



INVESTIGATION REPORT

ALLEGED MISCONDUCT BY CHIEF OPERATING OFFICER OF ESKOM

24 August 2020

BACKGROUND

On 27 July 2020, the Minister of Public Enterprises addressed a letter to the Interim Chairperson of the Eskom Board, which required the Board to consider and report on matters relating to various allegations made against Mr J A Oberholzer, Chief Operating Officer of Eskom Holdings SOC. The Board considered the request, and in view of the fact that the COO reports to the Group Chief Executive, referred the matter to the GCE for investigation, and reporting back to the Board before a final decision would be taken whether or not disciplinary action would be initiated against the COO.

The Minister requested the Board to pay specific attention to three matters, viz.:

- Alleged failure by the COO to declare shareholding in Stefanutti Stocks, and his participation in decisions regarding the contractor
- Very significant increases in the contract value of a contract awarded to Black and Veatch, and an investigation whether or not the COO had played a role in these expansions
- The role played by the COO in the offer of a settlement with Aveng, which offer was subsequently withdrawn on advice of the Zondo Commission, and which is currently a matter before court; the Minister indicated that he was in agreement with the recommendation made by Adv. Cassim SC that a decision on whether or not to institute disciplinary action against the COO be held in abeyance pending the outcome of said court action

The Minister also referenced allegations of victimisation, nepotism and corruption made against the COO by an alleged whistle-blower, Mark Chettiar (MC), currently still employed by Eskom, and made the Board aware that he had received allegations from SAFTU in this regard.

The present report deals with each of these elements seriatim. Where supporting documentation is referenced, this is indicated in blue type and is attached to the report.

A. **Declaration of Interest – Alleged Corruption**

(All applicable evidentiary documents for all the issues stated below are embedded in [Folder 3 Titled – Declaration of Interest Documentation](#))

1. Jan Oberholzer was appointed as Eskom Chief Operating Officer (COO) on 16 July 2018 after interviews with the Board members in June 2018. His CV was submitted, available and discussed during these interviews and the Board members were aware of the fact that the COO was employed by Stefanutti Stocks during his absence from Eskom (refer to [Annexure 1](#)).
2. The COO declared his shareholding in Stefanutti Stocks as part of his FNB Securities portfolio (the only shares in the portfolio) on 07 August 2018 and again on 26 June 2019. The then Eskom Group GCE approved both these declarations at the time (refer to [Annexures 2, 3 and 4](#)).

3. Stefanutti Stocks total issued shares (SSK) to the market is 188 080 764. Jan Oberholzer was allocated 35 834 shares (SSK) by Stefanutti Stocks as part of his remuneration package – not purchased by Jan Oberholzer (refer to [Annexure 5](#)). Mr Oberholzer shareholding therefore amounted to 0.0190525% of the issued share capital of Stefanutti Stocks.
4. At the time of joining Eskom, the shares were valued at R 2.90/share (refer to [Annexure 6](#)), which equated to a total of R 103 918.60.
5. At the time of selling the shares on 30 March 2020, the shares were valued at R 0.16/share and R 0.17/share (refer to [Annexures 7, 8 and 9](#)), or a total of R 5 689.43.
6. After brokerage fees the amount paid to Jan Oberholzer on 30 March 2020 upon the sale of the shares was (refer to [Annexures 10 and 11](#)) R 2 894.60, which was donated to the 'Lewende Woord' church on 03 April 2020.
7. The COO wrote a letter on 08 August 2018 (23 days after joining Eskom) to Bowmans Forensics Investigators requesting them to pay specific attention to Stefanutti Stocks as one of the Contractors alleged to have colluded with Eskom officials and defrauded Eskom of R millions. It can be argued that if the COO had acted to protect his own financial interests, he would have sold his shares at the time with the information at his disposal, and not have waited until the shares had effectively no value (refer to [Annexure 12](#)). The fact that he had owned the shares, declared his interest, and then acted without any regard for the personal financial consequences to him of his actions appears to be an adequate rebuttal of allegations that he pursued his own agenda at the expense of Eskom in order to generate a financial benefit for himself.
8. The prescribed formal external independent lifestyle audit had been conducted on the COO and the audit findings did not reveal anything not disclosed to Eskom or anything to be concerned about (refer to [Annexures 13, 14, 15, 16, 17, 18 and 19](#)).

B. Stefanutti Stocks – Alleged Corruption

(All applicable evidentiary documents for all the issues stated below are embedded in [Folder 4 Titled – Stefanutti Stocks and Kusile Documentation](#))

1. It is confirmed that the COO was not involved in any Eskom Kusile contract before, during or after his employment with Stefanutti Stocks prior to him re-joining Eskom on 16 July 2018.
2. The COO attended only two meetings with Stefanutti Stocks to date discussing contracts at the Kusile project – the first one arranged by the Former Chairman/Interim CEO, Jabu Mabuza, even after the COO advised against it (refer to [Annexures 1, 2, 3, 4 and 5](#)).

a. 17 October 2019 (Intercontinental Hotel, OR Tambo)

Present from Eskom

- Jabu Mabuza

- Bartlett Hewu
- Jerome Mthembu
- Binesh Singh
- Jan Oberholzer

Present from Stefanutti Stocks

- Russell Crawford

- b. 23 January 2020 (Kusile Project)

Present from Eskom

- Avin Maharaj
- Binesh Singh
- Jan Oberholzer

Present from Stefanutti Stocks

- Russell Crawford
- John le Riche

3. The COO has co-signed two modifications where Stefanutti Stocks is concerned – the other signatory is that of the Chief Procurement Officer, Solly Tshitangano (refer to [Annexures 6, 7, 8 and 9](#)):

- a. Modification 3 with Stefanutti Stocks Basil Read JV for the construction of miscellaneous structures for Kusile Power Station Project. The modification was the extension of the contract duration of 14 months including a 7 months' contingency time. The increase in contract time was mainly due to access delays. The submission was for presentation to Eskom Tender Committee, Board IFC and Board approval where after approval must be obtained from National Treasury.
- b. Modification 4 with Stefanutti Stocks Basil Read JV for the construction of miscellaneous structures for Kusile Power Station Project. The modification was for an increase in contract value (R 268.3 million). The increase was due to a) an increase in re-measurable quantities, b) design changes, c) late access claim, d) project labour agreement and e) other allowances. The submission was for presentation to Board IFC and Board approval where after approval must be obtained from National Treasury.

Eskom governance processes do not allow any one individual to approve contract modifications, there is a very structured process ensuring the necessary approval. The COO co-signed the submissions in his capacity as Acting Group Executive Group Capital also responsible for the Kusile Power Station Project (refer to [Annexure 10](#)). The Kusile Projects Director and his team and not the COO motivated at the relevant governance structures for approval.

4. Within three weeks of joining Eskom, the COO started working very closely with Bowmans and the SIU, investigating a number of major construction companies for

alleged fraudulent activities of which Stefanutti Stocks counts as one (refer to [Annexures 11 and 12](#)).

5. The COO has also worked closely with Bowmans Forensics department, which investigated alleged corrupt activities focussing on both contractors and Eskom employees. The COO has been instrumental in removing and dismissing numerous executives and senior managers involved in fraudulent activities (refer to [Annexures 13, 14, 15, 16 and 17](#)).
6. The COO was not employed at Eskom from 01 January 2009 until 15 July 2018 nor was the COO involved in any aspect related to the R4 billion overpayment investigation against four of the major construction companies (refer to [Annexures 18 and 19](#)).

C. Black & Veatch – Alleged Corruption

(All applicable evidentiary documents for all the issues stated below are embedded in [Folder 5 Titled – Black & Veatch Documentation](#))

1. The Black & Veatch professional services chronology of documents and events for the period 2003 to 2018 are tabled in [Annexure 1](#). The COO (at the time Acting Senior General Manager Projects Support) resigned from the employment of Eskom effective 31 December 2008. The detail related to documents and events from 01 January 2009 have not been perused as these fall outside of the scope of this investigation.
2. The Eskom Enterprises Tender and Procurement Committee approved the first Engineering Houses Panel assisting Eskom via enabling agreements for the provision of engineering and project management services over a period of 5 years in December 2005 (refer to [Annexure 2](#)).

The estimated total cost value for the Panel A Engineering Houses over the 5-year period was:

– Engineering Work:	-	R 103 million
– Project Management Services:	-	R 180 million
– Total:	-	R 283 million

The local and foreign content of the proposed enabling agreements are as follows:

- One third of R 283 million (USD 14.8 million at an exchange rate of 6.3750 as at 12/12/2005). 100 % is foreign.
 - ✓ Black & Veatch
- One third of R 283 million (Euro 12.52 million at an exchange rate of 7.536 as at 12/12/2005). 50 % is foreign.
 - ✓ PB Power (Alliance)
- One third of R 283 million (Euro 12.52 million at an exchange rate of 7.536 as at 12/12/2005). 50 % is foreign.
 - ✓ ESBI and Murray & Roberts

3. The COO (at the time General Manager Projects Support) was appointed on 02 April 2007 the Employers Agent for the Black & Veatch professional services contract as well as the Employer's Representative (DCF) for the Black & Veatch professional services contract to the value of R 100 million until 06 March 2011 (refer to [Annexure 3](#)).
4. On 05 September 2007, the Eskom Board Tender committee approved a Modification of the Panel A Engineering Houses Enabling Agreements to make provision for outsourcing of additional Engineering and Project Management services and to extend the contract period.
The Board Tender Committee approved (refer to [Annexures 4, 5, 6, 7, 8 and 9](#)):
 - To select Parsons Brinckerhoff Africa (Pty) Ltd (PB Power) as the lead partner for Engineering and Project Management on Project until project completion (including defects period) estimated to be end 2016.
 - To select Black and Veatch Corporation (B&V) as the lead partner for Engineering and Project Management on Project Bravo until project completion (including defects period) estimated to be end 2017.
 - To allocate to ESBI, Engineering and Project Management services, on OCGT/GAS 1/OCGT Conversion Projects until projects completion estimated to be end of 2010.
 - To allocate to Panel A, other Engineering and Project Management services in respect of other projects, on an as and when required basis until 31 December 2017.
 - To increase the increase in cost to the following:

Engineering House Utilisation							
	Current			2011		Contract Completion	
	Committed Task orders until July 2007	% of allocation Committed	% of Panel A Utilised (to date)	Forecasted Utilisation: from Aug 2007 to April 2011 (ZAR)	Future Utilisation: from Aug 2007 to April 2011 (%)	Total Utilisation (ZAR)	Total Utilisation(%)
PB Power	R 96,015,558	34%	33.93%	R 882,770,868	36%	R 1,422,303,754	35%
M&R and ESBI	R 89,009,482	31%	31.45%	R 115,000,000	5%	R 204,009,482	5%
Black & Veatch	R 97,562,498	35%	34.47%	R 1,442,262,096	59%	R 2,473,854,981	60%
Total	R 282,587,538	100%	99.85%	R 2,440,032,964	100%	R 4,100,168,217	100%

Originally Allocated Budget = R 283,000,000

5. On 16 March 2008, the COO (at the time Acting Senior General Manager Projects) signed both the Onshore and Offshore professional services contract as the Employers Representative as per the Delegation of Consent Form (refer to [Annexures 10 and 11](#)).
6. The COO (at the time Acting Senior General Manager Projects) was appointed on 30 October 2008 as the Employers Representative (DCF) in terms of the Black & Veatch NEC Professional Services Contract and to approve compensation events within the following value and time limits: R 2.474 billion until 29 March 2017 (refer to [Annexure 12](#)).

7. The COO (at the time Acting Senior General Manager Projects) resigned from the employment of Eskom effective 31 December 2008 without signing any Black & Veatch Professional Services Task Order.
8. The Black & Veatch Employers Representative (DCF) modifications (contract modifications) as from 01 January 2009 are as follows (refer to [Annexure 13](#)):
 - R 2.474 billion until 29 March 2017 on 23 March 2009
 - R 3.182 billion until 29 March 2017 on 29 March 2010
 - R 7.000 billion until 31 December 2017 on 20 July 2011
 - R 7.000 billion until 31 December 2017 on 27 August 2012
 - R 11.000 billion until 31 December 2017 on 14 March 2013
 - R 12.180 billion until 31 December 2017 on 05 April 2016

The COO was able to provide documented proof for the Black & Veatch professional services cost escalation from R 100 million to R 2.474 billion but unable to comment on the significant increase in cost (including the necessary governance process) for the Black & Veatch professional services from the 05 September 2007 cost of R 2.474 billion until 29 March 2017 to the R 12.180 billion until 31 December 2017.

Management is of the firm belief that an investigation into the contract value increases of the Black and Veatch contract is required, and will take steps to implement same.

12. I can find no fault or other improper conduct on the part of Oberholzer insofar as this transaction is concerned. None of the people that addressed me or any documentation demonstrates any wrongdoing on the part of Oberholzer.
13. It may be prudent to investigate the particularities justifying the increase from R2.4-billion to R14-billion since 2008 to the present time, and in particular whether this was warranted, the role players and whether there was any improper conduct in the massive increase of some R11.6-billion.

14. There is no factual content supporting allegations of corruption or other wrongful conduct on the part of Oberholzer in relation to his role in the Black and Veatch contract.
9. A detailed schedule is available for all Task Orders placed for Black & Veatch professional services, and who requested the services and the value thereof (refer to [Annexure 15](#)).

D. Aveng R 40 million Payment (Majuba Rail Project) – Alleged Corruption
(All applicable evidentiary documents including the Zondo Commission report are available for all the issues and aspects stated below in [Folder 2 Titled – Aveng Documentation](#))

The Zondo Commission Investigation highlights the sequence of events from 19 March 2018, while the COO officially joined Eskom on 16 July 2018. Below is a chronological sequence of events for context.

1. Aveng sent a letter to Eskom on 22 January 2019 requesting a meeting to discuss outstanding cash retention and disputed invoices. The meeting took place at Megawatt Park on 14 February 2019 – both the COO and Mark Chettiar (MC) were present at the meeting. MC took minutes of the meeting – this meeting is mentioned in MC’s Grievance under Section E (refer to [Annexures 1 and 2](#)).
2. On 19 February 2019, the Aveng Group Chief Operating Officer, Sean Flanagan, sent an e-mail expressing his appreciation with the meeting stating that it was the first genuinely positive engagement with Eskom in a long time. MC compiled a memorandum on 22 February 2019 requesting approval to release the cash retention in lieu of a bank guaranteed retention – as per the original signed contract between Eskom and Aveng (refer to [Annexures 3 and 4](#)).
3. MC prepared and submitted a memorandum on 26 April 2019 requesting approval to negotiate and settle the disputes with Aveng – the memorandum, however, was never signed due to the decision to rather finalise the dispute through the adjudication process and obtain an assessment from the Adjudicator. The meeting took place between Eskom and Aveng on 26 April 2019 to discuss the disputed invoices – this is the meeting where the R 43 million was tabled and discussed. The COO was not present, however, MC was present – note the attendance register (refer to [Annexures 5 and 6](#)).
4. On 09 May 2019, MC responded to the Aveng Group CEO by e-mail on the R 40 million (Aveng tabled R 43 million) without prejudice settlement subject to Eskom governance approval – irrefutable proof that MC was aware and an integral part of the R 40 million-settlement discussions (refer to [Annexure 7](#)).
5. MC prepared a letter to Aveng for the COO’s signature on 16 May 2019 reflecting his agreement (refer to [Annexures 8 and 9](#) as well as the Zondo Commission Report on page 13 of the findings – refer to [Annexure 25](#)).

16 May 2019	<p>Mr Chettiar sent an email to Mr Oberholzer (Annexure 20) which attached a response he drafted for him (COO) to the Aveng email of 13 May 2019. The response (Annexure 21) stated, <i>inter alia</i>, as follows:</p> <ol style="list-style-type: none"> 1. The approval of the settlement offer of R40 mil required approval for both internal and external (National Treasury) governance processes as per the timelines indicated; 	<p>Though Mr Chettiar informed us that the project team was not involved in the settlement discussions, based on this response, he became aware of the settlement and was also supportive of this pending appropriate governance approvals.</p> <p>He also raised the issue of Aveng’s financial situation, which was a concern, asking for an urgent meeting to understand its impact on</p>
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6. The letter (without prejudice settlement) was signed by the COO on 17 May 2019. Please note an extract of the letter (refer to [Annexure 10](#)).

We understand that Aveng needs to meet its obligations, however, Eskom as a state-owned company, must follow corporate governance processes, which include a National Treasury legislated process. The approval of the settlement offer of R 40 million requires us to obtain approval for both internal and external (National Treasury) governance processes as per the time lines below:

7. The COO e-mailed MC and the Senior Manager Contract Management on 17 May 2020 requesting them to ensure alignment on the payment to Aveng (refer to [Annexures 11, 12 and 13](#) as well as the Zondo Commission Report on page 14 for findings – refer to [Annexure 25](#)).

17 May 2019	The COO sent an email to Mr Chettiar and Mr Möller, indicating that it was his understanding that there was no alignment between the two of them on the reply to Aveng and instructed them to finalise this ASAP (Annexure 24)	This email was based on Mr Möller's email which clearly went against what Mr Chettiar had proposed to Mr Oberholzer as a response to Aveng.
17 May 2019	Mr Chettiar responded to the above email of Mr Oberholzer, sending it to Mr Oberholzer and Mr Möller (Annexure 25), stating <i>inter alia</i> , that: <ol style="list-style-type: none"> 1. Of importance to note was that there was an A&F report that indicated that the contractor was late and Eskom owed them nothing (Annexure 8); 2. Of importance was that governance needed to be followed, and a date of 28 June 2019 to conclude this had been communicated to Aveng (Annexure 26-27); 	As per this email from Mr Chettiar, there was no obligation to pay Aveng, as also stipulated in the A&F report. This, however, conflicts with his earlier letter of response he drafted for Mr Oberholzer, where he was fine with the settlement as long as it went through governance processes. He also highlighted the issue of financial distress that was being experienced by Aveng, highlighting the risk that they could be paid but

8. On 18 May 2019, the COO sent a letter to Mr Flanagan stating “**that we commit to do our best to expedite the approvals as much as we can without contravening the governance process**” (refer to Zondo Commission Report on page 14 for findings – refer to [Annexure 25](#)).

18 May 2019	Mr Oberholzer sent an email to the Mr Flanagan (Annexure 28), attaching a response letter to his email of 13 May 2019 (Annexure 29)	This response letter was effectively similar to the one Mr Chettiar drafted for Mr Oberholzer, except for the inclusion of the following: “We commit to do our best to expedite the approvals as much as we can without contravening the governance processes.”
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9. The COO and the then Acting General Manager Legal & Compliance (Jerome Mthembu), on 21 July 2019 requested an external independent opinion from a legal company (ENS) on the validity of paying Aveng. MC was requested to compile the necessary memorandum. The legal opinion was obtained from ENS on 29 July 2019 confirming that Eskom must pay the R 40 million (refer to [Annexures 14, 15 and 16](#)).

10. On 01 August 2019, the then Acting General Manager Legal & Compliance (Jerome Mthembu) sent a letter to the COO confirming payment the payment to Aveng based on the external legal opinion from ENS (refer to [Annexure 17](#)).
11. Aveng lodged a court application for the R 40 million on 13 August 2019 (refer to [Annexure 18](#)).
12. On 20 August 2019, a letter was sent to Aveng (prepared by MC) confirming payment early September 2019. MC in addition prepared a memorandum to the CFO requesting authorisation of the R 40 million payment. Aveng acknowledged receipt of the letter on 22 August 2019 (refer to [Annexures 19, 20, 21, 22, 23 and 24](#)).
13. Eskom received the Zondo Commission Report on 23 August 2019 recommending not paying Aveng due to possible irregularities (refer to [Annexures 25, 26 and 27](#)).
14. MC prepared a memorandum (submitted to the office of the COO on 28 August 2019) requesting approval of payment of the R 40 million to Aveng. The COO rejected signing the letter based on the decision made by the Eskom leadership due to the recommendations by the Zondo Commission Report (refer to [Annexure 28](#)).
15. Note the e-mails dated 05 & 06 September 2019 demonstrating MC's delay in implementing the decision informing Aveng of Eskom's decision not to continue with the R 40 million payment due to the recommendations from the Zondo Commission Report (refer to [Annexure 29](#)).
16. On 06 September 2019, Eskom (via ENS) sent a letter to Aveng informing them that Eskom would not make the R 40 million payment due to content in the Zondo Commission report stating possible irregularities (refer to [Annexures 30 and 31](#)).

From the above-mentioned facts, it is clear that the alleged whistle-blower was an instrumental part of the process from inception to the point of supporting and preparing the relevant documents for approval of the proposed payment to Aveng. It is also clearly evident that the COO did not propose payment of R40 million to Aveng on his own accord. Rather, the COO ensured that due process according to Eskom requirements was followed, independent legal advice was obtained from ENS, and only when the matter was raised by the Zondo Commission, was the payment stopped as a precautionary measure.

E. Alleged Victimization, Nepotism and Corruption

(All applicable evidentiary documents for all the issues stated below are embedded in [Folder 1 Titled - Grievance Documentation](#))

1. Mark Chettiar (MC) acted in the position of Coal and Clean Technology Projects General Manager from 01 May 2018 reporting to Abram Masango, the previous Group Executive Group Capital (refer to [Annexures 1 and 2](#)).
2. Jan Oberholzer officially commenced work at Eskom as the Chief Operating Officer (COO) on 16 July 2018.

3. MC had acted in this position for 10 months from (May 2018 to February 2019), and was transferred into this position effective 01 January 2019 to create stability in this environment (refer to [Annexure 3](#)).
4. The General Executive Group Capital (Abram Masango), resigned at the end of October 2018, leaving this portfolio vacant. A decision was made (in conjunction with the then GCE, Phakamani Hadebe) not to fill this position and that the COO would in addition to his COO responsibilities, also manage this division to a) understand and deal with corruption and b) manage non-performance of project deliverables and c) the scaling down of new build activities.
5. The COO was duly given delegation to oversee this portfolio, and the General Managers within the Group Capital Division (GCD) including (MC) reported directly to the COO.
6. MC's project portfolio had significant non-performance challenges with the COO having regular telephonic discussions and face-to-face meetings with MC to advise and guide him in terms of the expectations and deliverables expected of this portfolio.
7. Two Senior Managers under MC's leadership, as well as organised labour, lodged grievances against MC due to his perceived lack of people management skills and more specifically on the appointments he made in his environment which were not aligned to Eskom's Equity plan (refer to [Annexures 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13](#)).
8. He also was found to have lied under oath at a formal disciplinary hearing (refer to [Annexure 12](#)).
9. The majority of the projects that MC was responsible for were running late with ongoing negative outcomes, resulting in significant risks to both the financial and operational performance of these projects (e.g. Camden Ash Dam, Majuba Rail Loadout and Ankerlig Transmission Koeberg Second Supply (ATKSS) power station projects) resulting in wasteful and unnecessary cost escalation.
10. This continued non-performance eventually led to the COO telling MC telephonically on 05 September 2019 (after another negative surprise at the Camden power station ash dam project resulting in the doubling of contractor cost from R 144 million to R 284 million as well as a commensurate time extension) that the performance of majority of the projects under his portfolio was not improving and asked him to go and think if he is '**cut out for this job**'. MC informed the COO the following day, 06 September 2019, that he was on sick leave.
11. Currently, as a direct result of poor project management and leadership on the Camden Ash facility project, Camden power station is shut down (average of 1 200 MW necessitating the usage of OCGT's where one OCGT is burning approximately R 650 000 of diesel per hour – a conservative estimate of more than R 1.2 billion since the shutdown) due to the safety risk with the ash dam – with numerous project delays and non-performance. Eskom could have avoided one stage of load shedding during the July 2020 week of load shedding. In addition, more than R 50 million has been spent the last 3 months transporting ash in order to ensure the safe use of the ash

dam to commence operations (another R 20 million over the next 4 weeks is envisaged).

12. Also due to poor project management and leadership on the Majuba Rail Coal Handling Facility Project at the Majuba power station (where Aveng (contractor) was involved), there are on average more than 1 200 trucks every day delivering coal to the station due to the fact that the Majuba Rail project is still not complete also due to ongoing project delays and non-performance – unnecessarily adding a cost of approximately R 300 000/day (more than R 60 million since December 2019), including a real risk of a R 120 million/month claim from Transnet as a result of underutilization of the railway line (currently in very challenging negotiations). In addition, various road accidents and fatalities have occurred due to the number of trucks on the road.
13. During the latter part of 2018, information surfaced that the Group 5 construction company was heading for Business Rescue. Eskom, at the time, had a contract with Group 5 as the main contractor for the multi-billion rand Ankerlig Transmission Koeberg Second Supply (ATKSS) project at Ankerlig. However, even with the reality of this significant risk, the portfolio and project leadership for some unknown reason did not take any action to deal with this risk.

The COO instructed MC to obtain external legal advice in amending the existing Group 5 contract paying the supplier of the gas turbines, General Electric (GE), directly in order to de-risk this significant financial and commercial portion of the contract by avoiding the inclusion of the gas turbines in the business rescue process – this issue caused tension due to the fact that MC professed not to understand why this was necessary, and procrastinated implementing decisions (refer to [Annexures 14 and 15](#)).

A contract amendment was concluded following and applying adherence to the stipulated governance processes in ensuring the corrective action is taken in managing and addressing this significant risk. However, this contract remained a challenge due to very poor performance and leadership.

14. Subsequently, Eskom's Industrial Relations Department (IR) informed the COO that MC had filed a Grievance against the COO dated the 13 September 2019 (refer to [Annexure 16](#)).
15. As evident from the Grievance dated 13 September 2019, the problem arose specifically when the COO advised MC that his projects were not performing as expected and asked him to think if he is **'cut out for this job'**. Some of the serious allegations in the grievance:
 - a. MC believed the COO was out of line by stating that his projects are not performing.
 - b. MC was put under pressure paying Aveng R 40 million.
 - c. The COO used the f-word.
 - d. The COO appointed his brother in law.

- e. MC insinuated that the COO has chosen to act as Group Executive Group Capital to promote corruption.
 - f. MC was confidentially issued with a contract amendment for Group 5 on the ATKSS project, which was only signed by the COO. MC claimed total disregard for governance and protocol and openly stated that he was never involved – he subsequently conceded at the start of the grievance hearing that this was false, and he withdrew the statement.
16. The then Acting GCE/ Eskom Board Chairman, Mr. Jabu Mabuza, instructed Eskom Legal & Compliance to appoint an external Senior Counsel to preside over the grievance procedure. Advocate Eric Mkhawane SC chaired the hearing on 17 October 2019.
17. MC made a number of unsubstantiated allegations in his grievance, of which he retracted one at the start of the Grievance hearing viz. (refer to section 7 of Adv. Eric Mkhawane’s Report in [Annexure 17](#)).
7. At the commencement of the meeting, Mr Chettiar withdrew a statement made on the desired outcome of the grievance because it was untrue. The statement reads as follows:
- “Another example is that I was issued – confidentially – with a contract amendment for the ATKSS project only signed by the COO for Group 5 in February 2019. I am not aware of such an amendment nor why only he signed it. I am hoping that this is a document that is not authentic, if it is then I am concerned about his disregard for governance and protocol. This must be investigated. I was never engaged on this amendment”.*
18. At the hearing on 17 October 2019, MC was afforded the opportunity to substantiate and provide proof on each of the allegations made in his grievance. With the exception of the COO using the f-word, MC could not prove any of the serious allegations he made in writing in his grievance against the COO.
- The COO accepted without any discussion that he used the f-word and apologized to MC in the presence of Adv. Eric Mkhawane and Masingita Rikhotso from Industrial Relations – MC accepted the apology. The COO once again apologised for the use of the f-word on 20 December 2019 during their performance discussion (refer to [Annexure 20](#)).
19. Advocate Eric Mkhawane gave his findings and recommendations on 31 October 2019 to the then Acting GCE / Eskom Board Chairman, Mr. Jabu Mabuza (refer to [Annexure 17](#)). MC accepted and signed the report by Adv. Eric Mkhawane (refer to [Annexure 18](#)).

20. It is important to draw attention particularly to section 11 of Adv. Eric Mkhawane's Report and his recommendation made in section 17 below (refer to [Annexure 17](#)).
11. Mr Chettiar, in reply agrees with the challenges put forth by Mr Oberholzer and he was also open to be moved if need be.
17. With regards to the challenges being experienced in Mr Chettiar's portfolio, there should be constant feedback and parties should free to explore different mechanisms so that the business performance is not adversely affected. Mr Chettiar has indicated willingness to engage and explore alternatives with regard to his role in the portfolio
21. During the discussion of the outcome and recommendations of the Grievance, the COO voiced his concerns and dissatisfaction to the then Acting GCE / Eskom Board Chairman, Mr Jabu Mabuza, on the allegations made by MC, including reputational damage.
22. The then Acting GCE / Eskom Board Chairman, Mr. Jabu Mabuza, agreed that there should be consequence management and instructed the Group Executive Human Resources (Ms. Elsie Pule) to institute a disciplinary hearing against MC – a charge sheet was prepared by the Group Executive Human Resources (Ms. Elsie Pule).
23. Despite the above, the COO made himself available and continued to work with MC, and engaged him further on his project portfolio non-performance. MC and the COO also discussed the fact there was a **breakdown in the trust relationship**, to which MC also acknowledged and agreed (refer to [Annexure 20](#) as well as Adv. Cassim's Report in section 29 supporting independently that the relationship of trust required for continued work performance was broken in [Annexure 32](#)).

29. The trust and working relationship between Oberholzer and Chettiar is broken. There is no question of this fact. Chettiar used emotive language in formulating his complaint against Oberholzer and accused Oberholzer of dishonesty. In these circumstances, it is understandable that Oberholzer sought to take disciplinary steps against Chettiar in the face of Oberholzer's belief that he was wrongly (if not falsely) accused of dishonesty. It is also understandable that Oberholzer sought to take steps to move Chettiar to a

division outside operations. I find no wrongdoing in the process followed by Oberholzer in this regard.

24. A performance discussion was held on 20 December 2019 between MC and the COO, and once again, MC was advised of his project portfolio non-performance and the significant impact and risk to the organisation and the country (refer to [Annexures 19 and 20](#)).
25. During the performance discussion on 20 December 2019, alternative work options for MC were discussed – and he was given an opportunity to come forward with proposals – however, nothing was forthcoming from MC (refer to [Annexure 20](#)).
26. Three more meetings, viz. (31 December 2019, 03 January 2020 and 16 January 2020) were held with MC together with the Group Executive Human Resources (Ms. Elsie Pule) to discuss alternative options and assist and guide MC on Eskom's process of accommodating him elsewhere in the business.
27. At the first meeting on 31 December 2019, MC tabled an option of leaving the organisation with two years' full pay – this was not accepted by Eskom as being outside of policy. The Group Executive Human Resources (Ms. Elsie Pule) tabled the option to MC of joining the Human Resources Division to assist in remodelling the Eskom Academy of Learning (EAL), cognisant of MC's previous background, specifically in the training and development space, and stating that the move would not affect his current grading or package (refer to MC CV in [Annexure 21](#)).

28. At the second meeting, MC tabled the option of joining the Finance Division. The COO committed to discuss MC's proposal with the Chief Financial Officer (CFO), Calib Cassim – this fact can be confirmed with the CFO. The Group Executive Human Resources (Ms Elsie Pule) again tabled the option of reassignment to Human Resources to MC.
29. At the third meeting, MC was informed that the CFO confirmed that there is no opportunity within the Finance Division and that the reassignment to Human Resources was considered the solution. Based on the aforementioned, the COO informed MC that the reassignment to Human Resources would be effective from 01 February 2020 – this was in the presence of Group Executive Human Resources (Ms. Elsie Pule).
30. The following issues were considered between the Group Executive Human Resources (Ms. Elsie Pule) and the COO:
 - MC's environment was fraught with people issues – two Senior Managers reporting to MC, as well as organised labour (NUM and NUMSA) had filed grievances against him, and one of the Snr Managers had taken his case to the CCMA.
 - Despite several attempts in facilitating meetings between MC and organised labour, organised labour continued to be unhappy with MC due to his lack of people management skills and most specifically on the appointments that were made in his environment that were not aligned to Eskom's Equity plan.
 - The situation was becoming untenable, in addition to the non-performance of MC's projects, an urgent decision had to be made to ensure stability, sustainability and continuity of the department and the wellbeing of MC.
 - After much thought and deliberations and considering the best interest of Eskom, MC was accommodated as a General Manager in Human Resources, reporting directly to the Group Executive Human Resources (Ms. Elsie Pule) with effect from 01 February 2020 (it must be noted that this lateral move did not impact his grading or package).
31. On 20 January 2020, MC was served with a formal notice to attend a disciplinary hearing emanating from the baseless unproven allegations in his grievance dated 13 September 2019 (refer to [Annexure 22](#)). The formal notice clearly stated that 'If found guilty, Eskom will, given the seriousness of the misconduct, submit that a sanction of dismissal be imposed'.
32. On 29 January 2020, MC sent an email informing the COO that he was booked off sick with immediate effect until approximately 24 February 2020 (refer to [Annexure 23](#)).
33. On 30 January 2020, in consultation with the Group Executive Human Resources (Ms. Elsie Pule), a formal letter was sent to MC concluding the discussion on his redeployment to the Human Resources Division with effect from 01 February 2020 (refer to [Annexure 24](#)).
34. Naresh Singh, General Manager Africa Strategy was seconded to the Coal & Clean Technology Portfolio with effect from 01 February 2020 to ensure stability and

continuity of service in this department and to manage and oversee the execution of the critical projects portfolio (refer to [Annexure 25](#)).

35. During his sick leave MC filed a case with the CCMA (18 February 2020) claiming victimisation – the organisation was informed the date for the CCMA was set for 13 March 2020 (refer to [Annexure 26](#)).
36. MC sent another sick note after 24 February 2020 indicating that he had been booked off again until 11 March 2020. His CCMA case was heard on 13 March 2020 (refer to [Annexure 27 and 28](#)).
37. MC communicated with his new manager, the Group Executive Human Resources (Ms. Elsie Pule) on 16 March 2020, requesting details regarding his new portfolio, the HR structure, his office space, his scope of work, etc. By virtue of communicating with his new manager and asking details as mentioned above, it is a clear indication that he accepted his transfer.

The Group Executive Human Resources (Ms Elsie Pule) provided MC with the relevant information and shared in writing her expectations in terms of outputs, including specific time frames to deliver these objectives.

MC then rejected the office space offered by the Group Executive Human Resources (Ms Elsie Pule) later in March 2020 and indicated that he would work from home. Thereafter MC indicated that he would not accept the position in Human Resources and would await the outcome of the CCMA (refer to [Annexures 29, 30 and 31](#)).

38. Since the last week of January 2020 to date (8 months), MC has not delivered or complied with any of the work instructions given to him by the Group Executive Human Resources (Ms. Elsie Pule) to deliver outputs on his new portfolio, yet he continues to receive his full salary with benefits as a General Manager.
39. Eskom received a letter from Corruption Watch on allegations against the COO for alleged corruption and victimisation just before 13 March 2020. On 15 March 2020, the media covered the allegations.
40. The COO was also accused of nepotism by appointing his brother in law, Gregory Jacobs, at the ATKSS project at Atlantis in the Western Cape. MC was unable to substantiate this during the hearing chaired by Adv. Eric Mkhawane on 17 October 2019. Similarly, Adv. Cassim's Report in section 30 supports the fact that the proper process was followed (refer to [Annexure 32](#)).

Available documentation proves that a transparent process was followed with regard to the secondment of Mr Jacobs to the ATKSS project from 01 September 2019 until 31 January 2022 between the appropriate managers without any involvement from the COO (refer to [Annexures 34, 35, 36, 37, 38, 39, 40 and 41](#)). The Senior Manager, Mr Johan Sauermann, provided an affidavit to this effect (refer to [Annexure 42](#)).

Furthermore, the COO formally stated upfront his conflict of interest when a request for the appointment of Mr. Jacobs at the ATKSS project was tabled on 20 May 2020 (refer to [Annexures 43 and 44](#)).

41. Eskom Board appointed a Senior Counsel, Advocate Cassim SC, to investigate the allegations against the COO late March 2020. It must be noted that this was the second round of investigations, notwithstanding the financial implications and cost to Eskom for some of the same allegations as per MC's grievance.
42. On 15 April 2020, the COO was cleared of allegations of corruption, victimisation, nepotism and potential conflict of interest as per Advocate Cassim's reports (refer to [Annexures 32 and 33](#)).
43. The allegations MC made on the Aveng matter in his grievance are still pending the outcome of a claim lodged by Aveng against Eskom. It should, however, be pointed out that:
 - a. Adv. Cassim's investigation terms of reference (TOR) did not include the pursuance the Aveng issue.
 - b. Adv. Cassim's report was published without having provided the COO any opportunity to be interviewed to present his version of events.
 - c. Having not been granted access to the Zondo Commission report may have prejudiced the COO.
 - d. Due to continued media attacks and death threats made to the COO and his family, the COO called an urgent meeting on 24 July 2020 with the Eskom GCE, André de Ruyter, and the Eskom Acting Group Executive, Legal & Compliance, Bartlett Hewu, to understand first-hand a) the terms of reference (TOR) given to Adv. Cassim and b) the findings of Zondo Commission report.

The Zondo Commission report was made available to the COO at the meeting. It must be stated that the report does not implicate the COO but states that the COO has followed due governance process (refer to the Zondo Commission Report in Section D [Folder 2 Titled – Aveng Documentation: Annexure 25](#)).

A further MS Teams meeting was held on 27 July 2020 with the Eskom GCE, André de Ruyter, and the Eskom Acting Group Executive, Legal & Compliance, Bartlett Hewu, and Adv. Cassim to air the COO's contention on the Aveng issue. The following transpired from this meeting:

- a. Adv. Cassim conceded that the Aveng matter was not part of the terms of reference (TOR);
- b. Adv. Cassim conceded that the COO was not provided the opportunity to present any facts on the Aveng matter;
- c. Adv. Cassim conceded that he mistakenly assumed that the grievance hearing by Adv. Eric Mkhawane was not investigated and concluded thoroughly while it was pointed out to him that it in fact was;
- d. Adv. Cassim stated that his report was taken out of context and made into a political issue;

- e. Adv. Cassim stated that he wanted to issue a statement given that his report was taken out of context but decided against it due to possible further negative publicity, and
- f. Adv. Cassim apologised four times during the conversation for the reputational damage to the COO due to his incomplete and biased report related to the Aveng issue.

CONCLUSIONS AND FINDINGS

With regard to the questions posed to the Board by the Minister of Public Enterprises with reference to allegations against the COO, the investigation conducted by the Group Chief Executive finds as follows:

1. The COO did in fact properly declare his interests in accordance with the relevant Eskom policy.
2. While he maintained and declared interests in Stefanutti Stocks by virtue of his shareholding, he did not in any way act in a manner that would suggest that he has sought to benefit from his position by attempting to influence Eskom's stance towards Stefanutti Stocks. On the contrary, through his personal involvement of collaborating with Bowmans and the SIU, supporting and pursuing claims against Stefanutti Stocks and his failure to trade in the shares, even while in possession of privileged knowledge that he must have known would have a negative impact on the value of the shares, he has demonstrated an unbiased and even-handed approach to representing Eskom's best interests, to the point where largely, as a result of his own personal actions, the value of his shareholding was reduced to insignificance.
3. The proposed settlement amount of R40 million to conclude a claim by Aveng was arrived at through an extensive and proper governance process in Eskom, including obtaining legal advice from external attorneys corroborating and supporting the payment of the claim in full and final settlement. No malfeasance of any nature whatsoever was found or suspected with regard to the actions of the COO in this regard. While the Cassim report did recommend a disciplinary process to be initiated in order to enable a proper ventilation of this issue to be determined in a disciplinary hearing, it must be noted that nowhere in the report is there an inference of instituting a disciplinary hearing specifically against the COO. This must be read in conjunction with point 43 in Section E in respect of the formal meeting held on 27 July 2020 with the Eskom GCE, André de Ruyter, and the Eskom Acting Group Executive, Legal & Compliance, Bartlett Hewu, and Adv. Cassim to air the COO's contention on the Aveng issue. In hindsight, the actions of the COO were rational and commercial to settle a claim and avoid protracted legal action, which has now ensued owing to the evidence of the alleged whistle-blower.
4. While the COO was initially involved ex officio in the award of a contract to Black and Veatch, the major increases in the value of the contract occurred during the period when he was not in the employ of Eskom. The very substantial increases in the value of the Black and Veatch contract are clear grounds for further investigation. However,

the evidence considered in this investigation does not support taking any action against the COO with regard to the Black and Veatch contract.

Based on the evidence presented in this report, it is recommended that the Board does not institute disciplinary proceedings against the COO. It is apparent from the sequence of events emanating from the documentation that an underperforming employee, when held to account for significant performance issues in his area of responsibility, sought to portray himself as a victimised whistle-blower, presumably in order to prolong the period of his employment. The alleged whistle-blower has in the process inflicted substantial reputational damage on the COO, with his allegations not corroborated by the facts or evidence.

The present report is the third investigation into the alleged actions of the COO as presented by Mr Chettiar. None of the investigations found any substance to the allegations of wrongdoing as put forward by Mr Chettiar. It is recommended that the Board endorses the COO's actions as having been fair, transparent, procedural and professional in upholding and fulfilling his contractual mandate in serving the interests of his employer Eskom, and that note is taken of an emerging pattern of underperformers to style themselves as whistle-blowers when called to account, a trend that is entirely at odds with the desired high-performance culture that Eskom is seeking to inculcate in its employees.



A M de Ruyter
GROUP CHIEF EXECUTIVE
Eskom Holdings SOC Limited

24 August 2020