IN THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

PORTFOLIO COMMITTEE ON PUBLIC ENTERPRISES, (NATIONAL ASSEMBLY), [CORPORATE GOVERNANCE IN ESKOM]

STATEMENT

I, the undersigned,

NICHOLAS HUGH LINNELL

State that;

1. I am a director and shareholder in CT&A Project Management Pty Ltd (trading as *The Project Office*) and employed there since 2001/2. We provide business improvement services across a number of disciplines.

2. I hold BL. LLB law degrees from the University of Zimbabwe and a B.Com (Honours) degree from University of Cape Town. I have been engaged in business activities within corporates and in consulting services for 35 odd years.

3. I was approached on or about 7th March 2015 by Dudu Myeni for who I had provided consulting services at Mhlathuze Water and SAA. The request was to attend a meeting with the President and the Chairperson of Eskom, in Durban on the 8th March. The purpose was to discuss the feasibility of undertaking an inquiry into Eskom.

4. Context
    4.1. At that time the country was experiencing rolling power outages and there were commentaries suggesting they would get worse before they got better. These included views that a complete outage was possible and that should that happen it would potentially take weeks to begin to bring the network up again. During such a period there would be no

power at all. Business has since estimated that these failures cost the economy billions and billions of Rands. The troubles at Eskom must also have weighed on the minds of the rating agencies.

4.2. There were continuing media articles alleging corrupt or improper commercial activities at Eskom with some executives being publically named.

4.3. Public statements by Minister (Brown) that she was not receiving credible information from Eskom must have further concerned stakeholders.

4.4. There was a national crisis at this time.

4.5. There were public calls for an in depth enquiry into Eskom.

5. I attended the meeting in Durban on Sunday 8th March 2015. When I arrived at the Presidency Mr Tsosti, the then Chairman of Eskom and Ms Dudu Myeni were already there. We discussed the intended enquiry, how it would take place and what it would seek to achieve. After a period we joined the President.

6. The President was clearly familiar with the purpose of the meeting and we provided a summary of what was proposed (arising from the earlier discussions referred to above).This included a number of key principles.

6.1. For the enquiry to have credibility it needed to be open, independent and comprehensive. It needed to be free from internal interference.

6.2. It needed to be quick as lengthy previous enquiries in other state entities led to greater harm than good.

6.3. It needed the capacity and capability of the best investigators across commercial, financial and technical disciplines. It was therefore not suitable for one entity to conduct it.

6.4. It needed to be seen to be credible. Sound communications with stakeholders and the public were necessary.

6.5. I cannot now recall whether my proposal for a retired judge to oversee the enquiry was mentioned during this discussion. However it was always my contention that that was necessary and it was included in the Terms of Reference and media release.

6.6. The Board and the Minister (Brown) must be in agreement and supportive and seen to be so.

6.7. I discussed implications of board and PFMA approvals (see memorandum referred to below which included seeking approval of Ministry of Finance)

6.8. The matter of suspension of top executives was discussed. The rationale supporting suspensions was that;

6.8.1. If investigators were going to have the freedom to follow the evidence there needed to be an environment free from fear or intimidation. These conditions do not have to be "active" to exist and the passive presence of key people can inhibit openness. These were precautionary suspensions and those included would be counselled on that point as would the media release.

6.8.2. The risk to the business of suspensions of key people would be managed by appointment of capable subordinates. A strong communication strategy would convince stakeholders and the public that this was a positive not negative approach. The enquiry would be limited to 3 months.

6.9. My own role would be to act as a coordinator and interface with the Board.

7. The President listened to these views and asked one or two questions then he agreed. He undertook to speak with the Minister and Mr Tsosti would speak with the Board.

8. As the matter was urgent I would travel to Johannesburg the following day and be available to the board as and when required.

9. Overnight I drafted a proposed Board memorandum, proposed resolutions and an aide memoire on suspensions. I forwarded these to Mr Tsosti. (**Attached**). I assume this was subsequently circulated to the Board. This included;

9.1. Detailed background to the importance of events and the seriousness of the state of Eskom.

9.2. Process of consensus and approval between the President, The Board, the Mister (Brown) and Ministry of Finance (funding approval). This is important as it clearly is inclusive, transparent and required the approvals of Finance and DPE.

10. On that Monday 9th, I sort legal advice from leading labour attorneys (in my own capacity) on the labour issues and obtained opinion from them.

11. I went to Megawatt Park in anticipation of being called by the Board. I took with me a senior labour lawyer to deal labour law matters if requested by the Board . We were however later told the Board was not in agreement and we left. In part I considered that that might be the end of the matter.

12. On Wednesday 11th I was again called by the Chairman to Megawatt Park. On this occasion I was called into the board meeting.

13. Clearly the matter had already been discussed and agreed to. I was asked to introduce myself and there were a number of questions. These included the proposed suspensions. We also discussed how the communication aspect of these should be managed. It was important to be

discussed the process of the discussions with the four executives identified and the media and communication strategy. It was critical to take the public into the board's confidence and say what the Board was doing and why. Experience dictates that transparency is critical to credibility.

14. During that meeting I had the impression that the Minister of Public Enterprises had immediately prior to that moment addressed the Board on the matter. I was not privy to those discussions nor the Chairman's presentation.

15. After that meeting there was a press conference attended by a number of the Directors at which the Chairman stated publically that there would be an in-depth enquiry, it would speedy and was urgent. My appointment was coordinator was announced.

16. The media announcement created significant interest which was not negative. This is important in the context of the following week's ratings announcement.

17. After the press briefing I met with Ms Mabude (chosen to lead the Board committee overseeing the enquiry) and we discussed the scope and principles of terms of reference. I suggested matters such as the need for an independent whistle-blower facility to allow people to give anonymous tip-offs and meeting the executive team. Their input would be critical but more importantly their trust in the process was critical. I also met with the Senior General Manager: Assurance and Forensic Office of the Chief Executive and discussed the approach and IA involvement.

18. That same afternoon, Ms Mabude and Mr Naidoo (Board Recovery and Build Programme Review Committee (BRBPR) chair) and I met with the Executive (about 30 executives). Mr Naidoo introduced me as having been appointed by the board to coordinate the enquiry. I was asked to provide a brief overview of the enquiry and the purpose of the interaction with them – to obtain suggestions for the scope. It was agreed that they would provide the – I think head of legal, with all their suggestions and these would be forwarded to me to have included in the proposed scope.

19. I then left Megawatt Park. The enquiry firmly in progress with Board approval, the executive and the public informed.

20. Following that I received a number of communications from Eskom including an invitation from Mr Naidoo, a director, to join the Board Recovery and Build Programme Review Committee (BRBPR) workshop the following week. His communication with that committee included reference to the Board's intention to commit to a "deep dive" investigation.

21. I also received an invitation to attend a Board A&R subcommittee (delegated board authority to oversee the enquiry) meeting to be held on the 19th and then again on the 23rd March.

22. On the 12th March Minister Brown released a media statement endorsing the Board's decision to hold an in depth enquiry.

23. There was no doubt that at this time that the enquiry was in motion.

24. I was about that time required to provide my proposed draft terms of reference to Malesela Phukubje the company secretary by Sunday 15th 6pm.

25. Over the next few days I made enquiries with legal and accounting firms seeking those which had capacity, capability and no prior conflicts (previous advice to Eskom).

    25.1. I met with ENS and received from them a written “CV”. I considered them for the commercial forensic investigation stream.

    25.2. I had telephonic discussions with Grant Thornton for the financial stream. Other leading accounting firms had previous advisory experience with Eskom.

    25.3. I canvassed potentially names for the retired judge role with a highly respected lawyer and compiled a list with a preferred candidate. This candidate would without any doubt have been welcomed by all stakeholders and the public as providing the right oversight (It would not be fair to identify this candidate as he was never in the end approached or aware of the possible role).

    25.4. I spoke with industry experts as to potential candidates for the technical stream. While this never developed further there was the formation of two teams for this area (it being hugely complex and difficult to scope). One team would be an overseas technical entity and the other, a group of acknowledged South Africa technical experts (group of “wise men/women”). The advantage would be that they would have “local” knowledge and be able to assist with directing focus for the overseas entity.

26. I emailed the draft terms of reference to Ms Mabude and the company Secretary on Sunday 15th at 7.05pm (**attached)**. [Just before or after this I received a company proposed terms of Reference from the Company Secretary which I did not use but serves a point of comparison to that proposed by myself].

27. There were a number of important issues included in my proposed terms of reference.

    27.1. It was detailed and comprehensive in it’s scope – it was to be an in depth enquiry.

    27.2. It proposed the appointment of a retired judge – it would have credible independent oversight;

    27.3. It referenced the streams of enquiry that would be undertaken by different entities - it was unlikely that one entity could have the cross skills necessary for such a comprehensive enquiry.

28. On the evening of Monday 16th I had a discussion with Ms Mabude regarding the terms of reference which I had submitted. That discussion was brief. I was concerned that Ms Mabude

now refused to allow me access to the input received from the executives (see para 18 above). There was a notable cooling of enthusiasm.That conversation ended with an agreement that I would meet Ms Mabude the following morning at around midday (17th).

29. At 4.50 am on the 17th March I received an email from a Mr Thulo Selele copied to the Company secretary informing me that I was no longer required to attend the BRBPR meeting as the A&R subcommittee would now be handling the inquiry. The time of this email struck me as peculiar. It was also contrary to the previous evening's parting understanding with Ms Mabunde. My perception was there had been an intervening event.

30. Upon making some enquiries concerning this abrupt change of events I received information (hearsay) that a number of members of the board and some of the suspended executives had attended an late night private meeting during the night of Monday 16th. I assumed that this was linked to the early morning email.

31. On Wednesday 18th at 9.21am I forwarded a further draft of the terms of reference and proposed media release to the Chairman of Eskom and Ms Mabunde. I strongly recommended that the media statement be released urgently – by midday same day (18th) as it was important to maintain a positive endorsement through the press – public and stakeholder opinion was critical.

32. I never received any response to this email from the chairperson of A&R (Ms Mabunde).

33. However the Chairman contacted me and informed me that he had spoken to Ms Mabunde and she had undertaken to come to his house as soon as she was able to discuss the documents sent. He asked that I also attend.

34. By midmorning there was no further response and I called the chairperson and suggested I visit him as the media were asking for comment and without it the company was beginning to receive negative publicity. What was intended to be a positive intervention was evaporating. I was keen to have information in the public domain and receive informed commentary the following day.

35. The Chairperson informed me that the Minister had called him and instructed him to ensure a media report was issued due to the poor press – it was now a week after the announcement and there had been no further media release and the public was already sceptical of Eskom. He agreed to the release and instructed me to forward it directly to the company secretary and manager in his office. The instruction was that it follows the normal process and be copied to all directors and the minister.

36. Later I realised it was never released and upon enquiry by me to the Chairman I was informed by Mr Tsosti that the Minister of DPE and certain directors had objected to the press release and he had told the company secretary not to release it.

37. He also informed me that the Minister's office stated (hearsay) that protocol does not allow the Board to appoint a retired judge without the President's authority. I stated that to my knowledge that is not true. Effectively this aspect of the TOR was being rejected.

38. Later that evening (Wednesday 18th) I received a call around 6pm from the Chairman asking me to come to his house as the Chair of A&R had arrived. The three of us met and we first reviewed the media statement. In effect the Ms Mabunde wanted all the references to the scope and approach including the retired judge and the use of three independent forensic teams to be excised.

39. I provided reasons why I disagreed with that view and none of these reasons were challenged by Ms Mabude. The response was simply "the committee does not want this". When I asked for reasons why the committee would have a different view Ms Mabude did not provide any. At this time the Chairman intervened as he did not like the adversarial tone that the discussion had taken on.

40. Ms Mabude then suggested that I attend a meeting of A&R the next day – Thursday 19th in the evening and present my arguments to them. I subsequently received a formal meeting invite to that planned meeting.

41. However it was subsequently cancelled and my attendance not required. Instead an urgent board meeting was called, I think for the Friday 20th.

42. I was later informed that Mr Tsosti was to appear before the board for a disciplinary hearing arising from his actions to set up the enquiry. I was asked by his legal representatives to provide a statement of my and Mr Tsosti's roles which I did. The content of much of this statement here is taken from that contemporaneous statement provided around the 20th March.

43. I have in my possession original documents and emails that support this statement and which will also provide timing and dated versions of documents referred to.

44. I subsequently saw a press release from Eskom stating that I had been removed alongside Mr Tsosti.

45. Notwithstanding the termination of the enquiry, the Board did not reinstate the suspended executives despite their suspension having been explicitly linked to the enquiry.

46. Subsequent information
    46.1. Subsequent to the aborted enquiry there was public demand for an investigation into Eskom. This resulted in the Board appointing a legal firm, Dentons to undertake an enquiry. Later (much) Eskom released parts of their report. The questions ought to be posed – Why was a second enquiry mandated given the first was aborted; Why specifically was Dentons appointed; What were their agreed terms of reference and if they were narrower than the first enquiry proposed why were they narrower; What were their

findings and more particularly what did they not find that subsequently has come to light through the Gupta leaks and other investigations.

46.2. I have seen Ms Davids (Eskom legal advisor) evidence before the Committee with reference to her meeting with a member of the Gupta family on the 9th March 2015. She stated that Gupta informed her of the proposed enquiry and suspensions (prior to the board decision ofthe 11th). I can state that at no time was any Gupta or (to my knowledge) any related person ever party to discussions in which I was involved. However by 8th and certainly the morning of the 9th the board and the Minister had met to discuss the enquiry and proposed process. It was therefore open knowledge to many people within Eskom by that time (9th).Why the Gupta's were aware at all is worth querying.

46.3. The question has been posed whether the suspension of the executives on the 10th directly resulted in the downgrade of Eskom the week following the suspensions. This question ought to be put to Standard and Poors as only they would know. However an article by Dirk De Vos in the Daily Maverick on the 23rd March 2015 reviewed Eskom's situation and its mounting debt and troubles. Eskom was clearly is a dangerous place. He stated that the suspensions did play a role. However that ought to be tested as it had been anticipated prior to the suspensions. However to the extent that it did play a role in the downgrade, the further question ought to be asked – was it the suspensions *per se* or the events thereafter – the muddled handling of their suspensions, the poor media releases, absence of stakeholder engagement in what was intended, the subsequent cancellation of the enquiry but continued suspension of the executives.

47. Conclusion

47.1. A valid question must be why was I was appointed in the manner that why was I appointed that by those did so. I don't know that answer although I have asked myself many times.

47.2. I can however state that the reasons given me at that time for the enquiry were sound and supported by most informed persons at that time – it was necessary. In itself there is nothing untoward about that. If there was ulterior motive as I have often pondered, it is confusing that it was so quickly aborted.

47.3. From my first engagement my position was I would do it if it was open, independent (and seen to be so), having proper credible oversight, with skilled and credible resources. That was never challenged and it must have been with that in mind that I was proposed and appointed. Why the charade if it was never intended to be.

47.4. The trigger to abort the enquiry must have been the circulation of my written, detailed terms of reference and proposed approach. That was the death knell.

47.5. The reasons given for its termination then, warrant testing.

Signed on 21st November 2017 at Cape Town

Nicholas Linnell

ESKOM SOC

9TH MARCH 2015

Memorandum

The Company has implemented rolling restricted supply to all areas for a number of months. Notwithstanding the integration of Medupi unit 1, continued maintenance and unscheduled shut downs have and will inevitably cause ongoing planned and unplanned outages. The CEO is on public record as having forecast that these will continue for as much as 5 years.

Medupi and Kusile are years behind schedule and tens of billions over budget.

Lost revenue as a result of lost sales arising from supply not meeting demand runs into billions.

Escalating funding shortfalls have increased the interest carrying cost beyond prudential limits.

Eskom has been obliged to seek increasing funding from treasury. The forward forecast anticipates that funding shortfalls will continue.

The Company has also been subjected to public embarrassment relating to tender and other expenditure disputes -some of which have becomes litigious. These compound current negative perceptions of Eskom.

The impacts of these failings are numerous and the consequential risk extends far beyond the Company to all South Africans. Economic capacity is being severely restricted across all sectors and curtailed foreign and domestic investments postponed or cancelled outright. These in turn create a spiral effect with increasing unemployment and pressure on the fiscus.

The past response by Eskom has been to offer the public little insight to the causes and little guidance to the future. Public announcements are often uninformative or silent. The perception is that there has been a tendency to deny and defend. As a consequence neither business nor the man-in-the -street has any notion of what the future holds. That perception extends to a belief that - "neither does Eskom". This Board is duty bound to establish the facts and to address the causes and implications.

Until this moment the Board has been entirely reliant on the Executive for information pertaining to these challenges. It is abundantly clear that this in itself is part of the problem. This Board has no independent and objective insight into the extent that some of our failings might be caused or exacerbated by management failure. Given the abnormal risks facing the Company and its obligations to the public, this board must know the facts - as unpalatable as they might be.

The Board is also in an unenviable position as it is known that the Executive relationship with the shareholder can at times be more engaging that it is with the Board. While this Board can have no quibble with close shareholder relationship this may not be a substitute for proper and sound corporate governance.

Given the severe risk of further outages and little independent understanding of the facts, there it is critical that the Board act immediately - to establish first-hand the causes of these challenges

It is recommended that the Board urgently authorise and mandate an independent, external enquiry to establish the facts of the current difficulties. This enquiry must be unfettered by management and the Board and other policy stakeholders. It must be seen to be credible and objective. It must have a mandate to be penetrating and unhindered.

The Board must ensure that it creates the space and environment within the company and amongst stakeholders for the investigators to fulfil this mandate unimpeded and without influence.

The resolution before the Board provides the authority for such an enquiry.

In order to facilitate the urgent and independent execution of this resolution, a further resolution provides the delegation of the selection, mandating and contracting (including terms of reference) and oversight of the enquiry to a board subcommittee. While this subcommittee remains accountable to the full Board, the subcommittee should have the Board's delegated authority to take all such steps and measures as the subcommittee deems necessary to ensure the fulfilment of the mandate, as the board would itself have.

There is therefore an urgent and pressing need for the Board to gain first-hand an unabridged review of the facts and their impact.

ESKOM SOC

DECISION RECORD OF THE BOARD
9TH MARCH 2015

Resolution

1. That this Board resolves that there are exceptional circumstances demanding the necessity for an urgent meeting of the Board of Directors. Ordinarily notice of at least 7 days is required. Due to these exceptional circumstances (recorded in the memorandum) this Board resolves to accept short notice and to receive and consider the notice and resolutions of this meeting.
2. That this Board resolves that an external and independent enquiry be set up to investigate and determine the facts relating to the current technical, commercial and structural status and any acts and/or omissions that have contributed to the current deficiency of generating and distribution capacity of Eskom.
3. That the Board resolves to appoint a Board subcommittee comprising Zola Tsotsi, Chairperson of the Board, Ms Chwayita Mabude, Chairperson of Audit and Risk Committee and Zethembe Khoza, Chairperson of People and Governance Committee, mandated with delegated authority of the Board to determine the terms of reference of the enquiry; the selection, mandating and contracting of the independent investigators; and the oversight of the enquiry. The subcommittee shall have the Board's delegated authority to take all such steps and measures as the subcommittee deems necessary to ensure the unfettered fulfilment of this mandate, as the board itself would have such power and authority, and further, without limitation, to ensure that the environment within the Company does not hinder or create a perception of hindering the enquiry and to take all such necessary steps to ensure such.
4. That the Board authorises the Chairperson in consultation with the Minister and the Minister of Finance to approve expenditure sufficient and necessary to fund this enquiry.
5. That this enquiry shall be required to present its final report to the Board, the Minister and the Presidency no later than the 30th June 2015.
6. That the subcommittee shall have the authority to deviate from the requirements of Eskom's Procurement Policies and Procedures as is necessary given the target to complete the investigation within 3 months (urgency) and to appoint such persons or entities to conduct the enquiry that are independent of Eskom and free of any influence or suspicion of influence of any party that might have any effect on the enquiry, save that the subcommittee shall if required provide reasons to the Ministry of Finance for any such deviations.

Resolution 1

Approved ☐ Not Approved ☐

Resolution 2.

Approved ☐ Not Approved ☐

Resolution 3.

Approved ☐ Not Approved ☐

Resolution 4

Approved ☐ Not Approved ☐

Resolution 5

Approved ☐ Not Approved ☐

Resolution 6

Approved ☐ Not Approved ☐

Conditions / Follow-up Actions:

Members:	**Signature:**
1. Zola Tsotsi	
2. Tshediso Matona	
3. Tsholofelo Molefe	
4. Ms Chwayita Mabude	
5. Norman Tinyiko Baloyi	
6. Dr Pathmanathan Naidoo	
7. Venete Klein	
8. Nazia Carrim	
9. Romeo Kumalo	
10. Mark Vivian Pamensky	
11. Zethembe Khoza	
12. Dr Baldwin Sipho Ngubane	
13. Devapushpum Viroshini Naidoo	

DRAFT

TERMS OF REFERENCE FOR A FACT FINDING INQUIRY

AT

ESKOM HOLDINGS (SOC) LIMITED

TERMS OF REFERENCE

1. PREAMBLE

The Board has received complaints and concerns raised by various sources, both internal and external to Eskom with regards to inter alia sufficiency and reliability of supply of electricity; escalating build project costs; escalating maintenance costs; high costs of primary energy and the inordinately high costs of the bond programmes that Eskom has participated in recently. In addition the Board has recognised the need for independent assessment of the state of the company's capability and performance. The Board has appointed an inquiry coordinator who shall be responsible for the implementation of the inquiry as mandated in the terms of reference.

To this end, the Board of Directors have resolved to institute an independent inquiry into all of these concerns. Having so resolved, the Board of Directors delegated the authority to institute the inquiry to the Board Audit and Risk Committee which shall oversee the process. Included in the authority to institute this inquiry is also the authority to:

- To consider and approve the terms of reference as proposed by the project coordinator;
- To consider and appoint a retired judge to oversee the independence of the inquiry from amongst a panel recommended by the inquiry coordinator;
- To consider and appoint services providers for the three separate areas of inquiry from a panel proposed by the inquiry coordinator;
- To receive and consider the interim and final reports and provide comments to the inquiry teams as necessary;
- To ensure that the scope of work as defined in the terms of reference are delivered within prescribed time lines;
- To approve a budget for the execution of the inquiry;

2. OBJECTIVE/PURPOSE

To provide the Board and Shareholder with an assessment of the current state of Eskom and in particular to determine the reasons for the current lack of, and inconsistency/ unreliability of supply of electricity to customers; to determine the causes of engineering failures, delays and cost overruns; to review primary energy sources, costs and quality of supply; to review the financial solvency, liquidity and the cost of funding of Eskom; and to provide recommendations with regard to possible actions.

The inquiry must be free of all influence or interference and shall be so structured as to ensure that independence is seen to exist.

3. APPROACH

The inquiry shall be subject to the oversight of a retired judge to ensure that the inquiry is free of influence and is objective.

The inquiry will be managed by a project coordinator who shall be responsible for the delivery of the mandate and who shall propose to the subcommittee terms of reference and a short-list of possible service providers to execute the mandate, to be approved by the subcommittee.

The inquiry shall focus separately on technical, commercial and financial facets of the Company. Each will be performed under separate inquiry teams selected having regard to their particular skills and independence.

4. TIMING

The inquiry shall commence on the 23rd March 2015 and shall provide its final report and recommendations to the Board not later than 19th June 2015

5. RESOURCES

5.1. The inquiry teams shall have access to all documentation and other data belonging to the Company as deemed by the inquiry teams to be necessary and shall be permitted to interview and receive information from any employee and supplier as necessary.
5.2. Each team and the inquiry coordinator shall have access to all premises of the Company at all reasonable time and upon reasonable notice;
5.3. The internal audit department will provide assistance as agreed from time to time with the Head of Internal audit department.
5.4. The Board subcommittee shall provide appropriate and necessary assistance to the inquiry teams as requested from time to time.
5.5. Board and board committee agenda packs and minutes shall be available to each team on request.
5.6. The Company shall provide a meeting room sufficient to house 6 persons and shall provide access as required to interview rooms.
5.7. All prior inquirys and reports in connection with matters included in this scope shall be made available to the inquiry.
5.8. The inquiry shall be permitted to establish an independent reporting “hot-lines” enabling internal and external people to provide anonymous input to the inquiry.
5.9. The respective teams comprising the inquiry shall meet on a fortnightly basis to ensure coordination.

6. SCOPE OF INQUIRY

The scope below may be limited in consultation with the Board subcommittee having regard to the budget and time available save that this may only be limited on the basis of what the teams' deem in their discretion to be "material" in the circumstances of the information available.

6.1. Technical

- 6.1.1. In respect of all generating plants' (+/-87), benchmark maximum output capacity, planned capacity and actual output for the immediate past 36 months;
- 6.1.2. Review current status of all generating plants and provide opinion on the causes and contributory factors for sub optimum output (in excess of 33 require major repair);
- 6.1.3. Review all major incidents at plants and their causes and any avoidable factors not acted upon (including communications between plant and executive);
- 6.1.4. Review maintenance requirements of all generating plants assessing actual vs planned maintenance and review all contracts and service level agreements and compliance to the same as well as costs relative to plan. Have particular regard to all unplanned failures and review in context of maintenance conducted/not conducted;
- 6.1.5. Review all 3rd party electricity supply available to the grid (including proposals received but not acted on) and compare to actual supply connected to the grid for the past 36 months. Provide an opinion on the technical reasons and cost implications for not having connected when possible. Review all information including correspondence, negotiations and contracting with regard to that supply and reasons for less than optimum connected supply. In addition, consider the available potential of supply from foreign countries and determine any reasons for supply (from time to time) less than that potential and consider any reasons thereof;
- 6.1.6. Specifically enquire into the principal causes of failure at Majuba and Duvha and make recommendations as necessary. In so doing have regard to management reports and independent insurance/assessor reports and determine the degree of transparency of reporting to the Board and have regard to the reasons for any late submissions of these reports to the Board.
- 6.1.7. Conduct high level reviews of the new builds at Medupi and Kusile and determine the principal causes and contributory factors to the overruns of cost and time.
  - 6.1.7.1. The degree of depth of this report to be agreed between the subcommittee and the inquiry team bearing in mind the time available.
  - 6.1.7.2. To determine whether appropriate contingency plans were in place and acted upon at the earliest possible instance;
- 6.1.8. In collaboration with the Financial and Commercial inquiry teams to the review the supply of primary energy (coal, diesel, gas, water) to all plants over the past 36 months and determine whether supplies met specification, quality and delivery requirements (also have regard to any incorrect specifications provided).

6.1.9. Review the causes of disruption of power to two Rand Water pumps at Rand Water in September 2014 paying special attention to any lack of proactive or reactive management response i.e. were there warning and how effectively did we react;

6.1.10. To consider the impact of weather on the performance of any of the plants and to provide an opinion as to whether these risks could have been mitigated;

6.1.11. To review risk management and contingency plans to determine that such are sufficient to negate any generation risk, and at times of plant failure and whether such were implemented effectively.

6.2. Commercial

6.2.1. Review all procurement and other contracts for capital projects, primary energy supplies and operational services (exceeding R1 million or such figure as varied with agreement with the subcommittee) for the past 48 months and determine adherence to supply chain policy and business case approvals. Have special regard to any contracts and payments made but not matched to specification (cost, time and quality). Have regard to any rolling or renewed contracts that have cumulative value above the threshold;

6.2.2. Review all contracts related to Medupi and Kusile from inception. Review these in context to the original business case and adherence to tender and supply chain requirements. The focus to be on commercial matters and not technical. The team to coordinate their inquiry with the Technical and financial teams.

6.2.3. Review employee and contractor contracts and payments made to employees and contractors and identify any that bear *prima facie* concern.

6.2.4. Undertake electronic assessment of all company email correspondence, identifying certain key words to be proved by the subcommittee, for the last 24 months, and where appropriate undertake interviews with internal and external parties to probe where indicated.

6.2.5. Review a random sample of internal correspondence between project leaders and plant/project management on Medipi, Kusile, Majuba and Duvha and identify whether plant management foresaw problems and communicated risk upwards. Review management reactions;

6.2.6. Similarly (plants as per above) review all correspondence between suppliers and company in which disputes are debated. Interview suppliers as necessary.

6.2.7. Review new posts created over past 36 months and provide a schedule of position and TCC.

6.2.8. Review all executive and Board reports pertaining to new builds and summarise material implications and decisions.

6.2.9. Review contracts and recruitments of employees with TCC >R1.5m per annum for last 24 months;

6.2.10. Review a sample of senior employee suspensions, disciplinary hearings and dismissals (and reinstatements) of employees last 36 months (filter those earning >R1 000 000 p.a.).

6.2.11. Review summaries of internal audit reports over the last 36 months and management responses and any action taken on material risks identified;

6.2.12. Review internal audit programs – schedule of audits and risk analysis and review Internal audit reports of the same and review actions taken;

6.2.13. Review draft external audit reports for the past 3 years (2012-2014) and identify risks noted and not in final reports and determine reasons for such

6.2.14. Interview sustainability executive for insight to risks not identified;

6.2.15. Review correspondence from insurers of major claims submitted (to be objectively assessed by the team) and premium adjustments for those and reasons for them for past 36 months.

6.2.16. To review the organismal model and consider the implication on the performance of the company and make recommendations as required.

6.2.17. To consider the implementation of any policy decisions and their impact on the performance of the Company. To coordinate with Financial and Technical inquiry teams to ensure appropriate consideration by each.

6.2.18. Review company policies to determine compliance of good governance, transformation and conflict of interest.

6.2.19. Review whistle-blower reports for past 36 months and provide an opinion of the satisfactory follow-ups thereof.

6.3. Financial

6.3.1. Review the approved financial statements of the Company as at 30th September 2014 and provide a summarised "red flag" report on material concerns. Review the current management report forecast for the year ending March 2015 and provide similar comments and in particular to any variations not anticipated in September 2014.

6.3.2. Review material funding facilities/contracts /bonds of any nature and provide an opinion of the terms relative to the market and the company's risk.

6.3.3. Review all steps taken by the Company to recover unpaid "government/municipal" debt (debtors) currently estimated at R4.7 billion. Provide commentary on the impact on the financial standing of the company on such unpaid debt.

6.3.4. Review all non- government trade debtors (customers) and provide a similar review and in particular to steps taken to secure payment;

6.3.5. Conduct (together with Commercial team) a review of all primary energy supplies over the past 36 months and determine the cost implications of any contracts "not for value";

6.3.6. Determine the lost revenue and/or penalty cost implications of all non-implemented 3rd party electricity supply opportunities.

6.3.7. Determine the net wasted cost (and reasons therefore) of payments made to primary energy suppliers for materials not received but paid for over the past 36 months.

6.3.8. Review all non-government major electricity-user sales contracts (together with their business cases) and determine the value of lost revenue over time and, together with commercial, provide an opinion on the proprietary/commercial wisdom of such contracts at the time.

6.3.9. Review all contracts and payment of pre-sold electricity "buy-backs" and access the cost/benefit of such decisions.

6.3.10. Together with Technical teams provide an estimated cost to the company of the cost (increased costs) and time (lost revenue) overruns at Medupi and Kusile;

6.3.11. To consider asset management policies and practices;

6.3.12. To provide a high level financial protection for the next 3 years.

6.4. Coordination

6.4.1. The inquiry coordinator shall:

6.4.1.1. Draft terms of reference for the scope of the inquiry.

6.4.1.2. Consider suitable persons to fill the positions provided for in this terms of reference and to make recommendations to the subcommittee;

6.4.1.3. shall ensure that each of the teams have access to each other so as not to create overlaps and gaps;

6.4.1.4. have responsibility for the delivery of the scoped work of each inquiry team and of the final consolidated report;

6.4.2. The coordinator shall access to the interim work of each team and to provide comment and guidance to each team as he deems appropriate.

7. REPORTING

7.1. Each inquiry team to provide the inquiry coordinator with a weekly and monthly summary of their activities and material (including preliminary) findings for presentation to the subcommittee;

7.2. The program coordinator to recommend possible reinstatement of suspended executives as soon as inquiries are complete and risks mitigated.

7.3. At the end of the inquiry, present to the Board Committee a report.

7.4. The final report to include a summary of material finding and recommendations.

8. APPOINTMENT OF AN INDEPENDENT SERVICE PROVIDER

In the exercise of its authority as delegated by the Board, the Audit Committee has appointed……………………………………………………………to assist with …………………… team of the inquiry.

9. FEES

9.1. The respective service providers will negotiate and agree the fees that Eskom will pay to the service provider.

Signed at ____________________ on this the day _________________2015

For and on behalf of Eskom

Signature

____

Name of Signatory

____

Designation of Signatory

For and on behalf of

[Service Provider]

____

Signature

____

Name of Signatory

____

Designation of Signatory

ESKOM SOC

PRESS RELEASE

THE BOARD ENQUIRY

On Wednesday 11th March 2015, the Chairperson of the Board Mr Zola Tsotsi released a media statement and held a media conference announcing the Board's decision to mandate an inquiry in the current state of the Company.

Understandably there has been considerable interest in the inquiry and much expectation created. There have also been numerous media reports variedly reporting the enquiry and this has led to some confusion.

The purpose of this communication is to provide the public with further details on the inquiry and to lessen the space for further confusion.

Firstly, this initiative that has been taken by the Board has the complete support of our shareholder Minister Lynn Brown.

The purpose of the inquiry is:

"To provide the Board and Shareholder with an assessment of the current state of Eskom and in particular to determine the reasons for the current lack of, and inconsistency/ unreliability of supply of electricity to customers; to determine the causes of engineering failures, delays and cost overruns; to review primary energy sources, costs and quality of supply; to review the financial solvency, liquidity and the cost of funding of Eskom; and to provide recommendations with regard to possible actions.

The board further resolved that the inquiry must be free of all influence or interference and shall be so structured as to ensure that independence is seen to exist.

To that end the Board delegated the oversight of the inquiry to the Board Audit and Risk Committee. However so as to ensure that even this was not perceived as having influence, the terms of reference provide for a number of important checks and balances.

1. The appointment of a retired judge to ensure that the inquiry is free from influence and bias.
2. The appointment of industry and professional experts in specific fields to undertake the work defined in the scope of the inquiry.
3. The appointment of a person outside the company who shall coordinate the various aspects and be accountable to the board subcommittee for the timely delivery of the objectives.

The subcommittee has considered the proposed terms of reference and scope of the inquiry prepared by the inquiry coordinator and has asked that these be put to a number of professional persons or entities that we believe have the capacity and expertise to complete this mandate in the time allowed.

Once the various professional teams have been appointed the Board will provide the public with details of the following:

1. The appointed retired judge;
2. The professional teams appointed;
3. The terms of reference.

In appointing the professional teams we will have regard to fact that the public must have confidence in the people undertaking this task. That they are competent and that the possibility of interference would be improbable. We shall do this as it is right and to ensure complete transparency and confidence in the process.

Some speculation has arisen as to the overlap of the Board's inquiry and what might appear parallel initiatives. The ministerial "war room" has a very specific mandate to consider the strategic issues and to seek ways of eliminating structural bottlenecks. The "energy committee" is looking at a very specific part of the future energy needs and options. The board's inquiry focuses a fact gathering exercise – the product of which will be shared with both these committees. However the board's inquiry is focused on internal matters that have affected our performance and identify some key remedial actions that might be identified.

As a Board we are certain that this is in the best interest of the Company and the nation. We cannot readily recognise any concerns as to why this should not happen. For some time both the Government and the public had demanded such an inquiry. We now have it.