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PROCLAMATION

by the

President of the Republic of South Africa

No. R. 2, 2012

SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996 (ACT NO. 74 OF 1996): REFERRAL OF MATTERS TO EXISTING SPECIAL INVESTIGATING UNIT AND SPECIAL TRIBUNAL

WHEREAS allegations as contemplated in section 2(2) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996) (hereinafter referred to as the "Act"), have been made in respect of the affairs of Eskom Holdings Limited (hereinafter referred to as "Eskom");

AND WHEREAS Eskom suffered losses that may be recovered;

AND WHEREAS I deem it necessary that the said allegations should be investigated and justiciable civil disputes emanating from such investigation should be adjudicated upon;

NOW, THEREFORE, I hereby, under section 2(1) of the Act, refer the matters mentioned in the Schedule in respect of Eskom for investigation to the Special Investigating Unit established by Proclamation No. R. 118 of 31 July 2001 and determine that, for the purposes of the investigation of those matters, the terms of reference of the Special Investigating Unit are to investigate as contemplated in the Act, any -

(a) serious maladministration in connection with the affairs of Eskom;
(b) improper or unlawful conduct by board members, officials and/or employees of Eskom;
(c) unlawful appropriation or expenditure of public money or property;
(d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;
(e) intentional or negligent loss of public money or damage to public property;
(f) offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, and which offences were committed in connection with the affairs of Eskom; or
(g) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof,

which have taken place between 1 January 2006 and the date of publication of this Proclamation or which took place prior to 1 January 2006 or after the date of publication of this Proclamation, which are relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or contracts investigated under authority of this Proclamation, and to exercise or perform all the functions and powers assigned to or conferred upon the said Special Investigating Unit by the Act, including recovery of any losses suffered by Eskom, in relation to the said matters in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Fourteenth day of December Two thousand and eleven.

J G Zuma
President

By Order of the President-in-Cabinet:

J T Radebe
Minister of the Cabinet

SCHEDULE

1. The procurement of, or contracting for coal supplies and coal transportation services by or on behalf of Eskom and payments made in respect thereof in a manner that was -

(a) not fair, competitive, transparent, equitable or cost-effective;

(b) contrary to applicable -

  (i) legislation;

  (ii) manuals, guidelines, practice notes or instructions issued by the National Treasury; or

  (iii) manuals, codes, guidelines, policies, procedures, prescripts, instructions or practices of or applicable to Eskom,

and related irregular or fruitless and wasteful expenditure incurred or losses suffered by Eskom.

2. The procurement of, or contracting for helicopter services for the Eastern Cape region by or on behalf of Eskom and payments made in respect thereof in a manner that was -

(a) not fair, competitive, transparent, equitable or cost-effective;

(b) contrary to applicable -

  (i) legislation;

  (ii) manuals, guidelines, practice notes or instructions issued by the National Treasury; or

  (iii) manuals, codes, guidelines, policies, procedures, prescripts, instructions or practices of or applicable to Eskom; or

(c) conducted or facilitated by or through the intervention of board members, officials or employees of Eskom with undeclared or unauthorised conflicts of interest,

and related irregular or fruitless and wasteful expenditure incurred or losses suffered by Eskom.

3. Any undisclosed or unauthorised interests which the board members, officials or employees of Eskom may have had in contractors, suppliers or service providers bidding for work or doing business with Eskom or to whom contracts were awarded by Eskom, contrary to applicable -

(a) legislation;

(b) manuals, guidelines, practice notes or instructions issued by the National Treasury;

(c) manuals, codes, guidelines, policies, procedures, prescripts, instructions or practices of or applicable to Eskom or Eskom's board members, officials or employees,

and the extent of any actual or potential benefits derived directly or indirectly by Eskom's board members, officials or employees from such undisclosed or unauthorised interests.

4. Maladministration in connection with the affairs of Eskom in relation to -

(a) the incorrect blending of different grades of coal to fuel its coal burning power stations;

(b) the payment for, or acceptance by Eskom, of coal of inferior quality than the coal that had been contracted for;

(c) the procurement of, or contracting for work, goods or services for fencing in excess of the need for such work, goods or services;

(d) the failure to safeguard fencing material belonging to Eskom or in respect of which Eskom carried the risk of loss or damage; or

(e) payments made for the blending of coal, for coal or for fencing that were not due or payable,

and any related losses that Eskom suffered.

PROKLAMASIE

van die

President van die Republiek van Suid-Afrika

No. R. 2, 2012

WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996 (WET NO. 74 VAN 1996): VERWYSING VAN AANGELEENTHEDE NA BESTAANDE SPESIALE ONDERSOEKEENHEID EN SPESIALE TRIBUNAAL

AANGESIEN bewerings soos beoog in artikel 2(2) van die Wet op Spesiale Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as die "Wet"), gemaak is in verband met die aangeleenthede van "Eskom Holdings" Beperk (hierna na verwys as "Eskom");

EN AANGESIEN Eskom verliese gely het wat verhaal kan word;

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en beregbare siviele geskille voortspruitend uit sodanige ondersoek bereg moet word;

DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, die aangeleenthede in die Bylae vermeld, ten opsigte van Eskom vir ondersoek na die Spesiale Ondersoekeenheid ingestel deur Proklamasie No. R. 118 van 31 Julie 2001 en bepaal dat, vir die doeleindes van die ondersoek van daardie aangeleenthede, die opdrag van die Spesiale Ondersoekeenheid is om soos beoog in die Wet, ondersoek te doen na enige -

(a) ernstige wanadministrasie in verband met die aangeleenthede van Eskom;
(b) onbehoorlike of onregmatige optrede deur raadslede, beamptes en/of werknemers van Eskom;
(c) onregmatige bewilliging of besteding van publieke geld of eiendom;
(d) onwettige, onreëlmatige of nie-goedgekeurde verkrygende handeling, transaksie, maatreël of praktyk wat op Staatseiendom betrekking het;
(e) opsetlike of nalatige verlies van publieke geld of skade aan publieke eiendom;
(f) misdryf bedoel in Dele 1 tot 4, of artikel 17, 20 of 21 (vir sover dit op voornoemde misdrywe betrekking het) van Hoofstuk 2 van die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004, en welke misdrywe gepleeg is in verband met die sake van Eskom; of
(g) onwettige of onbehoorlike optrede deur enige persoon wat ernstige benadeling vir die belange van die publiek of enige kategorie daarvan veroorsaak het of kan veroorsaak,

wat plaasgevind het tussen 1 Januarie 2006 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2006 of na die datum van publikasie van hierdie Proklamasie, wat relevant is tot, verband hou met, insidenteel of bykomstig is tot, die aangeleenthede vermeld in die Bylae of wat dieselfde persone, entiteite of kontrakte betrek wat ondersoek word kragtens die volmag verleen deur hierdie Proklamasie, en om al die werksaamhede en bevoegdhede wat deur die Wet aan die gemelde Spesiale Ondersoekeenheid toegewys of opgedra is, uit te oefen of te verrig in verband met die genoemde aangeleenthede in die Bylae, insluitend die verhaal van enige verliese wat deur Eskom gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die Veertiende dag van Desember Twee duisend-en-elf.

J G Zuma
President

Op las van die President-in-Kabinet:

J T Radebe
Minister van die Kabinet

BYLAE

1. Die aanskaffing van, of kontraktering vir steenkool verskaffing en steenkoolvervoerdienste deur of namens Eskom en betalings wat in verband daarmee gemaak is op 'n wyse wat -
(a) nie regverdig, mededingend, deursigtig, billik of koste-effektief was nie;
(b) strydig was met toepaslike -
(i) wetgewing;
(ii) handleidings, riglyne, praktyknotas of instruksies deur die Nasionale Tesourie uitgevaardig; of
(iii) handleidings, kodes, riglyne, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op Eskom van toepassing is,
en verwante onreëlmatige of vrugtelose en verkwiste uitgawes opgeloop of verliese wat deur Eskom gely is.

2. Die aanskaffing van, of kontraktering vir helikopter dienste vir die Oos-Kaap streek deur of namens Eskom en betalings wat in verband daarmee gemaak is op 'n wyse wat -
(a) nie regverdig, mededingend, deursigtig, billik of koste-effektief was nie;
(b) strydig was met toepaslike -
(i) wetgewing;
(ii) handleidings, riglyne, praktyknotas of instruksies wat deur die Nasionale Tesourie uitgevaardig is; of
(iii) handleidings, kodes, riglyne, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op Eskom van toepassing is; of
(c) gedoen of gefasiliteer was deur of deur die ingryping van raadslede, beamptes of werknemers van Eskom met ongeopenbaarde of ongemagtigde konflikte van belang,
en verwante onreëlmatige of vrugtelose en verkwiste uitgawes opgeloop of verliese wat deur Eskom gely is.

3. Enige ongeopenbaarde of ongemagtigde belange wat Eskom se raadslede, beamptes of werknemers kon gehad het in kontrakteurs, verskaffers of diensverskaffers wat 'n bod gemaak het vir werk, of besigheid met Eskom gedoen het of aan wie kontrakte deur Eskom toegeken was, strydig met toepaslike -
(a) wetgewing;
(b) handleidings, riglyne, praktyknotas of instruksies wat deur die Nasionale Tesourie uitgevaardig is; of
(c) handleidings, kodes, riglyne, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op Eskom, of Eskom se raadslede, beamptes of werknemers van toepassing is,
en die omvang van enige werklike of potensiële voordeel wat direk of indirek ontvang is deur Eskom se raadslede, beamptes of werknemers uit sodanige ongeopenbaarde of ongemagtigde belang.

4. Wanadministrasie in verband met die sake van Eskom ten opsigte van -
(a) die foutiewe vermenging van verskillende grade van steenkool om dié se steenkoolverbrandingstasies van brandstof te voorsien;
(b) die betaling vir, of aanvaarding deur Eskom, van steenkool van 'n laer kwaliteit as die steenkool waarvoor gekontrakteer is;
(c) die aanskaffing van of kontraktering vir werk, goedere of dienste vir omheining in oormaat van die behoefte vir sodanige werk, goedere of dienste;
(d) die versuim om omheiningsmateriaal wat aan Eskom behoort of ten opsigte waarvan Eskom die risko van verlies of skade gedra het, te beveilig;
(e) betalings wat gemaak was vir die vermenging van steenkool, vir steenkool of vir omheining wat nie opeisbaar of betaalbaar was nie,
en enige verwante verliese wat deur Eskom gely is.

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