

3. THE PURCHASE OF EGYPTIAN CRUDE OIL AND THE RELATED PAYMENTS TO INTERSTATE

INTRODUCTION

3.1 During the sanctions years SFF obtained Egyptian crude oil through the company called Interstate. Interstate received handsome margins on the oil so delivered. In 1992, with the easing of sanctions, SFF succeeded in concluding a direct contract with the Egyptian General Petroleum Company (EGPC), the Egyptian Government's petroleum company. Since then SFF obtained Egyptian crude oil directly from Egypt. Interstate, however, continued to receive a margin on the oil purchased through EGPC, albeit a reduced margin. It was the payment of these margins after 1992 that came under scrutiny.

ALLEGATIONS SURROUNDING THE EGYPTIAN OIL TRANSACTIONS

3.2 The NSN reports made many allegations of irregularities surrounding the Egyptian oil contracts. The core allegations of relevance to this chapter, are the following:

- There was no acceptable reason for the payments to Interstate in that Interstate provided no value in exchange for the payments it received from SFF;
- There was no contract recording the payments to Interstate; and
- There was no Board approval for the payments to Interstate.

The implication was that the payments to Interstate were in some way improper or even fraudulent.

3.3 Various other allegations were made by NSN, which may be termed side issues to the main theme of payments to Interstate, but which nevertheless constitute allegations of irregularities. In this chapter,

these allegations are indicated in italics and dealt with as they arose in the chronological sequence of events.

- 3.4 At the hearings of the present investigation, Counsel for the Minister and NSN maintained that there was no justification for the payments to Interstate. It was contended by Counsel that the payments to Interstate were compensation for services rendered during the sanctions period; that it was pay-back time for a person who had been a friend of SFF and did them favours in the sanctions era. It was further contended by Counsel that the payments to Interstate were deliberately hidden by those involved, presumably to hide them from scrutiny. The facts and allegations put forward to substantiate Counsel's contentions are also dealt with below in chronological sequence of events.

AMBIT OF THE INVESTIGATION WHEN DEALING WITH OIL TRANSACTIONS

- 3.5 The terms of reference of NSN in this regard were basically to concentrate on Egyptian oil transactions. The question therefore arose whether I needed to look further than the issues pointed out by NSN and also look at oil transactions with other supplier countries. I decided against such a course for the following reasons:

- One had to first determine whether the NSN allegations did indeed point to major irregularities at SFF before embarking on a broader investigation.
- Such a broader investigation would of necessity have been a full-scale audit of SFF over many years. The cost of this would have been prohibitive, and could not be justified in view of the fact that regular internal and external audits have been done at SFF.
- Parliament requested me in the resolution of 21 August 1997 to investigate the alleged irregularities, thus implying that I should look

at the allegations already on the table regarding Egyptian oil contracts.

- NSN, when picking up peculiarities unrelated to their original terms or reference, asked the Minister to extend their terms of reference, which the Minister readily did. The Salem issue, as well as alleged discrepancies with the 1993 annual financial statements, were not included in the original terms of reference, but were only included when NSN became aware of these matters during their management audit.
- A whistle blower within the company, Mr B Casey (who was the Deputy General Manager: Crude Oil), was quite willing to assist the Minister and the present investigation. So also were other employees in the company willing to speak their minds during the investigation. In their testimonies no other allegations of irregularities were made.

THE SANCTIONS PERIOD

3.6 In order to understand the payments to Interstate, it is necessary to have the background of SFF's role during the sanctions period, and to go back to the origin of these payments at the time when sanctions against South Africa were eased.

The role players during the sanctions period

3.7 During the period when SFF had to operate under oil sanctions against South Africa, the three main role players for present purposes were Mr D R Vorster, Mr S J Van Zyl and Mr F Abdelnour.

3.8 Mr Vorster was appointed Chairman of CEF and SFF as well as Accounting Officer of CEF. He was subsequently also appointed as Chairman of SOEKOR and MOSSGAS.

- 3.9 Soon after Mr Vorster's appointment as Chairman to the Board of SFF, he was tasked by IDC to oversee the management of SFF and to take responsibility for the oil buying function within SFF. Because of the highly secretive nature of oil buying, and because of the extremely large sums of money involved in each oil transaction, oil purchase procedures were instituted whereby Mr Vorster personally signed off every purchase approval as well as every payment for oil.
- 3.10 It was during this period (on 1 April 1989) that Mr S J Van Zyl was appointed General Manager of SFF and CEF. In his capacity as General Manager of SFF, he was, during the sanction era, responsible for the procurement of crude oil for those oil companies who did not wish to procure their own crude oil, as well as for the safeguarding of strategic crude oil stock and other assets of SFF.
- 3.11 During this period Mr Abdelnour came into the picture. He was the Chairman or President and shareholder of the African Middle East Petroleum Company (AMEP). He is an Egyptian national residing in Geneva, Switzerland. As an oil trader he represented to SFF that he had good credentials and connections particularly in Egypt, such as the following:
- He was the nephew of Mr Boutros Boutros Ghalli who occupied various ministerial portfolios in Egypt, for example Minister of Petroleum, Minister of State, Minister of Foreign Affairs, and who subsequently went on to become Secretary-General of the United Nations. Through Mr Boutros Ghalli, Mr Abdelnour had a direct line of communication with the President of Egypt.
 - He was special advisor to the then Minister of Petroleum of Egypt, who was also Chairman of EGPC (the Egyptian

General Petroleum Corporation) at the time that SFF commenced business with AMEP.

- He had good relations with the then Deputy Chairman of EGPC as well as his successor.
- He had good relations with the Minister of Petroleum of Egypt who succeeded his predecessor as Minister in 1991.

3.12 Mr Abdelnour was also involved in a company called Interstate Petroleum Company (Interstate). SFF understood Mr Abdelnour, AMEP and Interstate to be effectively the same party.

The payment of margins

3.13 It was common knowledge that SFF had to pay margins or premiums to procure crude oil during the sanctions years. A “margin” was what was paid over and above the cost of the oil (including the cost of shipping and related costs). It was a profit element paid to the supplier of the oil. Margins were payable in part for the costs incurred by the trader, and in part to re-imburse them for political and commercial risks incurred in defying UN and home country sanctions. Such margins or premiums were claimed from the South African Equalisation Fund by the company which paid them. The Equalisation Fund was funded from fuel levies paid by motorists.

3.14 In the late 1970's early 1980's, after what was termed the second oil shock (after the fall of the Shah of Iran) when oil became scarce and expensive, margins payable on term contracts were very high. This was actually the reason why SFF was mandated by Government to buy oil on behalf of most of the oil companies in South Africa.

Payment of margins for purposes other than obtaining oil

3.15 During the hearing of this investigation, Counsel for the Minister brought documents to my attention indicating that the South African Minister of Economic Affairs and Technology in 1989 requested SFF to conclude a contract for oil with an overseas company. The aim of this contract was to gain a political advantage from the Ivory Coast. This would be attained by using a large percentage of the margin payable under that contract to fund the election campaign of a prominent political leader in the Ivory Coast who went on to become Head of State of that country.

3.16 Counsel simultaneously brought an application for an order to prevent publication in the media of the identity of the Head of State, and consequently of the country, involved. I did not grant the order for the following reasons:

- Section 16 of the Constitution of the Republic of South Africa Act 108 of 1996 entrenches freedom of the press and other media.
- To limit this fundamental freedom, considerations weighing more than freedom of the press must be clearly shown.
- The basis for the application was that in general cordial diplomatic relations between the Ivory Coast and South Africa could be undermined if that Head of State is mentioned.
- However, no specific and compelling national or public interest was brought to my attention which would justify encroaching on the freedom of the media and their right of access to information.

3.17 Counsel no doubt wanted to use this information as an indication that all was not well at SFF regarding the payment of margins, but did not seriously pursue it once the SFF officials had been heard on the issue.

- 3.18 Mr Vorster stated that during his tenure, the only case of payment of a margin for direct political purposes, and not for the purposes of obtaining oil, was that of the Ivory Coast. It was paid in terms of an instruction of the then Minister of Mineral and Energy Affairs. Because a part of that margin had nothing to do with the procurement of oil by SFF, SFF had formally recorded the situation in letters to the Ministers concerned. Mr Van Zyl went so far as to state that that contract was an irritation to SFF and difficult to execute. No other such cases were brought to my attention. Of importance is that the political office bearers at the time instructed SFF to conclude such a contract, and the idea did not emanate from SFF.
- 3.19 Whilst the Ivory Coast payment might have been an isolated incident it represented a classic case of political manipulation of a state-owned company for political gain. It is indeed hoped that this case represents an aberration which will never again be repeated within the CEF group or any other similar organisation.

Original contracts with Interstate (before 1992)

- 3.20 According to Mr Vorster, SFF was originally introduced to the Egyptian General Petroleum Corporation (EGPC) by Mr Abdelnour. EGPC is the government owned national oil company of Egypt. It was represented to Mr Vorster by Mr Abdelnour and confirmed by two successive Egyptian Ministers of Petroleum that AMEP had an evergreen oil contract with EGPC. It was understood by Mr Vorster that AMEP was used as a vehicle by EGPC for handling oil sales to sensitive regions such as Israel and South Africa during the sanction years. A contract with Mr Abdelnour could thus get Egyptian oil for SFF. Before 1992, EGPC was not willing to enter into a direct contract with SFF due to the United Nations sanctions against South Africa then in force. SFF was therefore compelled to source Egyptian crude oil through an intermediary. The

original Egyptian oil for South Africa, before the Interstate contracts, was not even obtained directly from Mr Abdelnour, but through another company called Regency Trading, which received its Egyptian oil from Mr Abdelnour.

- 3.21 During June 1988 SFF, represented by Mr Vorster, entered into a written contract with Interstate, represented by Mr Abdelnour, for the supply of 20 000 US barrels of Egyptian crude oil per calendar day for the period 1 June 1988 to 31 May 1989. The price payable by SFF was based on the official government selling price (OGSP) plus a margin of US \$0,30 per barrel. In addition an administration fee was also payable calculated as follows: US \$0,10 per barrel for the first 5 475 000 barrels (based on 15 000 per day), and US \$0,05 per barrel for the balance of 1 125 000 barrels (based on 5 000 barrels per day). Furthermore AMEP warranted that it held a valid supply contract for the oil to be supplied in terms of the Interstate contract, and nominated Interstate to act as its wholly owned subsidiary in the supply of the oil. AMEP also guaranteed the due fulfilment of all obligations by Interstate to SFF in terms of the Interstate contract and bound itself as surety. Obtaining Egyptian oil was at the time regarded by SFF as a major step forward in view of its reliability of supply and competitive pricing.
- 3.22 Interstate continued to supply Egyptian crude oil to SFF in terms of annual Interstate contracts until May 1992. In terms of the last Interstate contract, which was entered into on 30 May 1991, the price payable by SFF was based on the EGPC selling price plus a margin of US \$0,30 per barrel and an administration fee of US \$0,05 per barrel.
- 3.23 According to the oral testimony of Mr Vorster, Mr Abdelnour proved to be a very consistent and good supplier. To this Mr Van Zyl added in his written responses to my questions that a relationship of mutual trust was built over the years between SFF and Mr Abdelnour. Mr Vorster viewed

Mr Abdelnour at the time as the only person through which SFF could access EGPC and Egyptian Ministers to work towards obtaining a direct contract with EGPC. As it happened, it took 5 years before a contract could be entered into directly with EGPC. These are factors to bear in mind when one evaluates the subsequent developments surrounding Egyptian crude oil supplies to SFF.

MOVE TOWARDS A DIRECT CONTRACT WITH EGPC

3.24 The easing of sanctions started in early 1992. At this stage SFF's role of sanction breaker ceased and the attention of the company was directed at international trading and commercialisation. Another development was that, as from April 1990, SFF undertook to become self-funding through commercial oil trading transactions and interest generated on accumulated commercial funds, thereby saving the State in the order of R40 to R50 million SFF operational costs per year. Accordingly, from 1 April 1990, Mr Van Zyl as General Manager of SFF was made responsible for ensuring that SFF became and remained self-financed. This objective was met by trading crude oil internationally.

3.25 According to Mr Vorster, it was always the objective of SFF to try to get a direct source of oil, with the primary objective of signing a country to country contract, in this case with the Egyptian government's oil company, EGPC. To further this objective, Messrs Vorster and Van Zyl met with the Egyptian Minister of Petroleum on 29 March 1992 to pursue the possibility of a direct EGPC/SFF oil supply contract. Mr Abdelnour was present at this meeting. After listening to Mr Vorster's request for a direct EGPC contract, the Minister agreed to raise it at a higher level within the Egyptian Government.

3.26 According to Mr Vorster, SFF's original proposal at this meeting was that they should have a direct contract with EGPC and that Mr Abdelnour

should keep his own contract, even though from information available to them they knew that EGPC had limited supplies of oil available. The Minister of Petroleum made it quite clear that a direct contract could only be considered on the basis that SFF takes over Mr Abdelnour's contract volumes, because there was no other oil available – it was either that or no contract at all.

- 3.27 At the time Mr Vorster recorded his discussions with anyone outside SFF concerning official business. His notes were made available to the investigation and assisted a great deal. At one point the notes on the meeting with the Egyptian Minister read:

“Raised issue with Minister for SFF to take over the evergreen contract of AMEP with EGPC”.

- 3.28 Counsel for the Minister and NSN argued that this quotation is contrary to Mr Vorster's evidence that it was the Egyptian Minister who raised the issue of SFF only being able to get oil if they took over Mr Abdelnour's contract. Mr Vorster's response was that the notes were not a verbatim report and that the whole discussion took an hour. He stated that the note should be read in the context that it was after this discussion that SFF proposed to the Egyptian Minister that they take over the oil volumes of the AMEP contract.
- 3.29 It was not disputed that, in order to generate commercial income (to be self-reliant), it was essential for SFF to maintain a level of oil trading activities even though the role of SFF was declining in terms of importing oil on behalf of the oil companies. Access to oil supplies through a term contract such as the EGPC contract was therefore important to SFF from a commercial trading point of view. Such commercial trading not only put the SFF in the position to cover its own costs but also generated substantial sums of money for the State. Furthermore the ideal which

was pursued by all three South African Ministers of Mineral and Energy Affairs during the tenure of Mr Vorster as Chairman, was that of entering into a country to country oil supply contract between South Africa and the supplier country. The importance of such contracts, of which the EGPC contract with SFF was to be the first, was according to Mr Vorster to be found in the following:

- It was part of the drive to improve relations between South Africa and other countries on the African continent.
- It was perceived as an important link between Egypt and South Africa which would lead to closer contact in other fields.
- During the deliberations of the National Energy Forum towards the end of 1993, labour representatives felt strongly that a percentage of South Africa's crude oil requirements should still be procured via SFF. While this situation remained unresolved, a term contract such as the EGPC contract offered a secure source of crude oil to SFF, and for this reason SFF was keen to maintain the contract at the time.

3.30 The NSN reports cast some doubt on the desirability of procuring Egyptian crude oil by questioning the profitability of such oil. Mr Van Zyl gave the following reasons for SFF's preference for Egyptian crude oil:

- When comparing Egyptian crude oil with crude oil from other countries which was also suitable for refining in South Africa, the political stability of Egypt ensured the reliability of supply.
- Egypt had no restrictions on trading with its oil.
- Gulf of Suez Mix (GOSM) and Zeit Bay available from Egypt were widely used by South Africa refineries.
- Egyptian oil prices were more competitive when compared with other crude oil.

- The price of Egyptian crude oil did not differentiate between a Eastern or Western hemisphere destination, which differentiation makes oil more expensive for South Africa.
- Egyptian crude oil had a value in the market in excess of its official selling price.

3.31 To sum up, the benefit SFF derived from the contract with EGPC at the time was, according to Messrs Vorster and Van Zyl, a secure source of usable oil through a direct term contract with the producer country.

THE FIRST DIRECT CONTRACT WITH EGPC

3.32 On 3 April 1992 Mr Vorster was informed that EGPC had received approval to enter into a direct FOB (free on board) contract with SFF at official government selling prices, through the EGPC/AMEP contract being taken over by SFF. This led to the SFF/EGPC contract being signed on 24 May 1992.

3.33 The contract was to be effective from 1 June 1992 to 31 December 1993. It allowed SFF to purchase 10 500 000 barrels (1 500 000 tons) of a range of Egyptian crude oil grades. The contract was an evergreen one, which meant that it was automatically renewable unless either of the parties notified the other on or before 1 October of any year that it wished to terminate the contract. If SFF did not want to take the oil that EGPC agreed to supply because they did not have a market for it, Mr Abdelnour could lift the oil, as will be explained in the next few paragraphs.

THE SIX CENTS AGREEMENT WITH INTERSTATE

3.34 This then brings us to the origin of the payments to Interstate. These arose from an agreement concluded between SFF and Mr Abdelnour's

Interstate that Interstate would receive a margin from SFF for any oil which was lifted by SFF under the direct EGPC contract.

3.35 According to the testimonies of Messrs Vorster and Van Zyl, it came about as follows: Before the signing of the direct EGPC contract on 24 May 1992, meetings took place between representatives of SFF (including Mr Van Zyl), and Mr Abdelnour on 11 May 1992 and 14 May 1992. During these meetings, agreement was reached for a margin of US \$0,06 per barrel to be paid to Interstate to compensate Mr Abdelnour for the effective “cession” to SFF of the oil volumes he held under the AMEP evergreen contract with EGPC. The amount included US \$0,01 per barrel for logistical support services to be provided by AMEP/Interstate in the execution of the EGPC contract. At the same time a reciprocal margin of US \$0,05 per barrel payable by Interstate to SFF was agreed for any oil delivered to Interstate by SFF from the EGPC contract. In practice the party taking the oil took the risk but also the opportunity to earn more than 5 or 6 cents on that oil through trading it internationally. This margin to Interstate was, as Mr Vorster put it, a commercial consideration payable to Interstate for the rights acquired by SFF through the “cession” or, more accurately put, relinquishing of its rights by Interstate/AMEP. This was necessary to facilitate the EGPC contract on which AMEP had previously been earning margins of up to US \$0,35 per barrel.

3.36 The Interstate arrangement was the only instance where a margin was payable to a party who is not the actual supplier/seller of crude oil to SFF. Margins were usually payable to practically all suppliers of crude oil to SFF. Such margins were usually documented either in a term contract or specific spot contract transactions, and also documented in each crude oil supply approval of SFF signed by the Chairman.

THE ALLEGATION: NO ACCEPTABLE REASON FOR PAYMENTS TO INTERSTATE

3.37 The allegation that there was no acceptable reason for the payments to Interstate necessitates further scrutiny of the reasons submitted for the Six Cents Agreement with Interstate. It was indeed submitted that the reason given (namely the relinquishing of Mr Abdelnour of AMEP's oil volumes in favour of SFF) was a later fabrication. According to Mr Vorster SFF originally proposed US \$0,05 per barrel to Mr Abdelnour at the first meeting. At the second meeting, Mr Abdelnour suggested that SFF should reconsider the US \$0,05 because he incurred certain costs, such as arranging a letter of credit to SFF. He requested that they consider giving him an additional US \$0,01 for the logistical services he had to perform. According to Mr Vorster, Mr Abdelnour wanted even more, but SFF was not prepared to go beyond US \$0,06. In Mr Vorster's recollection SFF ended up giving Mr Abdelnour the US \$0,01 extra, taking into account certain costs that Mr Abdelnour would incur in supplying the oil. The US \$0,05 was then in recognition of the relinquishing of his volumes in terms of the contract that he had with EGPC, and the US \$0,01 was to cover the extra costs. According to Mr Vorster it was a negotiation process during which these amounts were discussed but not calculated in fine detail.

3.38 It seems to me that SFF accepted the additional US \$0,01 in order to advance the negotiation process rather than it being a situation where SFF thought that they had to have an agent to deal through.

3.39 Corroboration for the view that the US \$0,06 was rather a package deal, lies in the sequence of events – at the meetings of 11 and 14 May 1992 it was already agreed to pay US \$0,06 whereas at the subsequent meeting of 24 May 1992 (when the EGPC agreement was signed) the question was asked who would solve problems relating to the contract

and EGPC suggested that Mr Yasser (who was Mr Abdelnour's representative in Egypt) would be available for this.

- 3.40 One needs also to look at what Mr Vorster subsequently said to NSN in this regard. Mr Vorster responded to questions put by NSN in the letter of 5 June 1997. On the question: *“Please also advise on what basis did you approve the payment of US \$0.06 cents per barrel to Interstate, when it appears that no record of Board approval for this transaction exists”*, Mr Vorster responded as follows:

“...From 1990 onwards the suppliers margin was split into two payments, \$0,30 per barrel in terms of the normal supply contract and a \$0,05 per barrel administration fee payable to African Middle East Petroleum in terms of an addendum to the 1990 and 1991 contracts. Both contracts were approved by the Board and signed by me.

The purpose of the change was to prepare for the time when a direct SFF/EGPC contract could be entered into at normal EGPC prices, with a contract administration fee payable separately to African Middle East, owned by Mr Fakhry Abdelnour.

This change in fact occurred in 1992 and was duly reported to the SFF Board Crude Oil Committee at a meeting on 23 June 1992.

The administration fee then agreed with African Middle East was \$0,06 per barrel. The specific approval of this administration fee was not minuted at the time, because it flowed from an arrangement that was already in place and approved prior to the time of the direct EGPC - SFF contract reported to the Board, as indicated above.

What is certain, is that the EGPC/Interstate contract was a lucrative one for SFF Association, and furthermore that the SFF Board was at all times aware of the African Middle East agreement. This is confirmed by the fact that a full report regarding the contract, including the \$0,06 per barrel payable to Mr Abdelnour, was presented to the SFF Board at the meeting on 28 June 1994..."

- 3.41 Mr Vorster was questioned extensively by Counsel for the Minister and NSN on the reference to an "administration fee" in the above quotation. The suggestion was made that all of the US \$0,06 was indeed an "administration fee" and not a consideration for relinquishing oil volumes in favour of SFF. Mr Vorster explained that the reason for his using the wording "administration fee" was the loose connotation put on the usage of terms like "margin", "administration fee" and "fee for administering the contract" within SFF circles.
- 3.42 Mr Vorster was asked when questioned during his oral evidence, whether he ever told Mr Petersen from NSN that the underlying cause for the US \$0,06 was indeed to get Mr Abdelnour to relinquish his oil volumes. Mr Vorster answered that when he reacted to Mr Petersen he was relying on memory, looked at the contract and a few of his notes, and formulated the answer. He conceded that perhaps he did not formulate his answer in sufficient detail. Earlier he also mentioned that he was required at a relatively short time to go and try to refresh his memory on what had happened.
- 3.43 If one looks at the interview which Mr Vorster had with Mr Petersen on 12 May 1997, the impression left is that Mr Vorster was a bit at sea because Mr Petersen was questioning him about details of things that had happened four to five years previously. He said at various times that he would have to refresh his memory and refer to his notes of

meetings at the time. On this occasion, Mr Petersen approached the discussion from the point of view that there had been no Board approval for the payment of the US \$0,06. The underlying cause for the US \$0,06 was not specifically raised. During the interview Mr Vorster did say that the US \$0,06 was a fee paid for Mr Abdelnour to administer the contract, but in view of the foregoing circumstances of the interview, it is clear that a fuller picture emerged at the present investigation after Mr Vorster had had the time to refresh his memory from his contemporaneous notes, the veracity of which was not challenged.

- 3.44 Mr Van Zyl puts it somewhat differently in his written responses to my question where he says that “in a way it can be seen as a fee to Abdelnour for giving up his quota”. At the time (March to May 1992) it would not have been possible for SFF to obtain an EGPC contract without paying the margin for it. The provision for logistical and problem solving support cost SFF US \$0,01 per barrel. “The service was good and the price reasonable”.
- 3.45 Also in his written responses to my questions, Mr Van Zyl stated that before the easing of sanctions, the Crude Oil Pricing Committee agreed that a price formula of official government selling price (OGSP) plus US \$0,11 was reasonable for Egyptian crude oil. During SFF’s negotiations with Mr Abdelnour they agreed to split the practically guaranteed margin of US \$0,11 on Egyptian oil. This meant that if SFF took over Mr Abdelnour’s contract, and if SFF sold the crude, Mr Abdelnour received US \$0,05 and if he sold the crude, SFF received US \$0,05. It was furthermore agreed to pay Mr Abdelnour US \$0,01 for logistical and problem solving support.
- 3.46 In general then, Mr Van Zyl corroborates Mr Vorster.

3.47 An affidavit of Mr J. De Jager was also placed before me. Mr De Jager was the Deputy General Manager: Crude Oil at the time. In the affidavit Mr De Jager says the following:

“...5. Previously the SFF Association paid a higher margin to Mr Abdelnour for the procurement of Egyptian crude oil.

6. Mr Abdelnour made the direct contract with EGPC possible, which the SFF Association appreciated.

7. It was agreed to pay Mr Abdelnour US \$0.06 cents per barrel as a margin.

8. This margin of US \$0.06 cents per barrel was much lower than the margins that the SFF Association paid Mr Abdelnour prior to the direct EGPC contract being entered into...”

3.48 In view of the evidence that Mr De Jager also attended the meetings of 11 and 14 May 1992 where the Six Cents Agreement was negotiated with Mr Abdelnour, Counsel for the Minister and NSN made the following submissions:

- Mr De Jager does not mention that any consideration in the margin was for Mr Abdelnour to provide services.
- Mr De Jager is alluding to a payment (in point 6) as a result of making a direct contract possible. The US \$0,06 therefore had nothing to do, according to Counsel, with a cession or relinquishing of rights, but was paid because Mr Abdelnour facilitated the contract.

3.49 Since the affidavit is rather brief and the agreement to pay Mr Abdelnour is stated as fact and not elaborated upon, it would not be warranted to conclude that this affidavit refutes or contradicts Mr Vorster's detailed evidence in this regard.

3.50 When Mr Vorster testified before us, he had had the opportunity to refresh his memory and consult his notes. These contemporaneous notes on the issue were in fact handed in as part of the exhibits before us. The notes were kept in his own handwriting in bound volumes at the time. His testimony found endorsement as to the underlying cause for the Six Cents Agreement where his notes deal with the meeting of 11 May 1992 :

“-FA [which stands for Mr Abdelnour] ceding his contract with EGPC to us/wants margin”;

and later on:

“basis - Margin 5 c to SFF for barrels lifted by FA, for non FA barrels we pay him 5 c “;

and then regarding the notes for the meeting of 14 May 1992:

“Deal agreed:- 6 c/b to FA for normal liftings”.

3.51 If one accepts that Mr Abdelnour relinquished his volumes of oil in favour of SFF, it makes sense that he would want something in return, a *quid pro quo*, as Mr Vorster said in his evidence. Mr Abdelnour was losing a lucrative source of income, namely the margin payable to him when supplying oil in terms of the contract between Interstate and SFF. According to Mr Vorster, Mr Abdelnour said at the time that the only way he was prepared to relinquish his contract was if there was some recognition of the fact that he was losing his margin and that he needed some recompense for that.

3.52 It would appear that Mr Vorster tried to reconstruct as fully and as accurately as possible the events before 1994. No submissions have been made to suggest that these notes were not made at the time these discussions took place. Despite the fact that Mr Vorster had not formulated his responses to Mr Petersen in exactly the same manner as during his testimony, I find that he has been corroborated by Mr Van Zyl and that the payment of US \$0,06 was in recognition of Mr Abdelnour having made the country to country contract possible. The fact is, there were some discussions on 11, 14 and 24 May. As a result of those discussions an agreement was entered into in terms of which the US \$0,06 was paid. For purposes of this investigation it would appear that the US \$0,06 was paid as a *quid pro quo* either in the form of a “cession” or an administrative fee. It would be academic at this point in time to find either way because there was a contract entered into. There are difficulties about this contract not having been in writing and these difficulties are discussed below.

THE ALLEGATION: NO CONTRACT RECORDING PAYMENTS TO INTERSTATE

3.53 It was established that this Six Cents Agreement with Interstate was never recorded in a formal written contract. The only documentation in the files of SFF recording the terms agreed between SFF and Interstate consists of a facsimile dated 2 July 1992 addressed by SFF to Interstate, and a draft agreement. Counsel for the Minister and NSN argued during the investigation that the absence of a formal written agreement is evidence to indicate that there was a deliberate intention on the part of SFF not to pre-record this agreement in the documentation.

3.54 Mr Vorster explained the origin of the facsimile of 2 July 1992 as follows :

When the time came for the first EGPC oil cargo under the contract to be approved by Mr Vorster, it was realised that there was only a verbal

agreement regarding the separate US \$0,06 margin payment to Interstate. An instruction was given by Mr Vorster to Mr J de Jager, Deputy General Manager: Crude Oil, to record the Six Cents Agreement with Interstate by facsimile, and as soon as possible thereafter to draft a written agreement for signature by the parties. Mr Vorster believed the facsimile dated 2 July 1992 was in fact transmitted and a draft contract was drawn up by the crude oil department. It was the intention therefore to record the agreement with Interstate in writing, but through an oversight the draft contract was not finalised and a written contract was not put in place.

3.55 The facsimile read as follows :

“AGREEMENT IN TERMS OF EGYPTIAN CRUDE OIL SALES

Further to the recent SFF and Interstate meetings of 11 and 14 May 1992 we herewith outline our understanding of the agreement.

- 1. The entire agreement is subject to the existence of a direct contract between SFF and EGPC.*
- 2. All Interstate purchases of Egyptian crude oil will be from SFF, irrespective of destination.*
- 3. SFF does not guarantee Egyptian crude oil availability to Interstate.*
- 4. Interstate supplies of Egyptian crude oil to South Africa can only be made to Shell South Africa. With*

the knowledge of SFF, supply to other South African third parties is subject to SFF approval.

5. *Certain fees are payable depending on whether it is a sale by SFF to a downstream receiver or a sale by SFF to Interstate.*

5.1 *SFF sale to Interstate :*

SFF sells on a FOB loadport basis at a fee payable by Interstate of USD 0.05 per barrel plus costs.

5.2 *SFF sale to downstream receiver :*

A fee of USD 0.06 per barrel payable to Interstate.

6. *Payment will be made 30 days after bill(s) of lading date(s).*

7. *The above agreement is subject to revision after 50% of the contractual volume has been sold.*

We trust the above reflects our mutual understanding.

Regards

J de Jager"

- 3.56 I have already alluded above to the fact that the failure to record this contract in writing lead to a number of propositions and counter propositions by Counsel during the investigation. The country to country contract between EGPC and SFF was a significant event in the oil procurement history of South Africa. As stated above there were even foreign relations implications between more particularly Egypt and South Africa, and generally between South African and other African countries. The verbal contract, which was the centre of dispute, was supplementary

to this very significant and important agreement. It was a first for South Africa and for SFF. The main contract was a term contract. It had been the policy of SFF that all term contracts had to be in writing. Spot contracts could be concluded verbally and later confirmed in writing. Even though the Interstate agreement for the payment of US \$0,06 was not for a fee payable to a supplier it could have been reasonably expected that, as a supplementary contract, it would also be in writing. It would be an untenable position to suggest otherwise. In his evidence Mr Vorster conceded as much.

3.57 The failure to record the contract resulted in a number of interpretational and evidential problems, which were raised by NSN and further canvassed by Counsel for the Minister and NSN during the present investigation. These were mostly the following:

- That the facsimile dated 2 July 1992 was only signed by Mr Van Zyl in October 1996 after the Minister had requested a copy of the contract in terms of which the US \$0,06 was paid;
- The facsimile did not record the underlying cause for the payment of US \$0,06;
- A written contract was supposed to have been processed and completed after the facsimile was dispatched – a contract was drafted but it was never signed;
- This contract was never reflected in Board minutes.

3.58 The reason for the facsimile, which was confirmed by Mr Van Zyl, was that there was no previous confirmation of their discussions with Mr Abdelnour. When Mr Vorster was questioned on why the *causa* for the payment was not incorporated in the facsimile, he said that he saw no reason for that to be done since it would have been recorded in the detailed agreement which was to be drawn up later according to his instructions. I find the situation untenable. The very reason,

presumably, for sending the facsimile would have been to record in a written, though summary, form the verbal contract. The *causa* is the reason, the basis or the substratum of a contract. No summary would be appropriate without the *causa*, otherwise the whole purpose of the facsimile would have been defeated.

3.59.1 In a letter of 28 October 1996, the Minister *inter alia* asked Mr Van Zyl whether there was a written contract in terms of which the payments to Interstate were made. If so, the Minister requested a copy of the full text and its history. To this Mr Van Zyl responded on 5 November 1996:

“The agreement between Interstate and SFF is contained in the enclosed facsimile to Interstate signed on 2 July 1992. The agreement remains current and was effective from the signing of the first agreement with EGPC”.

3.60 The controversy that ensued, emanated from the words contained in Mr Van Zyl’s answer “ signed on 2 July 1992”. The initials of Mr Van Zyl appeared in writing with the date 2 July 1992, on the facsimile. An affidavit from a senior employee, Mr D Bouwer, stated that the document was never signed on 2 July 1992 as reflected on this document, presumably referring to the initials of Mr Van Zyl. It was further stated that Mr Van Zyl appended his signature in the employee’s presence during October 1996. Mr Van Zyl disputed these allegations. Mr Van Zyl said that after Mr De Jager sent the fax off, Mr De Jager sent a copy to him and Mr Van Zyl confirmed his agreement with it by putting the words “OK” and his signature on it. The copy with his initials was intended for internal records.

3.61 *In their conclusion, NSN made certain negative findings pertaining to the words “signed on 2 July 1992” against Mr Van Zyl.* In this regard Mr Van Zyl faced a disciplinary action which ran simultaneous with this

investigation. Originally it included 80 charges. The charges were later reduced to five. The issue of the facsimile was in the end not included in the charges which he eventually faced at the disciplinary hearing, which culminated in his dismissal from SFF. In view of that development his intention concerning the words "signed on 2 July 1992" becomes only of academic importance.

3.62 At some stage Mr Petersen seemed to have pursued the avenue that the facsimile was indeed not sent on 2 July 1992, but that it was a later fabrication. In this regard Mr Petersen obtained an affidavit from the Company Secretary stating that she saw the facsimile for the first time on 1 April 1997. Mr Vorster pointed out that she would not have seen it, because the only people privy to the documentation and minutes of the Crude Oil Committee, where people who were directly involved with it, and it was not seen by other people in the company due to the secrecy surrounding crude oil trading. In his affidavit, Mr J De Jager, the Deputy General Manager: Crude Oil, also confirmed that the facsimile was sent as a result of the meeting held between himself, Mr Vorster and Mr Abdelnour in Johannesburg.

3.63 Mr Vorster confirmed that, when SFF had to pay the US \$0,06 in terms of the Six Cents Agreement to Mr Abdelnour, there had to be something in writing in terms of SFF policy for the payment to be made. Mr Vorster conceded that it had been an oversight not to put the agreement in writing and that it was the intention to do so. The only explanation Mr Van Zyl could offer why the US \$0,06 agreement was not put in writing, was that it was not something that caused them problems, therefore it was not an issue at Board meetings. He further stated that Management at SFF and CEF went through a hectic period at the time, and that SFF was running successfully and smoothly and making substantial profits. He further testified that they tended therefore to concentrate on the things that went wrong, which did not happen with the EGPC/Interstate

contracts. Mr Van Zyl stated that although Company Policy RO2 (providing for contracts to be in writing) is applicable to crude oil supply contracts, it was not applicable to the Six Cents Agreement with Interstate, since in that case the agreement was not a supply contract. I do not accept this proposition by Mr Van Zyl. The policy with regard to term contracts, namely that they had to be in writing, was a salutary one. Any contract supplementary thereto would of necessity have to be in writing. The problems under discussion are an illustration of what could happen if such contracts are not also reduced to writing.

- 3.64 Against the above-mentioned concession by Mr Vorster, the further testimony by Mr Van Zyl that it was not necessary to put the agreement in writing is a direct contradiction. The further testimony that because SFF and CEF were going through a hectic period and that SFF was in the main running smoothly and making profits cannot serve as an excuse for negligence or failure to do the right thing. I also do not concur with Price Waterhouse's view, as detailed in their letter to the Auditor-General dated 16 April 1997, namely that it is normal business practice for contracts to be informal. I would expect that all contracts should be formalised and authorised at the appropriate levels.
- 3.65 A written contract would probably have gone a long way to allay the suspicions that had arisen around the US \$0,06 payments to Interstate. I therefore recommend a strict application of the written contracts policy and that this has to be drawn especially to the attention of Internal Audit and specifically incorporated, as one of the imperatives into the rules and regulations in terms of which they approve payments.
- 3.66 Mr Vorster stated that he found it surprising that it never occurred to any of the Internal Audit Managers involved to bring it to the attention of the Chairman or the Board. The Internal Audit Manager had to pre-audit every crude oil payment which means he or she had in fact to ascertain

that there was a written contract before appending a signature for payment. Mr Vorster said that had the Internal Audit Manager (who was the only person who had access to crude oil contracts at the time), had raised it he would certainly have seen to it that the contract was put in place. The steps that were eventually taken by Internal Audit in this regard are discussed under the heading Corporate Governance below.

3.67 With hindsight the Head of Internal Audit should have raised with Management and the Chairman that a written agreement was not in place. As mentioned above, Mr Vorster confirmed that, had this been done, he would have ensured that a written agreement be drawn up and signed.

3.68 One finds it difficult to understand why an otherwise well run organisation like the SFF, failed to put a written contract in place. This is compounded by the other omissions, which have been discussed above. The facsimile, which was intended to improve the situation, did not make it any better, since it did not set out the *causa* for the contracts. A draft contract remained a draft contract and it was never signed. This draft was in any case inadequate, as it had not yet been seen and corrected by the actual negotiator, Mr Vorster. It is unacceptable that this matter was not addressed by internal controls such as Internal Audit. This is an indication of a material defect in the organisational structure. This matter will be further addressed under Corporate Governance, which is discussed below.

FURTHER ALLEGATIONS ARISING FROM THE FACSIMILE OF 2 JULY 1992

Interstate contract should have been renegotiated

3.69 *Various issues were raised by the NSN report and by Counsel for the Minister and NSN regarding the terms of the Six Cents Agreement with*

Interstate as it was recorded in the facsimile of 2 July 1992. The first issue concerns point 7 on the facsimile quoted above, which read that the agreement is subject to revision after 50% of the contractual volume had been sold. Mr Vorster explained, and was corroborated by Mr Van Zyl, that this clause was put in to give SFF, and Interstate, the opportunity to renegotiate their agreement should it prove not to be satisfactory and beneficial to the parties. It was therefore a back door left open to re-negotiate if things did not work out properly. However, SFF regarded the contract as a good one and the need to re-negotiate never arose. For that reason the criticism that no re-negotiation took place in terms of the contract, holds no water.

Payments to Interstate on oil taken into stock were not appropriate

- 3.70 *The second issue arose when NSN concluded that no payment was due to Interstate on shipments taken into stock by the SFF Association, since the facsimile indicated that only purchases which are for downstream receivers should attract the US \$0,06 margin. NSN calculated that R 2 955 118 was paid incorrectly on shipments taken into stock by the SFF. However, according to Mr Vorster the margin of US \$0,06 per barrel was payable to Interstate on all cargoes lifted by SFF from EGPC, regardless of the final destination of the cargo. "Downstream receiver" would generally refer to a refinery, or an oil trader acquiring oil for on sale to a refinery, or to oil being held in storage prior to sale to a refinery. Therefore oil taken into stock as part of a transaction that ultimately ended up with a third party (downstream receiver), either in the form of the specific cargo or an exchange cargo, can appropriately be considered as an upliftment for a downstream receiver.*
- 3.71 Mr Vorster said that the intention was never to draw a distinction between oil supply to a refinery and oil taken into stock and no such distinction was drawn during the negotiation as to the circumstances

under which the US \$0,06 was paid. Otherwise SFF could merely put oil in stock to avoid the US \$0,06 margin and sell it later on – that was not the spirit of the agreement. The word “downstream receiver” was merely used to make it clear from Mr Abdelnour’s point of view that only if SFF took up the oil, the US \$0,06 would be payable.

3.72 Again, whereas the facsimile of 2 July 1992 was supposed to reflect in summary form an agreement to pay Interstate, it only served to muddy the waters even further. The phrase “downstream receiver” was wrongly used. It would have been sufficient - if this was the agreement - to simply state the US \$0,06 was payable on all cargoes lifted by SFF from EGPC.

3.73 The monies alleged to have been wrongly paid by NSN were calculated on the basis of the ordinary meaning of a “downstream receiver”. However, having taken into account the evidence of people who were involved in the original discussions, I cannot discount the interpretation that the amount of US \$0,06 was payable on all the amounts lifted by SFF from EGPC. The explanation for the wording is a feasible one. One should also remember that Mr Vorster was indeed the person who negotiated this contract.

Interstate costs

3.74 *The third issue concerned costs.* Clause 5.1 of the facsimile dated 2 July 1992 reads as follows: “*SFF sale to Interstate: SFF sells on a FOB loadport basis at a fee payable by Interstate of US \$0,05 per barrel plus costs.*” What happened in practice was that SFF lifted the oil from EGPC and paid EGPC. Mr Abdelnour would then, if he wanted to take up the oil, take it from SFF and reimburse SFF, adding US \$0,05 per barrel to the amount paid. What was meant by “plus costs” was that if Mr Abdelnour took up the oil, costs would be for his account, since he

would have to raise a letter of credit to SFF. This would have to be done at his cost. Although SFF also had to raise a letter of credit to EGPC, the intention was never that Interstate would also bear the cost relative to SFF, and SFF carried the cost in this regard. The costs required to be paid by Interstate were therefore only the costs associated with the upliftment of cargoes by Interstate.

THE ALLEGATION: NO BOARD APPROVAL FOR PAYMENTS TO INTERSTATE

3.75 The next issue that merited attention was whether or not the SFF Board knew about the Six Cents Agreement with Interstate. To evaluate the position, it is necessary to have an understanding of how the Board interacted with its Crude Oil Committee.

The Crude Oil Committee

3.76 Originally the SFF Board was kept very small with four Directors only. Two came from IDC and two from the Department of Mineral and Energy Affairs, one of whom was always the Director-General. The SFF Board reported to the CEF Board on all matters excluding crude oil activities. These activities were regarded as so confidential in view of oil sanctions against South Africa, that the SFF Board dealt with them separately, with only the General Manager, the Deputy General Manager: Crude Oil, and sometimes the Shipping Manager in attendance. The minutes were kept separately from other Board minutes and were recorded by the Deputy General Manager: Crude Oil.

3.77 The CEF Board, on the other hand, was made up of the four Directors of the SFF Board, as well as other Directors. It was seen as an inconvenience that these other Directors must sit and wait outside for the SFF Board to finish their business when the two Boards had their meetings in succession. With the gradual easing of sanctions against

South Africa, Mr Vorster as Chairman proposed at the CEF Board meeting of 24 March 1992 that the same Directors in future serve on both the CEF and SFF Boards. The reason for the proposal is minuted as the greater openness and the fact that crude oil procurement might change in future. Mr Vorster explained that the intention was to have a more efficient operation with the same Directors dealing with everything, which would do away with the need for the SFF Board to report separately to the CEF Board. By "greater openness" he was referring to matters such as looking after strategic stocks and tank farms, that no longer needed to be concealed from the CEF Board. However, the sensitivity and secrecy with regard to crude oil procurement remained (for example the quantities bought, the time of buying and the sources). For that reason the CEF Board adopted a resolution whereby sensitive crude oil matters would be discussed at a separate committee meeting.

3.78 *The NSN report came to the conclusion that there had been no approval for the establishment of a Crude Oil Committee.* The implication was that the Crude Oil Committee was an attempt to cover up the payments to Interstate. In terms of a round robin resolution in May 1992, various Board Committees were appointed, including the Crude Oil Committee. A copy of this round robin resolution was submitted to the CEF Board meeting on 23 June 1992 for noting. The same four members (including Mr Vorster) who previously made up the full SFF Board were now appointed as the Crude Oil Committee. In reality therefore, nothing had changed with regard to sensitive crude oil matters and the same people were still dealing with such matters.

3.79 Counsel for the Minister and NSN was critical about the timing of these changes which happened about the same time that the 1992 country to country contract was entered into and when the issue of the payment of the US \$0,06 to Interstate arose. As indicated above these changes were effected for convenience and in the light of the changing oil

procurement environment. I find that nothing untoward should be read into the said changes.

3.80 *The NSN report stated that the Crude Oil Committee had no terms of reference.* For this, NSN relied on a letter from Mrs M Du Toit, the Company Secretary, dated 25 August 1997 where she stated (apparently in response to Mr Petersen), that “*No terms of reference were approved for this committee at the time*”. There was indeed no charter setting out the terms of reference. However, it should be pointed out that the resolution of the CEF Board on the amalgamation of the two Boards did say that sensitive crude oil matters shall be discussed by a separate committee, and the round robin resolution also included this by way of background information. Furthermore, Mr Vorster testified that it was well understood what the Crude Oil Committee was intended to do. There is corroboration for this statement in the fact that the same Directors who previously dealt with these matters now made up the Crude Oil Committee.

3.81 Whilst this may have been so, it must be remembered that company policy and structures are geared towards the smooth functioning and continuity within the company. Whilst the incumbents may have understood what the Crude Oil Committee was intended to do, they would not remain with the company forever. Written terms of reference should have been detailed to ensure that those who succeeded them would know what to do. Certainty is synonymous with efficiency and effectiveness. When it comes to company structures, whilst understanding is a good and necessary feature, certainty is certainly to be preferred.

3.82 *The NSN report also stated that the resolutions of the Crude Oil Committee were never presented to the SFF Board for ratification or notification.* NSN concluded that the Board of Directors allowed the Crude Oil Committee to usurp the management and control of crude oil

affairs, and thus failed in their statutory fiduciary duties. Normally Board Committees have a duty to report to their Board. They are normally mandated to deal with certain specific issues and report back for the Board to ratify the Committee's decision. However, as I see it, secrecy still prevailed with regard to sensitive crude oil matters. Therefore the full Board delegated the task to deal fully with these matters to a selective committee. It was a conscious decision of the Board that the Crude Oil Committee should not report back to the full Board since that would defeat the whole purpose of maintaining secrecy on sensitive oil matters. That was the whole purpose of the Crude Oil Committee. The aim was to limit access to sensitive information.

3.83 Therefore it would not have been appropriate that the Crude Oil Committee reported to the Board. However given that the Crude Oil Committee consisted of Board members (in fact it constituted the whole SFF Board prior to 1 April 1992, including the Chairman), crude oil decisions were taken at the highest level. In addition the Crude Oil Committee:

- consisted of independent representatives from IDC and the Department of Minerals and Energy Affairs, who had significant experience in crude oil matters;
- obtained information from the Crude Oil Department (the Deputy General Manager: Crude Oil) and the General Manager, who attended the Crude Oil Committee meetings;
- passed certain limited crude oil information to the Board during the setting of budgets, etc, so that the financial aspects of the crude oil function were open to the entire Board. This should have ensured that there were sufficient checks and balances on the Crude Oil Committee without reporting to the Board.

3.84 When sanctions were eventually lifted, so was secrecy, and the Crude Oil Committee only operated until the end of 1993. Thereafter the full SFF Board dealt with all crude oil matters. The Crude Oil Committee was therefore utilised as an interim measure by the Board. It seems to have been a reasonable step to take at the time and in the prevailing circumstances. It was pointed out by Mr Vorster that what the Crude Oil Committee in reality did, was to report to the Minister and his Department via the Director-General, who was part of the Committee.

Absence of reference in minutes of payments to Interstate

3.85 The direct EGPC contract of 1992 was duly approved by the SFF Board.

Mr Petersen requested the Company Secretary to try and find an approval for the Six Cents Agreement with Interstate in the minutes of the Board/Crude Oil Committee for 1992 and 1993, which she was unable to do. In fact the only mention made of Interstate was in a submission dated 1 June 1992 where it was noted that the original Interstate contract had been replaced with the EGPC one. Mr Vorster indicated in his written responses to my questions that the Six Cents Agreement with Interstate was never minuted. Counsel for the Minister and NSN pursued the point that the Six Cents Agreement was not minuted either because it had not been discussed at the meetings at all, or was deliberately being kept out of the minutes.

3.86 In his written responses to my questions, Mr Vorster stated that the margin payable to Interstate, being closely associated with the EGPC contract, was an item dealt with in discussions at the Crude Oil Committee. Regular reports were submitted by Management to the Committee with regard to the EGPC crude oil liftings. The Six Cents Agreement with Interstate and the name of Mr Abdelnour were raised in the discussions, although the minutes do not reflect the detail thereof.

Interstate is not mentioned in the Crude Oil Committee minutes because a written contract with Interstate was not presented to the Crude Oil Committee for approval. Similarly, most of the other oil matters discussed that did not lead to a particular decision or required action, were also not minuted in detail, if at all.

- 3.87 In his responses to questions put by Mr Petersen, dated 5 June 1997, Mr Vorster stated in this regard that *“the specific approval of this administration fee was not minuted at the time, because it flowed from an arrangement that was already in place and approved prior to the time of the direct EGPC/SFF contract reported to the Board...”*. In oral evidence Mr Vorster conceded that this was not an accurate statement. He explained that at the time he was relying on memory of something that happened five to six years before and with limited documentation available. In preparing for this investigation, he had time to study the documentation (until he was barred from doing so on instruction of Minister Maduna) and to come to a more balanced and accurate conclusion.
- 3.88 Mr Van Zyl also described the absence of reference to Interstate in the minutes as due to bad minuting. He said every contract, and all parties involved, were regularly discussed at Board/Committee meetings and that the members were fully aware of margins paid to everybody. Mr Van Zyl also pointed out that margins payable were never mentioned in Board/Crude Oil Committee submissions even in the time of sanctions, although they were discussed. He was not really able to explain why this was the position except to refer to secrecy, which does not really hold water since the Board/Crude Oil Committee meetings were in any case confidential. On reflection, however, he mentioned a Board decision that margins could be approved by the General Manager and/or the Chairman. This explanation, however, also is not acceptable. Margins which could be approved by the General Manager and the

Chairman were with regard to spot contracts. As stated above the payment of the US \$0,06 was supplementary to a term contract and ought not to have been treated differently.

Knowledge on the part of the Directors

3.89 Corroboration for Mr Vorster's and Mr Van Zyl's statement that the Crude Oil Committee members knew about the Six Cents Agreement with Interstate, is found in the Board meeting of 28 June 1994 when the US \$0,06 payment to Interstate appeared in the submission to the Board. The issue at hand was discussed, but according to Mr Pithey there was no query or objection from any of the Directors about the payments to Interstate. None of the Directors who had served on the Crude Oil Committee indicated that they had not been previously aware of this and Mr Pithey has no recollection that any of the Directors showed surprise about these payments being made.

3.90 It should also be noted that the US \$0,06 payments to Interstate were openly declared and signed for by the General Manager and the Chairman in the approval of the payment documentation kept by SFF.

3.91 A document was also handed in which is a transcript of an interview that Mr Petersen had with Mr MacDonald, one of the Directors serving on the Crude Oil Committee at the time. On the issue of whether Mr MacDonald was aware of the Six Cents Agreement with Interstate, Mr MacDonald responded :

“ I can remember the whole thing being debated at the time on the basis on which they ought to or ought not to enter into that contract”

and later :

“You know the whole story was debated at great length, there were a lot of technical considerations and other things. I can’t remember those kind of details but the Management put the case to the Crude Oil Committee and the members of the Crude Oil Committee at the end was satisfied that that was acceptable”

and later :

“ I was aware that there was a transaction with Egypt and that Interstate was involved. It was a transfer from Interstate to a direct deal, that they had an important role to continue to play in executing that contract. I do not remember the details, you talk about this specific 6 cents that was paid to them”.

3.92 Thereafter Mr Petersen presented Mr MacDonald with the facsimile of 2 July 1992. Later during the interview he is quoted to have said :

“ The pro’s and con’s of continuing to involve Interstate in a new contract, that was discussed when that contract was concluded with the Egyptians directly. And the recommendation had been made that there should be an involvement of Interstate”.

3.93 This transcript indicates knowledge of the involvement of Interstate on the part of Mr MacDonald. The transcript was confirmed by Mr Petersen in evidence.

3.94 The first Board meeting on which information on sensitive oil matters was freely disseminated to the full SFF Board after sanctions were lifted, was the one of 28 June 1994. As indicated above, this information included the Six Cents Agreement with Interstate. It does not appear therefore that there was an intention to hide the payments. Although the Chairman had changed at the time, the General Manager, Mr Van Zyl, and the Deputy General Manager: Crude Oil, Mr De Jager, raised this

issue through a board submission. They were the two people from Management side who were involved with the Six Cents Agreement when it was concluded.

- 3.95 On the probabilities therefore I find that the Crude Oil Committee members, who should have known of the Six Cents Agreement at the time, did indeed know. However, I am compelled to remark on the standard of minuting since it was not clear from the Crude Oil Committee/Board minutes that the Six Cents Agreement with Interstate was discussed.

Standard of minuting

- 3.96 Mr Vorster pointed out that the minutes of the Crude Oil Committee meetings were kept by a member of the crude oil department and not by the regular Board secretary, for reasons of confidentiality. Not only was the minute taker not formally trained in secretarial matters, but the minutes also tended to concentrate on decisions taken, and noting of the crude oil movements and transactions. The whole exercise of taking minutes, be it in an open meeting or a closed meeting, is to keep a true record of the proceedings. Even in conditions of secrecy "bad minuting" is not a virtue. Such a practice, especially within a company environment, is to be discouraged.

- 3.97 In any event, in this age of transparency, I take it that minuting is now undertaken by a competent person trained to so. If not, I recommend that it be done. No relaxation or laxity of standards should be tolerated in a State entity, which deals in billions of rands on behalf of the tax payer.

Board meeting of 28 June 1994

- 3.98 As indicated above, the issue of the Six Cents Agreement came to the Board at the meeting of 28 June 1994, through a Board submission of 6 June 1994. In this Mr De Jager and Mr Van Zyl proposed that the oil received from the EGPC contract be made available to local oil companies at the official EGPC prices. However, local oil companies had then to make a commitment to take up the oil.
- 3.99 Mr Van Zyl explained that the background to this was that the oil industry wanted to get SFF out of crude oil trading. To get rid of this situation of industrial in-fighting, SFF thought that it would assist if they were able to make the EGPC volumes of oil available to the local industry at break-even prices.
- 3.100 The Board approved that an alternative agreement be negotiated with Mr Abdelnour so that no margin on Egyptian oil going to local oil companies should be payable. *The NSN reports stated that no new agreement with Mr Abdelnour could be found despite the Board resolution.* Mr Van Zyl testified that pursuant to the Board resolution, Mr De Jager negotiated with the oil industry to try and get a commitment from them to take up the oil. Responses of the local industry were that they were not willing to give SFF a term contract in this regard and to take up the oil. The result of this was that the pre-condition on the part of SFF to re-negotiate the agreement with Mr Abdelnour could not be met and therefore no negotiations took place with Mr Abdelnour. According to Mr Van Zyl the position was reported to the Board in the submission of September 1994.

APPROVAL OF THE SIX CENTS AGREEMENT PAYMENTS

- 3.101 Because of the sensitivity and magnitude of oil transactions within SFF, Mr Vorster retained after his appointment as Chairman in 1985, the

function of approving all individual oil buying and selling transactions, as well as the approval of the final payments.

3.102 One of the responsibilities of the Chairman and Accounting Officer of CEF/SFF was to account for all moneys received and disbursed by SFF and the Central Energy Fund, and to keep true and full records of all transactions entered into by SFF and CEF. It is common cause that during the tenure of Mr Vorster, there were no moneys that had not been accounted for in the books of SFF and CEF.

3.103 From the evidence it appeared that every approval for the purchase or sale of a crude oil cargo, detailing the volumes, price, costs (including specific margins payable or receivable), as well as the expected profit margin or differential in the case of a sale, was submitted by the General Manager and the Crude Oil Manager to the Chairman for his final signature. Any payment to Interstate could be made only if the approved EGPC transaction had actually been completed. In addition to all other signatories acquired, the Head of Internal Audit had to warrant by a signature that there was a signed approval for the transaction, that the transaction had in fact taken place according to the approval, that all the legal documents had been completed before payment, and that the amounts were in order. Only then, and relying on prior signatories having duly performed their duties regarding payment approval procedures, the Chairman appended his signature for final approval of payment.

3.104 When Mr Pithey took over from Mr Vorster as Chairman, he proceeded in the tradition of Mr Vorster by approving crude oil payments himself. Mr Pithey said that in approving payments reliance was placed by him on the submissions and approvals of the Deputy General Manager: Crude Oil as verified by the General Manager - this was part of their line function. He saw his control function as Chairman when approving

payments as one to ensure that the approval procedures and controls had been complied with. Also for the period during which Mr Pithey was Chairman, no evidence of payments which were unaccounted for was presented or proved.

3.105 *When dealing with the Six Cents Agreement with Interstate, NSN concluded that Mr Van Zyl abused his position as General Manager by causing Interstate to be paid US \$0,06 per barrel of oil without the necessary authority.* This view by NSN is apparently based on the view that there is no written contract. It is however true that an oral agreement can also give rise to a binding contract however undesirable it might have been not to have it in writing. *NSN continued and stated that the Board or Crude Oil Committee never ratified "the act" by Mr Van Zyl.* It is, however, now quite clear that it was the Chairman of the Board, Mr Vorster, who negotiated the Six Cents Agreement at the time. It was also the Chairman of the Board who approved the payments to Interstate in the final instance. This statement of NSN is simply not consistent with the facts. One cannot ignore the discussions which took place during May 1992. It is part of the evidence that there was a desire in SFF to conclude a direct contract with EGPC. There is further evidence that it was EGPC which indicated that without a take-over of Interstate quotas (and therefore the involvement of Mr Abdelnour) there would be no country to country contract. In my view this would be one single factor which would have persuaded SFF to accommodate Interstate above all else.

3.106 On a reading of the NSN reports, especially in view of the fact that the reports did not uncover an underlying *causa* for the Six Cents Agreement, and that the reports came to the conclusion that there was no value received in return for the US \$0,06 per barrel paid, the question invariably arose whether someone was lining his pockets by receiving kickbacks on the agreement. The Minister, Mr Cilliers, Mr Pithey, Mr

Van Zyl and Mr Vorster were questioned in this regard and none of them had any knowledge of, or evidence pointing to, such kickbacks.

3.107 None of the other officials of SFF testified about kickbacks or bribes during the investigation, nor were such suspicions mentioned to Mr Petersen, it seems. It is of course always difficult to prove such kickbacks, since such knowledge is usually limited to the person paying and the person receiving. I have not been able to find evidence to this effect in this investigation.

BOARD/CRUDE OIL COMMITTEE APPROVAL FOR THE RENEWAL OF THE EGPC CONTRACT

3.108 *The NSN report highlighted that in contrast to the period 1992 to 1995, no board approval could be found for the renewal of the 1996 and 1997 contracts. NSN therefore concluded that all transactions under the 1996 and 1997 contracts were not duly authorised. They went on to say that the Chairman at the time, Mr Pithey, therefore failed to comply with section 1E of the Central Energy Fund Act 38 of 1977. This section provides that the Chairman of the Board shall be the Accounting Officer charged with the responsibility of accounting for all monies received by SFF and for other payments made by SFF. However, Mr Pithey was fully aware of the Six Cents Agreement with Interstate. He himself approved the payments in this regard. Mr Van Zyl also pointed out that it was not necessary for the Board to approve the renewal of the EGPC contract, and that for the years 1993 to 1995 the Board indeed only noted it. Whilst it could be said to be technically incorrect not to have the renewals noted by the Board, all indications are that the Chairman knew about it. Therefore nothing turns on it.*

THE EGAM CONTRACT

3.109 Mr Vorster was succeeded by Mr Roy Pithey as Chairman of SFF with effect from 1 April 1994.

3.110 During January 1996, EGPC and SFF concluded another contract effective from 1 January 1996, for the sale of 500 000 metric tons (3 600 000 barrels) of GOSM (Gulf of Suez Mix) oil. The terms of this contract were exactly the same as the previous EGPC contract which was still continuing, except for volumes and prices. For convenience sake this contract was referred to during the investigation as the EGAM contract, since EGPC and an oil company AMOCO were two companies involved in this regard. How AMOCO became involved, will become clear below.

Reasons for the EGAM contract

3.111 Mr Pithey explained that a country to country contract such as the EGPC contract was still considered important by SFF in establishing a trading base and for its status as a trader.

3.112 Mr Pithey testified that 1995 had not been a very good year for SFF's oil trading. The volumes of GOSM oil available had declined dramatically. SFF was facing the possibility that in 1996 it would not be able to acquire sufficient volumes to trade successfully. It was therefore necessary for Mr Van Zyl to go to Egypt and to try and impress on the Egyptians that SFF needed more tradeable oil. The overriding consideration was to ensure the ability to trade profitably and to ensure that sufficient profit was generated to eliminate burdening the State with the operational costs of holding the country's strategic stocks. The need for a stable source of readily tradeable grades of oil was therefore important to SFF and was assured through the maintenance of term contracts. The EGAM contract was indeed concluded to procure an additional supply of GOSM crude oil.

3.113 Counsel for the Minister and NSN referred to two Board submissions which, it was argued, contradicted Mr Van Zyl's evidence that the main aim to obtain Egyptian oil was to trade it internationally : The first is a Board submission dated 12 November 1992 which read that the Egyptian oil volumes must be adapted to fit into local demand and where possible for international trade. The other one was a Board submission of 24 December 1993 which read that where Egyptian volumes of oil could not be disposed of locally, it had to be sold internationally. Counsel made the point that these submissions contradicted Mr Van Zyl's written responses to my questions where he stated that the main objective of the deal with Mr Abdelnour was never to supply South Africa with crude oil. When questioned in this regard Mr Van Zyl said that the local market was always SFF's primary responsibility. However, the factual situation was that most of the Egyptian crude oil was sold internationally because the local industry did not want to take it. Mr Van Zyl stated that his remark that the main objective of the deal with Mr Abdelnour was never to supply South Africa with crude oil must have been written with the hindsight knowledge that the Egyptian oil was mainly traded internationally and indeed not supplied to the local industry.

3.114 It was common cause that not all was well between the industry generally and the SFF, especially after the lifting of sanctions. It would appear that the major oil companies in South Africa only tolerated receiving oil supplies through SFF for as long as sanctions were in place.

3.115 The main business of SFF was to do backwardation deals. Crude oil was sold, the future price of oil hedged, and the oil sold then replaced with cheaper oil. At the time of the EGAM contract, the market was in backwardation according to Mr Van Zyl. The most important aspect of

backwardation trading was to have a secure source of oil, otherwise one would be speculating, which SFF did not want to do. The EGAM contract gave SFF that secure oil supply which could be traded internationally without any problem. It included GOSM that was acceptable to the South African refineries and could therefore replace previous strategic stocks. Mr Van Zyl furthermore explained that if one relies on spot market transactions, one runs two risks. Firstly, one may not find the oil and secondly the price may be too high and destroy any possible profits. Finding available oil is the greatest risk, specifically oil that is internationally tradeable. Without this security one cannot go into backwardation trading. It was a commercial decision to reverse the slow decrease in profits that SFF experienced by getting more GOSM through the EGAM contract. This later proved to have been the correct decision in view of the subsequent profits made by SFF. Mr Van Zyl pointed out that historically SFF was always able to take up a GOSM commitment. During 1996 in fact they even took up more GOSM than contractually agreed upon.

Assignment of the EGAM contract to AMOCO

3.116 On 13 February 1996 EGPC, SFF and AMOCO Oil Company (AMOCO) concluded an agreement of assignment, in terms of which EGPC assigned all its rights and obligations under the EGAM contract to AMOCO. This assignment took place because EGPC did not have a sufficient quota of GOSM crude oil available for SFF. In exchange for arranging additional GOSM for SFF, EGPC wanted a margin of US \$0,015 per barrel. Mr Van Zyl stated that he assessed the benefit of the extra US \$0,015 at the time (which was to have the desired additional volumes of crude oil available) and therefore agreed to the margin to be paid to EGPC.

- 3.117 The parties already reached agreement on this contract during the period December 1995 to January 1996. It was only signed at a meeting in South Africa on 13 February 1996, however, because it was the first opportunity where all the parties were together at the same place.
- 3.118 The Chairman at the time, Mr Pithey testified that it was his understanding that the payment of a US \$0,015 margin was a requirement of EGPC for facilitating the additional GOSM volume. According to Mr Pithey the Board did not apportion a value to such a margin. The EGAM contract as reported by Management was represented as satisfactory and commercially acceptable. Payment of the US \$0,015 was recovered out of each transaction in respect of which it was payable and should not be assessed in isolation. It formed part of a composite contract and must therefore be assessed in this light and in the light of the additional volume of GOSM crude oil procured by SFF.
- 3.119 The arrangement concerning the US \$0,015 was that SFF paid the contract price plus an extra US \$0,015 per barrel to AMOCO directly. AMOCO would then forward the US \$0,015 to EGPC.
- 3.120 The Minister was suspicious that the US \$0,015 was being paid to Mr Abdelnour, and not to EGPC. These suspicions no doubt arose because Mr Casey incorrectly stated in his memo of 16 October 1996 that a margin of US \$0,075 is paid to Interstate. The Minister asked Mr Pithey about this when they met during October 1996. Mr Pithey undertook to speak to Mr P Koch, the Managing Director of AMOCO, when he saw him in London. When Mr Pithey met Mr Koch he asked him who the ultimate beneficiary was of the US \$0,015 payable in terms of the EGAM contract. Mr Koch later advised him telephonically that as far as he was able to establish, the amount paid in terms of the EGAM contract was fully accounted for by EGPC.

3.121 At one stage the US \$0,015 amount was deducted from the US \$0,06 paid to Interstate. Mr Van Zyl explained that this had been an effort by SFF Management to put pressure on Mr Abdelnour to perform on the execution of the EGPC supply contracts. He regarded the temporary withholding of US \$0,015 as the best way to apply pressure. He wanted, for example, assistance in deferred pricing from Mr Abdelnour. Mr Van Zyl conceded that it was an idle threat to withhold the US \$0,015 because SFF was contractually bound to pay, but according to him idle threats sometimes work.

Extension of the Six Cents Agreement with Interstate

3.122 The following sequence of events lead to the eventual extension of the Six Cents Agreement with Interstate to the EGAM contract, as set out by Mr Van Zyl : He discussed the possibility of obtaining more GOSM with Mr Abdelnour. Mr Abdelnour stated that he would revert to him, which he eventually did with the message that Mr Van Zyl would have to talk to the Egyptian Minister of Petroleum. Mr Van Zyl went to see the Minister in Egypt and was accompanied by the South African Minister of Mineral and Energy Affairs at the time who also had other official business in Egypt. During the meeting with the Egyptian Minister, Mr Abdelnour and other EGPC officials were also present. The Egyptian Minister asked EGPC to investigate SFF's request for more GOSM. Mr Van Zyl remained in Egypt whilst Mr Abdelnour and EGPC discussed the possibilities. According to Mr Van Zyl he was unaware up to this stage of the role AMOCO was to play. However, when later confronted with his own handwritten notes, he had to concede that his recollection in this regard had been wrong, and that the possibility of a contract with EGPC assigned to AMOCO, had been discussed at the negotiations on 8 November 1995 already.

- 3.123 Mr Abdelnour wanted the Six Cents Agreement between Interstate and SFF to continue with reference to the EGAM contract in view of the fact that he found the GOSM for Mr Van Zyl. This was acceptable to Mr Van Zyl since he knew that he would make a profit on the oil regardless of the US \$0,015 margin to EGPC, and a US \$0,06 margin to Mr Abdelnour. They agreed that their agreement of 2 July 1992, as contained in the facsimile quoted in paragraph 3.55 above, would apply to the 1996 EGAM contract as well, in view of the fact that the previous arrangement had been a successful one. Mr Van Zyl did not think it necessary to put a contract in place to regulate the extension because the position of 1992 would apply in the same manner.
- 3.124 This was another opportunity for SFF to formalise the position which was not utilised.
- 3.125 According to Mr Van Zyl there had been no doubt in his mind that had they removed Mr Abdelnour from the arrangement with the EGAM contract, SFF would not have obtained the volumes of oil. There were negotiations between AMOCO and Mr Abdelnour, and Mr Van Zyl's opinion was that if he refused to accept Mr Abdelnour's involvement they would not have finalized that agreement.
- 3.126 Mr Pithey understood the position to be that EGPC had said that they could introduce SFF to a supplier who had oil (which EGPC did not have available), and that that supplier would then fall under the arrangement that EGPC has with SFF. Mr Pithey regarded the EGAM contract as an extension to the existing EGPC contract with a view to obtain additional volumes. He understood that the broad provisions of the EGPC contract would apply to the EGAM contract. He seemed to have believed that the need for the services of, and relationship with, Interstate remained.

Board approval for the EGAM contract

3.127 *NSN in their report were of the opinion that the EGAM contract, including the assignment, was not approved by the Board, nor was Mr Van Zyl authorised to negotiate or to sign these contracts. The report goes on to say that Mr Pithey failed to exercise his statutory duty in this regard as Accounting Officer by failing to ensure Board approval for the actions of Mr Van Zyl. However, according to Mr Pithey a specific Board mandate for Mr Van Zyl to sign the EGAM contract was not a requirement and Mr Van Zyl acted within his authority to sign such contract. Mr Pithey also said that the mindset at the time was that the AMOCO arrangement falls within a continuation of the EGPC contract. The General Manager may in terms of company policy sign any contract up to one year, the effect of which was taken up in the budget. Contracts longer than a year should go to the Board. However, the intention of an evergreen contract is that the relationship would last for more than a year. I recommend that evergreen contracts should also be reviewed by the Board in future.*

3.128 *NSN in their second report highlighted the fact that in the submissions to the Board for the meetings of 26 June 1996 and 25 September 1996, the Board was informed that there was only one crude oil term contract in the SFF's system, namely the original 1992 EGPC contract. Even though the EGAM contract had by that time already been concluded, it was not mentioned until the submission to the Board dated 18 November 1996 for the Board meeting of 3 December 1996. It was pointed out by the NSN report that this was after the Minister started his enquiries about the contract during October 1996. From this NSN concluded that Mr Pithey failed to prevent Mr Van Zyl from misrepresenting to the Board that the EGPC contract was not the only contract in the system, whilst Mr Pithey was approving payments under it.*

3.129 Pithey stated that when he took over as Chairman on 1 April 1994, as part of his induction by Mr Van Zyl and others, he was informed about the broad background and the existence of the relationship with Interstate, although he never saw an agreement for the US \$0,06 payments to Interstate. It also seems as if Mr Pithey never saw the EGAM contract, but he assumed these contracts to exist. He understood that the US \$0,06 payment to Mr Abdelnour had a legitimate basis. Furthermore he understood that historically Mr Abdelnour had been involved and out of consideration for relinquishing his crude oil volumes he was entitled to from EGPC, had received US \$0,05 plus US \$0,01 differential for logistical services. In Mr Pithey's view he was appropriately informed both before and after the conclusion of the EGAM agreement, but he stated that he was not aware before February 1996 that Mr Abdelnour would get his US \$0,06 in terms of the EGAM contract as well. However, he had no difficulty with this.

3.130 We therefore get the situation that Mr Van Zyl, within his rights according to his and the Chairman's understanding, concluded an agreement. The Board only had to be informed about this agreement which did not take place at the first two opportunities after these agreements were signed.

3.131 Mr Pithey pointed out that the Board submissions, drafted by Mr Casey, look identical and that it is probably a standard document on a word processor. Mr Pithey said that it was an oversight on Mr Casey's part not to mention the EGAM contract. Mr Van Zyl confirmed that it was Mr Casey's responsibility, being the Deputy General Manager: Crude Oil, to bring the contract to the attention of the Directors. Mr Van Zyl (who negotiated the contract) conceded that as countersignee of the Board submission he overlooked the error. The question is, why and how did this happen. The Board is entitled to be informed at all times about such

matters. The General Manager and the Chairman ought to release information to the Board about important company matters at the first opportunity. In this case there appears to have been no justifiable reason for the omission. Not making information available to the Board timeously leads precisely to the kind of conclusion that was made by NSN in this regard. The practise is improper and it should be strongly discouraged. Whether or not it was Mr Casey who made the omission does not change the situation. Corporate governance means just that. There can be no apportioning of blame among management. They ought to take responsibility for such omissions as management, not as individuals.

CRITICISM OF THE EGYPTIAN OIL CONTRACTS

3.132 The NSN report and Counsel for the Minister and NSN raised various criticisms of the Egyptian oil position to substantiate their premise that there was no reason for the payments to Interstate except to favour Mr Abdelnour. These will be discussed below.

Structure of the EGAM contract

3.133 *The NSN report seriously criticised the EGAM arrangement* and Counsel for the Minister and NSN continued to do so during this investigation. The allegation was that the EGAM contract was structured in the way it was (namely a direct contract with EGPC and assigned to AMOCO) to provide a basis for continued payments to Interstate and this indicated bad faith on the part of Mr Van Zyl. Mr Van Zyl denied this and stated that it happened this way because he had only recently been introduced to AMOCO, and his company's policy was to get as close to the oil source as possible with a contract with the Government oil company, and EGPC had proven to SFF to be a reliable supplier.

- 3.134 It seems to me that, if Mr Van Zyl was acting in bad faith, he could have achieved exactly the same result without this intricate structure. He could have conveyed to the Board that Mr Abdelnour had assisted in making a direct contract with AMOCO possible and should get US \$0,06 for that, for as long as there is a contract with AMOCO, as opposed to EGPC. It should also be pointed out that there was at this stage no apparent reason for wanting to compensate Mr Abdelnour for services rendered in the sanctions era – he had been handsomely compensated by receiving high margins during that era already.
- 3.135 It became clear when hearing all the evidence that it was a business decision of SFF to obtain more GOSM. To implement that decision Mr Van Zyl went to Mr Abdelnour who had assisted him before. He once more obtained the assistance he required from Mr Abdelnour. It is a feasible explanation and something that happens every day in the business world. This explanation was not contradicted except by way of speculation on whether it could have been done in another way and whether the contract was a good one. Quite clearly Mr Abdelnour once again wanted a *quid pro quo* for finding the oil Mr Van Zyl had asked him to. Mr Van Zyl took the margins into consideration when deciding on the profitability of the contracts. The Chairman and later the Board had no objection against the arrangement. Whilst it is always possible to criticise with hindsight, this seems to have been a normal business transaction.

Profitability of the Egyptian oil contracts

- 3.136 According to the calculations of NSN in their first report the total payments in respect of the US \$0,06 to Interstate for the period 1 June 1992 until 28 February 1997 amounted to R6 505 887. The amount paid to SFF by Interstate in connection with the US \$0,05 when they lifted oil, amounted to R2 548 632. The nett payments to Interstate for this period

therefore amounted to R3 957 255. For the period 1990 to 1997 SFF made a profit of R 1,1 billion, purely from commercial operations.

3.137 There was a major difference of opinion between SFF and NSN on how profitable the EGPC contract itself was. *The first report of NSN gave their calculation of the trading result of SFF with the Egyptian crude oil for the period 1 June 1992 to 28 February 1997. In terms of this calculation, they concluded that there had been a trading loss amounting to just over R5 million.* However, if one adds the financing and hedging nett income to the figures, a nett income of nearly R7 million is shown on the Egyptian crude oil. The NSN calculation also specifically excluded backwardation profits apportioned to the EGPC contract. This was done on the basis that it is generally accepted accounting practice to relate a profit to its underlying cause.

3.138 SFF did an audit on the calculations of NSN and found the following :

- Just on the back-to-back cargoes the profits indicated by NSN were underestimated by around R2,519 million.
- On the cargoes taken into stock, the costs calculated by NSN were inflated by R15,7 million.

3.139 The approach of NSN to exclude backwardation profits is inappropriate if one bears in mind that the whole basis of the profits SFF made, relied on backwardation deals. Mr Vorster pointed out that for the years 1993 and 1994 when he was still at the SFF, NSN calculated a trading loss on Egyptian oil by excluding backwardation profits and financing income. However, SFF actually made a trading profit of R19,75 million if one includes backwardation and financing profits, and actually made a total profit of R92 million for that period. However one looks at it, SFF did make a substantial profit for the benefit of the South African tax payer, and the Egyptian oil played a part in realising this profit.

Interstate unknown

3.140 During their audit, NSN telefaxed a list of questions through to the Chairman of EGPC. In the reply dated 13 May 1997, it was stated that there is no business relationship or arrangement between EGPC and Interstate, and that Interstate is unknown to EGPC.

3.141 In a letter of 23 May 1997, the Ambassador of Egypt relayed to Minister Maduna a response received from the “*relevant Egyptian Authorities*”. The relevant part of this letter reads as follows :

- “1. *The Egyptian General Petroleum Corporation ‘EGPC’ only deals directly with each of its contractual parties independently from each other and in a direct manner without the intervention of any mediators.*

2. *No deals were carried out in whatever form with the SFF during the sanctions imposed on the apartheid regime of South Africa.*

3. *Any deals between the ‘EGPC’ and South Africa were, and are carried out directly without any intervention or mediation.*

4. *Any dealings between the SFF and AME – African Middle East Company, or Mr Fakhry Abdelnour are unrelated to, and beyond the knowledge of the Egyptian General Petroleum Corporation ‘EGPC’.*

5. *Any commissions which may have been handled between the SFF and AME – African Middle East Company, or Mr*

Fakhry Abdelnour is a matter concerning both, and the 'EGPC' was, and is, no party in whatever form.

6. *Mr Fakry Abdelnour is a trader, and has no say whatsoever in the policy setting of the 'EGPC'.*
7. ...
8. ...
9. *Regarding the visit of Mr Maher El Shafei, it was due to the following facts:*
 - *South Africa had requested a shipment of crude oil from the Suez Gulf type.*
 - *The requested quantity was not available at the 'EGPC' which made a request to 'AMOCO' to provide the required quantity from its reserve stocks*
 - *Therefore, a representative of 'AMOCO', and a representative of the 'EGPC' (Mr Maher El Shafei) had to be present to discuss the terms with the relevant South African authorities."*

3.142 At a later stage Mr Petersen again addressed certain questions to the Egyptian Embassy. It was answered under covering letter of the Embassy dated 17 April 1998. Although this communication also denied knowledge of Interstate, it made it clear that AMEP is one of EGPC's customers and further stated that Mr Abdelnour is the president of AMEP.

3.143 I have heard evidence that various letters of goodwill were exchanged between Egyptian Ministers and South African Ministers during the period 1988 – 1993. In one of these letters dated 7 July 1991, the

Egyptian Minister states the following: *“My aim, like that of the predecessor is to continue and extend our co-operation in conjunction with African Middle East Petroleum”*. Evidence was also given on Mr Abdelnour’s arrangement of the first meeting with the Deputy Chairman of the EGPC on 26 February 1987; of the meetings with Egyptian Ministers of Petroleum in the company of Mr Abdelnour on 28 April 1988 and 28 August 1991; of the meeting where Mr Abdelnour helped SFF to strategise for the meeting of 29 March 1992 with the Egyptian Minister of Petroleum; and that on at least three occasions, namely 29 September 1993, 30 September 1993 and 29 September 1994, correspondence from the EGPC was routed via Mr Yasser to Mr Vorster. The latter fact confirms in Mr Vorster’s view that certainly up to the end of 1994, AMEP was involved in the logistics of the EGPC contract. Mr Vorster also pointed out that at the meeting of 24 May 1992, when signing the 1992 EGPC contract, SFF wanted to know who they should contact if they have problems in the execution of the contract, for example if language problems were to arise. EGPC, through the Deputy Chairman, then said that Mr Yasser, Mr Abdelnour’s representative in Egypt, might be contacted in this regard.

3.144 The evidence referred to above stands in stark contradiction to the contents of the answers from EGPC. In my view, a possible explanation is that any involvement by a government (or a government owned company) in sanctions busting which was in contravention of a United Nations resolution is not a matter which can be admitted easily. It is equally true that the personalities who were involved during that era have moved on or changed. The environment is totally different in both Egypt and South Africa.

3.145 Mr Fakhry Abdelnour and his companies’ involvement directly or indirectly in the South African oil procurement scenario is a fact that need not be debated. The fact that AMEP is a customer of EGPC puts

in doubt the assertion that Interstate is not known at EGPC. I have already accepted earlier on that AMEP, Interstate and Mr Abdelnour refer to one and the same person. To me, the letter of the Egyptian Ambassador is an indication that there is a complete turnaround from the 1992 position when EGPC put the involvement of AMEP/Interstate as a condition for entering into a country to country contract. We have gone full circle.

3.146 *NSN concluded that the Cairo representative of Interstate (Mr Yasser) was not known to AMOCO and that AMOCO had no direct operational involvement with Interstate. Therefore Interstate could not have rendered services in respect of the EGAM contract.* For this, NSN relied on a report dated 27 November 1996 of the Shipping Manager of SFF, Mr Mouton. This report was compiled after Mr Mouton's visit to Egypt with a view to strengthen relationships with the institutions and people SFF had commercial relationships with. In this report he mentions that Mr Yasser is unknown to AMOCO and is treated as such. Mr Mouton goes on to say that Mr Yasser is especially well known by EGPC, that he moves in high circles and that his conduct shows a high level of self confidence.

3.147 Mr Pithey stated that when he hosted a dinner during May of 1996, which representatives of EGPC, AMOCO and Mr Abdelnour attended, it was evident for him from the interaction between these representatives and Mr Abdelnour that they were well acquainted. This also ties in with Mr Van Zyl's evidence that Mr Abdelnour was involved with the EGAM contract negotiations, but does not necessarily gainsay Mr Mouton's view that Mr Yasser was unknown to AMOCO.

Value received in return for the 6 cents payments to Interstate

3.148 Officials within SFF were questioning the value added by Interstate with regard to logistical services. The questions that were asked in this regard were asked about the EGAM arrangement. Mr Casey commenced employment with SFF early in 1995. According to Mr Casey, he raised his concern with Mr Pithey about the value received on the Six Cents Agreement early in 1996 already. Mr Pithey thought that the value issue was raised with him during April 1996. Mr Pithey stated that he discussed it with Mr Van Zyl, who neither denied the reason for the questioning, nor rejected the debate, but was of the opinion that there was value to be gained from Mr Abdelnour's involvement. It is difficult to say whether Mr Casey could not have been right and whether Mr Van Zyl was not being influenced by past involvement to a point where he omitted to question the status quo. Mr Pithey pointed out that Mr Casey questioned at the time the full amount paid to Interstate, and did not say they got no value at all. According to Mr Pithey, Mr Casey also did not raise the issue strongly in the sense that he made written submissions or put alternatives. Mr Casey could not assure him that if they did terminate their relationship with Mr Abdelnour SFF's access to Egyptian oil volumes would not have been jeopardised. Moreover, there was a running contract in place at the time and, although ample opportunity was given at Board meetings, Mr Casey never raised the issue there.

3.149 Mr D Bower, one of the oil traders, also questioned the necessity of Interstate's involvement. This happened at the time when he negotiated a spot contract directly with AMOCO outside the assigned EGPC contract and when Mr Van Zyl brought that contract under the EGAM contract, thus attracting the US \$0,06 margin to Interstate. *NSN stated that this indicated that Mr Van Zyl did not act in the best interest of the company by including the deal, which did not attract a US \$0,06 payment, under the EGAM contract.* However, Mr Van Zyl explained that Mr Abdelnour had insisted that the spot contract be brought within

the ambit of the EGAM deal. Mr Van Zyl did that rather than risk losing the additional volumes. (This action of Mr Van Zyl was also dealt with in the disciplinary hearing of Mr Van Zyl referred to in paragraph 3.61 above, and therefore does not merit further attention for present purposes.)

3.150 In response to NSN, who queried what logistical support Interstate had provided, the Ministry received a memorandum dated 10 April 1997 from Mr Mouton, the Shipping Administration Manager. In the memorandum he stated that he was not aware of any savings affected on demurrage as a result of an intervention by Interstate since he took up his current position in January 1995. Also in response to a question by NSN, as regards logistical and problem solving services rendered by Interstate, he stated that "It is my honest opinion that Interstate added no value to shipping related issues".

3.151 At the request of Minister Maduna, Mr Van Zyl submitted a report to the Minister dated 21 October 1996. In this report the Interstate/SFF arrangement is listed as one of the relevant contracts regarding the supply of Egyptian crude oil to SFF. He explains that in terms of this contract SFF pays Interstate US \$0,06 per barrel for every barrel of oil procured by SFF under the contracts with EGPC, and in return Interstate may procure some of the oil under the EGPC contracts in which case Interstate pays SFF US \$0,05 per barrel. He then goes on to say that this is a reciprocal agreement which allows SFF a confirmed margin and a secure market for Egyptian crude oil which SFF wish to or cannot trade, and that the US \$0,01 difference in the above margins covers logistical support and problem solving services supplied by Interstate on behalf of SFF in Egypt. He then goes on to say the following:

"What is important is to determine whether we get value for our money.

Interstate is compensated by SFF for the logistical service which is rendered by their representatives in Cairo. These services are varied and cannot be anticipated in advance.

The following are examples of services rendered and in some cases the value thereof

- *Deferred Pricing US \$ 772869*
- *Acceptance of delayed SFF ship which moved the loading date from one month to the next. Resulting price benefit US \$ 1209023*
- *Smooth loading of SFF cargoes ensuring a minimum of delay which protects SFF from large ship demurrage claims.*
- *Ensuring that SFF views on pricing reaches the EGPC pricing committee thus ensuring SFF has some influence on the Official Selling Price determination every month.”*

3.152 *NSN went into the examples given by Mr Van Zyl of services rendered by Interstate and concluded that there was no tangible evidence of logistical support and problem solving on the part of Interstate, and that there is in fact no value given for the US \$0,06 payment. NSN furthermore concluded that Mr Van Zyl misrepresented to the Minister the value of the services rendered by Interstate – NSN specifically referred to assertions of Mr Van Zyl that the intervention by Interstate resulted in deferred pricing and the acceptance of a delayed ship. NSN continued by stating that in their opinion Mr Van Zyl’s “continued attempts to mislead” the Minister raised concerns about the level of protection he was affording to the interests of SFF and the government and seriously undermined the credibility of management representation of CEF and the SFF to government.*

3.153 These conclusions eventually lead to disciplinary charges against Mr Van Zyl (see paragraph 3.61 above). In this disciplinary hearing the matter of the deferred pricing and the acceptance of the delayed ship was thrashed out and Mr Van Zyl was found guilty of misleading the Minister in this regard. It need not therefore be dealt with here as well.

3.154 *The NSN report highlighted the fact that an official within SFF had in fact raised the issue of value and Interstate before the 1992 EGPC contract.* In this regard they relied on three documents which originated from Mr J De Jager, the Deputy General Manager: Crude Oil at the time. The three documents were an office note of 10 December 1991 of a discussion between Mr De Jager and Mr Abdelnour, and two memoranda to Messrs Vorster and Van Zyl, both dated 2 December 1991. Mr Vorster put these documents into the following perspective: At the time SFF still had a direct contract with Interstate and were paying higher margins than the spot margins. It was these margins that were questioned. It is an example of the continuing evaluation of value received in exchange for margins, which took place during his tenure as Chairman. At the time also, one Egyptian Minister of Petroleum took over from another and it appeared that Mr Abdelnour had some difficulties to establish himself with the new Minister. In the end he succeeded, which is evidenced by the fact that he made Mr Vorster's meeting with the new Egyptian Minister possible. Furthermore, Mr De Jager was referring to rumours in the market which are always rife because traders vying for new contracts are always trying to convince potential clients that whoever they are dealing with, is no longer the best person available in the market. The issue raised by Mr De Jager was discussed between Mr De Jager and Mr Van Zyl, and the eventual outcome was the direct contract with EGPC in 1992, with a much lower margin payable to Mr Abdelnour.

- 3.155 The question is whether SFF paid enough attention to the value derived from the Six Cents Agreement and its extension in 1996, to ascertain whether it was not time to renegotiate the situation. Mr Vorster stated that the US \$0,06 to Interstate was considered on a quarterly basis when the Board/Crude Oil Committee met. There was also constant discussion in SFF Management circles about the extent to which Mr Abdelnour was playing a role and was essential for the long-term continuation of the EGPC contract. When looking at the renewal of the EGPC contract at the end of 1993 going into 1994, the US \$0,06 and reciprocal US \$0,05 were also taken into consideration. In fact they were taken into consideration in deciding to uplift each consignment of oil under the contract.
- 3.156 It became apparent that Mr Vorster was under the firm impression that, had they stopped paying the US \$0,06 to Interstate at the time that he was Chairman, this would have lead to the situation where at the next renewal of the evergreen contract SFF would have been told by EGPC that the contract is no longer available.
- 3.157 On the issue of whether Mr Abdelnour had any influence on the Pricing Committee of the EGPC, Mr Vorster stated that he cannot really say. However, they did discuss pricing with Mr Abdelnour from time to time and asked him to relay back to the Minister of Petroleum their views and request that Minister to take this into account. From time to time it seemed as if there were changes but once again it was difficult to say whether they were due to Mr Abdelnour's contribution or not. But he did think that Mr Abdelnour had an influence on the Pricing Committee. Mr Abdelnour was a close friend of the then Deputy Director who ran EGPC and had close connections with the Minister of Petroleum. Mr Vorster said that he would have been surprised, considering that Mr Abdelnour also sold Egyptian oil from time to time, if Mr Abdelnour did not use whatever influence he had to try to influence the price. One would also

not expect EGPC to confirm that they took cognisance of what Mr Abdelnour had said in fixing the OGSP prices.

3.158 In other aspects also Mr Vorster was under the impression that Mr Abdelnour did provide value for SFF. Mr Vorster stated that in the early years the only company that could load oil on very large crude oil carriers, with the resultant saving in transport costs, was SFF and Mr Abdelnour was the major negotiator who made this possible. However, this was still at the time when the oil to South Africa was provided through Interstate. Through Mr Abdelnour SFF could go into Egypt any time they wanted to see the Egyptian Ministers and received VIP receptions. They could meet with the officials of EGPC whenever they wanted to through the endeavours of Mr Abdelnour. Mr Abdelnour was

also able to facilitate SFF's contact with important officials in Egypt, and he was present with every discussion they had with the oil Ministers of Egypt.

3.159 Mr Pithey said that at times Mr Van Zyl had indicated to him a desire to attempt to negotiate the reduction of the money paid to Interstate. He mentioned once or twice that he had not been successful with such negotiations. Mr Van Zyl also mentioned to him that they were trying to get more out of Interstate. Mr Pithey knew that the value of the agreement with Interstate was assessed from time to time by SFF employees dealing with EGPC and Interstate at operational level. Also during the annual budget presentation, the value of whatever relationship under discussion was assessed. At those budget meetings all operations were reviewed, including the need for a contract, the oil market, and predictions for the oil market. SFF was result driven and had to make profits. Budget meetings coincided with the time SFF had to communicate to EGPC whether they wanted to renew their evergreen contracts or not.

- 3.160 For the record it has come to my attention that the EGPC contract was not renewed for the year 1999. I have not gone into the reasons for this development and I do not debate it as the parties were not aware of it during the investigation.
- 3.161 One gets the impression when evaluating all the evidence that although Interstate played a crucial role for SFF earlier on, Mr Van Zyl was hard put to come up with tangible evidence of Interstate's benefit to SFF during 1996. However, one cannot discount the fact that well placed connections in the business world sometimes add value which is difficult to express in rands and cents.
- 3.162 NSN placed emphasis on the issue of value derived for the Six Cents Agreement with Interstate, as audits normally do. In the debate that followed, however, there was a failure to distinguish between the actual terms of the contract and the benefit derived from the contract. The logistical and support services to be rendered by Interstate was never spelt out as specific terms of the contract, but the contract was indeed a consideration for something Mr Abdelnour had already performed, namely to make oil available. Logistical and support services were intangible commodities which were not that easily definable.
- 3.163 Mr Vorster, who negotiated the Six Cents Agreement originally, was quite clear that if the benefit derived from the Six Cents Agreement were found to be lacking, one would have to renegotiate the US \$0,06 margin with Mr Abdelnour (which Mr Van Zyl seemed to have tried to do without success). With hindsight, it seems as if Mr Abdelnour positioned himself shrewdly. The only way to end the Six Cents Agreement would be not to renew the evergreen contract with EGPC on which the Six Cents Agreement depended. However, should SFF not renew the evergreen

contract they would lose their country to country contract for Egyptian oil, which was not a preferred option for them.

- 3.164 It appears that these implications were not appreciated at the time the Six Cents Agreement was concluded, or indeed in 1996 when the Agreement was extended to the EGAM contract. Except for the renegotiation clause there was no time limit placed on the payments. It also became quite clear during this investigation that the Chairmen and Mr Van Zyl, who had intimate knowledge of the set-up in Egypt, were concerned about possible negative consequences if they cut out Mr Abdelnour. On the other hand, Mr Abdelnour did make it possible for SFF to obtain oil which they sought and would otherwise not have obtained, at least in 1992. Furthermore, this oil, notwithstanding the margin to Interstate, assisted SFF to make handsome profits.
- 3.165 What should be pointed out, is that it was not the intention that the US \$0,06 or US \$0,015 would be lost to the Company – it was supposed to be recovered in the profit made at the end of the day when the oil obtained with those margins was used in trading to make a profit. In fact, during Mr Vorster's time at least, the theoretical loss of the US \$0,05 profit SFF could have made if Mr Abdelnour took up the cargo, was also taken into account. Therefore, on any cargo SFF lifted, Mr Vorster insisted that they recover a minimum of US \$0,11.
- 3.166 What is also important to bear in mind according to Mr Vorster, is that when the first EGPC contract was concluded, the US \$0,06 margin was much lower than the margin SFF was paying immediately before the direct contract came into operation. There were also four other term contracts still in the system during 1992, which paid much higher margins, in one instance as high as US \$0,42 per barrel. The margin of US \$0,06 was therefore regarded in 1992 as a competitive one and SFF was happy with it.

3.167 However, it is true that if SFF did not pay the US \$0,06 or US \$0,015 margins, profit would have been higher by those amounts. But, according to Mr Vorster and Mr Van Zyl, the choice was not whether to pay the US \$0,06 or not but whether to get the contract. Getting the contract depended on paying a consideration, which was in this case the sum of US \$0,06. The margins were regarded by the SFF as a commercial consideration for the benefit of receiving oil to make profits for the company, and therefore the State.

Availability of oil elsewhere

3.168 The point was made that BP and Engen were able to acquire oil without paying a margin or with a lower margin. The question then is whether it was beneficial to South Africa to keep the EGPC contract in place, having to pay margins for Interstate. Mr Vorster explained that the EGPC sold their crude oil at the official government selling price (OGSP) which was set from time to time in terms of their own calculations and norms and was therefore not a direct reflection of the spot market prices prevailing in the market. The prices of other traders or producers were determined by their own particular circumstances at the time. It therefore happened, as in the case of all other state owned producers who sold at OGSP prices, that there were times when the particular price was well above or well below spot prices in the market. An OGSP price removed the short-term spot price variations from the buyer, and on average was better than the spot market, but there were times when the OGSP was less attractive than the spot or alternative markets. The EGPC contract was an evergreen annual contract, whereas the market variations occurred over much shorter periods within a year. So a view had to be taken annually on whether to continue with the contract, but on balance during the time that Mr Vorster was Chairman, it was decided to remain with the EGPC contract which source had ensured a stable supply since 1987 to SFF. With regard to the information provided by

BP and Engen regarding lower or no margins, it would always be possible to acquire from somewhere and for a time a cheaper source of supply but it was a ministerial decision at the time not to allow BP and Engen to buy for themselves so as not to disrupt the supply lines to South Africa.

Possibility of direct contract with AMOCO

3.169 *NSN pointed out that a subsequent direct contract between SFF and AMOCO, dated 1 January 1997, went off without a hitch. This, NSN said, casts serious doubts on the validity of statements about the indispensability of Interstate. AMOCO also responded to NSN in a letter of 14 March 1997 that it had been SFF and EGPC's choice to involve Interstate, that AMOCO had an excellent supplier's record and that AMOCO did not have any direct operational involvement with Interstate. From this, NSN concluded that the arrangement with the EGAM contract was unnecessary and that SFF could have concluded a direct contract with AMOCO, thus saving on the margins payable under the EGAM contract. It needs to be pointed out that what AMOCO said was that it was not necessary from their point of view to involve Interstate. They were not saying that a direct contract, cutting out EGPC, would have been possible at the time.*

3.170 To the suggestion that a direct contract with AMOCO could have been possible at the time, Mr Pithey responded as follows: The relationship with AMOCO, which culminated in the assignment of the EGAM contract, was developed over a period of time during which period no basis to warrant termination by SFF of its relationship with Interstate was presented to him. When Mr Pithey met with Mr P Koch, Managing Director of AMOCO, at the AMOCO offices in London on 29 October 1996, he raised the issue with Mr Koch whether AMOCO and SFF were able to enter into a direct contract excluding Interstate, without

jeopardising their respective business relationships with EGPC. Mr Koch was unable to answer and stated that he would have to check with his people in Egypt. After Mr Pithey returned to South Africa, he telephoned Mr Koch in London and Mr Koch was unable to give such confirmation. Mr Pithey again met Mr Koch when the latter was in Cape Town in January 1997. On this occasion Mr Koch once again was unable to assure Mr Pithey in this regard. Mr Pithey was not informed or aware of the communications between the Minister and AMOCO that were in progress at the time.

3.171 Mr Pithey said he was also not aware that, at the time that the EGAM contract was concluded, AMOCO had allegedly approached SFF with a proposal for a direct contract between AMOCO and SFF. Mr Pithey understood from Mr Casey that AMOCO had merely expressed an interest in supplying SFF with crude oil. No proposal in this regard had been submitted to Mr Pithey and the inability of Mr Koch as late as October 1996 to assure Mr Pithey that a direct contract between AMOCO and SFF would not jeopardise the relationship of AMOCO or SFF with EGPC, is inconsistent in Mr Pithey's view with a suggestion now made that a direct AMOCO/SFF contract was feasible at that stage.

3.172 During a dinner hosted by him about May 1996 and attended by representatives of EGPC, AMOCO and Mr Abdelnour, it was acknowledged that the presence of the aforesaid parties was to conclude a revision of the existing supplier arrangement. At that stage it was not suggested, or even intimated, to Mr Pithey by the AMOCO representative that AMOCO was able to, or desirous of dealing directly with SFF.

3.173 Mr Pithey said that although it was not brought to his attention early in 1996 that they could have a direct contract with AMOCO, Mr Casey did mention to him at a later stage that he thought they could deal directly

with AMOCO and possibly do without Interstate. Mr Pithey said it sounded good and Mr Casey should work on it. Mr Pithey discussed it with Mr Van Zyl, who said it will be good if they can do it this way. The problem here of course was that the contract was already in place and had to run the year, so it seems that whatever Mr Casey would have been able to do in this regard had to wait for 1997 in any case.

3.174 Mr Van Zyl, in his memorandum to the Minister dated 5 November 1996, stated that a direct contract with AMOCO might have been possible then, but that this was the first year of the EGAM contract. Therefore, having EGPC as the main contracting party gave SFF the additional assurance that the supply commitment would be met. Once AMOCO had established itself as a reliable supplier, a direct contract would be considered. *However, NSN argued that Mr Van Zyl was well acquainted with the oil industry, and would therefore have known of AMOCO's long involvement in Egypt, its status as a reliable supplier and that it is one of the largest oil companies in the world.*

3.175 It must, however, be taken into account that SFF's approach was to get country to country contracts as far as possible, and that this was also referred to by Mr Van Zyl in his memorandum where he said that the EGAM agreement should be considered a Government to Government contract. It seems that the only reason why AMOCO was really brought into the picture was because EGPC did not have the volumes available. Whether or not AMOCO would have been willing to enter into a direct contract, and whether or not this would have adversely affected relations with EGPC, are of academic importance only. The point is that Mr Van Zyl, for reasons dealt with in paragraph 3.123 above, decided to work through Mr Abdelnour, and that Mr van Zyl found the solution acceptable, having weighed up the margins payable against profit potential. It was a business decision which may be criticised with

hindsight, but it is not a decision which I can find on the available evidence to have been *mala fide*.

MINISTER MADUNA'S INVOLVEMENT

Investigating the Minister's role

3.176 As is evident from the discussion above, the whole saga surrounding the SFF which eventually lead to this investigation originated with the Minister's suspicions regarding the payments to Interstate. Because of these suspicions the Minister took certain steps to investigate the matter. He also made reference to the Auditor-General in his statement in Parliament on 18 June 1997. It was argued by Counsel for the Minister and NSN that I have not been asked by Parliament to investigate what the Minister had done, but what SFF and the Auditor-General had done, having due regard only to what the Minister had said in Parliament on 18 June 1997. It was argued that these remarks of the Minister in Parliament are relevant only to the extent that they had the effect of instigating Parliament to request the present investigation. I am therefore precluded, so runs Counsel's argument, from investigating the actions of the Minister.

3.177 To my mind the Minister's suspicions and subsequent actions form such an integral part of the sequence of events that one cannot ignore them without running the risk of not informing Parliament and the public fully on what had happened and the reasons therefore. In any event, Counsel for the Minister and NSN did concede, correctly so, that I am not precluded from commenting on whether the Minister was justified or otherwise in making the remarks he did. In this regard Counsel used the phrase: "whether a reasonable Minister in the position of Minister Maduna, having regard to the information at his disposal, would have made those remarks". I would not be in a position to make such

comments without taking cognisance of what lead to the Minister's suspicions and actions.

Basis for the Minister's suspicions and remarks

3.178 Regarding the approach of Dr Pahad, the then Deputy Minister in the office of the Deputy President, to Minister Maduna in August 1996, when concerns were first raised about payments made to Interstate, the Minister testified that the concern Dr Pahad had raised was that since there was a country to country contract between South Africa and Egypt, there was no reason for any payments to be made to a third party like Interstate.

3.179 When approached by Dr Pahad the Minister had already met the General Manager of SFF, Mr Van Zyl, in circumstances, which the Minister described as very strange. This meeting took place shortly after the Minister was appointed, but before he assumed duty, when the same Mr Abdelnour who Dr Pahad later mentioned, introduced the Minister to Mr Van Zyl in the office of the ANC Chief Whip in Parliament. The Minister thought this to be an unusual event where a foreigner introduced him to an employee of his. The Minister stated that from that day on he was uneasy about this association between Mr Abdelnour and Mr Van Zyl. This is borne out by the fact that the Minister indeed mentioned to Mr Pithey later on in August 1996 that he had found it "funny" that Mr Abdelnour had introduced Mr Van Zyl to him. This meeting, together with Dr Pahad's approach, raised the Minister's suspicions about the payments to Interstate.

3.180 Mr Van Zyl explained that he had had reason at the time to go to Cape Town for business interests. Mr Abdelnour was also in Cape Town and invited Mr Van Zyl along for a meeting that Mr Abdelnour had with the Chief Whip. Since Mr Van Zyl was interested to meet the Chief Whip,

he went along. This is not strange when it is borne in mind that Mr Abdelnour and Mr Van Zyl have had business dealings for many years, but the Minister obviously did not have this background information of how Mr Van Zyl happened to be present. The Minister testified that Mr Abdelnour had said that he had come to South Africa from Geneva specifically to introduce Mr Van Zyl to the Minister. It is debatable whether Mr Abdelnour did not say this tongue in cheek, since he himself had not met the Minister at that stage and given the above background to the meeting which Mr Van Zyl sketched in evidence. However, the Minister seemed to have taken this statement seriously. Shortly after this introduction of Mr Van Zyl to the Minister, and before the Minister took up office, Messrs Van Zyl and Pithey indeed had a meeting with the Minister, which would presumably have been the formal introductory meeting if Mr Van Zyl had not gone with Mr Abdelnour to Parliament.

- 3.181 In response to Dr Pahad's approach the Minister wrote to his Director-General asking for information, but only referring to the possibility of negotiating a reduction of the price of Egyptian crude oil, and not sharing his concerns on the payment to Interstate with the Director-General. This communication was referred to Mr Van Zyl, who provided the Minister with the documents required. During August 1996, the Minister stated that he also discussed the concerns raised by Dr Pahad with Dr E Banda, a lawyer and consultant. The Minister knew that Dr Banda had some knowledge of the liquid fuels industry in general and the CEF group in particular. He conveyed to Dr Banda that he needed to get information from employees, functionaries or board members who would be prepared to tell him the truth about what was going on at SFF. Dr Banda said that he knew of somebody who would be able to assist, and on 1 September 1996 brought Mr B Casey to meet the Minister at the latter's home. This was the first of various meetings between Mr Casey and the Minister. At the time Mr Casey was the Deputy General Manager: Crude Oil at SFF.

3.182 The Minister stated that he felt it important to have a direct link with somebody who had access to information inside the SFF like Mr Casey. He thought it essential that the link between Mr Casey and himself should be kept secret. He thus instructed Mr Casey not to disclose his contact with him and they met secretly. This eventually led to the unusual situation of the General Manager (Mr Van Zyl) asking information from his Deputy General Manager (Mr Casey) to respond to the Minister's queries and the Deputy General Manager then secretly assisting the Minister to question the responses that the Minister had received.

3.183 During subsequent meetings with the Minister, Mr Casey expressed concerns that there was no cognisable value received for the payments to Interstate. Whereas the Minister had already had concerns about this matter these were heightened by Mr Casey's inputs.

3.184 When the meeting scheduled by the Minister with Mr Van Zyl on 18 October 1996 came to Mr Casey's attention, this prompted Mr Casey to prepare a memo for the Minister which was dated 16 October 1996. In this memo Mr Casey questioned the value for SFF of the 1995 renewal of the contract SFF had with EGPC. He also questioned a total margin of US \$0,075 paid on a contract with AMOCO. He continued in the memo by saying the following:

"We have been asked [presumably by Mr Van Zyl] to dig very deeply to find reasons why this was justified. At best the reasons are very tenuous. Mr Abdelnour is said to have 'added value' by preventing problems when a ship arrived a few days late. He promised SFF deferred pricing (which effectively enables a lower price to be paid provided one has done hedging in advance), but

failed to deliver as AMOCO were not prepared to do this except on one occasion, without Mr Abdelnour's assistance”.

3.185 With this input at his disposal, the Minister then met with Mr Van Zyl on 18 October 1996. During the present investigation the Minister testified that when he asked Mr Van Zyl at this meeting about the US \$0,06 payment, Mr Van Zyl disclaimed any knowledge of the payments. This issue is of importance when evaluating Mr Van Zyl's *bona fides* in the matter. The issue is somewhat clouded by the fact that the Minister stated in a document which was handed in during the present investigation that he had asked Mr Van Zyl about the US \$0,075 (as apposed to US \$0,06) which was being paid to Interstate and that Mr Van Zyl said that he did not know what the Minister was referring to. It was clear from the import of the questioning by Counsel for the Minister and NSN, that what was put to Mr Van Zyl was that he denied knowledge of a payment to Interstate, whether US \$0,06 or US \$0,075.

3.186 Mr Van Zyl responded by saying that he did tell the Minister about the US \$0,06 - he told him that US \$0,05 was for a reciprocal commercial agreement and it reflected the value of an evergreen EGPC supply contract, and US \$0,01 differential was for logistical support services. Mr Van Zyl stated that in the meeting the Minister requested background information on SFF's relationship with Egypt and the involvement of Mr Abdelnour. He also requested Mr Van Zyl to write a report which he later did, dated 21 October 1996.

3.187 It is improbable that Mr. Van Zyl would have disclaimed all knowledge of payments to Interstate during this meeting. First of all Mr Van Zyl knew that such payments were fully documented in the payment approval documentation of SFF. Secondly in a letter to the Minister dated 22 October 1996 with reference to their meeting of 18 October 1996, Mr Van Zyl wrote that he had contacted Mr Abdelnour with a request to

extend the deadline to confirm their requirements with EGPC for 1997, and added that that is the type of service they expect and get from Interstate. This addition makes no sense if a payment for services from Interstate has been disclaimed four days earlier during the meeting of 18 October 1996. Thirdly in the report of Mr Van Zyl dated 21 October 1996, he deals fully with the payments to Interstate.

3.188 The Minister responded to Mr Van Zyl's report on 28 October 1996 by raising questions flowing from the report. The Minister was assisted by Mr Casey to draft these questions. The result was a formidable list of questions asking for detail on most of the issues raised in the original report. It was clear from this that Mr Casey did not find Mr Van Zyl's reasoning to be convincing. What in effect happened here, was that Mr Casey was questioning the value received for the payments to Interstate in detail, and on the face of it making out a very good case. The arguments that Mr Casey as Deputy General Manager would normally have thrashed out directly with his General Manager and the Board, was now done through the Minister. It should be noted that Mr Casey did raise the issue within SFF previously, but, it seems, not as aggressively as the Minister was now doing.

3.189 At this stage, even before he received Mr Van Zyl's responses to his questions, the Minister gave instructions on 4 November 1996 in a letter to Mr Van Zyl to go ahead with the EGPC contract, "*without any matters and commitments extraneous to it.*" He added that if for any reason it becomes necessary and unavoidable for the SFF to utilise the resources of persons outside, such as Interstate, he would expect Mr Van Zyl and the Chairman to address him on this jointly and he would expect written contracts in this regard. The Minister also instructed that the SFF must have a separate and direct agreement with AMOCO. Normally one would have expected the Minister to wait for Mr Van Zyl's responses on the list of questions dated 28 October 1996 before taking such action,

but the Minister found himself in the situation where concerns were raised to him about the payments to Interstate, with the General Manager saying that value is received for these payments and the Deputy General Manager questioning this. The Minister was in the difficult position of deciding what to do where one is suspicious of improper dealings by top management of a company, as he no doubt was suspicious of Mr Van Zyl. In these circumstances one cannot criticise the Minister for stopping the payments for the interim. It is clear from the introductory paragraphs to the terms of reference eventually given to NSN, that he regarded the stopping of payments as a measure to prevent unauthorised payments until he was convinced that the payments were justified. In this introductory paragraph the Minister stated that, as it was not clear to him why Interstate was paid, he decided to order that this practice should stop and that no further payments be made until and unless he knew why the SFF had to pay any sum to Interstate.

3.190 Mr Van Zyl's answers to the Minister's questions of 28 October 1996 are dated 5 November 1996 and did not provide any further information which Mr Casey was not continuing to question. It is therefore understandable that the Minister wanted the matter investigated and appointed NSN. At the beginning of the present investigation, and especially when the NSN reports became available, there was grave concern about these payments to Interstate. It was only after hearing oral evidence in July 1999 that the payments were put into perspective. The Minister already gave notice of his intention to institute a management audit in the letter of 28 January 1996 but the actual appointment was only made on 12 February 1997 (see paragraph 1.6 for the terms of reference).

3.191 It is clear that the Minister also distrusted the Chairmen of the Board. He told the previous Chairman, Mr Vorster, not to go to the SFF

premises and not to go through the volumes of files Mr Vorster left with SFF when he retired as Chairman. Although the Minister conveyed to the Chairman at the time, Mr Pithey, that he trusted him, the Minister nevertheless used a whistle blower (Mr Casey) within the organisation without telling Mr Pithey about this. Why he distrusted them became clear when the Minister stated in evidence that he regarded them as sanctions busters. This attitude on its own would have been unacceptable without any indication on the part of the Chairmen of dishonesty towards the company or the Minister. However, it is difficult to assess to what extent the Minister's attitude was influenced by suspicions about the situation at SFF being raised by the NSN auditor, Mr Petersen, at the many briefing meetings he had with the Minister.

3.192 The secret channels of communication the Minister set up with one of the employees, Mr Casey, have been criticised by some parties as an improper compromising of the company structures, namely the Board and Management of SFF. With hindsight one is always wiser. It is also very easy to be an armchair critic. Minister Maduna defended his actions by stating that there were no other options but to go the route of a "whistle blower" which is how he saw Mr Casey. He was of the view that it could lead to the destruction of, or tampering with, evidence if he acted otherwise.

3.193 One can to some extent understand the reasoning behind the Minister's actions. This route can however also be fraught with dangers. An atmosphere of trust is essential to any healthy and productive work environment. Creating secret channels is not conducive to this. On the contrary it can create mutual distrust among employees.

3.194 However, up to this point I find the Minister's actions understandable and acceptable.

FURTHER DEVELOPMENTS

3.195 As indicated above, the Minister stopped further payments to Interstate until such time as he was appraised of the reasons for these payments. Interstate at the time requested payment of outstanding amounts up until August 1997.

3.196 At the SFF Board meeting held on 3 December 1996, Mr Van Zyl informed the Board that monies payable to Interstate were outstanding and that in his view if such amounts were not paid the reputation of SFF in the industry might be negatively affected and SFF could also face legal action for the payment of such amounts. The view of Mr Pithey and the Board members was that it was not clear whether the implications of the Minister's instruction to withhold payments were fully appreciated by the Minister, but that such instructions should be complied with pending the matter being discussed by Mr Pithey with the Minister. The Board decision on 3 December 1996 was to terminate the relationship with Interstate with immediate effect. Mr Pithey pointed out that the decision of the Board was never one to renege on outstanding obligations.

3.197 At this stage Mr Van Zyl decided, notwithstanding what the Minister had said, to pay Interstate the still outstanding amounts. This action also featured in Mr Van Zyl's disciplinary hearing, and is therefore not dealt with in detail here. However, it later turned out that Mr Van Zyl's authorisation for the payment was conveyed to the Minister's office by Mr Casey, and the Minister once again stopped the payment. Interstate chose, for reasons unknown, not to take legal action.

CONCLUSION

3.198 It is mostly easy with hindsight to criticise business deals, and to say that a deal could have been better, or resulted in better profits. That is not what I was called upon to do. I was requested by Parliament to investigate irregularities, in other words whether there was, *inter alia*, something irregular or improper with the US \$0,06 payments to Interstate. It would have been irregular for example if there had been from the very onset no benefit whatsoever to SFF, or if it was concluded merely to favour an old partner in sanctions busting. It would also have been irregular if someone concluded the contract merely to receive kickbacks to pocket. Similarly it would be irregular, even if the deal was a good one, if monies received or disbursed were not properly accounted for. Although I criticised various aspects above, I could find no irregularities in the sense described in this paragraph. Whether or not it turned out to be a bad deal is irrelevant for present purposes, unless the person concluding the deal at the time knew, and is shown to have known, that it is a bad one, and as such acted *mala fides*. The evidence does not justify such a conclusion either.