



Report To: **MUNICIPAL COUNCIL**

File ref :

Collaborator/Item no: SC 8.1

Date: **01 DECEMBER 2016**

SUBJECT: LATEST PAYMENT PLAN PROPOSED TO Eskom

REPORT DATED 28 NOVEMBER 2016 FROM THE ACTING MUNICIPAL MANAGER

1. PURPOSE

The purpose of this item is to provide a report to Council on the latest payment plan proposed to Eskom to pay off the arrears on the Eskom bulk account, and for Council to ADOPT this payment plan.

2. FOR DECISION BY

Council

3. EXECUTIVE SUMMARY

The municipality has defaulted on unrealistic Eskom payment plan as a result of being required to provide a payment plan for the sake of compliance with external demands. This resulted in the municipality not enjoying the benefits of interest being waived, as it was an agreement that, upon honouring and settling of Eskom debt, Eskom will waive interest charged on Eskom account. The reality is that the municipality cannot be forced into unrealistic payment plans anymore as it leads to a situation where the full debt is demanded by a creditor upon defaulting on the payment plan. Such an example is Eskom, from whom a "notice to remedy breach" was received on 10 November 2016 – see attached. This notice states that if the amount of R58 053 726.78 is not paid within 14 days, steps will be implemented to discontinue the supply of electricity to Makana Municipality. Eskom required that either the debt be paid, or a payment plan to reduce the debt be proposed and adopted by Council.

As at 31st July 2016, the municipality took 90% of its equitable share (**R30 million**) and paid over to Eskom, resulting in total debt amounting to **R18 million**. During the month of August, the municipality received Eskom invoice with adjustments as Eskom claimed it has been under billing the municipality. Total debt of R58m is made up as follows:

• Arrear debt as @ 31 st July	R18, 839, 629.92
• Interest as @ November	R17, 640, 215.20
• 2016/17 Billings incl. VAT	R58, 146, 321.55
• 2016/17 Adjustments	R14, 179, 532.11
• <u>Less:</u> Payments made (August to November)	(R50, 751, 972.00)
Total Debt:	<u>R58, 053, 726.78</u>

4. DISCUSSION/CONTENTS

Subsequently a payment plan was drafted and presented to Eskom representatives. At that meeting, it was confirmed by Eskom that Makana Municipality manages to pay the current accounts for the year, over the 12 month period, but the problem lies in the payment of the arrears. It was then recommended that a payment plan based on realistic cash flow assumptions be drafted and submitted to Eskom. The reason for this is that there will not be another opportunity for Makana Municipality to propose another payment plan if this plan is defaulted on as Eskom is stepping up on its credit control procedures. The cash flow was compiled considering past revenue and expenditure trends, adapted, where necessary, to the current situation. Other creditors, some with whom there are payment plans too, was also considered as some creditors cannot be neglected in favour of others. This proposed payment plan was submitted to Eskom on 23 November 2016.

The proposed payment plan is attached hereto, and indicates that, unless the situation improves, Makana Municipality will be settling the arrears by December 2020 only. This reflects the reality that Makana Municipality is facing. Efforts to reduce expenditure, although positive in many instances, does not reflect the desired results. Fuel usage did reduce from R800 000 per month to around R450 000 per month, telephone account reduced from R220 000 to about R130 000, etc. Multiple efforts to improve revenue collection and increase revenue generation efforts also does not show the desired results yet, although the collection rate is increasing compared to 2014/15 and 2015/16.

Eskom payment plan was drafted taking into account that, as from January 2017, the payment plan for the DBSA loan commences, and there is a pending payment plan with Department of Water and Sanitation as well.

5. RECOMMENDATIONS

- a) THAT Council NOTE and ADOPT the latest proposed payment plan to reduce the arrear debt owing to ESKOM.
- b) THAT Council NOTE that this would be the last opportunity to propose a payment plan to ESKOM
- c) THAT Council NOTE that if this plan is defaulted on, the disconnection process will be initiated without further notice.

6. FINANCIAL IMPLICATIONS

With the current level of revenue collected and expenditure it will always be a challenge to pay the current account each and every month, as is required by ESKOM. In order for the arrears not to grow further, it is important to adhere to this "not negotiable requirement" of ESKOM. It was proven in the past and acknowledged by ESKOM that this is not impossible to pay the full current accounts over the 12 month period – not necessarily on time, but it does get paid eventually within the 12 month period. The additional payments on the payment plan were based on intervals that the Equitable Share is received. However in some instances, the Equitable Share receipts will have to be used to catch up on arrear payments to other creditors, as well as to catch up on the current accounts from ESKOM that the municipality may have defaulted on. It will require financial discipline and strict controls to adhere to the payment plan.

7. COMMENTS FROM DIRECTORATES

Municipal Manager: Recommended.

8. ANNEXURES

- A. Payment Plan proposed to ESKOM
- B. Notice of Remedy of Breach from ESKOM



ACTING MUNICIPAL MANAGER
MR M PLANGA

Mr Mandisi Maplanga
Acting Municipal Manager
Makana Municipality
P O Box 136
GRAHAMSTOWN
6139

Date:
10 November 2016

Enquiries: Tom Chapman
Tel : +27 41 502 4081

Dear Mr Maplanga

NOTICE TO REMEDY BREACH

1. We refer to the existing Electricity Supply Agreement between Eskom Holdings SOC Ltd (Eskom) and Makana Municipality ('the Municipality'), in terms of which Eskom is currently supplying electricity to the Municipality ('the Agreement').
2. All capitalised terms used in this notice without being defined herein shall have the meanings as defined in the Agreement.
3. The Municipality has, in breach of the Agreement, failed to pay Eskom **R58 053 726.78 (Fifty Eight Million Fifty Three Thousand Seven Hundred and Twenty Six Rand Seventy Eight Cents)** on 05 November 2016 (the Final Payment Date) for electricity consumed by the Municipality in terms of the Agreement.
4. Should the Municipality fail to pay the full amount referred to in paragraph 3 above, including interest thereon within a period of 14 calendar days from the date of receipt of this letter (which date shall be computed in accordance with the provisions of Annexure B clause 9.2 (Notices/Addresses) of the Agreement, Eskom may forthwith discontinue the supply of electricity to the Municipality and terminate the Agreement in accordance with the relevant provisions of the Agreement.
5. In accordance with clause 9.2 of the Agreement interest shall be compounded Monthly from the Due Date to date of payment, at a rate per annum equal to the prevailing prime rate charged by First National Bank of Southern Africa Limited in South Africa plus 5%.
6. Should the supply of electricity be discontinued and the Agreement be terminated, in terms of paragraph 4, the Municipality will be required to enter into a new electricity supply agreement, on Eskom's terms and conditions applicable to the category of customers to the Municipality belongs, prior to Eskom restoring the supply of electricity to the Municipality and such terms may include security to be provided that will be sufficient to cover the estimated amount payable by the Municipality for electricity supplied during any 3 consecutive months.

7. The Municipality must take all the necessary precautions to ensure the safety of staff and to limit damages to your operations and business, should Eskom discontinue the supply of electricity to the Municipality.

All of Eskom's rights are reserved.

Yours sincerely,



Tom Chapman
STRATEGIC ACCOUNT EXECUTIVE
Eastern Cape Operating Unit
Group Customer Services

MAKANA LOCAL MUNICIPALITY

ACKNOWLEDGEMENT OF DEBT AND REPAYMENT PLAN AGREEMENT

1. INTRODUCTION

It is recorded that:

- 1.1 Eskom Holdings SOC Ltd ("Eskom") is currently supplying Makana Municipality (the Municipality) with bulk electricity in terms of the Electricity Supply Agreement ("ESA"), entered into between Eskom and the Municipality on or about 20th June 2014.
- 1.2 The Municipality acknowledges that it is truly and lawfully indebted to Eskom for electricity supplied in terms of the ESA referred to in Clause 1.1 above and undertakes to pay Eskom as detailed herein.
- 1.3 The Municipality also acknowledges that the terms and conditions set out herein below shall regulate and govern the repayment of all and any monies due, owing and payable to Eskom arising out of the Municipality's indebtedness to Eskom.
- 1.4 This Acknowledgement of Debt and Repayment Agreement ("the Agreement") is a separate agreement from the ESA or any other agreement that is entered into between Eskom and Municipality.

2. PERIOD OF AGREEMENT

This Agreement shall notwithstanding the last signature thereof become effective on 1st November 2016 and shall remain in force until the Municipality has paid Eskom in full the amounts referred to or tabulated in Clause 4 below.

3. DEBT ACKNOWLEDGEMENT

The Municipality acknowledges that as at 21st November 2016 it is truly and lawfully indebted to Eskom in the sum of **fifty eight million fifty three thousand seven hundred and twenty six rand and seventy eight (R58 053 726.78)** including VAT and accumulated interest compounded monthly from January 2015 to 3rd November 2016 ("the debt") for electricity supplied to the Municipality.

4. REPAYMENT

- 4.1 The Municipality hereby undertakes to pay the debt and accumulated interest compounded monthly from due date as follows:

Month	Payment	Balance
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November 2016	Current	R 58 053 726.78
December 2016	Current + R4 053 726.78	R 54 000 000
January 2017	Current	R 54 000 000
February 2017	Current	R 54 000 000
March 2017	Current	R 54 000 000
April 2017	Current	R 54 000 000
May 2017	Current	R 54 000 000
June 2017	Current	R 54 000 000
July 2017	Current	R 54 000 000
August 2017	Current + R10 000 000	R 44 000 000
September 2017	Current	R 44 000 000
October 2017	Current	R 44 000 000
November 2017	Current	R 44 000 000
December 2017	Current	R 44 000 000
January 2018	Current	R 44 000 000
February 2018	Current	R 44 000 000
March 2018	Current	R 44 000 000
April 2018	Current	R 44 000 000
May 2018	Current	R 44 000 000
June 2018	Current	R 44 000 000
July 2018	Current	R 44 000 000
August 2018	Current + R15 000 000	R 29 000 000
September 2018	Current	R 29 000 000
October 2018	Current	R 29 000 000
November 2018	Current	R 29 000 000
December 2018	Current	R 29 000 000
January 2019	Current	R 29 000 000
February 2019	Current	R 29 000 000
March 2019	Current	R 29 000 000
April 2019	Current	R 29 000 000
May 2019	Current	R 29 000 000
June 2019	Current	R 29 000 000
July 2019	Current	R 29 000 000
August 2019	Current + R15 000 000	R 14 000 000
September 2019	Current	R 14 000 000
October 2019	Current	R 14 000 000
November 2019	Current	R 14 000 000
December 2019	Current	R 14 000 000
January 2020	Current	R 14 000 000
February 2020	Current	R 14 000 000
March 2020	Current	R 14 000 000
April 2020	Current	R 14 000 000
May 2020	Current	R 14 000 000
June 2020	Current	R 14 000 000
July 2020	Current	R 14 000 000
August 2020	Current + R11 000 000	R 3 000 000
September 2020	Current	R 3 000 000
October 2020	Current	R 3 000 000
November 2020	Current	R 3 000 000
December 2020	Current + R3 000 000	nil

- 4.2 In accordance with the ESA the outstanding amount shall bear interest, compounded monthly from the due date to date of payment, at a rate per annum equal to the prevailing prime rate charged by First National Bank of Southern Africa Limited in South Africa plus 5%.
- 4.3 Notwithstanding sub-clause 4.2 above and subject to sub-clause 6.2 below, the debt shall not bear any interest after the date on which the last interest was calculated as indicated in paragraph 3 above.
- 4.4 It is specifically recorded that the Municipality retains the right to repay the debt in full at any given time during the period contemplated in paragraph 2 above. In the event of such occurrence, the Municipality will only be liable for interest accumulated on the debt up to and until the date of such payment, in full and final settlement.
- 4.5 A certificate under the signature of a duly authorised employee of Eskom (whose authority as such need not be proved by Eskom) or by any professional practising accountant who is engaged by Eskom setting out the amount due and payable by the Municipality at any time in terms of this Agreement, shall be sufficient and prima facie proof of the Municipality's debt for purpose of any legal proceedings including obtaining of summary or default judgement.

5. CURRENT ACCOUNTS

The Municipality acknowledges that its undertaking herein does not absolve it from any of its obligations in terms of the ESA, including its obligation to pay all the current accounts timeously and as and when they become due and payable in terms of the ESA.

6. DEFAULT

- 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.
- 6.2 The debt shall bear interest, compounded monthly from the date on which the last interest was calculated as indicated in clause **Error! Reference source not found.** above, at a rate per annum equal to the prevailing prime rate charged by First National Bank of Southern Africa Limited in South Africa plus 5% .
- 6.3 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.
- 6.4 The Municipality undertakes to pay on an attorney and client scale, all legal costs and expenses incurred in making demand for, or suing for the recovery of the capital and interest or any portion thereof and the cost of the execution of any judgement and in general all the costs which Eskom may incur in connection herewith.

7. RENUNCIATION OF BENEFITS

The Municipality renounces the benefits of the legal exceptions that there was no cause for the debt and that there was an error in calculations and the Municipality declares itself to be fully acquainted with the meaning, force and effect of such renunciations.

8. GENERAL

8.1 This Agreement constitutes the sole record with respect to the indebtedness of the Municipality to Eskom.

8.2 No addition to or variation or cancellation hereof shall be of any force or effect unless agreed to in writing by Eskom and the Municipality.

8.3 No indulgence which Eskom may grant to the Municipality in respect of the terms of this Agreement shall constitute a waiver or novation of any of the past or future rights of Eskom and Eskom shall not thereby be precluded from exercising any rights against the Municipality which may have arisen in the past or which might arise in the future.

9. WARRANTY OF AUTHORITY

The Municipality hereby warrants that at the time of execution of this Agreement it has obtained all the approvals and/or consents required under any of its empowering legislations and has taken all necessary action to authorize its signatory to bind it in terms of this Agreement.

SIGNED for and ON BEHALF of the Municipality by the signatory below, who warrants that he/she is duly authorised on 2016.

.....

NAME:

TITLE:

AS WITNESSES

1.

2.

SIGNED for and ON BEHALF of Eskom by the signatory below, who warrants that she/he is duly authorised on 2016.

.....

NAME:

TITLE:

AS WITNESSES

1.

2.