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HORAK

18

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ORIGINAL

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

In the matter between: CASE NO: 83581/2017

RESILIENT PROPERTIES PROPRIETARY LIMITED	First Applicant
CHANGING TIDES 91 PROPRIETARY LIMITED	Second Applicant
RETRACTION PROPS 7 PROPRIETARY LIMITED	Third Applicant
MOGWELE TRADING 278 PROPRIETARY LIMITED	Fourth Applicant

and

ESKOM HOLDINGS SOC LTD	First Respondent
EMALAHLENI MUNICIPALITY	Second Respondent
MEC: CO-OPERATIVE GOVERNANCE & TRADITIONAL AFFAIRS (MPUMALANGA)	Third Respondent
MINISTER OF ENERGY	Fourth Respondent
NATIONAL ENERGY REGULATOR OF SOUTH AFRICA	Fifth Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001
2017 -12- 08
L. W. MOTAU
GRIFFIER VAN DIE HOË HOF VAN SUID AFRIKA GAUTENG AFDELING, PRETORIA

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12 DECEMBER 2017

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DATED at **PRETORIA** on this **8th** day of **DECEMBER 2017**

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TO: THE REGISTRAR OF THE HIGH COURT
PRETORIA

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REGISTRAR OF THE HIGH COURT OF
SOUTH AFRICA GAUTENG DIVISION, PRETORIA
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2017 -12- 08
J. PAGEL
REGISTRARS CLERK
GRIFFIER VAN DIE HOË HOF VAN
SUID-AFRIKA GAUTENG AFDELING, PRETORIA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

83581/17

CASE NO: /2017

In the matter between:

RESILIENT PROPERTIES PROPRIETARY LIMITED	First Applicant
CHANGING TIDES 91 PROPRIETARY LIMITED	Second Applicant
RETRACTION PROPS 7 PROPRIETARY LIMITED	Third Applicant
MOGWELE TRADING 278 PROPRIETARY LIMITED	Fourth Applicant

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ESKOM HOLDINGS SOC LTD	First Respondent
EMALAHLENI MUNICIPALITY	Second Respondent
MEC: CO-OPERATIVE GOVERNANCE & TRADITIONAL AFFAIRS (MPUMALANGA)	Third Respondent
MINISTER OF ENERGY	Fourth Respondent
NATIONAL ENERGY REGULATOR OF SOUTH AFRICA	Fifth Respondent

NOTICE OF MOTION

PART A

BE PLEASED TO TAKE NOTICE that the abovenamed applicants intend to apply to the above Honourable Court on **Tuesday 12 December 2017** at **10h00** or so soon thereafter as counsel for the applicants may be heard for an order in the following terms:

a) That the Applicants' non-compliance with the Rules of Court relating to service and time periods be condoned and that the relief sought under **PART A** be heard as one of urgency in accordance with Rule 6(12) of the Uniform Rules of Court;

b) That for so long as the Applicants make full payment of all amounts due to the second respondent ("the Emalahleni Municipality") in respect of electricity supply to the Applicants' operations in Emalahleni and pending the outcome of the relief sought under **Part B** of this notice of motion,

(i) the first respondent ("Eskom") is interdicted and restrained from implementing its decision ("the interruption decision") to interrupt the bulk electricity supply to the entire Emalahleni Municipality, and

(ii) until such time as the Emalahleni Municipality has fully paid off its arrears to Eskom, the applicants are authorised to discharge the debts that they incur to the Emalahleni Municipality in respect of the ongoing supply of electricity to their operations within the Emalahleni Municipality by making payment of the amount of such debts directly to Eskom and furnishing the Emalahleni Municipality with proof of such payments to Eskom,

c) Granting the Applicants leave to supplement their founding affidavit to make out their case for certification of the class that they seek in relation to the relief claimed in Part B of this application when they supplement their founding papers in Part B in terms of Rule 53;

d) That any Respondents that oppose this application are directed jointly and severally to pay the Applicants' cost of suit;

e) That the Applicants are granted further and/or alternative relief.

TAKE NOTICE FURTHER that the Applicants have appointed their attorneys at the address listed below as the address at which they will receive service and notice in this application.

TAKE NOTICE FURTHER THAT if you intend to oppose PART A of the relief sought, you are required: -

a) To notify Applicants' attorneys and the office of the Deputy Judge President of this above Honourable Court in writing on/or before 10h00 on Monday 11 December 2017;

b) In the notice referred to in paragraph (a) above, appoint an address in terms of Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings;

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c) Deliver your opposing affidavits (if any) by no later than 10h00 on Monday 11 December 2017 at the said address of the applicant's attorneys and the Office of the Deputy Judge President of this above Honourable Court; and

d) **TAKE NOTICE FURTHER** that the Applicants will serve and file their replying affidavits and heads of argument on or before 9h00 on Tuesday 12 December 2017.

PART B

TAKE NOTICE FURTHER that the Applicants intends to apply to the above Honourable Court on a date to be arranged with the Registrar of this Honourable Court for an order in the following terms:

1. That leave be granted to the applicants to claim the relief claimed in paragraphs 3 to 7 below as a class action in terms of section 38(c) of the Constitution as representatives of all members of the class of electricity consumers in Emalahleni who

    a. were not in arrears with their electricity accounts to the second respondent as of the date of institution of this application, and

    b. prior to the date of hearing of Part B of the application, have signed a written document indicating their intention to join the class action ("the class").

2. That the applicants are permitted to act as representative of all the members of the class in the class action for the relief claimed in paragraphs 3 to 7 below.

3. Declaring that the interruption decision is unconstitutional and invalid;

4. Reviewing and setting aside the interruption decision;

5. To the extent that it is necessary for the relief claimed by the Applicants in prayers 3 and 4 above, declaring that section 21(5) of the Electricity Regulation Act 4 of 2006 is inconsistent with the Constitution and invalid.

6. Declaring that

    a. the failure of the Emalahleni Municipality to pay its arrear debt to Eskom is unconstitutional and invalid

    b. until such time as the Emalahleni Municipality has fully paid off its arrears to Eskom, the Applicants and all members of the class are authorised to discharge the debts that they incur to the Emalahleni Municipality in respect of the ongoing supply of electricity to them by making payment of the amount of such debts directly to Eskom and furnishing the Emalahleni Municipality with proof of such payments to Eskom,

7. Interdicting Eskom from disconnecting the electricity supply to the Emalahleni Municipality for the purpose of compelling the Emalahleni Municipality to pay its arrear debts to Eskom.

8. Ordering Eskom and the Emalahleni Municipality jointly and severally to pay the Applicants' costs of suit; and

9. Granting the Applicants granted further and/or alternative relief.

TAKE NOTICE FURTHER THAT

a. Eskom is called upon to show cause why the interruption decision should not be reviewed and set aside;

b. Eskom is called upon to despatch to the registrar of this court within 15 days after receipt of this application the record of the reasons for the interruption decision;

TAKE NOTICE FURTHER that if you intend to oppose **PART B** of the relief sought, you are required:-

a) To notify applicant's attorneys and the Registrar of this above Honourable Court within 15 days from date of receipt of this notice of motion or any amendment thereof in terms of Rule 53(4);

b) In the notice referred to in paragraph (a) above, to appoint an address in terms of Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings; and

c) Within 30 days after the expiry of the time referred to in Rule 53(4), to deliver your answering affidavits.

TAKE NOTICE FURTHER THAT if no notice of intention to oppose is received as set out above the relief sought under **PART B** of this notice will be enrolled for hearing on a date to be arranged with the Registrar

TAKE NOTICE FURTHER THAT the accompanying affidavit attached to this notice deposed to by SANDRA LEE VAN DER WALT together with the annexures thereto, will be used in support of the relief claimed in Parts A and B.

DATED at **PRETORIA** on this **8th** day of **DECEMBER 2017**

Kokinis Inc
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c/o Couzyn Hertzog, Horak
321 Middel Street
Brooklyn, Pretoria
Ref. Mr D Nel/md/KOK9/0272
Tel. 012 460 5090

TO: **THE REGISTRAR OF THE HIGH COURT**
PRETORIA

AND TO: **ESKOM HOLDINGS SOC LTD**
First Respondent
Megawatt Park
Maxwell Drive
Sunninghill Extension 3
SANDTON

SERVICE PER SHERIFF

AND TO: **EMALAHLENI MUNICIPALITY**
Second Respondent
Municipal Offices
Mandela Street
EMALAHLENI

SERVICE PER SHERIFF

AND TO: **MEC: CO-OPERATIVE GOVERNANCE & TRADITIONAL AFFAIRS (MPUMALANGA)**
Third Respondent
c/o State Attorney, Pretoria
SALU Building
316 Thabo Sehume Street
PRETORIA

SERVICE PER SHERIFF

AND TO: **MINISTER OF ENERGY**
Fourth Respondent
c/o State Attorney, Pretoria
SALU Building
316 Thabo Sehume Street
PRETORIA

SERVICE PER SHERIFF

AND TO: **NATIONAL ENERGY REGULATOR OF SOUTH AFRICA**
Fifth Respondent
526 Madiba Street
Arcadia
PRETORIA

SERVICE PER SHERIFF

10

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: /2017

In the matter between:

RESILIENT PROPERTIES PROPRIETARY LIMITED	First Applicant
CHANGING TIDES 91 PROPRIETARY LIMITED	Second Applicant
RETRACTION PROPS 7 PROPRIETARY LIMITED	Third Applicant
MOGWELE TRADING 278 PROPRIETARY LIMITED	Fourth Applicant

And

ESKOM HOLDINGS SOC LIMITED	First Respondent
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MINISTER OF ENERGY	Fourth Respondent
NATIONAL ENERGY REGULATOR OF SOUTH AFRICA	Fifth Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION PRETORIA PRIVATE BAG/PRIVAATSAK PRETORIA 0001 2017 -12- 08 GRIFFIER VAN DIE HOË HOF VAN SUID AFRIKA GAUTENG AFDELING, PRETORIA

FOUNDING AFFIDAVIT

I, the undersigned,

SANDRA LEE VAN DER WALT

do hereby make oath and say that:

1. I am an adult female manager employed by the first applicant, which has it principal office situated at 4th Floor, Rivonia Village, Rivonia Boulevard, Rivonia 2191.

2. I am duly authorised to depose to this affidavit on behalf of the applicants.

3. The facts herein contained are within my personal knowledge, save where it otherwise appears from the context, and to the best of my knowledge and belief its contents are both true and correct.

THE PARTIES

4. The first applicant is **RESILIENT PROPERTIES PROPRIETARY LIMITED**, a private company with limited liability duly registered and incorporated in terms of the company laws of South Africa with registration number 2002/016890/07. The first applicant has its offices at 4th Floor, Rivonia Village, Rivonia Boulevard, Rivonia 2191.

5. The second applicant is Changing Tides 91 Proprietary Limited, a private company with limited liability duly registered and incorporated in terms of the company laws of South Africa with registration number 2001/012757/07. The second applicant has its offices at Morningside Shopping Centre, cnr Rivonia Road and Outspan Road, Morningside, Johannesburg.

6. The third applicant is Retraction Props 7 Proprietary Limited, a private company with limited liability duly registered and incorporated in terms of the company laws of South Africa with registration number 2005/034956/07. The third applicant has its offices at 17 2nd Floor, 66 Park Lane, Sandown, Sandton.

7. The fourth applicant is Mogwele Trading 278 Proprietary Limited, a private company with limited liability duly registered and incorporated in terms of the company laws of South Africa with registration number 2005/005957/07. The fourth applicant has its offices at 543 Flemington Street, Kyalami Estate.

8. The applicants are the co-owners of immovable properties on which they operate a retail rental strip ("a mall') known as the Highveld Mall ("the Highveld Mall"). A building on the properties houses the mall. It is situated in the municipal service area of the second respondent and on erven described as Erven 1715 and 1716 Del Judor Extension 27 Township, registration division J.S., province of Mpumalanga. I attach current Windeed searches in respect of the two erven as **Annexures FA1.1 and 1.2**.

9. I am authorised to depose to this founding affidavit on behalf of all the applicants, all of whom support this application. I shall refer to the applicants collectively as "Highveld Mall".

10. Highveld Mall brings this application

10.1. In its own interest

10.2. In the public interest, and

10.3. On behalf of the class of electricity consumers in Emalahleni who, as of the date of issue of this application, were up to date with their electricity account payments to the municipality ("the affected class").

11. The first respondent is **ESKOM HOLDINGS SOC LIMITED** ("**ESKOM**"), a state-owned company duly incorporated in accordance with the company laws of the Republic of South Africa, with its principal place of business situated at Megawatt Park, Maxwell Drive, Sunninghill, Extension 3, Sandton, Gauteng.

12. The second respondent is the **EMALAHLENI MUNICIPALITY** ("**EMALAHLENI**") a local municipality duly established in terms of the Local Government Municipal Structures Act no 117 of 1998 (as amended), with its principal office situated at Municipal Offices, Mandela Street, eMalahleni.

13. The third respondent is the **MEC: CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS MPUMLANAGA N.O., ("the MEC")** acting in her official capacity as appointed Member of the Executive Committee of the Department of Co-operative Governance and Traditional Affairs for the Mpumalanga Province and cited care of the State Attorney, Pretoria at SALU

Building, 316 Thabo Sehume Street, Pretoria. The MEC is cited by virtue of the interest it may have in the relief claimed by Highveld Mall.

14. The fourth respondent is the **MINISTER OF ENERGY ("the Minister")** acting in his official capacity as Cabinet Minister responsible for the administration of the Electricity Regulation Act 4 of 2006 ("the ERA"), and cited care of the State Attorney, Pretoria at SALU Building, 316 Thabo Sehume Street, Pretoria. The Minister is cited as the Executive Authority responsible for the administration of section 21(5) of the ERA the constitutionality of which is conditionally challenged in Part B of this application. No costs order is sought against the Minister in respect of matters other than the conditional constitutional challenge to section 21(5) of the ERA unless the Minister opposes the other relief sought by Highveld Mall.

15. The fifth respondent is the **NATIONAL ENERGY REGULATOR OF SOUTH AFRICA ("NERSA")** of 526 Madiba St, Arcadia, Pretoria. NERSA is cited by virtue of the interest it may have in the relief claimed by Highveld Mall.

16. No relief is sought against the MEC or NERSA and no costs order is sought against them unless they oppose this application.

THE PURPOSE OF THIS APPLICATION

17. In Part A of this application, Highveld Mall seeks an interim interdict restraining Eskom from interrupting electricity supply to the whole of the municipal area

of Emalahleni (which includes the city of Witbank), pending the outcome of Part B of this application.

18. Highveld Mall is a rate payer, employer, retail lessor and consumer of electricity that draws its electrical supply from Emalahleni. Highveld Mall consumes electricity as a lessor and also distributes it to its various tenants who conduct business from the Mall. An interruption in supply causes irreparable harm to Highveld Mall as well as its tenants. This harm results as a direct consequence of the proposed unlawful action of Eskom in interrupting electricity supply to Emalahleni and the unlawful failure by Emalahleni to make payment to Eskom including a failure to remit all or any or some of the amounts paid by Highveld Mall (and other members of the affected class) in respect of its/their electricity accounts with Emalahleni.

19. Highveld Mall's account is currently not only up to date but in fact in credit to the tune of R 1 164 210.66 (I attach proof as **Annexure FA2**), and so it, its tenants and other members of the affected class end up being the victims of a power struggle between Eskom and Emalahleni resulting in the denial of the constitutional rights of the victims.

20. The relief in Part A is claimed on condition that Highveld Mall continues to make full payment of all amounts due to Emalahleni in respect of electricity supplied to Highveld Mall by Emalahleni.

21. Moreover, Highveld Mall seeks relief ("the direct payment relief") that would entitle it, (and in due course all members of the affected class who opt in to the class action brought by Highveld Mall in Part B), to discharge their electricity account obligations to Emalahleni by making payment directly to Eskom of the amounts they are charged by Emalahleni for electricity and copying Emalahleni with proof of payments of such amounts.

22. The direct payment relief is sought on the basis that it will endure for so long as Emalahleni has failed to pay off its arrears to Eskom. It will assist Eskom both to limit its credit risk in relation to Emalahleni and to recover some of the arrear amounts owed by Emalahleni. In relation to the latter, I point out that Emalahleni adds a substantial premium onto the electricity price charged to it when it resells electricity to its consumers. So direct payments to Eskom from Highveld Mall and the affected class will include a premium on the Eskom wholesale price to Emalahleni.

23. In Part B of this application the applicant seeks orders:

23.1. That leave be granted to the applicants to claim the relief claimed in paragraphs 3 to 7 of the notice of motion as a class action in terms of section 38(c) of the Constitution as representatives of all members of the class of electricity consumers in Emalahleni who

23.1.1. were not in arrears with their electricity accounts to the

second respondent as of the date of institution of this application; and

23.1.2. prior to the date of hearing of Part B of the application, have signed a written document indicating their intention to join the class action ("the class").

23.2. Declaring that Eskom's decision (**"the interruption decision"**) communicated to the applicant on 30 November 2017 to interrupt the electricity supply to the applicant's retail mall and all other consumers of electricity in the Emalahleni municipal area is unconstitutional and invalid;

23.3. Reviewing and setting aside the interruption decision;

23.4. Authorising the Applicants and all members of the class to discharge the debts that they incur to the Emalahleni Municipality in respect of the ongoing supply of electricity to them by making payment of the amount of such debts directly to Eskom and furnishing the Emalahleni Municipality with proof of such payments to Eskom;

23.5. Providing for the direct payment relief to continue in respect of the applicants and the class in respect of electricity consumption in Emalahleni until Emalahleni has fully paid off its arrears to Eskom;

23.6. Interdicting Eskom from disconnecting the electricity supply to Emalahleni for the purpose of compelling Emalahleni to pay arrears without first approaching this Court on public notice to the residents of Emalahleni and obtaining a court order authorising it to disconnect the electricity supply to Emalahleni; and additionally

23.7. Declaring section 21(5) of the ERA to be unconstitutional and invalid in the event that such an order is necessary for the relief claimed by Highveld Mall.

24. The applicant respectfully submits that the interruption decision is unconstitutional and invalid because:

24.1. It is an exercise of self-help and collective punishment of the consumers of the Emalahleni area to which Eskom has resorted in an attempt to procure payment of the arrears owed to it by Emalahleni as opposed to using the judicial process to secure payment of these arrears. It is thus inconsistent with

24.1.1. The fundamental founding value of the rule of law protected by section 1(c) of the Constitution;

24.1.2. The fundamental right of access to court, protected by section 34 of the Constitution; and

24.1.3. The fundamental right to access to water (s 27(1)(b) of the Constitution) which will be fatally compromised as detailed further below; and

24.1.4. The fundamental right of all residents of Emalahleni to an environment that is not harmful to their health or well-being (s 24(a) of the Constitution).

24.2. It is an act which is calculated to ensure that the Emalahleni municipality is unable to perform its duty under sections 152(1)(b) and section 156(1)(a) read with Part B of Schedule 4 to the Constitution to supply electricity (and water as will be explained below) to the applicant and other consumers in the Emalahleni area who dutifully pay their municipal accounts. It therefore interferes with the constitutional rights of Highveld Mall and other law-abiding consumers in Emalahleni.

25. Apart from the unconstitutionality of the interruption decision, Highveld Mall respectfully submits that it falls to be reviewed and set aside under paragraphs (c), (e)(iii) and (f)(ii) of section 6(2) of the Promotion of Administrative Justice Act 3 of 2000 (**"PAJA"**) because it is a decision that was taken by Eskom

25.1. without any reasonable basis for believing that the Emalahleni municipality is able to pay off its arrears to Eskom, or that the

interruption decision is likely to produce greater payments from the Emalahleni municipality;

25.2. in circumstances where the Emalahleni municipality is less likely to be able to comply with its ongoing current obligations to Eskom if the interruption decision is implemented;

25.3. in circumstances where the harm to be caused to Highveld Mall and the greater community of Emalahleni clearly outweighs any benefit to Eskom in implementing the interruption decision; and

25.4. in circumstances where there is no need for Eskom to implement the interruption decision until after the festive season but implementation prior to the festive season will cause particular harm to Highveld Mall and other consumers in Emalahleni.

26. The interruption decision thus amounts to

26.1. procedurally unfair administrative action;

26.2. administrative action taken without regard to relevant considerations, and

26.3. irrational and unjustifiable administrative action.

27. The applicant respectfully submit that they are entitled to the final interdictory relief that they seek against Eskom because Eskom is committed to self-help

as a debt collection measure against Emalahleni and this approach is unconstitutional for the reasons set out above.

THE APPLICANT'S AFFECTED BUSINESS

28. The Applicant's business (Highveld Mall) is:

28.1. A 68,000m^2 retail shopping centre housing 185 tenants with an annual visitation of 8 million shopping trips. There are approximately 2000 employees in the shops, with over 100 daily support staff such as security guards, cleaners, gardeners, electrical technicians and refuse removal staff;

28.2. Largely a collection of retail businesses which cater for the day to day shopping, food, medicinal, and other needs of the wider community; and

28.3. The Mall's electricity demand reading for the last 12 months is 4661kVa, with 1,654,589kWh used on average pm.

29. As is set out more fully below, in the present case, the disconnection of electricity to Emalahleni threatens not only the immediate interruption of electricity supply to the residents of Emalahleni and the applicant's tenants, but also threatens a complete shutdown and extensive damage to the water and sewerage services of Emalahleni that are dependent on continuous electricity for its operation.

30. It follows that

30.1. the interruption decision indirectly violates the Applicant's constitutional rights to electricity services from Emalahleni;

30.2. directly interferes with the capacity of Emalahleni not only to provide electrical services to the Applicant and other residents, but also with its capacity to provide a range of other municipal services such as the provision of potable water; and

30.3. is accordingly inconsistent with Eskom's constitutional obligations under Chapter 3 of the Constitution and section 154(1) to strengthen the capacity of Emalahleni to perform its constitutional function of providing its residents and businesses with access to electricity services and not to act in a manner that impedes Emalahleni's performance of this function.

BACKGROUND TO THE DISPUTE

31. From at least January 2012, the Emalahleni Local municipality defaulted in its payments due for electricity supplied by Eskom. Over this period, Eskom did not behave like a responsible creditor but failed to take steps to collect outstanding amounts owed to it by the municipality. When the arrears of Emalahleni had accumulated to hundreds of millions of rands, Eskom finally

took action. It did so, not by pursuing its rights in the courts. Rather, in January 2017, it resorted to the self-remedy of interrupting the electricity supply to Emalahleni without regard to the consequences that this would have for the law-abiding residents of Emalahleni.

32. Prior to interrupting the electricity supply to Emalahleni, Eskom invited representations from residents of Emalahleni. Highveld Mall submitted representations to Eskom through its attorneys but these did not persuade Eskom. In February 2017, the electricity supply to Emalahleni was intermittently interrupted by Eskom over a period of approximately a week. This triggered a substantial collapse of the water reticulation and sewage networks in Emalahleni which were unable to cope with the interruption of the electricity supply. The details in this regard were set out in an affidavit to which the City Manager, Mr Theodore Jansen van Vuuren deposed in an application to stop the electricity interruptions. A copy of that affidavit is attached as Annexure **"FA3"**. I ask that paragraphs 13 to 19 thereof be incorporated into this affidavit.

33. Following the week of interrupted electricity supply, the municipality and Eskom managed to reach an agreement in terms of which Eskom stopped interrupting the electricity supply. However, it appears that in the course of 2017 Emalahleni started again to default on its payment obligations to Eskom.

34. On 9 September 2017, Eskom again threatened to interrupt supply to Emalahleni and published a notice calling for representations from the public. A copy of that notice is attached as **Annexure "FA4"**. Highveld Mall again made representations to Eskom through its attorneys. A copy of those representations, (which were incorrectly dated 1 September 2017, but were dispatched to Eskom on 11 September 2017) is attached as **Annexure "FA5"**.

35. Again these representations failed to persuade Eskom, and on 30 November 2017 Eskom notified the municipality indicating that it would start interrupting the electricity to Emalahleni from Thursday 14 December 2017. A copy of Eskom's letter to the municipality is attached as **Annexure "FA6"**. Highveld Mall was only made aware of Eskom's decision on 1 December 2017 when it was reported publicly.

36. As late as 29 November 2017, I had met with the Municipal Manager, Mr Sizwe Mayisela and the CFO of the municipality, Jabu Hlatswayo and been assured that the municipality was in constant talks with Eskom and there was no reason to worry that Eskom would interrupt the electricity.

THE IRREPARABLE HARM FACED BY HIGHVELD MALL

37. Eskom's stated intention is to disconnect the electricity supply to all Emalahleni consumers at the following times:

37.1. Monday to Friday from 06:00 to 08:00 and 17:00 to 19:30; and

37.2. Saturday and Sunday from 08:30 to 11:00 and 15:00 to 17:30.

38. Both Highveld Mall and its tenants rely on a continuous supply of electricity as a crucial component of the viability of their businesses. Neither Highveld Mall nor its tenants are capable of fully mitigating their losses in the event of power disruptions.

39. Although a small individual generator may be able to cater for emergency use in an isolated small business or residence, a total replacement of grid provided power, with diesel electricity generators, for the entire mall, will result in a completely overwhelming challenge in terms of noise pollution, air pollution, infrastructure alteration and cost.

40. Small outlets will not be able to afford generators and currently most of the businesses in the mall cannot afford and do not have back-up generators. Many do not have access to open air space and cannot install a generator at all. The inevitable result is that especially small outlets will lose custom to larger generator assisted concerns. A loss in turnover translates disproportionately into a bottom line loss and it will drive many small concerns altogether out of business.

41. This in turn impacts very adversely on the applicant in that it stands to lose tenants, rental income, reputation and goodwill. It also produces a direct loss

of rental income to Highveld Mall because its leases with its tenants entitle it to a share of their turnover.

42. Many tenants employ equipment which requires very high levels of electrical energy such as heaters, stoves, dryers, geysers and the like – this kind of equipment cannot be served with diesel driven electricity generators unless a prohibitively expensive and major capital outlay is undertaken. Although it may be possible to replace the grid with diesel powered electricity generators, the expense is prohibitive and not financially viable in particular because it amounts to an intensive capital outlay on equipment that stands for the most part completely idle. Highveld Mall commissioned an assessment in replacing the grid power with generators but the total cost amounted to an upfront investment of close on R10 000 000.00 and ongoing running costs that would be ruinous to small concerns like many of the tenants of Highveld Mall who would be obliged to cover their share of the increased generation costs. The capital outlay, ongoing operational expenses, maintenance and infrastructure challenges posed by a diesel generating system cannot be accommodated by a mall that was simply not designed to house diesel powered generators for its entire electricity requirement.

43. Moreover, a very large number of electronic devices are currently on display and employed in the retail centre. Many of these do not seamlessly migrate from grid to generator supplied electricity. Many digital electronic apparatuses

such as computer servers, desktop computers and the like, have to be especially configured or adapted to operate safely on diesel generated electrical power which in turn requires an outlay in time and money on the necessary expertise and effort required.

44. The applicant calculated that it would require an entire team of technicians solely devoted to the re-start, re-booting, switching on and off and maintenance of the electronic equipment in the mall.

45. In order to illustrate the scale of the problem - in December 2016 the tenants achieved a combined turnover of R 252,467,523.00 being on average R8.4m per day or approximately R1000 000.00 per hour of business. The December 2016 foot count alone averaged 29,000 visitors per day, with the busiest day yielding 45,540 shoppers. The average spend per head for last December was R290.24 per visitor.

46. Any disruption in power supply will immediately result in large numbers shoppers commuting to Middelburg or Pretoria as their normal shopping pattern will be interrupted. This loss of goodwill cannot be easily quantified and is likely to become increasingly damaging over time as more and more clientele make alternative shopping arrangements. It is not clear how to quantify this pattern.

47. Not only will reputational harm be suffered with shoppers but additionally the Highveld Mall will end up suffering tremendous commercial harm with its tenants who will insist on reductions in rental and/or remedial steps to be taken by Highveld Mall.

48. As alluded to earlier, on 16 February 2017 Eskom implemented a previous interruption decision in Emalahleni. The consequences were instructive. As appears from the affidavit of the City Manager (**Annexure "FA3"**):

48.1. The water levels in Emalahleni's five reservoirs gradually decreased and on Sunday19 February 2017 during the afternoon, the water levels dropped to a point where no outflow of water was possible. As a result the water supply to the roughly 424,578 individuals (97 000 households) who depended on water supply from the Emalahleni Municipality, was terminated at roughly 16h45 on Sunday 19 February 2017. By 23 February 2017, not one of the 424,578 individuals who depended on water supply from the municipality had any access to any water.

48.2. The Emalahleni pump and purification system could not provide an adequate supply to provide the higher lying areas of the municipality with water between scheduled power interruptions. The approximately 40 000 households in these areas had thus been left

without water for more than a week starting from 06h00 on Thursday 16 February 2017.

48.3. This state of affairs was likely to continue from three to five days after all interruptions terminated because it took between 3 and 5 days to restore the interruption of water supply to the respective areas depending on whether the areas are low or high lying and on the distance of areas from reservoirs.

48.4. The operation of municipal sewer networks depends on a functioning water supply. All Sewer and sanitation services in the Emalahleni area came to a complete standstill on Sunday afternoon on 19 February 2017. In formal townships serving 40 000 households in higher areas these services came to a complete standstill at 06h00 on 16 February 2017.

48.5. If there is no supply of water it simply means no waste water flows in the sewers. This results in a hard sludge forming which bonds to the insides of the sewer lines and eventually completely blocks the lines. In cases of major blockages it then becomes necessary to dig up the entire sewage pipes to repair or replace them. Due to the water supply unavailability caused by the disconnection of electricity by Eskom, major blockages were starting to form in the entire Emalahleni municipal sewage network. By 23 February

2017, it was estimated that there were only 72 hours left before the solids in the sewer system would form a hard sludge which would permanently block the sewage pipes. Even if the water supply was restored thereafter, these blockages would remain and would require the Municipality at an enormous cost, to dig up and to replace major parts of its sewage system. For the higher lying areas to which water supply could be returned only 5 days after the electrical interruptions had been terminated, the point of irreparable damage had already been reached.

48.6. The non-functioning of the sewerage and sanitation services obviously poses a severe health risk for all the communities affected by the electricity interruptions. In cases where the electricity termination caused permanent blockages to the pipes there was an added risk of pipes bursting when water supply was restored and raw sewage being discharged into public areas through the broken pipes.

49. The facts to which the City Manager deposed related to events following electricity interruptions for approximately a week. If Eskom's proposed interruptions continue indefinitely, the consequences will be much more dire. In a parallel application brought by Wilhelm Johannes Coetzee, Save Emalahleni Action Group and Samuel Nape, Wilhelm Reinhardt van As has

deposed to an expert affidavit describing the likely effects of indefinite electricity interruptions on the water supply and Francois Alwyn Visagie has deposed to an expert affidavit addressing *inter alia* issues relating to electricity infrastructure and financial harm both to Eskom and Emalahleni. Copies of these affidavits are attached as **Annexures "FA7" and "FA8"** respectively.

50. As appears from the expert affidavit of Wilhelm Reinhardt van As

50.1. Despite the vague suggestions apparently made by Eskom that it will consider attempting to interrupt the electricity supply to the rest of Emalahleni without interrupting the electricity supply to the water reticulation, water purification and sewage systems, it is not practically possible to do this – "the electricity grid was established and developed in such a way that electricity cannot be supplied to water supply elements and not to other consumers at the same time" (para 19 – see also paras 44 and 45);

50.2. The proposed interruptions will lead to the rapid collapse of the entire Emalahleni water network within 48 hours and it is likely that a human and environmental disaster will follow (paras 23 to 24);

50.3. Interruptions to the electrical supply to the water purification system will lead to raw, unpurified water flowing into reservoirs and creating a serious health risk to the community (paras 33 and 34);

50.4. There is a real risk that Eskom's planned interruptions will lead to a total collapse of the entire sewer system (paras 36 to 39);

50.5. Interruptions to the electrical supply to the sewage works will result in a situation where raw sewage flows into the natural waterways and ultimately finds its way into the Olifants River catchment system, creating an environmental hazard way beyond the boundaries of Emalahleni (paras 40 to 43).

51. At Highveld Mall, municipal water supply terminated during the electricity interruptions of February 2017. The Mall has a reserve tank of one million litres, but the collapse of the municipal water supply network meant that this emergency supply system was depleted, not least because it was overused by people who came to the Mall to obtain access to water (and working toilets) which were not available elsewhere. From the experience of February 2017, it is clear that the reserve tank will not be able to supply Highveld Mall through any sustained period of electricity cuts and after a week's electricity interruptions, Highveld Mall is likely to be without running water, functioning toilets and a safe fire prevention sprinkler system.

52. As the City Manager pointed out in his affidavit, further direct consequences flowing from the loss of electricity included:

52.1. The delay and disruption of all road traffic and the endangering of road safety due to the non-functioning of all traffic lights in the towns within the municipality;

52.2. An increase in the incidence of electrical cable theft from the municipal electricity distribution network – cable theft creases dramatically in the event of the cables no longer carrying live current.

65.3 The overloading of power cables with power surges when power was restored resulted in cables to explode.

53. The expert affidavit of Francois Visagie (**Annexure "FA8"**)

53.1. Confirms that interruptions to the electrical power supply are likely to cause substantial damage to municipal electrical infrastructure both in terms of immediate failures of mini-substations and breaker faults, and in terms of long-term damage to transformer life (paras 4.1 and 4.2 of the expert report); and

53.2. Shows that the reduced electricity consumption because of the interruptions will cause material financial harm not only to Emalahleni (thus hampering its capacity to repay Eskom) but also to Eskom itself in the form of reduced sales (para 2 of the expert report).

53.3. Moreover, if as is possible, sustained interruptions lead to the collapse of the Emalahleni economy, Eskom will lose annual revenue in excess of R400 million (para 3 of the expert report)

54. For the reasons set out above, the impact of an intermittent planned interruption of electricity supply to the Emalahleni area would be calamitous for Highveld Mall and the residents of Emalahleni. In summary –

54.1. Highveld Mall faces almost insurmountable logistical difficulties, commercial losses, a crisis to its water supply and a concomitant loss of goodwill among tenants and shoppers. Its losses are largely unquantifiable and unrecoverable.

54.2. The community faces potentially catastrophic interruption to electricity and water supply and a real public health risk.

PRIMA FACIE RIGHT

55. Highveld Mall's *prima facie* right to the relief that it claims against Eskom in Part B is foreshadowed in paragraphs 24 to 27 above and is addressed in more detail below in relation to the Part B relief. I refer to what is set out therein and respectfully submit that Highveld Mall has a strong *prima facie* case to support its claim for interim relief.

NO ALTERNATE REMEDY

56. The harm to which the Highveld Mall is exposed is harm caused by the resort of Eskom to self-help in the face of the manifestly unlawful failure of Emalahleni to pay what it owes Eskom for electricity.

57. Despite the unconstitutionality of the conduct of Emalahleni and Eskom, Highveld Mall has been advised that it is unlikely that a delictual or constitutional damages claim for Highveld Mall would be recognised by our Courts. If Emalahleni or Eskom disagree with the advice that has been given to Highveld Mall in this regard, I invite them to tender to accept liability for any damages proven by Highveld Mall to have been caused by acts or omissions on their part which are found by a Court to have been unconstitutional.

58. The environmental and public health harm faced by the broader Emalahleni community is plainly irreparable and not capable of being remedied without an interdict.

THE BALANCE OF CONVENIENCE

59. The substantial harm faced by Highveld Mall and the broader Emalahleni community has been set out above. As against this substantial irreparable harm threatened to Highveld Mall and community, Eskom is faced with no threat of irreparable harm whatsoever.

60. Eskom has a legal claim against Emalahleni for payment of the electricity arrears owed to it. That claim can be enforced in the Courts, if needs be by invoking the processes of execution that are applicable to civil claims against private debtors. If, as Eskom suggests, its claims against Emalahleni is undisputed, the process of obtaining summary judgment on those claims should not take more than a month. If Eskom had pursued this route almost six years ago, when the arrears first started accumulating, it would already have recovered all arrears and the parties would not have found themselves in their present position.

61. Quite apart from Eskom's own inaction being responsible for its present predicament, its self-help remedy is of no greater utility to it than a civil judgment would be. The expert report of Francois Visagie shows that interrupting supply to Emalahleni will not result in monthly savings to Eskom – on the contrary, it will result in monthly losses to Eskom. So, the only purpose of the interruption decision must be to collect the overdue debt of Emalahleni. But that purpose presupposes that Emalahleni will be able to come up with the resources to pay its arrears. If Emalahleni can find the resources to pay its arrears when faced with a self-help threat of power disconnection, it (or the sheriff) will find the resources to pay its arrears when faced with a lawful threat of execution of a civil judgment.

62. Moreover, the direct payment relief proposed by Highveld Mall, particularly if embraced by members of the affected class will probably put Eskom in a better financial position than anything that it may achieve through its threatened resort to self-help.

63. By taking Emalahleni out of the payment loop and paying directly to Eskom, Highveld Mall and other members of the affected class will, if the direct payment relief is granted, contribute meaningfully towards the ongoing reduction of the Emalahleni arrears, whether or not Eskom has decided to pursue the legal process for securing payment of these arrears.

64. In contrast, the self-help remedy proposed by Eskom will directly and indirectly place financial strain on Highveld Mall, all law-abiding consumers in Emalahleni and the entire Emalahleni local economy. In the process it will further compromise the financial ability of Emalahleni to pay its Eskom arrears.

65. I accordingly submit that the balance of convenience overwhelmingly favours the applicant.

URGENCY

66. I refer to what I have stated above about the nature of the imminent harm faced by Highveld Mall and residents of Emalahleni. Highveld Mall was

confronted with the prospect of this harm only on Friday 1 December 2017. The intended unlawful conduct by Eskom is to commence on Thursday 14 December 2017. I accordingly respectfully submit that

66.1. the urgency of this application is justified, and

66.2. Highveld Mall has acted with all necessary haste in launching this application.

LEAVE TO SUPPLEMENT IN RELATION TO THE CLASS ACTION BROUGHT IN PART B

67. In part B of this application, Highveld Mall seeks to institute a class action on behalf of all members of the affected class for the relief that it claims also in its own name. I have been advised and respectfully submit that

67.1. it is incumbent on Highveld Mall to justify why such a class should be certified and why it should be entitled to bring such a class action,

67.2. however this is not an issue that should waste the time of an urgent court, and

67.3. given that Highveld Mall will be supplementing its papers in terms of Rule 53 in relation to the review relief that it claims in Part B, it

would be convenient for it to address the certification requirements of its proposed class action at that stage.

68. Highveld Mall accordingly seeks leave to supplement its papers to address the certification requirements for its proposed class action when it files its supplementary founding affidavit in terms of Rule 53.

CONCLUSION ON PART A

69. In all the circumstances, I respectfully submit that Highveld Mall is entitled to the interim relief it seeks in Part A of the application.

THE CAUSES OF ACTION FOR THE RELIEF SOUGHT IN PART B

The Unconstitutionality of the Interruption Decision

70. As has been set out above, the interruption decision appears to have been designed primarily to force Emalahleni to settle the arrears that it owes Eskom, and to this end, to inflict a form of collective punishment on all of the electricity consumers in the Emalahleni area in the apparent hope that

70.1. those consumers who are not paying Emalahleni for the electricity that they consume will be persuaded to start doing so, and

70.2. those consumers who are already paying Emalahleni for the electricity that they consume will pressurise Emalahleni into settling its arrears with Eskom.

71. If there are any other reasons underlying the interruption decision, these will emerge when Eskom files its reasons under Rule 53, and Highveld Mall will supplement its case in the light of these reasons when they are furnished.

72. Whatever the reasons for the interruption decision, it is manifestly an act of self-help. Although Emalahleni has been in arrears for close to six years, Eskom has, at no stage, sought to engage the judicial process to recover these arrears. Rather, it has resorted to self-help in preference to legal proceedings to recover the debts owed to it by Emalahleni, despite the fact that unlike a money claim against Emalahleni in the High Court, the self-help route adopted by Eskom is calculated to prejudice all electricity consumers within Emalahleni and effectively imposes a scheme of collective punishment of all of these consumers, including those, like Highveld Mall, who are dutifully paying Emalahleni for the electricity that they consume.

73. Moreover, I have been advised that Eskom has no legal power authorising it to take the interruption decision.

73.1. To the extent that it relies on section 21(5) of the Electricity Regulation Act, I respectfully submit that, on a proper interpretation

of section 21(5) interpreted with due regard to the spirit, purport and objects of the Bill of Rights in accordance with section 39(2) of the Constitution, it does not authorise Eskom to interrupt the supply of electricity to a municipality as opposed to an end user consumer that is its customer.

73.2. In the alternative, I respectfully submit that if section 21(5) is to be interpreted to vest in Eskom the power that it asserts, the section is unconstitutional and invalid because, so interpreted it is inconsistent with

73.2.1. The fundamental founding value of the rule of law protected by section 1(c) of the Constitution;

73.2.2. The fundamental right of access to court, protected by section 34 of the Constitution;

73.2.3. The fundamental right of access to water protected by section 27(1)(b) of the Constitution;

73.2.4. The fundamental right of municipal residents to an environment that is not harmful to their health or well-being (s 24(a) of the Constitution); and

73.2.5. The constitutional rights of municipal residents under sections 152(1)(b) and section 156(1)(a) read with Part

B of Schedule 4 to the Constitution to electricity and water services.

74. In all the circumstances, I have been advised and respectfully submit that the interruption decision is

74.1. inconsistent with the founding constitutional principle of the rule of law, enshrined in section 1(c) of the Constitution;

74.2. inconsistent with the fundamental right of access to Court protected by section 34 of the Constitution; and

74.3. accordingly objectively invalid.

75. I have been advised and respectfully submit that the interruption decision is additionally unconstitutional and invalid because it is calculated to ensure that Emalahleni is unable to perform its duty under sections 152(1)(b) and section 156(1)(a) read with Part B of Schedule 4 to the Constitution to supply electricity to the Applicant other consumers of electricity in the Emalahleni area who dutifully pay their electricity accounts. It therefore interferes with the constitutional rights of the Applicant as against Emalahleni.

The Review Relief

76. I have been advised and respectfully submit that the interruption decision amounts to administrative action because it is a decision taken by an organ of state in the performance of a public function and is calculated to interfere with the power of a municipality to perform its constitutional duties in relation to the provision of electricity.

77. I have been advised and respectfully submit that for the reasons set out above, the interruption decision accordingly falls to be reviewed and set aside under section 6(2) of PAJA because

77.1. it is a decision which Eskom was not authorised to take under any empowering provision (paragraph (f)(i)); and

77.2. for the reasons set out above, it is a decision which is unconstitutional and unlawful (paragraph (i)).

78. I have been advised and respectfully submit that even if the interruption decision does not constitute administrative action, it is liable to be reviewed and set aside on these constitutional grounds because they are grounds that apply to all conduct of organs of state, and not only to administrative action.

79. Apart from the unlawfulness and constitutionality of the interruption decision, I refer to what I have set out above and respectfully submit that the interruption

decision falls to be reviewed and set aside under paragraphs (c) and (e)(iii) of section 6(2) of PAJA because it is a decision that was taken by Eskom

79.1. without any reasonable basis for believing that the Emalahleni municipality is able to pay off its arrears to Eskom, or that the interruption decision is likely to produce greater payments from the Emalahleni municipality;

79.2. in circumstances where the Emalahleni municipality is less likely to be able to comply with its ongoing current obligations to Eskom if the interruption decision is implemented;

79.3. in circumstances where the harm to be caused to Highveld Mall and the greater community of Emalahleni clearly outweighs any benefit to Eskom in implementing the interruption decision; and

79.4. in circumstances where there is no need for Eskom to implement the interruption decision until after the festive season but implementation prior to the festive season will cause particular harm to Highveld Mall and other consumers in Emalahleni. In this regard, I point out that the turnover of Highveld Mall in December is ordinarily more than 60% higher than it is in other months. Many tenants of Highveld Mall depend on December trade to operate at

a profit over the whole year. So if Eskom disrupts December trade it causes disproportionate harm to Highveld Mall and its tenants.

80. The interruption decision thus amounts to

80.1. procedurally unfair administrative action;

80.2. administrative action taken without regard to relevant considerations; and

80.3. irrational and unjustifiable administrative action.

81. Highveld Mall will amplify these grounds of review when it supplements its founding affidavits under Rule 53 when Eskom has furnished the Rule 53 Record of the interruption decision.

The Declaratory Relief that Emalahleni's Financial Delinquency is Unconstitutional and Authorising the applicant to Discharge their Liabilities to Emalahleni by Paying Eskom until Emalahleni has paid off its Arrears in Full

82. I have been advised and respectfully submit that the failure of Emalahleni to pay its electricity arrears to Eskom is manifestly unlawful and thus inconsistent with section 1 of the Constitution.

83. This unconstitutional conduct of Emalahleni threatens the rights and interests of Highveld Mall because it leads to situations like the present where the

applicant is faced with the threat of disconnection by Eskom. In the circumstances, I have been advised and respectfully submit that

83.1. This Court should declare the conduct of Emalahleni to be unconstitutional and invalid under section 172(1)(a); and

83.2. In the exercise of its broad remedial discretion under sections 38 and 172(1)(b) of the Constitution to grant appropriate relief and to make any order that is just and equitable this Court should authorise Highveld Mall and other members of the affected class who opt in to the class action to discharge their liabilities to Emalahleni for electricity consumption by paying their ongoing electricity accounts directly to Eskom and copying Emalahleni with proof of such payments until such time as Emalahleni has paid off its arrears to Eskom in full.

The Final Interdict Sought Against Eskom

84. Eskom is clearly committed to using the interruption and disconnection of electricity supply to Emalahleni as a self-help mechanism of collecting amounts that it claims from Emalahleni. For the reasons set out above, I respectfully submit that this course of conduct

84.1. is calculated to cause far-reaching irremediable harm to the Highveld Mall and the Emalahleni community,

84.2. is inconsistent with

84.2.1. the fundamental founding value of the rule of law protected by section 1(c) of the Constitution;

84.2.2. the fundamental right of access to court, protected by section 34 of the Constitution;

84.2.3. the fundamental right of access to water (section 27(1)(b) of the Constitution);

84.2.4. the fundamental right of municipal residents to an environment that is not harmful to their health or well-being (s 24(a) of the Constitution); and

84.3. interferes with the constitutional rights of Highveld Mall and other members of the affected class under 152(1)(b) and section 156(1)(a) read with Part B of Schedule 4 to the Constitution.

85. In the circumstances, I respectfully submit that Highveld Mall is entitled to final relief interdicting Eskom from disconnecting the electricity supply to Emalahleni for the purpose of compelling Emalahleni to pay arrears.

CONCLUSION ON PART B

86. For all the reasons set out above, I respectfully submit that Highveld Mall is entitled to the relief that it claims in Part B of the Notice of Motion.

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WHEREFORE applicant prays for an order in terms of the notice of motion.

DEPONENT

I hereby certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit, which was signed and sworn to before me at RANDBURG on the 8TH day of DECEMBER 2017, the regulations contained in Government Notice No R1268 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

WILLIAM COLIN RICHMOND
PROFESSIONAL ACCOUNTANT SA
COMMISSIONER OF OATHS RSA
EX OFFICIO

Full Names:

Business Address: SEX HOUSE, CNR EILEEN & GENEVA STR, BLAIRGOWRIE

Office:

"FA1.1"

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DEL JUDOR EXT 27, 1715, 0 (PRETORIA)

GENERAL INFORMATION

Deeds Office	PRETORIA
Date Requested	2017/12/06 14:01
Information Source	DEEDS OFFICE
Reference	PROP 104 HIGHVELD LEGAL MATTER

PROPERTY INFORMATION

Property Type	ERF
Erf Number	1715
Portion Number	0
Township	DEL JUDOR EXT 27
Local Authority	EMALAHLENI LOCAL MUNICIPALITY
Registration Division	JS
Province	MPUMALANGA
Diagram Deed	T8997/2006
Extent	5.0003H
Previous Description	-

OWNER INFORMATION

Owner 1 of 4

Company Type	COMPANY
Name	RESILIENT PROP PTY LTD
Registration Number	200201689007
Title Deed	T8997/2006
Registration Date	2006/01/19
Purchase Price (R)	21,660,000 *
Purchase Date	2005/12/09
Share	0.600000 *
Microfilm Reference	2007 0287 4583
Multiple Properties	YES
Multiple Owners	YES

Owner 2 of 4

Company Type	COMPANY
Name	CHANGING TIDES 91 PTY LTD
Registration Number	200101275707
Title Deed	T8998/2006
Registration Date	2006/01/19
Purchase Price (R)	CRT *
Purchase Date	-
Share	0.175000
Microfilm Reference	2007 0237 5129
Multiple Properties	YES
Multiple Owners	NO

Owner 3 of 4

Company Type	COMPANY
Name	RETRACTION PROPS 7 PTY LTD
Registration Number	200503495607
Title Deed	T8999/2006
Registration Date	2006/01/06
Purchase Price (R)	CRT *
Purchase Date	-
Share	0.100000
Microfilm Reference	2007 0237 5167
Multiple Properties	YES
Multiple Owners	NO

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Owner 4 of 4

Company Type	COMPANY
Name	MOGWELE TRADING 278 PTY LTD
Registration Number	200500595707
Title Deed	T9000/2006
Registration Date	2006/01/06
Purchase Price (R)	CRT *
Purchase Date	-
Share	0.125000
Microfilm Reference	2007 0237 5222
Multiple Properties	YES
Multiple Owners	NO

ENDORSEMENTS (4)

#	Document	Institution	Amount (R)	Microfilm
1	B158619/2007	STANDARD BANK OF SOUTH AFRICA LTD	180,000,000	
2	B2414/2006	STANDARD BANK OF SOUTH AFRICA LTD	64,000,000	2007 0237 5411
3	B2416/2006	STANDARD BANK OF SOUTH AFRICA LTD	43,000,000	2007 0166 5620
4	B2415/2006	STANDARD BANK OF SOUTH AFRICA LTD	49,000,000	2007 0287 4305

HISTORIC DOCUMENTS (5)

#	Document	Owner	Amount (R)	Microfilm
1	T86171/1999	PLAASLIKE OORGANGSRAAD VIR WITBANK	T/T	2007 0237 4991
2	T86171/1999	EMALAHLENI LOCAL MUNICIPALITY	T/T	2007 0237 4991
3	T8997/2006	CHANGING TIDES 91 PTY LTD	21,660,000	2007 0287 4583
4	T8997/2006	RETRACTION PROPS 7 PTY LTD	21,660,000	2007 0287 4583
5	T8997/2006	MOGWELE TRADING 278 PTY LTD	21,660,000	2007 0287 4583

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DEL JUDOR EXT 27, 1716, 0 (PRETORIA)

GENERAL INFORMATION

Deeds Office	PRETORIA
Date Requested	2017/12/06 14:05
Information Source	DEEDS OFFICE
Reference	PROP 104 HIGHVELD LEGAL MATTER

PROPERTY INFORMATION

Property Type	ERF
Erf Number	1716
Portion Number	0
Township	DEL JUDOR EXT 27
Local Authority	EMALAHLENI LOCAL MUNICIPALITY
Registration Division	JS
Province	MPUMALANGA
Diagram Deed	T8997/2006
Extent	13.9999H
Previous Description	-

OWNER INFORMATION

Owner 1 of 4

Company Type	COMPANY
Name	RETRACTION PROPS 7 PTY LTD
Registration Number	200503495607
Title Deed	T8999/2006
Registration Date	2006/01/06
Purchase Price (R)	CRT *
Purchase Date	-
Share	0.100000
Microfilm Reference	2007 0237 5167
Multiple Properties	YES
Multiple Owners	NO

Owner 2 of 4

Company Type	COMPANY
Name	RESILIENT PROP PTY LTD
Registration Number	200201689007
Title Deed	T8997/2006
Registration Date	2006/01/19
Purchase Price (R)	21,660,000 *
Purchase Date	2005/12/09
Share	0.600000 *
Microfilm Reference	2007 0287 4583
Multiple Properties	YES
Multiple Owners	YES

Owner 3 of 4

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Registration Date	2006/01/19
Purchase Price (R)	CRT *
Purchase Date	-
Share	0.175000
Microfilm Reference	2007 0237 5129
Multiple Properties	YES
Multiple Owners	NO

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Owner 4 of 4

Company Type	COMPANY
Name	MOGWELE TRADING 278 PTY LTD
Registration Number	200500595707
Title Deed	T9000/2006
Registration Date	2006/01/06
Purchase Price (R)	CRT *
Purchase Date	-
Share	0.125000
Microfilm Reference	2007 0237 5222
Multiple Properties	YES
Multiple Owners	NO

ENDORSEMENTS (4)

#	Document	Institution	Amount (R)	Microfilm
1	B158619/2007	STANDARD BANK OF SOUTH AFRICA LTD	180,000,000	
2	B2414/2006	STANDARD BANK OF SOUTH AFRICA LTD	64,000,000	2007 0237 5411
3	B2415/2006	STANDARD BANK OF SOUTH AFRICA LTD	49,000,000	2007 0287 4305
4	B2416/2006	STANDARD BANK OF SOUTH AFRICA LTD	43,000,000	2007 0166 5620

HISTORIC DOCUMENTS (5)

#	Document	Owner	Amount (R)	Microfilm
1	T86171/1999	PLAASLIKE OORGANGSRAAD VIR WITBANK	T/T	2007 0237 4991
2	T86171/1999	EMALAHLENI LOCAL MUNICIPALITY	T/T	2007 0237 4991
3	T8997/2006	CHANGING TIDES 91 PTY LTD	21,660,000	2007 0287 4583
4	T8997/2006	RETRACTION PROPS 7 PTY LTD	21,660,000	2007 0287 4583
5	T8997/2006	MOGWELE TRADING 278 PTY LTD	21,660,000	2007 0287 4583

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Piet Rootman

07 DECEMBER 2017 10:46

Account No
2023180
HIGHVELD MALL-EMALAHLENI

Month
1711

Period Type
Financial

External References
Bank Reference 2023180
EasyPay No 9118000000020231808

Address
1716 MANDELA ST DEL JUDOR X27 EMALA
1716

Stand Number
00460027000017160000000

Pending

Receipts	
Sundry Levies	No
Sundry Invoices	No
Arrangements	No
Journals	No

Arrangement

Ageing

Current	1,164,210.66-
30 Days	
60 Days	
90 Days	
120 Days	
Total	1,164,210.66-

Services	Balance 01 Nov '17	Payments	Levies	Journals	Balance (excl VAT)	VAT Amount	Balance 07 Nov '17
Advance Payment		1,151,282.00-			1,151,282.00-		1,151,282.00-
Interest	12,928.66-				12,928.66-		12,928.66-
Electricity	1,126,733.32+	1,126,733.32-			254,450.48-	254,450.48+	
Water	72,544.02+	72,544.02-			461.29+	461.29-	
Sewerage	30,441.88+	30,441.88-			198.36+	198.36-	
Refuse							
Vatable Sundries							
Non-Vat Sundries							
Erven							
Housing							
Rent							
Other Services							
Rates	.13+	.13-					
Legal Fees							
Deposits							
Total	**1,216,790.69+**	**2,381,001.35-**			**1,418,001.49-**	**253,790.83+**	**1,164,210.66-**

EMALAHLENI
2017 -12- 07
30
LOCAL MUNICIPALITY

Highveld Mall's account is up to date and in credit of R 1.1 M.

Successful Read
Note: All balances are VAT inclusive unless otherwise stated.

33

S4
"FA3"

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:

In the matter between:

EMALAHLENI LOCAL MUNICIPALITY **FIRST APPLICANT**

and

ESKOM HOLDINGS SOC LTD **RESPONDENT**

APPLICANT'S FOUNDING AFFIDAVIT

I, the undersigned

THEO JANSEN VAN VUUREN

do hereby make oath and say

1. I am an adult and the Municipal Manager of the Emalahleni Local Municipality. I am duly authorised to make this affidavit and to bring this application on behalf of the Emalahleni Local Municipality in terms of the delegation of authorities of the Emalahleni Local Municipality as approved by the Council of the Municipality on 6 December 2012. An extract of the certified council resolution and of the delegation of powers is attached as **Annexure T1.**

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2. The facts herein contained are within my personal knowledge, unless otherwise stated or unless the context indicates otherwise and are true and correct.

3. The Applicant is the Emalahleni Local Municipality, a local municipality duly established as such in terms of section 12 of the Municipal Structures Act 117 of 1998 with its principal place of business at the Municipal Offices, Mandela Street, Emalahleni, Mpumalanga.

4. The Respondent is Eskom Holdings SOC Ltd, a public company incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at Megawatt Park, Sunninghill, Sandton, Johannesburg.

5. The entire share capital of the Respondent is owned by the state and it is thus an organ of state, as contemplated in the Constitution and the Promotion of Administrative Justice Act 3 of 2000 (PAJA). The Respondent is a national public entity as defined in section 1 of the Public Finance Management Act 1 of 1999, is defined as a major public entity in Schedule 2 of Act 1 of 1999 and is a national organ of state contemplated in section 1 of the Intergovernmental Relations Framework Act, Act 13 of 2005.

6. The Respondent has been the sole supplier of electricity on the national grid within the borders of the Republic of South Africa and is a licensee in terms of and/or for purposes of the Electricity Regulation Act 4 of 2006 that operates a generation, transmission and distribution of electricity licence.

7. The Applicant brings this application in its own interest, in the public interest and on behalf of the local communities within the following towns and municipal areas within its area of jurisdiction:

> The Ridge Casino, Highveld Mall, Blanchville/Jackaroo, Park/Clearwater Estates, Die Heuwel Extension 4, Highveld Park, Model Park, River Crescent Centre, Seekoeiwater Plots, Ben Fleur, Duvha Park Extentions, Del Judor Extensions, Klipfontein, Witbank Extensions 8,41 and 5, Bankenveld, Tasbet Park Extension 12, Witbank Dam, Corridor Hill, N4 Business, Reyno Ridge, Dixon Plots, Witbank Extension 16, Tasbet Park Extension 1, Thubelihle, Ferrobank Industrial, Kwa-Thomas Mahlanguville, Witbank CD, Schoongezicht, Klarinet Industrial (Abattoir), Tasbet Park Extensions 2 and 3, Witbank Extensions 66, 16 and 41, Duvha Park Extensions, Evergreen, Protea Hotel Jellicoe Street and Moth Cottages Retirement Village.

8. The Applicant brings the application especially on behalf of the 40 000 households in the formal Townships of the KwaGuqa Extentions; Clewer; Phola, Ogies; Hlalanikahle; Empumelelweni; Bankenveld; Duvha Park Extensions; Tasbet Park Extensions; and the Del Judor Extensions, who have not had any access to water or sanitation services since 06h00 on 16 February 2017.

9. The Applicant also brings this application on behalf of about 34 000 households occupying the informal settlements within the jurisdiction area of the Applicant

who are indigent and who are therefore unable to pursue their claims to access to water supply individually or together.

10. The purpose of this application is to obtain an urgent interim interdict against Respondent to restore the bulk electricity supply to the Townships and points of supply as stated above in paragraph 7:

10.1. pending the hearing and finalisation of this application,

10.2. pending the finalisation of the intergovernmental dispute between the parties,

10.3. pending the finalisation of a review application to be brought against the Respondent's decisions to interrupt the bulk supply of electricity to the Applicant's area of jurisdiction dated 6 February 2017, and

10.4. pending the finalisation of a review application to be brought against Respondent's decisions dated 16 February 2017 and 19 February 2017 refusing to exempt The Applicant's water supply network from the electricity supply interruptions and to increase the frequency and duration of the existing interruptions.

11. Before I deal with the urgency of the matter, I respectfully summarise the following relevant background facts:

11.1. On 25 November 2016, the Respondent gave notice of its intention to 10 interrupt the bulk electricity supply to the Applicant. A copy of the notice is attached hereto as **Annexure T2**;

11.2. On 31 December 2016, the Applicant made representations to the Respondent a copy whereof is attached hereto as **Annexure T3**;

11.3. On 4 January 2017 the Respondent provided advice and granted an opportunity to the Applicant to redevelop a further catch up plan, which is attached as **Annexure T4**;

11.4. On 9 January 2017 I was informed by Mr Chris Lukheleni, the consumer account executive of the Respondent that the Applicant must submit a revised payment plan to catch up with the arrears;

11.5. I received the Respondent's 10 January 2017 final notice on 11 January 2017 by e-mail. A copy of the 10 January 2017 notice is attached hereto as **Annexure T5**;

11.6. Mr Chris Lekhuleni send me a press release issued by the Respondent on 13 January 2017. A copy of this press release is attached hereto as **Annexure T6**;

11.7. In this press release the Respondent indicated that the municipalities can avoid the planned electricity supply interruptions if the municipalities adhere to the requirements stated in the press release being:

11.7.1. A cash payment as negotiated with Respondent;

11.7.2. A written undertaking that current accounts will be honoured going forward; and

11.7.3. A payment plan for the arrears.

11.8. On 15 January 2017, the Applicant proposed a revised repayment plan to the Respondent. A copy of this plan is attached as **Annexure T7**;

11.9. On Monday 16 January 2017, the Respondent issued another press release. In this press release the Respondent confirmed that the planned interruption in electricity supply in the area of the Applicant will continue and that the towns of Doornpoort, Kwaguga, Wilbank and Churchill will be affected. This area is the same as the area stated in paragraph 7 above. A copy of this press release is attached hereto as **Annexure T8**;

11.10. On Thursday 19 January 2017, the Respondent granted municipalities until the end of January 2017 to settle their arrear accounts. I attach a copy of the Respondent's press release as **Annexure T9**.

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11.11. On 6 February 2017 Respondent gave notice to the Applicant that it will start with interruptions in bulk electricity supply to the Applicant on 16 February 2017. A copy of this notice is attached as **Annexure T10.**

12. On 13 February 2017, the Applicant and Respondent held a meeting to negotiate a settlement on the envisaged interruption of bulk electricity supply. The minutes of this meeting is included in a letter from Respondent dated 14 February of which a copy is attached as **Annexure T11.**

URGENCY:

13. On 16 February 2017 the Respondent disconnected the bulk electricity supply towns and points of supply in the Applicant's area of jurisdiction and made it clear that this interruption will continue until the Applicant and the Respondent can agree on a new arrangement to repay the outstanding amounts due to Respondent.

14. On 19 February 2017 Respondent indicated that it will increase the frequency and/or duration of the interruptions. I attach hereto a copy of this notification as **Annexure T12.**

15. The Applicant and the local community within the Emalahleni Local Community Towns and points of electrical supply referred to above which are all affected by the interruption of bulk electricity supply, suffer irreparable harm to such an extent that it warrants the hearing of the matter on an extremely urgent basis.

The situation is getting more desperate by the hour. I respectfully explain as follows: 13

16. The Applicant's entire water supply system is dependent on electricity and the Applicant is unable to supply any water services without bulk electricity supply from Respondent to the townships in its area.

17. The interruption of bulk electricity supply from 06h00 to 08h00 and from 17h00 to 19h30 as from 16 February 2017 resulted in the following detrimental consequences to the local community:

17.1. About 97 000 households (424 578 individuals) in the formal townships in the Applicant's jurisdiction area are provided with piped water through the Applicant's bulk water supply system. Roughly 34 000 households in informal settlements are provided with water through water tankers.

17.2. As a result of the frequency of the interruptions (on Thursday and Friday between the hours 06h00 – 08h00 in the morning and 17h00 – 19h30 and on Saturday and Sunday between 08h30-11h00 and 15h00 – 17h30), the water levels in the water towers gradually decreased.

17.3. The decrease of the water levels is also because the current demand for water in the Municipality is 150 mega litres (ml) (that is 150,000,000 litres) per day.

17.4. Before the current power interruptions Applicant was only able to provide 105 ml/day which means there is shortfall of 45ml/day. During peak hours, the system more often ran dry due to high demand of water. The water supply was simply not enough. The municipality was already doing water shedding during the day and replenished the water levels in the reservoirs during the night.

17.5. As a result of the frequency and duration of the interruptions in the electricity supply from Thursday 6 February 2017 onwards (which was aggravated by a burst of a 900mm water pipe on Sunday 19 February 2017), the levels in the 5 reservoirs gradually decreased and on Sunday 19 February 2017 during the afternoon, the water levels dropped to a point where no outflow of water was possible.

17.6. As a result the water supply to the roughly 424,578 individuals (97000 households) who depend on water supply from the Municipality, was terminated at roughly 16h45 on Sunday 19 February 2017. Since then not one of the 424,578 individuals who depend on water supply from the Applicant has had any access to any water.

17.7. In the higher lying areas of the KwaGuqa Extentions, Clewer, Phola, Ogies, Hlalanikahle, Empumelelweni, Bankenveld, Duvha Park Extensions, Tasbet Park Extensions and the Del Judor Extensions the Applicant's pump and purification system cannot provide an adequate

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supply to provide these areas with water before the next scheduled power interruption.

17.8. This has resulted therein that the approximately 40 000 households in these areas are without water from 06h00 on Thursday 16 February 2017. This this lack of water supply will continue for 5 days after all interruptions have terminated because it will take 5 days to restore the water interruption after the power interruptions has stopped.

17.9. It takes between 3 and 5 days hours to restore the interruption of water supply to the respective areas depending thereon whether the areas are low or high lying and whether it is near to the reservoirs or in areas further removed.

17.10. The Applicant cannot supply the prescribed minimum quantity of water to these 40 000 households through water tankers for the reasons set out in the confirmatory affidavit by Mr K L Mashile who is the Applicant's Executive Director of Technical Services.

17.11. Roughly 34 000 households in informal settlements also no longer have access to the prescribed minimum of quantity of water supply since 06h00 on 16 February 2017.

17.12. The reason why the water supply to the above communities is terminated, is the direct result of the suspension of electricity by Respondent as is

explained by Mr Mashile and Mr W R van As whose confirmatory affdavits are attached to this Founding Affidavit (Anenxures T18.1 and T18.2).

17.13. All Sewer and sanitation services in the Municipality's area came to a complete standstill on Sunday afternoon on 19 February 2017. In the formal townships of KwaGuqa Extentions; Clewer; Phola, Ogies; Hlalanikahle; Empumelelweni; Bankenveld; Duvha Park Extensions; Tasbet Park Extensions and the Del Judor Extensions serving 40 000 households these services came to a complete standstill at 06h00 on 16 February 2017.

17.14. The operation of Municipality's sewer network depends on the availability of water. If there is no supply of water it simply means that no waste water will flow in the sewers. This will form a hard sludge which will block the drains.

17.15. Under normal conditions, the Municipality each month records about 25 major sewer blockages on mainlines which are caused by a lack of adequate water supply. In the case of a major sewerage blockage, the sewage pipe has to be dug up and to be replaced.

17.16. Because the entire water supply is now terminated, it follows that a hard sludge is busy forming in the major sewage pipes which places the entire municipal sewerage system at risk.

17.17. If the water supply to the sewer and sanitation system of Applicant is not restored within the next 72 hours, solids in the sewer system will form a hard sludge which will permanently block the sewage pipes. Even if the water supply is restored thereafter, these blockages will remain and will require the Municipality at an enormous cost, to dig up and to replace major parts of its sewage system. This will delay the restoration of sewer and sanitation systems in these townships indefinitely.

17.18. As it will take 5 days after the electrical interruptions has stopped to restore the water supply to the towns of of KwaGuqa Extentions; Clewer; Phola, Ogies; Hlalanikahle; Empumelelweni; Bankenveld; Duvha Park Extensions; Tasbet Park Extensions and the Del Judor Extensions serving 40 000 households the hard sludge in these sewage pipes will remain and become permanent obstructions and a large portion of these pipes will have to be dug up and to be replaced to restore sewer and sanitation services to these towns. This will delay the restoration of sewer and sanitation systems to these in these townships indefinitely.

17.19. It behoves with respect no argument that the non-functioning of the sewer and sanitation services will pose a severe health risk for all the communities that are affected by the electricity interruptions. Also, the hard sludge will cause a smell and is likely to lead to waterborne diseases such as cholera, typhoid and dysentery which are caused by bacteria and parasites.

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17.20. In addition, in the high lying areas where the hard sludge in the sewage pipes has become permanent, when the water supply will be restored, 5 days after stoppage of the interruptions, raw and untreated sewage will be forced from the blocked sewage pipes into the townships from pipes that will burst and from manholes thereby creating a severe health risk which will continue indefinitely.

17.21. The Applicant's sewer treatment plants rely fully on electricity for operation. If not functional it will result in raw sewerage that will flow into the Witbank Dam. The Naawpoort Sewer Treatment Plant is 1 km away from Witbank Dam and was operated at maximum capacity. Because of the constant interruptions, raw sewer has started to flow into the Witbank Dam. The Witbank dam serves as the raw water source for water to supply the town of Emalahleni and its surroundings areas and the raw sewer poses a serious health hazard.

17.22. I refer to the confirmatory affidavit by Mr Mashile (Annexure 18.1) in this regard.

18. Further direct consequences flowing from the loss of electricity (excluding the interruption of water and sewer supply) include:

18.1. The delay and disruption of all road traffic and the endangering of road safety due to the non-functioning of all traffic lights in the towns within the Applicant's area of jurisdiction. There are 64 traffic intersections. About

110000 vehicles make use of the public roads in the Applicant's area on a daily basis;

18.2. The incidence of electrical cable theft will increase dramatically and it will be impossible to contain during the scheduled disruptions of the bulk electricity supply:

18.2.1. In the recent past there were disruptions in the electrical supply to Jakaroo Park, Del Judor, Pine Ridge, Ferrobank and Blanchville; during these interruptions cable theft took place in those areas.

18.2.2. As a result of the power interruption the power to all electrical cables within the Applicant's area of jurisdiction will be off and it will be easy to remove and steal electrical cables.

18.2.3. It will be impossible to prevent or contain electrical cable theft during the envisaged periods of electrical supply interruption through inspection and patrols because the whole of the electrical cable system (totalling in excess of 1200 kilometres of electrical cable) would lie available and be safe for cable theft. It will be impossible to anticipate at which locations cable theft will take place while the electrical power is off.

18.2.4. It will be impossible to test or monitor the electrical cable system electronically and to detect where and when cable theft are taking

place while the power is off. The Applicant does not have a scada monitor system in place.

18.2.5. Only after and during the time periods when the bulk power is turned on by Respondent will the Applicant be able to detect which areas still do not have electricity and start to determine whether it is due to the breakdown equipment or due to cable theft.

18.2.6. The replacement of stolen electrical cable will therefore also be delayed and this will also lengthen the duration of the power interruptions;

18.2.7. If power is restored, the resultant power surge often results in cables to overload and to explode.

18.3. On 13 to 15 February 2017, violent protests took place as a result of the disruption of the water supply to amongst others KwaGuqa, and Hlalanikahle. The severity of the protests led to a temporary closure of the N4 highway. Because the water shortage has now reached critical proportions, more violent and longer protests are likely to occur which may potentially result in damage to property and loss of life.

19. The Applicant has ignored the disastrous consequences of the interruption of the bulk electricity interruptions on the access to water, sanitation, the collapse of the Applicant's water and sanitation infrastructure and the health risk caused to the local community to date.

20. Instead Respondent gave notice to the Applicant on 19 February 2017 that it *"will increase the frequency and/or duration of the interruptions once the public notification process has been concluded"*. The reason for this increase is "*as there is no progress from the Municipality in remedying the breach*" I refer to **Annexure T12** in this regard.

21. It is clear from this notice of 19 February 2017 that the Respondent is not at concerned at all about the disastrous consequences of the existing power interruptions and that it has already and finally decided to increase the frequency and duration of the power interruptions when the public has been notified thereof.

22. I respectfully submit that the matter is extremely urgent as a result. For every hour and every day that the interruptions in the electricity and water supply continues, the irreparable harm suffered by the Applicant and its roughly half a million population, continues to increase for the reasons set out above.

23. I now turn to grounds for the relief contained in the Notice of Motion.

THE EXISTENCE OF AN INTERGOVERNMENTAL DISPUTE AS CONTEMPLATED IN THE INTERGOVERNMENTAL RELATIONS FRAMEWORK ACT, ACT 13 OF 2005:

24. On 13 and 15 February 2017 the Applicant requested the Respondent to exclude the Applicant's water supply network from the power interruptions so as to enable

the Applicant to continue to supply water (and hence sanitation services) to its local community. A copy of the second request is attached hereto as **Annexure T13.**

25. On 16 February 2017 the Applicant supplied further information about the request for exemption to Respondent. A copy of this information attached hereto as **Annexure T14.**

26. This letter confirmed that if the water supply network of the Applicant is exempted from the power interruptions, about 200 households would continue to receive electricity because it is impossible to isolate the electricity supply to these households from a feederline from Doompoort and other related substations.

27. On 16 February 2017 Respondent indicated that because it was not technically possible to isolate all consumers from the network (in order to supply only the water pump stations), it was not prepared to exempt the water stations from power interruptions. A copy of this letter is attached hereto as **Annexure T15.**

28. On 18 February 2017 Applicant made a follow-up request for the exemption of the Doompoort Substation to Respondent. A copy of this request is attached hereto as **Annexure T16.** I refer to paragraphs 5 to 7 of this letter wherein I again explained why the exemption of the Applicant's water infrastructure is essential.

29. On 19 February 2017 Respondent confirmed that it is not prepared to grant exemption from power supply interruption in respect of the Doornkroof point of supply. A copy of this letter is attached as **Annexure T17** hereto.

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30. The Respondent currently supplies electricity in bulk to the Applicant for municipal purposes and for distribution to consumers within the Applicant's licensed area of supply in terms of a written agreement. A copy of this agreement which was concluded on 18 September 2001, is attached as **Annexure T19.**

31. In terms of clause 22.3 and 22.4 of the electricity supply agreement the Respondent may discontinue or terminate the bulk supply of electricity to Applicant if the Applicant fails to pay any electricity account in accordance with clause 9 of the agreement.

32. The Applicant fell in arrears in respect of the bulk electricity supplied by Respondent to the towns and areas stated in paragraph 7 above and the Applicant and the Respondent concluded an acknowledgement of debt and repayment plan agreement on 9 May 2016. A copy of this agreement is attached hereto as **Annexures T20.**

33. As at 8 May 2016 the Applicant was indebted to Respondent in the amount of R 544 066 777.67 (including VAT and accumulated interest). I refer in this regard to paragraph 3 of **Annexure T20.**

34. The repayment of debt schedule is contained in clause 4.1 of the repayment plan agreement (Annexure T20). In terms of this repayment schedule the Applicant had to repay the entire debt by April 2018.

35. Applicant was unable to pay its current accounts for bulk electricity between July 24 and December 2016 in full. It was also unable to repay the debt in terms of the repayment plan (Annexure T20) due to the following circumstances which were beyond the Applicant's control and which the Applicant could not anticipate:

35.1. The Applicant budgeted for payment of its current electrical accounts due to Respondent on an estimated payment rate of 87% of electrical accounts by its consumers in view of the payment rates of previous years, whereas the payment rate by the Applicant's customers dropped to 63% during 2016. This resulted therein that the Applicant received about R40 million less per month in revenue from its customers than the amounts budgeted for each month.

35.2. The Applicant underestimated the impact of the closing down of the Highveld Steel and Vanchem Industries and of their subsidiary industries on unemployment and on the payment rate by consumers of electricity. Although only 2500 people became unemployed as a result of the closing down of Highveld Steel and Vanchem about 12000 people eventually became unemployed as a result thereof and this contributed to the decreased payment rate of 63% of electricity accounts instead of the budgeted 87% payment rate.

35.3. Due to vacancies in the Applicant's Finance department, the Applicant was unable to implement effective credit control measures immediately to address the low payment rate.

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35.4. Applicant was furthermore also not able to roll out electricity meters and to bill an estimated 25 000 additional consumers of electricity in new developments who were consuming electricity without paying for the electricity.

35.5. Applicant estimated the electricity consumption in the Applicant's area and budgeted the consumption for 2016 based on the electricity consumption of previous years. During the previous years the electricity consumed was much lower than during the winter of 2016 with the average monthly consumption during winter 2015 on average below R100 million whereas during winter 2016 the consumption was constantly above R135 million per month. This was partly due thereto that 2016 was the first year that there was no load shedding by Respondent, and this could not be anticipated by the Applicant.

36. The Applicant as a result, underestimated the consumption of electricity by its consumers and its liability to Respondent and overestimated the payment rate of the electrical accounts by its consumers and the revenue to be received by the Applicant. It therefore did not budget for such difference in expenditure and in revenue received for electricity and did not have sufficient funds to pay the higher than anticipated electrical accounts to respondent during 2016.

37. As a result, the Applicant short paid its current account with the Respondent and was also unable to pay the total of R 75 million which fell due by December 2016 in terms of the repayment plan (Annexure T20 par 4.1). 26

38. Because the 31 December proposal (Annexure T3) was not acceptable to Respondent, the Applicant prepared and submitted a revised payment and catch up plan (Annexure T7). The Applicant made an analysis of the revenue required and how soon such revenue can be generated by the Applicant based on operations and the improvement of efficiencies and based thereon prepared the revised catch up plan (Annexure T7).

39. The Applicant has taken the following corrective actions in order to pay the outstanding electrical account to Respondent and based thereon revised the catch up plan to pay the outstanding account as per **Annexures T3 and T7**:

39.1. The Applicant appointed a Chief Financial Officer on 1 July 2016 who now oversees financial planning, credit control and billing;

39.2. The Applicant appointed the Red Ants as dedicated credit control teams during November 2016 and the Applicant has seen an improvement from a 63% payment rate to more than 85% in one month in the four suburbs where they were employed. During January 2017 their credit control measures will be extended to another four suburbs;

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39.3. With the roll out programme of registering new consumers, putting in electrical meters and billing such consumers in the more affluent areas and business sector a negative cash flow position is projected to change to a positive shift movement in additional operational income of R650 million over the next 12 months;

39.4. To correct the outstanding arrears in the short term, the top 300 defaulting customers are being cut off and 50% of these have already been disconnected as of 15 January 2017. This credit control processes will continue and will ensure the maintenance of the payment levels above 85% as per Applicant's budget;

39.5. A new prepaid electrical system has gone live during the first week of January which now enables the Applicant to monitor leakages from the Applicant's pre-paid system to ensure that no leakages take place. The previous estimated leakages from the Applicant's prepaid electrical revenue stream were estimated at R 12 million monthly;

39.6. Applicant launched an incentive scheme to encourage its customers to repay their outstanding arrears with the municipality as from 16 January 2017. At this stage businesses are in arrears in more than R260 million, Governmental debt is R40 million and households own the Applicant R1.6 billion. Through allowing different levels of waiving of interest and discounts of up to 50% on difficult recoverable debt, the Applicant estimated that in the moratorium period between the 16th of January and

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the 31st of March 2017, 75% of outstanding government debt, 45% of debt from the business sector and 10% of debt from households could be recovered. It is estimated that R300 million from the outstanding arrears of R2.2 billion due to the Applicant can be recovered during this period;

39.7. For the first time since 2012, there was a decrease in the outstanding arrears to the Applicant in an amount of R35 million;

39.8. Applicant started a process of removing illegal connections which are the cause of the very high level of 41% of non-revenue electricity. On the 13th of January the first area was cleaned up and arrangements with the community, law enforcement and the SAPS to monitor the situation and prevent the reoccurrence are in place. The Applicant will continue to roll out this initiative and by end of February 2017 will cover all areas where there are large scale illegal connections. This will reduce the Applicant's non-revenue electricity by nearly 50%;

39.9. The Applicant's Council has approved the selling of municipal land and the first sale estimated at R85 million at that stage was finalized by the end of January 2017 (this property was in fact sold at a much higher price as is explained below). The other three pieces of land with a further potential selling value of R200 million will be in the market during February 2017 and should deliver revenue by May 2017;

39.10. For purposes of the new repayment plan (Annexure T7) Applicant conservatively included R70 millions of these proceeds in the period up to

April 2017 and the balance will be available together with confirmed equitable share allocations to continue the capital repayments as per the original repayment plan from May 2017 onwards;

39.11. Applicant has now brought various townships who have not been billed before into its revenue system. These townships have been billed since 15 January 2017 and based on current payment rates the Applicant estimated an amount of R16 million a month to be generated from these townships from February 2017 onwards. A large part of Klarinet (more than 6000 households who have never been billed before) are now included in the Applicant's billing and it is estimated that up to R17 million in additional revenue per month can be realized from March 2017 onwards from this area alone;

39.12. The provincial and municipal human settlement programme will be delivering 18 000 serviced stands over the next 18 months. This programme will accommodate more than 70% of households who are currently not contributing to any electrical revenue on serviced sites who consume electricity and who will then be formally billed by the Applicant. The Applicant's target is to reduce the current close to 40% non-revenue electricity consumption to 20% by March 2018.

40. The payments that the Applicant has made to Respondent since 1 January 2017 to 16 February 2017 are set out in **Annexure T21** hereto.

41. On 13 February 2017, the above repayment plan was again presented to the Respondent. In addition, a cession of the purchase price of R250 million in respect of the sale of the Applicant's land was offered to the Respondent. The Respondent insisted that it will not continue to interrupt the electricity supply if the Applicant make an immediate payment of R277 million and the remaining amount of R185 million over a period of 3 months.

42. The Applicant was not able to comply with Respondent's ultimatum and it is impossible for the Applicant to give an undertaking that it would comply with therewith in future because the Applicant simply do not have the funds available to do so. The Applicant's total creditors amount to R1,1 billion of which an amount of about R 950 million is due to the Respondent.

43. Because the Applicant did not budget for a surplus, the Applicant does not have any capital or reserve funds to immediately catch up and to give effect to the Respondent's ultimatum. I am confident that the Applicant will however, by restructuring the payment schedule as proposed in Annexure T7, be able to catch up with the repayment schedule (in Annexure T20) by May 2017 and thereafter be able to pay the full outstanding amount to Respondent by April 2018.

44. To raise the required capital the Applicant resolved to sell a prime property that it owns. A copy of the invitation to tender is attached as Annexure T25 and the Honourable Court is respectfully requested to read the contents herein as part of this affidavit.

45. The tender process was concluded yesterday, 20 February 2017 and the tender was awarded at an amount of R250 000 000.00. The successful tenderer will raise a guarantee which will be presented to the Respondent as part payment of the outstanding debt. The Applicant is confident, in view of the successful sale of its properties and the steps set out in paragraph 39 above, that it will not default on its payment plan.

46. The Respondent was fully aware, not only of the steps taken by the Applicant set out in paragraph 39 above but also of the intended sale of the Applicant's properties.

47. This notwithstanding, the Respondent continued to interrupt the Applicant's electricity supply. Under these circumstances, I respectfully submit, the Respondent's actions cannot serve any meaningful purpose. The Applicant cannot propose a more favourable repayment plan because it does not have the funds available.

48. The Respondent contends that it is entitled to interrupt the bulk electricity supply to the Applicant in terms of the energy supply agreement (Annexure T19) and as a result of the Applicant's breach of its contractual obligations to pay the electrical accounts due by the Applicant to Respondent.

49. The Respondent lost sight of the fact that the Applicant and Respondent are both organs of state and as such they have a constitutional duty to co-operate to the benefit and welfare of the general public. The constitutional duties that rest upon the Applicant and the Respondent were given effect to in Act 13 of 2005.

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50. On 21 February 2017, the Applicant declared an intergovernmental dispute in terms of section 41 of Act 13 of 2005. A copy of the declaration of dispute is attached hereto as **Annexure T22.** It was also sent and delivered to the Respondent, the Minister of Energy, the Minister of Public Enterprises and to the MEC for Co-operative Governance and Traditional Affairs (Mpumalanga Province).

51. Applicant's Attorneys also forwarded this notice of dispute together with a covering letter by email to Respondent on 21 February 2017 at 12h11. A copy of the email together with the covering letter and the declaration of the intergovernmental dispute by the Applicant is attached hereto as **Annexure T23.**

52. The covering letter informed Respondent that :

52.1. Applicant has given notice of an intergovernmental dispute in terms of the provisions of section 41(1) of Act 13 of 2005 and attached a copy of the notice Annexure T22;

52.2. The notice was send by email but will also be forwarded by registered post as required by the Regulations promulgated under the Intergovernmental Relations Framework Act 13 of 2005. The Notice was also copied to the Minister of Energy, the Minister of Public Enterprises and the relevant MEC;

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52.3. The dispute between the parties consisted thereof that Respondent interrupted the bulk electricity supply as from 16 February 2017 without taking into account the circumstances, material interests and budgets of the Applicant and the fact that the disruption of the electricity supply now threatens to result in the total collapse of the Applicant's water and sanitation infrastructure and is causing severe socio-economic hardship to the local community; and.

52.4. Requested a written undertaking from Respondent before16h00 on 21 February 2017 that Respondent will not continue to interrupt the bulk electricity supply to the Applicant pending resolution of the declared intergovernmental dispute, alternatively the review of the Respondent's decison failing which the Applicant will approach the High Court on an urgent basis for appropriate relief.

53. The Respondent did not give the requested undertaking.

54. It is submitted that the intergovernmental dispute arose from statutory powers or functions assigned to the Applicant and the Respondent to render municipal services and electrical services and is justiciable in a court of law. The electricity supply agreement (Annexure T 19) between the parties implements the statutory power or function bestowed upon the Respondent as the distributor of electricity to supply electricity to the Applicant as an electricity service authority and service provider.

PRIMA FACIE RIGHT

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55. I respectfully submit that the intergovernmental dispute would in all probability be resolved in favour of the Applicant. Section 41(1)(a) and (c) of the Constitution enjoins all spheres of government and all organs of state within each sphere to (amongst others) preserve the peace and to secure the wellbeing of the people of the Republic. In addition, they must provide effective transparent, accountable, coherent government for the Republic as a whole. In addition, spheres of government and all organs of state must co-operate with one another in mutual trust and good faith by (amongst others) assisting and supporting one another and avoiding legal proceedings against one another (section 41(1)(h)(ii).

56. The prospects of success, with respect, favours the Applicant. The Respondent has embarked on a destructive and ruinous course that ignores not only its clear constitutional obligations, but has now resulted in the gross violation of the constitutional and statutory rights and obligations of the Applicant and its local community.

57. Also, section 5(a) of Act 13 of 2005 requires that organs of state must take account of the circumstances, material interests and budgets of other governments and organs of state when exercising their statutory powers and functions.

58. In deciding to interrupt the bulk electricity supply to the Applicant, the Respondent did not take into account the financial circumstances and budget of

the Applicant or its material interests and obligations in the supply of municipal services to the local community. 35

59. Respondent also did not take into account that the power interruptions will not assist the Applicant to settle its outstanding account with Respondent but that it may make it more difficult for the Applicant to recover current and outstanding electricity accounts due to it by its local communities for as long as the interruptions are continuing especially because they are being deprived of access to water by such interruptions.

60. The rendering of bulk electricity supply by Respondent to the Applicant constitute administrative action alternatively public action and the interruption of such bulk electricity supply to the Applicant affects the obligation and capacity of the Applicant to render municipal services to the local community within its area of jurisdiction, as well as the constitutional and statutory rights of the local community to electricity, access to water and an environment that is not harmful to their health or well-being.

61. I refer to a Provincial Communication Bulletin issued by the Respondent on 20 February 2017 wherein the General Manager of the Respondent's Mpumalanga Operating Unit, Mr Phil Khumalo stated:

> *I am fully aware of the water supply challenges in eMalahleni, especially now, being impacted by daily interruptions. There are some who do not have the luxury of buying bottled water or having private bulk water supply, JoJo tanks, generators, etc. I hope that the municipalities can be*

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persuaded to pay Eskom and resolve this inconvenience speedily for the benefit of all affected."

A copy of this statement is attached as **Annexure T24.**

62. Despite being fully aware of the disastrous consequences of the power interruptions on the supply of water and sanitation services and on the Applicant's municipal services infrastructure network, Respondent chose to ignore these consequences and has chosen instead to increase the severity of the interruptions for no apparent purpose.

63. The Applicant has made every reasonable effort to avoid an intergovernmental dispute with the Respondent. The Respondent was not concerned about the disastrous consequences of the interruption of the bulk power supply to the Applicant's obligation to provide of water and sanitation services to the local community and the Applicant therefore had no other alternative than to declare an intergovernmental dispute with Respondent.

64. The intergovernmental dispute that Applicant declared consists thereof that :

64.1. The disruption of the electricity supply threatens to result in the total collapse of the Applicant's water and sanitation infrastructure and is causing severe socio-economic hardship to the local community;

64.2. The Municipality is obliged to preserve and to protect the existing access to electricity water and sanitation of the local community of Emalahleni;

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64.3. Respondent interrupted the bulk electricity supply to the Applicant as from 16 February 2017 without taking into account that this will make it impossible for the Applicant to fulfil its constitutional and other statutory obligations to provide basic municipal services which include water and sanitation to the local community within the Applicant's area;

64.4. The Respondent's decided to interrupt the supply of bulk electricity in order to obtain payment from the Applicant for arrears whilst there exists less intrusive or drastic measures to obtain payment; and

64.5. The effect of the interruption would not ensure payment on different terms as were proposed by the Municipality. I refer to paragraphs 4 to 6 of **Annexure T22** in this regard.

65. It is also submitted that the Respondent is obliged to follow a fair procedure before deciding to interrupt the bulk electricity supply to the Applicant and other municipalities affording the Applicant and members of the local community to be affected by the interruption of electricity a fair opportunity to make representations to Respondent on the consequences of such interruption of bulk electrical supply and on alternative less drastic measures available to Respondent to obtain payment from the Applicant for outstanding electrical accounts rather than to interrupt the bulk electricity supply to the Applicant and to its local community.

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66. The Applicant's local community was not made aware of the consequences of the envisaged power interruptions by the Respondent on the water supply and sanitation and they were not given any opportunity to make meaningful representations in respect thereof to Respondent.

67. Respondent did not consider the consequences of the interruption of the bulk supply of electricity to the Applicant on the access to water supply and a healthy environment to the local community of the Applicant and has not afforded the local community a fair or any opportunity to address Respondent on such consequences and on less drastic alternative measures to obtain payment form the Applicant.

68. Less drastic measures would include:

68.1. To allow the Applicant more time to realise the proceeds from the sale of its land and/or to accept the Applicant's repayment plan;

68.2. Not to cut the bulk electricity supply to the Applicant's bulk water supply and sanitation system so as to ensure that the Applicant remains able to continue to provide access to water to its local community;

68.3. To limit the frequency and duration of the interruptions in the electricity supply to allow sufficient recovery periods between interruptions.

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69. The Applicant as a municipality and as an electricity distributor is under an obligation to provide electricity as an important basic municipal service to the local community within its area of jurisdiction in terms of the Municipal Systems Act, Act 32 of 2000. The Applicant is also obliged to provide water and sanitation to the local community in terms of the Municipal Systems Act.

70. The local community within the Applicant's jurisdiction area is entitled to receive electricity from the Applicant. The Applicant as the service provider and the Respondent as the supplier of bulk electricity to Applicant are both obliged to follow fair procedures before terminating those services.

71. The right to receive electricity arises from the broad duties on local government to provide services as set out in the Municipal Systems Act 32 of 2000 read with the National Housing Act 107 of 1997.

72. The local community within the Applicant's area of jurisdiction has a right of access to water in terms of section 27 of the Constitution read with the Water Services Act of 108 of 1997 and has existing access to water.

73. Section 3(1) of the Water Services Act guarantees everyone the right of access to 'basic water supply and basic sanitation'. The Act defines 'basic water supply' as 'the prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene.

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74. The Regulations Relating to Compulsory National Standards and Measures to Conserve Water Notice 509 of 8 June 2001 prescribed the minimum standard of basic water supply as '25 litres per person per day or 6 kilolitres per household per month' at a minimum flow rate of not less than 10 litres per minute, within 200 metres of a household and with an effectiveness such that no-one is without water supply for more than seven full days in any year.

75. The Water Services Act and Regulations therefore ensure that all people have access to a minimum basic water supply.

76. The right of access to water also requires that the state and state organs (which include the Applicant and the Respondent) must refrain from interfering with the existing access to this right.

77. The Applicant is enjoined to respect and protect the existing access of its consumers and local community to water and sanitation and to a healthy environment.

78. The interruption of the existing water supply to the Applicant's consumers and local community which follows as a result of the disconnection of the bulk electricity supply to the Applicant results in a breach of the Applicant's constitutional duty to respect its local community and consumers' existing access to water.

79. I respectfully submit that the Applicant has demonstrated the existence of a *prima facie* right as a result.

IRREPARABLE HARM

80. It is submitted that the Applicant shall suffer the following irreparable harm if interim relief is not granted:

80.1. Apart from the fact that the local communities within its jurisdiction area continues to be deprived of water (which affects their dignity and right to a healthy and clean environment, amongst others) the Applicant runs the risk that its entire sewerage and reticulation system may collapse and go to ruin.

80.2. The Applicant will continue to be unable to fulfil its constitutional and statutory obligations to provide basic services (water, sanitation and a healthy environment) to its local community;

80.3. The interruption of the electrical supply and of the interrupted of total loss of water supply is likely to result in widespread public protests and public unrest endangering property and lives;

80.4. The interruption and loss of water supply is likely to lead to the non-payment for municipal services by consumers which will impacts negatively on the Applicant's ability to earn revenue to render municipal

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services to the local community and to perform its other governing duties and obligations;

80.5. The Applicant's sewage and electrical reticulation system will continue their collapse and public health will continue to be affected negatively.

81. It is submitted that the balance of convenience favours the Applicant and its local community above Respondent. The inconvenience that Respondent will suffer if the interim interdict is granted, consists of Respondent being obliged to continue to provide bulk electricity services to the Applicant pending resolution of the Intergovernmental Dispute, alternatively pending finalisation of the review applications.

82. The inconvenience the Respondent may suffer will also decrease to the extent that the Applicant will continue to implement its proposed repayment plan.

83. In short, the inconvenience the Respondent may suffer consists of the Respondent having to wait until May 2017 to catch up with the repayment schedule set out in Annexure T7.

84. It is submitted that this inconvenience cannot weigh up against the local community's loss of access to water , sanitation and a healthy environment which has already resulted from the disconnections.

NO ADEQUATE ALTERNATIVE REMEDY

85. The Applicant requested the Respondent to provide it with an undertaking that it would not continue to interrupt the bulk electricity supply to the Applicant. The Respondent has refused to provide the Applicant with the requested undertaking. 43

86. It is submitted that the Applicant has no other adequate remedy. It has to approach the Honourable Court for the relief set out in the Notice of Motion.

87. Applicant therefor prays that the urgent relief as claimed in the notice of motion be granted against Respondent.

THEO JANSEN VAN VUUREN

SIGNED and SWORN to before me at Rustenburg on this 23 day of February 2017, the deponent having acknowledged that he/she knows and understands the contents of this declaration and that he/she has no objection to the taking of the prescribed oath and that he considers it binding on his conscience.

COMMISSIONER OF OATHS
FULL NAMES: Rhanyn Kotze
ADDRESS: 105 Clyde Avenue, Waterkloof
OCCUPATION: Practicing Attorney

"FA 4 92"

Notice

DISCONTINUATION OF ELECTRICITY SUPPLY TO EMALAHLENI LOCAL MUNICIPALITY

Eskom Holdings SOC Limited hereby notifies all parties who are likely to be materially and adversely affected by the contemplated discontinuation of electricity supply to Emalahleni Local Municipality on 20 November 2017 and continuing indefinitely, following Emalahleni Local Municipality's failure to settle on due dates an amount totalling R1 190 746 629 (one billion one hundred and ninety million seven hundred and forty six thousand and six hundred and twenty nine rand) for the supply of electricity, part of which has been outstanding and in escalation since January 2012 ("the electricity debt"). This amount is the arrear debts as on 29 January 2016.

The contemplated interruption of electricity supply will result in temporary scheduled disconnections at the following times:

onday to Friday	Saturday and Sunday
06:00-10:00	07:00-10:00
17:00-21:00	17:00-20:00

Eskom is obliged to supply electricity on a financially sustainable basis. The failure of Emalahleni Local Municipality to pay its electricity account timeously ha[illegible]opardised the financial sustainability o[illegible] supplying electricity to the below mentioned towns/municipal areas.

Eskom hereby invites all parties to submit written comments on or before the date specified below indicating why Eskom should or should not proceed with the planned disconnection.

The following towns/municipal areas will be affected by the planned disconnection, except those directly supplied by Eskom.

- The Ridge Casino, Highveld Mall, Blanchville/Jackaroo Park/Clearwater Estates, Die Heuwel Ext 4, Highveld Park, Model Park, River Crescent Centre, Seekoeiwater Plots, Den Fleur, Duvha Park Extensions, Del Judor Extensions, Klipfontein, Witbank Ext 6, 41 & 5, Bankenveld, Tasbet Park Ext 12, Witbank Dam, Corridor Hill, N4 Business, Reyno Ridge, Dixon Plots, Witbank Ext 16, Tasbet Park Ext 1
- Thubelihle, Ferrobank Industrial and Kwa-Thomas Mahlanguville
- Witbank CD, Schoongezicht, Klarinet Industrial (Abbatoir), Tasbet Park Ext 2 and 3, Witbank Ext 66, 16 and 41, Duvha Park Extensions, Evergreen, Protea Hotel, Jelicoe Street and Moth Cottages Retirement Village
- KwaGuqa Extensions, Hlanganikahle Extensions and Sinqobile, Ogies Township, Phola Township
- Ganala/Kriel Town and Thubelihle Township

The submissions/comments or requests for further information should be submitted to:

Senior Manager: Customer Services

[illegible]ical address: 28 Ferreira Street, Nelspruit 1200

Postal address: PO Box 579, Nelspruit 1200

E-m[illegible]address: CSMpumalanga@Eskom.co.za

Fax: 086 568 2610

Closing date for submissions will be end of business on 19 October 2017. Please take note that comments received after the closing date will not be considered.

Such comments and submissions will be considered and the final decision will be published in a notice 9 November 2017.

Reference Number: MQU28072017PAJA

Issued in terms of the Promotion of Administrative Justice Act (Act 3 of 2000)

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Fourie van Pletzen
INCORPORATED
Attorneys • Conveyancers • Notaries

Our Ref: F Botha/ive/MAT
Your Ref:
Date: 1 September 2017

ESKOM HOLDINGS SOC LTD

THE SENIOR MANAGER:
CUSTOMER SERVICES

BY EMAIL: CSManagement@eskom.co.za

BY FAX: 086 568 2610

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Fourie van Pletzen
INCORPORATED
Attorneys · Conveyancers · Notaries

Our Ref: F Botha/ive/MAT
Your Ref:
Date: 1 September 2017

ESKOM HOLDINGS SOC LTD

THE SENIOR MANAGER:
CUSTOMER SERVICES

BY EMAIL: CSManagement@eskom.co.za

BY FAX: 086 568 2610

Dear Sir/Madam

re: NOTICE RE INTERRUPTION OF BULK ELECTRICITY SUPPLY TO EMALAHLENI LOCAL MUNICIPALITY – HIGHVELD MALL

1. This representation is addressed to yourselves on behalf of our clients, the Co-owners of the Highveld Mall in Emalahleni.

2. This letter is addressed to you in response to your undated Notice published entitled "Discontinuation of Electricity Supply to Emalahleni Local Municipality" and contains submissions advancing reasons why the contemplated interruption and/or disconnection should not proceed.

Background

3. The representatives of the Highveld Mall have received your undated Notice advising of the intended interruption of bulk electricity supply to the Emalahleni Local Municipality. The Highveld Mall is situated within the area such Municipality and stands to be severely affected by any interruption or disconnection of electricity supply to the Municipality.

Fourie van Pletzen
INCORPORATED
Attorneys · Conveyancers · Notaries

4. The Highveld Mall is up to date with payments of all charges, including electricity, levied by the Municipality, and is an excellent payer of all such accounts. Any payment which may be due to yourselves in respect of the supply of electricity is as a result of the non-payment by the Municipality, and does not result from any default by the Highveld Mall.

Effects of disconnection

5. Any disconnection of electricity supply to the Highveld Mall will have catastrophic consequences on the tenants, shoppers, centre, and community. Should the electricity be disconnected, shops will be closed for the duration of disconnection. Furthermore disconnection it will lead to loss of trade and possible closure of businesses. Tenants in the Mall may seek to cancel their leases due to the interruptions and close their businesses. Should tenants vacate their shops, it could even lead to the Mall closing indefinitely. Many individuals and families depend on the continued operation of the Mall for their livelihood.

6. The Highveld Mall has a Gross Lettable Area of 85,000m² and contains a total of 185 stores. Most of these stores do not have backup generators and will have to close their doors during interruptions. Massive damages will be suffered by the Mall and the businesses conducted therefrom in the form of *inter alia* loss of trade, stock loss, reputational damage and loss of clientele.

7. A regulated disruption, as opposed to an outright disruption, will have the same severely detrimental effect on the Mall since the shopping hours fall within the times contemplated for disconnection and the Mall is expected to be operational during such times.

8. Should the disconnection of the supply to our client's property proceed, our client reserves its rights to hold Eskom liable for all losses and/or damages resulting from such disconnection.

9. Any further information which may be reasonably required in respect of the above submission will be made available upon request.

Fourie van Pletzen
INCORPORATED
Attorneys · Conveyancers · Notaries

10. This communication is not to be construed as an admission of any purported right to disconnect electricity supply. Insofar as applicable, all rights of the co-owners are reserved to approach a Court for relief in protection of their rights, including but not limited to urgent relief for connection of supply. Should a Court be so approached, our client's rights are reserved to join yourselves in any proceedings together with the relevant Minister and to hold you liable for the costs thereof.

11. We await to receive your confirmation as a matter of urgency.

Yours faithfully,

FOURIE VAN PLETZEN INC.
PER: F BOTHA

"FA 6" 97

Eskom

Cllr Lindiwe Ntshalintshali
Executive Mayor
Emalahleni Local Municipality
P O Box 3
WITBANK
1035

Date:
30 November 2017

Enquiries:
Tel +27 13 7552957
Musa Mabila

Dear Executive Mayor Cllr Ntshalintshali

FINAL DECISION ON THE INTERRUPTION OF BULK ELECTRICITY SUPPLY TO EMALAHLENI LOCAL MUNICIPALITY EFFECTIVE 14 DECEMBER 2017

As indicated in the notice published on 08 September 2017 Eskom has carefully considered all written representations, comments and/or submissions received on or before the closing date which among others, detailed the negative effect the contemplated interruption is likely to have on residents and business, the fact that some customers are paying, health related issues and many other representations. After careful consideration of all the representations and the overall impact of the escalating municipal debt, Eskom has taken a decision to proceed with the contemplated interruption and/or disconnection of bulk electricity supply to Emalahleni Local Municipality commencing 14 December 2017.

The contemplated interruption of electricity supply will result in temporary scheduled disconnection at the following times:

Monday to Friday	Saturday and Sunday
06h00 – 08h00	08h30 – 11h00
17h00 – 19h30	15h00 – 17h30

Notwithstanding the above proposed indicative times for the interruption of electricity supply, Eskom may, upon 15 calendar days' notice, disconnect electricity entirely and indefinitely should the electricity debt situation not improve.

The following towns/municipal areas shall be affected by the contemplated interruption and/or disconnection, except those directly supplied by Eskom:

EMALAHLENI LOCAL MUNICIPALITY TOWNS/POINTS OF SUPPLY TO AFFECTED
Witbank CBD and suburbs
Thubelihle
Kwaguqa
Ogies Township
Ganala/Kriel Town
Phola Township

CUSTOMER SERVICES
Key Accounts Management – Mpumalanga Operating Unit
28 Ferreira Street Nelspruit 1200
PO Box 579 Nelspruit 1200 SA
Tel +27 13 755 9200 Fax +27 86 539 4378 www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/015527/30

Eskom advises the municipality to inform all parties that are likely to be materially and adversely affected by the contemplated interruption of bulk electricity supply to take all the necessary precautions to ensure the safety of lives and to limit damages to their equipment, Operations and business.

All of Eskom's rights are reserved.

Yours sincerely

Phil Khumalo
GENERAL MANAGER
MPUMALANGA OPERATING UNIT

"FA7"

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: _____/2017

In the matter between:

WILLEM HELM JOHAN COETZEE	First Applicant
SAVE EMALAHLENI ACTION GROUP	Second Applicant
SAMUEL NAPE on behalf of INTERESTED AND AFFECTED PARTIES IN TERMS OF SECTION 38 OF THE CONSTITUTION	Third Applicant

and

ESKOM HOLDINGS SOC LIMITED	First Respondent
EMALAHLENI LOCAL MUNICIPALITY	Second Respondent
THE PREMIER, MPUMALANGA PROVINCE	Third Respondent
THE EXECUTIVE COUNCIL FOR PROVINCE OF MPUMALANGA	Fourth Respondent
THE MEMBER OF THE EXECUTIVE COUNCIL FOR COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, MPUMALANGA	Fifth Respondent
THE MEMBER OF THE EXECUTIVE COUNCIL FOR TREASURY, ECONOMIC DEVELOPMENT AND TOURISM, MPUMALANGA	Sixth Respondent
THE NATIONAL ENERGY REGULATOR	Seventh Respondent
MINISTER OF WATER AND SANITATION	Eighth Respondent
OLIFANTS RIVER FORUM	Ninth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned

WILLEM REINHARDT VAN AS

100

(Identity Number: 471201 5055 08)

hereby declare under oath as follows:

1. I am an adult male and as such I am competent to depose to the facts stated herein.

2. The facts stated herein fall, unless the context indicates otherwise, within my personal knowledge and are both true and correct.

3. I am a Professional Engineer (Civil) (registered with CESA number 780097) currently, practising as a Consulting Engineer currently working for SCIP Engineering Group (Pty) Ltd as a Specialist Engineer. I am a retired director of this company.

4. I hold the degrees B.Sc. and B.Eng. (Civil) from the University of Stellenbosch which I obtained in 1974. I am an Associate of the South African Association of Arbitrators and have acted as Arbitrator, Mediator and Expert Witness in different disputes in the past.

5. I have resided in eMalahleni since 1982 and acted as Consulting Engineer since then. I have detailed knowledge of the bulk water and sewer systems of eMalahleni and have conducted many different projects on behalf of the Municipality. I have inter alia executed the following projects during my professional career:

   3.1 upgrading of Water Purification Works (Point D) viz improving of

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capacity of system – 1988;

3.2 upgrading process of the only potable water purification plant of the City. Although this was in 1989, the plant still operates on the same principles of Civil Engineering today;

3.3 the upgrading a sewage purification works in 1989 namely the Ferrobank Sewage Works. This plant is a typical plant found in the rest of South Africa and this system is well known to me;

3.4 design and installation of delivery lines towards Point A (Die Heuwel) and Point B (Klipfontein);

3.5 design and installation of delivery lines at Ogies and Phola Townships;

3.6 design and installation of the link line from Witbank Dam to Middelburg including the building of the pump station at Witbank Dam;

3.7 maintenance and upgrading of Witbank Dam – 2005

3.8 design and supervision of New Pump Station at Witbank Dam – 2003

3.9 design and installation of 900 mm diameter delivery line from the Pump Station to the Raw Reservoir group called Point B – 2007

3.10 design and installation of reservoir at Point D – 2008;

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6. I also was involved with several projects regarding the bulk sewer and water systems like pump stations, delivery main pipelines and reservoirs in Emalahleni. The working of the system is well known to me.

BULK WATER DEMAND

7. The water consumption in the Emalahleni area is of such a magnitude that an uninterrupted electricity supply is needed. The demand for water in the ELM is 150 mega litres (ml) (that is 150 million litres) per day. The ELM is under normal circumstances only able to provide 105 ml/day, which means there is a shortfall of 45 ml/day.

8. The Municipality's pumps and purification system operate at full capacity to meet the current demand. If the electricity supply is disrupted, consumers are only able to obtain water from reservoirs for a short period. As no water is pumped into the reservoirs, the continuous outflow drains the reservoirs. When the electricity supply is then restored, it takes a considerable period of time for the pumps and purification system to pump sufficient quantities of water to fill the reservoirs.

9. The frequency and duration of Eskom's bulk electricity interruptions from 16 February 2017 onwards, resulted that the levels in the 5 reservoirs gradually decreased and on 19 February 2017 the water levels dropped to a point where no outflow of water was possible. It normally takes between 3 and 5 days to restore the interruption of

water supply to the respective areas depending thereon whether the areas are low or high lying and whether it is near to the reservoirs or in areas further removed.

BULK WATER SUPPLY SYSTEM

10. Attached hereto as Annexure "A" is a diagrammatical layout of the Bulk Water Supply System in eMalahleni. The drawing was prepared by SCIP Engineering Group in the past whilst investigating and executing projects.

11. Water is pumped from Witbank Dam from a height of 1478m above mean sea level up to a raw water reservoir group at Point B in Klipfontein at a height of 1630m. This height difference of 152m is overcome by electrical energized pumps at Witbank Pump Station. The maximum capacity of this system is 150 megalitres per day.

12. From Point B some 20 megalitres per day gravitates towards Highveld Steel, a Steel factory towards the West. The balance of water is then pumped from the underground (previous stone quarry) reservoir towards the Water Treatment Plant at Point D.

13. After the purification process, the water then gravitates to the 40Ml reservoir from where the water reaches the Point D Pump Station. This unit is the heart if the whole distribution system. The pump energized by electricity distributes the water to Point A and B.

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14. From this Point D water is pumped to point C, another reservoir group and also to Phola and Ogies.

15. At each of these reservoir groups, low level and high level reservoirs exist. The low-level reservoirs serve areas at geodetic height of some 25 metres lower than the reservoir lowest level and for the benefit of the higher areas, normally close to the reservoir group, water is served from a high level reservoir.

16. Pumps are needed to get the water into the high-level reservoirs. Should the interruption in power supply be affected, the reservoir will run dry within a short period of time. The capacity of such a tower is generally only 2 Megalitre while the capacity of the ground reservoirs in the area is 40 Megalitre. This means that the higher laying areas will be without water in a short period of time.

17. From Point A, water gravitates towards Point E (KwaGuqa) and the greater Klarinet area.

18. The main water distribution points in the eMalahleni area are Point A (Die Heuwel), Point B (Klipfontein), Point C (Reyno Ridge), Ogies / Phola and Point E (KwaGuqa). At each of these points water is pumped into Water Towers (Reservoirs at height). This understandably needs electricity to energise the pumps.

19. The electricity grid was established and developed in such a way that electricity cannot be supplied to water supply elements and not to

other consumers at the same time.

20. During electricity disruptions the reservoirs are rapidly drained, and the system can then not be replenished. Should further disruptions occur within a relative short period, the condition becomes unmanageable. The bulk electricity interruptions implemented by Eskom in February 2017 had exactly that effect. The bulk electricity interruptions that Eskom intends to implement from 14 December 2017 will have the same effect.

21. From the first day of Eskom's bulk electricity interruptions in February 2017, various areas of eMalahleni was left without water. The number of affected areas increased on a daily basis as the reservoirs ran dry.

22. When Eskom eventually terminated their bulk electricity interruptions on about 22 February 2017, the entire water and sewer networks were on the point of total collapse, and a major human and environmental disaster was prevented.

23. I am of the opinion that Eskom's intended bulk interruptions that will commence on 14 December 2017 will have the same detrimental effect. The fact that Eskom is prepared to allow the electricity supply to the water reticulation networks only to be interrupted once a day will not prevent the rapid total collapse of water entire water network. Eskom has in my opinion clearly not given proper consideration to major human and environmental disaster that will follow if they

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continue and persist with their intended bulk electricity interruptions.

24. In my professional opinion and my experience gathered at the time of Eskom's load shedding in the past and their bulk electricity interruptions in February 2017, the water supply of Emalahleni will be totally disrupted within 24 to 48 hours after the first interruption.

DAMAGE TO THE WATER NETWORK

25. The pressure and water flow in the water supply reticulation system must be maintained in order to prevent airlocks causing pipe burst and cavitation and breaking of water pumps. As a result of Eskom's bulk interruptions in February 2017 and the resulting interruption in water supply, 2 pipe bursts occurred on the main water supply at the dam line and about 20 pipe bursts on the reticulation system to household connections. Under normal circumstances, on average a pipe burst on the main water line takes place about once a year when the water pressure remains constant and regulated.

26. It is my opinion that the pipe bursts occurred due to a phenomenon called water hammer: if pumping is in progress from the dam, a column of water is transported via the pipelines to a point some 150m higher upstream. This water movement represents transportation of 1,74 ton water per second. Should the flow be interrupted suddenly, the kinetic energy in this column of water is not summarily destroyed and causes high pressure surges called water hammer causing damage and

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destruction to pipes and pumps in the system.

27. The same high pressures can materialize if the pumps suddenly start after a power disruption when the column of water has to reach the flow rate determined by the pumps.

28. In summary it is clear that in order to deliver water to consumers, electricity is absolutely necessary. The distribution system cannot function without it.

29. It is my professional opinion that it is impossible for the Municipality to deliver water to consumers without the availability of electricity.

WATER PURIFICATION SYSTEM

30. The Water Purification Works or Water Treatment Plant purifies some 120 megalitres per day which is distributed to the greater eMalahleni area. The Purification Works functions on flow by gravitation from unit to unit but all units are equipped with electrical elements like sediment scrapers for instance. The chlorine dosage unit in particular needs electricity, the filter beds needs electricity to activate the air blowers at the sand filter beds.

31. The purification plant can be considered as a chemical unit. Chemicals are introduced to the raw water as it enters the plant and these chemicals should stay in contact with the water for a certain period before flocculation of unwanted elements takes place and can

be removed from the circuit.

32. Chlorination of the water takes place whilst the flow tempo of the water tempo through the plant is electrically / electronically detected to provide the correct Chlorine dosage.

33. When an electricity interruption occurs, the plant comes to standstill, the chemical process fails, and raw water continue to flow through the plant untreated and unpurified. The flow of water through the plant cannot be stopped.

34. This means that untreated, unclarified water goes into the accumulating reservoir and is distributed to the community for whom this water is their only source of drinking and cooking water. Needless to say, that this cause a serious health risk to the consumers thereof.

SEWER NETWORK

35. The operation of the municipality sewage network depends entirely on the availability of water to carry the sewerage to the sewage plants.

36. If there is no supply of water, it simply means that sewage cannot flow away in the sewer. Should the water supply not be restored within short period, solids in the sewer system will form a hard sludge which will eventually block the sewage pipes permannetly. Even if the water supply is restored thereafter, these blockages will remain and will require the ELM, at an enormous cost, to dig up and to replace major

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parts of its sewage system. This will delay the restoration of sewer and sanitation systems in these townships indefinitely. These will also cause raw sewerage to overflow into the streets, onto properties and will eventually end up in the Olifants River system.

37. Under normal conditions, the municipality experiences about 25 major sewer blockages on the main sewer per month, which will be worsened by a lack of adequate water supply. In the case of a major sewerage blockage, the sewage pipe has to be dug up and to be replaced.

38. In February 2017, as a result of no water supply, a hard sludge was forming in the major sewerage pipes which placed the entire municipal sewerage system at risk.

39. There is a real risk that Eskom's interned interruptions will lead to the total collapse of the entire sewer system

SEWAGE WORKS

40. With particular reference to the sewage purification works the following:

40.1 the Municipality operates four of these plants namely Naaupoort, Ferrobank, Riverview and Klipspruit;

40.2 several pump stations in the area is necessary to get some of the sewage to the different purification plants but in general most of the outflow lines are gravity orientated;

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40.3 it is common knowledge that should the power be interrupted, these pump stations will start overflowing within minutes after the interruption started. This was indeed also the case during Eskom's bulk electricity interruptions to the municipality in February 2017 and will also occur when Eskom's intended bulk interruptions is implemented. The effect on the environment is catastrophic and cannot be easily undone.

41. Like in the case of the potable water purification plant, these plants work on gravitational energy to let water flow through the system.

42. Since sewage arrives at the pump station mainly by gravity pipelines, the sewage will simply find its way through the plant and come out the other end totally untreated and raw sewage will then land into the natural waterways and eventually find its way into the Olifants River catchment system.

43. The municipality's sewer treatment plants rely fully on electricity for operation. If not functional, raw sewerage will flow into the Witbank dam and the Olifants River system. The Witbank dam serves as the raw water source for water to supply the town of Emalahleni and its surrounding areas and the raw sewer presents a serious health hazard. In February 2017, the Eskom's constant interruptions caused raw sewerage to flow into the Witbank dam.

ISOLATION OF ELECTRICITY SUPPLY TO WATER AND SEWERAGE NETWORKS

44. The whole city depends for its water supply and the purification of sewage on the uninterrupted supply of electricity.

45. The source of electricity to the potable water purification plant cannot be practically isolated from the rest of the electricity network. To isolate any of the above users from the network will necessitate the manual removal of contact points at high safety risks for the technicians.

W R VAN AS

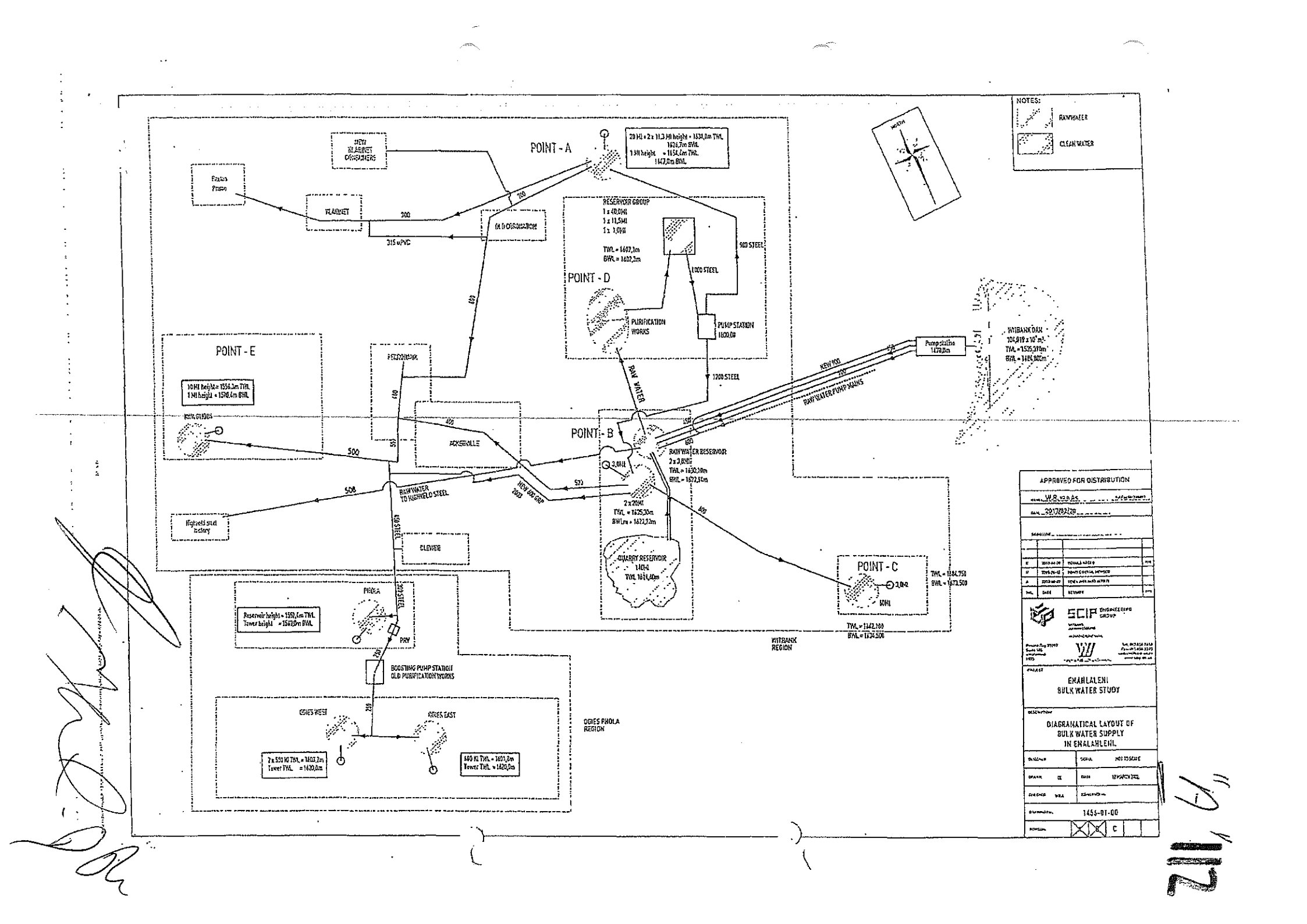
I certify that the deponent acknowledged that he has read and understands the contents of this affidavit, which was sworn to in front of me, the deponent having declared that he has no objection to the prescribed oath and regards the prescribed oath as binding on his conscience.

SIGNED AT [illegible] ON THIS THE 7 DAY OF **DECEMBER 2017.**

COMMISSIONER OF OATHS

FULL NAMES :
BUSINESS ADDRESS :
DESIGNATION :

IAN RICHARD BAILIE
PRACTICING ATTORNEY RSA
42 PLUMER STREET
WITBANK
COMMISSIONER OF OATHS


NOTES:
RAWWATER
CLEAN WATER
POINT - A
20 Ml + 2 x 11,3 Ml height = 1634,8m TWL
1626,7m BWL
1 Ml height = 1654,4m TWL
1647,0m BWL
NEW KLAARBET CONTAINERS
Eskom Prepaid
KLAARBET
300
315 uPVC
700
RESERVOIR GROUP
1 x 40,0Ml
1 x 11,5Ml
1 x 1,0Ml
TWL = 1602,1m
BWL = 1602,2m
900 STEEL
1000 STEEL
POINT - D
PURIFICATION WORKS
PUMP STATION
1600,0m
1200 STEEL
400
POINT - E
10 Ml height = 1556,3m TWL
1 Ml height = 1570,4m BWL
NEW GLOBUS
PETROMARK
600
555
500
ACKERVILLE
RAW WATER
POINT - B
550
555
2 x 3,8Ml
TWL = 1630,19m
BWL = 1622,95m
RAW WATER RESERVOIR
2 x 3,8Ml
2 x 20Ml
TWL = 1625,30m
BWL = 1622,12m
QUARRY RESERVOIR
140 Ml
TWL 1614,40m
NEW 900
700
RAW WATER PUMP MAINS
Pumpstation
1478,0m
WITBANK DAM
104,919 x 10⁶ m³
TWL = 1535,370m
BWL = 1484,900m
508
520
NEW 400 GRP
2000
RAWWATER TO HIGHVELD STEEL
Highveld steel factory
650 STEEL
CLEWER
800
POINT - C
3,0Ml
60Ml
TWL = 1584,750
BWL = 1573,500
TWL = 1542,100
BWL = 1534,500
WITBANK REGION
PROSA
Reservoir height = 1553,6m TWL
Tower height = 1542,0m BWL
PRV
200 STEEL
700
BOOSTING PUMP STATION
OLD PURIFICATION WORKS
265
OGIES WEST
OGIES EAST
2 x 550 Kl TWL = 1603,2m
Tower TWL = 1620,0m
440 Kl TWL = 1601,8m
Tower TWL = 1620,0m
OGIES PHOLA REGION
APPROVED FOR DISTRIBUTION
W.R VAN AS
2017/02/28
SCIP ENGINEERING GROUP
EMAHLALENI
BULK WATER STUDY
DIAGRAMATICAL LAYOUT OF
BULK WATER SUPPLY
IN EMALAHLENI
1456-BT-00
C

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"FA8"

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: _____/2017

In the matter between:

WILLEM HELM JOHAN COETZEE	First Applicant
SAVE EMALAHLENI ACTION GROUP	Second Applicant
SAMUEL NAPE on behalf of INTERESTED AND AFFECTED PARTIES IN TERMS OF SECTION 38 OF THE CONSTITUTION	Third Applicant

and

ESKOM HOLDINGS SOC LIMITED	First Respondent
EMALAHLENI LOCAL MUNICIPALITY	Second Respondent
THE PREMIER, MPUMALANGA PROVINCE	Third Respondent
THE EXECUTIVE COUNCIL FOR PROVINCE OF MPUMALANGA	Fourth Respondent
THE MEMBER OF THE EXECUTIVE COUNCIL FOR COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, MPUMALANGA	Fifth Respondent
THE MEMBER OF THE EXECUTIVE COUNCIL FOR TREASURY, ECONOMIC DEVELOPMENT AND TOURISM, MPUMALANGA	Sixth Respondent
THE NATIONAL ENERGY REGULATOR	Seventh Respondent
MINISTER OF WATER AND SANITATION	Eighth Respondent
OLIFANTS RIVER FORUM	Ninth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

FRANCOIS ALWYN VISAGIE

do hereby make oath and say that:

1. I am an adult male with identity number: 631222 5023 087, the managing director of Enercon (Pty) Ltd, with its main place of business situated at 13 Kolgans Street, Bankenveld, Emalahleni.

2. The facts contained herein are within my personal knowledge and are to the best of my belief both true and correct.

3. I have 30 (Thirty) years of experience in the energy and electrical consulting and engineering field. A copy of my curriculum vitae is attached hereto as annexure "FAV1".

4. I refer to my expert report dated 16 October 2017, attached hereto marked as annexure "FAV2". I confirm and approve the content thereof.

5. I confirm the contents of the supplementary founding affidavit deposed to by WILLEM HELM JOHANNES COETZEE insofar as it relates to me.

Deponent

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at on this 7 day of FEBRUARY 2017, and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

COMMISSIONER OF OATHS

IAN RICHARD BAILIE
PRACTICING ATTORNEY RSA
42 PLUMER STREET
WITBANK
COMMISSIONER OF OATHS

PO Box 14308, Leraatsfontein, 1038 Tel/Fax: 0136926744, Cell: 0832308655

FRANCOIS A VISAGIE

OBJECTIVE Consulting and Engineering Services

EXPERIENCE

2001 – 2017 - ENERCON PTY LTD

Managing Director

- Established company to provide energy and electrical services and products.
- Deliver consultancy services to companies such as South 32 (Previously BHP), Mondi, Emalahleni Municipality, Umfolozi Sugar, Eskom, Glencore.
- Deliver complete design, construction and commissioning services for MV and HV Electrical networks.
- Projects completed:
  - Modini 132kV/22kV/11kV 3 * 20 MVA Substation
  - 6 * 800 kVA 22000/550 V Mini-substations for South 32 Evaporation Project.
  - 22kV Switching Substation for Khutala Mine.
  - Glencore Mining - Network design and network studies.
  - Lurco/Olifants 22kV Twin Chikadee overhead line.
  - Emalahleni Municipality - AMR system for all HV and Large Industrial /commercial customers
- Expand Customer based from 200 GWH per annum in 2001 to 3 000 GWH per annum in 2015.
- Provide specialist electrical engineering knowledge and skills to Industry.
- Conduct network simulations studies by using DigSiLent Software.
- Maintain regular interactions between Enercon, Eskom, NERSA and Customers.
- Design and maintain customized pricing agreements such as Wheeling, Third party Resellers, Real Time Pricing, Demand Market Participation.
- Implement and maintain energy efficiency strategies.
- Provide a complete metering solution by offering customers Automated Real Time Metering systems. - Enercon online metering systems.
- Energy Management
- Project Management
- Protection Coordination Studies and Testing

1998 - 2001 Eskom Distribution Northern Region

Regional Sales and Marketing Manager / Key Customer Coordinator

- Overseen Key Customer Division for Northern Region.
- Develop and implement Customised Pricing Agreements for Sasol Synfuel, Sappi Ngodwana, Swaziland Electricity Board, Mondi (Piet Retief), TSB Komati.
- Implement and maintain regional and national pricing policies/directives.
- Compile annual sales and forecast budgets for Region.
- Implemented marketing programmes for Industrelek, Agrelek and Electroserve Brands.
- Serve on Distribution Pricing Committee.
- Visited Duke Power, Wisconsin Gas and Electricity, and other utilities in USA as career development .

1996 - 1998 Eskom Distribution Northern Region

Key Customer Executive

- Manage portfolio of Customers with Co-generation / Internal Generation Capacity.
- Formulate and implement customised pricing agreement to achieve Eskom objectives.
- Administer and maintain contractual aspects and service level agreements.
- Serve on Distribution Pricing Committee. (Ad / Hoc)

1992 - 1996 Engineering Eskom (Northern Region)

Protection, Telecommunication and Metering Area Manager

- Managed engineers and technicians responsible for highly skilled services in electrical network protection, metering and telecommunication.
- Responsible for project commissioning of PTM related functions.
- Implement centralised and automated meter reading capabilities for Region. (DG 20 and replace with MV 90)

1989 - 1992 Distribution Eskom (Eastern Transvaal Region)

Assistant District Manager - Middelburg

- Responsible for Eskom services as per geographical area classified as Middelburg District.
- Day to day leadership, managing and coaching.
- Act as District Manager from 1989 until 1991

1988 - 1989 Vanderbijl District Eskom (Southern Region)

District Engineer

- Design Electrical networks for rural and medium voltage customers.
- Conduct Load Flow Studies.
- Responsible for project commissioning of new installations.
- Responsible for preventative maintenance procedures and schedules.

1986 - 1988 Letabo Power Station (Eskom)

Snr Technician

- Implement power electronic section for Generation.
- Attended specialised training at Siemens (Isando). UPS systems.

1982 - 1986 Camden Power Station (Eskom)

Eskom – Engineer in Training Program

- Follow Eskom training program

EDUCATION

National Government Certificate of Competency. Factories

University of Technology - Vaal Campus

- Master Diploma in Technology.
- National Higher Diploma in Technology.
- Diploma in Technology
- Utility Management Leadership
- Business Leadership (MBL)- Unisa

MEMBERSHIP

Engineering Council of South Africa. (Professional Engineering Technologist)

ID Number:	*6312225023087*
Full Names:	Francois Alwyn
Home Language:	Afrikaans
Other Language:	English – Written and spoken
Interest:	Golf, Photography

REFERENCES: Particulars and details of contact person will be provided on request.

ESKOM PROPOSED BULK INTERRUPTION OF THE GREATER EMALAHLENI MUNICIPALITY.

DATE: **16 OCTOBER 2017**

REF: **ELM/EBI/SRP01**

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1. EXECUTIVE SUMMARY:

Enercon Pty Ltd is a consulting firm which also provides products and services to Emalahleni Local Municipality (ELM) for the past 12 years. Enercon is also managing for the past 4 years and Energy Management System which provides for the online real time metering of the top 300 Commercial and Industrial Customers in the Witbank, Ogies, Phola, Kriel and Schoongesight supply areas.

The ELM has approximately 93 000 customers of which the majority is residential customers. The Commercial, Mining and Industrial customers consumed approximately 38% of the total Eskom Purchases. (Approximately 5000 customers) The average purchase price for all electricity from Eskom is approximately 98 c/KWH per annum and the average selling price is approximately 152 c/KWH per annum. It is general knowledge that the ELM faces serious challenges with respect to a non-payment culture as well as illegal connections within the residential sector, similar than what Eskom is experiencing in Soweto. In addition the ELM implemented in July 2017 a new financial, administration and billing system which is not fully functional and prevents the ELM to apply reasonable management principles.

It therefor follows that the ELM is functioning under severe financial pressure and are therefor extremely vulnerable to incidents which will impact on the day to day cash flow.

The submission is brought by myself as Managing Director, as an independent consultant, residing within the ELM and also a resident of the ELM. The following serve as a summary of key comments for your consideration regarding the proposed bulk interruptions as announced by the Mpumalanga Operating Unit. (Eskom)

- Expected revenue loss to Eskom as a result of less electricity sold amounts to R 27 million per summer month, and R 40 million per winter month.
- The net loss to ELM (Difference between selling price and Eskom purchase price) is in excess of R18.2 million.
- Cost of un-served energy (COUE) which has been calculated to be in excess of 30 GWH per month is estimated to be between R 300 million and R 2.1 Billion per month, based on DME recommendations of R75/KWH (High) and R10/KWH (Low) parameters.
- Long term destruction of the electrical infrastructure of the ELM as it is a technical fact that the high inrush currents associated with bulk interruptions will severely affect the life of sensitive equipment such as transformers, cables and switchgear.
- Bulk interruptions is an unfair practise as it affects those suburbs with payment rates in excess of 90%, which is vital to the financial sustainability of the ELM, in the same manner and equally than suburbs where payment rates of less than 10% exist. This may negatively motivate paying consumers and it will encourage an even bigger "non-payment" culture.

- The bulk interruptions implemented earlier in 2017 proofed to have had no effect on the Municipality's ability to pay Eskom's current accounts, it only caused misery and impact on our basic human rights such as water and sanitation.
- Eskom promulgates that bulk interruptions is a last resort but failed to publicly state what other avenues were followed to ensure a sustainable payment plan for example, requesting bank guarantees/securities, direct allocation of revenue from Pre-paid vendors, direct payment of key customers and large industries as partial payment/minimum payment of current accounts and incentivise re-payment plans.

This document will deal with the above summary hereafter more extensively:

2. COST TO ESKOM

The notification as published makes provision for bulk interruptions during weekdays from 06:00 until 10:00 and from 17:00 until 21:00 during weekdays (8 hours per day), on Saturdays and Sundays bulk interruptions are scheduled for 07:00 until 10:00 and again from 17:00 until 21:00. My analysis demonstrates that this effectively means that all energy consumed by the ELM during Eskom Peak hours on weekdays will be prevented in total. The total number of system hours lost per a typical month amounts to 224 hours and the split between Eskom's Time-of-use table is:

- Peak = 110 Hours
- Standard = 74 Hours
- Off peak = 40 Hours
- Total = 220 Hours

My investigation shown that the typical average monthly consumption of the ELM during Eskom's Time-of-Use periods is as follows:

- Peak = 13 GWH
- Standard = 32 GWH
- Off-peak = 33 GWH

It then follows that the expected energy loss per month will be as follows:

- Peak = 13 GWH
- Standard = 5 GWH
- Off-peak = 12 GWH

By assuming and average energy price of 90 c/kwh per summer month and 132c/kwh per winter month it follows that Eskom's revenue will be reduced with R 27 million and R 40 million respectively. By considering the difference between Eskom's WEPS and Megaflex rates the direct net profit loss to Distribution is approximately R 5 million per month.

3. COST TO EMALAHLENI LOCAL MUNICIPALITY

AS per Nersa's directive for the calculation of municipal tariffs, all tariffs are cost driven and addresses the cost of supply methodology, similar for the ELM . Given the loss of opportunity to sell electricity (224 Hours per Month) while maintaining the same cost structure (Staff, vehicles, maintenance and so forth) it follows that a ring fenced entity such as the ELM Electricity division will operate at a loss. Enercon has calculated the direct financial loss to be in excess of R 18 million per month. It is estimated that this will represents a third of potential income. It further follows that the ELM will sell energy at a loss as the average unit cost (Eskom Purchases) will most likely increases to be more than the ELM average selling price (Due to fixed charges such as network, service and administration charges) This situation will not only destroy the financial sustainability of the ELM, but will severely affects the ELM service delivery capability.

It therefor follows that while the option of Bulk Interruption is seen by Eskom as a solution and last resort, the actual impact will be a total collapse of the ELM. When this occur Eskom will lose approximately 900 GWH per annum and revenue to the value in excess of R 400 million per year. Within 3 years Eskom will incur more losses than the outstanding debt which is consider to be almost R 1 billion.

The above analysis is based on pure electricity trading between Eskom and the ELM, it did not considers the Cost of Unserved Energy (COUE). By applying the parameters as set out by Department of Energy , COUE is considered to be between R75/kwh and R 10 /kwh. By accepting a potential loss of 30 GWH due to Eskom's bulk interruption policy, the net impact on the economy of the ELM will be between R 300 million per month and R 2 billion per month. Should this policy lead to the total collapse of the ELM the COUE will be more than R 9 billion per annum.

Considering the above it is suffice to state that Eskom's bulk interruption policy is not the last resort to be implemented, in fact it is my position that Bulk Interruption should be declared unlawful as it holds a serious and real risk to completely destroy the ELM.

4. IMPACT ON ELECTRICAL INFRASTRUCTURE

In addition to the financial implications as explain above, it is a technical fact that Bulk Interruptions will have an impact on electrical infra-structure. Enercon considers the short and long term impact of the proposed bulk interruption policy on the infrastructure of the ELM.

4.1 SHORT TERM IMPACT

The short term impact on the electrical infrastructure was clearly visible during the bulk interruptions earlier in 2017. See Annexure A which shows the electrical network of the ELM. Within the Witbank Area there are 4 points of supply, Doornpoort, Churchill, Witbank DS and Schoongesight. The network consist almost entirely of a cable network interconnecting multiple reticulation substations, and from these substations electricity is reticulated to end consumers by means of cables and Mini-substations. The vast majority of these Mini-substations are not equip with switchgear and MV cables are interconnected via links. Similar network exists in Schoongesight, Ogies, Phola, Kriel and Thubelihle.

Historical the network was not design to cater for a scenario where all energy will be disconnected and re-connected simultaneously, hence the network conditions brought about by bulk interruptions will have a severe impact on the network This was evident during the early 2017 bulk interruptions where at least 3 Mini-substations failed and 2 MV breakers faulted during Eskom's bulk interruptions.

A further short term impact is that the ELM will be faced with an increasing risk of cable theft. (Currently the ELM experience at least 1 incident per week) As the schedules are known upfront it provides for an easy access for criminal activities. The only remedy to the ELM would be to hire more security in order to protect assets. As these costs are govern by regulation it follows that the ELM may end up spending more money on the cost of security than what the electricity cost would have been.

Lastly, Eskom should consider that together with the ELM they are organs of state that have a vested interest in providing public services, the policy of bulk interruptions will have an immediate and direct impact on water and sanitation as these systems rely entirely on constant electricity supply. Not only will bulk interruptions ensure a total collapse of these systems within days, but it may also caused severe damaged to pipelines, pumps, screens and so forth. This is as a result of the scale of bulk interruption preventing controlled shutdown and start-up procedures.

4.2 LONG TERM IMPACT

As mentioned , the distribution and reticulation of electricity is achieved by the application of transformation of voltage levels by mini-substations, reticulation transformers and distribution transformers. The installed capacity is in excess of 400 000 KVA within the ELM.

Transformers are a key and a critical component in this process. It is a technical fact that ageing of transformers are directly related to the thermal deterioration of its insulation paper. Inrush currents as a result of the switching of transformers onto upstream connected load is extremely more severe than under no load conditions. The mechanical and thermal stresses applied to the transformer will directly affect the useful life of the transformer.

Eskom's intended strategy to switch the entire network twice a day ongoing will certainly affects the useful life of all transformers. It therefor follows that the short term strategy to encourage payments of electricity accounts will destroy the long term potential to distribute electricity on a large scale.

5. CONSEQUENTIAL IMPLICATIONS OF BULK INTERRUPTIONS

It is reasonable to foresee that Eskom should also consider the affects of bulk interruptions on the community in general, for this purpose I have consider the impact to residential and business customers.

5.1 RESIDENTIAL

Disrupting electricity to thousands of consumers who have paid for electricity either pre-or post paid, is unfair and unconstitutional. The dispute centres between the ELM and Eskom for the payment of electricity accounts, by intentionally and purposefully take action that impact on the basic rights and dignity of residents of the ELM cannot be justified by stating bulk interruption is a last resort. The hours which Eskom has announced for bulk interruption are especially punishing residential consumers and families. It destroys the opportunity to prepare for work, school and again in the evening to prepare food and other household tasks.

Your attention is drawn to consider the impact on micro economical activities such as health and medical services, old age homes, schools and day-care centrums. All of these facilities are extremely dependant on a reliable electricity supply.

5.2 BUSINESS

The most significant and sensitive customer category, the effect of Eskom's proposed bulk interruption policy is that most businesses within the ELM will not be able to survive a sustained period of bulk interruptions. (It is a known fact that this strategy will not change the ELM financial capacity nor will it improve payments.)

I am aware of at least 2 large industrial customers that have indicated that the proposed plan interruptions will lead to closure of their business, the impact on shopping malls and retail outlets will be catastrophic. Oil Depots located in Ferrobank will not be in a position to provide fuel to outlets within Mpumalanga and this could lead to the permanent closure of these facilities.

As mentioned previously, businesses consumed approximately 38% of all electricity, by destroying this category of customers would ultimately destroy the potential to not only pay existing Eskom accounts but also arrears.

5.3 PUBLIC UNREST

Eskom has to foresee the potential of civil unrest and not only the ELM assets but also that of Eskom would be potential targets. The question again arises regarding the scale of balance between the strategy of bulk disconnection versus the cost that these interruptions will have on both Eskom as well as the ELM, and, the likelihood that this strategy will achieve any success.

At time of this report this risk has already been demonstrated in the Govan Mbeki Municipality where protesters have burned and looted assets and shops. Eskom cannot distance themselves from their accountability and again the position bulk interruptions as a last resort is not plausible nor any justification.

5.4 CONCLUSION

In conclusion, the introduction of bulk interruptions will not contribute to immediate nor future payments of Eskom accounts, it is certain that it will affect the economy of the ELM negatively and thereby increasing the potential of debt. This policy will bring direct financial losses to both Eskom and the ELM as well as the business sector. It will impact on the dignity and the right to basic services of all residents within the ELM, who many are employees of Eskom. It will poses a short and long term risk on the electrical infrastructure that will affects the ELM long after any financial settlement agreement has been reached.

6. ALTERNATIVE FINANCIAL CONSIDERATIONS

As an independent consultant I acknowledge the right of Eskom to apply measures to ensure payment for electricity, I also understand the long term financial implications on Eskom as a utility and the importance to the country to have a sustainable and financially sound utility. I am further aware that previous payment plans were not honoured. I am further convinced that drastic and urgent measures are necessary to assist the ELM to become a profitable entity . In order to ensure a reliable payment plan the following needs to be investigated in conjunction with stake holders:

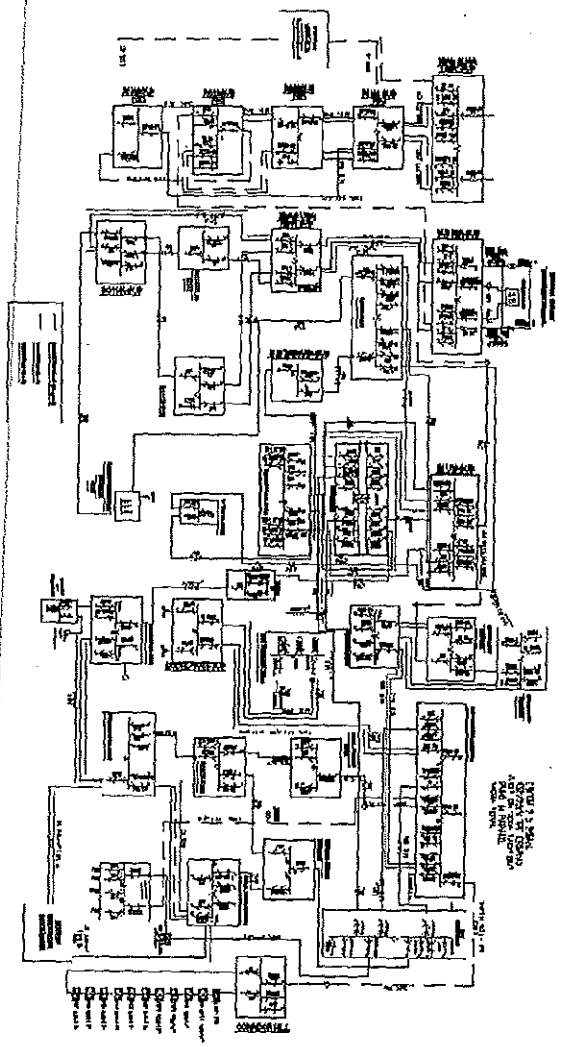
- Securing an acceptable form of security for outstanding debt as well as allowing for future debt. (My recommendation is that Eskom should seek guarantees/securities to the value of R1.5 billion).
- Immediate improvement of current monthly accounts will only be achievable by introducing a revenue stream directly between end consumers and Eskom. A practical solution will be to ring fence the top 300 customers as well as 3rd party vendors such as Cigi Cell, Easypay and RA Cellular to deposit prepaid revenue directly into an Eskom account. My investigation shown that this would ensure at least 70-80% of the Eskom account will be covered by these revenue streams.

- Offering an incentive to the ELM for paying current accounts for example:
  - The historical debt (R544 million) be put into a suspense account , referred to as Suspense 1.
  - The debt incurred since July 2016 (Estimated to be R 360 million) be put into suspense account referred to as Suspense 2.
  - That Suspense 2 will attract interest at prime, that the ELM will be responsible for paying this interest monthly as part of the current account.
  - That the minimum payment level shall be 80%, including the revenue streams from Key, Business and Prepaid customers for the first 12 months and 100 % thereafter. That Suspense 2 will become payable in year 2, over a period of 60 months.
  - That if the ELM complies with the above at the end of year 6 (72 months), Suspense 1 will be completely written off by Eskom.
  - By compiling to the above plan, the ELM will re-gain the key , business and Prepaid customers at the end of 72 months.
  - That the ELM will remain responsible for all services and administration with regards to the above mentioned customers.

Your consideration of the above comments is highly appreciated.

FA VISAGIE (Pr. Eng. Technologist)
ENERCON PTY LTD

ANNEXURE A - ELECTRICAL NETWORK



EMALAHLENI LOCAL MUNICIPALITY

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 83581 **/2017**

In the application between:

RESILIENT PROPERTIES PROPRIETARY LIMITED	First Applicant
CHANGING TIDES 91 PROPRIETARY LIMITED	Second Applicant
RETRACTION PROPS 7 PROPRIETARY LIMITED	Third Applicant
MOGWELE TRADING 278 PROPRIETARY LIMITED	Fourth Applicant
and	
ESKOM HOLDINGS SOC LIMITED	First Respondent
EMALAHLENI MUNICIPALITY	Second Respondent
MEC: CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS (MPUMALANGA)	Third Respondent
MINISTER OF ENERGY	Fourth Respondent
NATIONAL ENERGY REGULATOR OF SOUTH AFRICA	Fifth Respondent

ANSWERING AFFIDAVIT

I, the undersigned,

MUSA MABILA

do hereby make oath and state as follows:

1. I am the Acting Senior Manager: Customer Services employed as such by the first respondent. I am duly authorised to depose to this affidavit on

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behalf of the first respondent. For ease of reference, I adopt the term "*Eskom*" wherever I refer to the first respondent.

2. The facts deposed to herein are to the best of my belief both true and correct. They are within my personal knowledge unless the context thereof indicates otherwise or I expressly state so.

3. Where I make submissions of a legal nature in this affidavit, I do so on the strength of the advice that I have received from Eskom's legal representatives which I accept as being correct and I do not necessarily repeat this fact in every instance.

4. Eskom opposes the relief sought by the applicants herein. I have read the application (notice of motion and founding affidavit) of the applicants and I wish to answer to it as follows:

4.1. First, I will deal with urgency and non-compliance with the practice directive;

4.2. Second, I give an overview of Eskom's broad defences to the relief sought;

4.3. Third, I deal with the relevant background facts in order to place the application in its proper context.

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4.4. Fourth, I will demonstrate to the court that the application does not meet the requirements for interim relief in that:-

4.3.1 the applicants have failed to establish a right, *prima facie* or otherwise;

4.3.2 the applicants have failed to demonstrate that they have no alternative remedy

4.3.3 the applicants have failed to demonstrate that the balance of convenience favours the granting of the relief sought.

4.5. Fifth, I will deal *ad seriatim* with allegations in the founding affidavit of the applicants.

4.6. Each of the issues raised above, will be dealt with under separate headings below.

5. URGENCY AND NON-COMPLIANCE WITH THE PRACTICE DIRECTIVE

5.1 I am advised that urgent applications in their nature are not appropriate to deal with complex legal issues. This is one such application. For this reason alone, interdict should be refused.

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5.2 In addition to the above, I am advised that government department and organs of state by extension, should be afforded a reasonable time to put their answering affidavit(s). The truncation of the time period in this circumstances is hopelessly unreasonable and falls foul of this principle.

5.3 In the premises, Eskom prays that in the event the above Honourable Court finds that a proper case has been made out for an interdict, which is not admitted, the court should exercise its negative discretion to refuse an interdict.

5.4 I deny that this matter is urgent. The urgency, if any, was self-created. The applicants knew as early as September 2017 that Eskom is contemplating to interrupt the electricity. That notwithstanding, the applicants failed to take any step.

5.5 Even worse the applicants have failed to make out a case for the acceleration of the hearing of this matter. In their founding affidavit the applicants have failed to deal with the following:

5.5.1 the prejudice that they will suffer or may suffer by having to wait for hearing in the ordinary cause;

5.5.2 the prejudice that other litigants might suffer if the application was given preference;

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5.5.3 the prejudice that Eskom might suffer by the abridgement of the prescribed times and the early hearing.

5.6 Further, the applicants have failed to comply with the practice directive. They have not made out a case as to why the matter could not be enrolled in terms of the practice directive of the above Honourable Court and no condonation is sought in that regard.

6. OVERVIEW OF THE RELIEF SOUGHT AND ESKOM'S DEFENCE

6.1. The Applicants seek interim relief pending a review of the decision by Eskom to interrupt the electricity supply to the eMalahleni Local Municipality ("ELM").

6.2. Eskom intends to interrupt supply, first, because of the failure of ELM to pay for the electricity it received from Eskom over a long period of time. Second, the scheduled interruptions are intended to reduce the bulk supply of electricity with the result that the consumption is reduced so that the ELM does not use more electricity than it may afford. Third, to minimise the rate of escalation of the ELM's debt.

6.3. The amount for electric charges that ELM owes to Eskom is currently in the sum of R1,3 Billion. In September 2017 when the notice of intention to interrupt electricity was issue, outstanding amount was R1, 190, 746,

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629.00 (one billion one hundred and ninety million seven hundred and forty six thousand six hundred and twenty nine rand).

6.4. Despite promises and debt repayment undertakings which ELM had previously made, it has failed to pay the amount owed to Eskom and the debt is escalating and will continue to escalate as long as there supply is not reduced.

6.5. Consequently Eskom has given due notice of the reduction and interruption of electricity supply to ELM.

6.6. In terms of Section 21 (5) of the Electricity Regulation Act, Act 4 of 2006 ("ERA") Eskom is empowered to reduce or interrupt or terminate the electricity supply under certain circumstances.

6.7. The applicants have proposed in their affidavit to seek an interim order whereby they pay over directly to Eskom, their portion of the electricity payments which are otherwise due and owed to ELM in return for which, Eskom should continue to supply electricity to ELM uninterruptedly.

6.8. Eskom is opposed to the direct payment relief proposed by the applicants. The average monthly electricity consumption of ELM during summer is R 65, 000,000.00 (sixty five million rand). In winter it rises to approximately R 90, 000, 000.00 (ninety million rand). On the other hand it appears from Annexure FA2 to the founding affidavit that the average monthly account of

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the applicants is R 1, 000,000.00 (one million rand). This is less than 2% of the monthly consumption of ELM. It will not serve any purpose therefore to accept direct payment from the applicants and supply electricity whilst recovering far less than the monthly consumption.

6.9. In any event based on past experience, Eskom has a genuine fear that once an order in the terms as proposed by the applicants is granted to the effect that the applicants may pay Eskom directly, ELM will stop paying Eskom all together.

6.10. Past experience has shown that once an interim order is granted compelling Eskom to supply electricity against direct payment as proposed by the applicants herein, the effected municipalities stop making further payments or make short payments in respect of monthly electricity usage. In this regard, I specifically from Eskoms experience in the matters of Maluti-A-Phofung, Matjhabeng municipalities and Lekwa municipality. After the interim and final orders were granted in those matters, the debts of the said municipalities spiralled out of control.

6.11. Eskom opposes any order in terms of which it is stopped from interrupting electricity supply while it does not receive full payment of current account and portion of the arrear amount.

6.12. Eskom does not want to interrupt the electricity supply of the applicants and other end users unnecessarily or cause harm to their businesses. Eskom

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has however, been left with no other option because of ELM's refusal to pay Eskom what it owes to it, and considering that the debt continues to escalate if the supply of electricity is not reduced it is necessary to take the action so taken.

6.13. Eskom does not have any contractual relationship with the applicants. In particular, there is no contractual relationship or any kind of relationship that creates an obligation for Eskom to provide electricity to the applicant.

6.14. The applicants on the other hand have contracts with ELM. They allege that they have dutifully paid ELM what it charges them for electricity usage. This is the money ELM ought to have used to pay Eskom at least for the applicants' electricity consumption.

6.15. Eskom supplies electricity to ELM in terms of an electricity supply agreement entered into between Eskom and ELM. Eskom complied with all its obligations in terms of the electricity supply agreement as well as the relevant legislation. Eskom supplied ELM with bulk electricity, issued it with statements or invoices for electricity usage, and delivered notices and/or letters of demand when there was none or insufficient payments.

6.16. Eskom was left with no other option but to interrupt the electricity supply to ELM during peak hours in an effort to halt the unbridled escalation of its electricity debt.

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6.17. As at November 2017 the municipal debt, across the country, was in the amount of R 12, 973 billion having increased from R 11. 45 billion as at June 2017. The debt is escalating on a monthly basis as municipalities such as ELM default in their monthly payments. In the last five years the overdue debts have increased more than tenfold.

6.18. As at June 2017, Eskom had already entered into payment arrangements with sixty two (62) defaulting municipalities of which the ELM was one. Notwithstanding the payment arrangements ELM defaulted in the payments of its electricity account.

6.19. ELM is in the Mpumalanga province. The combined debt of the municipalities in Mpumalanga was R2.536 billion as at June 2017.

6.20. Eskom is responsible for the generation of all electricity within South Africa. It is of uttermost important to always ensure that Eskom remains financially viable and sustainable so that it can generate and supply electricity for the benefit of all South Africans. The failure by the various municipalities such as ELM to pay their debts poses a serious threat to Eskom's financial viability and that may bring about its demise.

6.21. In view of the costs involved, Eskom is forced to borrow money to fund capital projects like power stations to ensure that it has sufficient capacity to generate electricity for the benefit of all South Africans.

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6.22. The money recovered for the supply of electricity to municipalities and other bulk users who purchase it directly from Eskom is used to fund operational costs including paying off the capital costs debt. When these entities fail to pay Eskom, Eskom has to borrow additional money, at a huge premium, to fund operational costs like paying salaries and debts.

6.23. Operational costs should ideally be funded by revenue from electricity charges, not borrowings. Borrowing money to fund operational requirements is not sustainable in the short, medium and long-term because it increases the costs of generating electricity exponentially.

6.24. Should Eskom be unable to recover monies, which it is owed, it would jeopardise Eskom's ability to supply sustainable and affordable electricity to the nation as a whole. This includes putting a lot of business throughout the country at risk of going out of business.

6.25. Eskom has made numerous attempts to collect the money owed to it by ELM and other defaulting municipalities. ELM does not dispute its debt to Eskom hence it has made numerous promises to pay. To this end ELM previously concluded payment arrangement agreements with Eskom, which it has failed, to honour.

6.26. Eskom has afforded ELM and all other persons who may be adversely affected by its decision an opportunity to make representations before it could implement the temporary electricity restrictions at scheduled intervals.

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6.27. After careful consideration of all the representations and the overall impact of the escalating municipal debt especially on Eskom's liability to deliver on its mandate, Eskom took a decision to proceed with interruption of bulk electricity supply to ELM at predetermined times in the mornings and the afternoons.

6.28. Eskom chose to follow this course because all other attempts to collect the money owed to it have failed and the debt keeps on escalating.

6.29. Eskom is of the view that it would serve no purpose to take judgment and execution steps against ELM. Such a course would simply jeopardize innocent end users further because the ELM's services would grind to a complete halt within a day in the event of Eskom taking execution steps and selling movable and immovable property belonging to ELM.

6.30. Moreover, ELM does not have sufficient easily reliable assets to pay off its debt owed to Eskom. The infrastructure that is used and necessary for the supply of electricity to the applicants belongs to ELM. The only entity that can purchase it is another licensee operating in terms of a license granted by NERSA for that specific area.

6.31. Eskom has a statutory obligation in terms of the PFMA to take steps to enforce payment of the debts owed to it.

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7. **THE RELEVANT BACKGROUND FACTS**

7.1. The relationship between Eskom and ELM is governed by the electricity supply agreement annexed hereto and marked "**ES1**".

7.2. It is a material term of the electricity supply agreement that should ELM breach any of its terms and conditions, Eskom would notify it of such breach and if the breach is not remedied by ELM within a period of fourteen days from date of such notification, Eskom may forthwith disconnect in part or in full, the electricity supply to ELM.

7.3. ELM defaulted in its payments by either not paying at all or short paying. Eskom has struggled for a while now to get ELM to settle its debt and to pay for its current electricity consumption.

7.4. During May 2016, ELM and Eskom concluded a written acknowledgement of debt and repayment plan in terms of which ELM acknowledged its indebtedness to Eskom in the total sum of R544, 066, 777. 67, payable over an agreed period of time.

7.5. Again ELM defaulted in its obligations in terms of the acknowledgement of debt. It was this non-compliance with its repayment obligations that resulted in Eskom implementing scheduled interruptions during February/March2017 as referred to in the applicants' founding affidavit.

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7.6. I attach hereto marked **"ES2"** a copy of a letter from ELM to Eskom in which is acknowledged a meeting that took place between Eskom, ELM, the Minister of Cooperative Governance and Traditional Affairs and the Premier of Mpumalanga Province.

7.7. This letter also confirms the terms of the settlement agreement which precipitated the disposal of a litigation that had been instituted. The terms of the settlement agreement that ELM would:

7.7.1 pay its current account for March 2017 in full when it fell due;

7.7.2 upon receipt, pay over to Eskom the full amount of its equitable share;

7.7.3 cede to Eskom the proceeds of what it expected to receive from the sale of immoveable property;

7.7.4 pay the full amount of the balance of the arrears no later than December 2017.

7.8 On 22 June 2017, Eskom addressed a letter to ELM recording that the latter was in breach of its obligations in terms of the acknowledgement of debt and repayment plan. A copy thereof is attached marked **"ES3"**. There was no response to this letter.

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7.9 On 17 July 2017, Eskom addressed another letter of demand to ELM in which it demanded payment of the amount of approximately R1.1 billion, failing which it would initiate a PAJA process with a view to implement scheduled interruptions. A copy thereof is attached marked **"ES4"**. There was no response to this letter either.

7.10 In the light of ELM's persistent breach of its payment obligations, Eskom initiated the PAJA process during September 2017, which culminated in the decisions now sought to be reviewed and set aside.

7.11 Businesses in the area such as the applicants were at all material times aware of those demands and that despite their payment for electricity in accordance with their end user supply or consumption agreements with ELM, Eskom was not paid for electricity supplied to ELM.

7.12 Because of ELM's breach of the agreement the entire outstanding balance owing in terms of the first payment agreement became due and payable. Eskom was thus entitled to disconnect the electricity supply of ELM in terms of the agreement.

7.13 More importantly, ELM never disputed the debt it owed to Eskom during the aforesaid meetings.

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7.14 As a result of ELM's breach of the repayments agreement Eskom became entitled in terms of that agreement, read with section 21 (5) of the ERA and clause 10 of the supply agreement to disconnect or reduce or interrupt the electricity supply to ELM forthwith.

7.15 On 09 September 2017, Eskom published a notice of its intention to interrupt the supply of bulk electricity to ELM at scheduled times from starting from 20 November 2017. It called upon residents of ELM to make representations, if any, on or before 19 October 2017. A copy of the notice referred to is annexed and marked "**ES5**".

7.16 As it appears from **ES5**, at the time of publication of the notice aforesaid the ELM owed Eskom an amount of R 1, 190, 746, 629.00 (One billion one hundred and ninety million seven hundred and forty six thousand six hundred and twenty nine rand).

7.17 It was Eskom's intention, initially, to implement what it terms scheduled interruptions of electricity supply to ELM between the times Monday to Friday 06h00 – 10h00 in the morning and 17h00 – 21h00 in the evening on weekdays; and 07h00 – 10h00 in the mornings and 17h00 – 20h00 in the evening on weekends.

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7.18 Following public participative process, the hours have now been reduced to 06h00 – 08h00 in the mornings and between 17h00 – 19h30 afternoons, whilst the times for weekends will be 08h30 – 11h00 in the mornings and 15h00 – 17h30 in the afternoons.

7.19 The proposed planned interruptions of electricity, despite Eskom's rights to completely terminate the supply, is, in my view, less burdensome to the communities of ELM;

7.20 It was further planned in such a way that people affected would schedule their lives taking into account the five hours out of 24 when there would be no electricity, whilst minimizing the rate at which the debt of ELM escalates without making it impossible for ELM to meet their obligations in the future. In so saying, Eskom has not abandoned its rights to terminate the supply of electricity supply totally, were circumstances so to require.

7.21 On 30 November 2017, Eskom issued a media statement confirming its decision to interrupt electricity at ELM and same was followed by a notice in the local newspaper confirming its decision to interrupt the supply of bulk electricity to ELM at scheduled times.

7.22 Eskom is continuing to supply ELM with electricity without receiving payment of the monies, which are owed to it. It only intends to limit or

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reduce the supply. ELM's debt is increasing exponentially. This hampers Eskom's ability to supply electricity to the rest of the country at affordable rates.

7.23 Eskom afforded ELM and all stakeholders ample opportunity to make representations. Eskom considered the representations and also considered other avenues as opposed to interrupting the electricity supply to ELM. Having done the aforesaid, Eskom decided to proceed with the interruptions scheduled.

7.24 To add to the aforesaid, Eskom considered the impact the interruptions would have on end users. Besides what the applicants allege in their founding papers, Eskom does not know the identities of the electricity users in the district of ELM and has had no direct dealings with them. Eskom has a contract with ELM and supplies it with electricity through one point. Eskom is unable to separate any of ELM's customers from its grid.

7.25 Eskom initially decided that it would be better to conclude payment arrangement agreements with ELM as opposed to interrupting the electricity supply. But, as I have explained above, ELM simply failed to comply with its obligations under the repayment agreements.

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7.26 Insofar as the honourable court might find that Eskom had to comply with the requirements stipulated under the Promotion of Administrative Justice Act, 3 of 2000 ("*PAJA*"), Eskom submits that it has done so.

7.27 ELM's failure to honour its promises to pay have forced Eskom to interrupt the electricity supply during peak hours. The course suggested by Eskom is the least intrusive and most reasonable having regard to the interest of all the parties involved.

7.28 Eskom is authorised by the Electricity Regulations Act, Act 4 of 2006 ("*ERA*") to reduce and/or terminate the supply of electricity to a customer such as ELM, if that customer contravenes its payment conditions with Eskom.

7.29 The payment conditions of ELM as contained in the electricity supply agreement and the various payment arrangement agreements echo the provisions of Section 21(5) of ERA and also authorise Eskom to terminate the supply of electricity should a party contravene the payment conditions.

7.30 It is an express term of each of the agreements that, in the event of non-payment of electricity charges by ELM, Eskom would acquire the right to terminate the supply of electricity. Any order that will compel Eskom not to take any steps to recover money it is owed for the supply of electricity by

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making use of the legal authorisation it derives from the legislation will not only be undermining the authority of Parliament but will also be placing an undue burden on Eskom.

7.31 The planned interruptions were structured in such a manner that people who are affected thereby would be able to schedule their lives accordingly taking into account the availability or non-availability of electricity.

7.32 The interruptions would at the same time minimise the rate at which the debt of ELM escalates without making it impossible for it to meet its obligations in the future. In so saying, Eskom has not abandoned its rights to terminate the supply of electricity totally, where circumstances so require.

7.33 The applicants' constitutional rights to access to electricity are only enforceable against ELM. Eskom supplies electricity to ELM in terms of the agreements concluded between it and ELM.

7.34 The applicants knew of Eskom's intention to terminate the supply of electricity for non-payment for the last two years and yet they failed to take any action against ELM or to exercise any other alternative remedies available at their disposal.

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8. **AD ABSENCE OF A *PRIMA FACIE* RIGHT:**

8.1 To understand the content of the right in issue, a short conspectus of the law is necessary.

The National Energy Regulator of South Africa ("*Nersa*") and Its Competency

8.2 The ERA provides under Section 3 that NERSA is the custodian and enforcer of the National Electricity Regulatory Framework provided for in the ERA.

8.3 The objectives of NERSA are set out under Section 2 and are quoted herein *verbatim* as follows:

"*2(a) achieve the efficient, effective, sustainable, and orderly development, and operation of electricity supply infrastructure in South Africa;*

(b) ensure that the interests and needs of present and future electricity customers and end users are safeguarded and met, having regard to the governance, efficiency, effectiveness and long term sustainability of the electricity supply industry within the broader context of economic energy regulation in the Republic;

(c) facilitate investment in the electricity supply industry;

(d) facilitate universal access to electricity;

(e) promote the use of diverse energy sources and energy efficiencies;

(f) promote competitiveness and customer and end user choice; and

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(g) *facilitate a fair balance between the interests of customers and end users, licences, investors in the electricity supply industry and public.*"

8.4 NERSA is also the authority that issues licences that allow entities such as Eskom and the municipalities such as ELM to generate, transmit and distribute electricity. I refer the court to Eskom's distribution licence, which is annexed and marked "**ES6**".

8.5 The court will note from Eskom's distribution licence that Condition 2 read with Schedule 1 thereof, provides for the right of Eskom to supply electricity to the areas listed in Schedule 1 and further stipulates that Eskom cannot supply electricity directly to any customer of a municipality.

8.6 In issuing licences, NERSA is empowered by Section 14 to determine applicable conditions which include, amongst others, the following:

8.6.1 The setting an approval of prices, charges, rates and tariffs to be charged by licensees;

8.6.2 Approving the format of and contents of agreements entered into by licensees;

8.6.3 Regulate revenue of licensees;

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8.6.4 The performance, improvement target by licensees, including the monitoring thereof through certificates of performance;

8.6.5 Regulating the quality of electricity supply and service;

8.6.6 Determining the class of customers and end users to whom electricity may or must be supplied;

8.6.7 Regulating the need to maintain facilities in a fully operational condition so as to obviate electricity leakages and provide for its security.

8.7 Section 15 of the ERA also requires of NERSA to set the electricity tariff for a licensee in a manner that formulates efficiency and ensures that the licensee is able to recover the full cost of its licence activities, including a reasonable margin or return.

8.8 Section 21(5) of the ERA provides as follows:

"*A licensee may not reduce or terminate the supply of electricity to a customer, unless –*

(a) The customer is insolvent;

(b) The customer has failed to honour or refuses to enter into, an agreement for the supply of electricity; or

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(c) *The customer has contravened the payment conditions of that licensee."*

8.9 Both Eskom and ELM have been issued with licences by NERSA to distribute electricity.

8.10 ELM is a customer of Eskom insofar as it purchases the electricity in bulk from Eskom in terms of the electricity supply agreement, which it then on sells or distributes to its customers. If ELM does not pay Eskom for the electricity that it buys, Eskom, in terms of Section 21(5) of the ERA and the electricity supply agreement, Eskom is entitled to reduce or terminate the supply of electricity of ELM.

9 Eskom and Its Role

9.1 Eskom is a major public entity and organ of state as provided for in Schedule 2 of the Public Finance Management Act, 1 of 1999 (*"PFMA"*).

9.2 Its main source of business is the generation, transmission and distribution of electricity in bulk within the Republic of South Africa and neighbouring countries.

9.3 Eskom conducts its business under the authority of the licence granted to it by NERSA.

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9.4 The licence conditions stipulate that Eskom shall only supply electricity to the class of customers within a designated area and charge such customers and/or end users tariffs and prices that are approved and published by NERSA.

9.5 NERSA, in setting and/or approving the prices, charges and tariffs mentioned above, must make provision for the licensee to operate on an efficient basis so that it is able to cover the full costs of its licence activities, including a reasonable margin or return.

9.6 Eskom thereafter concludes electricity supply agreements with its customers, whose form and its content have been pre-approved by NERSA in terms of the ERA.

9.7 Eskom is also legally bound by Section 51(1)(b)(i) of the Public Finance Management Act, 1 of 1999 ("*the PFMA*") to take effective and appropriate steps to collect all revenue due to it.

9.8 In the event of non-payment of amounts due for electricity supply, Eskom has a residual right, in terms of the electricity supply agreement and/or the payment agreements and Section 21(5) of the ERA to terminate the supply of electricity.

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10 The ELM Municipality

10.1 ELM is a local municipality established in terms of Section 2 read with Section 3(d) of the Local Government, Municipal Systems Act, 32 of 2000 (*"the Systems Act"*).

10.2 In terms of Section 152(1) of the Constitution, municipalities must ensure the provision of services to communities within the areas of jurisdiction in a sustainable manner.

10.3 Municipalities such as ELM must also strive, within their financial administrative capacity, to achieve the objective set out in Section 152(1) of the Constitution. This section provides that a municipality must:

10.3.1 Structure and manage its administration, budgeting and planning processes;

10.3.2 Give priority to the basic needs of the community and to promote the social and economic development of the community and to participate in the national and provincial development programmes.

10.4 Section 4(2) of the Systems Act gives legislative content to the various constitutional duties of the municipalities by setting out the duties of the municipal councils, which exercise the executive and legislative authority at municipal level.

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10.5 In particular, Section 4(2)(f) provides as follows:

"*(2) The council of a municipality, within the municipality's financial and administrative capacity and having regard to practical considerations, has the duty to –*

....

(f) give members of the local community equitable access to municipal services to which they are entitled."

10.6 Further content to this general duty to provide municipal services is found in terms of Section 73 of the Systems Act. The Section obliges ELM to give priority to the basic needs of the local community and to promote its development and to ensure that all members of the local community have access to at least the minimum level of basic municipal services, which include electricity.

10.7 Section 9(1)(a)(iii) of the Housing Act, 1 of 1997 imposes a specific obligation on ELM to provide basic municipal services including electricity in a manner that is economically efficient.

10.8 The Constitutional Court has said that municipalities like ELM also have an obligation to issue statements for electricity usage and recover money it is owed from its end users. Should an end user fail to meet its side of the bargain, the municipality has a right to terminate its supply of electricity even without a court order.

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10.9 ELM has dismally failed to meet any of its obligations in terms of the aforesaid legislation and Constitutional Court's decision.

10.10 The applicants were, according to their founding affidavit, fully aware of the fact that ELM was in default of its obligations to Eskom and of the decision taken by Eskom contemplating the interruption of electricity supply to ELM during January 2012 and in any event no later than January 2017.

10.11 The remedy for the applicants, if they felt aggrieved by Eskom's decision, was to apply for a *mandamus* to force ELM to pay Eskom to secure their right to basic municipal services which they are entitled to receive only from ELM. The applicants failed to do so.

10.12 Eskom is discharging its obligations in exercising its rights in terms of the provisions of Section 51(1)(b)(i) of the PFMA and Section 21(5) of the ERA under circumstances where the debt of ELM is not in dispute and has been due and payable for a period of more than two years (escalating and remaining unpaid) notwithstanding efforts to recover it.

10.13 Eskom's conduct is in terms of the aforesaid statutes and any rights that the applicants allege to have, are limited by the provisions of Section 36 of the Constitution.

10.14 Any rights that the applicants have exists and are enforceable only against ELM and not against Eskom.

MM

10.15 In these proceedings the applicants seek an interim order pending the judicial review of the decision of Eskom to interrupt the electricity supply to the ELM.

10.16 The Constitutional Court has, on occasion, stated that the right to judicially review a decision resides in everyone and does not require protection *pendete lite*. Accordingly, the applicants do not have a right to obtain an interim interdict simply to protect their right to judicially review the decision of Eskom.

10.17 Further, the applicants do not have any right to enforce against Eskom either statutory or contractually. There is no privity of contract between Eskom and the applicants for the supply of electricity and Eskom does not supply electricity directly to the applicants. The applicants' contracts, if any, would be with the ELM and their rights enforceable only against the ELM. It follows that obtaining relief against Eskom in these circumstances is impermissible.

10.18 Thus, the applicants can only enforce their contractual rights including their right to basic municipal services against the Municipality. Further, Eskom does not provide municipal services. The provision of these services is a domain of the ELM and it is a right that may be lawfully enforced only against the ELM.

MM

10.19 The Constitution does not create any constitutional right to electricity. At best, applicants would only have a right to basic municipal services. The right to basic municipal services is a right enforceable against the ELM.

10.20 To the extent that there may be such a right to access to electricity, which is part of basic municipal services and which is enforceable only against the ELM, such right is limited by the provisions of s21(5) of the ERA which is a law of general application.

10.21 The aforesaid section entitles Eskom to reduce or terminate the supply of electricity to a customer if the customer fails to honour an agreement for the supply of electricity or if the customer has contravened the payment conditions of Eskom in as much as the ELM may do the same should its customers default. It is common cause even on the version of the applicants that the ELM has failed to pay for the electricity charges and its debt has risen to unacceptable levels. In that way the ELM has breached its obligations.

10.22 Eskom has not deprived the applicants any of their rights either as alleged or at all. If any there is any infringement of any of their rights, which is denied, such infringement is not at the instance of Eskom. The actions of Eskom are statutorily authorised and Eskom has exercised its legislative right in the national interest. Applicants' rights, if any, do not tank above those that are in the national interest.

MM

10.23 Further, this application seeks to interdict Eskom from exercising its statutory powers. I am advised that in the absence of *mala fides* that has not been alleged in the founding affidavit, courts do not readily grant such an interdict. I am advised that the interdict of exercise of a statutory power is adjudicated against a higher test which the applicants have not satisfied. This on its own is dispositive of this application.

10.24 Under the circumstances it is submitted that the applicants have failed to demonstrate a right, *prima facie* or otherwise and that the application accordingly stands to be dismissed with costs.

11 ALTERNATIVE REMEDY

11.1 As state above, the applicants' constitutional right of access to electricity are enforceable against ELM only. They are not enforceable against Eskom. Eskom supplies electricity to ELM in terms of the electricity supply agreement concluded between itself and ELM. ELM concludes wholly independent contracts with its end users like the applicants.

11.2 The applicants have known of Eskom's intention to terminate the supply of electricity for non-payment at least no later than January 2017.

11.3 The applicants were, according to their founding affidavit, fully aware of the fact that ELM was in default of its obligations to Eskom and of the decision taken by Eskom contemplating the interruption of electricity supply to ELM.

MM

Yet they did nothing about ELM's failure to comply with its obligations which failure would obviously cause them harm.

11.4 There are and have always been remedies readily available to the applicants at all times. Those remedies include:-.

11.4.1 applying for a *mandamus* to force ELM to pay Eskom in order to secure and safeguard their right to basic municipal services;

11.4.2 applying to have ELM place under administration;

11.4.3 approaching NERSA under Section 18 of ERA for appropriate relief, especially in light of the continuing breach by ELM of its licence conditions and its constitutional obligations to it residents.

11.5 Besides, they have a right to sue ELM for whatever damages they might suffer as a result of its conduct when it failed to pay Eskom with the results that their rights to basic municipal service are affected.

11.6 This application is, in light of the delay in launching it and the statutory provisions that underpin Eskom's conduct, solely aimed at unlawfully frustrating Eskom from implementing its rights against ELM.

MM

11.7 Eskom and ultimately, the South African public and other businesses at large will be severely prejudiced if the defaulting municipalities are not curtailed in their use of electricity.

12. **BALANCE OF CONVENIENCE**

12.1 The founding affidavit is conspicuously silent on whether the class of consumers in ELM on behalf of whom the applicants purport to act have their accounts settled and are up-to-date and how much are they contributing in the revenue collection on electricity accounts of the ELM.

12.2 Further, the applicants do not make out a proper case for balance of convenience. For instance, the applicants do not deal with the inconvenience that Eskom will suffer should the interdict be granted.

12.3 In any event, in comparison to the inconvenience foreshadowed by the applicants, I wish to bring to the attention of the above Honourable Court that the overall municipal debt in the country had risen to R 13, 624 billion as at 30 November 2017.

MM

12.4 As at 30 November 2017 the outstanding amount owed by the ELM was an amount of R1,3 billion.

12.5 It is inconceivable that the applicants would demand Eskom to supply electricity to the ELM when the latter does not pay for services rendered. Clearly, in demanding that Eskom continues to supply electricity in circumstances where the ELM does not honour its obligations towards Eskom, the underlying intention of the applicants is to collapse Eskom.

12.6 It will be a great inconvenience not only to Eskom but to the entire population of the Republic of South Africa if Eskom is compelled to supply electricity to the ELM when it does not service its electricity account. I will demonstrate this hardship hereunder and submit that the applicants' right should be balanced against the interests of Eskom and those of the entire population that will be affected.

12.7 Eskom borrows money to fund capital projects necessary to ensure the realisation of the provision of the electricity at a huge cost. Were it to be unable to continue to recover electricity charges from its customers, there will be an on-going need to borrow additional money at an unaffordable cost to fund operational costs.

MM

12.8 Operational costs should ideally be funded by revenue from electricity charges, not borrowings. Borrowing money at that cost to fund operational costs would not be sustainable in the short, medium and long term and could increase the cost of generating electricity exponentially, to the detriment of the general populace.

12.9 Eskom's inability to recover electricity charges would also mean that Eskom is faced with the risk of having to write-off additional billions of rand estimated to more than billion rand by the end of this financial year. This, coupled with the current low recovery rate, will have a negative impact on Eskom's financial performance (EBITDA). EBITDA is a measure used by rating agencies to determine a stable credit standing. A good credit standing is a prerequisite to accessing much sought after financial markets for funding.

12.10 If Eskom is compelled by the court order to continue to supply electricity in circumstances where it is not collecting electricity charges from its customers, the debt shall increase, its credit rating will be negatively affected and shall drop such that it shall not be able to attract financial markets.

MM

12.11 Once the credit rating drops with the result that Eskom is unable to attract financial markets for funding, it will invariably be forced to turn to government for a bailout. That will affect the entire South African Citizenry in that such debt as a result of bailout will be transferred to them. That in turn will plunge the whole country into an economic crisis at a time when the economy of the country is strained.

12.12 I submit therefore, that the regulated interruptions of electricity are reasonable and less burdensome. They are such that the residents of the ELM shall be able to order their lives taking into account the scheduled electricity interruptions. Apart from that any lesser means would be catastrophic not only to Eskom but the country as a whole.

12.13 In all the circumstances I submit that Eskom's action is in the interest of the general public extending beyond the residents of ELM.

12.14 I am advised that, insofar as:

12.14.1 Eskom's conduct is lawful and in the national interest to ensure the sustainability of electricity supply, uphold the rule of law and good governance;

MM

12.14.2 the applicants have residual public law and contractual rights against the ELM, which they have failed to enforce, not even by way of an alternative claim in this application;

12.14.3 the interruption is scheduled for certain pre-notified few hours in a day. The inconvenience that may be suffered is no greater than that suffered by citizens during periods of scheduled load shedding, wherein it has become customary to plan activities around the absence of power;

12.14.4 the limited interruption has the added advantage that the debt owed to Eskom would not escalate to an extent that it becomes impossible for the ELM to pay;

12.14.5 the relief sought by the applicants, as replicated by similarly-placed municipalities, imperils Eskom's ability to provide sustainable service delivery across the country;

the balance of convenience favours the dismissal of the application.

13. I will now proceed to deal with *ad seriatim* with the allegations in the founding affidavit of the applicants. Any allegation not specifically admitted and/or dealt with herein should be taken as being denied.

MM

14. **AD PARAGRAPHS 1 AND 2 THEREOF**

I do not take issue with the contents of these paragraphs.

15. **AD PARAGRAPH 3 THEREOF**

To the extent that the allegations made therein differ with what I have stated herein, the truthfulness and the correctness thereof are denied.

16. **AD PARAGRAPH 4 TO 9 THEREOF**

I do not take issue with the allegations contained in these paragraphs.

17. **AD PARAGRAPH 10 THEREOF**

I deny that this application is instituted in the public interest and/or on behalf of a class of consumers. The applicants herein are acting purely to protect their commercial interests. By alleging that they are acting in the public interest and/or class of consumers, the applicant are attempting to hide behind the provisions of Section 38 of the Constitution of the Republic of South Africa, Act 2006 in order to avoid a cost order against them should it be necessary for such an order to be made. Clearly, the applicants have only their interest to protect. In any event the applicants have not made out a case for reliance on the public interest or class action.

MM

18. **AD PARAGRAPH 11 THEREOF**

I admit the contents of this paragraph.

19. **AD PARAGRAPH 12 TO 15 THEREOF**

I note the contents of these allegations.

20. **AD PARAGRAPH 16 THEREOF**

It is strange that the applicants do not seek any relief against the third respondent, the MEC, when in fact it the MEC who must ensure that the ELM complies with its constitutional obligations to provide basic municipal services. Save as aforesaid I note the allegations in this paragraph.

21. **AD PARAGRAPH 17 THEREOF**

I note the nature of the relief sought but I deny that the applicants are entitled thereto.

22. **AD PARAGRAPH 18 THEREOF**

22.1 I deny that Eskom's conduct to interrupt electricity is unlawful.

MM

22.2 Further, it bears repeating that there is no privity of contract between Eskom and the applicants for the supply of electricity. Eskom does not supply electricity directly to the applicants. The applicants' contracts, if any, would be with the ELM and their rights enforceable only against the ELM. It follows that obtaining relief against Eskom in these circumstances is impermissible.

22.3 If anything, far from acting in the public interest and on behalf of a class of consumers, the allegations made by the applicants in this regard are a clear indication that the applicants instituted these proceedings merely to protect their interests.

23. **AD PARAGRAPH 19 THEREOF**

23.1 I reiterate that Eskom does not supply electricity directly to the applicants. It is ELM that supplies electricity to the applicants. Eskom supplies electricity to ELM through a central grid. The latter on sells the electricity to the applicants in terms of their agreement, if any. That being the case, it is of no moment that the applicants' account is up to date. The fact is, the ELM's electricity account is in arrears by a huge margin.

23.2 Further, if the account of the applicants is indeed up to date as alleged, then the applicants do have an alternative remedy in that it is opened to them to seek a *mandamus* against the ELM to provide them with services.

MM

24. **AD PARAGRAPH 20 THEREOF**

I note these allegations.

25. **AD PARAGRAPH 21 THEREOF**

For reasons already set out above, Eskom is opposed to the direct payment relief proposed by the applicants. Applicants' direct payment will not make any meaningful impact on the monthly consumption of ELM. Instead it will cause the debt to rise exponentially. It will be irresponsible to accept R 1, 000, 000.00 (one million rand) every month when the amount due is actually approximately R 65, 000.000.00 (sixty five million)

26. **AD PARAGRAPH 22 THEREOF**

For reasons already set out above, Eskom is opposed to the direct payment relief proposed by the applicants.

27. **AD PARAGRAPH 23 THEREOF**

I note these allegations. Eskom will deal with Part B of the application fully when it is ripe at the relevant stage. Suffice to say I deny the allegations made on behalf of the applicants to the extent of their inconsistence with what I have stated herein.

MM

28. **AD PARAGRAPH 24 THEREOF**

I deny the allegations contained in this paragraph. I have already explained the purpose of interrupting electricity supply. Further, these allegations will be fully ventilated at the stage when Part B of the application is dealt with.

29. **AD PARAGRAPH 25 THEREOF**

I deny the allegations contained in this paragraph. These allegations will be fully ventilated at the stage when Part B of the application is dealt with.

30. **AD PARAGRAPHS 26 and 27 THEREOF**

I deny the allegations contained in these paragraphs. The interruption of electricity supply in the circumstances is permitted in terms of Section 21(5) of the ERA. I deny therefore that it amounts to self-help and that it is unconstitutional either as alleged or at all.

31. **AD PARAGRAPH 28 THEREOF**

I have no knowledge of the allegations contained in this paragraph.

MM

32. **AD PARAGRAPH 29 THEREOF**

I deny these allegations. Even if they are correct, the Emalahlani is the author of its own misfortune. Further, the applicants' remedy lies against the ELM. Eskom has no obligation towards applicants.

33. **AD PARAGRAPH 30 THEREOF**

I deny the allegations contained in this paragraph.

34. **AD PARAGRAPH 31 THEREOF**

34.1 The applicants became aware that the ELM was defaulting on its payments as early as 2012. Since then, though, they did not bring any application to seek a *mandamus* against the ELM whose conduct threatened the applicants' rights to basic municipal services.

34.2 I deny that Eskom failed to take steps to collect the outstanding amounts owed. Eskom has engaged the ELM regarding its debt to the extent that acknowledgement of debts were signed.

35. **AD PARAGRAPH 32 THEREOF**

35.1 I deny that the electricity interruptions triggered a collapse of the water reticulation and sewer network of ELM. There is no evidence in that regard.

MM

In any event, and even if it were so, ELM is the author of its own misfortune.

35.2 In any event, water pumps receive electricity from the Eskom's grid. It is not possible for Eskom to isolate electricity supply to water pumps and other essential service providers. In addition, those who operate water pumps in ELM have not raised any of the issues raised by the applicants as at the time of the closing date for receipt of representations.

35.3 Eskom has gone a step further, and undertaken to ensure electricity to keep water pumps running provided ELM in turn undertakes to ensure that such supply is not reticulated to other users and is limited to water pumps only.

35.4 I wish to point out that on 21 November 2017, the Department of Water and Sanitation issued notices to at least 30 municipalities, including ELM for the recovery of arrear debt, failing which it intends to restrict the flow of water in terms of applicable statute. As at that date, in terms of information published in the Department's website ELM allegedly owed R144 654 433-72. A copy of the notice is attached marked **"ES7"**.

36. **AD PARAGRAPH 33 THEREOF**

I admit the allegations in this paragraph.

MM

37. **AD PARAGRAPHS 34 AND 35 THEREOF**

Save to deny that the notice issued by Eskom constituted a threat, I note the allegations contained in this paragraph.

38. **AD PARAGRAPH 36 THEREOF**

I have no knowledge of the allegations contained in this paragraph.

39. **AD PARAGRAPH 37 THEREOF**

I admit the contents of these paragraph.

40. **AD PARAGRAPHS 38 AND 39 THEREOF**

I reiterate that the remedy available to the applicants lies against the ELM and not against Eskom.

41. **AD PARAGRAPHS 40 TO 47 THEREOF**

41.1 It bears repeating the applicants' remedy lies not against Eskom as there is no relationship between them contractual or otherwise.

41.2 Further, any harm or inconvenience, if any, suffered by the applicants does not outweigh that which is and will be suffered by Eskom.

MM

42. **AD PARAGRAPHS 48 TO 54 THEREOF**

For fear of belabouring these papers I reiterate what I stated above in response to paragraph 32 of the founding of the founding affidavit.

43. **AD PARAGRAPH 55 THEREOF**

43.1 I deny that the applicants have a right to an interdict pending the relief sought in Part B. It bears repeating that the Constitutional Court has stated that the right to judicially review a decision resides in everyone and does not require protection *pendete lite*. Accordingly, the applicants do not have a right to obtain an interim interdict simply to protect their right to judicially review the decision of Eskom as they seek to do.

43.2 In any event, I have already dealt with the issues pertaining to prima facie right herein above. I need not repeat same.

44. **AD PARAGRAPH 56 TO 58 THEREOF**

44.1 I have already stated herein above the alternative remedies available to the applicants.

44.2 I deny that the conduct of Eskom is unconstitutional and that it amounts to self-help.

MM

44.3 I reiterate that any remedy that applicants may have lies not against Eskom. Thus Eskom does not accept any liability of any nature.

45. **AD PARAGRAPH 59 TO 65 THEREOF**

45.1 All allegations herein that are inconsistent with what I have stated are denied.

45.2 I have already dealt with the balance of convenience herein above and I refer the above Honourable Court to what I have stated above.

45.3 Moreover, a civil court judgment is not necessarily the best option. It will be catastrophic to the ELM and its residents. First, as stated above, the attachment of the property of the ELM will simply make it impossible for it to function and to provide services. Second, it will not have an effect of reducing the escalation rate of the debt.

45.4 In any event, Eskom is authorised both in terms of the provisions of the ERA and the electricity supply agreement to reduce or interrupt or terminate the electricity supply under certain circumstances. Such circumstances have now arisen in this matter hence the decision to interrupt.

MM

46. **AD PARAGRAPH 66 THEREOF**

I have already dealt with the urgency herein above. I refer the Honourable Court to what has already been stated in that regard.

47. **AD PARAGRAPH 67 AND 68 THEREOF**

I note that the application to institute a class action is not before the court at this stage. Eskom will deal with such application once the application is instituted.

48. **AD PARAGRAPH 69THEREOF**

I deny the allegations contained in this paragraph.

49. **AD PARAGRAPH 70 THEREOF**

49.1 I have explained herein above that interruptions of electricity serve many purposes than only as a collection measure. The interruptions of electricity would, for instance, minimise the rate at which the debt of ELM escalates without making it impossible for it to meet its obligations in the future. It would also ensure that the ELM does not use more electricity than it can afford.

MM

49.2 In any event, Eskom is empowered in terms of the provisions of the ERA as well as the electricity supply agreement to terminate the electricity supply. Further, Eskom has obligation in terms of the PFMA as set out above.

49.3 In a nutshell, Eskom was acting within its powers when it took the decision to interrupt the electricity supply.

50. **AD PARAGRAPH 71 THEREOF**

I note the allegations contained in this paragraph.

51. **AD PARAGRAPH 72 THEREOF**

51.1 I deny that Eskom has resorted to self-help. It bears repeating that the steps or decision taken by Eskom is authorised in law.

51.2 I reiterate that execution of a civil court judgment would collapse the ELM in a matter of hours once a writ is executed. Once the property of the ELM is attached and removed for execution the latter will no longer be able to provide basic municipal services. It certainly requires its equipment which constitutes its property in order to provide basic municipal services to the community.

MM

52. **AD PARAGRAPH 73 THEREOF**

52.1 I deny the allegations contained in this paragraph and in particular the interpretation proposed by the applicants.

52.2 I point out that the Constitutional Court has already pronounced itself on the provisions of Section 21(5) of the ERA. I submit that if municipalities are permitted to disconnect the electricity supply to their defaulting customers, then equally, Eskom is permitted to disconnect or interrupt or reduce the electricity supply to its defaulting customers such as the ELM.

52.3 I submit further that all rights in the Bill of Right are subject to limitation. To the extent that applicants contend that they have rights enforceable against Eskom or any right to electricity including basic municipal services, Section 21(5), being a law of general application, justifiably limits such rights.

52.4 I deny specifically that the rights of the applicants are limited by Eskom's scheduled interruptions.

52.5 In any event such limitations would be very is justified in terms of section 36 of the Constitution of the republic of South Africa Act 2006. Section 21(5) of the ERA serves such purpose of limiting the rights.

MM

52.6 further, the limitation minimal in the circumstances, given the fact that the interruptions would be scheduled and carefully communicated by Eskom; and any such limitations are reasonable and justifiable in that:-

52.6.1 they are temporary and conditional in nature and only endures until the amounts owing by ELM are paid or a mutually agreed repayment plan is concluded;

52.6.2 they do not amount to a complete deprivation but would endure for not more than five hours daily;

52.6.3 they will not have a negative effect on the minimum guaranteed free electricity of 50kwH;

52.6.4 they will have the effect that the debt of ELM will not escalate to debilitating effect and thus have an impact on its ability to provide other services to its citizens, whilst enabling Eskom to manage its own harm, being the cost of the most expensive supply hours; and

52.6.5 it could have been and can still be avoided by the enforcement of other alternative legal remedies available at the disposal of the applicants against ELM, which, to date, has not been done.

MM

53. **AD PARAGRAPH 74 THEREOF**

I deny the allegations contained in this paragraph.

54. **AD PARAGRAPH 75 THEREOF**

I deny the allegations contained in this paragraph.

55. **AD PARAGRAPH 76 THEREOF**

I admit only that the decision to interrupt electricity is an administrative decision. Save as aforesaid I deny the remainder of the allegations contained in this paragraph.

56. **AD PARAGRAPH 77 THEREOF**

I deny each and every allegation contained in this paragraph. I add that Eskom is authorised in law to take the steps it took herein.

57. **AD PARAGRAPH 78 THEREOF**

I deny these allegation and in particular that there is any basis to review the decision to interrupt electricity.

MM

58. **AD PARAGRAPH 79 THEREOF**

I deny each and every allegation contained in this paragraph.

59. **AD PARAGRAPH 80 THEREOF**

I deny each and every allegation contained in this paragraph. Eskom went about taking the decision procedurally. The record, once filed, will should that a proper procedure was followed prior to taking the decision. No irrelevant considerations were taken into account and the decision is rational and justifiable.

60. **AD PARAGRAPH 81 THEREOF**

I note these allegations. Eskom reserves its rights to answer fully to these allegations and to the supplementary affidavit once it is served and filed.

61. **AD PARAGRAPHS 82TO 83 THEREOF**

I note these allegations. They relate to ELM.

62. **AD PARAGRAPHS 84 AND THEREOF**

To the extent that the allegation contained therein differ with what I have stated in this affidavit, they are denied.

MM

63. **AD PARAGRAPH 85 THEREOF**

I deny these allegations.

64. **WHEREFORE**, Eskom prays for an order in the following terms:

(a) That the application be dismissed;

(b) That the applicants, alternatively the second respondent, be ordered to pay Eskom's costs which costs includes the costs occasioned by the employment of two counsel;

(c) That Eskom be granted further and/or alternative relief.

MUSA MABILA

I certify that the deponent has in my presence acknowledged that he/she is familiar with the contents of this affidavit and understands it, that he/she has no objection to taking the prescribed oath and regards the oath as binding on his/her conscience where after the oath was administered and the affidavit sworn to by the deponent, he/she having uttered the phrase "*So Help Me God*".

COMMISSIONER OF OATHS

Ex officio:

Full names:

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ELECTRICITY SUPPLY AGREEMENT

between

ESKOM

and

EMALAHLENI LOCAL MUNICIPAL COUNCIL

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ESKOM

[Megaflex and Benefit of Diversity]

ELECTRICITY SUPPLY AGREEMENT

SECTION A: GENERAL

1. PARTIES

The parties to this Agreement are -

E S K O M

herein represented by PHIRWA JACOB MAROGA in his capacity as EXECUTIVE DIRECTOR (DISTRIBUTION)

- AND -

EMALAHLENI LOCAL MUNICIPAL COUNCIL

('the DISTRIBUTOR' and previously known as The Town Council of Witbank)

herein represented by ~~GERHARDUS JOHANNES UITENWEERDE MULLER ROTHMAN~~ JACOBUS JOHANNES JACOBS in his capacity as ~~ACTING DIRECTOR EXECUTIVE CORPORATE SERVICES~~ DEPUTY CITY SECRETARY

2. INTRODUCTION

It is recorded that -

2.1 ESKOM is presently supplying the DISTRIBUTOR, in terms of an existing electricity supply agreement, concluded between ESKOM and the Town Council of Witbank, dated 24 July 1985 (Ref. No. ETR 54/85), with electricity in bulk for municipal purposes and for the purpose of distribution to consumers within the DISTRIBUTOR's licensed area of supply.

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2.2 The DISTRIBUTOR has elected to be charged at the Megaflex prices as set out in ESKOM's Schedule of Standard Prices and has also applied to ESKOM for an increased 60 MVA (sixty megavolt amperes) point of supply of electricity at ESKOM's Churchill substation. 127

2.3 The DISTRIBUTOR and ESKOM have agreed that the said supply agreement dated as in subclause 2.1 above, shall be terminated and replaced by this Agreement on the date of signing hereof.

3. GENERAL AGREEMENT

ESKOM agrees to supply to the DISTRIBUTOR and the DISTRIBUTOR agrees to take from ESKOM all the electricity required by the DISTRIBUTOR for its distribution system, on the terms and conditions set out in this Agreement; subject to the provisions of the Eskom Act, 1987 (Act No. 40 of 1987) and the Electricity Act, 1987 (Act No. 41 of 1987) and the Rules and Regulations issued thereunder (hereinafter referred to as 'the Act' and the 'Electricity Act' respectively), and of the parties distribution licences and ESKOM's Schedule of Standard Prices, as amended or re-enacted from time to time.

4. INTERPRETATION AND DEFINITIONS

Unless inconsistent with the context the words and expressions used in this Agreement shall have the same meanings as those assigned to them in the Act, the Electricity Act, the Eskom Distribution Licence and the Eskom Schedule of Standard Prices and the Rationalised User Specification for Quality of Supply ('NRS 048') issued by the South African Bureau of Standards.

5. ANNEXURES

The following annexures referred to in this Agreement shall be deemed to be incorporated herein and to form an indivisible part hereof.

Annexure A - Megaflex Price List
Annexure B - Quality of Supply Specification

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6. PERIOD OF AGREEMENT

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This Agreement shall come into force on the date of signing hereof and shall endure for an indefinite period, subject to the provisions of this Agreement and the right of either party to terminate this Agreement by giving the other party 12 (twelve) calendar months' notice in writing.

SECTION B: FINANCIAL

7. PRICES FOR ELECTRICITY

7.1 The prices payable by the DISTRIBUTOR for electricity supplied or made available under this Agreement, shall be the Megaflex prices as prescribed in the Eskom Schedule of Standard Prices, subject however to ESKOM's right to adjust the prices it charges for electricity supplied in accordance with the provisions of the Electricity Act and with the approval of the National Electricity Regulator.

Particulars of the Megaflex prices currently in force are set out in Annexure 'A'.

Diversity audit 13 January

7.2 ESKOM agrees to grant the DISTRIBUTOR the benefit of diversity between the maximum demands measured by ESKOM at each of the points of delivery referred to in Clause 14 on condition that:

7.2.1 The DISTRIBUTOR complies with the provisions of ESKOM's policy document, titled 'Granting the Benefit of Diversity' (Ref No ESKADAATO), as amended with the approval of the National Electricity Regulator.

7.2.2 ESKOM shall notify the DISTRIBUTOR in the event of non-compliance with the criteria as set out in ESKOM's policy document as referred to in subclause 7.2.1 above. Should the CUSTOMER fail to comply with the said criteria within 14 (fourteen) days after receiving such notification ESKOM shall withdraw the benefit of diversity until such time that ESKOM is satisfied that the CUSTOMER complies with the said criteria.

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7.3 The calculation of the maximum demand charge referred to in the Megaflex prices as set out in ESKOM's Schedule of Standard Prices shall accordingly, for as long as the benefit of diversity is granted to the DISTRIBUTOR, be based on the maximum simultaneous demand registered during peak and standard periods in the month at the said points of delivery, subject to the proviso that the reactive energy charge referred to in the Megaflex prices as set out in the aforementioned Schedule, shall be calculated separately for each point of delivery.

For the purpose of this subclause, 'maximum simultaneous demand' shall mean the highest simultaneous load, measured in kilowatts, supplied in any demand integrating period of 30 (thirty) consecutive minutes in the month, arithmetically summated over the said points of delivery.

7.4 If additional points of delivery are made in terms of this Agreement, such additional supplies shall be subject to the express condition that the demand charge for each additional point of delivery, shall be based on the maximum demand supplied at that particular point of delivery. The diversity between the monthly maximum demands at such additional points of delivery and the existing points of delivery shall accordingly not be taken into account in determining the DISTRIBUTOR's liability unless otherwise agreed to by ESKOM.

8. CAPITAL EXPENDITURE: MONTHLY RENTAL

8.1 The DISTRIBUTOR shall pay to ESKOM in respect of the capital expenditure and costs incurred and/or to be incurred by ESKOM in making this bulk supply of electricity available to the DISTRIBUTOR, at the points of delivery referred to in Clause 14, the monthly amounts as set out in subclause 8.2 (hereinafter referred to as 'the monthly rental').

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8.2 The monthly rentals and the expiry dates are as follows:

Points of Delivery	Monthly Rental	Expiry Date
POD 1 – Churchill Substation	R8 192,00 (+ VAT @ 14% = R9 338,88)	15 September 2004
POD 2 – Doornpoort Substation	R23 540,00 (+ VAT @ 14% = R26 835,60)	15 September 2004
POD 3 – Churchill Substation	(i) R8 159,00 (+ VAT @ 14% = R9 301,26)	16 February 2010
	(ii) R2 774,00 (+ VAT @ 14% = R3 162,36)	5 (five) years from date of connection

8.3 The monthly rental (before the addition of VAT at the prescribed rate) shall be rebated, but not beyond extinction, in respect of each month during which electricity is taken by R2,00 (two rands) for each kilowatt of the actual maximum demand recorded during peak or standard periods in that month, or if the charges for that month are calculated according to the Megaflex prices as set out in ESKOM's Schedule of Standard Prices, by an amount calculated as the product of the total number of kWh of active energy supplied during peak periods in the month and the rate of 1,81c (one comma eight one cents) per kWh.

8.4 The monthly rental or the net amount thereof, if any, as determined above, shall be payable:

8.4.1 until the expiry dates as specified in subclause 8.2, subject to this Agreement remaining in force, and if the monthly rental is increased at any time as is provided for in Clause 12, the amount by which the monthly rental is increased shall be payable until such date as is agreed between the parties, or until the supply is terminated, whichever date is the earlier; and

8.4.2 monthly, whether any electricity is taken in any month or not, at the same time as the prices payable under Clause 7.

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9. PAYMENT OF ELECTRICITY ACCOUNTS

9.1 Electricity accounts for all charges payable under this Agreement shall be sent to the DISTRIBUTOR as soon as possible after the end of each month (i.e. meter-reading month, as per the definition of 'month' in the Eskom Schedule of Standard Prices), and each account shall be due and payable on the date the account is received by the DISTRIBUTOR, which date, for purposes of this Agreement, shall be as set out in subclause 25.2.

9.2 Should payment not be received within a period of 10 (ten) days from the date the account is deemed to have become due and payable in terms of subclause 9.1, ESKOM may discontinue the bulk supply to the DISTRIBUTOR and/ or terminate the electricity supply agreement after having given the DISTRIBUTOR 14 (fourteen) days written notice. The amount outstanding shall bear interest compounded monthly from the due date to date of payment, at a rate per annum equal to the prevailing prime overdraft rate charged by First National Bank of Southern Africa Limited plus 5% (five per centum).

9.3 Should the DISTRIBUTOR dispute an account, it shall not be entitled to reduce or set off its debt or defer payment thereof beyond the period allowed for in subclause 9.2; but the account shall be settled in full pending resolution of such dispute. If a manifest error is however evident, the DISTRIBUTOR shall be entitled to pay in lieu of the amount claimed an amount equal to the average of the accounts rendered for the preceding three consecutive months.

9.4 Should the DISTRIBUTOR be incorrectly charged for any amount(s) payable in terms of the electricity supply agreement as a result of human error, ESKOM shall inform the DISTRIBUTOR of the correct amount(s) payable and the reasons therefor.

In the case of the DISTRIBUTOR being overcharged, ESKOM shall as soon as practicable either credit the DISTRIBUTOR's electricity account or reimburse the DISTRIBUTOR with the total amount overcharged. The said amount shall include interest, compounded monthly from the date that the

to dismantle its equipment on termination of the supply, be put to certain expenditure and costs in excess of the value of the recoverable assets. To compensate ESKOM for such expenditure and costs it is agreed as follows:

11.1 In the event of the supply to the distribution system being discontinued the DISTRIBUTOR shall pay to ESKOM a contribution towards the said irrecoverable expenditure and costs which ESKOM would incur.

11.2 The DISTRIBUTOR's contingent liability shall not exceed the sum of R43 000,00 (forty-three thousand rands) (hereinafter referred to as 'the Guaranteed Contribution').

11.3 Subject to the DISTRIBUTOR meeting its obligations under this Agreement, the Guaranteed Contribution shall be reduced for and in respect of each completed year during which this Agreement remains in force from and including the fourth year until and including the thirteenth year, calculated from the date electricity is first supplied to the DISTIBUTOR in terms hereof, by 1/10th (one-tenth) of the Guaranteed Contribution.

11.4 If within the period of 13 (thirteen) years referred to in subclause 11.3, this Agreement is terminated by ESKOM for breach of contract by the DISTRIBUTOR or is terminated by the DISTRIBUTOR for any reason, the amount of the Guaranteed Contribution or the reduced amount thereof shall be due and payable by the CUSTOMER to ESKOM.

12. AMENDMENT OF TERMS - ADDITIONAL CAPITAL EXPENDITURE

In the event of the DISTRIBUTOR requiring ESKOM to provide an increased bulk supply in accordance with the provisions of Clause 13, such variation in the bulk supply shall be subject to such terms and conditions as agreed between the parties and confirmed in writing in accordance with subclause 22.2; failing such agreement, no increased bulk supply shall be provided by ESKOM. Any resultant adjustment of the amounts referred to in Clause 8, shall take account not only of the additional capital expenditure incurred or to be incurred by ESKOM in increasing the DISTRIBUTOR's bulk supply but also the additional capacity of ESKOM's distribution system made available and/or reserved to meet the DISTRIBUTOR's increased demand.

13. NOTIFIED MAXIMUM DEMAND AND NOTIFICATION OF ADDITIONAL DEMANDS

13.1 ESKOM's obligation shall be to make available and supply to the DISTRIBUTOR a supply of electricity up to the maximum capacity represented by the notified maximum demand of the DISTRIBUTOR, as increased from time to time by the additional demands of the DISTRIBUTOR, notified to and accepted by ESKOM in accordance with the provisions of subclause 13.3.

13.2 The notified maximum demands of the DISTRIBUTOR at the date of this Agreement is as follows:

Wilbank D|S

Points of Delivery	Notified Maximum Demands
POD 1 – ~~Churchill~~ Substation	35 MVA (thirty-five megavolt amperes)
POD 2 – Doornpoort Substation	30 MVA (thirty megavolt amperes)
POD 3 – Churchill Substation	60 MVA (sixty megavolt amperes)

13.3 The DISTRIBUTOR undertakes to notify ESKOM in writing each year of the notified maximum demand (in both peak and standard periods) for three succeeding years. Should the DISTRIBUTOR however at any time require an increased bulk supply from ESKOM (over and above the notified maximum demand in force from time to time), it shall give adequate notice in writing to ESKOM of the increased demands which it requires ESKOM to supply and the date(s) at which such increased demand(s) is/are required.

Any variation in the DISTRIBUTOR's notified maximum demand shall be dealt with in accordance with the procedure set out in the definition of 'notified maximum demand' in the Eskom Schedule of Standard Prices and the provisions of Clause 12.

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14. POINTS OF DELIVERY

The electricity supplied by ESKOM shall be delivered to the DISTRIBUTOR at the following points of delivery and at such additional points of delivery as may from time to time be mutually agreed between the parties:

WB DS

Points of Delivery	Points of Connection
POD 1 ~~Churchill~~ Substation	22kV line isolators
POD 2 – Doornpoort Substation	22kV line isolators
POD 3 – Churchill Substation	132kV line isolators

15. FORM AND QUALITY OF ELECTRICITY TO BE SUPPLIED

15.1 Electricity shall be supplied as three-phase alternating current at a nominal frequency of 50Hz (fifty hertz), subject to Regulation 9(3) of the Electricity Act, and at the following declared voltages:

WB DS

Points of Delivery	Declared Voltages
POD 1 ~~Churchill~~ Substation	22kV (twenty-two kilovolts)
POD 2 – Doornpoort Substation	22kV (twenty-two kilovolts)
POD 3 – Churchill Substation	132kV (one hundred and thirty-two kilovolts)

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15.2 ESKOM shall furnish the DISTRIBUTOR with a reliable and continuous supply of electricity in bulk. However, it is not practicable for ESKOM to guarantee that the continuity and voltage quality of the bulk supply will always be maintained under all contingencies. It is therefore incumbent on the DISTRIBUTOR to ascertain from ESKOM the nature of the protection provided on the bulk supply and the DISTRIBUTOR shall take adequate measures to protect its business and distribution system against any losses and/or damage arising from supply interruptions/ supply reductions or voltage distortions in the supply to its distribution system.

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15.2.1 Continuity or Reduction of Supply

(a) ESKOM shall have the right, for purposes of the efficient operation and extension of ESKOM's distribution and/or transmission systems and also in emergencies, to temporarily interrupt the bulk supply to the DISTRIBUTOR, subject to any limits prescribed in NRS 048.

(b) ESKOM prescribes to the interruption standards placed on utilities by NRS 048. ESKOM undertakes in the context of this Agreement to manage the interruptions to the DISTRIBUTOR in accordance with these requirements.

(c) ESKOM shall give the DISTRIBUTOR not less than 14 (fourteen) days' written notice of any planned interruptions.

(d) ESKOM and the DISTRIBUTOR shall collaborate in determining the portion of the DISTRIBUTOR's load which it will reduce through ESKOM's Load Curtailment and/ or Manual Load-shedding and/or Under-frequency Load-shedding schemes, or by other agreed means, if ESKOM should experience a shortage of generating and/or transmission capacity.

15.2.2 Voltage Quality

Details of the parties' obligations in respect of the voltage quality aspects of the supply, are specified in Sections B.1.1, C.1.2, C.1.3 and C.1.4 and C.1.5 of Annexure 'B'.

15.3 ESKOM shall not be liable for damages, expenses or costs caused to the DISTRIBUTOR from any reduction of or interruption in the bulk supply, or any variation of voltage or frequency, or any failure to supply electricity, unless the said reduction, interruption, variation or failure is due to the negligence of ESKOM.

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In the event that ESKOM should be liable for damage caused to the DISTRIBUTOR as a result of any such reduction in load or any interruption in the bulk supply, or any variation of voltage or frequency or any failure to supply electricity, such liability shall be limited to direct damage excluding consequential damages. Consequential damages include, but are not limited to, loss of production and loss of profit.

16. POWER FACTOR

The power factor at each point of delivery shall under all loading conditions not be leading, unless otherwise agreed to by ESKOM.

The power factor of the load at each of the points of delivery shall not be less than 0,85 (nought comma eight five) lagging. Should the power factor be less than 0,85 (nought comma eight five), the DISTRIBUTOR shall be required to install at its own expense suitable apparatus to ensure that this requirement is complied with.

For purposes hereof 'power factor' is defined as the kWh divided by the kVAh (where the kVAh equals the square root of the sum of the kWh squared and the kvarh squared) measured over the same demand-integrating period.

17. ACCOMMODATION FOR ESKOM'S EQUIPMENT

17.1 The DISTRIBUTOR has provided and shall continue for the duration of this Agreement to provide and maintain in good order at its expense the site to be mutually agreed upon and such accommodation, including structures, as ESKOM may reasonably require for accommodating its equipment and apparatus.

The said accommodation has been and shall continue to be designed, situated and provided with suitable access thereto to the reasonable satisfaction of ESKOM for the purpose of erecting and/or connecting up, inspecting, operating and maintaining the equipment and apparatus of ESKOM therein.

17.2 ESKOM shall have the right, after having given the DISTRIBUTOR prior written notice, to use the said accommodation in which its equipment and apparatus is installed for the purpose of supplying other consumers and, if necessary, to call upon the DISTRIBUTOR to extend the same for such purpose; but the cost of any extension of the said accommodation which is required solely for the purpose of supplying other consumers shall be for the account of ESKOM.

18. EQUIPMENT AND APPARATUS TO BE SUPPLIED BY ESKOM

18.1 All equipment and apparatus up to the points of supply at the points of delivery referred to in Clause 14 shall be provided, installed, operated and maintained by ESKOM.

18.2 The DISTRIBUTOR shall not, except in cases of emergency or at the request of or in terms of an authorisation from ESKOM, operate or interfere with the apparatus of ESKOM.

18.3 Notwithstanding any payments made by the DISTRIBUTOR to ESKOM in respect of the capital expenditure and costs incurred by ESKOM in making a bulk supply of electricity available to the DISTRIBUTOR, all material, equipment and apparatus erected or installed by ESKOM in pursuance of the electricity supply agreement shall be and remain the property of ESKOM.

ESKOM shall have the right to use such electrical equipment and apparatus for purposes of supplying other consumers, and also upon termination of the electricity supply agreement to enter upon the premises/property of the DISTRIBUTOR and remove therefrom all such material, equipment and apparatus.

19. APPARATUS TO BE PROVIDED BY DISTRIBUTOR

19.1 The DISTRIBUTOR shall, at its own expense, provide, erect, connect up, operate and maintain all circuits required to connect its electricity distribution system with the points of supply and all apparatus necessary for controlling such circuits to the reasonable satisfaction of ESKOM, including efficient

apparatus and switchgear for the protection of the apparatus of ESKOM against overload, faults and lightning on the DISTRIBUTOR's distribution system. The protection settings of the DISTRIBUTOR's fault and overload equipment shall be agreed with ESKOM to ensure appropriate protection grading.

ESKOM shall be entitled to recover from the DISTRIBUTOR any direct loss or expenses incurred by ESKOM by reason of damage to ESKOM's plant and equipment or otherwise by reason of failure of the DISTRIBUTOR to comply with the provisions of this Clause.

19.2 The apparatus of the DISTRIBUTOR shall be of good design and construction, properly installed and maintained by the DISTRIBUTOR.

19.3 The DISTRIBUTOR shall not at any time load in excess of its rated capacity the transmission lines, equipment and apparatus provided by ESKOM, and ESKOM shall be entitled in the event of an overload occurring to interrupt the bulk supply.

20. MEASUREMENT OF SUPPLY

20.1 Metering equipment for measuring the electricity supplied by ESKOM to the DISTRIBUTOR shall be provided, installed and kept in repair by ESKOM.

20.2 The quantities of electrical energy and power supplied shall be measured and recorded by ESKOM and electricity accounts shall be rendered monthly on the basis of such measurements. The records of such measurements shall at all reasonable times be open for inspection by the DISTRIBUTOR or its authorised representative.

20.3 During any period when a meter/recorder has not registered or ESKOM's records show that the reading is unreliable due to the meter or any associated equipment being defective, a reasonable estimate shall be made by ESKOM of the correct quantity for each of the months in question and the account(s) for such period shall be based on such estimate; provided that where the DISTRIBUTOR has its own meters installed, ESKOM shall take

account of the evidence provided by such meters in estimating the correct quantity/quantities.

20.4 As duplicate meters/recorders have been installed the average of the readings of the main and check meters/recorders shall be used for purposes of calculating the account. If the readings at any time differ by more than 2% (two per centum) from the average of the two readings, then for the purposes of rendering accounts, if ESKOM's records show that the discrepancy is attributable to one meter/recorder only, the reading of the other meter/recorder shall be taken but if the discrepancy may be due to the inaccuracy of both meters/recorders a reasonable estimate shall be made by ESKOM of the correct quantity. Such meters/recorders shall as soon as possible be tested and the account adjusted in accordance with the provisions of Clause 21 after the inaccuracy has been ascertained.

21. TESTING OF METERS / METERING INSTALLATIONS

21.1 ESKOM shall have the right to test the metering installation at any time and if any such test shows a meter/recorder inaccuracy exceeding 2% (two per centum) fast or slow or an overall metering installation inaccuracy exceeding 5% (five per centum), the same shall in the absence of evidence to the contrary be deemed to have existed since the second-last meter-reading date prior to the date of testing, and the account(s) shall be adjusted accordingly as soon as practicable after the inaccuracy has been ascertained.

21.2 If within 30 (thirty) days of the rendering of any monthly electricity account the DISTRIBUTOR requests ESKOM in writing to test the meter(s)/ recorder(s) and/or the metering installation(s), ESKOM shall do so on payment by the DISTRIBUTOR of the appropriate meter test fee(s) and/or the estimated cost that ESKOM would incur in testing the metering installation(s), and if such test shows a meter/recorder inaccuracy exceeding 2% (two per centum) or an overall metering installation inaccuracy exceeding 5% (five per centum), the same shall in the absence of evidence to the contrary be deemed to have existed since the commencement date of the month for which such account was rendered, and the account(s) shall be adjusted accordingly as soon as practicable after the inaccuracy has been ascertained, and the aforesaid fee(s) and/or costs paid in advance shall be refunded to the DISTRIBUTOR.

If the test shows the inaccuracy to be less than 2% (two per centum) and/or 5% (five per centum) respectively, the account(s) shall stand as rendered and the aforesaid fee(s) and/or costs paid by the DISTRIBUTOR shall be forfeited to ESKOM.

SECTION D: LEGAL

22. ENTIRE AGREEMENT AND VARIATION / BREACH OF TERMS AND CONDITIONS

22.1 This Agreement constitutes the sole and entire agreement between the parties and supersedes all previous negotiations, arrangements or agreements in respect of the subject matter of this Agreement, other than separate agreements or documents relating to rights-of-way and/or servitudes.

22.2 Save as provided for in Clauses 7 and 10, no variation, modification or waiver of any provision of this Agreement, or consent to any departure therefrom, shall in any way be of any force or effect unless confirmed in writing and signed by the parties and then such variation, modification, waiver or consent shall be effective only in a specific instance and for the purpose and to the extent for which it was made or given. Furthermore, any failure, delay, relaxation or indulgence on the part of either party in enforcing any provision of this Agreement shall not be deemed or construed to be a waiver thereof.

22.3 Should the DISTRIBUTOR fail to pay any electricity account in accordance with the provisions of Clause 9, ESKOM may discontinue the bulk supply to the DISTRIBUTOR and/or terminate this Agreement, without prejudice to any claim ESKOM may have for electricity supplied or for damages suffered by the default on the part of the DISTRIBUTOR, subject to the proviso that ESKOM shall give the DISTRIBUTOR prior notice thereof by facsimile or some other electronic medium. ESKOM shall afford the DISTRIBUTOR a period of 48 (forty-eight) hours within which to rectify the said default. The bulk supply shall be restored as soon as practicable after the DISTRIBUTOR has remedied the default and paid the requisite reconnection fee.

22.4 Should the DISTRIBUTOR fail to comply fully with any of the conditions of this Agreement, other than the failure to pay any account in accordance with the provisions of Clause 9, ESKOM shall be entitled to give the DISTRIBUTOR notice of such default and if the DISTRIBUTOR fails to remedy the default within 14 (fourteen) days after receiving such notification, or if circumstances justify it such other period as may be agreed between the parties, ESKOM may forthwith discontinue the bulk supply to the DISTRIBUTOR and/or terminate this Agreement, without prejudice to any claim ESKOM may have for electricity supplied or for damages suffered by the default on the part of the DISTRIBUTOR; provided however that if the default is such that in the opinion of ESKOM it would be dangerous to continue the supply to the DISTRIBUTOR, ESKOM may discontinue the supply without the prior notification aforesaid. ESKOM shall however forthwith inform the DISTRIBUTOR of its reasons for discontinuing the supply. The supply shall be restored as soon as practicable after the DISTRIBUTOR has remedied the default and paid the requisite reconnection fee.

23. CESSION OF AGREEMENT

23.1 Neither party shall be entitled to cede and/ or delegate this Agreement or any of its rights and obligations thereto, without the prior written consent of the other party, which consent shall not be unreasonably withheld.

23.2 Notwithstanding anything to the contrary contained in subclause 23.1, it is agreed that ESKOM may cede its rights or delegate its obligations and liabilities in terms of this Agreement to any entity that is created as a result of the restructuring of either ESKOM and/ or the Electricity Supply Industry (ESI) in South Africa.

24. RIGHT(S)-OF-WAY

24.1 The DISTRIBUTOR shall grant to ESKOM free of charge right(s)-of-way in perpetuity over property owned by the DISTRIBUTOR, along a route or routes to be agreed, for (a) the overhead electric power line(s) and/or underground electric cable(s) which ESKOM requires to erect, lay or install in connection with the bulk supply of electricity to the DISTRIBUTOR and (b) any extension(s) of such line(s) and/or cable(s) to other consumers of ESKOM. The right(s)-of-way under (a) may be used by ESKOM to supply

other consumers of ESKOM, as long as it does not disadvantage the DISTRIBUTOR.

Furthermore, the DISTRIBUTOR shall undertake to assist ESKOM in acquiring right(s)-of-way over any ground or immovable property within the DISTRIBUTOR's licensed area of supply as may be required by ESKOM in connection with the bulk supply of electricity to the DISTRIBUTOR.

24.2 Should ESKOM so desire the said rights may be registered as notarial servitudes against the title deeds of the DISTRIBUTOR's property. The DISTRIBUTOR undertakes that after the granting of any such rights to ESKOM, any sale or alienation of the said property by the DISTRIBUTOR before the registration of the said rights shall be made subject to ESKOM's right to secure registration of such servitudes. The DISTRIBUTOR shall give written notice, receipt acknowledged, to any person who wishes to acquire the said property, of the said rights in perpetuity referred to in subclause 24.1 and it shall provide ESKOM with the original notice and acknowledgement of receipt. If the DISTRIBUTOR fails to comply with the provisions of this subclause, it shall be liable to ESKOM for all costs that ESKOM may incur if the person acquiring the property instructs ESKOM to move the overhead lines or underground cables as set out in subclause 24.3. The costs shall be paid within 7 (seven) days of written demand from ESKOM, failing which interest will be payable on the outstanding amount in terms of subclause 9.2.

24.3 The said rights shall include provisions for access at all reasonable times to enable ESKOM to operate, maintain, repair, remove or replace any or all of the equipment of ESKOM.

24.4 All legal expenses in connection with the execution and registration of the said rights shall be borne by ESKOM.

24.5 If the DISTRIBUTOR should require ESKOM to change the route of any overhead electric power lines and/or underground electric cables across its property or the position of ESKOM's equipment or meters, the cost to be incurred by ESKOM in effecting the change or removal shall be borne, and paid in advance, by the DISTRIBUTOR.

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25. NOTICES / ADDRESSES

25.1 Any notice, notification, request, demand or other communication for any purpose under this Agreement shall be in writing addressed -

in the case of the DISTRIBUTOR as follows :

P O Box 3
WITBANK
1035

marked for the attention of the Acting City Secretary;

and in the case of ESKOM as follows :

P O Box 223
WITBANK
1035

marked for the attention of the Regional Customer Executive;

or to such other addresses, or for the attention of such other persons or department, as ESKOM and the DISTRIBUTOR may from time to time notify to each other.

25.2 All notices, notifications, requests, demands or other communications including accounts, shall be deemed to have reached the other party -

25.2.1 if delivered by hand, on the date of delivery;

25.2.2 if posted by ordinary mail or registered post, on the fifth calendar day following the date of such posting, and in the case of an account on the fifth calendar day following the date of the account;

25.2.3 if transmitted by facsimile or any other electronic medium acceptable to both parties, on the first business day following the date of despatch.

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25.3 For the purpose of this Agreement the DISTRIBUTOR's *domicilium citandi et executandi* shall be:

Civic Centre
President Avenue
WITBANK

and ESKOM's *domicilium citandi et executandi* shall be:

Megawatt Park
Maxwell Drive
Sunninghill Ext. 3
2199 SANDTON

Either party may, by written notice to the other, change its abovementioned *domicilium*.

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SIGNED for and on behalf of the **DISTRIBUTOR** on 28 August 2001

~~G J J M Bothman~~ J. J. Jacobs

As Witnesses:

1. _____

2. _____

SIGNED ~~for and on behalf of~~ **ESKOM** on 18 September 2001

P J Maroga

As Witnesses:

1. _____

2. _____

ANNEXURE 'B'

ADDENDUM TO ELECTRICITY SUPPLY AGREEMENT

QUALITY OF SUPPLY SPECIFICATION

A. POINTS OF COMMON COUPLING

The points of common coupling under normal operating conditions shall be as described in Table 1 of this Annexure.

B. ESKOM'S OBLIGATIONS

1.1 VOLTAGE QUALITY

1.1.1 ESKOM shall maintain the voltage harmonics, voltage unbalance, and voltage flicker at the points of delivery in compliance with the limits specified in Part 2 of NRS 048, as revised from time to time.

1.1.2 In the event of the voltage quality limits referred to in Section B.1.1.1 being exceeded, ESKOM shall take appropriate measures to rectify the voltage quality as soon as is practicable. ESKOM shall inform the DISTRIBUTOR of the remedial action it intends taking and when the situation is expected to be normalised.

1.1.3 ESKOM shall at its own cost take the necessary remedial action when the sum of consumer interaction at the points of common coupling (described in Table 1 of this Annexure) exceeds the voltage quality limits referred to in Section B.1.1.1, provided that all consumers connected to the points of common coupling are within their individually allocated apportionment.

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1.1.4 With reference to Regulation 9(2)(b) of the Electricity Act, it is a specific condition of supply that the maximum percentage by which the supply voltage may differ from the declared voltage for a period longer than ten consecutive minutes, shall be 7,5% (seven comma five per centum) above or below the declared voltage. The voltage levels shall be assessed according to part 2 of NRS048.

C. THE DISTRIBUTOR'S OBLIGATION

The DISTRIBUTOR shall so use the bulk supply as not to interfere with an efficient and economical supply to other consumers of ESKOM, and shall ensure that any voltage distortions caused by the DISTRIBUTOR's load or equipment or that of its end-users, shall not at any time exceed the limits specified in Section C.1.2, C.1.3 and C.1.4 [the prescribed limits having been determined in accordance with NRS 048].

1.1 FAULT LEVELS AND NOTIFIED MAXIMUM DEMANDS

The voltage quality limits specified in Sections C.1.2, C.1.3 and C.1.4 are based on the fixed values as specified in Table 1 of this Annexure.

1.2 HARMONIC VOLTAGE EMISSIONS

The maximum permissible harmonic voltage emission levels at the points of common coupling shall be as specified in Table 2 of this Annexure. All other harmonics must be in accordance with the voltage harmonic limits as specified in Part 2 of the NRS 048.

1.3 VOLTAGE FLICKER

The maximum permissible contribution to flicker by the DISTRIBUTOR at the points of common coupling shall be as specified in Table 3 of this Annexure.

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1.4 VOLTAGE UNBALANCE

The maximum permissible contribution to voltage unbalance by the DISTRIBUTOR at the points of common coupling shall be as specified in Table 4 of this Annexure.

1.5 RAPID VOLTAGE CHANGES

The DISTRIBUTOR shall ensure that rapid voltage changes [as described in chapter 9 of IEC – 1000-3-7] originating from its load or equipment due to the starting of large loads or the switching of equipment, as recorded by ESKOM at the points of common coupling, shall not exceed the following emission limits:

Number of changes per hour *r*	**Percentage Change in the Voltage**	
r<1	4	3
1<*r*<=10	3	2,5
10<*r*<=100	2	1,5
100<*r*<1000	1,25	1

1.6 REMEDIAL ACTION AND NOTICE OF EXTENSIONS

1.6.1 Should any one of the voltage quality limits specified in Sections C.1.2, C.1.3, C.1.4 and C.1.5 be exceeded, the DISTRIBUTOR shall be required to implement such operational measures or at its own expense install corrective equipment as may be necessary to reduce the voltage distortion caused by the DISTRIBUTOR's load or equipment or that of its end-users to within the specified limits.

1.6.2 ESKOM shall monitor the harmonic voltage emissions, the voltage flicker and voltage unbalance, in accordance with the provisions of Section D of this Annexure, to ensure that the limits as specified herein are not exceeded and shall in the event of an infringement

inform the DISTRIBUTOR thereof by facsimile in order that remedial action may be taken by the DISTRIBUTOR without delay.

Remedial action shall be taken by the DISTRIBUTOR immediately after being informed that an infringement has occurred, or where circumstances justify it within a period of time as may be agreed between the parties. If agreement on the period to be allowed for the DISTRIBUTOR to correct any infringement of the specified limits cannot be reached within 30 (thirty) days of the infringement occurring, the period shall finally be determined by the National Electricity Regulator.

1.6.3 The DISTRIBUTOR shall give adequate notice in writing to ESKOM of the installation of power factor correction equipment connected to the DISTRIBUTOR's distribution system at a voltage of 11kV (eleven kilovolts) and above and/or any other changes which may impact the power quality or impedance at the points of common coupling to the ESKOM system to enable countermeasures to be taken timeously.

D. MEASUREMENT/ VARIATION OF QUALITY OF SUPPLY

1.1 ESKOM shall monitor the quality of supply (continuity, harmonic current injection, the voltage flicker, voltage unbalance and voltage regulation) at the points of common coupling and ESKOM and the DISTRIBUTOR shall collaborate in drawing up appropriate operational procedures to facilitate the monitoring and reporting of the quality of supply. ESKOM shall install appropriate metering equipment at the said points of common coupling for this purpose.

1.2 ESKOM shall measure the power quality in accordance with the requirements specified in Part 3 of NRS048 and shall apply the relevant assessment method prescribed in Part 2 of NRS048 to the measured quantities.

1.3 The limits specified in Sections C.1.2, C.1.3 and C.1.4 may be revised if any of the fixed values in Section C.1.1 change.

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TABLE 1: POINTS OF COMMON COUPLING UNDER NORMAL OPERATING CONDITIONS (Section A) AND FIXED VALUES (Section C.1.1)

Points of Delivery	Points of Common Coupling (PCC)	Fault level (MVA) at the PCC	Notified Maximum Demands (MVA)
POD 1 – Churchill Substation	22kV line isolators at Churchill substation	438 MVA	35 MVA
POD 2 – Doornpoort Substation	22kV line isolators at Doornpoort substation	454 MVA	30 MVA
POD 3 – Churchill Substation	132kV line isolators at Churchill substation	2 789 MVA	60 MVA

TABLE 2: HARMONIC VOLTAGE EMISSIONS (Section C.1.2)

Harmonic Order	Voltage (%) at each point of common coupling		
	22kV Churchill	22kV Doornpoort	132kV Churchill
2	1,53	1,73	0,47
3	2,63	3,38	0,15
4	0,76	0,87	0,32
5	3,13	4,03	0,14
7	2,71	3,49	0,17
9	1,15	1,30	0,32
11	2,30	2,76	0,26
13	1,96	2,34	0,26
23	1,15	1,30	0,22
25	1,15	1,30	0,22

TABLE 3 FLICKER (Section C.1.3)

Points of Common Coupling	Short term flicker (Pst)	Long term flicker (Plt)
22kV Churchill	0,66	0,53
22kV Doornpoort	0,72	0,57
132kV Churchill	0,37	0,29

TABLE 4 VOLTAGE UNBALANCE (Section C.1.4)

Points of Common Coupling	Percentage voltage unbalance
22kV Churchill	1,22
22kV Doornpoort	1,39
132kV Churchill	0,51

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"ES2"
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EMALAHLENI
Local Municipality

P.O. BOX 3,
WITBANK
MPUMALANGA
1035

TEL.: 013 690 6911
FAX: 013 690 6207

www.emalahleni.gov.za

Emalahleni, Mandela Street
Tel.: 013 690 6911

Ga-Nala, Quintin Street
Tel.: 017 648 2241

Ogies, Hoofweg
Tel.: 013 643 1027

OFFICE OF THE EXECUTIVE MAYOR

Our Ref: T. Jansen Van Vuuren
Tel.: 013 690 6208

3 March 2017

Eskom Holdings Soc Ltd
Key Accounts Management
Mpumalanga Operating Unit
28 Ferreira Street
NELSPRUIT
1200

Attention: Phil Khumalo

Email: phil.khumalo@eskom.co.za

Dear Madam

EMALAHLENI LOCAL MUNICIPALITY: NEW ARRANGEMENTS ESKOM ACCOUNT

The above matter has reference.

Following the meeting between ESKOM, the Minister of COGTA, Provincial Premier and Emalahleni Local Municipality on 1 March 2017, Council resolved at a Special Council meeting on 3 March 2017 under item A.051/17 as follows:

1. That Council takes note of the initiative under leadership of the MEC COGTA to develop long term sustainable solutions;

2. That Council approves the following arrangements as agreed with ESKOM:

    - The full payment of the current account by the 31st March 2017;

- The transfer of the equitable share on receipt to ESKOM;
- The provision of a session on the land sale to ESKOM as a further down payment;
- That the balance of the arrears be settled as part of new payment arrangements by the end of December 2017; and
- The establishment of a technical team between ESKOM and the Municipality.

Yours faithfully

Cllr. L.L. Ntshalintshali
Executive Mayor

Eskom 1A/hde

'ES3'
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Eskom

Mr Theo Van Vuuren
Municipality Manager
Emalahleni Local Municipality
P O Box 3
WITBANK
1035

Date:
22 June 2017

Enquiries:
Chris Lekhuleni
Tel +27 13 755 9200

Dear Mr Van Vuuren

NOTICE TO REMEDY BREACH

1. We refer to the Acknowledgement of Debt and Repayment Plan Agreement ('the Agreement') entered into by Eskom and Emalahleni Local Municipality ('the Municipality') on 09 May 2016 in terms of which the Municipality acknowledged its indebtedness to Eskom and undertook to pay the debt as set out in the attached Agreement.

2. In accordance with the Agreement, the Municipality failed to pay Eskom all the current accounts timeously and as and when they become due.

3. The Municipality's action is therefore in breach of the Agreement. Refer to clause 6.1 and 6.2 as mentioned below:

   6.1 Should the Municipality default in the payment of any one of the instalments mentioned above, is placed under judicial management or administration, or it enters into a compromise with creditors, the full balance owing on the debt at the relevant time shall become due and payable and

   6.2 Eskom may with due regard to all the relevant legislations and the provisions of the ESA take whatever legal remedies available to it including disconnection of supply of electricity to the Municipality.

4. The total amount arrear amount R1 082 336 410 is now due for immediate payment.

5. Consequently the Municipality is advised to take all necessary precautions to ensure the safety of the public and to minimize the impact to its customers.

MM

Distribution Division
Key Accounts Management – Mpumalanga Operating Unit
28 Ferreira Street Nelspruit 1200
PO Box 579 Nelspruit 1200 SA
Tel +27 13 755 9001 Fax +27 86 539 4374 www.eskom.co.za

Eskom Holdings SOC Limited Reg No 2002/015527/30

Emalahleni Local Municipality is hereby given 14 days grace period to correct the breach and failure to correct will result in Eskom initiating the PAJA process without any further notice.

All of Eskom's rights are reserved.

Yours sincerely

Musa Mabila
SENIOR MANAGER:
MAINTENANCE & OPERATIONS
CUSTOMER SERVICE OPERATIONS (ACTING)
DISTRIBUTION- MPUMALANGA OPERATING UNIT

'ES4'
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Eskom

Cllr Lindiwe Ntshalintshali
Executive Mayor
Emalahleni Local Municipality
P O Box 3
WITBANK
1035

Date:
17 July 2017

Enquiries:
Tel +27 13 755 2957
Musa Mabila

Dear Executive Mayor Cllr Ntshalintshali

NOTICE OF INTERRUPTION OF BULK ELECTRICITY SUPPLY TO EMALAHLENI LOCAL MUNICIPALITY

1. Emalahleni Local Municipality is currently indebted to Eskom in the amount of R 1 122 056 234(One billion one hundred and twenty two million and fifty six thousand and two hundred and thirty four rand) for the bulk supply of electricity, part of which has been outstanding and in escalation since November 2002 ("the electricity debt").

2. Eskom is under a statutory obligation to generate and supply electricity to the municipalities nationally on a financial sustainable basis.

3. Emalahleni Local Municipality's breach of its payment obligation to Eskom undermines and places in jeopardy Eskom's ability to continue the national supply of electricity on a financially sustainable basis.

4. In terms of both the provisions of the Electricity Regulation Act 4 of 2006 and supply agreement with Emalahleni Local Municipality, Eskom is entitled to disconnect the supply of electricity to Emalahleni Local Municipality on account of non-payment of electricity debt.

5. In order to protect the national interest in the sustainability of electricity supply, it has become necessary for Eskom to exercise its right to disconnect the supply of electricity to Emalahleni Local Municipality.

6. Eskom recognizes that the indefinite disconnection of electricity supply may cause undue hardship to consumers and members of the community, and may adversely affect the delivery of other services.

7. In this circumstance, Eskom is contemplating a regulated interruption of electricity supply as opposed to an outright disconnection. The contemplated regulated interruption will allow members of the community and consumers the opportunity to make alternative arrangements for the scheduled periods of interruption.

8. As required by the Promotion of Administrative Justice Act (PAJA), 2000, (Act 3 of 2000), Eskom will through adverts in the local newspapers notify all parties who are likely to be materially and adversely affected by the electricity supply interruption to

CUSTOMER SERVICES
Key Accounts Management – Mpumalanga Operating Unit
28 Ferreira Street Nelspruit 1200
PO Box 579 Nelspruit 1200 SA
Tel +27 13 755 9200 Fax +27 86 539 4378 www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/015527/30

submit written representations, comments and/or submissions indicating why Eskom should or should not proceed with the with the contemplated interruption and/or disconnection, as the case may be.

All of Eskom's rights are reserved.

Yours sincerely

Phil Khumalo
GENERAL MANAGER
MPUMALANGA OPERATING UNIT

"ES5"
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Notice

DISCONTINUATION OF ELECTRICITY SUPPLY TO EMALAHLENI LOCAL MUNICIPALITY

Eskom Holdings SOC Limited hereby notifies all parties who are likely to be materially and adversely affected by the contemplated discontinuation of electricity supply to Emalahleni Local Municipality on 20 November 2017 and continuing indefinitely, following Emalahleni Local Municipality's failure to settle on due dates an amount totalling R1 190 746 629 (one billion one hundred and ninety million seven hundred and forty six thousand and six hundred and twenty nine rand) for the supply of electricity, part of which has been outstanding and in escalation since January 2012 ("the electricity debt"). This amount is the arrear debts as on 29 January 2016.

The contemplated interruption of electricity supply will result in temporary scheduled disconnections at the following times:

Monday to Friday	Saturday and Sunday
06:00-10:00	07:00-10:00
17:00-21:00	17:00-20:00

Eskom is obliged to supply electricity on a financially sustainable basis. The failure of Emalahleni Local Municipality to pay its electricity account timeously has jeopardised the financial sustainability of supplying electricity to the below mentioned towns/municipal areas.

Eskom hereby invites all parties to submit written comments on or before the date specified below indicating why Eskom should or should not proceed with the planned disconnection.

The following towns/municipal areas will be affected by the planned disconnection, except those directly supplied by Eskom:

- The Ridge Casino, Highveld Mall, Blanchville/Jackaroo Park/Clearwater Estates, Die Heuwel Ext 4, Highveld Park, Model Park, River Crescent Centre, Seekoeiwater Plots, Ben Fleur, Duvha Park Extensions, Del Judor Extensions, Klipfontein, Witbank Ext 8, 41 & 5, Bankenveld, Tasbet Park Ext 12, Witbank Dam Corridor, Hill, N4 Business, Reyno Ridge, Dixon Plots Witbank Ext 16, Tasbet Park Ext 1
- Thubelihle, Ferrobank Industrial and Kwa-Thomas Mahlanguville
- Witbank CD, Schoongezicht, Klarinet Industrial (Abbatoir), Tasbet Park Ext 2 and 3, Witbank Ext 66, 16 and 41, Duvha Park Extensions, Evergreen, Protea, Hotel, Jelicoe Street and Moth Cottages Retirement Village
- KwaGuqa Extensions, Hlanlankahle Extensions and Siqobile, Ogies Township, Phola Township
- Ganala/Kriel Town and Thubelihle Township

The submissions/comments or requests for further information should be submitted to:

Senior Manager: Customer Services
Physical address: 28 Ferreira Street, Nelspruit 1200
Postal address: PO Box 579, Nelspruit 1200
E-mail address: CSMpumalanga@Eskom.co.za
Fax: 086 568 2610

Closing date for submissions will be end of business on 19 October 2017. Please take note that comments received after the closing date will not be considered.

Such comments and submissions will be considered and the final decision will be published in a notice 9 November 2017.

Reference Number: MOU280/2017/PAJA

Issued in terms of the Promotion of Administrative Justice Act (Act 3 of 2000).

'ES6'
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NATIONAL ENERGY REGULATOR OF SOUTH AFRICA

Licence Number: NER/D/ESK

LICENCE FOR THE OPERATION OF DISTRIBUTION FACILITY

This licence is issued by the National Energy Regulator, hereinafter referred to as "the NERSA", in terms of the Electricity Regulation Act, 2006 (Act No. 4 of 2006).

This licence is issued to:

ESKOM HOLDINGS (PTY) LTD

hereinafter referred to as "the Licensee", only for the purpose of operation of distribution facility in the Area referred to in Schedule 1.

The operation of distribution facility permitted under this licence is subject to the terms and conditions as contained in this licence and/or amendments to these conditions as imposed by the NERSA. These licence conditions must be adhered to at all times.

ISSUED at Pretoria on this the 25 day of March 2010

CHIEF EXECUTIVE OFFICER
NATIONAL ENERGY REGULATOR

RS

DEFINITION

In this licence:

"The Act" means the Electricity Regulation Act, 2006 (Act No. 4 of 2006) and includes Regulations and Rules made under the Act.

INTERPRETATION

In this licence words and phrases shall have the meaning ascribed to them in the Act. Words or phrases importing the singular shall include the plural and vice versa. Headings are for convenience only and shall not affect the interpretation of the licence. Any reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document. In the computation of time under this licence, where there is a reference to a number of days between events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens and where the time for doing an event expires on a holiday, the event may be done on the next day that is not a holiday.

PS

CHAPTER ONE:

1 Scope of Licensed Activities

NERSA grants the Licensee a licence in terms of section 4 of the Act, to operate a distribution facility in the Area referred to in Schedule 1.

2 Duration of Licence

This licence shall come into effect from 1 July 2007 and expire 36 months after promulgation of the relevant licensing regulations made under the Electricity Regulation Act, 2006 (Act No.4 of 2006). Subject to the provisions of the Act the term of this Licence may be extended by NERSA.

3 Duties of the Licensee

3.1 The Licensee must operate the distribution facility in the Area referred to in Schedule 1 of this licence, and subject to the conditions of this licence.

3.2 The Licensee must distribute and supply electricity to all customers and/or end user within the area referred to in Schedule 1 and in accordance with this licence.

3.3 The Licensee must supply electricity to such potential consumers and/or end users in accordance with the approved electrification plan.

3.4 The Licensee must not cede, transfer, and assign a licence or any such power or duty to any other person without the prior written consent of the NERSA.

3.5 The Licensee must not discriminate between customers, class of customers and/or end users regarding access, tariff, prices and conditions of service, except for objectively justifiable and identifiable differences approved by the NERSA.

3.6 The Licensee must provide for non-discriminatory access to the distribution power systems to third parties.

CHAPTER TWO:

4 Specific Conditions

4.1 A licence and any licence conditions issued, or copies of these documents, shall be kept on the licensed premises.

4.2 The Licensee shall maintain records of and provide, in the manner and form determined by NERSA, such information and documents as NERSA may require from time to time.

4.3 The Licensee shall have a process for resolving disputes with customers and/or end users that deals with disputes in a fair, reasonable and timely manner. Publish information which will make its customers and/or end users aware of and help them use its dispute resolution process. In the event a Licensee and the customer fail to resolve a dispute between them, they shall refer such dispute to NERSA in terms of the provisions of section 42 of the Act.

4.4 The Licensee shall keep financial records associated with the operation of distribution facility separate from its other business activities as NERSA may require.

4.5 The Licensee shall furnish NERSA with information as requested by the approved Regulatory Reporting Manual (RRM) where applicable.

4.6 The Licensee shall comply with the price and tariff methodology, provided by NERSA in determining its prices and tariffs.

4.7 The Licensee shall charge the consumer and/or end user tariffs and prices approved by NERSA.

4.8 The Licensee shall operate the distribution facility in line with quality standards that NERSA may provide as and when required from time to time.

CHAPTER THREE

5 General Conditions

5.1 The Licensee must comply with all applicable provisions of the Act and, except where it has been exempted from such compliance by NERSA.

5.2 The Licensee must comply with codes, rules, laws and any other regulation applicable the operation of distribution facility.

5.3 The Licensee may at all reasonable times consents to inspections carried out by NERSA or authorised persons on its behalf for the purpose of ascertaining the conditions of the licensed premises and operational standards.

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5.4 The Licensee must take all reasonably practical steps to protect the environment and safety in the course of operations associated with this licence, including but not only, those specified in health and safety and environmental legislation currently in force and not specifically related to the operation of distribution facility.

6 Amendment of a Licence

This licence may be amended by NERSA in accordance with the Act and the Rules.

7 Revocation of a Licence

This licence may be revoked by NERSA in accordance with the provisions of the Act and the Rules.

8 Contravention of a Licence

A Licensee must at all times comply with the conditions of this licence, the Act and the Rules, not act in any manner that is inconsistent with this licence. In the event of contravention of this licence by a Licensee, such contraventions shall be dealt with in terms of section 19 of the Act.

9 Changes in the details of the Licensee

9.1 The Licensee must notify NERSA of any changes with the details of any changes in the registered name, operation of the distribution facility, registered address and other contact details.

9.2 The notifications contemplated in this section must be provided within 14 days of the event giving rise to them.

10 Correspondence with NERSA

10.1 All official communication with NERSA must be in writing, unless directed otherwise by NERSA.

10.2 The Licensee must, in all correspondence with NERSA, quote the licence reference number, as it appears on the licence certificate.

11 Whole Licence

This licence constitutes the entire licence and supersedes all prior understandings and agreements between the Licensee and NERSA.

12 Indemnity

12.1 NERSA and its employees are not liable for any and all claims, liabilities, losses, costs, expenses (including legal fees) and damages, which a Licensee may suffer resulting from the licensed activity.

12.2 This licence must not be construed as authorising the Licensee to operate any other distribution facilities without a licence.

SCHEDULES

SCHEDULE 1

a) Supply Area - Grid

The presently licensed area of Eskom. Customers being supplied by municipality or any other Licensed Distributor at the date of commencement of this licence are excluded from this licence.

List of Supply Areas

The areas in this licence are stated below by regions.

Central Region;
Eastern Region;
Northern Region;
North West Region;
Southern Region; and
Western Region.

b) Supply Area – Non-Grid

The supply areas with respect to non-grid electrification are strictly those that have been agreed to by Government and are stated below:

The concessions areas are:

- Eastern Cape/KwaZulu Natal (DC21, DC15, CBDC5, but excluding EC157)
- Eastern Cape (DC12, EC157)
- Northern Province (DC34, DC35, CBDC3)
- *****Central KwaZulu Natal (DC22, DC23, DC24, DC29)******
- Northern KwaZulu Natal (DC25, DC26, DC27, DC28)

SCHEDULE 2 Tariffs and Prices

As approved by the National Energy Regulator of S.A.

SCHEDULE 3 Amendments

Item No.	Amendment	Date of Approval
1	First issue to Eskom	August 1995
2	Portion 2 of the farm Hartebeesfontein No 422 IP in Stilfontein Municipality	22 November 1996
3	Accommodation of re-determination of cross boundary municipalities	July 2001
4	Amendment of Eskom's distribution license to include Dan Sandi View Township	21 August 2003
5	Amendment of the licence to include Dududu, Turton and Maguntia from Port Shepstone Municipality	29 April 2004
6	Transfer of Rosherville Properties (Pty) Ltd electricity distribution licence to Eskom	8 December 2005
7	Amendment of the licence to include Tigerkloof, Brussels, De Beers, Dryharts and Pudimoe from Naledi Municipality	7 August 2006
8	Extension of licence validity period until 30 June 2006	26 May 2006
9	Extension of licence validity period until 36 month after the promulgation of the relevant licensing regulations made under the ERA.	June 2007
10	Amendment of the licence to exclude Carsdale village in uMhlathuze Municipality	31 July 2007
11	Amendment of the licence to exclude Komati village in Steve Tshwete Municipality	28 March 2008
12	Amendment of the licence to exclude Ingwavuma town in uMkhanyakude District Municipality	25 March 2010

water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

DEFAULTING MUNICIPALITIES

NAME	AMOUNT
MOPANI DISTRICT MUNICIPALITY	R 520,803,421.99
VHEMBE DISTRICT MUNICIPALITY	R 642,876,734.24
MBOMBELA LOCAL MUNICIPALITY	R 103,031,635.73
DIPALESENG LOCAL MUNICIPALITY	R 62,604,901.32
LEKWA LOCAL COUNCIL	R 450,200,840.58
MSUKALIGWA LOCAL MUNICIPALITY	R 384,958,301.11
EMALAHLENI LOCAL MUNICIPALITY	R 144,654,433.72
DR PIXLEY KA-SEME LOCAL MUNICIPALITY	R 86,787,180.51
AMATOLE DISTRICT MUNICIPALITY	R 50,661,381.58
ZULULAND DISTRICT MUNICIPALITY	R 56,360,784.07
MADIBENG LOCAL MUNICIPALITY	R 59,837,027.48
JBMARKS (POTCHEFSTROOM) LOCAL MUNICIPALITY	R 69,551,269.07
DR RUTH SEGOMOTSI MOMPATI DM (LEKWA - TEEMANE LOCAL) MUNICIPALITY	R 195,078,428.51
DIKGATLONG LOCAL MUNICIPALITY	R 64,577,101.12
NGWATHE LOCAL MUNICIPALITY	R 85,522,098.85
MAFUBE LOCAL MUNICIPALITY	R 159,850,739.57
MALUTI A PHOFUNG LOCAL MUNICIPALITY	R 233,925,396.92
MOPANI DISTRICT MUNICIPALITY	R 520,803,421.99
EMFULENI LOCAL MUNICIPALITY	R 270,153,387.00
MATJHABENG LOCAL MUNICIPALITY	R 1,849,226,784.00
NALA LOCAL MUNICIPALITY	R 126,954,981.00
MAHIKENG LOCAL MUNICIPALITY	R 228,855,994.00
MAQUASSI HILLS LOCAL MUNICIPALITY	R 114,632,660.00
DITSOBOTLA LOCAL MUNICIPALITY	R 47,064,004.00
NGAKA MODIRI MOLEMA LOCAL MUNICIPALITY	R 62,933,833.00
NAMA-KHOI LOCAL MUNICIPALITY	R 97,794,551.00
MANGAUNG METRO MUNICIPALITY	R 349,227,064.00
KOPANONG LOCAL MUNICIPALITY	R 196,689,402.00
TSANTSABANE LOCAL MUNICIPALITY	R 24,972,589.00
GAMAGARA LOCAL MUNICIPALITY	R 8,376,736.00
MANGAUNG METRO MUNICIPALITY	R 349,227,064.00
KOPANONG LOCAL MUNICIPALITY	R 196,689,402.00

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COUZYN, HERTZOG &
HORAK

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TEL : +2712 460 5090

52.

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 83581/2017

In the matter between:

RESILIENT PROPERTIES PROPRIETARY LIMITED	First Applicant
CHANGING TIDES 91 PROPRIETARY LIMITED	Second Applicant
RETRACTION PROPS 7 PROPRIETARY LIMITED	Third Applicant
MOGWELE TRADING 278 PROPRIETARY LIMITED	Fourth Applicant

And

ESKOM HOLDINGS SOC LIMITED	First Respondent
EMALAHLENI MUNICIPALITY	Second Respondent
MEC: CO-OPERATIVE GOVERNANCE & TRADITIONAL AFFAIRS (MPUMALANGA)	Third Respondent
MINISTER OF ENERGY	Fourth Respondent
NATIONAL ENERGY REGULATOR OF SOUTH AFRICA	Fifth Respondent

INDEX TO REPLYING AFFIDAVIT AND ANNEXURES

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ORIGINAL

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO 83581/2017

In the matter between:

RESILIENT PROPERTIES PROPRIETARY LIMITED	First Applicant
CHANGING TIDES 91 PROPRIETARY LIMITED	Second Applicant
RETRACTION PROPS 7 PROPRIETARY LIMITED	Third Applicant
MOGWELE TRADING 278 PROPRIETARY LIMITED	Fourth Applicant

And

ESKOM HOLDINGS SOC LIMITED	First Respondent
EMALAHLENI MUNICIPALITY	Second Respondent
MEC: CO-OPERATIVE GOVERNANCE & TRADITIONAL AFFAIRS (MPUMALANGA)	Third Respondent
MINISTER OF ENERGY	Fourth Respondent
NATIONAL ENERGY REGULATOR OF SOUTH AFRICA	Fifth Respondent

REPLYING AFFIDAVIT

I, the undersigned,

SANDRA LEE VAN DER WALT

do hereby make oath and say that:

1. I am an adult female manager employed by the first applicant, which has it principal office situated at 4th Floor, Rivonia Village, Rivonia Boulevard, Rivonia 2191.

2. I deposed to the founding affidavit of the applicants ("Highveld Mall") and am duly authorised to depose to this replying affidavit on behalf of Highveld Mall.

3. The facts herein contained are within my personal knowledge, save where it otherwise appears from the context, and to the best of my knowledge and belief its contents are both true and correct.

INTRODUCTION

4. I have read the answering affidavit of Musa Mabila filed on behalf of the first respondent ("Eskom") and respond seriatim thereto below. Before doing so, I point out the irrationality of the course of conduct adopted by Eskom and then address the general grounds of opposition advanced by Eskom:

    4.1. Urgency and the abridgement of time periods; and

    4.2. The harm allegedly faced by Eskom and the balance of convenience

The Irrationality of the Interruption Decision Implemented by Eskom

5. The interruption decision is of little utility in curbing the risk of ongoing losses to Eskom. The interruption proposed by Eskom during September 2017 would cause an R18 million direct revenue loss per month to the Emalahleni municipality (see the expert report of Mr Visagie p 123 para 3). The current intended interruption is slightly less onerous but it is safe to assume that the Visagie expert report is still a by and large accurate guide to the impact of electricity interruptions. Moreover, periodic interruptions of electricity harm the local economy to a much greater degree than they save consumption. The direct loss of R18 million will therefore be accompanied by an additional indirect loss of revenue to the Emalahleni municipality which depends on the local economy for its revenue base. So, the ability of the Emalahleni municipality to discharge its ongoing obligations to Eskom will inevitably be compromised, not assisted, by the interruption decision.

6. That being the case, the only logical purpose underlying the interruption decision can be a belief that the harm imposed by the interruption decision will coerce the Emalahleni municipality into paying its arrears and ongoing current liabilities. But that presupposes that the municipality has the ability to do so. And if the municipality has the ability to pay its arrears and current liabilities, there is no reason why the judicial process should not be used to enforce payment of these liabilities.

7. Eskom suggests that the accumulated arrears cannot be recovered through the judicial process. In paragraphs 6.28 to 6.30 of the answering affidavit, Eskom states that

7.1. it took the interruption decision *"because all other attempts to collect the money owed to it have failed and the debt keeps on escalating"* and

7.2. *"it would serve no purpose to take judgment and execution steps against ELM. Such a course would simply jeopardize innocent end users further because the ELM's services would grind to a complete halt within a day in the event of Eskom taking execution steps and selling movable and immovable property belonging to ELM".*

7.3. *"Moreover, ELM does not have sufficient easily reliable [sic – realisable?] assets to pay off its debt owed to Eskom.*

8. If this is Eskom's genuine belief, then the interruption decision is an irrational act of collective punishment. If the municipality has the resources to pay off its arrears along the lines of the various instalment plans that were agreed and then defaulted on, Eskom should be suing on each defaulted instalment. If the municipality does not have the resources to pay off its arrears on these instalment plans, then the interruption decision will not enable it miraculously to find these resources. It will be an exercise in futility and one that visits

untold harm on the municipality, the local economy and electricity account paying businesses like Highveld Mall.

Urgency and the Abridgement of Time Periods

9. Eskom complains that Highveld Mall has imposed too short a time period on this application for urgent relief. The relevant chronology in relation to the present application is the following:

9.1. Eskom invited representations from the public in September 2017. It suggests that Highveld Mall should have sought urgent relief then, but that is incorrect. Highveld Mall had no direct line of communication to Eskom. It's only line of communication was with the Emalahleni Municipality, and as pointed out in the founding affidavit, as late as 29 November 2017, the municipality was still assuring Highveld Mall that there was little prospect of interruptions to the electricity supply.

9.2. Nor was there any reason for Highveld Mall to doubt the assurances of Emalahleni. On 26 October 2017 the *Witbank News* reported that the Premier, Mr David Mabuza, stated that Municipalities "*. . must decide on whether they still wanted to continue distributing electricity on behalf of Eskom or consider surrendering the function*" and that the Premier had met with Eskom on 23 October 2017 to

find a lasting solution to the electricity problem. This led Highveld Mall to believe that government at its various levels would deal with the problem without making account paying consumers suffer for governmental failures. A copy of the *Witbank News* article is attached as **"RA1"**.

9.3. In any event, any approach to this Court in September 2017 would have been premature. It would have been met with a response that Eskom had not yet taken any decision and was still to consider representations. It was only when Eskom took the interruption decision on 30 November 2017 that there was a finalised administrative act with which Highveld Mall could take issue.

9.4. When Eskom took the interruption decision on 30 November 2017 it announced that interruptions would commence on 14 December 2017. Eskom chose to limit the time between the announcement of the decision and its implementation. It must have been aware of the likelihood of urgent legal proceedings to obtain interim relief from the interruption decision. Yet it chose an implementation date that would require those proceedings to be finalised in less than two weeks from the date of the decision.

9.5. Highveld Mall was not, itself, notified by Eskom of the interruption decision, but learnt of the interruption decision on 1 December 2017 when it was reported.

9.6. Highveld Mall launched the present application on 8 December 2017, one week after it learnt of the interruption decision.

9.7. The only way to enrol the application in time for it to be heard before the interruption decision took effect on 14 December 2017 was to enrol in on the urgent roll for 12 December 2017.

9.8. On the morning of 9 December 2017, Counsel for Highveld Mall indicated to Counsel for Eskom that if Eskom required additional time to file its answering affidavits, Highveld Mall would afford Eskom whatever time it required, in return for an undertaking not to implement the interruption decision prior to the decision of this Court in the urgent application. Eskom, however, elected to insist on having this matter disposed of prior to 14 December 2017.

9.9. Eskom now complains in its answering affidavit that it has not been afforded a reasonable time to prepare its answering affidavits and that "complex legal issues" of the sort raised by the present application should not be dealt with under such conditions of urgency.

9.10. Highveld Mall agrees that it would be more desirable for the present matter to be heard on a longer timetable. It does not want to prejudice Eskom in its opposition to the present application, nor does it want this Court to be burdened by having to decide Part A without adequate time to consider the papers and arguments. It accordingly invites Eskom to take whatever additional time it reasonably requires to file answering affidavits given the urgency of the matter and to agree to a reasonable timetable for the hearing of this urgent Part A application against an undertaking that the interruption decision will not be implemented until Part A has been decided.

9.11. If Eskom fails to accept this invitation, Highveld Mall will ask this Court, in the alternative to granting the Part A relief, to set a reasonable timetable for the determination of the urgent application in Part A and to interdict Eskom from implementing the interruption decision pending finalisation of Part A.

The Harm Allegedly Faced by Eskom and the Balance of Convenience

10. I have addressed above, the irrationality of the interruption decision. If Eskom is facing significant harm due to defaulting municipalities, the interruption decision will do little to avert that harm.

11. Moreover, Highveld Mall takes issue with Eskom's attempts to exaggerate that harm in its answering affidavit. The aggregate amount of municipal debt is substantial, but this amount needs to be contextualised.

11.1. It is a figure that has been inflated for years because Eskom has been charging interest at prime plus 5% on this debt and apportioning debt repayments to interest before capital. In its recent tariff application to NERSA it gave notice that it was finally changing these practices. In this regard, I attach as Annexure **"RA2"** the title page of this tariff application and pages 142-3 thereof.

11.2. The figure of the R1.3 billion allegedly owed to Eskom by Emalahleni represents approximately 0.61% of the turnover of R212.884 billion that Eskom projected in its tariff application to NERSA. In this regard, I attach as **"RA3"** the relevant slide from Eskom's presentation of 20 November 2017 to the NERSA public hearings at Midrand.

11.3. The suggestion that municipal debt is a major contributor to Eskom's liquidity problems is simply incorrect. In the same presentation of 20 November 2017, Eskom relied on a World Bank report on "inefficient costs" in electricity utilities in Africa. According to this report, 81% of the total "inefficient costs" in Eskom relate to under-pricing, 15% to overstaffing and only 4% to bill collection

losses. A copy of the relevant slide from the 20 November 2017 presentation is attached as **"RA4"**.

11.4. The 4% figure quoted by the World Bank refers to total unrecovered debt, not merely municipal debt. In this regard, according to its 2017 financial statements, Eskom's accumulated arrear debt (without interest) to Soweto consumers whom it supplies directly amounted to R5.3 billion and its Soweto payment levels as a percentage of billed revenue (excluding interest) in Soweto was only 16%. Copies of the relevant pages of the Eskom Annual Financial statements are attached as **"RA5"**.

11.5. The suggestion that municipal debt is a material contributor to the risk of a further downgrade is incorrect. At the 20 November 2017 presentation mentioned above, Eskom included a slide that quoted the latest Fitch ratings watch negative report. A copy of the slide is attached as **"RA6"**. The Fitch report from which it quotes is attached as **"RA7"**. The slide in Eskom's presentation explains the decision with reference to *"Eskom's weakening liquidity and funding access partially stemming from unresolved corporate governance issues, weak cash flows driven by lower than expected tariff increase due to delays in implementing outstanding regulatory*

clearing account applications." It did not mention municipal debt. Neither did the ratings report from which it quoted.

12. Finally, it cannot seriously be suggested that an interim delay in implementing the interruption decision is likely to cause material harm to Eskom. If the interruption decision is lawful and is likely to be effective, it can be implemented in mid-2018 when a specially allocated hearing of Part B of the application is likely to have taken place. A wait of a few months to interrupt electricity in Emalahleni is not going to have any material effect on Eskom's balance sheet.

13. As against the illusory harm that Eskom invokes, Highveld Mall and the other account paying electricity consumers of Emalahleni will suffer substantial irreparable harm in the form of irrecoverable commercial loss and damage to their businesses. Eskom appears to accept that this is the case. It states that it does not want to cause harm Highveld Mall's business but suggests that it has been left with no other option (para 6.12 of the answering affidavit).

14. In addition to the commercial harm faced by Highveld Mall and other businesses in Emalahleni, residents of Emalahleni face the real public health threat of a collapse of the water reticulation and sewage systems. In the face of this threat, Eskom offers the contradictory statements that

14.1. It cannot isolate electricity supply to water pumps and other essential service providers (para 35.2 of the answering affidavit), but

14.2. It will ensure that electricity is provided to keep water pumps running provided that Emalahleni in turn undertakes to ensure that such supply is not reticulated to other users and is limited to water pumps only (para 35.3 of the answer).

15. Eskom offers no details of how its proposed arrangement in relation to water pumps will be achieved; it simply does not engage with the expert evidence that this is not possible because *"the electricity grid was established and developed in such a way that electricity cannot be supplied to water supply elements and not to other consumers at the same time"*

16. Nor does Eskom offer any proposal in relation to the sewage works and water purification plants in respect of which there is expert evidence that the interruption of electricity supply will create a material risk of serious health and environmental hazards.

17. I now turn to respond seriatim to the allegations in the answering affidavit of Mr Mabila. Due to the time constraints in filing this replying affidavit, I do not respond to all paragraphs in the affidavit of Mr Mabila, but, save as is set out

below, I deny all allegations inconsistent with the contents of my founding affidavit

18. **AD PARAGRAPHS 1 to 4**

18.1. I deny that Eskom's grounds of opposition to the application are well founded.

18.2. Save as aforesaid, I take note of these paragraphs.

19. **AD PARAGRAPH 5**

19.1. I refer to what I have stated above in relation to the timing of the application and deny this paragraph.

19.2. The urgency of the application is self-evident. Unless Highveld Mall is given relief prior to Thursday 14 December 2017, the harm that it seeks to avert will start to be inflicted on it.

19.3. Given the time-line set out in the founding affidavit, it becomes self-evident that the practice directive could not be followed.

20. **AD PARAGRAPH 6**

20.1. I take note of the figures in paragraph 6.8. Highveld Mall is confident that through its class action it will be able to enlist enough account paying consumers to cover the full amount of Emalahleni's

monthly current liability to Eskom. In this regard, it is important to bear in mind that the tariff charged by Emalahleni to its consumers includes a substantial premium on the tariff charged by Eskom to Emalahleni.

20.2. Eskom failed entirely to deal with the expert report by Visagie which points to the probability of it being entirely feasible to sign up bulk users given the existence of online real time metering systems and the limited number of bulk users

20.3. The direct payment relief sought by Highveld Mall will not prevent Eskom from suing Emalahleni for any remaining balances of its liability to Eskom, current or historical. So the past experience cited by Eskom is irrelevant.

20.4. I do not take issue with the facts alleged relating to the liability of Emalahleni to Eskom and the payment arrangements made in this regard.

20.5. I point out that once diligent bulk consumers make direct payment to Eskom, a municipality will obviously have much less of a financial ability to make payment on behalf of NON-PAYING consumers. The very reason for the default is to a large extent the culture of non-payment. This culture does not miraculously disappear once bulk

consumers pay directly to Eskom – the problem remains with the municipality who is left with non-paying electricity consumers, electricity bills from Eskom and the loss of its bulk clients. However, these problems are not curbed by an electricity interruption either – it simply exacerbates it since the interruption compromises the ability of PAYING consumers to make payment.

20.6. Lekwa is a case in point – the diligent consumers in Lekwa amounted to 53% of the municipality's total bill and the bulk of the Eskom bill. Direct payment to Eskom thus removed the diligent payers from the Municipality leaving it with all the non-payers. It thus stands to reason that it simply was not in a position to make payment as before when it still had access to the diligent consumer income stream.

20.7. I refer to what I have stated above in relation to the contextualisation of the problem of municipal debt and deny paragraphs 6.19 to 6.26 to the extent that they are inconsistent therewith.

20.8. I respectfully submit that it hardly lies in the mouth of Eskom to attempt to justify its collective punishment of account paying consumers like Highveld Mall by complaining about municipal arrears when it has, itself, allowed arrears in Soweto to accumulate

to over R5 billion without any interest and has a collection rate of only 16% in Soweto without any interest.

20.9. I refer to what I have stated above and deny paragraphs 6.27 to 6.31 to the extent that they are inconsistent therewith.

20.10. I deny that the contentions advanced by Eskom in paragraph 6 legally justify the interruption decision.

21. **AD PARAGRAPH 7**

21.1. Save as is set out below in this paragraph, I take note of the allegations in paragraph 7.

21.2. I have stated above what Highveld Mall knew and did not know. I deny paragraph 7.11 to the extent that it is inconsistent therewith.

21.3. I admit that the proposed interruptions are less burdensome than a complete termination of supply. However, as I have pointed out above and in the founding affidavit, they remain extremely damaging to Highveld Mall and all account paying consumers in Emalahleni. I deny paragraphs 7.19 and 7.20 to the extent that they are inconsistent therewith.

21.4. I refer to what I have stated above and in the founding affidavit and deny paragraphs 7.22 and 7.23 to the extent that they are inconsistent therewith.

21.5. I respectfully submit that Eskom did have to comply with the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"). I repeat my submission that the interruption decision is unlawful and deny the allegations to the contrary in paragraphs 7.26 to 7.30 and 7.33.

21.6. I refer what I have stated in relation to the harm that will be caused by the interruption decision and deny paragraphs 7.31 to 7.32.

21.7. I address the contentions in relation to alternative remedies below and deny paragraph 7.34.

22. **AD PARAGRAPHS 8 to 10**

22.1. The statutes and licences quoted in these paragraphs speak for themselves.

22.2. I note the suggestion in paragraph 10.11 but respectfully submit that it is unfounded. Eskom has failed to sue Emalahleni for amounts it owes Eskom. Such a suit would have been the simplest of legal processes. But Eskom, having failed to engage that simple process, suggests that Highveld Mall should have sued Emalahleni for a mandamus directing it to discharge its liabilities to Eskom. In

any event, it appears that it is currently impossible for Emalahleni to make payment. This is an obvious and fatal defense to the implementation of a mandamus.

22.3. I deny the allegation in paragraph 10.22 that any rights of Eskom in the present matter implicate the national interest.

22.4. Save as aforesaid, I refer to what I have stated above and in the founding affidavit and deny this paragraph. Legal argument on the ambit of Highveld Mall's prima facie right will be addressed at the hearing of the application.

23. **AD PARAGRAPH 11**

23.1. I repeat what I have stated above in relation to the proposed mandamus.

23.2. The harm faced by Highveld Mall is harm that will be caused by the interruption decision. I deny that any of the alternative remedies suggested by Eskom are alternative remedies for this harm or that it could reasonably have been expected of Highveld Mall to pursue remedies of this nature rather than seeking to interdict the unlawful threat of harm presented by the interruption decision when that decision was first announced by Eskom.

23.3. I note the suggestion that Highveld Mall has a damages remedy against Emalahleni. I have been advised that it is by no means clear that this is the case. In any event, Eskom itself appears unwilling to litigate against Emalahleni. The reason is obvious – it is the proverbial man of straw. I note further that Eskom does not tender to pay the damages of Highveld Mall if it is shown in Part B of the application that the interruption decision was unconstitutional or unlawful.

23.4. I deny paragraph 11.6 and respectfully submit that Highveld Mall cannot be criticised for launching this application five court days after the interruption decision was announced.

23.5. I refer to what I have set out above and deny paragraph 11.7.

24. **AD PARAGRAPH 12**

24.1. I deny that the interruption is analogous to load shedding. It is far more damaging than load shedding because it takes place every day throughout the entire municipal area. Apart from the lesser extent of the electricity interruptions under load shedding, load shedding never presented the public health and environmental hazards that the interruption decision presents.

24.2. I refer to what I have stated above and deny paragraph 12 to the extent that it is inconsistent therewith.

25. **AD PARAGRAPHS 14 to 64 GENERALLY**

Save as is set out below, I deny these paragraphs to the extent that they are inconsistent with what I have set out above and in my founding affidavit.

26. **AD PARAGRAPH 17**

The contents are denied – the interest in these proceedings of the class of rate payers Highveld Mall seeks to join are self-evident and fully coterminous with those of Highveld Mall.

27. **AD PARAGRAPH 20**

I point out that it is not the MEC who is threatening imminent harm in these proceedings. There are simply no steps the MEC can take at this stage to forestall the harm. The current litigation is the applicant's only option.

28. **AD PARAGRAPH 22**

From the contents it is clear that Eskom seeks to hide behind privity of contract to avoid its constitutional obligations. I have dealt with the insinuation that the interests of Highveld Mall are somehow to be distinguished from the ordinary Emalahleni resident.

29. **AD PARAGRAPH 23**

I have dealt with the contents of this paragraph above. I re-iterate that a mandamus would have been futile.

30. **AD PARAGRAPH 25**

I have dealt with this before – I reiterate that bulk consumers amount to almost 40% of the Emalahleni electricity consumption. This payment directly to Eskom together with all the payments from diligent consumers ought to fully settle Eskom's monthly bill to Emalahleni. It does not appear that Eskom has explored this possibility at all.

31. **AD PARAGRAPH 34**

The issue of an alternative remedy has been dealt with. It is not clear how a mandamus might assist Highveld Mall in the CURRENT circumstances. During 2012 it was equally open to Eskom to collect the outstanding debt by means of ordinary process. It failed to do so.

32. **AD PARAGRAPH 35**

32.1. Other than the bald denial, Eskom fails to deal with the detailed evidence of catastrophic consequences to the sewer network should it interrupt electricity supplies. It is clear that a collapse was

imminent and unavoidable. Emalahleni's blameworthiness is common cause.

32.2. Eskom's version regarding electricity supply to essential services appear to support the contentions of Highveld Mall. The electricity supply infrastructure was not designed to isolate essential service providers and hence an interruption will gravely affect their operations. It is not clear how Highveld Mall is to address this problem whether Eskom's proposal is feasible or not – Highveld Mall has no control over Emalahleni and has no knowledge as to whether the latter is in a position to keep essential services operating as suggested by Eskom – all indications are that it cannot do so.

32.3. A restriction in water supply does not equate to cutting it altogether. However, should the restriction amount to a denial of access it will be equally unconstitutional.

33. **AD PARAGRAPH 43.1**

Highveld Mall seeks interim relief to stave off a human catastrophe. Its interim proceedings are not designed simply to give it a chance to exercise its right to review.

34. **AD PARAGRAPH 45.3**

34.1. The contents fully support Highveld Mall's position. It appears common cause that Emalahleni is currently unable to make payment. This being the position Eskom's proposed action is calculated to inflict widespread human suffering without it having any hope of yielding any sustainable positive results for Eskom.

34.2. Eskom seems (correctly) unable to distinguish the results of its own proposed actions from the consequences it anticipates will flow from executing a civil judgement. In BOTH cases Emalahleni's inability to pay will simply result in the equivalent of a distressed human debtor being forced to forgo the essential requirements to sustain human life at the behest of a remorseless creditor.

35. **AD PARAGRAPH 45.4**

I deny that the circumstances entitle Eskom to act in this way. I have dealt with this herein before. I may again point out that failing Emalahleni's ability to make payment, the insistence by Eskom to interrupt electricity supply amounts simply to wanton infliction of harm without any hope of recovering the overdue amount.

36. **AD PARAGRAPH 49.1**

I have dealt with this before but reiterate – first, the financial ability of Emalahleni is likely to become MORE parlous, second, the decrease in

consumption does not avoid the ongoing fixed cost for either Emalahleni OR Eskom, third, the interruptions are unlikely to have any effect on the culture of non-payment Eskom and Emalahleni complains about and finally, a direct payment to Eskom by bulk users will permit Eskom to collect not only the cost of supply to these users but also the premium currently paid to Emalahleni.

37. **AD PARAGRAPH 52**

37.1. The allegation in paragraph 52.6.4 as to most expensive supply hours is incorrect.

37.1.1. I attach as Annexure **"RA8"** an extract from Eskom's current schedule of standard prices.

37.1.2. As appears from the definitions section "Low Demand Season" runs from September to May and thus will be the season in which the interruption decision takes effect for more than five months.

37.1.3. The diagram at Figure 2 of the Annexure shows that in Low Demand Season, peak consumption periods are between 7h00 and 10h00 and 18h00 and 20h00 on weekdays.

37.1.4. The hours of interruption proposed by Eskom are 6h00 to 8h00 and 17h00 to 19h30 on weekdays and 8h30 to 11h00 and 15h00 to 17h30 on weekends. This totals 32.5 hours of interruption per week, of which only 12.5 hrs (7h00 to 8h00 and 18h00 to 19h30 on 5 weekdays) are peak consumption hours. So 20 of the 32.5 proposed interruption hours are not peak consumption hours.

38. **AD PARAGRAPH 64**

I deny this paragraph and stand by my request for an order in the terms set out in the notice of motion.

WHEREFORE applicant repeats its prayer for an order in terms of the notice of motion.

DEPONENT

I hereby certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit, which was signed and sworn to before me

at RIVONIA on the 12 day of DECEMBER 2017,

the regulations contained in Government Notice No R1268 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

Stevens

COMMISSIONER OF OATHS

Full Names: **TAMLYN STEVENS (CA)SA**
COMMISSIONER OF OATHS

Business Address: **3rd Floor, Rivonia Village**
Rivonia Boulevard, Rivonia
PO Box 138, Rivonia, 2128

Office:

1.1. A copy of the *Witbank News* article is attached as **"RA1"**.

1.2. In this regard, I attach as Annexure **"RA2"** the title page of this tariff application and pages 142-3 thereof.

1.3. In this regard, I attach as **"RA3"** the relevant slide from Eskom's presentation of 20 November 2017 to the NERSA public hearings at Midrand (RA 11.2)

1.4. A copy of the relevant slide from the 20 November 2017 presentation is attached as **"RA4"**. (RA 11.3)

1.5. Copies of the relevant pages of the Eskom Annual Financial statements are attached as **"RA5"**.

1.6. Eskom included a slide that quoted the latest Fitch ratings watch negative report. A copy of the slide is attached as **"RA6".**

1.7. The Fitch report from which it quotes is attached as **"RA7"**. Th

1.8. I attach as Annexure **"RA8"** an extract from Eskom's current schedule of standard prices.

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Mayor on the red carpet over Eskom debt

Several businesses found themselves in the dark earlier this week when the municipality started flicking the switch to businesses who owe the municipality more than R60-million, churches that owe more than R30-million and residents who are in arrears.

October 26, 2017



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R40-million, that is how much government departments owe to Emalahleni Local

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Municipality.

Several businesses found themselves in the dark earlier this week when the municipality started flicking the switch to businesses who owe the municipality more than R60-million, churches that owe more than R30-million and residents who are in arrears.

With the Eskom bulk power interruptions knocking on the front door, Mpumalanga Premier David Mabuza summoned all the municipalities that have challenges with settling their Eskom account to find a lasting solution on this matter which has dragged on for a very long time.

AUTHOR



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All the executive mayors, including the Executive Mayor of Emalahleni Cllr Lindiwe Ntshalintshali had to report to the premier's office on October 17 to give a full account of the current situation.
The premier ordered provincial and national government departments, which owe municipality's money to cough up and settle their accounts.

> "This provincial government must pay every municipality they owe, we should not be part of the problem," he said.

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The billing systems also came under the spotlight and the premier called on the municipalities to improve their billing systems in order to improve on their revenue collection.

Premier David Mabuza.

The premier added that municipalities needed to decide on whether they still wanted to continue distributing electricity on behalf of Eskom or consider surrendering the function.

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Schools bid farewell to Northwood, Glenashley principals (https://northglennews.co.za/122823/schools-bid-farewell-northwood-glenashley-principals/)

Northglen News (http://northglennews.co.za/)

Top five Christmas holiday destinations (https://citybuzz.co.za/67143/top-five-christmas-holiday-destinations/)

City Buzz (http://citybuzz.co.za/)

7 sharks spotted (https://www.knysnaplettherald.com/News/Art spotted-20171211)

Knysna-Plett Herald (http://www.knysnaplettherald.com/)

Só lyk die tornado wat Midvaal getref het (http://vaalweekblad.com/26997/lyk-die-tornado-wat-midvaal-getref-het/)

Vaal Weekblad (http://vaalweekblad.com/)

More mob justice in Thembalethu (https://www.georgeherald.com/News/Article/ mob-justice-in-thembalethu-20171211)

George Herald (http://www.georgeherald.com/)

> **"You are running this 'spaza' shop at a loss. People steal electricity and you battle with revenue collection. If you want to sustain this business, you must deal with illegal connections.**
> **"Running a municipality and selling electricity is a business, if you do not pay your service providers, they will not trust you and you will have a credibility problem. Eskom is a business, it cannot give electricity for free," said Mabuza.**

The premier met with Eskom on Monday October 23 to find a lasting solution. By the time of going to press no details were available.

The municipality's current account on Tuesday, October 24 was R133-million and their total debt R1.3-billion.

> **"We have a mountain to climb but we are confident that we will conquer if business, government and residents pay," Mabuza said.**

ALSO READ

Millions paid to protect municipal assets

Just a week ago the municipality received a slashing for appointing a security company to look after the Executive Mayor, Cllr Lindiwe Ntshalintshali, even though they are apparently not registered for VAT.

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Mayor got new Audi Q7

It has been confirmed that the Executive Mayor of Emalahleni, Cllr Lindiwe Ntshalintshali got new wheels.

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JUST IN: Maimane Phiri robbed at gunpoint (https://alexnews.co.za/109112/just-maimane-phiri-robbed-gunpoint/)

Alex News (http://alexnews.co.za/)

Florries ontvang groot geskenk (https://roodepoortrecord.co.za/2017/12/11/besi gee-terug-aan-die-gemeenskapflorries-ontvang-groot-geskenk-web/)

Roodepoort Record (http://roodepoortrecord.co.za/)

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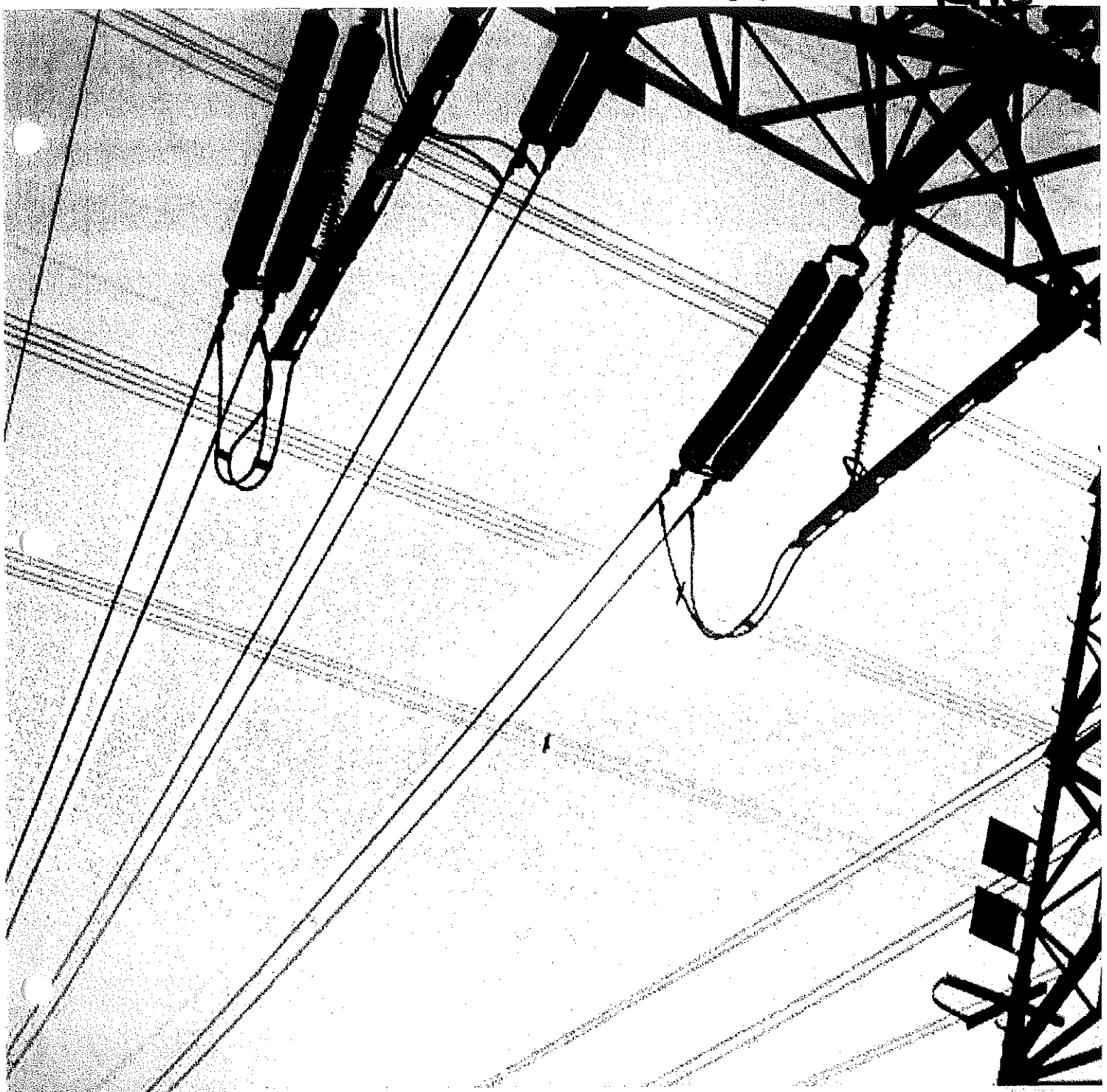
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Revenue Application

FY2018/19

August 2017

Eskom

- Energy Conservation Scheme (ECS) rules were embedded in Electricity Supply Agreements

- Reluctance by global companies to invest in SA due to a lack in competitiveness and the uncertain situation in SA from a political and sustainable financial perspective (i.e. credit rating, labour)
- Internationally governments (not utilities) provide mechanisms for incentivised electricity prices for large energy intensive users in their countries
- A sustainable solution requires a coordinated national (SA Inc) effort and should consider all options. Eskom is completely supportive of any policy interventions by the Government in ensuring further economic growth that is likely to attract further industrial investment.
- As reflected in Eskom's application, Eskom is making every effort to increase local in cross-border sales. However, as alluded to earlier a concerted effort by the country is needed to improve economic conditions.

As cost drivers are not only electricity prices, growth initiatives are driven from a country platform together with the key role players, i.e. Department of Trade and Industry, Economic Development Department, Industrial Development Corporation, National Treasury, Department of Energy, and the National Energy Regulator of South Africa to ensure an integrated and focused SA Inc approach to maximise growth stimulation.

The Government has initiated the establishment of a work group facilitated by the Department of Public Enterprises to find alternative options that can be implemented. This include short term price incentives for electricity intensive users as well as more cost reflective tariffs for energy intensive industrial customers.

19.2.9 Impact on Municipal Debt

SALGA is concerned that any price increase will result in further debt burden on Municipalities. Approximately 50% of Municipal electricity customers are residential customers. Approximately 40% of these are indigent. It is felt that this is a vicious cycle.

It is agreed that the Municipal debt challenge needs to be addressed. It is submitted that the challenge needs to be looked at holistically from a Municipality financial sustainability point

of view. The economic impact study undertaken by Eskom illustrates the impact of price increases on various economic factors.

Eskom has committed to look at some of the items which the Municipalities deem to be contributing to the Municipal debt situation.

Eskom has agreed to implement the following (after following due governance processes)

1. Changing the interest rate charged on overdue amounts from Prime plus 5% to Prime plus 2.5%
2. Changing the payment cycle from 15 days to 30 days
3. Changing the payment allocation to Capital debt first and then interest
4. Allowing municipalities to pay connection charges for new/upgrading of supply points over a period of time instead of on a cash upfront basis.

It is proposed that these concessions would make it easier for the municipalities to deal with the debt situation.



Update of Revenue Requirement and Price increase after reducing IPPs by R7bn and accounting for the latest sales forecasts with reflects a 5TWh decline

Eskom

Allowable Revenue (AR)		Fx	Application FY2018/19 (R'm)	Adjustments to Application	Revised Application FY2018/19 (R'm)
Regulated Asset Base	RAB		763 589		763 589
WACC (%)	ROA	×	2.97%	2.97%	2.97%
Returns			22 690	0	22 690
Expenditure	E	+	62 221	0	62 221
Primary energy	PE	+	59 340	450	59 790
IPPs (local)	PE	+	34 209	-7 080	27 129
International purchases	PE	+	3 216	0	3 216
Depreciation	D	+	29 140	0	29 140
IDM	I	+	511	0	511
Research & development	R&D	+	193	0	193
Levies and taxes	L&T	+	7 994	0	7 994
RCA	RCA	+	-	-	-
Total Allowable Revenue			**219 514**	**-6 630**	**212 884**
Recovered from non standard tariff customers			13 309	244	13 553
Standard tariff customers	R'm		206 2015	-6 840	199 331
Standard tariff sales volumes	GWh		192 953	-4 871	188 082
Standard tariff price	c/kWh		106.87		105.98
Standard tariff price adjustments	%		**19.90%**		**18.91%**

Revenue requirement drops by R6630m with 18.9% average price increase & 26.9% for Munics from 1 July 2018

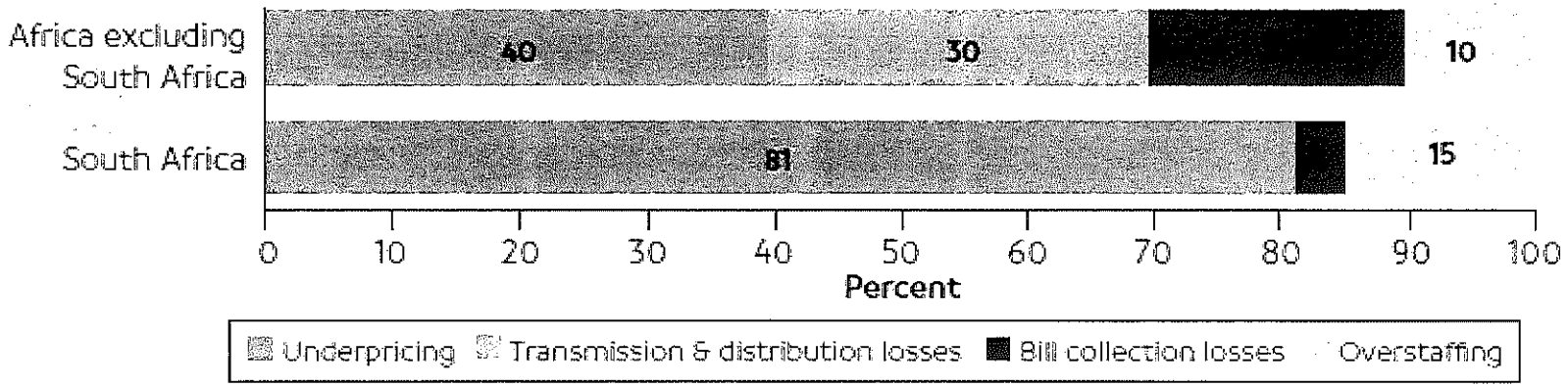
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World bank Report 2016 – Summary of inefficient (hidden) costs

Eskom

- The World bank study defined certain parameters that reflect efficient operations. Any deviation from these norms are seen to be inefficient and defined as hidden costs
- The norms are
  - Transmission & distribution losses (both technical and commercial) should be <10% of dispatched electricity
  - 100% bill collection
  - Same staffing level as in well-performing, comparable utilities in Latin America
- The graph below illustrates the factors that contribute to hidden costs



- Under-pricing is the main contributor of Eskom's hidden costs
- This is different from other African countries
- Eskom losses are not reflected in the graph as they are within the norm

Directors' report (continued)
for the year ended 31 March 2017

Funding
The group's net cash inflow from operating activities was R45.8 billion (2016: R37.2 billion) for the year, reflecting an increase of 23.1%. The liquidity position, comprising cash and cash equivalents plus investment in securities, was R32.5 billion (2016: R38.7 billion) at 31 March 2017. Eskom also has an additional R6.3 billion committed bank facilities available. The group therefore has access to adequate resources and facilities to continue as a going concern for the foreseeable future.

The board approved a revised borrowing programme of R338 billion for the period 1 April 2017 to 31 March 2022. National Treasury extended the current government guarantee framework agreement to 31 March 2023 thereby enabling Eskom in obtaining its required funding. A total of 53% (excluding the current cash and cash equivalents) of the funding requirement of R71.7 billion for the 2018 financial year has already been secured. Potential funding sources have been identified and plans are in place to secure the rest of the required funding.

Standard & Poor's downgraded Eskom's foreign and local currency credit ratings while Fitch only downgraded Eskom's local currency credit rating during the 2017 financial year. Both rating agencies further downgraded Eskom in April 2017. Moody's also downgraded Eskom's rating to a negative outlook on 13 June 2017.

Eskom was not severely impacted by the credit rating downgrades but may be impacted with increased funding cost in the future, even though the current market conditions remain constructive for funding.

Refer to the integrated report on page 90 for more information.

Economic regulation
NERSA granted Eskom a price increase of 2.2% for 2018. Eskom will focus on further internal cost efficiencies and sales growth programmes to mitigate the shortfall of the below inflation price increase.

Eskom submitted the 2015 regulatory clearing account (RCA) application of R19.2 billion to NERSA in May 2016, while the 2016 RCA application of R23.6 billion was submitted in July 2016. The 2017 RCA application will be submitted in July 2017.

The High Court of South Africa set aside NERSA's decision regarding the 2014 RCA on 16 August 2016 and remitted it back to NERSA. NERSA and Eskom were granted permission to appeal the decision. The court case was held on 4 May 2017 and the Supreme Court of Appeal upheld NERSA and Eskom's appeal on 6 June 2017. Eskom is awaiting feedback from NERSA on the way forward regarding the RCA applications.

NERSA approved Eskom's request for a single-year price increase application for 2019. Eskom submitted a one-year application on 19 April 2017 for consultation to National Treasury and South African Local Government Association. Eskom made a formal application to NERSA on 9 June 2017 and is expecting NERSA's determination before 31 December 2017 for implementation on 1 April 2018.

Refer to the integrated report on page 87 for more information.

Debt management
Arrear municipal debt (including interest) increased from R6.0 billion in 2016 to R9.4 billion at 31 March 2017 and remains unacceptably high despite numerous interventions. The Soweto arrear debt (excluding interest) increased to R5.3 billion (2016: R4.7 billion) at 31 March 2017.

Eskom will continue to implement technologies to prevent tampering with meters and to facilitate the conversion of post-paid customers to prepaid. Eskom is currently installing prepaid meters in Sandton, Midrand, Soweto and Kagiso. Eskom installed 29 599 smart meters during the year in these areas and 13 255 meters were converted to prepaid split metering. Eskom is also engaging with municipalities in two provinces to implement a pilot project to install prepaid electricity meters for their customers.

Refer to the integrated report on page 38 for more information.

Operating performance
The energy availability factor (EAF) improved from 71.07% to 77.30% for the year, exceeding the target of 72.00%. Particulate emissions of 0.30kg/MWhSO improved on the 2016 performance of 0.36kg/MWhSO. Water usage related to power station operations for the year was 1.42ℓ/kWhSO, better than last year's performance of 1.44ℓ/kWhSO.

The combination of improved plant performance, stagnant demand growth and an increase in IPP capacity is expected to result in excess generation capacity over the medium term. Eskom will consider options to manage any surplus generating capacity, including placing units in cold reserve or lean preservation (where units can be fully recalled to meet demand). Any decision to decommission power stations will only be made as a last resort in a way that optimises coal, people and capital costs across the fleet.

The transmission system minute <1 performance target was achieved with a performance of 3.80 (2016: 2.41), notwithstanding the negative impact of a few relatively large incidents involving plant failures during the year and a 1.60 (2016: 1.51) line faults per 100 km performance was achieved against a target of 2.2. The frequency and duration of distribution network incidents were better than target, with interruption frequency showing an improvement from 2016.

The KeyCare and Top Customer KeyCare measures, which measure the satisfaction of large industrial customers, improved during the year.

Eskom's safety performance remains a concern, particularly in light of the number of fatalities and serious injuries suffered by employees, contractors and the public during the year. The number of contractor and public fatalities reduced compared to 2016. Unfortunately, despite Eskom's intense commitment to safety, there were four (2016: four) employee and six (2016: 13) contractor fatalities.

Refer to the integrated report on page 42 for more information.

Notes to the financial statements (continued)

for the year ended 31 March 2017

5. Financial risk management (continued)

5.1 Credit risk (continued)

5.1.2 Financial instruments managed by various divisions and subsidiaries (continued)

(a) Trade and other receivables (continued)

Trade receivables (continued)

Local small power users

These comprise local customers that have a supply of 100kVA or less in size. Payment terms for small power customers is 30 days.

New customers are required to provide security equivalent to between one and three months' consumption at the commencement of the supply agreement. The level of security is reviewed if a customer defaults on their payment obligation or requires additional electricity supply capacity. In these instances, additional security is required to cover between one and three months of recent consumption before supply will commence. All new customers will preferably be on prepayment terms.

Soweto receivables are an identified high-credit risk area subject to specific credit risk management. The collection of revenue from customers in Soweto remains a challenge. The enhancement of credit control strategies and monitoring of payment levels in this area continue to receive management attention. The payment levels expressed as a percentage of billed revenue (excluding interest) for the year was 16% (2016: 18%). The residential revenue management strategy, which includes Soweto, continues to be implemented. The strategy entails implementation of split metering technology, conversion of meters to prepayment and stepping up disconnections for customers to improve payment levels.

An analysis of trade receivables days outstanding is presented below:

	Carrying amount	Not impaired[1]					Impaired				
		Not past due	Days past due 0-15	16-45	46-75	>75	Not past due	Days past due 0-15	16-45	46-75	>75
	Rm	Rm	Rm	Rm	Rm	Rm	Rm	Rm	Rm	Rm	Rm
Group and company											
2017											
Individually assessed for impairment											
International	1 582	806	–	–	–	–	189	86	203	288	10
Gross	1 704	806	–	–	–	–	189	86	203	288	132
Impairment	(122)	–	–	–	–	–	–	–	–	–	(122)
Local large power users – municipalities	7 207	1 284	–	–	–	–	4 421	188	390	100	824
Gross	11 102	1 284	–	–	–	–	4 430	781	1 782	379	2 446
Impairment	(3 895)	–	–	–	–	–	(9)	(593)	(1 392)	(279)	(1 622)
Local large power users – other	7 149	6 971	69	20	2	4	16	2	8	4	53
Gross	7 560	6 971	69	20	2	4	27	4	22	12	429
Impairment	(411)	–	–	–	–	–	(11)	(2)	(14)	(8)	(376)

	Carrying amount	Not past due	Days past due 0-30	31-60	>60
	Rm	Rm	Rm	Rm	Rm
Collectively assessed for impairment					
Local small power users – Soweto	655	8	10	4	633
Gross	4 205	47	62	5	4 091
Impairment	(3 550)	(39)	(52)	(1)	(3 458)
Local small power users – other	1 784	1 474	142	7	161
Gross	2 465	1 524	175	39	727
Impairment	(681)	(50)	(33)	(32)	(566)
	18 377				

Fitch Ratings puts Eskom on "Rating Watch Negative" … extract from 17 Nov 2017

Eskom

FitchRatings

FITCH PLACES ESKOM ON RWN; AFFIRMS GUARANTEED DEBT AT 'BB+'

Fitch Ratings-London-17 November 2017: Fitch Ratings has placed Eskom Holding SOC Ltd's Long-Term Local Currency Issuer Default Ratings (IDR) and unguaranteed local currency senior unsecured ratings of 'BB+' on Rating Watch Negative (RWN). Fitch has affirmed the government-guaranteed local currency senior unsecured debt ratings at 'BB+'. We have also placed the National Long-Term Rating of 'AAA(zaf)' and the National Short-Term Rating of 'F1+(zaf) on RWN.

The RWN reflects our intention to reassess the strengths of Eskom's links with the government of South Africa (BB+/Stable) due to Eskom's weakening liquidity and funding access partially stemming from unresolved corporate governance issues, weak cash flows driven by lower-than-expected tariff increases due to delays in implementing outstanding regulatory clearing account applications. The Guarantee Framework Agreement continues to support the company's ratings overall and in particular the affirmation of the guaranteed debt rating.

We may affirm the IDR if there are improvements to corporate governance and liquidity (for instance through additional government support) over the next three to six months or, failing that, downgrade it by up to two notches.

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Eskom Holdings SOC Ltd. (/gws/en/esp/issr/80464056)

FitchRatings

Fitch Places Eskom on RWN; Affirms Guaranteed Debt at 'BB+'

Fitch Ratings-London-17 November 2017: Fitch Ratings has placed Eskom Holding SOC Ltd's Long-Term Local Currency Issuer Default Ratings (IDR) and unguaranteed local currency senior unsecured ratings of 'BB+' on Rating Watch Negative (RWN). Fitch has affirmed the government-guaranteed local currency senior unsecured debt ratings at 'BB+'. We have also placed the National Long-Term Rating of 'AAA(zaf)' and the National Short-Term Rating of 'F1+(zaf) on RWN.

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We may affirm the IDR if there are improvements to corporate governance and liquidity (for instance through additional government support) over the next three to six months or, failing that, downgrade it by up to two notches.

KEY RATING DRIVERS

Corporate Governance, Liquidity Challenges: Fitch understands Eskom began a recovery programme to address the findings relating to the qualified audit opinion in the 2017 annual results. The most recent CEO rotation and their increasing frequency increase uncertainty about the continuity of the recovery plan. The programme has not yet provided confidence that the

targets will be met despite our understanding that the milestones set by the committee had been achieved at end-September 2017, improving corporate governance. This is also affecting Eskom's funding and liquidity position.

Fitch expects the Minister of Public Enterprises to appoint a permanent board before end-November 2017. Eskom has an interim board of nine members rather than 15. Fitch expects the new board to appoint permanent management. The company plans to improve its liquidity position and has started to defer some capex to reduce its short-term cash flow drain. However, failing improvement in liquidity and corporate governance and further support from the government we would be likely to reassess the strength of Eskom's links with the government and downgrade the IDR.

Double-Digit FY19 Tariff Expectation: Fitch expects a low double-digit tariff adjustment for end-March 2019 (FY19). Eskom has received approval from the National Energy Regulator of South Africa to submit a one-year tariff application for FY19, following the conclusion of Multi-Year Price Determination Three at end-March 2018.

DERIVATION SUMMARY

Fitch views Eskom's standalone creditworthiness as 'B-', reflecting its high leverage and weak interest coverage credit metrics, which are among the lowest in the peer group.

Eskom is similarly positioned to peers due to its monopolistic position in power generation and transmission for South Africa. Its strong position in the domestic electricity market, together with 100% government ownership and Fitch's assessment of strong links with the parent (notably supported by the Guarantee Framework Agreement) lead to Eskom's rating alignment with the sovereign.

KEY ASSUMPTIONS

Fitch's key assumptions within our rating case for the issuer include:

- low-single-digit overall growth in energy sales volume for FY18;
- energy export to support the growth, although transmission capacity constraints likely;
- tariff adjustment for FY18 of 2.2% and low double digits for FY19;
- no dividend payments;
- share of guaranteed debt to increase to about 50%.

RATING SENSITIVITIES

As the ratings are on RWN (except for state-guaranteed debt) we do not anticipate an upgrade. Future developments that may, individually or collectively, lead to a rating affirmation:
- An improvement in corporate governance, liquidity and funding position, possibly with further support from the government and higher tariff increases

Future Developments That May, Individually or Collectively, Lead to Negative Rating Action
- A negative sovereign rating action
- Weakening links with the government, such as the latter's failure to provide timely liquidity and funding alongside unresolved corporate governance issues while tariff increase delays add to pressure on Eskom's financial profile and debt-service capability

South Africa Sovereign Rating Sensitivities

The following risk factors could, individually or collectively, result in negative rating action:

- A marked increase in the government debt/GDP ratio or in contingent liabilities
- A further deterioration in South Africa's trend GDP growth, for example, due to sustained uncertainty about economic policy
- Net external debt rising to levels that raise the potential for serious financing strains

The following risk factors could, individually or collectively, result in positive

rating action:

- A substantial strengthening in trend GDP growth
- An improvement in governance that is supportive of public finances and the business climate
- A marked narrowing in the budget deficit and a reduction in the government debt/GDP ratio

LIQUIDITY

Liquidity Dependent on External Funding: Liquidity has deteriorated, with cash balances likely to reduce to about ZAR1.2 billion at end-November 2017 (after operating and financing cost) from ZAR31 billion at end-March 2017. Eskom has access to committed funding of about ZAR16 billion, which it expects to draw down before end-March 2018. The utility aims to borrow about ZAR24 billion and expects cash balance to increase to about ZAR10 billion by end of March 2018. We expect free cash flow to remain negative and for Eskom to need to access external funding on continuous basis.

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Additional information is available on www.fitchratings.com. For regulatory purposes in various jurisdictions, the supervisory analyst named above is deemed to be the primary analyst for this issuer; the principal analyst is deemed to be the secondary.

Applicable Criteria
Corporate Rating Criteria (pub. 07 Aug 2017)
(https://www.fitchratings.com/site/re/901296)
National Scale Ratings Criteria (pub. 07 Mar 2017)
(https://www.fitchratings.com/site/re/895106)
Parent and Subsidiary Rating Linkage (pub. 31 Aug 2016)
(https://www.fitchratings.com/site/re/886557)

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Eskom

SCHEDULE OF STANDARD PRICES FOR ESKOM TARIFFS 1 APRIL 2017 TO 31 MARCH 2018 FOR NON-LOCAL AUTHORITY SUPPLIES, AND 1 JULY 2017 TO 30 JUNE 2018 FOR LOCAL AUTHORITY SUPPLIES

1. Standard prices

The standard prices contained in this schedule to be charged by Eskom for electricity supplied or made available by Eskom to customers, shall, subject to the provisions of the Electricity Regulation Act (Act No 4 of 2006), or its successor-in-title, be as set out hereunder.

These terms, conditions and prices contained in this schedule are approved by NERSA and are valid until Eskom's next price increase or tariff changes as approved by NERSA from time to time.

2. Definitions and abbreviations

2.1. Definitions

For the purpose of this Schedule the following words and phrases shall have the same meanings as assigned to them herein:

Account means the invoice received by a customer for a single **point of delivery** (POD) or if consolidated, multiple **points of delivery** for electricity supplied and/or use of the **System**.

Active energy charge or energy charge means the charge for each unit of energy consumed, typically charged for as c/kWh.

Administration charge means the daily fixed charge payable per **POD** to recover administration-related costs such as meter reading, billing and meter capital. It is based on the **monthly utilised capacity** or **maximum export capacity** of each **POD**.

Affordability subsidy charge means the transparent charge indicating socio-economic subsidies related to the supply of electricity to **residential tariffs** and is payable on Eskom related active energy sales to **non-local authority tariffs**.

Ancillary Service charge means the charge that recovers the cost of providing ancillary services by the System Operator.

Annual utilised capacity means the higher of the **notified maximum demand (NMD)** or **maximum demand**, per **POD/point of supply** measured in kVA, and registered during a rolling 12-month period.

Chargeable demand means the highest average demand measured in kVA in a billing month during the chargeable time periods specified for each tariff. For WEPS and Megaflex, the chargeable period is during WEPS and Megaflex's peak and standard periods and for Nightsave Urban (Large and Small) and Nightsave Rural during Nightsave's peak periods.

Code means the Distribution Code, the South African Grid Code, the Grid Connection Code for Renewable Power Plants or any other code, published by NERSA, as applicable, and as amended, modified, extended, replaced or re-enacted from time to time.

Distribution means the regulated business unit through which Eskom constructs, owns, operates and maintains the **Distribution System** in accordance with its licence and the **Code**.

Distribution connected means connected to the **Distribution system**.

Distribution losses charge means the production-based (energy) incentive to generators. The losses charge is based on the approved loss factors, the load factor, the amount of energy produced seasonally and TOU and the WEPS energy rate (excluding losses).

Distribution network capacity charge (previously known as the **Distribution network access charge**) means the R/kVA or R/**POD** fixed network charge raised to recover **Distribution** network costs and depending on the tariff is charged on the **annual utilised capacity** or **maximum export capacity** where **maximum demand** is measured or the **NMD** where **maximum demand** is not measured.

Distribution network demand charge means the R/kVA or c/kWh variable network charge raised to recover Distribution network costs and depending on the tariff may be charged on the **chargeable demand** or the active energy.

Distribution System means Eskom's network infrastructure consisting of assets operated at a nominal voltage of 132 kV or less, not classified as transmission transformation equipment.

Distribution use-of-system (DUoS) charges means the network tariffs charged for making capacity available, connecting to and for the use of the **Distribution System**. The **DUoS** charges are the source of the **Distribution** network charge components in the retail tariff structures.

DUoS charge (generators) means the **DUoS** charges payable by generators. These **DUoS** charges for generators comprise the **network capacity charge** based on **maximum export capacity**, the **losses charge**, the **ancillary service charge**, the **service charge** and the **administration charge**.

DUoS charge (loads) means the **DUoS** charges payable by loads. These **DUoS** charges comprise the **network capacity charge**, the **network demand charge**, the **urban low voltage subsidy charge**, the **ancillary service charge**, the **service charge**, the **administration charge** and the **electrification and rural network subsidy charge**.

Electrification and rural network subsidy charge means the **DUoS charge** transparently indicating the contribution towards socio-economic network-related subsidies for Residential and **Rural$_p$** tariffs and is payable by loads that use the **Distribution** or **Transmission System** for the delivery of energy.

Energy demand charge means the seasonally differentiated charge per **POD** that recovers peak energy costs, and based on the **chargeable demand**.

Embedded Transmission use-of-system (ETUoS) charge means the TUoS charges payable by customers connected to the **Distribution** network.

Excess network capacity charge (previously known as the **excess network access charge)** means the charge payable with reference to the **NMD rules** and is based on the demand exceeding the NMD multiplied by the **event number** (recorded every time the NMD is exceeded) multiplied by the applicable **network capacity charges** for the tariff (refer also to paragraph 5).

High-demand season means the **TOU** Period from 1 June to 31 August of each year.

High voltage (HV) networks usually consist of equipment supplied at a voltage greater than 22kV and consist of the distribution substations and networks. A substation is considered an **HV** substation when the primary side of the substation is supplied at a voltage > 22 kV.

Key customer means a customer identified by Eskom as requiring special services, or a customer that consumes more than 100 GWh per annum on a contiguous site.

Local authority tariffs means tariffs applicable to municipal bulk points of supply.

Loss factors mean the factor indicating the cost or benefit of technical energy losses on the **Transmission** and the **Distribution System**. The **Distribution loss factors** differ per voltage category and per **Rural$_p$** and **Urban$_p$** categories. The **Transmission loss factors** differ for generators and loads and are based on the **Transmission zones**.

Losses charge means the charge payable based on the applicable **loss factors** and the WEPS rate excluding losses.

Low-demand season means the TOU Period from 1 September to 31 May of each year.

Maximum demand means the highest average demand measured in kVA or kW at the **POD/point of supply** during a 30 minute integrating period in a billing month.

Maximum export capacity (MEC) means the maximum capacity at the **point(s) of supply** notified by the customer and accepted by Eskom for the transmission of electrical energy between a generator and the **Transmission or Distribution System**. *Note: The notification of the maximum export capacity shall be governed by the **NMD and MEC rules.***

Medium voltage (MV) networks consist of the networks above 1 kV up to 22 kV. Some rural networks with a voltage of 33 kV have been specifically designated by Eskom as rural reticulation networks. A substation is considered a MV substation when the primary side of the substation is supplied at a voltage ≤ 22 kV.

Monthly utilised capacity means the higher of the **notified maximum demand (NMD)** or **maximum demand**, measured in kVA or kW, registered during the billing month.

Network capacity charge (previously known as the **network access charge**) means the R/kVA or R/**POD** fixed network charge raised to recover network costs and depending on the tariff is charged on the **annual utilised capacity** or **maximum export capacity** where **maximum demand** is measured or the **NMD** where **maximum demand** is not measured.

Network demand charge means the R/kVA or c/kWh variable network charge raised to recover network costs and depending on the tariff may be charged on the **chargeable demand** or the active energy.

Non-local authority tariffs means the tariffs applicable to Eskom's direct customers (i.e. customers within Eskom's licensed area of supply) and exclude the **non-local authority tariffs.**

Notified maximum demand (NMD) means the contracted **maximum demand** notified in writing by the customer and accepted by Eskom **per POD/point of supply**. *Note: The notification of demand shall be governed by the **NMD and MEC rules.***

NMD and MEC rules means the rules approved by NERSA and as amended from time to time for the notification of demand or maximum export capacity or changes to or exceedances of the **NMD or MEC** (refer further to paragraph 0).

Off-peak period means the **TOU periods** of relatively low **system** demand (refer further to paragraph 3).

Peak period means the **TOU periods** of relatively high system demand (refer further to paragraph 3).

Point of delivery (POD)/point of supply, means either a single point of supply or a specific group of points of supply on Eskom's **System** from where electricity is supplied to the customer by Eskom or from where the customer supplies electricity to Eskom's **System** located within a single substation, at which electricity is supplied to the customer at the same declared voltage and tariff. Note: This can be a metering or summation point.

Public holidays means the treatment of charges on **public holidays** as specified by Eskom and as set out in paragraph 10.

Reactive energy charge means a c/kVArh charge based on the power factor and tariff of the **POD**.

Residential tariffs means the Homelight and Homepower suite of tariffs.

Rural$_p$ means areas classified as rural by Eskom for the purposes of tariff design and classification.

3. Time-of-use periods

3.1. Nightsave Urban Large, Nightsave Urban Small and Nightsave Rural TOU periods

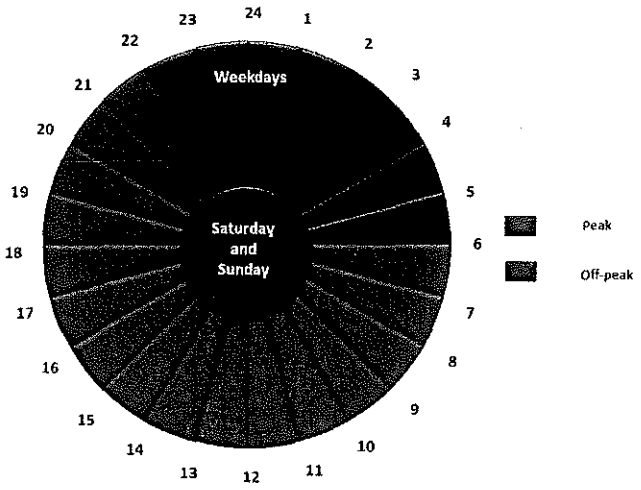


Figure 1: Nightsave TOU periods

3.2. WEPS, Megaflex, Megaflex Gen, Transflex 1, Transflex 2, Miniflex, Ruraflex and Ruraflex Gen: low and high demand seasons TOU periods

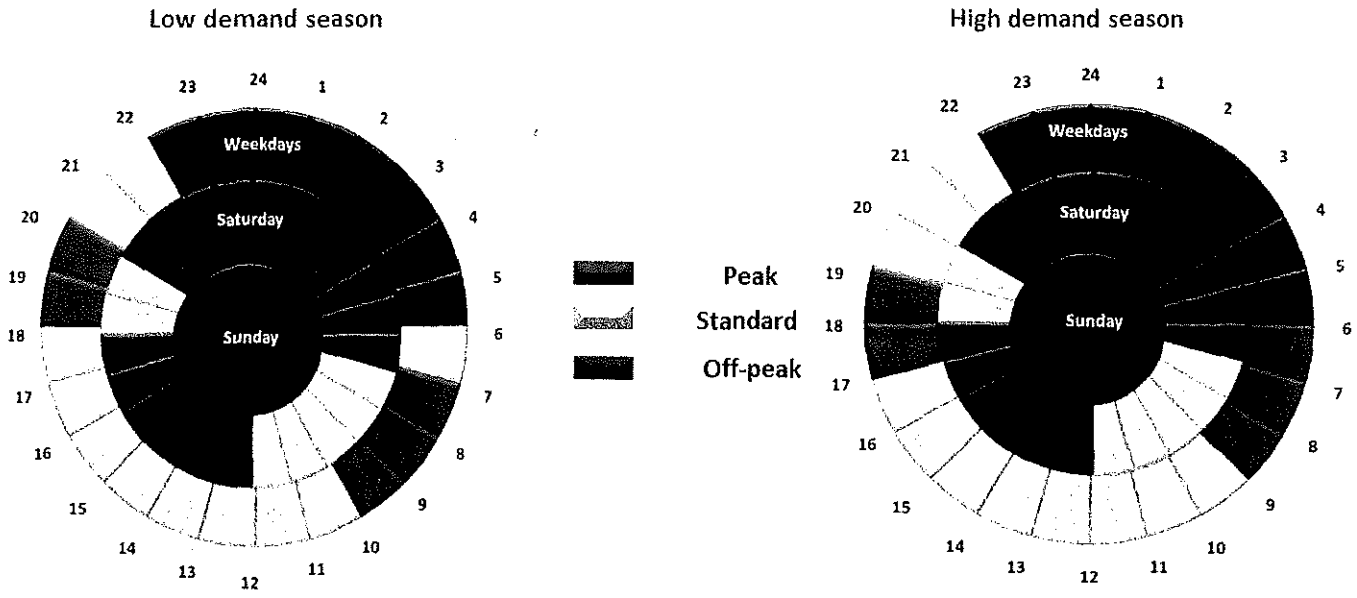


Figure 2: WEPS, Megaflex, Megaflex Gen, Transflex 1, Transflex 2, Miniflex, Ruraflex and Ruraflex Gen: low and high demand seasons TOU periods