

Friday, 19 March 2021]

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OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS,

TABLINGS AND

COMMITTEE REPORTS

FRIDAY, 19 MARCH 2021

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ANNOUNCEMENTS

National Assembly and National Council of Provinces

The Speaker and the Chairperson

1. Bills passed by Houses – to be submitted to President for assent

- (1) Bill passed by National Assembly on 19 March 2021:
 - (a) **Electoral Laws Amendment Bill** [B 22D – 2020] (National Assembly – sec 75).
- (2) The following entry is a correction of the announcement published on 18 March 2021:
 - (1) *Bill passed by National Council of Provinces on 18 March 2021:*
 - (a) ***Auditing Profession Amendment Bill** [B 2B – 2020] (National Assembly – sec 75).*

2. Draft Bills submitted in terms of Joint Rule 159

- (1) **Railway Safety Bill**, submitted by the Minister of Transport.

Referred to the **Portfolio Committee on Transport** and the **Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure**, for information.

National Assembly

The Speaker

1. Introduction of Bills

- (1) **The Minister of Transport**

- (a) **Railway Safety Bill** [B 7 - 2021] (National Assembly – proposed sec 76) [Explanatory summary of Bill and prior notice of its introduction published in *Government Gazette* No 43079 of 6 March 2020.]

Introduction and referral to the **Portfolio Committee on Transport** of the National Assembly, as well as referral to the Joint Tagging Mechanism (JTM) for classification in terms of Joint Rule 160.

In terms of Joint Rule 154 written views on the classification of the Bill may be submitted to the JTM. The Bill may only be classified after the expiry of at least three parliamentary working days since introduction.

National Council of Provinces

The Chairperson

1. Bills passed by Assembly and transmitted to Council for concurrence

- (1) Bill passed by National Assembly and transmitted for concurrence on 19 March 2021:

- (a) **Division of Revenue Bill** [B 3 - 2021] (National Assembly – sec 76).

The Bill has been referred to the **Select Committee on Appropriations** of the National Council of Provinces.

TABLINGS

National Assembly and National Council of Provinces

1. The Speaker and the Chairperson

- (a) Strategic Plan and Budget of the Auditor-General of South Africa for 2021 – 2024 [RP 65 – 2021].

COMMITTEE REPORTS

National Assembly

1. Report of the Portfolio Committee on Transport on the Civil Aviation Amendment Bill [B 44 – 2018] (National Assembly – sec 75), dated 17 March 2021

The **Portfolio Committee on Transport**, having considered the subject of the Civil Aviation Amendment Bill (National Assembly – sec 75), referred to it and classified by the Joint Tagging Mechanism (JTM) as a section 75 Bill, reports the Bill with amendments [B 44A – 2018].

The Economic Freedom Fighters (EFF) abstained from voting on the Bill.

Report to be considered.

2. Report of the Portfolio Committee on Public Works and Infrastructure on a petition lodged by Mr S August, Good Party, dated 17 March 2021

The Portfolio Committee on Public Works and Infrastructure, having considered a petition lodged by Mr S August (Good Party) on 24 November 2020, calling on the Assembly to investigate a policy review that will look into developing a consistent system across municipalities, provincial governments and national government on how the Extended Public Works Program (EPWP) employs job seekers, reports as follows:

On 11 December 2020, the above-mentioned petition was referred to the Portfolio Committee on Public Works and Infrastructure (the committee) for consideration and report. National Assembly Rule 347(1) determines that a member of the National Assembly must lodge a petition with the Secretary to Parliament for approval and tabling by the Speaker. The petition was lodged in the name of Mr S August, MP. On 16 March 2021, the committee considered the petition.

1. Oral presentations made to the Committee

1.1 Mr S August (member of the National Assembly)

Mr August gave a background of the objective of the petition. The purpose of the petition was to appeal to the Assembly to investigate a policy review that will look into developing a consistent system across municipalities, provincial governments and national government on how the Expanded Public Works Program (EPWP) employs job seekers.

1.2 The Department of Public Works and Infrastructure (DPWI)

The department reported that there was in fact a standardised policy in place on how beneficiaries of the EPWP were employed at national, provincial, and municipal government levels. It stated that it unfortunately did not have the necessary enforcement mandate to ensure uniform implementation across the three levels of government. The branch further reported that it was doing everything in its power to ensure that the policy was properly implemented at all projects across the three levels of government.

2. Observations

Having listened to the EPWP branch on the matter, the committee made the following observations:

- 2.1. A clear and uniform standard setting policy does exist. The committee felt that the EPWP, as one of the government programmes that played a key role in the Economic Reconstruction and Development Plan, must be properly implemented so that the scourge of unemployment can be curbed.
- 2.2. Further to this, the committee raised the critical question of how the DPWI and its EPWP branch were enabled to enforce the implementation of this national standardized policy of how municipalities, provinces, and national government employed beneficiaries.

3. Recommendations

Having considered the petition, the committee recommends that the Minister of Public Works and Infrastructure:

- 3.1. Completes its mandate-setting draft Public Works Bill to fully mandate and empower its branches to do its employment-creating coordinating work across national, provincial, and municipal government levels.
- 3.2. Further, ensures she includes clauses in the bill that make it possible to enforce the implementation of standard-setting uniform policies of how beneficiaries are employed in EPWP projects at municipalities, provincial governments, and national government.
- 3.3. Ensures that, as the EPWP is part of the safety net for the majority who have no skills and qualifications, a standardized policy on how government employs EPWP beneficiaries must be put in place.

Report to be considered.

3. Report of the Portfolio Committee on Mineral Resources and Energy on the Oversight Visit to the Western Cape Province dated 17 March 2021

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1. INTRODUCTION

The Portfolio Committee on Mineral Resources and Energy (hereinafter, “PCMRE” or “the Committee”) undertook an oversight visit from 26 to 27 February 2021 to the Strategic Fuel Fund (SFF) storage facilities in Saldanha Bay and Milnerton. Furthermore, the Committee visited PetroSA Head Office in Parow, wherein the Department of Mineral Resources and Energy (DMRE) also briefed the Committee on the implementation of the National Solar Water Heater Programme (SWHP). In its oversight programme, the Committee had planned to visit Eskom’s Koeberg Nuclear Power Plant. However, due to unforeseen circumstances, the Eskom leg of the visit had to be postponed until further notice.

This report provides a detailed synopsis of the Committee oversight visits as specified above.

2. COMPOSITION OF DELEGATION

2.1 Members of Parliament

Name of Member	Political Party
Hon S Luzipo (Chairperson)	African National Congress (ANC)
Hon JH Bilankulu	African National Congress (ANC)
Hon MG Mahlaule	African National Congress (ANC)
Hon VT Malinga	African National Congress (ANC)
Hon K Mileham	Democratic Alliance (DA)
Hon P Madokwe	Economic Freedom Fighters (EFF)
Prof CT Msimang	Inkatha Freedom Party (IFP)
Hon V Zungula	African Transformation Movement (ATM)

2.2 Parliamentary Staff

Name	Designation
Ms A Boss	Committee Secretary
Mr S Maboda	Committee Researcher
Mr M Dumezweni	Committee Assistant
Mr J Molafo	Communications Officer
Mr T Kostile	Communications (Photographer)

3. REPORT ON THE SITES VISITED BY THE COMMITTEE

This section of the report provides a synopsis of the oversight visits.

3.1 Visit to the Strategic Fuel Fund (SFF) Storage Facility in Saldanha Bay

The visit to the SFF Saldanha facility was twofold, firstly to tour the facility and secondly a briefing on the sale of strategic fuel stock.

The Chief Operating Officer of SFF, Mr Mfano Nkutha gave an overview of the SFF Saldanha storage facility. The Strategic Fuel Fund Association was established in 1964 as a Section 21 strategic oil reserves agency of South Africa. The Saldanha Bay crude oil storage terminal capacity is 45 million barrels and is the biggest facility by capacity in the southern hemisphere, with six (6) storage tanks. Two storage tanks remain incomplete, meaning there should have been eight (8) storage tanks. It was reported that the SFF had another storage facility in Orgies, Mpumalanga, which had twice the capacity of the Saldanha storage facility. This facility had to be decommissioned because of the mining that was taking place in the area.

The SFF is a subsidiary of the Central Energy Fund (CEF). According to Mr Nkutha, SFF is registered as a Not for Profit Organisation (NPO) – meaning it does not have to declare dividends. To generate income, the entity leases its facilities to third parties or traders. Mr Nkutha reiterated that the SFF is one of the best performing entities within the group, having attained R164 million in revenue during the 2013/14 financial year. The estimated revenue for the current financial year is estimated at approximately R2 million. The entity is the second largest in the world, in terms of Oil Pollution Control (OPC) technology.

During the tour of the facility, it was stated that, of the six crude oil storage tanks, four are leased to traders, whilst the remaining two (tanks 5 and 6) store strategic fuel stock. The entity supplies crude oil to Astron Energy Refinery in Millerton. Of concern is that, two kilometres from the SFF Saldanha terminal, a similar storage facility exists which belongs to the Royal Bafokeng Holdings. When asked why the tanks of the adjacent terminal are the same, SFF responded that the former employee of SFF works for the aforementioned company. Thus, it is alleged that the former employee probably copied the SFF designs.

However, SFF indicated that there is no copyright policy regarding its terminal. This was a surprise given the strategic importance of the SFF facility. The facility is a National Key Point for the SFF or Government not to have policies that protects it. Moreover, SFF shares its pipelines with the Royal Bafokeng Holdings, a private entity. This arrangement was perceived to be illogical. However, SFF indicated that the National Energy Regulator of South Africa (NERSA) stipulates that if one owns a pipeline, it must be shared with others. A concern was raised that NERSA is not consistent because Sunrise Energy (PTY) Ltd receives a different treatment when it comes to the sharing of pipes.

3.1.1 Briefing on the Sale of Strategic Fuel Stock

After the tour to the SFF storage facility, the Committee was briefed by the SFF on the sale of the strategic fuel stock. The presentation was delivered by Mr Abdul Haffaire, CEF Group Company Secretary.

The matter was heard before Judge Owen Rogers in the Western Cape High Court from 14 to 16 September 2020. The purpose of the proceedings was to set aside the unlawful transactions and to give effect to the applicants' (CEF and SFF) constitutional obligations and restore title of the strategic oil stock to the SFF. The applicants were successful in setting aside the unlawful decisions and transaction and South Africa's strategic oil stock was restored. The Western Cape High Court handed down the judgement on Friday, 20 November 2020. Regarding the merits of the matter, the Judge found that:

*“...various decisions taken by SFF and the then Minister of Energy in relation to the disputed transactions were invalid. The bases for invalidity stemmed from various factors and grounds, including that they were taken irrationally. Having held that the decisions were invalid, Rogers J held that the contracts concluded on the strength thereof must also therefore fall. Furthermore, the Judge found that “the applicants’ delay in launching the proceedings was egregious and not satisfactorily explained; it was held not to amount to a defence on the merits of the review as it was common cause that the disputed decisions and agreements were invalid. The delay was therefore condoned and was only a factor considered in respect of a **just and equitable remedy** in the circumstances.”*

Respondents contended that a just and equitable relief would have been as follows:

- *“The restitution of the purchase price and storage fees, interest on the purchase price and storage fees, and other losses, including hedging losses, insurance losses and other out-of-pocket expenses incurred pursuant to the entering into of the impugned transactions.”*

The Judge granted the relief sought by the applicants, such as declaring the various impugned decisions and agreements invalid and set aside. He further ordered that:

- Applicants pay to Glencore the purchase price and storage fees, together with interest thereon in line with the draft order agreed to between the parties. The applicants and Glencore were ordered to bear their own costs in the main application and interlocutory applications insofar as such applications relate to Venus and Glencore, also as agreed to by the parties in terms of the draft order.
- The applicants pay to Contango restitution of the purchase price and storage fees, as well as out-of-pocket expenses, including hedging losses, together with interests thereon, subject to the requirement that Contango attempt to recover the net purchase price for the oil paid by Contango to Taleveras before looking to SFF to recover this amount. The applicants were further ordered to pay Contango’s costs, including the costs of three counsel.
- That no restitution or compensation be payable by the applicants to Taleveras, and no order as to costs was made between the applicants and Taleveras.
- The applicants pay to Vitol restitution of the purchase price and storage fees, as well as out-of-pocket expenses, including hedging losses, together with the interest thereon. The applicants were further ordered to pay Vitol’s costs, including the costs of three counsel.

In respect of the above order, CEF and SFF filed a leave to appeal application on Monday, 7 December 2020, and leave to appeal to the Supreme Court of Appeal was granted by Judge Rogers on 22 December 2020. The notice of appeal was due to be filed with the Supreme Court of Appeal in February 2021. The PCMRE supported the appeal process initiated by CEF and SFF, arguing that it does not make sense to pay for hedging losses when the sale itself was declared illegal.

The SFF has made the following payments of restitution and the interests thereon in terms of the order handed down by Judge Rogers:

- Glencore: USD\$ 106,439,858.29
- Vitol: USD\$ 86,826,000.00
- Contango/Natixis: USD\$ 123,865,600.00

In terms of the total cost in rand in respect of the above, SFF paid R4.7 billion. On the sale of strategic fuel stock in 2015, the entity had received R4.2 billion. In courts, on this case, SFF has spent about R30 million to date. The appeal application cost is estimated at R2.2 billion. Therefore, should CEF and SFF lose the appeal case; the entity will further lose R.2.2 billion.

3.2 Visit to the SFF Storage Facility in Milnerton

Mr Zibusiso Gamzana, Maintenance Engineer, SFF, took the delegation through the Milnerton storage facility stating that the Milnerton Terminal is made up of 39 external floating roof above ground steel tanks. Between 1997 and 2005, there was regular crude oil transfer between SFF and the Chevron refinery and currently the tanks are out of commission awaiting the refurbishment project. Historically, PetroSA controlled the Milnerton facility, this arrangement ended in 2010 when SFF took full control.

Refurbishment of the tanks was scheduled for 2014. However, the SFF had a dispute with the company they had appointed. The company wanted more money than it had been contracted. Additionally, the Project Management Service Company had issues with Government. Apart from the issues the SFF had with the Company, the procurement process at the time revealed that the SFF did not have in-house skills to manage the refurbishment project. The refurbishment project has been revived. The entity stated that it had advertised for the project and that it was briefing service providers, on Tuesday, 02 March 2021.

Another issue, surrounding the facility, was the dispute on the SFF land which the Department of Land Affairs had donated for development. . The Department of Land Affairs (DLA) took over the land and handed it over to the communities for restitution purposes. The dispute was inter-governmental in nature, such as the DLA, City of Cape Town and NERSA. The dispute was settled out of court with the developers. The agreement was that the SFF should upgrade all its 39 crude oil storage tanks.

The delegation from Parliament was appalled with the condition of the facility. It seemed as though it were not maintained. The Chairperson of the CEF Board, Ms A. Noah, concurred with the delegation on this and assured the delegation that in future, the facility would not be found in the same condition.

The delegation was shown a solar water heater (SWH) storage within the SFF Milnerton facility. The SFF storage facility stored the SWH units for Western Cape six (6) municipalities participating in the roll out of the programme, namely:

- **Bitou Local Municipality (3000 units)** – Storage provided and delivery of units completed.
- **Mossel Bay Local Municipality (2000 units)** – Storage facility provided and delivery of units completed.
- **The City of Cape Town (6000 units)** – No storage Facility provided. Units stored at SFF;
- **Matzikama Local Municipality (2000 units)** – Storage facility does not meet all security measures, citing budget constraints;
- **Cape Agulhus Local Municipality (2000 units)** – Storage facility is too small. The storage facility only accommodated 800 units and the remaining units are not yet delivered and stored at SFF;
- **Swartland Local Municipality (2000 units)** – No storage facility provided. Units stored at SFF.

As a result of the above status, the SWH units for all these municipalities continue to be stored at the SFF as the only available option that assists the Department with curbing the

additional fruitless and wasteful expenditure, whilst it continues to get the municipalities ready for installation.

The SFF storage facility stored the solar water heater units from the following Manufacturers / Suppliers for these municipalities:

- **Actom (Pty) Ltd** with 3099 complete systems
- **Itakane 38 t/a iSolar (Pty) Ltd** incomplete units with the following components (5100 tanks, 4288 panels and 2199 cisterns). Extent of the missing items is as follows:
 - ✓ 806 solar panels /collectors against 5100 contracted quantity;
 - ✓ 2911 cisten tanks against 5100 contracted quantity;
 - ✓ 3585 frames against 5100 contracted quantity and no fitment kits were left against 5100 contracted quantity.
 - ✓ All Copper pipes
 - ✓ In possession of the Department, the components are as follows: 5100 tanks; 4294 solar panel, 2189 Cisten tanks, and 1515 frames.

As reported by the Department, the iSolar (Pty) Ltd is the manufacturer that encountered theft at its facilities in Atlantis prior to the Department taking delivery of its goods and the manufacturer could not claim from the insurance due to non-compliance with terms and conditions. The matter was elevated to the Office of the State Attorney for recovery of the missing components. As the Department was determining the value of the loss, in December 2020 the manufacturer informed the Department that the company is under liquidation and the Department would be contacted directly by the creditors concerning its goods.

3.3 Visit to PetroSA Head Office in Parow

From the SFF storage facility in Milnerton, the delegation proceeded to PetroSA Head Office in Parow. The delegation was given a tour of the Head Office building.

After the tour, the DMRE briefed the delegation on the National Solar Water Heater Programme.

3.3.1 Update by the DMRE on the Solar Water Heater Programme

From its inception, this programme had experienced a number of challenges. The programme aimed to install 1 million solar water units by 2015. On the contrary, it installed just over 400 000 units. Since then, the project has stalled owing to changes on implementing agents. From its inception, Eskom was the implementation agent. Due to dismal performance of the programme under Eskom, the DMRE took over as the implementing agency, in partnership with the CEF. The performance of the programme under the DMRE has worsened.

On its PetroSA Oversight Report, dated 02 December 2020, the Committee had recommended that the DMRE update it on progress made on the installation of the 87 000 solar water geysers by the end of January 2021. Moreover, the Committee had recommended that officials who contributed to the failure of the programme account to Parliament. Additionally, during the abovementioned oversight visit, the DMRE had committed that by the end of January 2021, the 1800 solar water units stored in Mossel Bay would have been installed. It is for this reason that the DMRE updated the Committee on the programme on 27 February 2021.

Contrary to the commitment made in Mossel Bay, only 178 solar water units had been installed as at the end of February 2021. Implementation status of the participating municipalities is provided in table 1 below.

Table 1: Installation Status for Each Municipality

No.	Municipality	SWHs allocated	SWHs delivered	SWHs installed
1.	JB Marks	5 000	5 000	100 fully installed
2.	Mahikeng	5 000	5 000	1523 fully installed
3.	The City of Matlosana	5 000	5 000	100 fully installed
4.	Bitou	3 000	3 000	2100 (partial),170 (fully installed)
5.	The City of Cape Town	5 000	5 000	0
6.	Swartland	2 000	2 000	0
7.	Cape Agulhas	2 000	800	0

8.	Polokwane	10 000	10 000	130
9.	Matzikama	2 000	0	0
10.	Mossel Bay	2 000	2 000	823 (partial), 178 fully installed
11.	Sol Plaatjie	6 000	5 550	150 (fully installed)
12.	The City of Tshwane	5 000	1 250	50 (fully installed)
13.	Ekurhuleni	5 000	0	0
14.	Ethekwini	6 000	1 195	0
15.	Mpofana	5 000	0	0
16.	Makana	6 000	6 000	0
17.	Emthanjeni	6000	1 195	0
18.	Elundini	5 000	3 600	0

Source: DMRE, (2021)

As evident in table 1 above, storage and installation of the units is a key challenge for the Department. A noticeable progress in installation is only in Mahikeng Municipality. The Department attributes this progress to the fact that the Councillors in the Municipality are actively involved in the project. Thus, political support plays an important role in this kind of project. The involvement of key Government Departments is also crucial such as the Department of Cooperative Governance and Traditional Affairs (COGTA) and the South African Local Government Association (SALGA). The DMRE indicated that COGTA does not form part of the SWH Programme steering Committee. This is an anomaly as COGTA is key to projects and programmes implemented at local government level.

The Department indicated that it was projected that 33 000 units would be installed by the end of December 2020 as part of Phase 1. It further states that nine (9) Installation Service Providers have been appointed for the installation of 33 000 systems in all the participating municipalities. However, it found the following to be stumbling blocks:

- Disputes with manufacturers on additional storage costs affecting Product Specific Training.

- Manufacturers refusing to conduct Product Specific Training (PST) until payments are made.
- Procurement of consumables for both PST and full installation – Request for Quotation (RFQ) concluded in December to enable delivery for PST and Request for Proposal (RFP) – poor responses and was concluded for only Gauteng and North West with the rest of affected municipalities including in the closed tender process currently in progress.
- Delays in the submission of beneficiary households to address the outcome of Technical Feasibility Assessment (TFA), e.g. asbestos houses.
- Municipalities' demands on only commencing installation when learner training is completed.
- TFA not completed in some municipalities.
- Demand for 30 percent of the project to be allocated to local business and community disruptions.

4. COMMITTEE OBSERVATIONS

This section provides a synopsis of the key issues observed by the Committee, particularly emanating from the presentations, discussions, and the walkabouts in various sites. These include:

- Notwithstanding the apologies that were made, the Committee noted with concern the absence of the Executive Accounting Officers of both subsidiaries that were visited (SFF and Petro SA).
- The Committee was not pleased with the safe keeping standards of solar water geysers (as there were parts missing).
- It was evident that there was no intergovernmental relationship on the Solar Water Heater programme.

- The Committee was not pleased with the state of the SFF facility in Milnerton. Much as it was reported that tanks need to be refurbished.
- The issue of a private entity that is linked to the SFF (Saldanha) remains unclear.
- The Milnerton facility seemed deserted, the site has not been utilised for 13 years, it is not clear what is the economic benefit of refurbishing a site that has been idle for 13 years.
- There is a lot of unused facilities (offices and tank farms) at PETRO SA.
- The Committee noted the need to change the SFF Milnerton Storage facility from crude oil storage to refined oil storage facility.
- Regarding the Milnerton SFF Storage Facility, the Committee was not pleased that it was only allowed to go to the emergency tank. the Committee was never taken to actual tanks that contain material that needed to be refurbished.
- SFF donated land via the Department of Land Reform as unused land to land reform beneficiaries (beneficiaries sold the land to developers) which eventually led to a dispute, between SFF and developers. Subsequent dispute concerning that same piece of land was settled out of court with the developers. The agreement was that the SFF should upgrade all its 39 crude oil storage tanks.
- The Committee welcomed the successful High Court application by the CEF and SFF to declare invalid and set aside the sale of 10 million barrels of South Africa's strategic crude oil to private companies. Moreover, CEF and SFF have been granted leave to appeal to the Supreme Court of Appeal to review and set aside the awarding of hedge and additional losses to Vitol and Contago.

- The Committee was concerned with Intellectual property right policy at CEF and SFF given that it is a National key point (i.e. whether the policy exist at all), even though tanks are easy to copy its design?
- The Committee was concerned about the Ogies facility that was donated as collateral. The company that promised to do commissioned work never executed the project.

5. COMMITTEE RECOMMENDATIONS

The Portfolio Committee, having conducted the oversight visit, recommends that:

- The Director-General (DG) of the DMRE should urgently meet with the DG of COGTA and the Chief Executive Officer of SALGA to intervene in the implementation of the National Solar Water Heater Programme.
- An oversight visit to areas where the solar water heater units are installed should be undertaken.
- DMRE should provide monthly update on the installation progress on the solar water heater programme.
- DMRE present by the end of June 2021 the overall status on the implementation of the National Solar Water Heater programme.
- On the unlawful safe of strategic fuel stock, SFF and CEF should furnish the Committee with a copy of the forensic report as a matter of urgency in order to follow up on consequence management.
- The National Energy Regulator of South Africa (NERSA) should brief the Committee on its licensing regime, especially with reference to Petroleum Pipelines.

- The Strategic Fuel Fund should explore ways to have Intellectual Property Rights for its facilities.
- The Committee should receive an update on the refurbishment of the SFF Milnerton crude oil storage facility by 31 March 2021.
- The Committee should undertake its previously planned oversight visit to Koeberg Power station.
- The Department provides better utilisation model of all idle capacity at PETRO SA once the merger process (PETRO SA, I GAS and SFF) is completed.
- As soon as merger is completed, an audit of all facilities owned or operated by the three entities that will merge should be conducted in order to identify facilities that are underutilised, to ascertain whether there is a need to retain or look at other alternatives for those facilities.
- DMRE should provide a detailed report on the disposal of Orgies strategic fuel stock.

Report to be considered