



**the dti**

Department:  
Trade and Industry  
REPUBLIC OF SOUTH AFRICA

## OFFICE OF THE DIRECTOR-GENERAL

Private Bag X84, PRETORIA, 0001, the dti Campus, 77 Meintjies Street, Sunnyside, 0002, Tel: (012) 394 3075; Fax: 012 394 0323; the dti Customer Contact Centre local: 0861 843 384 International: +27 12 394 9500, [www.thedti.gov.za](http://www.thedti.gov.za)

**Ms Joan Fubbs, MP**

Chairperson

Portfolio Committee on Trade and Industry

P O Box 15

Cape Town

8000

Dear Honourable Ms Fubbs

### RE: STATUS REPORT ON THE SABS INQUIRY: 13 JUNE 2018

Attached hereto please find some background documents for your information on the above matter.

Kind regards

**Lionel October**  
**Director – General**

Date: 05 / 06 /2018

## **OFFICE OF THE DIRECTOR-GENERAL**

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**Ms Daphne Rantho**

Chairperson

Portfolio Committee on Public Enterprises

Parliament

Cape Town

8000

Dear Madam,

### **Re: ESKOM INQUIRY: MR MATSHELA KOKO'S TESTIMONY AND MATTERS RELATED TO THE SOUTH AFRICAN BUREAU OF STANDARDS (SABS)**

We have received a detailed report from SABS with respect to the above matter and would like to advise as follows:

1. Mr Matshela Koko testified that his decision to procure coal from Brakfontein/Tegeta was based on SABS test results. The information, which we set out below, shows that his testimony is factually incorrect, misleading and lacking in rationality.
2. Mr Koko testified that, because over fifty (50) percent of the coal from Brakfontein was non-compliant, he decided to suspend the contract. This was done on 31<sup>st</sup> August 2015. The suspension was then lifted on 5<sup>th</sup> September. The report that we received from SABS indicates that SABS was contracted for first time on 1<sup>st</sup> September 2015. The samples were collected on 6<sup>th</sup> September and results were only completed on 18<sup>th</sup> September 2015.

3. The decision to “unsuspend” or lift the suspension could, therefore, not have been based on the SABS test results. There is, accordingly, no rational connection between the SABS results and Eskom’s decision.
4. The irrationality of Eskom decision to continue procuring coal from Brakfontein become even clearer when one looks at the actual test results. The test results indicates that the coal from the Brakfontein mine was out of specification and non-compliant. The sulphur content varied from 0,9 to 2,17. The Eskom specifications, in terms of the published tender, shows the specification limit to be <1,0, <1,1.
5. Accordingly, if Mr Koko had, as he claims, based his procurement decision on the SAB’s results, he would either have continued the suspension or terminated the contract as the coal was, once again, found to be non-compliant. This fact, as well as the timeline of events set out above, clearly shows that Eskom did not pay any attention to the SABS results. It should also be noted that the National Treasury had, on numerous occasions, formally advised the Eskom management that it should act on the SABS test results. These pleas were ignored.
6. We now turn to the issue of misleading or manipulation of evidence. In the course of investigating this matter, the senior management of SABS uncovered a possible case of collusion and /or manipulation of SABS processes that occurred at the SABS laboratory in Mpumalanga on 30<sup>th</sup> August 2015. The Minister has requested the Board of SABS to conduct a full forensic investigation into this breach.
7. The preliminary information presented to us by SABS shows that there was a clear breach of established protocols and that the tests conducted for the Brakfontein coal was “irregular” in a number of respects. Amongst others;
  - the samples were delivered on a Saturday night with a request that the tests be run immediately;

- outside of established procedures, three (3) samples were delivered directly to laboratory, which meant that there was no independent verification that the samples came from the mine concerned. The normal process is to source the sample independently from the mine;
- there were unauthorized parties present whilst the tests were being conducted (apparently Eskom insisted that representatives from the Brakfontein/Tegeta Mine be allowed to observe); and
- Eskom suspended a number of staff immediately after the results were released/became known

8. What is particularly disturbing is that it appears that the Eskom management used these "irregular" tests to justify its decision to lift the suspension of Brakfontein coal. When these tests were initially requested on the 26<sup>th</sup> of August by Ms Ramavhona (she was subsequently suspended) it was on the explicit understanding that these tests would not be used for procurement purposes. The reason for this limitation is that, when conducting ad-hoc, two way tests of this nature, the source of the sample cannot be independently verified. Eskom is well aware that the normal process is for a three-way system where SABS independently sources the coal from a particular mine.

9. The only conclusion we can draw from Mr Koko's testimony (he refers to the testing of three (3) samples), is that the only SABS report he is relying on is the "irregular" and defective report that was issued on 30<sup>th</sup> August. Mr Koko ought to have been aware that, even without the irregularities, the report of 30<sup>th</sup> August could not be used for purposes of making procurement decisions. Further, Mr Koko misled the committee by implying that SABS had given Brakfontein a clean bill of health despite the reports of September and October clearly indicating that the coal was out of specification and non-compliant.

10. Finally, we would like to draw the committee's attention to the fact that Eskom may have acted unlawfully. In terms of the Standard Act (2008), any person making an unlawful statement implying that an item has been approved by SABS, constitutes a punishable offence. A warning of this offence is made know to all parties contracting with SABS.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lionel October', is written over a horizontal line.

**Lionel October**

**Director-General**

**Date: 16 February 2018**



**the dti**

Department:  
Trade and Industry  
REPUBLIC OF SOUTH AFRICA

## **OFFICE OF THE DIRECTOR-GENERAL**

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**To:** Chairperson: Portfolio Committee on Public Enterprises: Ms Daphne Rantho  
Chairperson: Portfolio Committee on Trade and Industry: Ms Joanne Fubbs  
Executive Authority: Dr Rob Davies, MP

**Cc:** Minister of Finance: Mr Nhlanhla Nene, MP  
Minister of Public Enterprises: Mr Pravin Gordhan, MP  
Chairperson of the SABS Board: Mr Jeff Molobela  
CEO of Eskom: Mr Phakamani Hadebe  
CEO of SABS: Dr Boni Mehlomakulu

Dear Chairpersons and Minister

**Re: ESKOM INQUIRY: PROCUREMENT OF NON-COMPLIANT COAL FROM TEGETA**

My letter dated 16 February 2018 addressed to the Chairperson of the Portfolio Committee on Public Enterprises relating to the Eskom/SABS/Tegeta matter has reference.

I would like to bring to your attention that additional information has been obtained from the National Treasury and emails from SABS. The information obtained shows that collaboration between Eskom and SABS in the procurement of non-compliant coal from Tegeta resulted in irregular expenditure of approximately R3 billion.

1. There is now clear evidence of serious misconduct on the part of both Mr Koko and SABS officials in that an unauthorized and defective test certificate was issued by SABS and used by Mr Koko for an improper purpose. In this regard, please find attached an email received from SABS to the dti indicating that the

test report was “irregular”, in breach of standard testing protocols and obtained under false pretenses (see Annexures A1 and A2).

2. That SABS acted in a dishonest and hostile manner by impeding the investigation undertaken by the National Treasury into the SABS test reports. The correspondence between National Treasury and SABS clearly showed that SABS deliberately misled National Treasury by concealing the fact that it had issued a report on 30 August 2015 despite being specifically asked whether it had conducted this test (see Annexures B to G).
3. We also wish to bring to your attention that the entity that issued the unauthorized test report (SABS Commercial (SOC) has not been authorised in terms of section 54 of the PFMA; and is therefore operating outside of the precepts of the law.
4. I wish to further point out that the SABS Board and CEO has failed to act despite being aware of the SABS and Eskom collaboration since 13 September 2015. (The matter was covered on the front page of Sunday Times titled: *“How Eskom bowed to the Guptas”*. (See Annexure I)

Yours sincerely



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**Lionel October**

**Director-General**

**Date: 09 May 2018**

## **ANNEXURE A1**

>>> Boni Mehlomakulu <boni.mehlomakulu@sabs.co.za> 2018/02/01 09:28 PM >>>

Dear Dr Demana,

Apologies for the influx, but I think transparency on my side is important to establish some level of trust with the dti.

This morning's events:

With the Senior Manager in Pretoria today, Katima had to phone supervisors to search for specific records as part of my verification process of the account presented the Senior Manager. For some reason the laboratory supervisor decided to disclose the information to Katima. I interviewed the supervisor over the phone this afternoon and he said he realised the matter was getting serious due to the public Eskom enquiry and he **did not want to be complicit in the partial disclosure by the Senior Manager**. When Katima confronted the Senior Manager with the new information in the morning, he had pleaded forgetfulness and that was the reason Katima dragged him to my office. I requested the Senior Manager to explain himself in writing after my 12:23 email, his memo to me is attached.

Katima sourced the August adhoc test report from the supervisor as attached. The sulphur content is on average out of spec but the report itself is irregular. The supervisor has admitted that the lab deviated from normal procedure on instruction from the Eskom manager Charlotte who was suspended few days later early in September 2015. The supervisor shared emails that show that the test was done on a Saturday night and that the samples were specifically delivered to the SABS so the laboratory cannot confirm that the samples were actually from the mine (they simply entered what was on the label in the system). The instructions on emails from Charlotte to the laboratory seem to indicate that some deal was made telephonically and confirmed on email. The supervisor claims to have understood the adhoc testing as an 'informal favour' and that there Eskom was not going to use the result as Charlotte understood that the test was outside the contracting protocols between the SABS and Eskom.

I have also attached the specifications I reported on earlier, I still think it is important that you have the information. Amanda, Katima and Frank will go to Mpumalanga to investigate this matter. The Senior Manager, Mr Wolters memo also addresses partial disclosure to National Treasury in his direct engagement with official, this particular disclosure requires the Board of the SABS to deliberate and give further guidance. I am reluctant to take further action and compromise the Board. This is the reality we face often with our middle management colleagues, Mr Wolters was well aware that the information was for the Minister to engage in Parliament. The supervisor speculated on possible motives, but at this stage it would suffice to extend my apology for the inconvenience to the Minister and the DG.

I will communicate further on the guidance from the Board.

Regards

Boni

## **ANNEXURE A2**



## MEMORANDUM

TO : The CEO SABS  
From : Frans Wolters, Snr Manager M&M Highveld  
Date : 1 February 2018

### Explanation for omitting details regarding August 2015 Tests

As requested, this letter contains my explanation for omitting details regarding a test that was done on Eskom's request, which was reported on 30 August 2015.

I confirm that I was aware of this special test request that came via the Eskom contract manager, Ms Charlotte Ramavhona, at that time. I did not remember when that special test was actually conducted. It was more than two years ago, so I had to check on my records. In order to confirm when samples were tested for Brakfontein mine, I looked at the invoices, since I knew SABS did charge for all the tests. I saw no reference to any Brakfontein tests on the August 2015 invoice, so I assumed that no tests were done during August.

That was however a mistake, I realized later that the invoicing month only ran up to the 23<sup>rd</sup> of the previous month. As a result I gave incorrect / incomplete information to the CEO. I apologise for the inconvenience caused and to the impact this has on the SABS.

With regards to a meeting that I attended at the office of the Treasury together with Mr Makamo. I cannot remember whether the matter of that specific test was included during discussion with treasury, and if it were not included, why that would be the case.

Please accept my apology, I can assure you that this was an unintentional oversight.

Yours sincerely  
Frans Wolters

SABS COMMERCIAL SOC Ltd. Reg. No. 2000/013581/30

Directors: Mr J Molobela (Chairman), Dr MJ Ellman, Mr G Harris, Mr WK Masvikwa, Dr B Mehlomakulu, Ms Z Monnakgotla, Ms N Naraindath, Ms DE Ndlovu, Mr G Strachan, Ms W de Witt (Company Secretary).

Website: [www.sabs.co.za](http://www.sabs.co.za) E-mail: [info@sabs.co.za](mailto:info@sabs.co.za) Call Centre: 0861 277 227

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## ANNEXURE N – SCOPE OF WORK

### 1. Acceptable Coal Quality Specification for GEN 3287

1.1 The supplier shall ensure that each quality parameter of the coal delivered to Eskom shall comply with the Quality Specifications set out in the fourth column of either Table 1 and/or Table 2 (whichever is applicable as per tender response) hereunder.

1.2 If you are offering both specifications, you are required to submit a separate tender proposal for each offered specification.

**Table 1: Coal Quality Specifications A**

Quality parameter	Unit	Acceptable	Quality Specification	Measurement basis
Calorific Value	MJ/kg	24.0	≥22.50	Air Dried
Total Moisture	%	<9.0	≤9.0	As received
Inherent Moisture	%	3.0	N/A	As received
Ash	%	20.5	≤24.3	Air Dried
Abrasive Index (Eskom Mining House Method)	mgFe/4kg	<450	≤450	As received
Sulphur	%	<1.1	≤1.1	Air Dried
Volatiles	%	22	≥19.5	Air Dried
AFT (Initial deformation)	°C	1490	>1200	As received
*Sizing:				
+50mm	%	<5.0	≤5.0	As received
+45mm	%	<5.0	≤5.0	
0-3.0mm (cumulative)	%	<25.0	≤25.0	
0-1mm	%	<10.0	≤10.0	

\*Kindly note the agreed top size will be as per the nominated Power Stations sizing requirements

**Table 2: Coal Quality Specifications B**

Quality parameter	Unit	Acceptable	Quality Specification	Measurement basis
Calorific Value	MJ/kg	22.5	≥20.4	Air Dried
Total Moisture	%	<9.0	≤9.0	As received
Inherent Moisture	%	3.0	N/A	As received
Ash	%	24.3	≤29.4	Air Dried
Abrasive Index (Eskom Mining House Method)	mgFe/4kg	<450	≤450	As received
Sulphur	%	<1.0	≤1.0	Air Dried
Volatiles	%	21.3	≥18.8	Air Dried
AFT (Initial deformation)	°C	1390	>1160	As received
*Sizing:				As received
+50mm	%	<5.0	≤5.0	
+30mm	%	<5.0	≤5.0	
0-3.0mm (cumulative)	%	<15.0	≤15.0	
0-1mm	%	<10.0	≤10.0	

\*Kindly note the agreed top size will be as per the nominated Power Stations sizing requirements

1.3 The supplier shall ensure that no supplementary ultrafines are blended into the product and is substantially free from impurities and extraneous materials related to the proper mining and processing of coal.

## 2. Coal Quantities

2.1 Eskom requires up to 50 Million tons of Specification A coal.

2.2 Eskom requires up to 50 Million tons of Specification B coal.

2.3 Eskom reserves the right to require the supplier to deliver the coal to any alternative Power Station, and the supplier shall co-operate with Eskom in relation to such alternatives.

**3. Commencement date**

The coal deliveries are required to commence on the 1st of November 2017 (or as soon as possible thereafter)

**4. Mode of Transport:**

The mode of transport will be at the discretion of Eskom. Eskom's preferred mode of transport will be conveyor, rail and then road.

Suppliers may offer a delivered price clearly showing the transportation components. This will not be for tender evaluation purposes but will be considered for TCO evaluation purposes prior to contract award.

## Typical Eskom Rejection Limits

*Used @ SUDOR site lab.  
per customer / sudor request.*

### Coal Rejection Criteria

Analysis	Less / more than	Value	Units
Ash	More than	28.0	%
Calorific Value	Less Than	21.00	MJ/kg
Volatile matter	Less Than	21.0	%
Total Sulphur	More than	1.60	%
Abrasive Index	More than	450	mg Fe
AFT (deformation temp)	Less Than	1250	°C
PSD +40mm	More than	10	%
PSD -1mm	More than	10	%
PSD -3.35mm	More than	35	%
Total Moisture	More than	10	%

## **ANNEXURE B**



## **national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

Private Bag X 116, Pretoria, 0001 • Tel: (+27 12) 315 5111 • Fax: (+27 12) 325 1620 • PO Box 29, Cape Town, 8000 • Tel: (+27 21) 464 6100 • Fax: (+27 21) 461 2934

Enquiries : Sindile Mxunyelwa  
Ref : 43/12/5/1  
Tel : 012 315 548  
Fax : 012 326 6525  
Email : [Sindile.Mxunyelwa@treasury.gov.za](mailto:Sindile.Mxunyelwa@treasury.gov.za)

Mr L October  
Director-General  
Department of Trade and Industry  
Private Bag X84  
PRETORIA  
0001

Dear Mr October

### **ESKOM ENQUIRY – MR KOKO'S TESTIMONY AND MATTERS RELATED TO THE SOUTH AFRICAN BUREAU OF STANDARDS (SABS)**

1. I refer to your letter dated 02 March 2018 has reference (Annexure A) requesting the National Treasury to assist by furnishing the Department of Trade and Industry with all the documentation in relation to the investigation on Mr Koko's testimony and matters related to the South African Bureau of Standards (SABS).
2. Please find below details related to the engagements between the National Treasury and SABS regarding this matter:
  - a) A letter dated 30 September 2015 was sent to SABS requesting them to confirm the authenticity of the test report-coal analysis dated 18 September 2015 received from Eskom (Annexure B). SABS responded on a letter dated 02 October 2015 indicating that the National Treasury's request should be accompanied by a consent letter from Eskom authorising SABS to cooperate with the National Treasury (Annexure C).
  - b) A letter from Eskom dated 27 October 2015 was sent to SABS authorising them to release the information requested by the National Treasury (Annexure D). SABS responded in a letter dated 10 December 2015 confirming that test report-coal analysis dated 18 September 2015 was issued by them. The letter further indicated that the samples were received on 17 September 2015 and processed throughout the day and that Eskom received results on 18 September 2015. SABS refused to provide the National Treasury with a covering letter with details of the report issued to Eskom (Annexure E).
  - c) A letter dated 15 February 2016 was sent to SABS requesting a meeting to discuss the test report-coal analysis dated 18 September 2015. SABS responded on an e-mail dated 16 February 2016 confirming that Mr F Makamo and F Wolters will attend the meeting on 18 February 2016 (Annexure F).

- d) A letter dated 01 September 2016 was sent to SABS requesting any confirmation whether any other tests were conducted by SABS for Brakfontein Mine prior the test report-coal analysis dated 18 September 2015 (Annexure G). SABS responded on a letter dated 07 September 2016 refusing to confirm if there were any other tests conducted by SABS for Brakfontein Mine prior the test report- coal analysis dated 18 September 2015 (Annexure H).
3. I would also like to refer to your correspondence to the Portfolio Committee of Public Enterprises which indicates that the samples were collected on 06 September and results were only completed on 18 September 2015 (Annexure A). However this information is different from what was communicated to the National Treasury which indicated that the samples were received on 17 September 2015.
  4. Furthermore, your correspondence indicates that SABS issued an irregular and defective report dated 30 August 2015. Please note that SABS failed to disclose that a test was concluded in August 2015 to the National Treasury.
  5. Please also find attached a letter from Eskom dated 30 August 2016 which referred to the SABS report on paragraph 13.2 (Annexure I).
  6. I would like to bring to your attention that the National Treasury was compelled to appoint external consultants and incur expenditure to interpret the coal tests results because SABS was not willing to confirm in writing that coal was out of specification and non-compliant. The expenditure incurred by the National Treasury would have been avoided if SABS had acted independently.

Kind regards

  
**DONDO MOGAJANE**  
**DIRECTOR-GENERAL**  
**DATE:** 11/4/2018

## **ANNEXURE C**



## **national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001

Enquiries: Sindile Mxumyelewa Tel: (012) 395 6525 Fax: (012) 326 5445 Email: [sindile.mxumyelewa@treasury.gov.za](mailto:sindile.mxumyelewa@treasury.gov.za)

Ref: 43/1/2/5/1

Dr B Mehloimakulu  
Chief Executive Officer  
South African Bureau of Standards  
Private Bag X191  
PRETORIA  
0001

Dear Dr B Mehloimakulu

### **SABS - REQUEST FOR CONFIRMATION OF THE INFORMATION RECEIVED.**

The Office of the Chief Procurement Officer received the document (Test Report – Coal Analysis) from Eskom.

The Office of the Chief Procurement Officer would like to request SABS to confirm the authenticity of this document and provide us with the following information regarding this document:

1. Date when Eskom requested SABS to perform this test;
2. Date when SABS performed the test;
3. Date when Eskom received the results;
4. Covering letter with details of this report issued to Eskom and;
5. Any relevant information.

You are requested to respond to this letter by not later than 02 October 2015.

Kind regards.

*M. Tshitangano*

**SO LLY TSHITANGANO**

**CHIEF DIRECTOR: GOVERNANCE MONITORING & COMPLIANCE**

DATE: 30/9/2015

抗血

[illegible][illegible]

1. **Check your work.**  
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 4. **Check your work.**  
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 7. **Check your work.**  
 8. **Check your work.**  
 9. **Check your work.**  
 10. **Check your work.**

**五、参考文献**

**REFERENCES**

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**Example 13.10** Let  $A$  be a  $2 \times 2$  matrix. Find  $A^{-1}$  if  $A = \begin{pmatrix} 1 & 2 \\ 3 & 4 \end{pmatrix}$ .

0022-0715/96/0000-0000\$05.00/0

The test report will be used in the test report issued pursuant to 608.1. Customer 800.14. This report and its number shall only be the specific example of the test report. They do not imply that the test report is a copy of the test report. The report may be used for other purposes.

**tsanas**

## **CONDITIONS OF TEST - COAL ANALYSIS**

# **SABS**

The acceptance of an item for test and the issue of a test report are subjected to the SABS's CONDITIONS OF TEST \*, from which the following have been extracted:

1. if published or reproduced by the client, a test report shall be reproduced in full, i.e the reproduction shall contain the printed as well as the typed parts of the report, nothing excepted. In special circumstances an abridged form of the report or issue.
2. A test report relates only to an item submitted for the actual test. It furnishes or implies no guarantee whatsoever in respect of a similar item that has not been tested.
3. The performance of a test and the issue of a test report do not imply approval by the SABS of the quality and/or performance of the item that has been tested. This does not authorize the use of a certification mark.

NOTE - An unlawful statement implying that an item has been approved by the SABS constitutes a punishable offence in terms of the Standards Act.

4. While every endeavour will be made to ensure that a test is representative and accurately performed, and that a report is accurate in the quoted results and conclusions drawn from the test, the SABS or its officers shall in no way be liable for any error.

\*Obtainable upon request from the Chief Executive Officer, Private Bag X191, Pretoria, 0001.

## ANNEXURE D



Mr. Solly Tshitangano  
Office of the Chief Procurement Officer  
Department: National Treasury  
Private Bag X115  
Pretoria  
0001

ENQUIRIES: A Lume  
TELEPHONE: +27 12 428 6025  
DATE: 02 October 2015

By e-mail: [sindile.mxunyelwa@treasury.gov.za](mailto:sindile.mxunyelwa@treasury.gov.za)

Dear Mr. Tshitangano

**RE: SABS – REQUEST FOR CONFIRMATION OF THE INFORMATION RECEIVED**

We refer to your request for information as reflected in your letter dated 30 September 2015 ("the request"), the contents of which have been noted.

We take cognizance of the fact that the request seeks information beyond the confirmation of what is reflected in the Test Report obtained from Eskom. To confirm or furnish you with the requested information constitutes the sharing of client information with a third party. Such an act, when performed outside the applicable legal framework or any contractual obligations governing confidentiality prescripts between the SABS and its client (Eskom) may have adverse consequences for the SABS.

To protect the SABS against any consequences which may be unforeseen or unintended, the request should be accompanied by a consent letter from Eskom authorizing the SABS to cooperate with your office and the extent to which any information relating to Eskom may be disclosed.

Alternatively, you may request the required information in terms of the applicable provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

Kindly refer your request to the SABS in one of the forms outlined hereinabove for our consideration.

We trust that you will find the above to be in order.

Yours Sincerely

**Boni Mhlonakulu, PhD**  
Chief Executive

**SOUTH AFRICAN BUREAU OF STANDARDS – Established in terms of Section 2 of the Standards Act, 1945, as amended**

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## **ANNEXURE E**



Mr Frans Wolters  
SM: Mining and Minerals  
SABS Laboratory  
8 Rand Street  
MIDDELBURG  
1050

Dear Mr Wolters

**LETTER OF CONSENT AUTHORIZING SABS TO RELEASE INFORMATION  
REQUESTED BY THE NATIONAL TREASURY DEPARTMENT – REF: 724891**

The Department of National Treasury would like to confirm a test report for coal analysis issued by SABS on the 18<sup>th</sup> of September 2015 for Tegeta Brakfontein Mine coal samples.

This letter hereby gives you permission to release the related information to them.

Yours sincerely

**Kwenzokuhle Magwaza  
SENIOR MANAGER: TECHNICAL SERVICES (ACTING)**

Date: 27/10/2015

Primary Energy  
Megawatt Park, Maxwell Drive, Sunninghill, Sandton  
PO Box 1091, Johannesburg, 2000, SA  
Tel: +27 11 800 5794 Fax: +27 86 688 4464 [www.eskom.co.za](http://www.eskom.co.za)

Eskom Holdings SOC Ltd Reg No 2002/015627/30

## **ANNEXURE F**



ENQUIRIES: R Joubert  
TELEPHONE: +27 12 428 6412  
DATE: 10 December 2015

Mr. Solly Tshitangano  
Office of the Chief Procurement Officer  
Department: National Treasury  
Private Bag X115  
Pretoria  
0001

By e-mail: [sindile.mxunyelwa@treasury.gov.za](mailto:sindile.mxunyelwa@treasury.gov.za)

Dear Mr. Tshitangano

**RE: SABS – REQUEST FOR CONFIRMATION OF THE INFORMATION RECEIVED**

We refer to your request for information as reflected in your letter dated 30 September 2015 ("the request"), and the correspondence exchanged subsequent thereto.

As per your request, we confirm that the test report – coal analysis attached hereto and dated 18 September 2015 was issued by the SABS. The samples were received on 17 September 2015 and processed throughout the day. Eskom received the results on 18 September 2015.

Regarding your request to be furnished with a "covering letter with details of the report issued to Eskom" it is prudent to note that the SABS does not certify coal or explain the report. The laboratory merely reports the results. In this regard the test report should be self-explanatory.

We trust that you will find the above to be in order.

  
Yours Sincerely  
**Frank Makamo**  
Executive: Certification

**SOUTH AFRICAN BUREAU OF STANDARDS – Established in terms of Section 2 of the Standards Act, 1945, as amended**

**Gauteng Head Office**

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## **ANNEXURE G**



## **national treasury**

Department:  
National Treasury  
**REPUBLIC OF SOUTH AFRICA**

Private Bag X115, Pretoria, 0001

Enquiries: Sindile Mxunyelwa Tel: (012) 385 6525 Fax: (012) 326 5446 Email: [sindile.mxunyelwa@treasury.gov.za](mailto:sindile.mxunyelwa@treasury.gov.za)

Ref: 43/12/5/1

Mr F. Makamo  
Executive: Certification  
South African Bureau of Standards  
Private Bag X191  
PRETORIA  
0001

E-mail: [rina.lobert@sabs.co.za](mailto:rina.lobert@sabs.co.za)

Dear Mr Makamo

### **RE: SABS – REQUEST FOR CONFIRMATION OF THE INFORMATION**

Your letter dated 10 December 2015 has reference.

Your letter confirmed that the test report for coal analysis dated 18 September 2015 was issued by SABS.

Kindly advise if there were any other tests conducted by SABS for Brakfontein Mine prior to the above test.

You are kindly requested to respond and provide evidence to us by not later than 08 September 2016.

Kind regards,

*M. S. Tshitangano*

**SOLLY TSHITANGANO**

**CHIEF DIRECTOR, SCM GOVERNANCE, MONITORING & COMPLIANCE**

DATE: 11/9/2016



Enquiries : F Makamo  
Telephone: (012) 428-6412  
Date : 07 September 2016

Mr Solly Tshitangano  
Chief Director, SCM Governance, Monitoring & Compliance  
National Treasury  
Private Bag X115  
Pretoria  
0001

By e-mail: [Lindani.Dube@treasury.gov.za](mailto:Lindani.Dube@treasury.gov.za)

Dear Mr Tshitangano

**RE: ENQUIRY - REQUEST FOR CONFIRMATION OF THE INFORMATION -  
ACCREDITED COAL TESTING EXPERTS/CONSULTANTS**

We refer to the above mentioned matter and your letters dated 01 September 2016 addressed to the Executive: Certification, Mr Frank Makamo, as well as the letter dated 05 September 2016 addressed to the Chief Executive Officer (CEO) of the SABS, Dr Boni Mehlomakulu, the contents of which have been noted.

We are gravely concerned that you have opted to address your enquiries, dealing with one area of our operations to two executives. We regard the manner in which you engage with the SABS as haphazard.

Although we are enjoined by the Constitution to cooperate with one another and foster good relations, it is important to note that some of your enquiries relate to a third party (Eskom) who is a customer of the SABS and to whom we owe the duty of confidentiality. The SABS is also perturbed by the sporadic reference of its involvement in the matter involving Eskom and its suppliers, as reported on various media platforms, in total oblivion of the rôle played by the SABS in this matter. We find this position untenable and very disappointing.

**SOUTH AFRICAN BUREAU OF STANDARDS – Established in terms of Section 2 of the Standards Act, 1945, as amended**

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Fax +27 (0) 31 203 2907



We have, in the previous occasion, requested that you approach Eskom directly for information relating to its activities where the SABS is involved.

The enquiry in your letter of 05 September 2016, addressed to the SABS' CEO is not framed with sufficient particularity to allow us to respond thereto.

We trust that you will find the above to be in order.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Frank Makamo', is written over a faint, stylized graphic that resembles a series of vertical lines or a signature template.

**Frank Makamo**  
**Executive: Certification**

## **ANNEXURE H**

## Gupta's coal mine fails quality tests – Eskom gives it R4-billion deal

Staff Writer 13 September 2015 92 Comments



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Eskom went to “extraordinary lengths” to ensure the Gupta family scored a R4-billion coal supply deal from the parastatal. This is according to a report in the Sunday Times.

The report states that the Gupta mine linked to the multi-billion rand deal had failed coal quality tests four times, before being awarded the lucrative deal on the fifth try.

Shortly after the deal was concluded, it is reported that four Eskom employees were suspended for questioning the quality of the coal.

The Gupta's mining company, Tegeta Exploration and Resources, had tried since 2011 to score an Eskom deal, but had always been rejected.

A test in March on the company's coal found it to be "within specifications, but risky" – which resulted in a 10-year deal to supply the Majuba power station.

## **Coal rejected**

Two months after the Gupta-owned company started delivering coal, though, the supply was rejected due to poor quality.

On 31 August, Eskom sent a letter of suspension to Tegeta – complaining about the sub-standard coal.

However, after voicing "great concern" in the suspension letter, the temporary ban on the Gupta's coal was lifted five days later.

Four Eskom employees, with over 50 years experience, involved in the quality control process were suspended. Two laboratories which conducted the coal quality tests, SGS SA and Sibonsiwe Labs, were also suspended by Eskom.

The Sunday Times reported that Tegeta claimed Eskom staff had colluded with laboratory staff to state the coal was sub-standard to extort a bribe from the Guptas.

Eskom said Tegeta's coal had subsequently been tested by the SABS, and was found to be compliant.

Tegeta told the newspaper it operated “in line with corporate governance best practice”, but declined to comment on the issues surrounding its supply deal with Eskom.

*The full report can be read in the Sunday Times 13 September 2015 edition.*

## More on Eskom

[Corruption is the cause of Eskom load shedding](#)

[If we can't have electricity, no one can](#)

[ESKOM](#) [GUPTA FAMILY](#) [HEADLINE](#) [TEGETA](#)

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**LATEST NEWS**

## **ANNEXURE I**



Us

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## Eskom vs. Sunday Times

Sat, Nov 28, 2015

Ruling by the Press Ombudsman

28 November 2015

This ruling is based on the written submissions of Adv Neo Tsholanku, on behalf of Eskom, and those of Susan Smuts, legal editor of the Sunday Times newspaper.

### Complaint

Eskom is complaining about an article in Sunday Times of 13 September 2015, headlined *How Eskom Bowed to the Guptas – Utility jumped through hoops to give family R4bn for its dodgy deal*.

It complains the statement that:

- Eskom went to great lengths to ensure that the Gupta family landed a R4-billion coal deal was not backed up by the content of the rest of the story; and
- the allegation that Eskom executive Matshela Koko bypassed company protocol was incorrect.

Tsholanku adds that the:

- story was published despite the newspaper having been provided with "correct" answers to the journalist's questions; and
- editor refused Eskom a right of reply after she was asked for an opportunity to correct some "inaccuracies".

### The text

The article, written by Sabelo Skiti, said that Eskom had gone to extraordinary lengths to ensure that the powerful Gupta family landed a R4-billion deal. A Gupta mine (the company is called Tegeta Exploration & Resources) had reportedly failed a coal quality test four times before landing the deal on its fifth attempt. Shortly afterwards, four experienced employees were suspended "after again questioning the quality of the Gupta coal".

Skiti wrote that insiders laid bare the lengths to which Eskom went to hand the Guptas a deal to supply the Majuba power station in Mpumalanga with coal for the next ten years.

### Analysis

#### Gupta family

Skiti reported, "Eskom has gone to extraordinary lengths to make sure the powerful Gupta family landed a R4-billion coal deal."

Eskom says that, despite a sensational headline, the content of the article failed to show how Eskom had bent over backwards to accommodate the Guptas.

Tsholanku explains that Eskom concluded a coal supply and off-take agreement with Tegeta in March this year, following a rigorous pre-qualification process. After Eskom received an anonymous tip-off that some of its employees were in cahoots with workers of a third party in demanding bribes from Tegeta, to ensure that it passed the coal quality tests, it immediately:

- suspended all coal collections from Tegeta "as we needed to be assured of the quality of coal that we were receiving";
- suspended the four employees concerned, pending an internal investigation; and
- asked the SA Bureau of Standards (SABS) to independently analyse a sample of Tegeta's coal.

He says the SABS's quality audit confirmed that the coal in question had met Eskom's specifications – after which the suspension of Tegeta's coal supply contract was lifted.

Smuts replies that one source (a former senior member in Eskom's primary energy division, who still had extensive contacts within the energy corporation) told the newspaper about the five tests before Tegeta eventually struck a deal with the corporation. This source informed the reporter that it was unusual for multiple tests to be conducted on coal, as Eskom paid for them – if a coal sample failed to meet specifications, that company would usually not get another chance.

A second source, who worked on the contract management team at Eskom, confirmed this information – and so did a supplier, who told Sunday Times it was difficult to get Eskom to agree to do even one test on a sample.

In addition, two of the sources told the newspaper that the contract was awarded before the coal quality management procedure had been put in place. One of them added that at least two employees had left Eskom after being pressured for "delaying the contract" – by insisting that the coal did not meet specifications. This information was not published, as the newspaper had been unable to verify it ahead of publication.

Smuts adds that the story did include Eskom spokesman Khulu Phasiwe's comment that four pre-qualification tests were done because of pre-qualification improvement possibilities.

She adds that one source told the newspaper that Tegeta's coal was rejected due to poor quality, two months after Tegeta began delivering the product. This information was backed up by Koko's letter, addressed to Tegeta, which the journalist quoted. Koko *inter alia* wrote, "This is of great concern to Eskom as it now calls into question the exact nature and quality of the coal...in terms of the coal supply agreement."

The legal editor also says that the article reflected Phasiwe's response to the effect that the contract had been reinstated after samples of twelve stockpiles, worth R15-million, were taken for a test at the SABS, which found them to be compliant.

#### My considerations

I note the Journalist reported that:

- the fifth test found the quality of Tegeta's coal to be marginal ("within specifications but risky"), paving the way for the deal to be struck;
- two months later, the coal was rejected due to poor quality, leading to Tegeta's suspension;
- five days later, this suspension was lifted;
- instead, four experienced Eskom employees involved in the quality control process were suspended;
- Koko bypassed company protocol when he questioned the staff about inconsistencies found in the test results; and

two laboratories that conducted the tests, SGS SA and Sibonisiwe Labs, were also suspended.

Given the above, I cannot agree with Eskom that the content of the article failed to show how Eskom had bent over backwards to accommodate the Guptas. This, of course, does not mean that I accept it as fact that the corporation had that intention – it only means that I accept that the newspaper acted reasonably in making statements to that effect, given the information at its disposal (as outlined by Smuts's response above).

#### Koko

The story said that Koko had "bypassed company protocol when he personally stepped in to question the staff about inconsistencies found in the test results".

Eskom complains that this allegation was incorrect. Tsholanku says that, while letters of suspension may have been signed by Koko, the actual process was in fact initiated by the Senior General Manager in Primary Energy. In later correspondence to this office, Eskom states that Koko has acted within his delegated authority (a statement that was also reported in the article).

Smuts replies that two sources within Eskom (one at contract management and the other among the suspended four) told the newspaper Koko contacted them without the knowledge of their supervisor and asked them why Tegeta's coal had been rejected. They then compiled a report, detailing the tests which found that the coal was not up to standard. The report was sent to their supervisor, who passed it on to Koko.

"We (also) reflected Mr Phasiwe's comment that Mr Koko acted within his delegated authority," said Smuts.

#### My considerations

I note the statement that Koko had bypassed company protocol (by personally stepping in to question members of staff about inconsistencies found in test results) was attributed to sources. Also, Skiti did balance this out with Phasiwe's comment that Koko had acted within his delegated authority.

The sources were entitled to their opinion, and so was Sunday Times to publish it. The fact that the other side was reported brought the necessary balance to the matter.

#### Published despite adequate answers

Eskom complains that the newspaper published the story despite receiving "correct" answers to the journalist's questions.

Smuts submits that Eskom's responses were properly reflected. "The fact that we did not use every word of the response, or present Eskom's version as the uncontested truth, is irrelevant. We reflected the relevant portions of the response and discharged our duty in doing so. The public interest in scrutinizing Eskom's contracts is self-evident."

#### My considerations

In order to establish whether this part of the complaint has any leg to stand on, I am reflecting the gist of the questions and answers – to compare them to what was published.

Q: Can you confirm that the owners of Tegeta complained to Koko directly about the rejection of their company's coal and that the latter then personally investigated the matter?

A: An anonymous source informed Koko in his capacity as Group Executive Technology of alleged irregularities at the coal sampling laboratories. Eskom receives complaints from time to time and investigations are conducted when appropriate. Koko acted within his delegated authority.

Q: Explain why the contract was reinstated days after Tegeta's services were suspended.

A: Eskom suspended Tegeta's service to verify the quality of coal. Twelve samples from the disputed material were sent for independent verification at SABS. Those results showed that the previously rejected stockpiles were in fact compliant. The suspension was therefore lifted on condition that future samples would be independently analysed by SABS.

Q: In view of the ongoing investigation involving the four staff members, on what basis has the Tegeta contract been reinstated?

A: The suspension of staff members is a separate process.

Q: Why were the two laboratories (SGS SA and Sibonisiwe Labs) that conducted the tests suspended from doing further tests?

A: They have been suspended to allow the investigation into the inconsistencies in the coal results to go ahead. These inconsistencies have been referred to the forensics department for further investigation. The forensic investigation will include all the contracted laboratories to Eskom.

Q: How many coal specimens are sent to these two companies for testing each week or month?

A: Eskom has a panel of laboratories that it uses in its coal quality management process. Depending on volumes, the samples are allocated. Due to the confidentiality provisions in the contract, Eskom cannot divulge individual allocations.

Q: We understand Tegeta has been in talks with Eskom to supply coal since 2011. How many tests were done from then until March 2015 (when Eskom finally signed a supply contract with Tegeta)?

A: Analysis of coal from Tegeta (four samples were taken) was done as part of the pre-qualification process.

Q: How much did each of these tests cost?

A: Pre-qualification testing costs R102 000 on average.

Q: On average, how many times does Eskom test and re-test a particular supplier's coal to determine if it is of suitable quality?

A: The testing process is situational depending on quality improvement possibilities.

Q: Several experts and former Eskom employees have questions the signing of the deal with Tegeta, despite it being a new entrant in the coal industry. While we know there is great emphasis on procuring coal from emerging black coal mining companies, do you consider Tegeta to be such a company?

A: Eskom prefers to contract with coal supplies which have 50 + 1 black ownership. Where the supplies does not meet this standard, Eskom requires a migration plan to achieve this target. Tegeta has been contracted on this basis.

Q: Can Eskom explain what due diligence was done to ensure a ten-year contract is feasible and to justify the risk in view of the parastatal's security of supply issues?

A: Contracts are put in place depending on the offered resources size in order to ensure security of supply.

The journalist reported five of the ten questions and answers. I am satisfied that he conveyed those issues adequately and in context, and that they represented the essential issues at stake.

The following were not reported:

Q: In view of the ongoing investigation involving the four staff members, on what basis has the Tegeta contract been reinstated?

A: The suspension of staff members is a separate process.

Q: How many coal specimens are sent to these two companies for testing each week or month?

A: Eskom has a panel of laboratories that it uses in its coal quality management process. Depending on volumes, the samples are allocated. Due to the confidentiality provisions in the contract, Eskom cannot divulge individual allocations.

Q: On average, how many times does Eskom test and re-test a particular supplier's coal to determine if it is of suitable quality?

A: The testing process is situational depending on quality improvement possibilities.

Q: Several experts and former Eskom employees have questions the signing of the deal with Tegeta, despite it being a new entrant in the coal industry. While we know there is great emphasis on procuring coal from emerging black coal mining companies, do you consider Tegeta to be such a company?

A: Eskom prefers to contract with coal supplies which have 50 + 1 black ownership. Where the supplies does not meet this standard, Eskom requires a migration plan to achieve this target. Tegeta has been contracted on this basis.

Q: Can Eskom explain what due diligence was done to ensure a ten-year contract is feasible and to justify the risk in view of the parastatal's security of supply issues?

A: Contracts are put in place depending on the offered resources size in order to ensure security of supply.

The answers to (the remaining) questions 2, 3 and 5 were so vague and phrased in such general terms that I can hardly fault Sunday Times for not reporting them.

The remaining questions (1 and 4) were not of essential importance to the article.

I therefore agree with the legal editor's arguments on this issue – the story properly reflected Eskom's responses; it did not have to report minor issues (especially if the newspaper received vague answers on them); and it certainly did not have to present Eskom's version as the one and only, uncontested truth.

#### **Refusing a right of reply (after publication)**

Eskom complains that the editor refused it a right of reply after Eskom asked her for an opportunity to correct some inaccuracies in the article in question.

#### *My considerations*

It is difficult to uphold a complaint of this nature if the newspaper did not believe that it had made any mistakes. Of course, a subject of critical reportage should have a right of reply – but that applies to the story being prepared for publication, and not to "mistakes" to which a publication does not admit.

**Finding**

The complaint is **dismissed**.

**Appeal**

Our Complaints Procedures lay down that within seven working days of receipt of this decision, either party may apply for leave to appeal to the Chairperson of the SA Press Appeals Panel, Judge Bernard Ngoepe, fully setting out the grounds of appeal. He can be contacted at [Khanyim@ombudsman.org.za](mailto:Khanyim@ombudsman.org.za).

Johan Relief

Press Ombudsman

and



**To:**

Chairperson; Portfolio Committee on Public Enterprises: Ms Daphne Rantho, MP  
Chairperson; Portfolio Committee on Trade and Industry: Ms Joanne Fubbs, MP  
Executive Authority of **the dti**: Dr Rob Davies, MP

**Cc:**

Minister of Finance: Mr Nhlanhla Nene, MP  
Minister of Public Enterprises: Mr Pravin Gordhan, MP  
CEO of Eskom: Mr Phakamani Hadebe  
Parliamentary Committee on the Eskom Enquiry

Dear Chairpersons and Minister

**Re: ESKOM ENQUIRY: PROCUREMENT OF NON-COMPLIANT COAL FROM TEGETA**

Reference is made to the letter dated 9 May 2018, addressed to the Chairpersons of the Portfolio Committees on Public Enterprises, Trade and Industry and the Minister of **the dti**.

The SABS Board commends the Office of the Director-General of **the dti** ("the DG") on its eagerness to keep the Committees of Parliament informed of developments on the sensitive issues pertaining to the Eskom Enquiry so that these committees can carry out their oversight functions effectively.

The SABS Board regrets that the eagerness to present "new information" may have driven the DG to prematurely pronounce on matters that are supposed to form part of a forensic investigation. In doing so, there may have also been a un-intended oversight in recognising protocol. In terms of section 49(2) (a) of the Public Finance Management Act, No 1 of 1999, the SABS Board is the Accounting Authority of the SABS.

The SABS Board would like to note that it would have been helpful if, prior to addressing the letter to the Chairpersons of the relevant committees and the Executive Authority and copying the same to other organs of state and functionaries, the DG had first consulted with the Accounting Authority on the matters of concern. This would have prevented an unfortunate position in which the SABS Board as the Accounting Authority is compelled to give clarity on the issues raised by the DG, which if not done, could lead to the Executive Authority not being properly informed of all the issues raised, and may lead to a possibility of Parliament being misinformed.

In this regard the SABS Board would like to clarify the following, in respect of the DG's letter of 9 May 2018:

**1.0 There is clear evidence of serious misconduct on the part of both Mr Koko and SABS officials in that an unauthorised and defective certificate was issued by the SABS and used by Mr Koko for an improper purpose.**

The SABS Board has instituted a forensic investigation to deal with all the issues pertaining to the testing of Eskom Coal in accordance with the Executive Authority's letter of 15 February 2018 and the terms of reference obtained from the dti Legal Services. Sizwe Ntsaluba Gobodo was appointed as the forensic investigators by the SABS Board.

**2.0 The SABS acted in a dishonest and hostile manner by impeding the investigation undertaken by the National Treasury into the SABS reports.**

The SABS Board is still to engage with National Treasury to confirm these assertions. It should be noted that the DG engaged directly with the entity i.e. with SABS Executives in dealing with this issue. The SABS Board was only engaged after a letter had been sent to the Chairperson of the Portfolio Committee on Public Enterprises, dated 16 February 2018, in this regard. The SABS Board accepted the DG's apology for that omission during engagements after the fact.

**3.0 The Entity that issued the unauthorised test report (SABS Commercial SOC) has not been authorised in terms of section 54 of the PFMA and is, therefore, operating outside of the precepts of the law.**

The SABS Board takes this issue seriously. In terms of section 5 (5) of the Standards Act, the SABS is permitted to form commercial enterprises. In line with the policy to separate the SABS Standards development function from its commercial activities, SABS Commercial SOC Ltd was registered for that purpose. The SABS is expediting the investigation on the establishment processes of this subsidiary company which took place in the year 2000. Once the archives have been accessed and analysed, the SABS commits to provide a full report on the matter. Should the process have fallen short on governance (i.e. like failing to obtain the necessary approval from the respective authorities) then remedial action shall be taken without delay.

**4.0 The SABS Board and the CEO have failed to Act Despite being aware of the SABS and Eskom Collaboration since 13 September 2015.**

The SABS Board would like to confirm that a forensic investigation has been initiated and the Executive Authority has been kept informed of the same. The SABS Board would not like to be drawn on the speculation of when it should or should not have known about this matter and is confident that this will be disclosed after the forensic investigation is concluded.

Sincerely Yours

A handwritten signature in black ink, consisting of a series of loops and curves, likely representing the name 'Jeff Molobela'.

**Jeff Molobela**  
Chairman of the SABS Board

14 May 2018