

REVISED RULES
OF THE
ESKOM PENSION AND PROVIDENT FUND

ESKOM PENSION AND PROVIDENT FUND

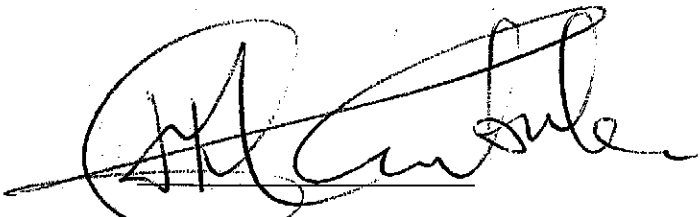
Extract of the minutes of the meeting of the Board of Trustees of the Eskom Pension and Provident Fund held at Hampton Park South, Bryanston on 27 May 2011.

It was resolved that the RULES of the Fund be revised and shall come into effect on date of registration. The format of the RULES remains unaffected.

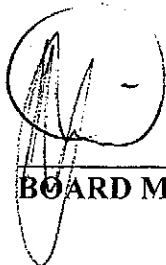
The reasons for the Revised Rules are as follows:

1. In general to consolidate the RULES to include the provisions of previous registered amendments numbers 1 to 6 and to update the RULES to reflect legislative changes and wording appropriate for efficient administration of the FUND.
2. To revise the definitions of the following:
 - (i) FINAL AVERAGE EMOLUMENTS
 - (ii) MARRIAGE
 - (iii) PRESERVATION FUND
 - (iv) SERVICE
 - (v) SPOUSE
3. To comply with the Financial Services Board's requirements.
4. To delete duplicated definitions and to correct all typographical errors with regard to numbering and omission of certain rules that were erroneously deleted in the Consolidated Rules that were registered in July 2005.
5. To amend the definition of disability and to ensure that maximum medical intervention has been attained before a member can be considered disabled.
6. To make provision for the creation of a contribution shortfall reserve, PENSIONER increase affordability reserve and an investment reserve in compliance with the Financial Services Board's requirements.
7. To reflect that a deduction in terms of a valid divorce order will have the effect of reducing the MEMBER'S withdrawal, death or retirement benefit.
8. To clarify the benefit paid on partial termination of the FUND.
9. To ensure that MEMBERS affected by a transfer of business of their employer in terms of Section 197 of the Labour Relations Act, 1995 are able to preserve their benefits and to clarify the options available to such MEMBERS.

Certified that the Resolution has been adopted in accordance with the provisions of the Revised Rules of the Fund.



CHAIRMAN

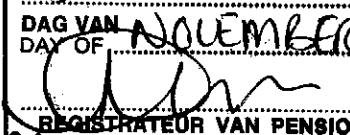


P. Iseni
BOARD MEMBER



PRINCIPAL OFFICER

R.S. C. LUTHULI
INITIALS AND SURNAME

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22 ND
DAG VAN NOVEMBER 2012 DAY OF

REGISTRATEUR VAN PENSIOENFONDSE REGISTRAR OF PENSION FUNDS

ESKOM PENSION AND PROVIDENT FUND

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ESKOM PENSION AND PROVIDENT FUND

REVISED RULES

CONSTITUTION

- 1 (1) The ESKOM PENSION AND PROVIDENT FUND shall be governed by these RULES as amended from time to time including the appendices referred to in rule 48 insofar as they are applicable to any MEMBER.
- (2) (a) The mission of the FUND shall be to provide benefits for employees and former employees of the EMPLOYERS and for their DEPENDANTS.
- (b) The operations of the FUND shall have as its main objectives the following –
 - (i) sound governance;
 - (ii) faultless administration; and
 - (iii) superior investment performance.
- (c) The BOARD shall in its fiduciary capacity determine such models of operation as it considers would achieve the objectives of the FUND.
- (3) (a) Effective 4 May 1995 the registered office of the FUND shall be at Moorgate House, Hampton Park South, 24 Georgian Crescent,

Bryanston, 2021, or at such other office in the Republic of South Africa as the BOARD may from time to time decide.

- (b) The postal address of the Eskom Pension and Provident Fund shall be at Private Bag 50, Bryanston, 2021, South Africa.
 - (c) The telephone number of the FUND is +27 (011) 709 7400.
- (4) Every payment due to or by the FUND shall be made at the registered office of the FUND in the currency of the Republic of South Africa, or in special circumstances elsewhere on such terms as the BOARD decide.
- (5) The FUND came into operation on 1 January 1950. The FUND was registered on 21 April 1958 in terms of the ACT as a privately-administered fund and was from this date known as the Electricity Supply Commission Pension and Provident Fund. On 24 February 1988 the name of the FUND was changed to the ESKOM PENSION AND PROVIDENT FUND.

DEFINITIONS

- 2 In these RULES words defined in the ACT but not defined in this rule shall bear the meanings assigned to them in the ACT and, unless inconsistent with the context, all words and expressions importing the masculine gender shall include the feminine and vice versa; words signifying the singular number shall include the plural and vice versa, and -

“ACCUMULATED CONTRIBUTIONS” shall mean the MEMBER’S CONTRIBUTIONS with interest determined at such rates and on such basis as, acting on the advice of the ACTUARY, the BOARD may from time to time determine.

“ACT” shall mean the Pension Funds Act, No. 24 of 1956, as amended.

“ACTUARY” shall mean a Fellow of the Institute of Actuaries of London or of the Faculty of Actuaries in Scotland, appointed by the BOARD.

“ADJUDICATOR” shall mean the Pension Funds Adjudicator appointed under section 30C (1) of the ACT.

“AUDITOR” shall mean the AUDITOR appointed by the BOARD.

A “1950 MEMBER” shall mean a male MEMBER who was a 1950 MEMBER at 30 June 1976 and who has not after that date become a 1952 MEMBER or a 1964 MEMBER or a 1976 MEMBER or a 1987 MEMBER and who elected to contribute 6% of his PENSIONABLE EMOLUMENTS, and shall include a 1952 MEMBER or a 1964 MEMBER who has reverted in terms of the RULES to being a 1950 MEMBER.

A “1952 MEMBER” shall mean a male MEMBER who was a 1952 MEMBER at 30 June 1976 and who has not after that date become a 1964 MEMBER or a 1976 MEMBER or a 1987 MEMBER and who elected to contribute 6% of his

PENSIONABLE EMOLUMENTS, and shall include a 1964 MEMBER who has reverted in terms of the RULES to being a 1952 MEMBER.

A "1964 MEMBER" shall mean a male MEMBER who was a 1964 MEMBER at 30 June 1976 and who has not after that date reverted in terms of the RULES to being a 1950 MEMBER or a 1952 MEMBER and has not become a 1976 MEMBER or a 1987 MEMBER, and who elected to contribute 6% of his PENSIONABLE EMOLUMENTS.

A "1976 MEMBER" shall mean a MEMBER who was in the SERVICE on 31 December 1986, who is not a 1950 MEMBER or a 1952 MEMBER or a 1964 MEMBER and who elected to contribute 6% of his PENSIONABLE EMOLUMENTS.

A "1987 MEMBER" shall mean a male or female employee who becomes a MEMBER on or after 1 January 1987 or a 1950 MEMBER, a 1952 MEMBER, a 1964 MEMBER, a 1976 MEMBER or a C MEMBER who elected in terms of rule 12 (3) to become a 1987 MEMBER.

A "C MEMBER" shall mean a female MEMBER who elected to contribute 4% of her PENSIONABLE EMOLUMENTS.

A "NON-CONTRIBUTORY MEMBER" shall mean a MEMBER who elected, before 31 January 1950 or within such further period as the BOARD may have allowed but not later than 31 July 1950, to become a NON-CONTRIBUTORY MEMBER.

"BOARD" shall mean the BOARD constituted in terms of rule 3.3.

"BOARD MEMBER" shall mean a person who has been appointed or elected to serve as a member of the BOARD in terms of the RULES.

"CHAIRMAN" shall mean the non-executive CHAIRMAN of the FUND referred to in rule 3.3(1)(a).

“COMPLAINANT” shall mean –

- (a) any person who is, or who claims to be –
 - (i) a MEMBER or former MEMBER of the FUND;
 - (ii) a beneficiary or former beneficiary of the FUND;
 - (iii) an employer who participates in the FUND;
- (b) any group of persons referred to in paragraph (a)(i), (ii) or (iii);
- (c) the BOARD of the FUND or MEMBER or PENSIONER thereof; or
- (d) any person who has an interest in a COMPLAINT.

“COMPLAINT” shall mean a COMPLAINT of a COMPLAINANT relating to the administration of the FUND, the investment of its assets or the interpretation and application of its rules, and alleging –

- (a) that a decision of the FUND or any person purportedly taken in terms of the rules was in excess of the powers of the FUND by the FUND or person, or an improper exercise of its powers;
- (b) that the COMPLAINANT has sustained or may sustain prejudice in consequence of the maladministration of the FUND by the FUND or any person, whether by act or omission;
- (c) that a dispute of fact or law has arisen in relation to the FUND between the FUND or any person and the COMPLAINANT; or
- (d) that an EMPLOYER who participates in the FUND has not fulfilled his duties in terms of the rules of the FUND;

but shall not include a COMPLAINT which does not relate to a specific COMPLAINANT.

“CONTINGENCY RESERVE ACCOUNT” shall mean a contingency reserve account as defined in the ACT

“CONTINGENT PENSIONER” shall mean a PENSIONER who is in receipt of, or will receive, a deferred PENSION.

“CONTINUOUS SERVICE” shall mean SERVICE in one unbroken period or the sum of the periods of SERVICE recognized by the BOARD.

“CONTRIBUTIONS” shall mean the amounts paid or payable by a MEMBER to the FUND, exclusive of interest and exclusive of contributions paid in terms of rule 18.

“DEFERRED PENSIONER” shall mean a former MEMBER who has elected to defer the payment of his benefits in terms of rules 28, 29, or 30 to a future date which falls between his fifty fifth and sixty fifth birthdays.

“DEPENDANT”, in relation to a MEMBER or PENSIONER, shall mean –

- (a) a person in respect of whom the MEMBER or PENSIONER is legally liable for maintenance;
- (b) a person in respect of whom the MEMBER or PENSIONER is not legally liable for maintenance, if such person –
 - (i) was, in the opinion of the BOARD, upon the death of the MEMBER or PENSIONER in fact dependent on the MEMBER or PENSIONER for maintenance;
 - (ii) is the spouse of the MEMBER or PENSIONER, including a party to a customary union according to Black law and custom or to a union recognised as a marriage under the tenets of any Asiatic religion;
 - (iii) is a child of the MEMBER or PENSIONER, including a posthumous child, an adopted child and an illegitimate child.
- (c) a person in respect of whom the MEMBER or PENSIONER would have become legally liable for maintenance, had the MEMBER or PENSIONER not died.

“ELIGIBLE CHILD” shall mean a child of a MEMBER or a PENSIONER, and shall include a posthumous child, an adopted child, and a child born out of wedlock recognised by the BOARD; provided the child is under the age of 21

years; or, if he is over that age, is in the opinion of the BOARD, permanently incapacitated by reason of physical or mental infirmity from supporting himself.

“ELIGIBLE EMPLOYEE” shall mean an employee who -

- (i) at the date of becoming a MEMBER, is under the PENSIONABLE AGE;
- (ii) is not a TEMPORARY EMPLOYEE or an employee on the London Office Staff of an EMPLOYER; and
- (iii) if applicable in his case, has completed the period of SERVICE required in terms of rule 11 (1) to become an ELIGIBLE EMPLOYEE.

“EMPLOYER” shall mean Eskom Holdings Limited and any of its subsidiaries and shall include an EXTERNAL EMPLOYER that, with the consent of Eskom Holdings Limited and on terms agreed with the BOARD in terms of rule 16, participating in the FUND; and where the context so requires, EMPLOYER shall mean for any employee, MEMBER, former MEMBER referred to in rule 18 or PENSIONER, the EMPLOYER employing the employee or MEMBER or the EMPLOYER last employing the former MEMBER or PENSIONER.

“EMPLOYER BOARD MEMBER” shall mean a BOARD MEMBER referred to in rule 3.3(1) (a) and (b).

“EMPLOYER SURPLUS ACCOUNT” shall mean an employer surplus account as defined in the ACT.

“ESKOM” shall mean Eskom Holdings Limited, a company duly registered and incorporated with effect from 1 July 2002 in terms of the organized and existing laws of the Republic of South Africa having its principal place of business at Megawatt Park, Maxwell Drive, Sandton, Republic of South Africa.

“EXTERNAL EMPLOYER” shall mean the FUND.

“FINAL AVERAGE EMOLUMENTS” shall mean the annual average of a MEMBER’S PENSIONABLE EMOLUMENTS over the last year of his PENSIONABLE SERVICE or over the months for which contributions were paid in respect of a MEMBER if the MEMBER’S PENSIONABLE SERVICE, is less than one year; provided that, if a MEMBER has been employed part-time during his period of PENSIONABLE SERVICE, his FINAL AVERAGE EMOLUMENTS shall be determined by the BOARD in consultation with the ACTUARY.

“FINANCIAL YEAR” shall mean the periods determined in accordance with the following –

- (a) from the date of registration of the FUND until 31 December 1991, any period of twelve months commencing on 1 January and ending on 31 December of the same year;
- (b) from 1 January 1992 until 30 June 1993; and
- (c) from 1 July 1993 thereafter, any period of twelve months commencing on 1 July and ending on 30 June of the following year.

“FINANCIAL YEAR END” shall mean 30 June of any year.

“FUND” shall mean the Eskom Pension and Provident Fund.

“MARRIAGE” shall mean a MARRIAGE recognised by a South African court of law.

“MEMBER BOARD MEMBER” shall mean a BOARD MEMBER referred to in rule 3.3 (2) (a) and 3.3(3)(a)

“MEMBER” shall mean a person who has remained or become a MEMBER of the FUND in terms of rule 11 or rule 16 and who has not ceased to be a MEMBER under the provisions of these RULES.

“MEMBER SURPLUS ACCOUNT” shall mean a member surplus account as defined in the ACT.

“MINIMUM INDIVIDUAL RESERVE” in respect of a MEMBER shall mean the greater of -

- (i) the fair value equivalent of the present value of the MEMBER’S accrued deferred pension: Provided that-

- (aa) where there is not a uniform rate of accrual over the full period of membership of the FUND, the accrued deferred pension shall be calculated assuming a uniform rate of accrual as if the MEMBER had remained in service until the attainment of his PENSIONABLE AGE ; and

- (bb) the fair value equivalent and the present value shall assume rates of increase in the PENSION before and after retirement, mortality rates and rates of discount as prescribed by the Registrar in terms of section 14B(2)(a)(i)(bb) of the ACT; and

- (ii) an amount equal to the value of the MEMBER’S CONTRIBUTIONS, less such expenses as the BOARD deems appropriate to deduct from the CONTRIBUTIONS, augmented as from 7 December 2001 by interest at a rate which is reasonable in relation to the gross investment return earned by the FUND on the assets backing the FUND’S liability in respect of the MEMBER, nett of such expenses as the BOARD determines should be offset against the gross investment return, plus such share of the EMPLOYER CONTRIBUTIONS paid in respect of the MEMBER as has vested in the MEMBER in terms of the RULES of the FUND, augmented with the same rate of interest: Provided that the BOARD may elect to smooth the interest contemplated in this subsection.

Provided that, for the purposes of determining a MEMBER'S MINIMUM INDIVIDUAL RESERVE, the additional voluntary contributions made by the MEMBER, if any, will not be taken into account. Instead they will be paid in addition to any other benefit to which a MEMBER may be entitled on termination of membership before retirement or taken into account for the purposes of determining the pension to which the MEMBER will be entitled on his or her retirement.

"MINIMUM PENSION INCREASE" in respect of a pensioner shall mean the pension increase determined by the board in terms of rule 32.

"PENSION" shall mean an annual sum payable in monthly instalments to a retired MEMBER, WIDOW, WIDOWER, or ELIGIBLE CHILD in terms of these RULES.

"PENSIONABLE AGE" shall mean a MEMBER'S age at the end of the month in which he attains the age of 65 years.

"PENSIONABLE EMOLUMENTS" shall mean for a MEMBER his salary or wages excluding -

- (a) payments for overtime work; and
- (b) unless specially included by resolution of his EMPLOYER with the consent of the BOARD, all allowances and all other remuneration; provided that:
 - (i) for the purposes of this definition, "salary" or "wages" shall include salary or wages deferred in terms of ESKOM'S Deferred Compensation Scheme;
 - (ii) for a MEMBER referred to in rule 19, his PENSIONABLE EMOLUMENTS during the period referred to in that rule shall be equal to the PENSIONABLE EMOLUMENTS on which he contributes in terms of that rule;

- (iii) if after the date on which he leaves the SERVICE his emoluments are increased with effect from an earlier date, the increase shall be ignored for the purposes of this definition; and
- (iv) for a MEMBER who receives his remuneration in a foreign currency, his salary shall for the purposes of this definition be his salary expressed in rands before conversion to the foreign currency, as notified to him by his EMPLOYER.

“PENSIONABLE SERVICE” shall mean the sum of -

- (i) a MEMBER’S period of PENSIONABLE SERVICE up to 31 December 1986 as defined in the RULES in force on that date;
- (ii) any period made pensionable in terms of rule 16, 21(4), 36(2) or 45 (2).
- (iii) the period of CONTINUOUS SERVICE after 31 December 1986 for which he had paid CONTRIBUTIONS to the FUND;
- (iv) a period of SERVICE determined in terms of rule 18 (8) if such period is PENSIONABLE SERVICE in terms of that rule; and
- (v) for a MEMBER who was in the SERVICE on 1 July 1992, one month for every complete period of twelve months of the total of his PENSIONABLE SERVICE in terms of paragraphs (i), (ii), (iii) and (iv) up to 31 December 1991;

provided that, for the purpose of calculating any benefit, the aggregate PENSIONABLE SERVICE shall be determined in whole months, a month in respect of which a CONTRIBUTION has been paid being counted as a full month.

“PENSIONER” shall mean a person in receipt of a PENSION from the FUND.

“PERFORMANCE BONUS” shall with effect from 1 July 2001 mean the bonus paid by an EMPLOYER to the MEMBER as notified by the EMPLOYER to the

BOARD at the time of payment, in respect of which bonus the BOARD agrees that rules 18(9) and 18(10) shall apply

“PENSION PRESERVATION FUND” shall mean a pension preservation fund as defined in section 1 of the Income Tax Act, 58 of 1962.

“PRINCIPAL OFFICER”, shall mean the officer referred to in section 8 of the ACT.

“RETIREMENT ARRANGEMENT” shall mean –

- (a) the pension fund or provident fund of a MEMBER’s new employer provided that the BOARD is satisfied that the rules of such pension fund or provident fund permit the acceptance of a transfer of the MEMBER’s benefit in terms of rule 45.1;
- (b) a retirement annuity fund as defined in section 1 of the Income Tax Act, 1962; or
- (c) a PENSION PRESERVATION FUND.

“RULES” shall mean the RULES (that is to say the RULES by which the FUND is to be governed in terms of rule 1 etc).

“SECRETARY” shall mean the SECRETARY of the FUND appointed by the BOARD in terms of rule 5.

“SERVICE” shall mean employment in the service of the EMPLOYERS and, if the BOARD approves after consulting the EMPLOYER, service in another organization which is part of a training scheme approved by his EMPLOYER, military service and compulsory national service training, and shall not be regarded as interrupted by authorized leave of absence.

“SPOUSE” shall mean a person who is the permanent life partner or spouse or civil union partner of a MEMBER in accordance with the Marriage Act, 1961, the Recognition of Customary Marriages Act, 1998, or the Civil Union Act, 2006, or the tenets of a religion.

“SUFFICIENT CONSENSUS” shall mean that when at least 75% of the votes are cast in favour of the decision.

“TEMPORARY EMPLOYEE” shall mean a person who is appointed for a specific purpose and whose employment will end when that purpose has been accomplished, or who is appointed for a specific period and whose employment will end at the end of that period.

“THIRTEENTH CHEQUE” shall with effect from 1 July 2001 mean the annual bonus paid by an EMPLOYER to a MEMBER as notified by the EMPLOYER to the BOARD at the time of payment, in respect of which bonus the BOARD agrees that rules 18(9) and 18(10) shall apply,

“TRANSLOCATION BENEFIT” shall mean- a cash payment in terms of rule 28(1), 29(1) or 30(1) which can under the provision of the South African Revenue Service be transferred to a PENSION PRESERVATION FUND.

“WIDOW OR WIDOWER” shall mean the surviving SPOUSE of a MARRIAGE.

BOARD

OBJECT OF BOARD

- 3.1 (1) The object of the BOARD shall be to direct, control and oversee the operations of the FUND in accordance with the applicable laws and the RULES.
- (2) In pursuing its object the BOARD shall-
- (a) take all reasonable steps to ensure that the interests of MEMBERS and PENSIONERS in terms of the RULES and the provisions of the ACT are protected at all times especially in the event of an amalgamation or transfer of any business contemplated in section 14 of the ACT, splitting of the FUND, termination or reduction of contributions to the FUND by an EMPLOYER, increase of CONTRIBUTIONS of MEMBERS and withdrawal of an EMPLOYER which participates in the FUND;
 - (b) act with due care, diligence and good faith;
 - (c) avoid conflicts of interest; and
 - (d) act with impartiality in respect of all MEMBERS or PENSIONERS.

DUTIES OF THE BOARD

- 3.2 (1) The duties of the BOARD shall, *inter alia*, include the duties to -
- (a) ensure that proper registers, books and records of the operations of the FUND are kept, including proper minutes of all resolutions passed by the BOARD;
 - (b) ensure that adequate and appropriate information is communicated to the MEMBERS and PENSIONERS of the FUND informing them of their rights, benefits and duties in terms of the RULES;
 - (c) take all reasonable steps to ensure that the contributions are paid timeously to the FUND in accordance with the ACT;
 - (d) obtain expert advice on matters in respect of which the BOARD may lack sufficient expertise;
 - (e) ensure that the RULES and the operation and administration of the FUND comply with the ACT, the Financial Institutions (Protection of Funds) Act, 2001, and all other applicable laws, and any other duties imposed by the RULES;
 - (f) procure that any contributions or other money received by the FUND shall, pending the investment or application thereof in accordance with the RULES, be deposited into the banking account not later than the first business day following the day on which the FUND received the contribution or other money;
 - (g) in consultation with the AUDITOR, take such measures as would ensure the efficient and secure operation of the banking account;

- (h) take such measures as may be prudent to protect the assets of the FUND and pay only such benefits as are provided for in the RULES;
- (i) ensure that -
 - (i) the investments shall be made in accordance with sound financial principles and an investment policy and strategy developed by the BOARD;
 - (ii) the investment policy and strategy shall have due regard to the income needs and long term interests of the FUND and its MEMBERS and PENSIONERS and shall include guidelines on the investment objectives of the FUND, the nature of the investments appropriate to the liabilities of the FUND, the type of investments permitted or not permitted and provision for appropriate performance reviews;
- (j) institute effective control and risk management measures in respect of the investments of the FUND and ensure compliance with its investment policy and strategy;
- (k) should the investment policy and strategy allow for the investment of assets in a financial instrument as defined in the Financial Markets Control Act of 1989, that is to say a futures contract, an option contract, loan stock or any instrument declared by the REGISTRAR by notice in the Government Gazette to be a financial instrument, take such precautions as may be prudent to control the risks associated with investments in such instruments. Provided that this duty shall not in any way derogate from the general duty of the BOARD to take due care in investing and protecting the moneys of the FUND;
- (l) establish a nominee or other company or trust in accordance with legislation to cater as appropriate for the business of the FUND.

- (2) The reference to the specific duties of the BOARD in sub-rule (1), shall not in any way derogate from the other common law and statutory duties of the BOARD or of a BOARD MEMBER.

CONSTITUTION, APPOINTMENT AND ELECTION OF THE BOARD

- 3.3(1) The BOARD shall be comprised of fourteen BOARD MEMBERS, constituted as follows:

EMPLOYER BOARD MEMBERS

- 3.3(1)(a) A non-executive CHAIRMAN appointed by ESKOM subject to the approval of the BOARD.
- (b) Six trustees appointed by ESKOM, one of whom shall be deemed by ESKOM to be an expert.

MEMBER BOARD MEMBERS

- 3.3(2)(a) Two PENSIONERS trustees shall be elected by the PENSIONERS.
- (b) The persons elected shall be ranked according to the number of votes received.
- (c) The first two persons with the highest votes shall be PENSIONER trustees.
- (d) The next two persons with the highest votes after the two PENSIONER trustees shall be available to replace the two PENSIONER trustees should they be temporarily unable to act in that capacity.
- 3.3(3)(a) Five member trustees shall be elected by the MEMBERS of whom at least two trustees shall be non-bargaining unit MEMBERS and the other three trustees will be elected from the labour organizations recognized by ESKOM to be representing employees, provided that those trustees as

elected from the said labour organizations, may not be MEMBERS of the FUND.

- (b) The persons elected shall be ranked according to the number of votes received.
- (c) The first two persons with the highest votes from the non-bargaining unit shall become the MEMBER trustees.
- (d) The next two persons with the highest votes after the persons referred to in (c) above, shall be available to replace the said MEMBER trustees should they be temporarily unable to act in that capacity.
- (e) The first persons with the highest votes from each of the three labour organisations shall become the MEMBER trustees .
- (f) The next persons with the highest votes after the persons referred to in (e) above from each of the three labour organisations shall be available to replace the said MEMBER trustees should they be temporarily unable to act in that capacity.

TERM OF OFFICE OF THE BOARD AND ELECTION OF THE BOARD

- 3.4 (1) The term of office of the BOARD shall be four years. The election of the MEMBER BOARD MEMBERS shall be conducted by secret ballot in accordance with the policies and procedures determined by the BOARD from time to time and such elections shall be held every four years. The BOARD may extend the term of office by an additional six months for the MEMBER BOARD MEMBERS.
- (2) A BOARD MEMBER may not serve as such for a period of more than two (2) consecutive terms.

REPLACEMENT OF BOARD MEMBERS AND FILLING OF VACANCIES

- 3.5 (1) An EMPLOYER BOARD MEMBER may at any time, be replaced by ESKOM on reasonable grounds.

- (2) An EMPLOYER BOARD MEMBER may resign from his position by giving ESKOM and the CHAIRMAN at least 30 days written notice to that effect. In such an event ESKOM shall appoint another BOARD MEMBER, to succeed him.
- (3) A BOARD MEMBER referred to in rule 3.3 (2) (a), and 3.3(3)(a) may resign from his position by giving the CHAIRMAN at least 30 days written notice to that effect. In such an event the respective person with the highest votes in terms of rules 3.3.2(d), 3.3(3)(d) or 3.3(3)(f) will fill the vacancy.
- (4) Save as otherwise provided, a BOARD MEMBER shall cease to hold office if :-
 - (a) two-thirds of the BOARD MEMBERS resolve that he is to be removed from office because of a breach of his fiduciary duty towards the FUND or its MEMBERS and PENSIONERS, after having given him a fair hearing, conducted by the BOARD or a committee of the BOARD; or
 - (b) he has failed to attend two consecutive BOARD meetings without the prior approval of the CHAIRMAN upon good cause shown by such BOARD MEMBER.
 - (c) a MEMBER who is elected as a BOARD MEMBER in terms of rule 3.3(2) (d) shall cease to hold office if he ceases to be in SERVICE or if he ceases to be a member of the said labour organisation.
- (5) A vacancy which arises as a result of a BOARD MEMBER ceasing to hold office in terms of sub-rule (4) during the term of the BOARD, shall be filled -
 - (a) in the case of a BOARD MEMBER referred to in rule 3.3(1) by ESKOM;

- (b) in the case of a BOARD MEMBER referred to in rule 3.3(2)(a), or 3.3(3)(a) by the respective persons with the highest votes referred to in rules 3.3(2)(d), 3.3(3)(d) or 3.3(3)(f).
- (6) A vacancy on the BOARD shall in no case invalidate any proceedings of the BOARD.

MEETING OF THE BOARD

- 4 (1) The BOARD shall meet on such dates as it shall determine from time to time to conduct the business of the FUND; provided that it shall meet at least four times during each FINANCIAL YEAR.
- (2) The CHAIRMAN may convene a special meeting of the BOARD if he regards it as necessary and shall convene such a meeting within 15 days when requested by at least four of the BOARD MEMBERS. Provided that the fifteen days' notice shall be waived if all BOARD MEMBERS agree thereto.
- (3) Save as otherwise hereinafter provided, the CHAIRMAN shall cause at least fifteen days' notice to be given of every BOARD meeting (whether it be a meeting referred to in (1) or (2) above), specifying the place, date and time of the meeting, as well as the general nature of the business to be transacted at the meeting.
- (4) It shall be deemed that proper notice of the meeting has been given to a BOARD MEMBER if -
 - (a) the notice has been delivered at the work or home address of the BOARD MEMBER to -
 - (i) the BOARD MEMBER; or
 - (ii) his superior; or
 - (iii) a person subject to his authority; or
 - (iv) a member of his household.

or

- (b) the notice has been posted to the work or home address of the BOARD MEMBER;

or

- (c) the notice has been transmitted by telefax to a fax number provided by the BOARD MEMBER to the CHAIRMAN;

or

- (d) the contents of the notice have been telephonically brought to the attention of the BOARD MEMBER.

- (5) The period of fifteen days shall commence to run on the day that the notice has been delivered, transmitted by telefax or the contents thereof conveyed by telephone to the BOARD MEMBER or, in the case of the notice having been posted, on the third day after the posting thereof.
- (6) The inadvertent failure by the CHAIRMAN to give notice to any BOARD MEMBER of a meeting, as aforesaid, shall not invalidate any meeting or any resolution passed thereat.
- (7) A minimum of eight BOARD MEMBERS present shall form a quorum; provided that at least fifty percent of the BOARD MEMBERS shall be made up of EMPLOYER BOARD MEMBERS and MEMBER BOARD MEMBERS respectively.
- (8) If a quorum is not present within thirty minutes from the time determined for the start of the BOARD meeting, the meeting shall be adjourned by the CHAIRMAN of the meeting for a period of at least one week.
- (9) The meetings of the BOARD shall be chaired by the CHAIRMAN. Whenever the CHAIRMAN is temporarily absent or for any reason is unable to perform his functions as CHAIRMAN of a meeting, the BOARD shall elect a person from among its ranks to act as CHAIRMAN during the absence or unavailability of the CHAIRMAN. The CHAIRMAN of a BOARD meeting shall be responsible for the orderly conduct of the meetings and may suspend or exclude from a meeting any BOARD

MEMBER who deliberately ignores the authority of the CHAIRMAN or who interferes with the orderly functioning of the BOARD.

- (10) The CHAIRMAN of the BOARD meeting shall cause minutes to be kept of all meetings held by the BOARD. If the minutes are signed by the person who chaired the meeting, they shall constitute *prima facie* evidence of the business transacted at the meeting.

DECISION MAKING BY THE BOARD

- 4.1 (1) At all meetings of the BOARD, decisions shall be made on the following basis:-
- (a) The CHAIRMAN shall under all circumstances only have an ordinary vote;
 - (b) In respect of a procedural matter with regard to a BOARD meeting, a decision shall be taken by a majority of the votes (that is to say 50% plus one);
 - (c) In respect of all other matters, a decision shall be taken as set out in rules (2) to (10) below,

Where it is obligatory that a decision be taken

- (2) A decision on a matter in respect of which it is obligatory in law or in terms of the RULES that a decision be taken by the BOARD, shall be taken by SUFFICIENT CONSENSUS.
- (3) If sufficient consensus cannot be obtained, the matter shall be referred to an arbitrator decided upon by the BOARD by SUFFICIENT CONSENSUS.
- (4) Should the BOARD not be able to take a decision on the person to be nominated as the arbitrator, the arbitrator shall be appointed by the AUDITOR.

- (5) The decision of the arbitrator shall be final and binding upon the parties and for all intents and purposes be deemed to be the decision of the BOARD.

Where the status quo ante can be retained

- (6) All other decisions tabled for decision-making by the BOARD, (that is to say where it is not obligatory in law or in terms of the RULES that a decision must be taken and the *status quo ante* can be retained), shall be by SUFFICIENT CONSENSUS.
- (7) If SUFFICIENT CONSENSUS cannot be obtained at that meeting, the *status quo ante* shall remain.
- (8) For the purposes of the application of this rule, it shall be regarded that the BOARD has taken a decision by SUFFICIENT CONSENSUS.
- (9) A question whether it is obligatory that a decision be taken (as contemplated in rule 4.1 (2)) or whether a decision is not obligatory (as contemplated in rule 4.1(6)) shall be decided by SUFFICIENT CONSENSUS.
- (10) If SUFFICIENT CONSENSUS cannot be obtained in respect of the question contemplated in rule 4.1 (9) at the first tabling of such question, the matter shall be referred to the next meeting of the BOARD. If SUFFICIENT CONSENSUS cannot be reached at that meeting, the CHAIRMAN shall refer such question to an admitted attorney or advocate with at least five years experience in the field of retirement fund law for an opinion. The attorney or advocate so instructed shall deliver his opinion before the next BOARD meeting and such opinion shall finally decide the question contemplated in rule 4.1 (9).
- (11) Voting by the BOARD shall be by show of hands or, if requested by any BOARD MEMBER present or represented at the meeting, by secret ballot.

- (12) An attendance register must be signed by all the BOARD MEMBERS present at each meeting of the BOARD.
- (13) If a decision is not taken at a meeting of the BOARD, but instead by “round robin resolution”, such decision shall be effective as if it had been passed at a meeting of the BOARD duly convened and held, provided that:-
 - (a) there is SUFFICIENT CONSENSUS amongst the BOARD MEMBERS in favour of the decision;
 - (b) the resolution is tabled at the next meeting of the BOARD and is noted in the minutes of such meeting.
- (14) A BOARD MEMBER who has a direct or indirect financial interest in a decision to be taken by the BOARD shall disclose this interest before any discussion of the matter and shall not be present during such discussion and shall not vote on the matter.

APPOINTMENT BY BOARD

- 5 (1) The BOARD shall appoint the PRINCIPAL OFFICER of the FUND and may appoint a SECRETARY and other officers of the FUND for such periods as they determine and may withdraw any such appointment and make another appointment in its place.
- (2) The BOARD shall determine the scope of the officer’s duties.
- (3) The BOARD shall appoint an ACTUARY and an AUDITOR for such periods as they determine, and may withdraw any such appointment and make another appointment in its place.

DELEGATION BY BOARD

- 6 (1) The BOARD may delegate any of its powers to another person or a committee of the BOARD, with the power to sub-delegate such power; unless the empowering instrument (e.g. the statutory provision or rule) on a proper construction thereof is to the effect that the power may not be delegated; provided that the BOARD will still remain accountable for the conduct of such a committee or person.
- (2) For purposes of the interpretation of the RULES, it shall be deemed that when a rule empowers the BOARD to perform a function or duty, that the BOARD may delegate the power concerned in terms of sub-rule (1) above, unless the context clearly indicates otherwise.

INDEMNITY

- 7 Every BOARD MEMBER and every officer of the FUND shall be indemnified by the FUND against all proceedings, costs and expenses incurred by reason of any claim in connection with the FUND, not arising from their gross negligence, recklessness, intentional unlawful acts, dishonesty or fraud.

REMUNERATION OF THE BOARD

- 7.1 (1) The BOARD MEMBERS shall receive from the FUND such remuneration and allowances as the BOARD may from time to time determine in concurrence with the Audit Committee of the BOARD.
- (2) Any such payments shall be regarded as an expense within the meaning of rule 34.

INDEMNITY BY THE BOARD

- 8 The BOARD shall indemnify the FUND against any loss resulting from the negligence, dishonesty or fraud of any of its officers or trustees, provided that loss from negligence shall not include a loss or shortfall arising:
- (a) on the realization of a bona fide investment made in accordance with rule 33;
 - (b) from a lower than anticipated return on any investment;
 - (c) as a result of the payment of any benefits in terms of these RULES;

POWERS OF THE BOARD

- 9 (1) The BOARD shall be entitled, in its absolute discretion, to make any arrangements and regulations for the administration of the FUND and to do anything not inconsistent with the ACT or these RULES that, in their opinion, is for the benefit or protection of MEMBERS and beneficiaries.
- (2) The BOARD shall, subject to the RULES, have all such powers as may be exercised by the FUND in terms of rule 1 and any powers specifically granted to the BOARD in the RULES, provided that such specific powers shall not in any way be construed as derogating from the general powers of the FUND as a juristic person.
- (3) The BOARD may in accordance with the provisions of section 14 of the ACT amalgamate any business carried on by the FUND with any business carried on by any other person, or transfer any business carried on by the FUND to any other person, or accept transfer of any business from any other person to the FUND, provided that -
- (a) the BOARD shall procure that a written notice, setting out full details of the proposed scheme, be sent to every MEMBER and PENSIONER who will be affected thereby, at least 30 days prior to submitting the scheme to the REGISTRAR; and

- (b) the scheme has been approved by every EMPLOYER which will be affected by the scheme.

DISPUTES

- 10
- (1) If a dispute arises between the FUND and a COMPLAINANT in respect of the interpretation of the RULES or payment of any benefit, the COMPLAINANT may lodge a COMPLAINT with the FUND and shall in that event put the basis for the dispute in writing and deliver it to either -
 - (a) the PRINCIPAL OFFICER at the postal address of the FUND; or
 - (b) the human resources department of ESKOM who shall immediately upon receiving the COMPLAINT deliver it to the PRINCIPAL OFFICER at the postal address of the FUND.
 - (2) The PRINCIPAL OFFICER or his delegate shall in his sole discretion refer the dispute to
 - (a) the BOARD or an appropriate Committee of the BOARD for consideration and decision; or
 - (b) an appropriate officer or employee of the FUND; or
 - (c) an appropriately qualified independent person or body.
 - (3) If a dispute is referred to the BOARD, the BOARD shall deal with the dispute as an obligatory issue in terms of rule 4.1(2).
 - (4) If a dispute is referred to an employee or officer of the FUND or to an independent person or body, such employee or officer or person or body shall attempt to resolve the dispute, and, if unsuccessful, shall request the PRINCIPAL OFFICER or his delegate, to deal with the matter in terms of sub-rule (2)(a).

- (5) The PRINCIPAL OFFICER or his delegate shall, unless the matter is resolved, inform the COMPLAINANT in writing within 30 days after the receipt of the COMPLAINT of the decision taken on behalf of the FUND in terms of this rule.
- (6) If the COMPLAINANT is not satisfied with the decision referred to in sub-rule (2) above, or if the PRINCIPAL OFFICER fails to reply to the matter within the 30 day period, the COMPLAINANT may lodge the COMPLAINT with the ADJUDICATOR in terms of section 30A of the ACT.

MEMBERSHIP

ADMISSION TO MEMBERSHIP

- 11 (1) The BOARD may lay down as a rule for any category of employees that eligibility for membership of the FUND shall be conditional on the employee completing a specified period of SERVICE with an EMPLOYER.
- (2) Every MEMBER who on 31 December 1986 was a MEMBER or a CONTINGENT PENSIONER shall remain a MEMBER or a CONTINGENT PENSIONER, as the case may be.
- (3) Every employee in SERVICE on 30 June 1976 who was not a MEMBER on that date but on or after 1 July 1976 became an ELIGIBLE EMPLOYEE shall have the right to elect to become a 1976 MEMBER on the following conditions:
 - (a) he shall pay to the FUND from the date of his admission to membership the MEMBER'S CONTRIBUTIONS payable in terms of the RULES;
 - (b) his CONTINUOUS SERVICE, including any qualifying period up to the date when he becomes a contributory MEMBER shall be PENSIONABLE SERVICE;
 - (c) his election shall be exercised in writing to the BOARD within two months of the date when he becomes an ELIGIBLE EMPLOYEE or within such extended period as the BOARD may allow, and such election shall be irrevocable.
- (4) Every person who joins the SERVICE of an EMPLOYER on or after 1 January 1987 and who becomes an ELIGIBLE EMPLOYEE shall become a 1987 MEMBER.

CHANGE OF CLASS

- 12 (1) A 1950 MEMBER may elect by notifying the FUND in writing at least six months before reaching the age of 60 years, to become a 1952 MEMBER or a 1964 MEMBER; provided that a MEMBER who has so elected may, subject to the consent of the BOARD, at any time before the said date revert to being a 1950 MEMBER.
- (2) A 1952 MEMBER may elect by notifying the FUND in writing at least six months before reaching the age of 63 years, to become a 1964 MEMBER; provided that a MEMBER who has so elected may, subject to the consent of the BOARD, at any time before the said date revert to being a 1952 MEMBER or, if applicable, a 1950 MEMBER.
- (3) A 1950 MEMBER, a 1952 MEMBER, a 1964 MEMBER, a 1976 MEMBER or a C MEMBER may elect irrevocably by notifying the FUND in writing to become a 1987 MEMBER provided that such election shall be made no later than 31 March 2001 after which date no MEMBER shall be entitled to elect to become a 1987 MEMBER.

CESSATION OF MEMBERSHIP

- 13 (1) A MEMBER shall not be permitted to withdraw from his membership while he remains in the SERVICE.
- (2) A MEMBER who for any reason leaves the SERVICE or who attains the PENSIONABLE AGE shall forthwith cease to be a MEMBER.

REQUIREMENTS OF MEMBERS

- 14 (1) When required by the BOARD, a MEMBER shall produce a birth certificate or other satisfactory evidence of age for himself and for his wife and ELIGIBLE CHILDREN, or if she is a 1976 or a 1987 female

MEMBER, her husband, and shall give the BOARD such other information as they require for the purposes of the FUND.

- (2) If any MEMBER fails to comply with the provisions of subsection (1) the BOARD may withhold payment of any benefit due to or in respect of him until the provisions are complied with.

RIGHT TO DOCUMENTS

- 15 (1) Every MEMBER shall -
- (i) be given a summary of these RULES;
 - (ii) be entitled to receive, free on demand, a copy of the RULES of the FUND inclusive of appendices;
 - (iii) be entitled to receive, free on demand, a copy of the last revenue account and balance sheet.
- (2) Every MEMBER shall be entitled to inspect at the registered office of the FUND, any of the documents mentioned in section 35 (2) of the ACT.

NEW EMPLOYERS

- 16 Notwithstanding anything in these RULES, if any company or organization decides, with the consent of ESKOM, to participate in the FUND, the BOARD, after consulting the ACTUARY, shall have power to make such financial and other arrangements and impose such conditions as they think fit, to ensure that the admission of the employees of that EMPLOYER to membership of the FUND shall not be to the disadvantage of the existing MEMBERS; and in particular the BOARD may require the new EMPLOYER to pay such initial contribution to the FUND as is certified by the ACTUARY to be necessary.

CONTRIBUTIONS

MEMBERS' CONTRIBUTIONS

- 17 (1) Subject to the provisions of this rule and rule 19, every MEMBER shall contribute to the FUND 7, 3% of his PENSIONABLE EMOLUMENTS.
- (2) No contributions shall be payable by a MEMBER for any period of SERVICE after attaining the PENSIONABLE AGE.
- (3) A MEMBER'S contributions shall be deducted by his EMPLOYER from his salary or wages and paid to the FUND as prescribed in the ACT.
- (4) For any month an EMPLOYER may, for the purposes of subsection (5), recognize a date during that month in respect of each of its business units as the "cut-off date" in that month for that business unit.
- (5) If, in the month in which a person becomes or ceases to be a MEMBER, he is a MEMBER in the SERVICE on the cut-off date for the business unit in which he is employed, his contribution for that month shall be equal to the contribution that he would have paid if he had been a MEMBER in the SERVICE throughout that month; otherwise, no contribution shall be payable by him for that month.

ADDITIONAL CONTRIBUTIONS

- 18 (1) A MEMBER may undertake to pay voluntary contributions to the FUND for the purpose of adding such additional benefits as the BOARD, in terms of this rule, determine.
- (2) A record shall be maintained in respect of each MEMBER'S voluntary contributions, to which, after deduction of any administration expenses, shall be added such interest and bonus as the BOARD, acting on the advice of the ACTUARY, determine.

- (3) If a MEMBER retires or is retired from the SERVICE and becomes entitled to a PENSION or if a MEMBER dies and a PENSION becomes payable in respect of him, the amount of the voluntary contributions accumulated with interest and bonus in terms of subsection (2) of this rule shall be utilized to provide such additional PENSION as the BOARD, after consulting the ACTUARY, determine. Provided that the BOARD may commute for a lump sum the whole or part of the PENSION subject to the provisions of rule 27.
- (4) If a MEMBER leaves the SERVICE in circumstances in which he becomes entitled to a lump sum benefit in terms of rule 28, or if a MEMBER dies and no PENSION becomes payable in respect of him, the amount of his voluntary contributions accumulated with interest and bonus in terms of subsection (2) of this rule shall be added to the lump sum benefits payable to or in respect of him.
- (5) If a MEMBER leaves the SERVICE in circumstances in which he becomes entitled to a lump sum benefit in terms of rule 29 or 30, the amount of his voluntary contributions accumulated with interest in terms of subsection (2) of this rule shall be added to the lump sum benefit payable to or in respect of him
- (6) A DEFERRED PENSIONER who has made an election in terms of rule 28(2), 29(2) or 30(2) and who has attained the age of 55 years may elect to receive in cash not more than one-third of the amount of the voluntary contributions accumulated with interest and bonus in terms of subsection (2) mutatis mutandis, subject to the provisions of rule 27. The balance shall be utilized to provide him with a PENSION as set out in paragraph (a), (b) or (c) below, whichever is applicable:
 - (a) If the DEFERRED PENSIONER is a partner to a MARRIAGE at the date of commencement of the PENSION, provision shall be made for a PENSION equal to 60 per cent of the DEFERRED

PENSIONER'S PENSION to become payable to and for the lifetime of the DEFERRED PENSIONER'S WIDOW or WIDOWER on the DEFERRED PENSIONER'S subsequent death, provided such WIDOW or WIDOWER is the person to whom the former MEMBER was married at the date the PENSION commenced; or

(b) If the DEFERRED PENSIONER is not a partner to a MARRIAGE at the date of commencement of the PENSION, such PENSION shall cease on the subsequent death of the DEFERRED PENSIONER; or

(c) Irrespective of whether the DEFERRED PENSIONER is a partner to a MARRIAGE at the date of commencement of the PENSION, if there are ELIGIBLE CHILDREN, provision shall be made for PENSIONS to be payable to such ELIGIBLE CHILDREN on terms equivalent to those set out in rule 26.

If he dies before such amount has been utilized, it shall be used by the BOARD, to provide lump sum benefits for his dependants subject to the provisions of section 37 C of the ACT.

(7) Whenever additional benefits are provided in terms of this rule, the BOARD shall, after consulting the ACTUARY, determine the period of SERVICE in respect of which such benefits are provided. Where such SERVICE is determined in respect of payments made in terms of subsection (1) it shall be PENSIONABLE SERVICE only if the MEMBER becomes entitled to an immediate PENSION in terms of these RULES. If such SERVICE is determined in respect of a MEMBER who has made an election in terms of rule 28, 29 or 30, such SERVICE shall be PENSIONABLE SERVICE only for the purpose of rule 26 (3) (b).

- (8) Whenever a PERFORMANCE BONUS is paid to a MEMBER, his EMPLOYER shall deduct from it an amount equal to the contribution that the MEMBER would in terms of these RULES have been required to make in respect of that bonus had it been a payment of PENSIONABLE EMOLUMENTS. At the specific request of the EMPLOYER in respect of a MEMBER, and subject to the agreement of the BOARD to such specific request, subsections (9), (10) and (11) shall apply mutatis mutandis in respect of a THIRTEENTH CHEQUE paid to such MEMBER.
- (9) Whenever an EMPLOYER deducts an amount from a PERFORMANCE BONUS or THIRTEENTH CHEQUE in terms of subsection (8), he shall pay such amount to the FUND, together with the amount that he would in terms of these RULES have been required to contribute in respect of that bonus had it been a payment of PENSIONABLE EMOLUMENTS
- (10) Any amount paid to the FUND in terms of subsection (9) shall be deemed to be a voluntary contribution paid by the MEMBER on the date on which the PERFORMANCE BONUS or THIRTEENTH CHEQUE is paid.
- (11) In the determination of an amount to be paid to a MEMBER on the winding up of the FUND in terms of rules 44 or 45, account will be taken of the amount of his voluntary contributions, if any, in terms of subsection (2) of this rule

CONTRIBUTIONS DURING LEAVE

- 19 A MEMBER who is on leave with full pay or with pay less than full pay or without pay or is temporarily laid off without pay shall continue during the period of such leave or lay-off to contribute on his full PENSIONABLE EMOLUMENTS before such leave or lay-off.

20 deleted

EMPLOYERS' CONTRIBUTIONS

- 21 (1) Each EMPLOYER shall contribute to the FUND, subject to the provisions of rule 17 (5) mutatis mutandis and of rule 36, amounts equal to 12,25% of the PENSIONABLE EMOLUMENTS of those of his employees who are MEMBERS and in addition 1,25% of the PENSIONABLE EMOLUMENTS of those of his employees who are 1976, C and 1987 MEMBERS; provided that the contributions payable by the EMPLOYERS may be reduced for such period and by such amounts as, on the advice of the ACTUARY, the BOARD, with the concurrence of ESKOM, may decide. The EMPLOYERS' contributions together with the corresponding contributions deducted from the salaries and wages of the MEMBERS shall be paid directly to the FUND within a period of seven days after the expiry of the period in respect of which the contributions are being paid. The BOARD shall, not later than the first business day following the day on which the FUND received the contributions, deposit the contributions in the banking account operating in the name of the FUND in terms of rule 33(1).
- (2) An EMPLOYER shall pay to the FUND in respect of PENSIONS granted in terms of RULE 28(1), (2), (3) or (4) such portion of the amount estimated by the ACTUARY as required to cover the additional liability incurred by the granting of such PENSIONS to MEMBERS in his SERVICE
- (3) The EMPLOYERS may make special payments to the FUND of such amounts as ESKOM may from time to time determine, on the advice of the ACTUARY, to provide the benefits prescribed herein.
- (4) An EMPLOYER may make a special payment to the FUND in order to add to the PENSIONABLE SERVICE of a MEMBER in his employ such

period of past SERVICE as the BOARD, after consulting the ACTUARY, determine.

BENEFITS

PENSION RATE

- 22 Subject to these RULES, the annual PENSION payable to a retired MEMBER shall be $1,085/600$ of his FINAL AVERAGE EMOLUMENTS per month of PENSIONABLE SERVICE.

RETIREMENT AT THE PENSIONABLE AGE

- 23 A MEMBER who has attained the PENSIONABLE AGE shall retire from the SERVICE and cease to be a MEMBER.

EARLY RETIREMENT

- 24 Notwithstanding the provisions of rule 23, a MEMBER may retire from the SERVICE after attaining the age of 55 years, in which case he shall be entitled, as from the date of his retirement, to a PENSION in respect of his PENSIONABLE SERVICE to the date of retirement calculated in terms of rule 22 reduced by a factor equal to thirteen-fortieths of one per cent for each month by which the period from the date of his retirement to the date on which he would have attained the PENSIONABLE AGE exceeds twenty-four months. The reduction factor may be waived at the discretion of the EMPLOYER subject to the payment to the FUND by the EMPLOYER of an amount determined by the ACTUARY as required to cover the additional liability so incurred by the FUND.

ILL-HEALTH RETIREMENT

Definition of "Disabled"

- 25 (1) For the purposes of this rule, "disabled" means, on a balance of probabilities, a MEMBER who is still in SERVICE and who is permanently incapable as a result of infirmity of body or mind, of performing the duties of –

- (a) the occupation or post in which the MEMBER was employed by the EMPLOYER at the time that the disability arose or was caused (whichever is the earlier), or
- (b) any other reasonable alternative occupation or post in his EMPLOYER's business for which he is or may become suitable by virtue of his education, training, experience and/or ability.

Provided that a MEMBER shall not satisfy the requirements of disability in terms of this rule 25(1) and shall not be regarded as being disabled if maximum medical intervention has not been attained in respect of his condition/s on the basis of which his application for the disability benefit is based, or where a MEMBER refused to undergo medical treatment prescribed by a medical doctor to cure or improve the MEMBER'S medical condition, and "disabled" and "disability" shall bear corresponding meanings.

Provided further that in the opinion of the BOARD based on any recommendation it has received from the medical panel appointed by the BOARD and if necessary any further independent medical advice as it deems it necessary to obtain, and notwithstanding anything to the contrary contained in the rules and without limiting the right of exclusion for other reasons, if the MEMBER becomes disabled during the first five years of his membership of the FUND, disablement directly or indirectly caused or accelerated by any injury or illness in respect of which the MEMBER received medical or surgical treatment, or about which the MEMBER could reasonably have been expected to have known during the six months prior to the commencement of his membership, shall not be regarded as disablement for the purposes of the RULES.

Disability Pension

- (2) Subject to sub-rule (5) hereof, a MEMBER who –
 - (a) has not attained the PENSIONABLE AGE;
 - (b) in terms of sub-rule (4) hereof, is determined to be disabled;

and

- (c) has been retired from the SERVICE on grounds of disability; shall be entitled to a PENSION calculated in terms of rule 22 with effect from the last day of the month following that in which the determination referred to in sub-rule (4) hereof is made.
- (3) For the purposes of determining the PENSION referred to in sub-rule (2) hereof, the MEMBER's PENSIONABLE SERVICE shall be deemed to be the aggregate of –
- (a) his PENSIONABLE SERVICE to the date of his disablement;
and
 - (b) 75% of the SERVICE that he would have completed from that date if he had remained in the SERVICE to the date on which he would have attained the PENSIONABLE AGE.

Determination of Disability Status

- (4) The BOARD in consultation with the medical panel appointed by it, if the function referred to in this rule is delegated to such a person, shall in its or his sole discretion determine whether or not a MEMBER is disabled for the purposes of this rule and the date upon which such disablement, if any, commenced. The BOARD, or the claims assessor, as the case may be, shall make its or his decision after –
- (a) considering such medical evidence as to the state of the MEMBER's health as may be supplied to it or him;
 - (b) consulting the MEMBER's EMPLOYER;
 - (c) consulting the MEMBER; and

- (d) having due regard to the disability assessment procedures established by the BOARD from time to time
- (e) having established from the medical evidence provided by the MEMBER and if necessary from an independent medical doctor that the MEMBER has reached a stage of maximum medical intervention and his/her condition has not improved.

For the purposes of this rule maximum medical intervention shall mean the surgical procedure or medical treatment recommended by a doctor or the surgical procedure or medical treatment prescribed by an independent medical doctor which procedure/treatment has in no way improved the MEMBER'S condition.

Pre-Disability Medical Testing

- (5) The BOARD shall be entitled to require an employee within six months of the date on which he became a MEMBER to submit to a comprehensive medical examination by one or more medical practitioners selected by the FUND and at the cost of the FUND. The purpose of the examination shall be to ensure the fair distribution of disability benefits. The BOARD shall request the medical practitioner or practitioners to report to the FUND on the MEMBER's health and to make recommendations as to any benefit restrictions which should be imposed upon the MEMBER in the light thereof. The BOARD shall in its sole discretion decide on the evidence whether or not and in what form such benefit restrictions should be imposed upon the MEMBER. Provided that irrespective of such benefit restrictions the MEMBER shall be entitled to make an election in terms of sub-rule (8) hereof.

- (6) The BOARD shall have the power to relax, waive or vary any benefit restrictions imposed on the MEMBER in terms of sub-rule (5) hereof. Provided that the MEMBER shall nevertheless be entitled to make an election in terms of sub-rule (8) hereof. Provided further, that the benefit restrictions shall not apply if the MEMBER is determined in terms of sub-rule (4) hereof to be disabled as the result of an accident.

No employment rights conferred by this rule

- (7) Nothing in this rule shall be construed as conferring on a MEMBER any rights by his EMPLOYER in regard to his past or future employment, if any, or the termination thereof.

Benefit applicable to a MEMBER who is not "disabled" as defined

- (8) If, in the opinion of the BOARD based on such medical advice as it deems it necessary to obtain and notwithstanding anything to the contrary contained in the RULES and without limiting the right of the BOARD to impose benefit restrictions for other reasons, the MEMBER becomes disabled during the first five years of his membership of the FUND, and his disability is directly or indirectly caused or accelerated by any injury or illness in respect of which the MEMBER received medical or surgical treatment, or about which the MEMBER could reasonably have been expected to have known during the six months prior to the commencement of his membership, the MEMBER shall be entitled to elect either –
- (a) a benefit equal to the actuarial value of his benefits in respect of his SERVICE as determined by the ACTUARY;
- or
- (b) a PENSION equal to 50% of the PENSION calculated in terms of sub-rule (2) hereof;

together with the amount of his voluntary contributions in terms of sub-rule 18(3) at the date upon which his SERVICE is terminated.

DEATH

26 (1) In this rule -

- (i) “specified percentage” shall at any time mean the percentage in the following table which accords with the number of ELIGIBLE CHILDREN at that time and whether there is at that time a WIDOW or WIDOWER or not:

WIDOW or WIDOWER	Number of ELIGIBLE CHILDREN	Percentage
Yes	0	60
	1	90
	2 or more	100
No	1	60
	2 or more	100

provided that whenever the BOARD are satisfied that under the provisions of subsection (7) of this rule rightful claimants from more than one MARRIAGE exist, the specified percentage shall not exceed 100%;

- (ii) “potential PENSION” shall mean in the case of a MEMBER a PENSION equal to the proportion shown in rule 22 of his FINAL AVERAGE EMOLUMENTS per month of the PENSIONABLE SERVICE that he would have completed if he had remained in the SERVICE to the date on which he would have attained the PENSIONABLE AGE; or in the case of a PENSIONER the PENSION to which he became entitled on retirement before commutation, if any, including the increases subsequently granted in terms of these RULES.

- (2) Subject to Section 37C of the ACT, if a MEMBER dies in the SERVICE before attaining the PENSIONABLE AGE, the benefits set out in paragraph (a) or (b) below, whichever is applicable shall be paid:
- (a) if a WIDOW or WIDOWER or ELIGIBLE CHILD is left, there shall be paid to or for such person:
- (i) a lump sum equal to twice his annual PENSIONABLE EMOLUMENTS; and
- (ii) a PENSION, the amount of which shall at any time be equal to the specified percentage of the MEMBER'S potential PENSION at that time, as set out in this rule;
- (b) if neither a WIDOW or WIDOWER nor any ELIGIBLE CHILD is left, there shall be paid to his DEPENDANTS, if any, a lump sum equal to the greater of (i) or (ii);
- (i) (aa) his annual PENSIONABLE EMOLUMENTS;
plus
- (bb) 10% of his FINAL AVERAGE EMOLUMENTS per year of PENSIONABLE SERVICE; or
- (ii) twice his annual PENSIONABLE EMOLUMENTS.
- (3) Subject to Section 37C of the ACT, when a PENSIONER dies, the benefit set out in paragraph (a) or (b) below, whichever is applicable, shall be paid:
- (a) if a WIDOW or WIDOWER or ELIGIBLE CHILD is left, there shall be paid to or for such person:
- (i) a lump sum equal to R3000.00; and

- (ii) a PENSION, the amount of which shall at any time be equal to the specified percentage at that time, as set out in this rule, of the PENSIONER'S potential PENSION;
- (b) if no WIDOW or WIDOWER nor any ELIGIBLE CHILD is left, there shall, subject to the provisions of subsection (12) hereof, be paid to his DEPENDANTS, if any, a benefit equal to:
 - (i) the excess, if any, of the amount of a lump sum determined in terms of subsection (2) (b) at the date of his retirement over the total benefit paid to him; plus
 - (ii) R3000, 00.
- (4) If the beneficiaries under paragraph (a) of subsection (2) of this rule, or paragraph (a) of subsection (3) of this rule, die or cease to be eligible before payment has been made to them in terms of this rule, then payment must be made in terms of Section 37C of the ACT.
- (5) The PENSION payable in respect of any ELIGIBLE CHILDREN shall normally be paid to their mother or father to administer on their behalf; provided that the BOARD may, in their absolute discretion, apportion the PENSION amongst the children and pay any child's share of PENSION to him direct or to his guardian.
- (6) If the WIDOW or WIDOWER of a deceased MEMBER or PENSIONER is not responsible for the physical care and maintenance of the ELIGIBLE CHILDREN, the BOARD shall have sole discretion to apportion the said lump sum benefit and children's PENSION among the beneficiaries in such proportions as they think fit and to pay the lump sum benefit and PENSION awarded to any ELIGIBLE CHILD or to the guardian of the child.
- (7) If a deceased MEMBER or PENSIONER is survived by more than one WIDOW or WIDOWER or by ELIGIBLE CHILDREN from more than

one MARRIAGE, a PENSION shall be granted to each WIDOW or WIDOWER equal to 60% of the MEMBER'S or PENSIONER'S potential PENSION divided by the number of WIDOWS or WIDOWERS and a PENSION shall be granted in respect of each ELIGIBLE CHILD equal to the balance of the specified percentage of the MEMBER'S or PENSIONER'S potential PENSION divided by the number of ELIGIBLE CHILDREN. Such PENSIONS shall be payable in lieu of the PENSION payable in terms of subsection (2) (a) (ii) or (3) (a) (ii). The PENSION granted to a WIDOW or WIDOWER in terms of this section shall be payable until her or his death; provided that if the WIDOW or WIDOWER dies leaving children who are ELIGIBLE CHILDREN the PENSION payable in respect of each such child shall be increased by an amount equal to the PENSION that was payable to the WIDOW or WIDOWER at the time of her or his death divided by the number of her children who are ELIGIBLE CHILDREN. The PENSION granted in respect of an ELIGIBLE CHILD shall be payable until he ceases to be an ELIGIBLE CHILD.

- (8) If on the death of a MEMBER or PENSIONER neither a WIDOW or WIDOWER nor any ELIGIBLE CHILD is left, the BOARD, in their absolute discretion, shall decide whether the deceased MEMBER or PENSIONER left a dependant or dependants and to which dependant or dependants and in what proportions the benefits shall be paid, subject to the provisions of section 37C of the ACT.
- (9) If no claim is made within twelve months of the death of a MEMBER, an amount equal to twice his annual PENSIONABLE EMOLUMENTS shall, subject to the provisions of section 37 C of the ACT, be paid to his estate, and there shall thereafter be no further claim on the FUND in respect of him.
- (10) If no claim is made within twelve months of the death of a PENSIONER, an amount equal to:

(i) the excess, if any, of twice his annual PENSIONABLE EMOLUMENTS at the date of his retirement over the total benefits paid to him; plus

(ii) R3000, 00

shall, subject to the provisions of section 37 C of the ACT, be paid to his estate and there shall thereafter be no further claim on the FUND in respect of him.

(11) If no claim is made within twelve months of the death or the termination of eligibility of the last beneficiary to whom a payment was made in terms of paragraph (a) of subsection (2) or (3) of this rule, and if the total payments made in terms of subsection (2) or (3) of this rule, excluding any payment made in terms of paragraph (a) (i) of subsection (3), or in terms of any other rule fall short of twice the MEMBER'S annual PENSIONABLE EMOLUMENTS, the amount of the shortfall shall be paid to such person as the BOARD in their absolute discretion, decide subject to the provisions of section 37C of the ACT.

(12) When a lump sum benefit becomes payable in respect of a PENSIONER in terms of subsection (3) (b) or (4) of this rule, the amount paid as a lump sum shall not exceed the amount determined by the Commissioner for the South African Revenue Service from time to time, and the balance of the lump sum benefit shall be paid as an annuity, either for a fixed period or for the lifetime of a DEPENDANT, of an amount determined by the BOARD on the recommendation of the ACTUARY.

(13) If the WIDOW or WIDOWER of a former employee has not become entitled to a PENSION in terms of the RULES of the FUND, the BOARD may in their absolute discretion and on the advice of the ACTUARY, grant a PENSION to such WIDOW or WIDOWER equal to such amount as they in their absolute discretion shall determine. This subsection is deemed to be effective from 1 January 1990; provided that, notwithstanding the provisions of rule 38, all payments that would have been made to a

WIDOW or WIDOWER in terms of this subsection from 1 January 1990, or such later date as the BOARD may in their absolute discretion determine, to the date on which the PENSION is granted shall be made on the first day of the month following the month in which it is granted.

- (14) If the PENSION payable to the WIDOW or WIDOWER of a former employee has been reduced in terms of the RULES of the FUND as a result of her or his remarriage the PENSION payable to such WIDOW or WIDOWER and the PENSIONS payable in respect of any ELIGIBLE CHILDREN of such former employee shall with effect from 1 January 1990 be equal to the PENSIONS that would have been payable to and in respect of them in terms of these RULES had the WIDOW or WIDOWER not remarried.
- (15) Should the FUND fail to effect payment of any lump sum due to a beneficiary in terms of paragraph (a)(i) of subsection (2), paragraph (b) of subsection 2, paragraph (a)(i) of subsection (3), paragraph (b) of subsection (3), subsection (8), subsection (9) or subsection (10) of this rule, within 6 calendar months of the date that a valid claim is received by the FUND upon the death of a MEMBER or PENSIONER, the beneficiary shall be entitled to interest on the benefit calculated from the first day of the seventh calendar month following the date that a valid claim is received by the FUND upon the death of the MEMBER or the PENSIONER. The amount of interest to be added to the benefit in terms of this subsection (15) shall be determined by the BOARD in its sole discretion after having regard to –
 - (a) the gross interest earned on the FUND's cash deposits;
 - (b) the rates of any other levies or taxes that may be due by the FUND from time to time; and
 - (c) the expenses relating to management of the FUND's cash deposits.

COMMUTATION

- 27 (1) The BOARD may commute for a lump sum -
- (a) the whole of the PENSION that becomes payable to a retiring MEMBER or WIDOW or WIDOWER or child that does not exceed the maximum amount that may be totally commuted in terms of the Income Tax Act; or
 - (b) at the request of a retiring MEMBER whose PENSION exceeds the maximum amount that may be totally commuted in terms of the Income Tax Act, not more than one-third of his PENSION.

The amount of the lump sum shall be determined by the ACTUARY.

- (2) If a PENSION is commuted in terms of paragraph (a) of subsection (1) of this rule, no PENSION or lump sum shall be payable to the WIDOW or WIDOWER or ELIGIBLE CHILDREN or dependants of the MEMBER, and this shall be allowed for in assessing the lump sum.

RETRENCHMENT

- 28 (1) Subject to the provisions of subsections (2), (3) and (4), if a MEMBER who has not attained the PENSIONABLE AGE is retired from the SERVICE owing to a reduction in or reorganisation of staff, or to the abolition of his office or post, or in order to facilitate improvements in efficiency or organization or to retrenchment generally, he shall be paid a benefit equal to three times his contributions plus ten per cent of his FINAL AVERAGE EMOLUMENTS for each year of his PENSIONABLE SERVICE before 1 January 1950; provided that in the case of a MEMBER whose admission to the FUND was deferred under rule 11 (1), for the purpose of the calculation of the lump sum payable under this rule, there shall be added to the MEMBER'S contributions the amount which he would have contributed to the FUND if he had been admitted without the waiting period.

- (2) If a MEMBER becomes entitled to a benefit in terms of this rule, he may elect instead:
- (a) that an amount equal to the actuarial value in respect of his SERVICE, as determined by the ACTUARY, be deemed to be a voluntary contribution made by him on the date of leaving the SERVICE; or
 - (b) to receive a benefit equal to his ACCUMULATED CONTRIBUTIONS and to have the balance of the actuarial value in respect of his SERVICE deemed to be a voluntary contribution so made.

Provided that in such circumstances the MEMBER shall become a DEFERRED PENSIONER and the benefit in subsection (a) or the balance of the actuarial value in respect of his SERVICE referred to in subsection (b) shall be deemed to be voluntary contributions and dealt with in terms of the provisions of rule 18(7).

- (3) With effect from 4 March 2000 if a MEMBER who has attained the age of 50 years, or who had attained the age of 45 years and who is listed in Appendix 10 to the RULES, and has not less than ten years' PENSIONABLE SERVICE, becomes entitled to a benefit in terms of this rule, he may instead be granted at the discretion of the BOARD after consulting the EMPLOYER, as from the date of his leaving the service of his EMPLOYER, a PENSION in respect of his PENSIONABLE SERVICE calculated in terms of rule 22, without reduction in terms of rule 24.
- (4) If a MEMBER'S SERVICE is terminated by due notice from his EMPLOYER, it shall be in the absolute discretion of his EMPLOYER whether he shall be entitled to a benefit in terms of this rule or in terms of rule 30.

- (5) Notwithstanding anything to the contrary contained in this rule 28, if the benefit payable in terms of subsections (1), (2) or (3) is less than the MEMBER'S MINIMUM INDIVIDUAL RESERVE, the MEMBER'S MINIMUM INDIVIDUAL RESERVE shall be payable or wholly or in part treated as a deferred benefit instead of the benefit referred to elsewhere in rule 28.

DISMISSAL

- 29 (1) Subject to the provisions of subsection (2), if a MEMBER is dismissed from the SERVICE he shall, subject to the provisions of rule 39, be entitled to a benefit equal to the amount of his ACCUMULATED CONTRIBUTIONS.
- (2) If a MEMBER becomes entitled to a benefit in terms of this rule, he may elect instead that the BOARD shall pay to him an amount not exceeding the amount which can be taken as a tax-free withdrawal benefit in terms of the Income Tax Act, and that the balance of the actuarial value in respect of his SERVICE, as determined by the ACTUARY be deemed to be a voluntary contribution made by him on the date of leaving the SERVICE. Provided that in such circumstances the MEMBER shall become a DEFERRED PENSIONER and his deemed voluntary contributions shall be dealt with in terms of the provisions of rule 18(7).
- (3) Notwithstanding anything to the contrary contained in this rule 29, if the benefit payable in terms of subsections (1) or (2) is less than the MEMBER'S MINIMUM INDIVIDUAL RESERVE, the MEMBER'S MINIMUM INDIVIDUAL RESERVE shall be payable or wholly or in part treated as a deferred benefit instead of the benefit referred to in subsection (1).

RESIGNATION

- 30 (1) 1. Subject to the provisions of subsection (2), if a MEMBER resigns voluntarily from the SERVICE before attaining the PENSIONABLE AGE, or leaves the SERVICE for any reason other than those detailed elsewhere in these rules, he shall, subject to the provisions of rule 40, be entitled to a benefit equal to the amount of his ACCUMULATED CONTRIBUTIONS; provided that the payment of a resignation benefit for MEMBER'S aged 55 years and older shall be subject to the South African Revenue's Services General Note 4 and or any other General or Practice Note as shall be published by the South African Revenue Service from time to time.
2. A MEMBER who has attained age 55 and over shall provide adequate documentary proof in order to determine whether a MEMBER is resigning in terms of this rule or taking early retirement in terms of rule 24. If any doubt arises in any particular case, the decision of the BOARD shall be final and binding upon the MEMBER and the FUND.
- (2) If a MEMBER becomes entitled to a benefit in terms of this rule, he may elect instead that the BOARD shall pay to him an amount not exceeding the amount which can be taken as a tax-free withdrawal benefit in terms of the Income Tax Act, and that the balance of the actuarial value in respect of his SERVICE, as determined by the ACTUARY be deemed to be a voluntary contribution made by him on the date of leaving the SERVICE. Provided that in such circumstances the MEMBER shall become a DEFERRED PENSIONER and his deemed voluntary contributions shall be dealt with in terms of the provisions of rule 18(7).
- (3) Notwithstanding anything to the contrary contained in this rule 30, if the benefit payable in terms of subsections (1) or (2) is less than the MEMBER'S MINIMUM INDIVIDUAL RESERVE, the MEMBER'S MINIMUM INDIVIDUAL RESERVE shall be payable or wholly or in part treated as a deferred benefit instead of the benefit referred to in subsection (1).

BOARD'S DECISION FINAL

31. If any doubt arises in any particular case in respect of or to which rules 28, 29 and 30 apply, the decision of the BOARD after consulting EMPLOYER shall be final and binding upon the MEMBER and the FUND.

INCREASE IN PENSIONS

- 32 (1) For the purposes of this rule, the date of granting of a PENSION or annuity to or in respect of a MEMBER, PENSIONER or former employee shall be the date on which he ceased to be in the SERVICE.

- (2) The BOARD shall establish and implement a policy with regard to PENSION increases to be granted which policy must-

- (i) take into account the extent to which any proposed pension increase is affordable to the FUND;
- (ii) aim to award a percentage of the consumer price index, or some other measure of price inflation which is deemed suitable by the BOARD; and
- (iii) set the frequency with which increases will be considered in line with the policy.

- (3) The BOARD shall communicate the policy referred to in subsection (2) to PENSIONERS when it is established and whenever it is changed.

- (4) With effect from 30 June 2003 and at intervals of not more than three years thereafter –

- (i) *the* BOARD must determine two possible PENSION increases:

- (a) The first increase that would result if

- (aa) the FUND's liabilities towards each of the PENSIONERS and DEFERRED PENSIONERS as at the dates on which they terminated employment, or the principal MEMBER died, in the case of DEPENDANT pensions, were added together; and
- (bb) that amount was then adjusted to an equivalent fair value of assets less PENSIONS paid, cash amounts paid on retirement and such expenses as the BOARD considers reasonable; and
- (cc) to that amount was added the liability in respect of special increases granted to PENSIONERS that were funded otherwise than through the net investment return earned by the FUND on the assets backing the PENSIONER and DEFERRED PENSIONER liabilities (and those liabilities in respect of special increases must be adjusted to an equivalent fair value of assets) augmented by the gross investment return earned on the assets of the FUND as a whole (unless the assets backing the PENSIONER and DEFERRED PENSIONER liabilities are invested in a separate portfolio, in which case its investment return may be used) less such expenses as the BOARD deems reasonable to deduct from the investment return;

- (dd) that amount is then divided by the present value of the current PENSIONS and deferred PENSIONS after making allowance for mortality, expenses, and future PENSION increases at a rate determined by the BOARD, adjusted to an equivalent fair value of assets.
 - (b) The second increase that would result if each PENSION payable in the month following retirement (or the death of the principal MEMBER, in the case of DEPENDANTS' PENSIONS), nett of any amount commuted to cash, or each deferred PENSION at the date of termination of service, were multiplied by the change in the consumer price index from the date of retirement, or termination of service (as the case may be) to the effective date of the calculation of the increase.
- (ii) The BOARD must then increase the PENSIONS by a factor, P, where P is the greater of the increase that would be granted in terms of the pension increase policy formulated by the BOARD and –
- (a) the PENSION increase described in sub-section (i)(a) (the “investment return” increase) if it is less than the PENSION increase described in sub-section (i)(b) (the “CPI” increase) and
 - (b) the “CPI” increase if it is less than the “investment return” increase.

Provided that where the BOARD finds it impractical to derive the "investment return" increase, the "CPI" increase, or the factor P for each individual PENSIONER the BOARD may use an approximate method which will preserve the broad principles behind the methods outlined above.

- (5) Subsection (4) will be applicable provided that; on 1 January of each year, every PENSION and annuity in force immediately before that date shall be increased as the BOARD, after consulting the ACTUARY, determine, but by not less than 3%; provided that, if the net annual rate of interest earned on the total FUND moneys, including any uninvested moneys, in the immediately preceding financial year is less than 6%, the increase shall be at such lower rate, but not less than 2%, as the BOARD, acting on the advice of the ACTUARY, determine; provided further that in respect of a PENSION or annuity granted in the twelve months preceding 1 January from which the increase is to be granted, the increase shall be one-twelfth of the percentage so determined for each complete month between the date of granting and the said 1 January.
- (6) The BOARD shall be entitled at its discretion to pay a lump sum bonus to PENSIONERS; Provided that the bonus shall be calculated according to such formula and based on such eligibility criteria and shall be of such frequency as the BOARD, acting on the advice of the ACTUARY, determines from time to time.

FINANCIAL PROVISIONS

INVESTMENTS

- 33 (1) The FUND shall open and operate a bank account, in its own name.
- (2) The BOARD shall have the power, subject to the provisions of section 19 of the ACT and subsection (3) of this rule, to invest, subject to the requirements of the Registrar, in immovable property, and in like manner to invest, lend, put out at interest, place on deposit, make advances of, or otherwise deal with all the moneys of the FUND upon such securities and in such manner as they from time to time determine, and to dispose of immovable property, realize, vary, reinvest, or otherwise deal with such securities and other investments as they from time to time determine.
- (3) Any amount advanced on mortgage of immovable property shall not, together with any other amount that has been or can be advanced on security of a prior or pari passu mortgage of that property exceed 75% of the value of the property on the date of the advance.
- (4) The BOARD may obtain an overdraft from a bank, or borrow from any other party, on such terms as they think fit, such sum as they approve for the purpose of completing any investment or meeting any temporary unforeseen cash shortage, and for this purpose may give such security as they decide.
- (5) Every document of title to an investment shall be registered in the name of the FUND. Every title deed and other document of title belonging to the FUND shall be kept in the safes or strong rooms at the registered office or other office of the FUND or in a banking institution, as decided by the BOARD.
- (6) Every cheque, contract or other document pertaining to the FUND shall be signed by such persons as the BOARD by resolution appoint.

- (7) A loan to a MEMBER or a guarantee in respect of a loan to a MEMBER shall be subject to the limits and the provisions prescribed in sections 19(5), 37A and 37D of the ACT.
- (8) If a financial institution grants to a MEMBER a loan to be used in terms of Section 19(5) of the ACT, the FUND, at the sole discretion of the BOARD, may grant to that financial institution a guarantee that, if the MEMBER fails to repay the loan, the financial institution will have a claim against the FUND for the amount owed to it by the MEMBER on the following conditions
 - (a) no guarantee will be issued if the MEMBER is at the time of the request for it, liable to the FUND in respect of a guarantee in respect of other immovable property;
 - (b) the capital sum in respect of any loan by the FUND to the MEMBER arising from the guarantee will be redeemable over a period of not more than 30 years in equal weekly or monthly instalments, or, if the MEMBER will retire before the expiry of that period, the balance of the loan can be repaid out of not more than one third of the total value of the benefit due to the MEMBER at his or her retirement;
 - (c) the claim by the financial institution against the FUND will be limited to the amount that the MEMBER would be entitled to in cash, after tax, if he or she left the FUND before his or her PENSIONABLE AGE; and
 - (d) the member must in writing give permission to the FUND to deduct his outstanding housing loan from the benefits payable to him in terms of the RULES.

EXPENSES

- 34 The whole of the expenses in connection with or incidental to the management and administration of the FUND and the investment thereof, including the cost of audit and of actuarial investigations, shall be borne by the FUND.

ACCOUNTS AND AUDIT

- 35 (1) The BOARD shall cause true and full accounts of the FUND to be kept, such accounts to be made up to the FINANCIAL YEAR END and to be audited by an AUDITOR or AUDITORS appointed under rule 5.
- (2) The BOARD shall submit annually to each EMPLOYER a full report of all matters relating to the FUND.

ACTUARIAL VALUATION

- 36 (1) The FUND shall be valued by the ACTUARY at intervals not greater than those specified in the ACT, for the purpose of determining whether it can continue to provide the benefits laid down in these RULES. The ACTUARY shall submit a report on the valuation to the BOARD, who shall forward a copy to each EMPLOYER.

36.1 Special provisions applicable to the distribution of surplus

- 36.1 (1) If a valuation as at the FUND's surplus apportionment date discloses that there is an actuarial surplus, such surplus shall be equitably apportioned between the stakeholders contemplated in the ACT in accordance with a scheme for apportionment to be submitted to the Registrar within 18 months after the Fund's surplus apportionment date, or such later date as approved by the Registrar. A MEMBER SURPLUS ACCOUNT and an EMPLOYER SURPLUS ACCOUNT shall be established in terms of rule 36.1(2) and 36.1(3) and any amounts allocated to the MEMBERS and/or the EMPLOYER in terms of the surplus apportionment scheme shall be credited to the applicable account.

- (2) If, as a result of a valuation by the ACTUARY, the BOARD considers that there is a substantial surplus in the FUND, the RULES may be amended so that the benefits are improved or the contributions reduced as the BOARD, with the consent of ESKOM and on the advice of the ACTUARY, decided. If as a result of such valuation, there is a surplus in the FUND, or if after such amendment there remains a surplus in the FUND, the BOARD, with the consent of ESKOM and on the advice of the ACTUARY, may grant such bonuses to persons in receipt of PENSIONS or such additional PENSIONABLE SERVICE to MEMBERS as they consider appropriate.
- (3) If, as a result of a valuation by the ACTUARY, the BOARD decide that the FUND cannot continue to provide the benefits specified in these RULES, the rules shall be amended so that the benefits are reduced or the contributions increased as the BOARD, with the consent of ESKOM and on the advice of the ACTUARY, notwithstanding the provisions of rule 43(1), decide.

36.1(2) EMPLOYER SURPLUS ACCOUNT

The EMPLOYER SURPLUS ACCOUNT shall be credited with:-

- 36.1(2)(1) the amount, if any, apportioned to the EMPLOYER in terms of a surplus apportionment scheme approved by the Registrar in terms of section 15B of the ACT;
- 36.1(2)(2) any amount which is required to be transferred to such an account in terms of an application made in accordance with Section 15F of the ACT and approved by the Registrar; and
- 36.1(2)(3) the amount standing to the credit of the EMPLOYER SURPLUS ACCOUNT shall be increased or decreased by the investment return earned by the assets within this account, including any investment income (received and accrued) less an allowance for any tax and if applicable, part or all of any expenses (paid or accrued), together with capital appreciation, realised or unrealised

36.1(3) MEMBER SURPLUS ACCOUNT

36.1(3)(1) The MEMBER SURPLUS ACCOUNT shall be credited with any amount allocated in terms of section 15B of the ACT to be used for the benefit of MEMBERS in terms of a surplus apportionment scheme approved by the Registrar.

36.1(3)(2) the amount standing to the credit of the MEMBER SURPLUS ACCOUNT shall be increased or decreased by the investment return earned by the assets within this account, including any investment income (received and accrued) less an allowance for any tax and, if applicable part or all of the expenses (paid or accrued), together with capital appreciation, realised or unrealised

36.1(3)(3) the amount standing to the credit of the MEMBER SURPLUS ACCOUNT may be used in the manner and for any of the purposes set out in section 15D of the Act.

36.1(4) Data CONTINGENCY RESERVE ACCOUNT

The Data CONTINGENCY RESERVE ACCOUNT must make provision for an amount determined by the BOARD at each statutory actuarial valuation on the advice of the ACTUARY in respect of the risks to the FUND of incorrect or incomplete data relating to the FUND's liabilities. The balance in the Data CONTINGENCY RESERVE ACCOUNT will not be credited with investment returns.

36.1(5)(1) Solvency CONTINGENCY RESERVE ACCOUNT

The Solvency CONTINGENCY RESERVE ACCOUNT must make provision for an amount determined by the BOARD on advice of the ACTUARY representing the difference between the value of the FUND's accrued liabilities determined on a solvency basis and the value of the FUND's accrued liabilities determined on a best estimate basis.

36.1(6) The BOARD may establish any other CONTINGENCY RESERVE ACCOUNT as it deems appropriate, acting on the advice of the ACTUARY, provided that these RULES will be amended accordingly. This may include, but will not be limited to the following:

36.1(6)(1) A Contribution Shortfall Reserve: this reserve will be utilised to protect the current benefit structure for members in respect of their future potential SERVICE in the FUND. The contribution shortfall reserve will be credited with an amount determined by the BOARD on the advice of the ACTUARY at the date of each actuarial valuation of the FUND as required by Rule 36(1). The balance in the Contribution Shortfall Reserve will not be credited with investment return.

(2) A Pension Increase Affordability Reserve: this reserve will be utilised to provide future increases to PENSIONS as required by section 14B (4) of the ACT. The Pension Increase Affordability reserve will be credited with an amount determined by the BOARD on the advice of the ACTUARY at the date of each actuarial valuation of the FUND as required in terms of Rule 36(1). The balance in the Pension Increase Affordability Reserve will not be credited with investment return.

(3) An Investment Reserve: this reserve will be utilised to provide for the smoothing of interest rates on the accumulation of MEMBER'S CONTRIBUTIONS and contributions in terms of Rule 18. The BOARD on the advice of the ACTUARY will calculate any amounts to be allocated to the Investment Reserve. The BOARD shall allocate to a MEMBER who leaves the FUND such portion of the Investment Reserve as it shall determine after consulting the ACTUARY, provided that where there is a negative balance in the Investment Reserve no return will be allocated to the MEMBER.

It is specifically provided that no part of the Contribution Shortfall Reserve, Pension Increase Affordability Reserve, or CONTINGENCY RESERVE ACCOUNT, or solvency CONTINGENCY RESERVE ACCOUNT may be paid to a MEMBER on exit from the FUND for any reason.

MISCELLANEOUS PROVISIONS

EFFECT ON TERMS OF EMPLOYMENT

- 37 (1) Nothing in these RULES shall in any way restrict the right of an EMPLOYER to terminate the employment of a MEMBER.
- (2) No person shall have any claim concerning the FUND either upon the FUND or against the BOARD or an EMPLOYER except in accordance with these RULES.

PAYMENTS OF PENSION

- 38 (1) Every person entitled to a PENSION or annuity shall notify the FUND in writing of his address and of any change of address.
- (2) The monthly amount of each PENSION and annuity shall be determined to the nearest cent.
- (3) Payments of PENSION and annuity shall be made to the beneficiary monthly on the first day of each month upon such evidence of his survival and continued eligibility as the BOARD require. If such evidence is not produced, the BOARD, in their absolute discretion, may defer payment of the PENSION or annuity until the evidence is produced.
- (4) The first payment of every PENSION and annuity that becomes payable on the death or retirement of a MEMBER shall be a full payment for the month in which the PENSION or annuity becomes payable. When a PENSION becomes payable to the WIDOW, WIDOWER, or child of a PENSIONER, or there is any change in the amount of a PENSION in terms of rule 26, the change shall take effect from the first day of the next calendar month. The last payment of a PENSION or annuity shall be a full payment for the month in which the PENSION or annuity ceases.

VARIATION OF METHOD OF PAYMENT

- 39 (1) If the BOARD decide that it is not desirable to make payment of a benefit, other than a PENSION or annuity, in the manner elsewhere provided for in these RULES, they may, in their absolute discretion, pay the benefit in whole or in part or by instalments or by conversion to an annuity -
- (a) to the beneficiary; or
 - (b) to the DEPENDANTS of the beneficiary; or
 - (c) to some other person either for the benefit of the beneficiary, or of his DEPENDANTS, or of both.
- (2) If the BOARD makes payment of a lump sum benefit by instalments, they shall add to the part retained by them, interest at such rate as they from time to time determine.
- (3) If the person entitled to a benefit is a minor, or under some other legal disability, the BOARD may pay the benefit to the guardian of the minor or to the curator of the person under the legal disability.
- (4) The BOARD may from time to time vary any decision in terms of this rule.

DEDUCTION FROM BENEFITS

- 40 The BOARD shall have power to deduct from any benefit, other than a PENSION or annuity, payable to or in respect of any MEMBER any amount due by that MEMBER to an EMPLOYER or the FUND, subject to the provisions of sections 37A and 37D of the ACT, and to pay such amount to such EMPLOYER or the FUND, as the case may be, whose receipt therefore shall constitute as good and valid receipt and discharge for the amount as if it had been paid to the MEMBER or beneficiary; and where a PENSION is payable, the BOARD shall have power to commute the whole of it, if it is less than the maximum amount that may be totally

commuted in terms of the Income Tax Act, or up to one-third of it if it is greater than that maximum, for a lump sum determined by the ACTUARY, and to make the deduction from such lump sum.

40.1 It is specifically provided that the BOARD shall have the power to deduct from any benefit any amount payable to or in respect of any MEMBER or PENSIONER to settle obligations of such MEMBER or PENSIONER in terms of the Income Tax Act, 1962 or the Maintenance Act, 1998. It is further provided that the BOARD shall have the power to deduct from any benefit payable to a PENSIONER any amount which the FUND has paid or will by arrangement pay on behalf of such PENSIONER in respect of:

- (a) such PENSIONER's subscriptions to a medical scheme registered in terms of the Medical Schemes Act, 1998;
- (b) any insurance premium payable by such PENSIONER to an insurer registered in terms of the Long-term Insurance Act, 1998;
- (c) any purpose approved by the Registrar of Pension Funds, on the conditions determined by him, upon a request in writing from the FUND;

and pay such amount to such medical scheme, insurer, institution, organization or person as the case may be.

40.2 If the FUND is furnished with a valid court order issued in respect of a MEMBER in terms of section 7(8) of the Divorce Amendment Act, 1989 as amended, the FUND shall reduce the MEMBER's benefit payable in terms of the RULES by the amount assigned or awarded to the MEMBER's spouse in terms of such court order. The payment of such award to the non-member spouse will have the effect of reducing the MEMBER'S years of service which in effect will impact on the benefit payable to the MEMBER upon, withdrawal from SERVICE, death or retirement.

UNPAID BENEFITS

- 41 (1) If a MEMBER or PENSIONER does not claim the benefit payable to him in terms of these RULES or if the FUND does not become aware of any DEPENDANTS of the MEMBER or PENSIONER, within twenty four months of the date on which the benefit became payable to the MEMBER or PENSIONER, the BOARD shall establish a notional account to which shall be credited:
- (a) the full amount of the benefit due to the MEMBER or PENSIONER or DEPENDANTS in terms of the RULES;
 - (b) such interest as the Board acting on the advice of the ACTUARY, determines
- (2) The balance standing to the credit of the notional account in terms of Rule 41(1) shall become payable by the FUND at such time as a valid claim is submitted to the FUND in terms of the RULES. In the event that the FUND is terminated before a valid claim is submitted in terms hereof the balance standing to the credit of the notional account shall be applied in terms of RULE 44(1)(c)
- (3) If a MEMBER who is retrenched, dismissed or has resigned dies before payment of the benefit to him is completed, the BOARD shall pay the amount to his estate.

PROHIBITION OF CESSION, ETC

- 42 (1) Subject to the provisions of the ACT, no right to a benefit payable in terms of these RULES, shall be capable of being ceded or hypothecated or be liable to be attached or be subject to any form of execution under a judgment or order of a court.
- (2) If a person attempts to cede or hypothecate a right to a benefit to which he is entitled in terms of these RULES, the benefit shall be withheld or suspended, as the BOARD decides; provided that they may pay the whole or part of the benefit to one or more of his dependants.
- (3) If the estate of a MEMBER or beneficiary is sequestrated or assigned, the right to a benefit to which he is entitled in terms of these RULES shall not form part of the assets of his insolvent or assigned estate.
- (4) Except as provided in rules 26 and 41, no right to a benefit in terms of these RULES shall become an asset in the deceased estate of any person.

AMENDMENTS TO RULES

- 43 (1) The BOARD may, amend the RULES by making a new rule or altering or rescinding any existing rule; provided that any such new rules, alterations or rescissions which are not to the general advantage of MEMBERS and of persons entitled to benefits shall be agreed to by those MEMBERS or such persons affected; provided further that no rule amendments that may have financial implications such as an increase in contributions may be effected without ESKOM'S concurrence.
- (2) Notwithstanding the provisions of subsection (1) of this rule, if the Commissioner for the South African Revenue Services at any time refuses to approve the FUND or any part of it for the purpose of enabling the MEMBERS to obtain the benefit of exemption or allowance in respect of income or other tax, or if the BOARD consider it expedient, having regard

to any ruling of the Commissioner for the South African Revenue Services about income or other tax, the BOARD may, alter the RULES to enable such approval to be obtained.

- (3) Every proposed amendment to these RULES affecting the financial basis of the FUND shall be submitted to the ACTUARY for his report before being adopted.
- (4) The BOARD shall notify the Commissioner for South African Revenue Services of every amendment to these RULES within two months of its approval by the Registrar.

WINDING-UP OF AN EMPLOYER

- 44 (1) If ESKOM is wound up, or ceases to carry on business, the BOARD shall appoint a liquidator subject to the approval of the Registrar, who shall, as from a date decided by him terminate the FUND by dividing the moneys of the FUND among the MEMBERS and persons in receipt of PENSIONS and prospectively entitled to PENSIONS in a manner recommended by the ACTUARY and approved by the liquidator; provided that -
 - (a) the amount available for a person in receipt of a PENSION or annuity shall be used to purchase an annuity for him from a registered insurer;
 - (b) the amount available for a person prospectively entitled to a PENSION or annuity shall be transferred to another pension fund or a retirement annuity fund for his benefit or used to purchase a deferred annuity for him from a registered insurer;
 - (c) if a person to whom an amount is payable cannot be traced, the amount shall be paid to the Guardian's Fund; and

- (d) the amount allocated to each MEMBER shall not be less than the MEMBER'S MINIMUM INDIVIDUAL RESERVE, provided that where the fair value of the assets of the FUND after the recovery of any debt owed to the FUND by the EMPLOYER in terms of section 33(3) is lower than the sum of the total of the MINIMUM INDIVIDUAL RESERVES for all MEMBERS who are being included in the distribution of the assets after adjustment for any benefits paid previously and the cost of annuity policies which will provide equivalent PENSIONS to all existing PENSIONERS and DEFERRED PENSIONERS, the MINIMUM INDIVIDUAL RESERVE may be proportionately reduced in the ratio which the fair value of the assets bears to the total of all MINIMUM INDIVIDUAL RESERVES adjusted for any benefits paid previously plus the cost of such annuity policies.
- (2) If one of the EMPLOYERS other than ESKOM elects or is required to terminate its participation in the FUND in respect of a group of or all of the MEMBERS in its employment or is wound up, whether voluntarily or not, or ceases to carry on business, then, unless a reconstructed company or organization takes the place of such EMPLOYER as a PARTICIPATING EMPLOYER in the FUND, the BOARD shall instruct the ACTUARY to determine the interest in the FUND of the MEMBERS in the service of such EMPLOYER on a date determined by the BOARD, and the amount of each such MEMBER'S interest shall be transferred to another pension fund, a PRESERVATION FUND or a retirement annuity fund or deemed to be a voluntary contribution made by him on that date in terms of RULE 18 and such EMPLOYER and MEMBERS shall cease to be an EMPLOYER and MEMBERS with effect from that date. The amount allocated to each MEMBER shall be the greater of the actuarial reserve and the MEMBER'S MINIMUM INDIVIDUAL RESERVE.
- (3) If an EMPLOYER amalgamates with, or the whole or a portion of its business is sold or transferred to another entity in terms of section 197 of the Labour Relations Act of 1995, the BOARD shall procure that the greater of the MEMBER'S actuarial reserve, and

MINIMUM INDIVIDUAL RESERVE, as determined by the ACTUARY, shall be transferred to a retirement annuity fund or a new or existing pension fund or a PENSION PRESERVATION FUND for his benefit.

TERMINATION OF THE FUND

- 45 Notwithstanding anything in these RULES, ESKOM may, on giving written notice to the BOARD, terminate the FUND, in which case the provisions of rule 44 (1) or rule 44(2) shall apply mutatis mutandis; provided that if rule 44 (1) applies, and two-thirds of the MEMBERS present at a duly constituted meeting called by the BOARD for the purpose, elect to continue the FUND without the EMPLOYERS' contributions, the RULES shall be amended on the advice of the ACTUARY and the FUND shall be continued.

TRANSFER TO OR FROM OTHER FUNDS

Transfer to other Funds

- 45 (1) a MEMBER who becomes entitled to a cash benefit in terms of rules 28(1), 29(1) or 30(1) may elect instead to transfer such cash benefit to any RETIREMENT ARRANGEMENT approved by the BOARD and by the South African Revenue Service. Provided that in making such election the MEMBER shall forgo the right to make an election in terms of rules 28(2), 29(2) or 30(2). Provided further that such transfer shall be subject to the conditions prescribed in the ACT and by the South African Revenue Service and that such transfer shall absolve the FUND of its liabilities towards the MEMBER in respect of all benefits in terms of these RULES.

TRANSFER FROM OTHER FUNDS

- (2) a MEMBER may transfer to the FUND from any RETIREMENT ARRANGEMENT approved by the BOARD and by the South African Revenue Service, any amount payable in respect of his participation in such

RETIREMENT ARRANGEMENT. Provided that such transfer shall be subject to the conditions prescribed in the ACT and by the South African Revenue Service. Subject to the discretion of the BOARD the amount so transferred shall be applied as a voluntary contribution in terms of rules 18(2) and 18(8).

TRANSFER TO A PRESERVATION FUND

- (3) The payment of a TRANSLOCATION BENEFIT to a PENSION PRESERVATION FUND shall be subject to the following conditions-
 - (a) The payment of a TRANSLOCATION BENEFIT shall not be permissible if –
 - (i) a part of the benefit due to the MEMBER has been paid as cash to the MEMBER; or
 - (ii) a part of the benefit due to the MEMBER has been transferred to the pension fund or provident fund of the MEMBER's new employer or is treated as a voluntary contribution in terms of rules 28(2), 29(2) or 30(2); or
 - (iii) the benefit due to the MEMBER has arisen through the amalgamation of the EMPLOYER with, or the transfer of control to or the sale to, another company or organisation and the transfer of the MEMBER's employment to the reconstructed company or organisation, and the FUND is not being terminated in terms of Section 28 or 29 of the ACT
 - (b) The payment of a TRANSLOCATION BENEFIT shall be permissible if –
 - (i) part of the benefit due to the MEMBER has been transferred on the MEMBER's behalf to a retirement

annuity fund as defined in Section 1 of the Income Tax Act, 1962; or

(ii) the benefit due to the MEMBER is reduced in terms of Section 37(D) of the ACT or Section 7(8) of the Divorce Act; or

(iii) the benefit due to the MEMBER has arisen through the retrenchment, resignation or dismissal of the MEMBER or the termination of the FUND in terms of Sections 28 and 29 of the ACT.

(c) If an amount is deducted from a TRANSLOCATION BENEFIT in terms of Section 37(D) of the ACT or Section 7(8) of the Divorce Act, and the balance is paid to a PENSION PRESERVATION FUND, then the BOARD shall ensure that the rules of the PENSION PRESERVATION FUND shall prohibit any further withdrawal benefit there from.

(d) A TRANSLOCATION BENEFIT shall not be paid to more than one PENSION PRESERVATION FUND.

INTEREST ON LATE PAYMENT OF BENEFITS

- 46 (1) The FUND shall effect payment of any lump sum benefit due to a MEMBER or beneficiary within seven working days of the date on which the conditions in sub-rule (3) are satisfied.
- (2) If the FUND fails to effect payment in terms of sub-rule (1) and such failure is due to negligence on the part of the FUND, will be entitled to interest on the benefit to be determined in terms of subsection(4) of this rule, except:
- (a) in the case of the death of a MEMBER or PENSIONER in which event the provisions of subsection (15) of rule 26 will apply; and
- (b) in the case of unpaid benefits in which event the provisions of paragraph (b) of subsection (1) of rule 41 will apply.
- (3) The benefit shall be due and payable once -
- (a) the FUND is satisfied that a valid claim for the benefit has been received and the FUND was given such period of notice as it reasonably requires to effect payment; and
- (b) the FUND has the information which it reasonably requires in order to effect such payment and, in the case of benefits payable on the death of a MEMBER, to dispose of such benefits in accordance with the ACT; and
- (c) the FUND has not received at the date of termination of the MEMBER's SERVICE-
- (i) written notice from the MEMBER's EMPLOYER of its intention to institute legal action against the

MEMBER or the MEMBER's estate for the recovery of compensation in respect of damage caused to the EMPLOYER by reason of any theft, dishonesty, fraud or misconduct by the MEMBER and a period of three months from the date on which such notice was received has not expired without such action being instituted;

(ii) proof that the MEMBER has in writing admitted liability to his or her EMPLOYER for compensation for such damage;

(d) the FUND has not received written notice of a claim by a spouse or a former spouse of the MEMBER or any other person against the FUND in terms of the ACT, the Divorce Act, the Maintenance Act or any other law which, if successful, would result in a reduction in the amount payable as a benefit to the MEMBER, or if such notice has been received, a period of three months from the date on which such notice was received has not expired;

(e) in the event that it is applicable, the conditions for the deduction of any amount due to the FUND or the EMPLOYER in terms of Section 37D of the ACT have been fulfilled.

(4) Except where sub-rule (5) applies, the amount of interest to be added to the benefit in terms of sub-rule (2) shall be determined by the BOARD in its sole discretion after having regard to, in respect of the period from the date on which the benefit became payable and the date on which it is paid –

(a) the gross rate of interest earned on the FUND's cash deposits;

(b) the rates of any other levies or taxes that may be due by the FUND from time to time;

- (c) the expenses relating to the management of the FUND's cash deposits; and
 - (d) the period of the delay starting on the day on which the benefit becomes due and payable in terms of sub-rule (3) and ending on the working day before payment is effected by the FUND.
- (5) Members who retired during the period 1 March 2001 to 28 February 2002 and who, in the context of a decision by ESKOM to establish the Eskom Defined Contribution Pension Fund, elected, subject to certain conditions, the transfer to that fund of the capital value of their retirement benefits, shall be entitled to interest on the pension instalments and lump sum which, but for the aforementioned election, would have been paid to them since their retirement, provided that –
- (a) the rate of interest must be the same as the rate that is applied to voluntary contributions, excluding bonuses, declared by the BOARD in respect of the period during which pension benefits which were due to the members were unpaid;
 - (b) interest must be added irrespective of whether the delayed benefit is a lump sum or a PENSION; and
 - (c) interest must accrue starting on the day on which the benefit becomes due to the MEMBER and ending on the working day before payment is effected by the FUND.

CONDONATION OF PREVIOUS EMPLOYER SERVICE FOR FUND PURPOSES

- 47 (1) Previous EMPLOYER SERVICE for the purpose of the FUND may be condoned subject to the following conditions:
- (i) The break in SERVICE shall not be longer than six months.
 - (ii) The actual period of eligible EMPLOYER SERVICE prior to the break in SERVICE shall be taken into consideration for PENSIONABLE SERVICE purposes.
 - (iii) An application for the condonation of previous EMPLOYER SERVICE for PENSIONABLE SERVICE purposes shall be subject to approval by the BOARD of the FUND.
 - (iv) An applicant of the EMPLOYER shall undertake to repay the FUND in a lump sum the refund of his ACCUMULATED CONTRIBUTIONS paid to him on resignation, together with interest thereon at a rate to be determined by the BOARD of the FUND from time to time, for the period between the date of rejoining and the date of repayment.
- (2) GENERAL
- (i) An application for the condonation of previous EMPLOYER SERVICE shall be made in writing within six months of rejoining the EMPLOYER's SERVICE.
 - (ii) Previous EMPLOYER SERVICE may be condoned more than once.
 - (iii) The actual period of the break in SERVICE shall not be regarded as SERVICE.

APPENDICES

- 48 The special conditions that apply to MEMBERS other than 1987 MEMBERS are shown in the appendices to these RULES together with the terms of office of the BOARD and changes to the Retrenchment rule 28(3).

Appendix	Description
1	A 1950 MEMBER
2	A 1952 MEMBER
3	A 1964 MEMBER
4	A 1976 MEMBER
5	A C MEMBER
6	Ill-health retirement of a MEMBER other than a 1987 MEMBER
7	Death of a MEMBER or PENSIONER other than a 1976 or 1987 MEMBER or PENSIONER
8	A NON-CONTRIBUTORY MEMBER
9	Deleted
10	Retrenchment rule 28(4)

- 49 When a MEMBER leaves the FUND on his retrenchment, dismissal or resignation, he will receive, in addition to any amount or amounts payable or to be treated as deferred benefits within the FUND in terms of RULES 28, 29 or 30 a share, in the ratio that the liability of the FUND in respect of the past service of the MEMBER bears to the liability of the FUND towards all its MEMBERS, including in both amounts any liability incurred as a consequence of additional voluntary contributions made by the MEMBER or all MEMBERS as appropriate, in respect of past service as at that date, of any credit balance in the MEMBER SURPLUS ACCOUNT, if any, as contemplated in the ACT and such CONTINGENCY RESERVE ACCOUNTS as the BOARD deems appropriate and as contemplated in the ACT, to be treated in the same way as his aforementioned benefits are to be treated.

APPENDIX 1

CONDITIONS FOR A 1950 MEMBER

He shall be subject to the provisions of rules 1 to 43 with the exceptions noted below.

RULE 2

His "PENSIONABLE AGE" shall be his age at the end of the month in which he attains the age of 60 years.

His "FINAL AVERAGE EMOLUMENTS" shall be the annual average of his PENSIONABLE EMOLUMENTS over the last three years of his PENSIONABLE SERVICE or over the whole of his PENSIONABLE SERVICE, if less than three years.

RULE 17 (1)

He shall contribute 6% of his PENSIONABLE EMOLUMENTS.

RULE 21

Subject to these RULES, the annual PENSION payable to him shall be 1/696 of his FINAL AVERAGE EMOLUMENTS per month of PENSIONABLE SERVICE.

RULE 24

If he is retired through ill-health, the provisions of appendix 6 shall apply.

RULE 25

On his death the provisions of appendix 7 shall apply.

APPENDIX 2

CONDITIONS FOR A 1952 MEMBER

He shall be subject to the provisions of rules 1 to 43 with the exceptions noted below.

RULE 2

His "PENSIONABLE AGE" shall be his age at the end of the month in which he attains the age of 63 years.

His "FINAL AVERAGE EMOLUMENTS" shall be the annual average of his PENSIONABLE EMOLUMENTS over the last three years of his PENSIONABLE SERVICE or over the whole of his PENSIONABLE SERVICE, if less than three years.

RULE 17 (1)

He shall contribute 6% of his PENSIONABLE EMOLUMENTS.

RULE 21

Subject to these RULES, the annual PENSION payable to him shall be $\frac{1}{636}$ of his FINAL AVERAGE EMOLUMENTS per month of PENSIONABLE SERVICE.

RULE 24

If he is retired through ill-health, the provisions of appendix 6 shall apply.

RULE 25

On his death the provisions of appendix 7 shall apply.

APPENDIX 3

CONDITIONS FOR A 1964 MEMBER

He shall be subject to the provisions of rules 1 to 43 with the exceptions noted below.

RULE 2

His "FINAL AVERAGE EMOLUMENTS" shall be the annual average of his PENSIONABLE EMOLUMENTS over the last three years of his PENSIONABLE SERVICE or over the whole of his PENSIONABLE SERVICE, if less than three years.

RULE 17 (1)

He shall contribute 6% of his PENSIONABLE EMOLUMENTS.

RULE 21

Subject to these RULES, the annual PENSION payable to him shall be 1/600 of his FINAL AVERAGE EMOLUMENTS per month of PENSIONABLE SERVICE.

RULE 24

If he is retired through ill-health, the provisions of appendix 6 shall apply.

RULE 25

On his death the provisions of appendix 7 shall apply.

APPENDIX 4

CONDITIONS FOR A 1976 MEMBER

He shall be subject to the provisions of rules 1 to 43 with the exceptions noted below.

RULE 2

His "FINAL AVERAGE EMOLUMENTS" shall be the annual average of his PENSIONABLE EMOLUMENTS over the last three years of his PENSIONABLE SERVICE or over the whole of his PENSIONABLE SERVICE, if less than three years.

RULE 17 (1)

He shall contribute 6% of his PENSIONABLE EMOLUMENTS.

RULE 21

Subject to these RULES, the annual PENSION payable to him shall be 1/600 of his FINAL AVERAGE EMOLUMENTS per month of PENSIONABLE SERVICE.

RULE 24

If he is retired through ill-health, the provisions of appendix 6 shall apply.

RULE 25

On his death the provisions of rule 25 shall apply with "appendix 4" substituted for "rule 21" in the definition of "potential PENSION".

APPENDIX 5

CONDITIONS FOR A C MEMBER

She shall be subject to the provisions of rules 1 to 43 with the exceptions noted below.

RULE 2

Her "FINAL AVERAGE EMOLUMENTS" shall be the annual average of her PENSIONABLE EMOLUMENTS over the last three years of her PENSIONABLE SERVICE or over the whole of her PENSIONABLE SERVICE, if less than three years.

RULE 17 (1)

She shall contribute 4% of her PENSIONABLE EMOLUMENTS.

RULE 21

Subject to these RULES, the annual PENSION payable to her shall be the following percentage of her FINAL AVERAGE EMOLUMENTS per month of PENSIONABLE SERVICE.

Exact age at Retirement	Percentage (A)	Percentage (B)
50	0,11494	
51	0,12069	
52	0,12644	
53	0,13219	
54	0,13793	
55	0,14368	0,12500
56	0,14525	0,12917
57	0,14682	0,13334
58	0,14838	0,13750
59	0,14995	0,14167
60	0,15152	0,14584
61	0,15455	0,15000
62	0,15758	0,15417
63	0,16061	0,15834
64	0,16364	0,16250
65	0,16667	0,16667

In calculating the percentage, allowance shall be made by interpolation for completed months of age.

RULE 23

- (1) If she was a MEMBER on 30 June 1976, and did not elect to become a 1976 MEMBER, she may retire from the SERVICE after attaining the age of 50 years, in which case she shall be entitled, as from the date of her retirement, to a PENSION in respect of her PENSIONABLE SERVICE to the date of retirement calculated in terms of rule 21 with percentage (A) applying.
- (2) If she was not a MEMBER on 30 June 1976, or was a MEMBER but elected to become a 1976 MEMBER, and has not less than ten years' CONTINUOUS SERVICE, she may retire from the SERVICE after attaining the age of 55 years, in which case she shall be entitled, as from the date of her retirement, to a PENSION

in respect of her PENSIONABLE SERVICE to the date of retirement calculated in terms of rule 21 with percentage (B) applying.

RULE 24

If she is retired through ill-health, the provisions of appendix 6 shall apply.

RULE 25

On her death the provisions of appendix 7 shall apply.

APPENDIX 6

ILL-HEALTH RETIREMENT OF A MEMBER OTHER THAN A 1987 MEMBER

Notwithstanding the other provisions of these RULES, if he is retired in terms of rule 23, he shall be entitled to a PENSION calculated in terms of rule 21 in respect of his PENSIONABLE SERVICE to the actual date of his retirement plus 75% for a 1976 MEMBER or 60% for any other MEMBER of the SERVICE that he would have completed from that date if he had remained in the SERVICE to the date on which he would have attained his PENSIONABLE AGE; provided that for a female MEMBER -

- (i) her PENSIONABLE AGE shall be her age at the end of the month in which she attains the age of 65 years; and
 - (ii) if she is not a 1976 MEMBER, the PENSION shall be equal to $1/600$ of her FINAL AVERAGE EMOLUMENTS per month of her PENSIONABLE SERVICE to the actual date of her retirement plus 60% of such potential SERVICE.
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APPENDIX 7

DEATH OF A MEMBER OR PENSIONER OTHER THAN A 1976 OR 1987 MEMBER OR PENSIONER

(1) In this appendix -

- (a) for a female MEMBER who was a 1976 MEMBER on 31 December 1986 or a female PENSIONER who retired as a 1976 MEMBER on or before 31 December 1986:

“specified percentage” shall at any time mean the percentage in the following table which accords with the number of ELIGIBLE CHILDREN who would, in the opinion of the BOARD, have been wholly or substantially dependent on her at that time but for her death:

Number of ELIGIBLE CHILDREN	Percentage
1	60
2 or more	100

- (b) for any other MEMBER or PENSIONER:

“specified percentage” shall at any time mean the percentage in the following table which accords with the number of ELIGIBLE CHILDREN at that time and whether there is at that time a WIDOW or WIDOWER or not:

WIDOW or WIDOWER	Number of ELIGIBLE CHILDREN	Percentage
Yes	0	50
	1	75
	2 or more	100
No (and in the case of a female MEMBER or PENSIONER who leaves an ELIGIBLE CHILD or CHILDREN wholly or substantially, in the opinion of the BOARD dependent on her)	1	50
	2 or more	100

(c) "potential PENSION" shall mean

(aa) in the case of a MEMBER a PENSION equal to the proportion or percentage applicable to the MEMBER in terms of the appropriate appendix of his average emoluments per month of the aggregate consisting of his PENSIONABLE SERVICE to the date of his death, in months and fractions of a month, and -

(i) 75% if she was a female 1976 MEMBER on 31 December 1986; or

(ii) 60% for any other MEMBER;

of the period from the date of his death to the date on which he would have attained the PENSIONABLE AGE had he lived, the said aggregate being determined in whole months in accordance with the proviso in the definition of PENSIONABLE SERVICE; provided that the percentage for any female MEMBER shall be that applicable to age 65; or

- (bb) in the case of a PENSIONER the PENSION to which he became entitled on retirement before commutation, if any, including the increases subsequently granted in terms of these rules.
- (2) Subject to section 37C of the ACT, if the MEMBER dies in the SERVICE before attaining the PENSIONABLE AGE, the benefits set out in paragraph (a) or paragraph (b) below, whichever is applicable, shall be paid:
 - (a) if a WIDOW or WIDOWER or ELIGIBLE CHILD is left, there shall be paid to or for such person a PENSION, the amount of which shall at any time be equal to the specified percentage of his potential PENSION at that time; or
 - (b) if neither a WIDOW or WIDOWER nor any ELIGIBLE CHILD is left, there shall be paid to his DEPENDANTS, if any, a benefit equal to 10% of his FINAL AVERAGE EMOLUMENTS per year of PENSIONABLE SERVICE.
- (3) Subject to section 37C of the ACT, when a PENSIONER who at retirement was a 1950 MEMBER or a 1952 MEMBER or a 1964 MEMBER, or a female MEMBER other than a 1976 MEMBER, dies, the benefit set out in paragraph (a) or paragraph (b) below, whichever is applicable, shall be paid:
 - (a) if a WIDOW or WIDOWER or ELIGIBLE CHILD is left, there shall be paid to or for such person a PENSION, the amount of which shall at any time be equal to the specified percentage, at that time, of the PENSIONER'S potential PENSION; or
 - (b) if neither a WIDOW or WIDOWER nor any ELIGIBLE CHILD is left, there shall, subject to the provisions of condition (6), be paid to his DEPENDANTS, if any, a benefit equal to 10% of his FINAL AVERAGE EMOLUMENTS per year of PENSIONABLE SERVICE- less the total amount paid to him in PENSION and commutation of PENSION.

- (4) If the beneficiaries under paragraph (a) of condition (2) or paragraph (a) of condition (3) die or cease to be eligible before payment has been made to them in terms of this rule, the payment must be made in terms of section 37C of the ACT.
- (5) If no claim is made within twelve months of the death or the termination of eligibility of the last beneficiary to whom a payment was made in terms of paragraph (a) of condition (2) or paragraph (a) of condition (3) and if the total payments made to or in respect of the MEMBER fall short of the MEMBER'S ACCUMULATED CONTRIBUTIONS, the amount of the shortfall shall be paid to such person as the BOARD, in their absolute discretion, decide, subject to the provisions of section 37C of the ACT.
- (6) When a lump sum benefit becomes payable in respect of a PENSIONER in terms of condition (3) (b) or condition (4), the amount paid as a lump sum shall not exceed the amount determined by the Commissioner for Inland Revenue from time to time and the balance of the lump sum benefit shall be paid as an annuity, either for a fixed period or for the lifetime of a DEPENDANT, of an amount determined by the BOARD on the recommendation of the ACTUARY.
- (7) If he is survived by more than one WIDOW or WIDOWER or by ELIGIBLE CHILDREN from more than one MARRIAGE, a PENSION shall, if condition (1) (b) applies, be granted to each WIDOW or WIDOWER equal to 50% of the MEMBER'S or PENSIONER'S potential PENSION divided by the number of WIDOWS or WIDOWERS and a PENSION shall be granted in respect of each ELIGIBLE CHILD equal to the balance of the specified percentage of the MEMBER'S or PENSIONER'S potential PENSION divided by the number of ELIGIBLE CHILDREN. Such PENSIONS shall be payable in lieu of the PENSION payable in terms of condition (2) (a) or (3) (a). The PENSION granted to a WIDOW or WIDOWER in terms of this section shall be payable until her or his death; provided that if the WIDOW or WIDOWER dies leaving children who are ELIGIBLE CHILDREN the PENSION payable in respect of each such child shall be increased by an amount equal to the PENSION that was payable to the WIDOW or WIDOWER at the time of her or his death divided by the number of her children who are ELIGIBLE CHILDREN. The PENSION granted in respect

of an ELIGIBLE CHILD shall be payable until he ceases to be an ELIGIBLE CHILD.

APPENDIX 8

CONDITIONS FOR A NON-CONTRIBUTORY MEMBER

He shall be subject to the provisions of rules 1 to 43 with the exceptions noted below.

RULE 2

If his CONTINUOUS SERVICE commenced before 1 August 1964, his "PENSIONABLE EMOLUMENTS" shall be increased by 25%.

His "PENSIONABLE SERVICE" shall include the entire period of his CONTINUOUS SERVICE.

RULE 17 (1) AND 19

He shall not be required to contribute to the FUND.

APPENDIX 9

Deleted

APPENDIX 10

RETRENCHMENT RULE 28(3)

**APPROVAL GRANTED BY SOUTH AFRICAN REVENUE SERVICE,
ACCORDING TO THEIR LETTER DATED 2000/05/29,
REFERENCE 18/20/4/27357**

**A. SEPARATION PACKAGES OF EMPLOYEES LESS THAN 50 YEARS OLD
APPROVED BEFORE 31 OCTOBER 1999**

NAME		UNIQUE NUMBER
De Bruyn	JA	0119904
Hurter	VJ	0039732
Manawule	MT	3446636
Uys	DH	812326
Makatane	NG	3278598
Griffin	R	0819167
Van Vuuren	CZ	0895383
Jacobs	JH	0272539
Cloete	DJ	0179005
Van den Berg	DJ	0537045
Erwee	DA	0052391
Ximba	PD	3458844
Venter	GJ	0059248

**B. SEPARATION PACKAGES OF EMPLOYEES LESS THAN 50 YEARS OLD
APPROVED AFTER 1 NOVEMBER 1999**

NAME		UNIQUE NUMBER
Zwane	FJ	3483406
De Jager	CJH	6057615
Dlamini	ZD	3647095
Noqongqolo	SL	3134759
Westermann	DMP	0581608
De Wet	WP	0453420
Ryan	H	6087166
Esterhuysen	NC	0491170
Ndlovu	OD	3491209
Mbokane	GP	3464337
Magula	TZ	3143951
Tiro	GR	3659524
Bester	FHV	0164034
Fiko	M	3775327
Kaspers	IC	107031
Milner	LD	0397933
Groenewald	PA	0343004
Pretorius	JJ	0292533
Kabinde	MJ	3324774
Le Roux	WG	0314150
Mthabela	JA	3279478

**C. SEPARATE APPROVAL GRANTED BY SOUTH AFRICAN REVENUE
SERVICE**

NAME		UNIQUE NUMBER
Khumalo	BA	3137338