



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE DIRECTOR-GENERAL

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Ms Daphne Rantho

Chairperson

Portfolio Committee on Public Enterprises

Parliament

Cape Town

8000

Dear Madam,

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

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

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

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

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

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

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

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

Yours sincerely

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

Lionel October

Director-General

Date: 16 February 2018