

Ons verwysing/Our reference: MR HJ MOOLMAN / AF / MAT10210
U verwysing/Your reference: URGENT

14 August 2023

URGENT!

**TO: ESKOM HOLDINGS SOC LIMITED
C/O THE CHIEF EXECUTIVE OFFICER**

BY E-MAIL: TitusRJ@eskom.co.za;
AND: Calib.Cassim@eskom.co.za

**AND TO: ESKOM NORTHWEST PROVINCE VIA E-MAIL
C/O: K MOKALA**

BY E-MAIL: MokalaK@eskom.co.za

C/O: L MAZAN

BY E-MAIL: MazanL@eskom.co.za

**CC TO: THE MUNICIPAL MANAGER / ADMINISTRATOR
DITSOBOTLA LOCAL MUNICIPALITY**

BY E-MAIL: moiloag24@gmail.com
AND: shematsietsi@yahoo.com
AND: moserwkw@gmail.com
AND: thandiwempame@gmail.com

**CC TO: THE MEMBER OF THE EXECUTIVE COUNCIL
COOPARTIVE GOVERNANCE AND TRADITIONAL AFFAIRS
NORTHWEST PROVINCE**

BY E-MAIL: motshabi@nwpg.gov.za;
AND: Tebogo.Motlashuping@cogta.gov.za;
AND: MMotlogelwa@nwpg.gov.za;
AND: MandisaMB@cogta.gov.za
AND: info@cogta.gov.za

**CC TO: THE OFFICE OF THE PREMIER
NORTHWEST PROVINCE**

BY E-MAIL: MGasemene@nwpg.gov.za

Sir/Madam,

**INTERRUPTION OF BULK ELECTRICITY SUPPLY TO THE RESIDENTS OF DITSOBOTLA
LOCAL MUNICIPALITY – NORTHWEST PROVINCE**

1. We act herein for and on behalf of the Democratic Alliance and the Ditsobotla Dienste-vereeniging.
2. The Democratic Alliance is a voluntary organisation and registered political party that represents its members in the respective legislatures at local, provincial, and national level and in this instance its members who are members of the local community of the Ditsobotla Local Municipality as defined in section 1 of the Local Government: Municipal Systems Act, Act 32 of 2000. Our client's members are also beneficiaries to the fundamental rights afforded to citizens in Chapter 2 of the Constitution of the Republic of South Africa, Act 108 of 1996 ("the Constitution") that the state and therefore all organs of state (including Eskom) are obliged to respect, protect, promote, and fulfil.
3. The Ditsobotla Dienste-vereeniging is a localised voluntary organisation that represents its members who are members of the community and businesses enterprises residing in or that is situated within the geographical area of Lichtenburg.
4. At all material times and relevant hereto:
 - 4.1. Eskom is the sole bulk electricity supplier to the Ditsobotla Local Municipality.
 - 4.2. Electricity is an essential resource and for purposes of the Ditsobotla Local Municipality Eskom enjoys a monopoly over the generation, transmission and distribution of electricity required by the affected local community.

DIREKTEUR / DIRECTORS: HANS-JURIE MOOLMAN LL.B., CLARISSA PIENAAR LLM

Bygestaan deur / Assisted by: SUMARI SCHUTTE LL.B

Registrasienommer / Registration number: 2007/028053/21 BEE Certificate Number: EMELOS030935 Level 4

In assosiasie met / in association with:



Reg. No 1994 / 000892/21 VAT Reg. No. 4310143021

- 4.3. The Local Municipality has a constitutional and statutory duty to procure bulk electricity and to supply such electricity via its systems of reticulation.
- 4.4. Eskom is an organ of state. Municipalities are solely dependent on Eskom for electricity supply. Eskom has a constitutional responsibility to ensure that municipalities are enabled to discharge obligations under the Constitution.
- 4.5. Eskom is by virtue of section 41(3) of the Constitution read together with the Intergovernmental Relations Framework Act, Act 13 of 2005, obliged to make every reasonable effort to settle an intergovernmental dispute and up until it has not been done so, may not implement a decision to interrupt electricity supply.
- 4.6. Where Eskom and the Municipality fail to resolve the dispute between themselves, section 139 of the Constitution, amongst other, obliges Province and even National Government to involve themselves and to resolve the impasse. Put differently, where Eskom refuses to supply electricity via the replaced transformer due to municipal debt without them exploiting the mechanisms created for intergovernmental disputes, organs of state fail the constitution and such failure affects and even destroys the livelihoods of ordinary citizens.
- 4.7. Our clients' members as end users of electricity supplied by the local municipality are not party to any contract or any license conditions attached to the municipality's duties and functions in paragraph 3.4, but are seriously and adversely affected by the interruption or the reduction of electricity supply as a consequence of a dispute between Eskom and their local municipality and in addition to the existing burden imposed on the whole country as result of what is now commonly known as load shedding.
- 4.8. The members represented herein are as a general rule paying consumers; and where prepaid meters are installed, members are in fact pre-paying for electricity.

5. We have been placed in possession of records and correspondence that reveals that the Ditsobotla Local Municipality is indebted to Eskom for historical debts emanating from bulk electricity supply and that on or about 25 July 2023, the local municipality was (again) informed by Eskom of its indebtedness and its intention to disconnect electricity supply to the municipality if certain imposed requirements were not adhered to on or before 7 August 2023. (Writer is not in possession of any earlier letters of demand or process amongst the relevant organs of state. The appointment of an administrator does however support our concerns of problems with the municipality over a prolonged period of time which the organs of state failed to address and resolve.)
6. The purported debt recovery strategy coincided with the alleged vandalism and destruction of a transformer at the Rustenburg Substation on 29 July 2023. (The actual state of repair and maintenance of the transformer before the alleged vandalism could not be established.)
7. We are instructed that electricity in Lichtenburg is distributed via two transformers and that as a result of the aforementioned vandalism and destruction of the one transformer, the town was left without electricity for 6(six) consecutive days. When electricity supply was eventually 'restored', our clients had to endure power cuts on a rotational basis of every 4(four) hours that does not necessarily coincide with the loadshedding schedule imposed by Eskom from a national level. These prolonged and additional power cuts have caused severe hardship and losses and have caused some business in Lichtenburg town to close, and or carry with it the immanent risk of closure. Writer is currently awaiting an assessment of the impact of the intermittent electricity supply on schools (where Grade 12s are to commence their record exams soon), old age homes, the effective treatment and disposal of sewage, etc. There is a real concern of an unfolding human and environmental catastrophe due to the inept supply of electricity to which Eskom holds the key.
8. We are in possession of a letter dated 2 August 2023 addressed by Eskom to the Acting Municipal Manager of Ditsobotla Local Municipality and wherein it was recorded that Eskom was then at an advanced stage to have the acquired transformer delivered to Lichtenburg Substation and that same was to be installed as soon as possible. In the

same letter Eskom demands payment of certain amounts by the municipality to ensure that Eskom can deliver the required electricity to the Ditsobotla Local Municipality. In the last paragraph of the letter the restoration process of the transformer is made subject to payment of the amount claimed.

9. After the communication referred to above councilor, Councilor Yusuf Laher of the Democratic Alliance was in person a witness to the following events:
 - 9.1. The transformer arrived in Lichtenburg on Saturday 5 August 2023 at 12:35, by abnormal load.
 - 9.2. Installation of the new transformer commenced on Sunday 6 August 2023.
 - 9.3. Installation was completed on Wednesday 9 August 2023 and thereafter the transformer was switched on, but without electricity. It was explained to Mr Laher that the oil of the transformer had to be heated and that certain operational tests had to be conducted before the transformer could be put to full use by connecting same with the municipality's reticulation system.
 - 9.4. All tests were conducted and completed on Thursday 10 August 2023 and the transformer was ready for connection, but no connection was made to restore electricity supply to the town via the transformer and to make an end to the additional extended rotational power cuts.
 - 9.5. On Friday 11 August 2023 a meeting between Eskom and the local municipality was scheduled with the Acting Municipal Manager of the Ditsobotla Local Municipality. At the meeting Eskom was represented by inter alia Mr Mokala.
 - 9.6. The meeting was attended on behalf of Eskom by Mr Mokala (the Northwest General Manager) and other representatives. At this meeting Mr Mokala demanded payment of certain amounts owed to Eskom to have the bulk electricity via the replaced transformer reconnected. In the alternative, payment arrangements were demanded. In response to the pressure exerted by Eskom,

the municipality in return explained that it was unable to pay the debt demanded or to make commitments towards payment arrangements that it will not be able to fulfil.

9.7. In response to the municipality's stance Mr Mokala explained that due to the inability of the municipality to commit to payments, Eskom is unable to commit to the reconnection of the electricity via the replaced transformer. Allegations of fruitless and wasteful expenditure were raised by Eskom as ratio for the refusal to utilize the transformer.

10. We are also in possession of a letter by Eskom addressed to Van Rooyen Tlhapi & Wessels Incorporated on 11 August 2023 wherein the following was confirmed:

10.1. That Eskom has requested the municipality to assist Eskom with the mandate to ensure bulk supply to the residents, by contributing towards the replacement costs of the transformer.

10.2. That despite the engagements with the Municipality, the municipality is not amendable to make any contribution on an urgent basis towards the costs of replacing the transformer.

10.3. That Eskom shall endeavor to further engage with the Municipality.

11. From the above it appears to be common cause that:

11.1. The vandalised transformer was replaced, installed and is operational.

11.2. That Eskom is capable to immediately restore bulk electricity supply via the transformer.

11.3. That the failure or refusal to restore bulk electricity supply to necessary levels in the area of Lichtenburg, is with the sole objective of coercing the municipality to effect payment as a debt collecting strategy.

11.4. That to date, no process of intergovernmental dispute resolution has been followed or concluded.

12. Based on the abovementioned statement of affairs and facts, we have been instructed to demand that Eskom reconnect bulk electricity supply via the replaced transformer with immediate effect and to bring an end to the rotational power cuts to which our clients' members have been subjected.
13. Should Eskom, for any other reason than the abovementioned and apparent debt collection strategy, refuse to reconnect the bulk electricity supply via the replaced transformer, you are invited to urgently disclose such reasons. Eskom is also invited to disclose its record of engagement with organs of state such as COGTA with whom it engaged to ensure ringfencing of electricity income and payment towards Eskom.
14. Should bulk electricity supply not be reconnected and no reasons as requested in paragraph 13 above, be provided on or before 16 August 2023 at 14:00, we are instructed to seek appropriate urgent relief against Eskom to have bulk electricity supply via the replaced transformer restored to our clients, pending a review of the decision to refuse the reconnection of bulk electricity supply as means and with the sole objective to secure payment from the local municipality. Our clients' rights remain reserved to truncate any requisite time periods given the hardship and risks caused by the short supply of electricity.
15. We await your urgent action and/or response, if any.

Yours faithfully



MOOLMAN & PIENAAR INC
BY: HJ MOOLMAN
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litigation3@mmlaw.co.za

DIREKTEURE / DIRECTORS: HANS-JURIE MOOLMAN LL.B., CLARISSA PIENAAR LLM

Bygestaan deur / Assisted by: SUMARI SCHUTTE LL.B

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