remain intact and no remedial action against Matjila has been pursued.

1. How and why were the recommendations of Eskom staff regarding this media contract over-turned ?
2. Which provisions of the PFMA or other relevant legislation or regulations were breached? Has any remedial action been taken?
3. Did Collin Matjila act beyond his mandate in signing the New Age contract? If so, what made this possible?

T-SYSTEMS


Collin Matjila


Salim Essa


Minister Brown

2013	Eskom exec identifies opportunity to save R1-bn on IT
2013	December: Eskom launches IT tender process
2014	T-systems is not shortlisted, faces losing Eskom business
2014	Acting CEO Collin Matjila delays tender process
2014	October: Recommendations on IT tender finally go to board
2014	November: Load-shedding commences, board wary of changing IT contract
2014	December: Minister Brown brings in new board
2015	January: Gupta connected T-Systems contract extended

In 2013, Eskom's Chief Information Officer (CIO) Sal Laher identified and reported on an opportunity for the utility to save almost R1 billion by internalizing core IT functions. T-systems - the serving IT support provider - became aware of the risk of losing Eskom's business which, together with Transnet contracts, accounts for the majority of the firm's income. Nonetheless, they were provided with the opportunity to bid for the smaller, non-core IT tender that the Eskom Board Tender Committee (BTC) launched in December 2013. However, T-Systems was not shortlisted when the bids were evaluated by the Eskom executive.

When it became clear that T-systems would likely lose out on any Eskom contract, Salim Essa is said to have approached the firm's leadership – offering to lobby Eskom on their behalf. T-systems leadership was already acquainted with Essa, as they had formed a consortium with Infraco – of which Essa was a director - the year before when bidding for a Transnet contract. Around this time, Collin Matjila – an Essa associate through COSATU property deals – was appointed Acting CEO of Eskom. Whatever role Essa may have played, T-systems appeared to have gained the ear of the CEO.

Similarly to the Koeberg Steam Generators tender, Matjila appears to have used delaying tactics to impede the awarding of the IT tender to any of the short-listed companies. Over the six months that Matjila was in charge, CIO Laher was arguably sidelined, mainly through a number of audits conducted under Matjila's direction. Though each audit ultimately indicated that the proposed internalization of core IT functions, in conjunction with the tendering of non-core functions, would save then financially stressed Eskom around R1 billion, none of these recommendations reached the board until Matjila was replaced by incoming CEO Tshediso Matona.

In late October 2014, the IT contract for non-core functions was tabled by the Board Tender Committee – just two months before the T-Systems contract was due to end. On October 31, CIO Laher formally informed T-Systems that Eskom would be dispensing with its services.

Then, in December, Minister Lynne Brown made sweeping changes to the board – bringing in at least six Gupta connected members. In January 2015, the new board decided to retain T-Systems. T-systems has since been connected with Gupta money laundering shell Homix.

Laher, winner of the 2013 Visionary CIO Award, and two respected group executives - Erica Johnson and Steve Lennon – left Eskom following the Koeberg, New Age, and T-System scandals.

1. Why were the recommendations of Eskom staff on this IT tender not taken into account? Which provisions of the PFMA or other relevant legislation or regulations were breached and who is being held to account?
2. What interactions did Matjila have with T-systems and/or Salim Essa?
3. What were the circumstances surrounding Eskom IT manager Sal Laher's suspension and resignation?
4. Did any Eskom board members or Eskom staff benefit materially from this tender award?

DUVHA BOILER

Chales Kalima

Abrams Masango

Edwin Mabelane

2011	**February:** Unit 4 turbine accident
2014	**March:** Catastrophic Unit 3 boiler explosion
2015	**August:** Insurance evaluation process completed
2015	**December:** Eskom launches tender for boiler replacement
2017	**June:** Eskom restarts tender process after negotiations terminated
2017	**March:** Trillian recommends Dongfang be awarded bid
2017	**March:** Dongfang awarded tender despite Eskom exec & KPMG reports
2017	**June:** Eskom interdicted from implementing Dongfang contract

Duvha power station has witnessed two major accidents in recent years. In February 2011, the Unit 4 turbine spun out during a control test and, in March 2014, Unit 3's boiler exploded. Both events caused catastrophic damage. While the repair of Unit 4 has not received much public attention, multiple controversies around the Unit 3 boiler explosion, and the subsequent boiler tendering process, have been in the spotlight.

The 2014 boiler explosion has been linked to changes in the coal procured for the Duvha plant immediately preceding the incident. The conveyer belt delivering coal from a tied mine had been broken since December 2013 and coal was being trucked in as a contingency measure. Allegedly, this coal did not meet the required specifications of the plant. As is the case with most coal contracts, Eskom has not disclosed any information about this coal supply agreement. The explosion took 600MW offline.

Despite a clear imperative to replace the boiler as quickly as possible - South Africa entered a period of extended load shedding in the second half of 2014 – Eskom took an inordinate amount of time to conclude the insurance evaluation process (August 2015) and to then issue and award the tender (December 2015 and March 2017, respectively). At the end of this protracted process, the Eskom Board Tender Committee (BTC) inexplicably awarded the contract to Chinese company Dongfang – one of the more expensive bids - despite previously stating that price would be the determining factor. Over and above cost considerations, Dongfang scored far lower than the other bidders in the safety, health and environment category, because it failed to submit key documents.

The final tender decision also deviated from the stated position of the Eskom executive and an external procurement reviewer (KPMG). In December 2016, both had recommended negotiations should be conducted only with General Electric (GE) and Murray & Roberts (M&R). Dongfang's contract is worth R4.8 billion, almost R2 billion more than GE and M&R bids.

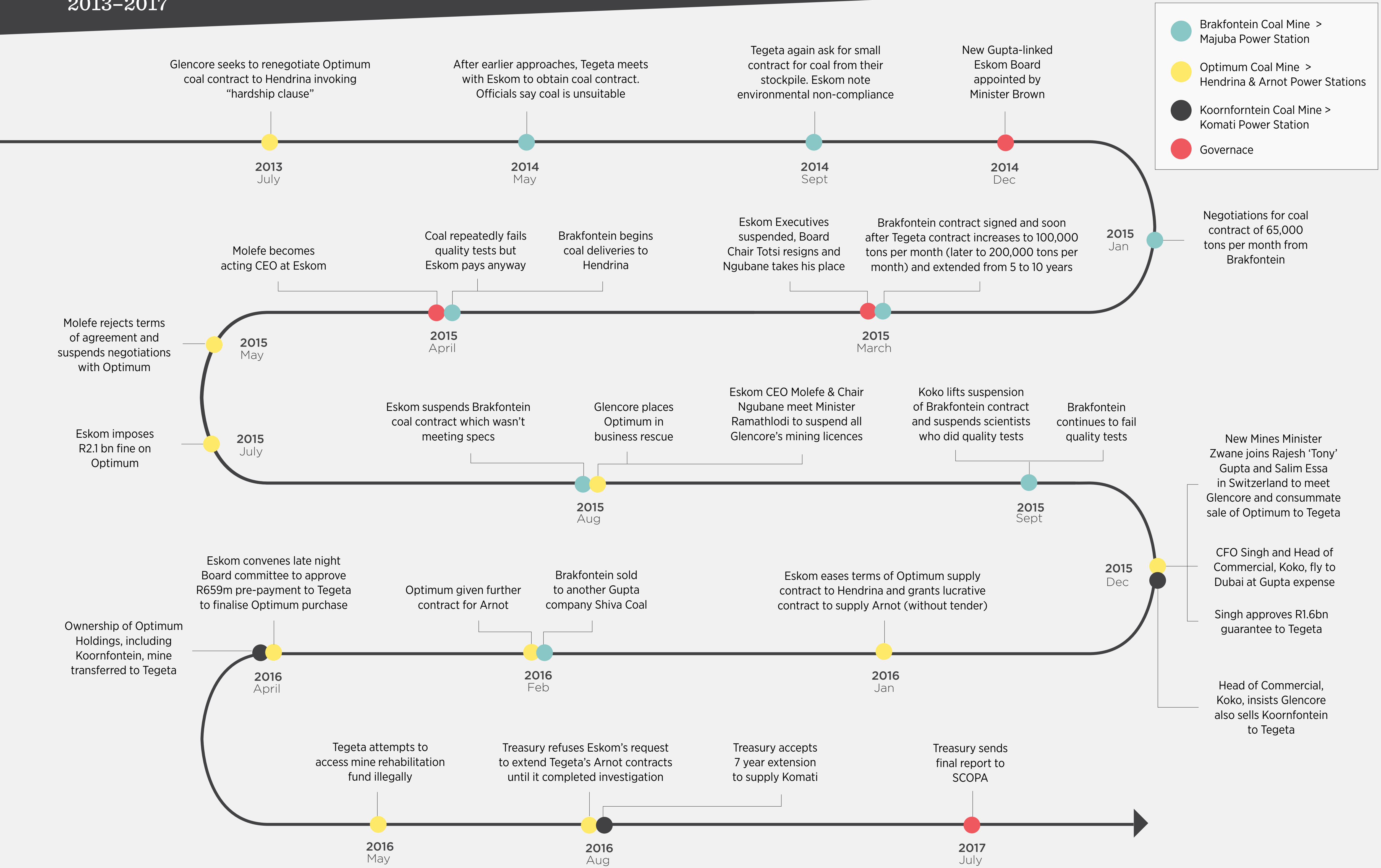
It has since emerged that the award was premised on a late-stage report conducted by Trillian – a firm then majority owned by Gupta associate Salim Essa – days before the contract was awarded. The report was premised on assumptions – that have since been challenged - around cost escalation, allegedly proposing that the fixed-cost Dongfang bid would ultimately be cheaper. Eskom also stated that the findings of the report were confirmed by SekelaXabiso – a company implicated in irregular spending at SABC.

The matter has since gone to court. On 30 June 2017, the High Court granted GE and M&R an interdict to stop Eskom from implementing its contract with Dongfang, whilst they make their judgement on the matter.

1. Given the court case that has overturned the validity of awarding the boiler refurbishment tender to Dongfang, what were the internal process that led to the irregular selection of this company as the winning bidder?
2. Did any Eskom board members or Eskom staff benefit materially from this tender award?

GUPTA COAL

2013–2017



GUPTA COAL


Rajesh (Tony) Gupta


Duduzane Zuma


Salim Essa


Ben Ngubane


Brian Molefe


Matshela Koko

Black gold

Eskom's largest procurement line item is coal, purchasing around 120 million tons per annum, worth more than R50 billion. It is here that we have seen the most ambitious schemes by the Gupta family to land lucrative contracts - in part made possible by the lack of transparency in coal procurement.

When the Gupta family first met Eskom CEO Brian Dames in early 2010, they tried to obtain a coal supply contract to the Lethabo power station, but nothing was concluded as Lethabo was supplied through a secure, long-term contract at competitive prices by the New Vaal mine. Their attention soon shifted to other opportunities - including the acquisition of the Brakfontein coal mine, which was always unlikely to deliver the quality of coal required by Eskom, and then, moving up a gear, the acquisition of Glencore's Optimum Coal Holdings and coal contracts to supply Eskom's Hendrina, Arnot and Komati power stations.

Brakfontein: Coal Eskom did not need

The Guptas purchased the Brakfontein coal colliery in Delmas through their company Tegeta in 2011. Despite this acquisition, their initial offers to supply Eskom's Majuba power station from Brakfontein were rebuffed. However, wholesale governance and management changes in Eskom turned their fortunes.

Following Minister Brown's new board appointments in December 2014, four Eskom executives were suspended in early 2015. Though the remaining managers and technical staff raised serious concerns around the quality of Brakfontein coal, environmental contraventions, as well as the black economic empowerment credentials of Tegeta, these were not addressed. The first Brakfontein contract was signed in March, when Ben Ngubane was appointed board chair. Brian Molefe took over as CEO in April and Matshela Koko – who was one of the four suspended executives – later returned to his position as MD of Technology and Commercial. The Guptas – seemingly fortified by the changes in the board and executive - became more insistent and ambitious. Meanwhile, the new board and executive appear to have been increasingly willing to respond to their demands. The initial Brakfontein contract was subsequently amended, with the coal supply agreement increasing from 65,000 to 100,000 and then 200,000 tons per month and the contract period extended from 5 to 10 years at a price higher than other coal suppliers to the Majuba power station. There were instances where more coal than specified in the contract was delivered, for which they were paid anyway.

However, the Brakfontein coal was repeatedly failing quality assurance tests. Because of this Brakfontein's contract was briefly suspended, only to be reinstated by Koko - who then suspended the scientists responsible for the negative quality tests. Emails from the #guptaleaks reveal how Tegeta staff effectively instructed Eskom staff to sign contracts without any competitive tenders, suggesting that the deals had been made at a higher level.

Ownership of Brakfontein has since been transferred to another Gupta company, Shiva Coal, which does not meet Eskom's empowerment criteria.

Optimum

The Guptas clearly had greater ambitions and their sights turned to Optimum Coal Holdings, a company owned by Glencore, which had three major assets: Optimum Coal Mine - which supplies Eskom's Hendrina power station, Koornfontein Mine - which supplies Eskom's Komati power station, and an export allocation at the Richards Bay Coal Terminal.

Under Glencore, the cost of production at Optimum Coal Mine had increased to more than R300 per ton.

However, the mine was locked into a fixed price contract with Eskom of around R150 per ton until 2018, meaning the mine was losing at least R120 million per month. In July 2013, due to these conditions, Glencore invoked a "hardship clause". Following negotiations, Eskom's Executive Procurement Committee (EXCOPS) approved a new contract in March 2015 - but final approval was deferred to the new acting CEO Brian Molefe, who rejected the terms of the agreement and suspended all negotiations. In July 2015, CEO Molefe then imposed a R2.1 billion backdated fine on Glencore for not meeting coal supply specifications. Around this time, the Guptas, through their company Oakbay, made Glencore an offer to purchase Optimum. The offer was initially rejected.

In August 2015, Glencore placed the mine in business rescue to stave off liquidation. In the same month, Eskom CEO Molefe and board chair Ngubane met with Mining Minister Ramatlhodi to persuade him to cancel Glencore's mining rights, while Koko threatened to review all of Glencore's coal contracts with Eskom. #guptaleaks show that Koko also leaked confidential Eskom information to the Guptas. Koko subsequently insisted that Glencore sell not only the Optimum Coal Mine, but all the assets in Optimum Coal Holdings, including Koornfontein and the export allocation.

Under this pressure, Optimum's business rescue practitioners entered into negotiations to sell Optimum Coal Holdings. These negotiations were subsequently facilitated by President Zuma's new Mining Minister, Mosebenzi Zwane, who joined Rejesh 'Tony' Gupta and Salim Essa in Switzerland in December 2015 to finalise the sale with Glencore's leadership. On his return journey, Zwane allegedly joined the Guptas on their jet to Dubai.

However, the Guptas still needed to find the money to pay the banks which held Optimum's debt. They wrote to Koko in December 2015 to confirm an in-principle agreement for a R1.68bn pre-payment for coal to be supplied in the future. During December, both Koko and Eskom CFO Anoj Singh were flown to Dubai – allegedly at the Guptas expense. Singh arranged for a R1.6 billion Eskom guarantee to Tegeta.

The eventual cash assistance to Tegeta for the purchase of Optimum was finalised at a late night Eskom Board Committee meeting convened in April 2016. Just hours after a consortium of banks refused to advance a R600 million loan to Tegeta, it was agreed at this meeting that Eskom would make a pre-payment of this exact amount to the company. Phone records obtained by the former Public Protector show that there was continual communication during this time between CEO Brian Molefe, the Guptas, and one of their senior executives.

Three months later, Optimum's business rescue practitioners filed a report with the Directorate of Priority Crime Investigation in terms of Section 34 of the Prevention and Combating of Corrupt Activities Act, alleging that the payment had been directed elsewhere and not into Optimum's accounts to assist with its liquidity, as purported by Eskom. Koko, when questioned on Carte Blanche, denied any pre-payment, but when confronted with evidence had to backtrack.

The challenge for the Guptas since, has been to earn profits from Optimum where its previous owner, Glencore, was incurring losses. Three strategies were adopted. First, the Guptas have attempted to sell the valuable Richards Bay export allocation. Second, they tried to mitigate the heavy fine that Optimum had incurred in the dispute with Eskom around below specification coal supplied to Hendrina. Third, the Guptas identified opportunities to increase revenues through further coal contracts. Though the Guptas have not yet finalised the sale of the export allocation, they have been somewhat more successful in the second and third strategies. The dispute was referred to arbitration and Eskom agreed to reduce the fine from R2.1 billion to R577 million, while the loss-making contracted coal supplies to Hendrina were minimised by reduced electricity generation output at the power station and alternative, higher priced supply contracts were made with Eskom to supply Arnot power station, 60 km away.

The Guptas have acquired major coal mining assets with Eskom's assistance and secured lucrative coal contracts to power stations, without competitive tendering and where there are better priced alternatives.

Komati, Hendrina and Arnot are old power stations that are due to be shuttered after 2020. Will the Gupta coal contracts mean that their operational lives will be extended, despite being amongst Eskom's most inefficient and expensive power plants?

A National Treasury investigation has been submitted to SCOPA, which recommends sanctions, as well as further forensic investigations.

SQUEEZING OUT THE COAL MAJORS

Malusi Gigaba

Sipho Nkosi (Exxaro head)

Mark Cutifani (Anglo head)

Brian Molefe

Matshela Koko

2013 — **Kusile:** Minister Gigaba torpedoes New Largo mine with 50 + 1% req.

2014 — **Matla:** Eskom fails to provide capital as per cost plus agreement for Exxaro

2015 — **Arnot:** Eskom terminates Exxaro/ Anglo Mafube contract

2015 — **Arnot:** Eskom terminates Exxaro Arnot tied mine

2017 — **Majuba:** Eskom refuses to extend Exxaro Leeuwpan mine contract

2017 — **Arnot, Tutuka, Komati:** Exxaro NBC contracts end

In recent years Eskom has adopted an increasingly robust – or even outright uncooperative - attitude in its negotiations with coal majors, such as Anglo Coal, Glencore, South32 (ex BHP Billiton) and Exxaro (which, until recently, was majority black owned). Eskom's coal power stations were built adjacent to these mines, which had long-term, secure, low-priced contracts.

Exxaro has experienced the full force of Eskom's recent antipathy to its major coal suppliers, with contracts to supply Arnot, Majuba, Tutuka, Komati, and Matla power stations recently terminated, not suitably maintained, or due to end soon without renewal on the horizon.

Exxaro used to supply Eskom's Arnot power station from a captive mine via conveyor belt - Exxaro owns the mining rights and Eskom the land. In 2006, the Arnot power station was upgraded but Eskom failed to secure land rights essential to extending the mine's operations and, with reduced output, unit costs of coal increased substantially. There was also a dispute around when the contract would expire. Despite a term sheet being agreed in 2013, Eskom terminated the coal supply agreement in September 2015 and the mine was closed with the loss of 1500 jobs. The mine could still be re-opened but Eskom has expressed no interest and has, instead, increased its short-term coal contracts with mines such as the Gupta's Optimum Coal mine, 60km distant. In the same year, Eskom also terminated an Arnot supply contract from the Mafube mine, which was jointly owned by Exxaro and Anglo, even though the cost of this coal was substantially cheaper than almost any other supply agreements, especially the Gupta contract.

Exxaro also had a fixed price coal contract, until March 2016, to supply Eskom's Majuba power station from its Leeuwpan mine - but Eskom has failed to approve any extension of the contract. In the meantime, Eskom has agreed to ever increasing supplies from the Gupta's Brakfontein mine, despite their coal not meeting power station quality requirements.

Exxaro supplies Eskom's Matla power station on a cost-plus contract. However, Eskom again failed to invest further in the mine, as per the agreement, even though historically it was a low-cost producer. As a consequence, Eskom is trucking in coal at much higher prices.

Exxaro's contracts to supply Eskom's Tutuka and Komati power stations will expire at the end of 2017. Komati is also being supplied by the Gupta's Koornfontein mine.

Another example of Eskom squeezing coal majors is Anglo's New Largo coal deposit, which was the rationale behind Eskom's siting of its new Kusile power plant. Heads of agreement were signed between the companies and Anglo proceeded with feasibility studies, environmental processes, and a mining right application; but then Minister Gigaba imposed a new 50+1 black ownership requirement without any official policy, legislative or regulatory backing in 2011. The mine remains undeveloped and coal is being trucked into Kusile at high cost and considerable risk.

Eskom coal procurements offer opportunities for new black-owned mines. As the shift from long-term contracts with coal majors to shorter term contracts with new entrants accelerates, transparency is important. It is clear that the Guptas have benefited from the shake-down of low-cost, long-term coal suppliers – arguably without supporting the transformation imperative that has made this possible.

Coal Questions

1. To what extent, and why, did Eskom board members and managers fail to comply with the PFMA and other Acts and regulations in the awarding of a series of coal contracts to:
   - Tegeta's Brakfontein coal mine to supply Majuba Power Station,
   - Tegeta's Optimum Mine to supply Arnot, and,
   - Tegeta's Koornfontein mine to supply Komati,

   at increased volumes, prices, and periods, without competitive tender, and despite some supplies repeatedly failing quality assurance tests?

2. What were the roles of Rajesh 'Tony' Gupta, Salim Essa, Ben Ngubane, Brian Molefe, Matshela Koko, and involved board sub-committees in the Glencore / Tegeta / Optimum Holdings deal including:
   - cancellation of the Cooperation Agreement with Glencore;
   - levying a fine of R2.1 billion on Glencore (which was substantially reduced later for Tegeta);
   - the private commercial negotiations in Switzerland;
   - the Department of Mineral Resources issuing mine stoppages and threats to review or cancel mining licences and coal supply agreements in all of Glencore's mines;
   - refusing to consent to the sale of Optimum to another purchaser (Endulwini Consortium), meaning that Tegeta emerged as the only remaining entity that wished to make the purchase;
   - Matshela Koko insisting that the sale include not just Optimum Coal but also Koornfontein and the Richard's Bay Terminal export allocation;
   - Matshela Koko's leaking of confidential Eskom information to the Guptas;
   - Anoj Singh approving a R1.6 billion guarantee with Absa bank to facilitate the Optimum purchase by Tegeta;
   - authorising an extraordinary pre-payment to Tegeta, of R659 million, which was used to purchase Optimum?

3. What is the nature of relationship between Ben Ngubane, Brian Molefe, Matshela Koko, Anoj Singh (plus other Eskom board members and managers) and the Guptas? Have they benefited materially from this relationship?

4. It is clear that Tegeta has benefited from favourable treatment to the detriment of other coal companies, including those that are fully black owned. Please explain this apparent partial treatment?

5. Could senior executives from Exxaro, Anglo, Glencore and South32 outline and document Eskom's actions in shifting from long-term to short and medium term coal contracts and the consequences for Eskom's coal costs and security of supply?

6. Could Ministers Gigaba and Brown explain their roles in frustrating investment in coal mines to supply Eskom, including lack of approval for Eskom to meet its obligations in cost-plus mines as well as blocking the development of the New Largo mine to supply Kusile?

7. Could Brian Molefe and Matshela Koko, plus Eskom executives responsible for Primary Energy and Procurement, explain their actions in terminating contracts with coal majors and instead favouring particular mines, such as those owned by the Guptas?

TRILLIAN


Salim Essa


Eric Wood


Brian Molefe


Anoj Singh

February: Trillian submits first direct invoice to CFO Singh
2016

April: Eskom pays Trillian same day that Optimum bought
2016

December: Minister Brown denies that Eskom has any contracts with Trillian
2016

March: Trillian report used to justify Dongfang tender award
2017

July: Eskom admits to paying Trillian R500-million since 2016
2017

In December 2016, Minister Lynne Brown categorically denied that Eskom had any contracts or had conducted any business with Trillian Capital Partners. In July this year, however, it emerged that Eskom has paid Trillian almost R500 million for 'consulting' work that had been contracted to McKinsey – with the first invoice sent directly to recently suspended Eskom CFO Anoj Singh on February 11, 2016.

In April 2016, Trillian was paid R30.7 million by Eskom for a 'corporate plan' on the same day that the Gupta's bought Optimum Holdings. Trillian bank statements show R160 million was paid to an unknown beneficiary on the same day. In March 2017, a Trillian report – undertaken in just two days – led to the selection of Dongfang in an R4 billion tender process, even though this report contradicted the recommendations provided by the Eskom executive and KPMG. Despite the money paid to Trillian, there appears to be little evidence to indicate any substantial work undertaken by the company. Yet Eskom has not only paid the company sizeable amounts, but has also explained critical procurement decisions by referring to Trillian reports. It appears that the Gupta consultancy may have functioned as a conduit for external instructions, a way to transmit money to Gupta-connected networks, and a means to 'legitimising' irregular Eskom processes.

It is worth remembering that Trillian has not only fulfilled this function in relations with Eskom, but also at Transnet (and when Brian Molefe and Anoj Singh where CEO and CFO, respectively). It would seem that then Trillian shareholders – Salim Essa and former Regiments Director Eric Wood – together with Molefe and Singh were able to transfer the arrangement from one state owned company to another. It is also important to remember that this arrangement was facilitated by McKinsey – specifically directors Vikas Sagar and Alexander Weiss (recently suspended), who are said to have identified and shared sensitive information with then Trillian majority shareholder Salim Essa on 11 key projects in Eskom that could bring in R9.4 billion in consulting fees over a 4-year period.

Trillian has also been named by the media and in #guptaleaks as being involved in the Gupta money-laundering operation, funnelling payments to shell company Homix.

1. How did Regiments/Trillion obtain inside information on Eskom's procurement budgets? What is the full scope of the Eskom procurements that they targeted and influenced?
2. Which procurements did Trillian influence so as to be awarded to Gupta-linked companies?
3. What payments have been made by Eskom to Regiments and Trillian since 2009? Were these payments made with or without contracts? Do any of the payments appear well out of proportion with the value of the work supposedly delivered?
4. What role has McKinsey played in the relationship between Eskom, Regiments, and Trillian?

IMPULSE

Matshela Koko

Koketso Choma

2014	2016	2016	2016–2017	2017
Matshela Koko appointed head of Group Technology & Comercial	**April:** Koketso Choma appointed Director at Impulse	**November:** Matshela Koko appointed Acting CEO	**April-March:** Impulse awarded R1-bn in contracts under Koko's oversight	**May:** Matshela Koko put on special leave pending inquiry into Impulse

Matshela Koko has survived the various waves of controversy that have led to both implicated and innocent executives leaving Eskom since 2009. In May 2017 he was however put on special leave, pending the investigation into Eskom's awarding of R1 billion in contracts to Impulse International while his 26-year old step-daughter, Koketso Choma, was a Director on the board. Choma is also one of two trustees of the Mokoni Trust, which held a 35% shareholding in the company. Impulse has benefitted from sub-contracts on some of Eskom's biggest expenditure items, including new builds Kusile and Medupi.

The Impulse contracts, however, are likely just the tail end of a long piece of string. Koko is known to have been the one to head up the R659 million pre-payment that enabled Gupta's Tegeta to buy Optimum Coal Holdings. Koko has also been implicated in the #guptaleaks, which suggest that he shared sensitive information with the Guptas. According to #guptaleaks and select informants, Koko has had dealings with the Guptas since at least 2015, including an all-expenses paid trip to Dubai in January 2016.

In addition to links with the Guptas, Koko has held the key position of Head of Group Technology and Commercial (later Group Generation and Technology) for the better part of a period that has been fraught with corruption scandals in procurement deals, including for primary energy inputs, transportation, and capital expenditure.

1. How did Matshela Koko, in partnership with others, abuse his position to corrupt Eskom procurement processes? In which way did he facilitate Gupta-linked contracts or those directed to his family interests?
2. What contracts have been awarded to Impulse over the years? Which ones were awarded when Matshela Koko was in a decision-making position in procurement? Indicate which of these were awarded during his tenure as Acting CEO and those awarded while his step-daughter, Koketso Choma, was a Director or equity holder?
3. In addition to possible family benefits through the Impulse contracts, what other material benefits has Koko accrued through Gupta-linked and other Eskom procurements?
4. Are any actions being taken to prosecute Koko?

STILL IN THE SHADOWS

There are additional areas that arguably warrant further investigation.

There are 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). Misleading information was presented to these organisations on Eskom's plans to shutter old **coal** power stations, as well as on the relative costs of coal versus renewable energy. The consequence of this misinformation was the shutdown of central Pretoria by hundreds of coal trucks on 1 March 2017 plus a number of other protests damaging to the economy. The facts need to emerge and sensible policies need to be developed to manage these tensions.

Diesel is used to fire turbines at Eskom's Ankerlig and Gourikwa power stations. Ordinarily, these run for less than 5% of the time to supply electricity at peak demand periods. In times of load shedding, however, they were run hard to keep the lights on – at a cost of around R10 billion per annum. There is evidence that Eskom gave diesel contracts at inflated prices to companies that clearly had no prior experience and acted merely as intermediaries.

When Eskom's expensive infrastructure is damaged or destroyed, the costs of replacement are huge. While the corruption around the award of the Duvha Unit 3 boiler refurbishment has been well documented, less has been reported on the replacement contracts for the **Duvha Unit 4 generator** or the **Majuba coal silo**. Given the track record of Eskom's Board Tender Committee, a spotlight should also be shone on these contracts.

Eskom has had to spend more on maintenance to reverse the declining performance of its power stations, the plant availability factor of which decreased from 90% to 70% at one stage. These lucrative **maintenance contracts** have not been adequately investigated by independent parties.

Eskom's capital budget is larger than any other government entity. We know that Eskom's new power stations – Medupi, Kusile and Ingula – are several years late and more than 200% over budget. Each have involved multiple **construction contracts**. Some evidence has been uncovered of awards to favoured parties (including Impulse), but the full scale of contractors and sub-contractor work should be examined.

Electricity demand is flat, new power stations are coming on line, and there is no urgency in committing to large new power investments. This has not stopped various parties pushing hard for a fleet of **nuclear** power stations and also the so-called Coal 3 plant (after Medupi and Kusile). At the same time, the more affordable, flexible and scalable options of renewable energy IPPs suffered from a blanket refusal by Eskom to sign any more contracts, including those that were already in procurement stage. The motivations for blocking renewable IPPs while pushing nuclear has been cause for suspicion.

Eskom had the most competent and experienced **Treasury** department of all South Africa's SOCs and, in years past, was successful in raising competitively priced debt on local and international capital markets. That capacity has deteriorated and advisory and capital-raising services are now often contracted out at an exorbitant cost. Eskom's credit rating has plunged and it has increasingly turned to development finance institutions, including the China Development Bank, to raise debt without disclosing its cost of capital. Eskom debt and financing costs have ballooned and it now poses a real threat to the sovereign.

Finally, there have also been concerns around Eskom's **audits**. Eskom used to have three auditors, including two large international firms. SizweNtsalubaGobodo is the sole remaining firm. Eskom received a qualified audit in 2017, with billions in irregular expenditure noted. This threatened to trigger serious breaches of some of its debt covenants and raised the possibility of sovereign guarantees being called, which would have had catastrophic fiscal and macro-economic consequences.

Ultimately, any project to repurpose Eskom's governance to facilitate systematic corruption in the power sector undermines and threatens the utility's financial viability and its ability to power South Africa's economy and improve the welfare of all its citizens.

RECOMMENDATIONS

Parliament's Committee on Public Enterprises' Inquiry into Eskom will likely make findings around the manner in which the governance of South Africa's state-owned electricity company has been undermined and re-purposed to materially benefit a politically connected elite, while compromising national economic and social development. It will likely also shine a light on the systematic and individual acts of corruption around Eskom procurement. Hopefully it will also make recommendations to prosecute culpable individuals, reform governance, and restructure South Africa's electricity sector so that grand corruption is less possible in the future.

Parliament has the power to call on Ministers, Eskom board members, executives, professionals, and other relevant stakeholders, to testify on how Eskom came to where it is today and what might be done to re-position the electricity sector to power economic growth and expanded social welfare sustainably in the future. The Inquiry has the potential to both illuminate the past and the future.

The immediate task of the Committee will be to probe breaches of laws and regulations and expose individual acts of corruption. Where these are clear, it will need to recommend prosecution and forward relevant details to the national prosecuting authorities. 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.

A further, and in many ways more fundamental, task of the Committee will be to expose the way in which board and executive appointments and directives have been subsumed by a political project that serves a narrow and corrupt elite, and to make recommendations on how governance of Eskom could be reformed and strengthened in the future. Much work has already been done. A Cabinet sanctioned activity by the Deputy-President's team has looked at the way in which SOC board appointments are made, including instituting nomination committees and eligibility criteria, as well as arms-length performance contracts which map out government's policy and economic objectives, set specific targets and then hold boards and management to account.

There is a wealth of international experience of how to reform state-owned utilities to improve their performance. There is general agreement that state-owned utilities should not rely on soft budgets and fiscal grants when there are much more pressing needs in education, health and other social services. Electricity companies should be financially viable. Technical and financial innovation in the power sector – like telecommunications - now demonstrates that competition and private sector participation is possible and beneficial, subject to appropriate regulation and policy instruments that meet social goals. Most developed and emerging economies have broken up and unbundled their electricity utilities and encouraged more competition.

Power sector reform proposals are probably beyond the remit of this Committee. However, it is clear that unbundling of Eskom, to create a separate generation company and an independent grid, will accelerate private investment in the sector and spark competition. This would make it more difficult to extract economic rents or add costs to electricity prices or to threaten the financial viability of the sector and the security of electricity supply that is so fundamental to economic and social development. It is hoped that the recommendations of the Committee will at least fuel the momentum that is building for power sector reform.

South Africans are watching Parliament's Committee on Public Enterprises' Inquiry into Eskom and look forward to its recommendations around holding individuals, as well as institutions, to account.

This work is part of a larger academic initiative – the State Capacity Research Project - convened by Prof Mark Swilling of the University of Stellenbosch's Centre for Complex Systems in Transition, with the involvement of researchers at the University of Cape Town's Development Policy Research Unit and Graduate School of Business, the University of Witwatersrand's Public Affairs Research Institute and Department of Economics, and the University of Johannesburg, as well as independent journalists and key informants.

We would like to acknowledge the work of researchers and journalists on which this booklet has drawn.

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