

ESKOM INQUIRY REFERENCE BOOK



A Resource for Parliament's Public Enterprises Inquiry

Civil Society, Journalists & Engaged Citizens

Version 3



October 2017

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Research support was provided by Lauren Hermanus and Jesse Burton.

It is part of the State Capacity Research Project (SCRIP) - a group of academics from research institutions at the Universities of Stellenbosch, Witwatersrand, Cape Town and Johannesburg.

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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Graduate School
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ESKOM INQUIRY REFERENCE BOOK

In October 2017, Parliament’s Public Enterprises Committee will begin its inquiry into alleged manifestations of state capture in three of South Africa’s state owned companies (SOCs): Eskom, Transnet, and Denel.

The authors of this reference book have set out to provide an independent, accessible, concise, and fact-based account of some, but not all, of the alleged instances of governance failure and capture at the largest SOC - Eskom.

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STATE OF STATE CAPTURE

At the start of November 2016, former Public Protector Thuli Madonsela's State of Capture report was made public after President Zuma's legal team withdrew a bid to interdict its release. A turning point, Madonsela's report provided the first comprehensive legal analysis of the alleged systemic corruption being perpetrated through state owned companies (SOCs).

Since then, South Africans have witnessed the rallying of civil society, investigative journalists, academia, public leaders and concerned citizens [including through groups such as the South African Council of Churches (SACC), the State Capacity Research Project (SCRIP), and the Organisation Against Tax Abuse (OUTA)], who have come together to further this civic work.

From these efforts, an overwhelming and growing body of evidence - including that contained in the #guptaleaks - has been built. Taken together, it suggests that the 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.

Further analysis is beginning to show how critical checks and balances built into the Constitution have been undermined in order to provide safe passage to those seeking to funnel money out of South Africa. Institutions such as SARS, the National Prosecuting Authority, the Hawks, the Special Investigating Unit, and - more recently - the Public Protector and the Office of the Chief Procurement Officer have all been affected - starved of resources and led astray by new, politically appointed, leadership. At the same time, the authority and oversight capability of Cabinet has been fragmented by a ballooning public service, the diversion of formal decision-making processes, and frequent shuffles. This has been to the detriment of the functioning of Government and those entities within the ambit of state governance.

By shedding light on the modus operandi of a network of implicated individuals and recognised brokers, South Africans are starting to join the dots. The plausibility of any claim that reported irregularities are random or unconnected - as would be the case with generalised corruption or maladministration - has been diminished. Instead, more and more information is coming to light that seems to corroborate claims that a coordinated political project of state capture has been underway, whereby governance structures have been systematically repurposed to serve corrupt interests.

This is evinced in the centralisation of decision-making power in targeted institutions, the hollowing out of executive and oversight competencies by granting top positions in SOCs and ministries to inept or corrupt individuals, and the cultivation of fear and mistrust through the establishment of 'shadow' structures and lines of accountability. Such a project would allow for the possibility of grand corruption at the highest level, the full ramifications of which have yet to be felt.

Allegations that practices indicative of state capture have been intentionally waged across a range of government institutions and within SOCs have since been levelled in Parliament, leading the Portfolio Committee on Public Enterprises to initiate an inquiry into governance failure and the abuse of public resources at Eskom, Transnet, and Denel. While the Inquiry is primarily positioned to illuminate what has happened in SOCs, the Committee will also be able to probe higher level structural and governance questions relating to the state of state capture.

SETTING SIGHTS ON ESKOM

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.

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

Currently, Eskom is building some of 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 in recent years, which has been detrimental to economic growth. 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 which were in the public domain, with allegations of inflated prices and corruption. However, any information that could validate or disprove these claims has been kept in the dark.

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)

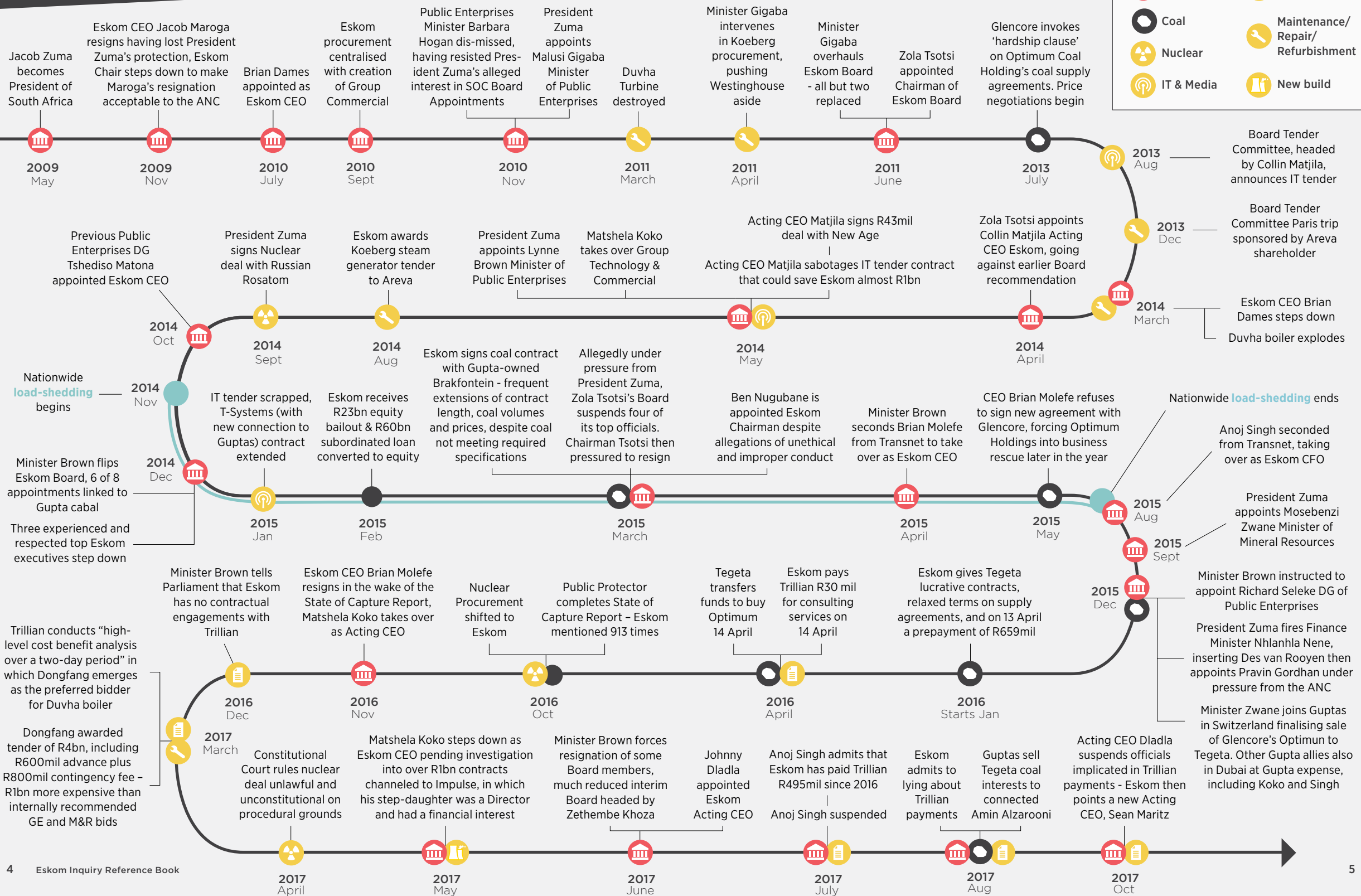
| | |
|------------------------|-------------|
| Assets | 710 billion |
| Capital expenditure | 56 billion |
| Revenue | 177 billion |
| Net operating expenses | 140 billion |
| Coal purchases | 50 billion |
| Staffing costs | 33 billion |

Source: Eskom Annual Financial Report 2017

GENERATING CONTROVERSY

2009–2017

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



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 in the early 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 board and executive appointments at SOCs in general, and at 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 in these years. Many of Eskom's most respected executives left during this period, demoralised by the changing institutional culture and early onset of coordinated corruption and political interference.

This pattern was reiterated shortly after Lynne Brown was appointed Minister of Public Enterprises. This time, the hollowing out of Eskom's board and executive governance appears to have been more severe. In December 2014, Minister Brown made sweeping changes to the board. Six out of eight appointees had unambiguous connections with the Gupta family and questions have been raised about a notable deterioration in the balance of skills, expertise, and experience on the board. During the course of the year a number of Eskom's top executives – including CEO Brian Dames and CFO Paul O'Flaherty – 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, then known for his poor performance and actions at the SABC and Land Bank. This was around the same time that the Dentons probe into possible governance failures and other issues at Eskom was prematurely terminated – with the interim report held back from Parliament and the public, and then allegedly 'destroyed' by the board in August 2015. Eskom's governance structures were thus impaired – as demonstrated by the high turnover, volatility, and disharmony in and across the board, the 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 appear to have taken place.

In July 2017, in the midst of another 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. Given these findings, it is highly suspect that a qualified audit had not been triggered in earlier years.

Rebuilding and reinforcing good governance at Eskom, including through reviewing systems of appointment and the structure of the utility itself, will likely be a critical area where recommendations should be developed.

Questions on Eskom Governance

What were the processes for Ministers Gigaba and Brown's appointments of the 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 independent 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? Were links between the relevant board members and 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? To what extent and to what end were key reports, such as the Dentons investigation, withheld from the War Room, Cabinet, Parliament and the public?

What is the role of the Board Tender Committee? What is and is not in their remit? Have these rules changed since 2009? Can the board override decisions/outcomes of the Executive Procurement Committee? Interrogate instances where the Board Tender Committee unduly influenced processes.

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

What role did Eskom chief executives Maroga, Dames, Matona, and B. Molefe, acting chief executives Matjila and Koko, and chief financial officers T. Molefe and 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 awarding of any tenders to these parties? Did members of the executive/board 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 Guptas' relationship with Eskom, and with other SOCs, and members of the board and 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 their associates? Did you ever accept any gifts from the Guptas or their associates?

Potential Interviewees: Eskom Executives and Managers

| CHIEF EXECUTIVES | OTHER ESKOM EXECUTIVES | PRIMARY ENERGY | |
|---|-------------------------------|------------------------|--|
| Brian Dames (2010-14) | Suzanne Daniels (2015-) | Johann Bester | |
| Collin Matjila, acting (2011) | Dan Marokane (2010-14) | Kiren Maharaj | |
| Tshediso Matona (2014-15) | Erica Johnson (2007-2014) | Ayanda Nteta | |
| Brian Molefe (2015-16&17) | Steve Lennon (2007-2014) | | |
| Matshela Koko, acting (2016-17) | Abram Masango (2014-) | PROCUREMENT | |
| Johnny Dladla (2017) | Mongezi Ntsokolo (2010-) | Charles Kalima | |
| Sean Maritz (2017-) | Thava Govender (2010-) | Pieter le Roux | |
| | Ayanda Noah (2012-) | Mandla Gobingca | |
| | Kannan Lakmeharan (2012-2014) | Malesela Sekhasimbe | |
| <th>FINANCE DIRECTORS / CFOs</th> <td>Edwin Mabelane (2015-)</td> <td></td> | FINANCE DIRECTORS / CFOs | Edwin Mabelane (2015-) | |
| Paul O' Flaherty (2010-13) | Prish Govender (2016-) | | |
| Tsholofelo Molefe (2014-15) | | | |
| Anoj Singh (2015-17) | | | |

REPURPOSING GOVERNANCE

ESKOM BOARD UNDER MALUSI GIGABA

Minister Public Enterprises

**November 2010
to May 2014**



**Director General
Public Enterprises**

Tshediso Matona
Dec 2010 – Sept 2014



**Advisor 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 Mkwanzazi *
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 ^a
April 2015 -
June 2017



Zethembe
Khoza (Acting)^{*}
June 2017 -
present

Eskom Board Members

Chwayita Mabude ^{*} ^a

Nazia Carrim ^{*} ^b

Venete Jarlene Klein ^a

Giovanni Michele Leonardi (Swiss)

Devapushpum Virosini Naidoo ^{*} ^b

Pathmanathan Naidoo

Mark Vivian Pamensky ^b

Romeo Khumalo ^b

Mariam Cassim ^b

New members June 2016:

Pulane Molokwane

Simpfiwe Dingaen

Banothile Makhubela

Sathiaseelan Gounden

Eskom CEO (including Acting CEOs)



Collin Matjila
(Acting)^{*}
April 2014 -
Oct 2014



Tshediso Matona
Oct 2014 -
March 2015



Brian Molefe ^b
April 2015 -
Nov 2016



Matshele Koko
(Acting) ^c
Nov 2016 -
May 2017



Johnny Dladla
(Acting)
June 2017 -
Oct 2017



Sean Maritz
(Acting)
Oct 2017 -
present

Financial Director



Tsholofelo Molefe
Jan 2014 - June 2015



Anoj Singh
Aug 2015 - July 2017

^{*} On tender committee

^a. Dismissed/resigned 2017

^b. Dismissed/resigned 2016

^c. (Group Executive for Technology and Commercial/ Generation 2014 - 2016)

KOEBERG GENERATORS TENDER



Minister Gigaba



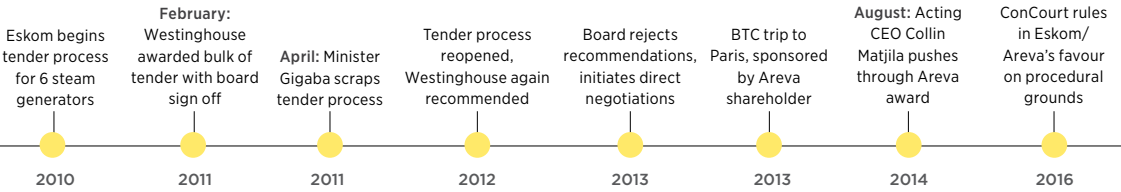
Collin Matjila



Minister Brown



Matshela Koko



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 three-part tender 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, 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.

In 2012, the tender bidding process was reopened. The EXCOPS again undertook a technical evaluation of bids, reaching a similar conclusion – that the bulk of the tender should be awarded to Westinghouse. 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. Westinghouse and Areva were asked to resubmit bids in July 2013 – the bid criteria did not change, however. The board rejected the EXCOPS recommendations on this bid too and instead invited the 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.

Then, in April 2014, Matjila was appointed Acting CEO of Eskom. Technically relieved of his BTC duties, Matjila continued to attend meetings. When EXCOPS again recommended Westinghouse be awarded the bulk of the tender in July, Matjila – along with Matshela Koko – tried, unsuccessfully, to revise the recommendation in favour of Areva. Following a protracted five-year process, during which the EXCOPS had consistently identified Westinghouse as the stronger bid, the BTC inexplicably awarded the tender to Areva on 12 August 2014 via secret ballot.

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 R5 billion 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 nuclear safety.

1. Why did Minister Gigaba intervene in this procurement decision?
2. Did Collin Matjila and others subvert regular procurement processes?
3. Was the tender process compliant with Eskom's SCM procedure and the Constitution (s217)?
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

Gupta-owned TNA Media's New Age newspaper was first 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, advertising budgets, and TNA business breakfast sponsorships. According to publicly available information, when Malusi Gigaba was Minister of Public Enterprises, his advisor - Siyabonga Mahlangu - pushed TNA deals at SOCs.

During Collin Matjila's tenure as Board Tender Committee (BTC) chairman (2011-2014), Eskom spent R12 million on 10 TNA business breakfasts - more than the going rate for more established media groups. Matjila was then appointed Acting CEO at the end of March 2014. It has since come to light, via the #guptaleaks, that this reportedly last-minute appointment may have been facilitated by Gupta Lieutenant, Salim Essa, who forwarded Matjila's CV to Tony 'Rajesh' Gupta and Duduzane Zuma just six days prior.

Matjila broached the idea of a one-year, R14 million business breakfast deal with the Eskom executive committee in early April. But the TNA contract soon ballooned into a three-year, R43 million business breakfast deal and a R4 million newspaper subscription package. Members of the board, executive, and legal counsel tried to stop or at the very least improve Eskom's terms in the contract, but Matjila - overriding official procurement processes and acting outside the scope of his authority - signed the improvident contract on 30 April 2014.

The board then initiated a forensic review, which found that Matjila had acted improperly in signing the contract. As a consequence, Eskom's external auditors, SNG, raised the TNA - New Age deal as a reportable irregularity in October. However, a number of board members motivated against identifying the deal as such, including chairman Zola Tsotsi and Chwayita Mabude. If they had been successful, Eskom would have had to delay the publication of the interim financial results ahead of a critical bond raising roadshow, with dire results.

The forensic review also recommended that the board ask the Minister to remove and lay criminal charges against Matjila. Conspicuously, Minister Brown made herself unavailable to the board. Troubled by the implications, two board members sitting on the Audit and Risk Committee (ARC) - Masithela and Luthuli - tendered their resignations.

Soon after, on 11 December 2014, Minister Brown implanted a new board at Eskom. Tsotsi and Mabude were the only non-executive members that survived. The new board ratified the TNA deal and no legal action was taken against Matjila.

1. Why did the new board ratify a deal that had been identified as irregular?
2. What were the full findings of the forensic investigation? How did the treatment of the findings compare between boards?
3. Does the evidence suggest that the board/s failed to fulfil their fiduciary and other duties?



T-SYSTEMS



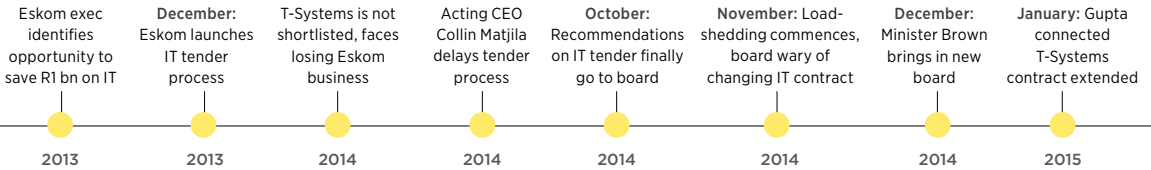
Collin Matjila



Salim Essa



Minister Brown



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 internalising 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, accounted 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.

When T-Systems was not shortlisted and it became clear that the ICT provider would likely lose out on any Eskom contract, Salim Essa is said to have approached the firm's leadership - offering to lobby on their behalf. T-Systems' leadership was already acquainted with Essa, as they had formed a consortium with Infracore - of which Essa was a director - the year before when bidding for a Transnet contract. Essa had been appointed Infracore director by Minister Malusi Gigaba in 2011. Around this time, Collin Matjila - an Essa associate in the dubious 2011 COSATU property deals - was appointed Acting CEO of Eskom. While the role that Essa may have eventually played is unconfirmed, T-Systems appeared to have gained the ear of the new Acting CEO.

As in the Koeberg Steam Generator tender, Matjila reportedly 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

internalisation of core IT functions, in conjunction with the tendering of non-core functions, would save the then financially stressed Eskom around R1 billion (a figure disputed by T-Systems), 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 finally tabled by the BTC - 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. There have been reports of connections between T-Systems and 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?
2. What interactions did Matjila have with T-Systems and/or Salim Essa?
3. What were the circumstances surrounding CIO Sal Laher's suspension and resignation?

DUVHA BOILER



Charles Kalima



Abrams Masango



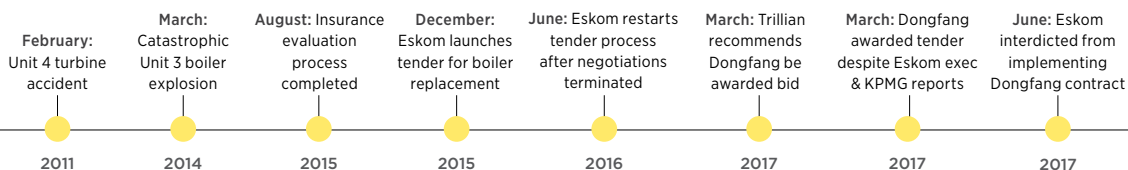
Edwin Mabelane



Anoj Singh



Salim Essa



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 the quality of coal procured for the Duvha plant and operational errors. 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. 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). Regiments was allegedly involved in these processes - though it was Essa's Trillian that later invoiced for the work in August 2016.

Eventually, the Eskom Board Tender Committee (BTC) 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 committee and an external procurement reviewer (KPMG). In December 2016, both had recommended negotiations should be conducted with only General Electric (GE) and Murray & Roberts (M&R), each with tender submissions -R2 billion less than the Dongfang bid.

The final award was supported by a late-stage report conducted by Trillian just two days before the contract was awarded. The report was premised on assumptions - that have since been challenged - around cost escalation, and proposed that the fixed-cost Dongfang bid would ultimately be cheaper. Eskom stated that the findings of the report were confirmed by SekelaXabiso - a company implicated in irregular spending at SABC.

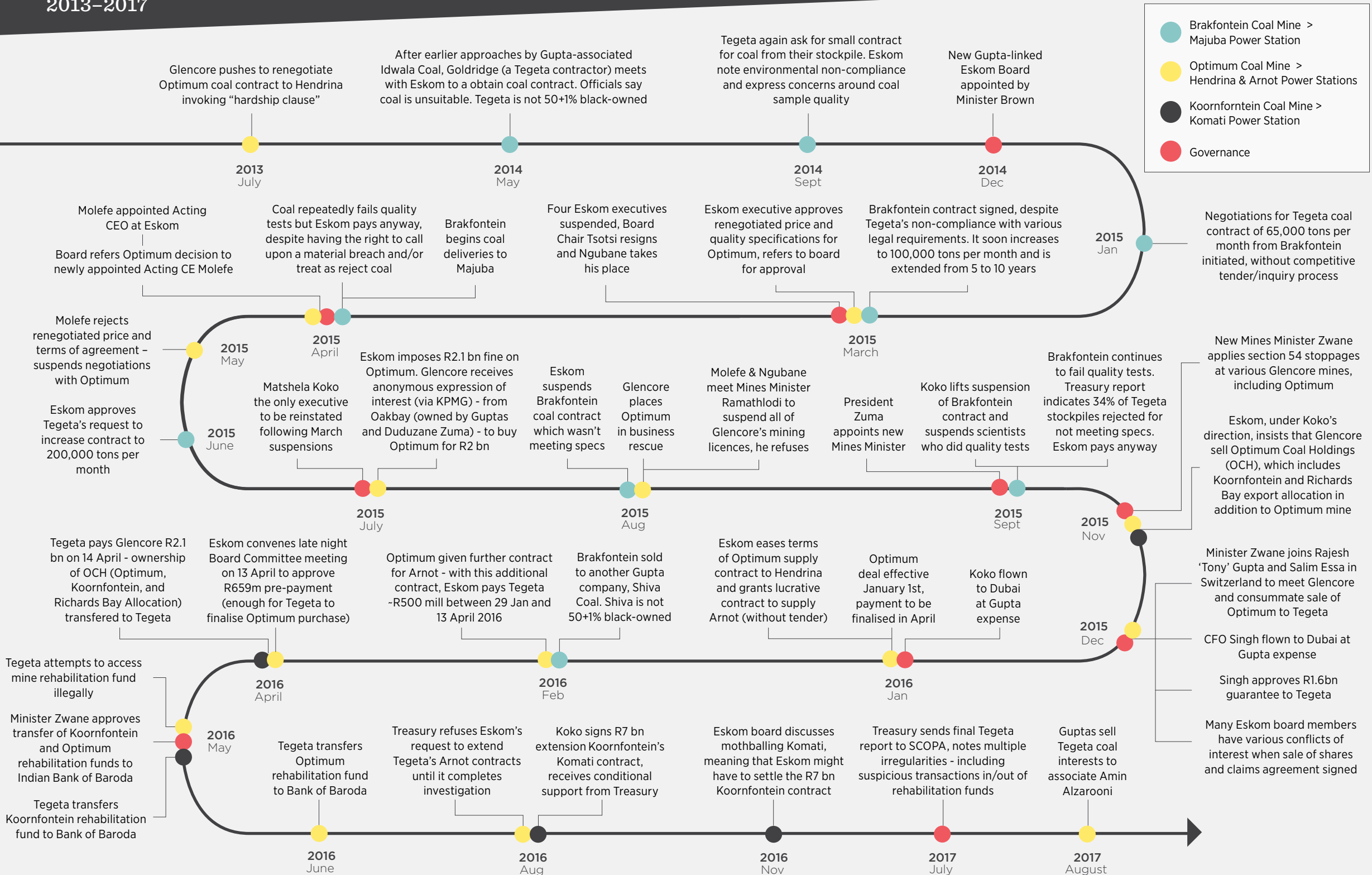
On 30 June 2017, the High Court granted GE and M&R an interdict to stop Eskom from implementing its contract with Dongfang, whilst they make a judgement on the matter.

1. Given the court case that has overturned the validity of awarding the boiler refurbishment tender to Dongfang, what internal process led to the irregular selection of this company as the winning bidder?
2. Why were Regiments and Trillian involved in the process? Was the procurement of their services in line with the Constitution (s217)?



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, with around 120 million tons, worth more than R50 billion, purchased per annum. 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 Arnot, Hendrina, Komati, and Majuba power stations.

Brakfontein: Coal Eskom did not need

The Guptas purchased the Brakfontein 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, Eskom staff entered negotiations with Tegeta in January 2015 'under pressure from above'. Though 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 on 10 March 2015. Two days later, the board

suspended four Eskom executives - CEO Matona, CFO T. Molefe, Maronake, and Koko.

Brian Molefe took over as CEO in April and Matshela Koko 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 enterprising. Meanwhile, Eskom's new leadership 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 that of other coal suppliers to the Majuba power station. There were instances when Tegeta delivered more coal than had been specified in the contract, 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 was subsequently 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. The #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 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 R1.68 billion pre-payment for coal to be supplied in the future. Between December and January, 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 on 13 April 2016. Just hours after a consortium of banks had refused to advance a R600 million loan to Tegeta, it was agreed at this meeting that Eskom would make a pre-payment

of R659 million to the company. Phone records obtained by the former Public Protector show continual communication during this time between CEO Brian Molefe, the Guptas, and one of their senior executives. On 14 April, Tegeta was able to pay Glencore R2.1 billion - concluding the deal.

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 (PACCA) Act, alleging that the payment had been directed elsewhere and not into Optimum’s accounts to assist with its liquidity, as purported by Eskom.

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 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 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.

A National Treasury investigation into Tegeta contracts, which recommends sanctions, as well as further forensic investigations, was submitted to SCOPA in July 2017.

Perhaps due to mounting scrutiny and increased risk of censure, the Guptas sold Tegeta’s coal interests to associate Almin Alzarooni in August 2017. Soon after, the South African High Court granted an interdict to freeze the Optimum and Koornfontein mine rehabilitation accounts, which had been moved to the Bank of Baroda in mid-2016. The implications of these developments are still unfolding.



SQUEEZING OUT THE COAL MAJORS



Malusi Gigaba



Siphoniso Nkosi
(Ex-Exxaro head)



Mark Cutifani
(Anglo head)



Brian Molefe



Matshela Koko

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



2013

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



2014

Arnot: Eskom terminates Exxaro/Anglo Mafube contract



2015

Arnot: Eskom terminates Exxaro Arnot tied mine



2015

Majuba: Eskom refuses to extend Exxaro Leeuwpaan mine contract



2017

Arnot, Tutuka, Komati: Exxaro NBC contracts end



2017

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 allowed for 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 the 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 in this and has, instead, increased its short-term coal contracts with mines such as Gupta-owned Optimum, 60km away. 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 lower than almost any other supply agreement, especially the Gupta contract.

Exxaro also had a fixed price coal contract, until March 2016, to supply Eskom’s Majuba power station from

its Leeuwpaan mine – but Eskom has failed to approve any extension of the contract. In the meantime, Eskom has agreed to ever increasing supplies from the Guptas’ Brakfontein mine, despite their coal not meeting power station quality requirements.

Exxaro also 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 Guptas’ Koorfontein 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 officials fail to comply with the Constitution (specifically s217), read in conjunction with the PFMA and other Acts and regulations, as well as Eskom procurement policies and delegation rules, 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-committee members in the Glencore / Tegeta / Optimum Holdings deal, including:
 - the 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;
 - Eskom's insistence that the sale include not just Optimum Coal but also Koornfontein and the Richard's Bay Terminal export allocation;
 - the leaking of confidential Eskom information to the Guptas;
 - the approval of a R1.6 billion guarantee with Absa bank to facilitate the Optimum purchase by Tegeta;
 - and, authorising an extraordinary pre-payment to Tegeta, of R659 million, which was used to purchase Optimum?
3. What is the nature of the 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 decisions pertaining to investment in coal mines to supply Eskom, including Eskom's failure to meet its obligations to cost-plus mines, and 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?
8. Have the Guptas actually sold Tegeta or are they, in effect, still beneficiary owners?



TRILLIAN



Salim Essa



Matshela Koko



Prish Govender



Anoj Singh



Charles Kalima



Edwin Mabelane

September: Contract between McKinsey & Eskom for consulting work signed (McKinsey paid R80 mil under this contract)

2015

January: 'At risk' contract between McKinsey & Eskom signed (unlawfully, never enters into force)

2016

February: Trillian submits first direct invoice to CFO Singh under consulting contract, authorised by McKinsey

2016

March: McKinsey alerts Eskom that it will not be working with Trillian as its BBBEE partner

2016

April: Eskom pays Trillian R30 mil same day that Optimum bought

2016

June: McKinsey's 'at risk' draft contract terminated

2016

August: Eskom pays- R680 mil to McKinsey, R235 mil to Trillian

2016

In December 2016, Minister Lynne Brown categorically denied - in Parliament - that Eskom had conducted any business with Trillian Capital Partners. Eskom has in fact paid Trillian almost R600 million for 'consulting' work - unofficially contracted to McKinsey and allegedly undertaken by other Gupta-connected companies - since early 2016. McKinsey has also scored big in these deals, netting -R1.1 billion from Eskom over the same period.

A number of reviews and investigations - some ongoing - are beginning to expose the extent of criminality and improper conduct involved in Trillian's deals with state owned companies (SOCs)*, as well as McKinsey's role in facilitating them. Reports focusing on Eskom suggest that a criminal case be registered against Trillian, civil action be taken against both McKinsey and Trillian, and an official disciplinary inquiry be instituted against implicated Eskom officials.

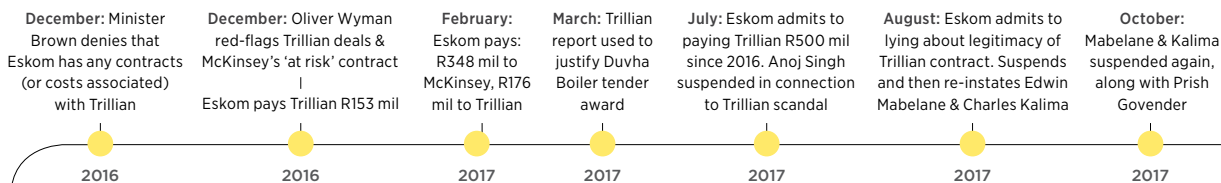
Before becoming entangled with Eskom, Trillian shareholders - Eric Wood and Salim Essa - were first involved in a locomotive deal that won Essa's Tequesta R5.3 billion in advisory fees. This was when Brian Molefe and Anoj Singh were Transnet CEO and CFO, respectively. Similar 'support' was provided by McKinsey. When Minister Brown seconded Molefe and Singh to Eskom in 2015, it appears as if she set a plan in motion which would allow the Guptas to capture similar rents at the power utility.

During 2015, McKinsey negotiated two contracts with Eskom - the mandates for both were approved by the Board Tender Committee (BTC). McKinsey then partnered with Gupta-linked Trillian, allegedly in order to meet Eskom's empowerment requirements. However,

it has since emerged that Trillian may not in fact have met these criteria and anyway subcontracted as much as 77% of the work billed for to a 0% black-owned firm in Dubai, eGateway Consultants. At this stage, there is no evidence that a contract between Eskom and Trillian or McKinsey and Trillian exists. This means that all payments made to Trillian are likely in contravention of the PFMA (section 45 c), as well as internal Eskom policies.

The first contract stemmed from the BTC's approval an 8-month consulting services contract. A 6-month contract was subsequently concluded in an Eskom Acceptance Letter dated 29 September 2015, signed by Matshela Koko - then Group Executive of Technology and Commercial - and Alexander Weiss of McKinsey. Ultimately the project only ran for only 3 months, from the beginning of August 2015 to the beginning of January 2017. Nonetheless, McKinsey (and Trillian) invoiced for the full value of the BTC approved 8-month contract (R80 mil and R30 mil, respectively). With no contract in place for Trillian, McKinsey issued a letter to Eskom authorising Trillian to invoice directly.

It was the second contract, however, that paved the way for their greater rent-seeking ambitions - an unsolicited 'no fee, at risk' turnaround project directly negotiated with top Eskom officials. The agreement was structured in such a way as to allow McKinsey (and Trillian) to claim a portion of all the savings or benefits that they were able to identify for the utility as compensation - virtually without limit. In addition, despite being structured as a 'no fee, at risk' project, the contract allowed for a down payment of R540 million. According to a statement made by a former Trillian Management Consulting CEO,



McKinsey directors Vikas Sagar and Alexander Weiss identified R9.6 billion in potential fees from Eskom over three years, Sagar is then alleged to have shared this information with Essa.

When Eskom's internal legal counsel, Advocate Neo Tsholanku, was asked to review the agreement, he noted that the remuneration model may have been inconsistent with the law. Tsholanku's opinion was confirmed by external legal counsel. Another Eskom expert, Aziz Laher, also alerted members of the executive to the possibility that the contract might be found to be irregular and advised that the contract not be signed without Treasury's approval.

This information was, however, disregarded and the contract was signed by Eskom's Chief Procurement Officer, Edwin Mabelane, on 7 January 2016. This means that the second contract - under which most of the payments were made - may have been signed unlawfully and is thus voidable. There is also some doubt around whether the second contract ever entered into force - as various conditions appear not to have been fulfilled before the Conditions Precedent expired on 31 January 2016. Finally, the contract - or rather the draft contract agreement - was unofficially terminated in March 2016 and then formally terminated in June 2016. As such, the contractual basis for the payments Eskom made to McKinsey and Trillian in the months that followed is questionable.

In spite of this, the BTC approved a R1.8 billion settlement - including an initial payment of R800 million - in August 2016. R680 million was paid to McKinsey in the same month, while an amount of R235 million was paid to Trillian (it is unclear under what contract). The BTC then authorised Koko - then Acting CEO - and CFO Singh to negotiate and conclude a final settlement of the second contract.

In December 2016, before the settlement had been concluded, a technical investigation - conducted by Oliver Wyman - recommended that Eskom perform an independent legal review, flagging a number of concerns with the contract. Despite this, in February 2017, Eskom paid McKinsey an additional R348 million and Trillian R176.

Trillian had also been paid R153 million in December 2016 - unrelated to the McKinsey, or any other, contracts.

Reflecting on Trillian's dealings with Eskom, it appears as if the Gupta-linked consultancy primarily functioned as a conduit through which large sums were transmitted to Gupta-connected networks. However, Trillian (previously Regiments) also allowed direct lines of communication between top Eskom officials and Gupta agents to be established with some semblance of normalcy. These relationships then allowed Eskom officials - including Koko, Mabelane, and Govender - to call on Trillian to 'legitimise' other irregular processes and contracts (see: Duvha Boiler).

Though a number of reports have confirmed the illicit relations between Trillian and Eskom, wherein firm recommendations to begin criminal and civil proceedings against those implicated are repeated, Eskom and Minister Brown have been slow to act. When Eskom finally took action against McKinsey, Trillian, and implicated officials early in October - Minister Brown and the board hastily replaced Acting CEO Dladla with the less than reputable Sean Maritz and suspended the head of legal, Suzanne Daniels.

* Reviews and investigations conducted by: Oliver Wyman, Geoff Budlender, G9 Forensic, and Bowmans.

1. Which Government and Eskom officials directed Eskom's procurement of services from Regiments/Trillian? To what extent did these officials misrepresent, obscure, or manipulate various other actors and processes into allowing Regiments/Trillian to function as they did?
2. Who were Salim Essa's key contact points (in government, Eskom, treasury, etc.) and how did he use these contacts to broker deals? What interactions did Essa have with the Minister and DG of Public Enterprises between 2010 and the present?
3. What role did McKinsey play in facilitating the Eskom and Regiments/Trillian arrangement? Were McKinsey's actions in line with PACCA?



STILL IN THE SHADOWS

There are additional areas that warrant further scrutiny.



In May 2017, Matshela Koko was put on special leave pending an investigation into contracts worth R1 billion awarded by Eskom to Impulse International while his 26-year old step-daughter, Kokeitso 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 benefited from sub-contracts on some of Eskom's biggest expenditure items, including new builds Kusile and Medupi. No further details of this investigation have been reported.



There are also allegations that Koko colluded with the Coal Transporters Forum and Unions to plan protests against possible closures of coal mines and the inroads made by 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. Questions remain about Koko's relationship with the Forum, with which he has had a 'special' relationship for a number of years.



More recently, Koko has found himself mired in allegations pertaining the termination of Just Coal's 10-year R8 billion coal supply contract in March 2017. The coal supplier has accused Koko of terminating the contract unlawfully, allegedly just days after Just Coal refused to bend to the demands of a senior ANC leader that they cede 20% of their company to a company associated with Koko. In a last ditch effort to salvage the contract, Just Coal made a 'donation' of R500 million to ANCYL President Collen Maine, who is said to have made an unsolicited promise to find a 'political solution'. While Just Coal has thrust this case into the light, lacking transparency around Eskom's other **coal supply contracts** raises questions around the scope for corruption and the abuse of executive power in securing and terminating these deals.



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 during 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 replacement costs 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 that of 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 has involved multiple **construction contracts**. Some evidence has been uncovered of awards to favoured parties (including Impulse), but the full scale of contractor and sub-contractor work should be examined. Questions have also been raised around inflated Quality Management contracts, which also prompted forensic investigations and suspensions.



Electricity demand is flat, new power stations are coming on line, and there is no urgency to commit to large new power investments. This has not stopped various parties from 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 have 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 now pose a real threat to the sovereign. Other **advisory contracts** have been flagged as suspect, including consulting work that may have been done by former Gupta-connected Eskom board member, Mark Pamensky, around the disposal of Eskom properties.



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. It is not clear what Eskom processes led to this outcome or for what reason. 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. This has raised a number of questions, including as to why a qualified audit was not initiated at an earlier stage. The fact that those who are legally responsible, and/or those with well-founded suspicions of illicit on-goings at the utility, failed to trigger this and other important mechanisms that are meant to prevent the abuse of resources and executive power indicates either an alarming failure or extensive usurpation of Eskom's governance.

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 concerning 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 probably also shine a light on the systematic and individual acts of corruption involving 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 expand social welfare sustainably in the future. The Inquiry has the potential to illuminate both the past and the future.

The Committee's immediate task 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 could be improved, including through the institution of 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 in reforming 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 – as in 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 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 Committee's recommendations will at least fuel the building momentum 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, together with 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.

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