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PROCEEDINGS HELD ON 13 NOVEMBER 2018

CHAIRPERSON: Good morning Mr Mokoena, good morning to everybody.

ADV PHILLIP MOKOENA SC: Good morning, Chair.

CHAIRPERSON: Thank you. Yes, Mr Mokoena are you ready to proceed?

ADV PHILLIP MOKOENA SC: I am ready, Chair.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Chair, prior to proceeding with the evidence of Ms Hogan, I deemed it prudent that we should bring some of the events which transpired yesterday to your attention. We have received two witness statements or statements, let me put it that way. They are dated 11 November 2018. They are both – they are both unsigned and they are from – they are in the letterheads of the ANC and with the name of Mr Gordon Mantashe at the end.

I only scanned through the two statements. They appear to be – the first one appear to be a response to Ms Hogan's evidence and the other one is a response pertaining to the testimony which was adduced by the banks in terms of time of reference 1.7.

I have not as yet canvassed that statement with Ms Hogan and furthermore I have not canvassed both statements with the legal team of the Commission. I thought it wise to bring those facts to attention, but in due course after we have formulated an approach to those statements, we will then approach, the Chairperson, with far more sensible submissions around those statements.

But I thought that I must simply highlight and place those facts on record.

CHAIRPERSON: No, thank you very much. I guess the first step is that they need to be signed by whoever is making the statements so that they can be taken seriously, because

you would not be able to put to the witness what you might regard as Mr Mantashe's version when you do not have his signature on the statements.

ADV PHILLIP MOKOENA SC: Yes, indeed.

ADV PHILLIP MOKOENA SC: So it may well be therefore that at some stage in the future if there is an application for leave to cross-examine Ms Hogan, if that is what is – or may be required it may be that we might ask her at some stage to come back, but it may well be that there is no – there will be no request for leave to cross-examine her, but there may be an application or a request that Mr Mantashe's version or the ANC's version be placed – put to her for her to comment on.

I guess that in due course you will get to know what the position is.

ADV PHILLIP MOKOENA SC: Indeed, Chair. Once we have interrogated all those issues we will be able to approach the, Chair, with a proper way forward pertaining to those statements.

CHAIRPERSON: Okay, no, thank you.

ADV PHILLIP MOKOENA SC: Okay, yes, Ms Hogan...[intervenes]

CHAIRPERSON: Well, I am sorry, Ms Hogan, Mr Mokoena and I were in part talking about you. So it may be at some stage in the future you may be asked to come back and I hope you would be able to come back.

MS BARBARA HOGAN: Sure.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Ms Hogan, yesterday we parted ways when we were dealing with annexure K and that annexure K is to be found on page 360. You had already testified on annexure K and you were just about to link it with annexure L that is on page 366. You may continue to testify on the contents of annexure A.

You would recall that we adjourned at the point where I said it raised serious issues of governance and that it raises serious issues that you were conveying to the ex-President and for that purpose and with the indulgence from the, Chair, if you may read the contents of annexure L into the record and thereafter give us the context?

MS BARBARA HOGAN: Yes. Annexure L is a letter from myself to the President on page 366 yes. From myself to the President and it is dated 8 September.

CHAIRPERSON: Let me just check again if you are audible throughout. Everybody can hear the witness? Okay, thank you.

MS BARBARA HOGAN: Thank you.

CHAIRPERSON: They can hear you.

MS BARBARA HOGAN: Thank you. So it is dated 8 September. Chair, you would recall that I had said that after Mr Ghama had been suspended the Deputy Minister and myself together with the department had embarked on a process to selecting candidates for a new Transnet board, not for a new CEO, but for a new board.

CHAIRPERSON: I am terribly sorry, Ms Hogan, I am going to interrupt you, because of something that I should have dealt with before you started. Please do not forget where you were when I interrupted you. I just wish to make the announcement that on Friday I granted an application that had been brought by Minister Pravin Ghordan for an order shifting his evidence from 15 November to 19 November.

I realised yesterday from the media that they were still talking on the basis that he was going to be giving evidence this week. That order was made on Friday, but it is only being distributed to the media today. It was not distributed and it is just important that the public knows that there has been a change in regard to the date when Mr Pravin Ghordan will be giving evidence.

The order that I made which was in accordance with the agreement that the Commission's legal team and Minister Ghordan's lawyers had made included that apart from giving evidence on the 19th which is Monday, next week, he will remain available on Tuesday, the 20th in case he is still needed and in case I grant any leave to cross-examine that may be brought.

I just thought I must let the public know about that and I should have made it before Ms Hogan began her evidence. I apologise to have interrupted you.

MS BARBARA HOGAN: Thank you.

CHAIRPERSON: Thank you, Mr Mokoena, you may proceed.

ADV PHILLIP MOKOENA SC: Ms Hogan you were at the verge of giving context to annexure L.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Annexure L on page 366. Yes, you may proceed.

MS BARBARA HOGAN: Okay, this was a letter to the President from myself, re Transnet Chairperson. The Deputy Minister and I were intent on submitting a memorandum – a cabinet memorandum around – for the appointment of a Transnet board, for some board members to retire, some to stay on, but new members and that would obviously include a Chairperson, because it was an Acting Chair.

When that started – when that was submitted through the cabinet secretariat and whatever the request came that the President wanted to speak to me about it. Finally we were able to speak telephonically and the President then said that he would want, as he had said before, several names as candidates for Chairperson and also he wanted the CV for them, for any candidate and also the CV for – of a Chairperson of another board that I was taking to cabinet for approval and that was the Board of SAFCOL which is a forestry company.

So those were immediately forwarded onto the President. I think it was exactly the same day, those CV's and whatever in response to his request. And a reminder from my department on both – I think it was the 10th and the 11th to the President requesting the meeting in this regard.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: So the letter...[intervenes]

ADV PHILLIP MOKOENA SC: Before you go to the reminders let us deal first with annexure L and its contents. What did you convey to the President if you may read the contents of that letter into the record?

MS BARBARA HOGAN: Okay. So firstly I reminded the President that Transnet has been operating with an Acting Chair, and at its AGM on 24 July the terms of the board members and the Acting Chair had to be extended, until such time that a new board is appointed.

Now I am sure you will recall that Mr Ghama's disciplinary process really only ended at the end of June and he was fired, and so to put a board together in three weeks in time for an AGM in July would have been impossible. You have got to do a proper job.

So once again, and this was the second time, Chair, I had to go to an AGM of Transnet and say I am not ready yet to appoint a board, or you know, to address vacancies that were due to occur on the board as well as the Acting Chair and the CEO.

The second issue I raised mentioned that Transnet was about to engage on a R84-Billion, five year expenditure program. It was a massive investment program. Governments from a macroeconomic point of view had taken the view and in my view it was a correct view, that massive investment and infrastructure yields results in that it promotes the economy and it provides employment and therefore both Transnet and

Eskom who were at the point and needed massive investment were going to embark on those investments.

Now Transnet was particularly well placed to embark on it, because its balance sheet was looking very good. It was – it at least balanced, but it still needed, you know the borrowings and whatever for that investment. I then said, you know, we need a strong board to oversee this massive investment process and that it was, because of the importance of Transnet to the economy it was absolutely important that the Chair and the board be appointed.

And that my department had prepared a cabinet memorandum for discussion to cabinet, but it was not yet submitted. So this is, because we agreed that we would discuss the matter first so that I can ascertain your final views on the composition of the board, in particular the Chairperson.

So in that telephonic conversation he had said to wait before submitting, because he wanted to see the CV's. I mention the name of the two candidates and then I say:

"I request an appointment at your earliest convenience to discuss this matter further with the Deputy Minister and myself in order that we are able to discuss your views on the preferred candidate and therefore deal with it."

So that was the point.

ADV PHILLIP MOKOENA SC: And this is against the background of correspondence that you have dealt with yesterday and the memorandum which you say the President did not react to?

MS BARBARA HOGAN: Yes, you know we were wanting to put this memorandum forward. The cabinet secretariat advised us that the President first wanted to discuss this.

ADV PHILLIP MOKOENA SC: Now in relation to annexure L after dispatching it to the President, did he react to annexure L?

MS BARBARA HOGAN: Once again no response. My department, my secretariat sent a request twice, after this letter, requesting that urgent meeting and there was no response from the presidency.

ADV PHILLIP MOKOENA SC: Now, may I refer you to page 15, paragraph 57 of your witness statement?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Now on page 15 while he was still waiting for those responses from the President then you recorded the following on paragraph 57:

"Three days later on Sunday, 31 October 2010, the President's office called me to a meeting with him and in the presence of Ngwede Mantashe, the Secretary General of the ANC. President Zuma said that the NEC has decided to redeploy me as the Ambassador to Finland. I declined the redeployment and informed them that I would be resigning as a member of parliament."

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Now you were expecting a response from the President on a number of issues which you raised with him as per the correspondence that we canvassed yesterday. The response that you received from the President was three days

later. I am sure you did not bargain for it that you are going to be now redeployed to Finland.

MS BARBARA HOGAN: Chair, there had been lots of rumours that I was going to be redeployed, not redeployed, but I was going to be reshuffled. So, but I had no idea that I was going to be sent as an Ambassador to Finland. I raised with the President the question that my partner Mr Kathrada who had spent 26 years in jail that I could not see my way fit to request him to accompany me for a further five years to live in Finland away from his country, family, friends and everything that meant so much to him.

So I thanked the President and I said, but I am not going to be able to accept that deployment, because it would not work for me from a personal point of view.

ADV PHILLIP MOKOENA SC: Ja, did the President at any stage indicate to you whether...[intervenes]

CHAIRPERSON: Well, Mr Mokoena I am just reflecting on the fact that you are the one who read to the witness that very important paragraph.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: I would have liked the witness to tell us about that very important meeting between herself, the former President and Mr Ngwede Mantashe, herself. I would like to hear – could you please just tell us about that meeting?

MS BARBARA HOGAN: Yes. I was invited, I received a phone call that Sunday 31 October in the afternoon from the President's office to say that the President urgently needed to see me at his home. You know, the official residence in Pretoria.

I knew then that I was going to be dismissed.

CHAIRPERSON: Sorry, just repeat that? You knew then that you were to be dismissed?

MS BARBARA HOGAN: Yes, you know, the rumours and everything. The President never really called me to any urgent meeting, you know, there was – and bear in mind...[intervenes]

CHAIRPERSON: I guess what you are saying is you had a strong suspicion.

MS BARBARA HOGAN: A strong suspicion.

CHAIRPERSON: Yes, ja.

MS BARBARA HOGAN: Bear in mind that I had attempted to put this Transnet cabinet memorandum before cabinet. I had requested special permission from the President a few days before, requesting the permission to jump the subcommittee process and take it straight and heard nothing and that never appeared on the agenda.

Also on that last cabinet meeting that I attended, what was on the agenda was the SAFCOL, the recommendations around the board and Chair of SAFCOL, and I received a letter from the Minister in the presidency, the late Minister Collen Shibane saying that the President was requesting me to remove that item from the agenda, even though it was at the cabinet meeting and it had gone through the subcommittee process.

And I declined and I said, you know, this is – we cannot stop processes of appointment and then I received a letter from and I have copies of that from Mr Shibane's saying in view of what you have said the President says you should go ahead with this cabinet memorandum.

So that was discussed and agreed at, at cabinet, but I was surprised that the President took such a strong interest in SAFCOL. SAFCOL was one of the smallest of the state owned enterprises. I think it had the lowest revenue base. And so it did confuse me on why he would want to have his own say on that.

So anyway, so that was a couple of days before and all of that had happened then and there had been a lot of rumours and the Deputy Minister had come to my office

and he said the rumours that he is hearing in the Luthuli house is that I was going to be dismissed.

And we discussed how I would handle it and he said I should do as dignified an exit and I said I agree. Okay, so I was summoned to the President, so I had a fair idea that I was going to be dismissed. Mr Kathrada insisted that he accompany me in the car and he was not invited into the President's residence and he did not expect to be part of the meeting, and he was left sitting outside in the car.

I then met with the President and Mr Mantashe and the President said that the NEC had decided that I ought to be redeployed as the Ambassador to Finland and then I said, you know, I am sorry I cannot accept that, but I said – I did say at that stage that I want to thank the President for the privilege of being able to serve my country as a cabinet Minister, and I mean that.

Any person who can serve your country as high level as that, it is a privilege and it is an honour to do it. I did not ask the reasons. For me it was perfectly, you know, the President has the prerogative to dismiss. I also said that I was not going to go back to parliament. The reason being that when I was made a Minister and Mr Kathrada who had been staying in Cape Town at that time, moved back to Johannesburg where his foundation was based, where is comrades, where his friends, family, a lot of people were based and going back to parliament, you know in the two years that I was a cabinet Minister Cassie was a lot of the time on his own, because I had to be down in Cape Town, and I just felt it would be unkind and not fair, because he had been perfectly accommodating to me when I had to be a Minister. For me now to expect him to now pack up and move back to Cape Town.

And I have done my stint in parliament. I had been a parliamentarian from 1994 to 2008 and I think there was time for young blood to come in and it was only, you know,

I thought there was nothing more I could contribute there. It was not in an act of peak at all that I said that I did not want to go to parliament.

With that...[intervenes]

CHAIRPERSON: I am sorry, I hear you say up to 2008, I am assuming when you are a Minister you remained a member of parliament or is that not so?

MS BARBARA HOGAN: Yes, as a Minister, yes, so 2010, you are right. I have done longer service than what I accredit myself with. And then there was silence and I said, you know, is that all, you know? And they said yes. And so I greeted them and I left. The President helped me to open the door, because the door was jammed and I left and I went home with Cathy and we went to my sister who – and her husband who has stood by me all these years. When I was in prison she was the rock that I leant on and I went to my...[intervenes]

CHAIRPERSON: So the dismissal was with immediate effect?

MS BARBARA HOGAN: My sister was my...[intervenes]

CHAIRPERSON: I am sorry, the dismissal, was it with immediate effect?

MS BARBARA HOGAN: With immediate effect. Obviously what happens is that you are dismissed, but it is only when the new Minister is sworn in that in effect there is transfer. So after explaining this to my sister and watching the television, it was portrayed that the President – from the presidency it was portrayed that those of us who were being reshuffled, because I was not the only one were being reshuffled, because we were incompetent and there was a whole narrative around that.

Any way...[intervenes]

CHAIRPERSON: Was that based on any media statement issued by the presidency?

MS BARBARA HOGAN: There was a media statement that was released, yes.

CHAIRPERSON: Oh, so it was not that the media was interpreting it in a certain way?

MS BARBARA HOGAN: Yes, and it was not a thing, they were incompetent, but the innuendo was certainly that the President wanted, you know, good professional people, and whatever. I then spent the whole night clearing my office at home, because you have to take back documents and I went back to the office in the morning, and organised my office, handed over all the documents to be filed and requested that my secretary and whatever organise a handover meeting for me, because it had been announced that Minister Gigaba was taking over, so that I could handover to him.

I then left. Mr Gigaba had not yet come to the office. I then left and I was told the next day that Mr Gigaba declined a meeting with me.

ADV PHILLIP MOKOENA SC: Before you go to the next day, have you now completed the events of 31 October 2010?

MS BARBARA HOGAN: Yes, and 1 November.

ADV PHILLIP MOKOENA SC: Oh, yes, that is what the, Chairperson, wanted to hear from you, from your own mouth as to what transpired on the day.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: May I inquire from you that prior to 31 October 2010 did the President express or indicate to you in any form that he was not happy with your performance as the Minister of Public Enterprises?

MS BARBARA HOGAN: No, he did not. The President at a certain stage did assign certain, very responsibility on me. He made me the Minister to coordinate the drawing up, the drafting and consolidation of government's energy plan going forward. Now I do not know, you know, there is a Minister of Energy and I did say at cabinet that I, you know, I am honoured to be given this job, but there is also a Minister of Energy and whatever, but I was told very firmly by the President, and we successfully introduced and

had passed with a fair amount of approval, because I engaged for civil society and a lot of players on this plan.

I also signed a performance agreement with the President. I think it was in April 2010. The President's office signed performance agreements with every Minister. And on that basis the President would be able to evaluate your performance at regular intervals. I was never evaluated on the basis of my performance in terms of that agreement.

ADV PHILLIP MOKOENA SC: Yes, were there any complaints which were made against you by any of the boards which were falling under your portfolio during that time or even prior to that?

MS BARBARA HOGAN: No.

CHAIRPERSON: You said that the President never expressed any unhappiness with your performance, but of course based on the evidence you gave yesterday it was – it must have been quite clear, it is quite clear that there were very sharp differences of opinion between yourself and the President in regard to some of the issues in your portfolio?

MS BARBARA HOGAN: Yes, correct. So the – you know, I was aware that we did not, we often had differences of opinion, but he never called me in and said I want to talk to you about these matters, I am not happy or the way that you are performing in the department as a Minister, no. I never got that kind of feedback from him.

CHAIRPERSON: Is there room, you can just answer this question to the best of your ability. Do you think there may be room for any suggestion that maybe your personality and his personality, your respective ways of dealing with issues were such that the kinds of differences that came up, maybe were likely to come up? Or is that something you have not thought about? I am just thinking...[intervenes]

MS BARBARA HOGAN: Ja.

CHAIRPERSON: Because the differences of opinion were quite sharp, I think on certain issues and I think they were expressed forcefully on both sides. You must just tell me if what I am thinking you do not agree with.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: And feel free to say you think differently. I am just exploring.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: Thoughts.

MS BARBARA HOGAN: The President is a genial person we know that. I cannot put aside the fact that probably dealing with women who held views, might have been an uncomfortable experience for him, but I was careful to be respectful all the way through.

At times we did butt heads and yes, we are two very different kinds of people, and I think those who have worked with me have found that whilst I am firm on certain principles I am also very open to discussion and other points of view. And the fact that the President just was not working from the same values, set of values that I was working from probably contributed to the breakdown in that relationship.

CHAIRPERSON: Okay, no thank you very much.

MS BARBARA HOGAN: Thank you.

CHAIRPERSON: You may continue.

ADV PHILLIP MOKOENA SC: Ms Hogan a question may be posed to say that, but you were not dismissed, you were in fact offered a post in Finland, why would you say that, you know, that equates to a dismissal?

MS BARBARA HOGAN: Well I was dismissed as a cabinet Minister and offered a redeployment as an Ambassador. So yes, I was dismissed as a cabinet Minister.

ADV PHILLIP MOKOENA SC: Now, you said who took over from you? Who took over?

MS BARBARA HOGAN: Minister Malusi Gigaba.

ADV PHILLIP MOKOENA SC: Did Minister Gigaba recommend a new board to be appointed?

MS BARBARA HOGAN: Well, Minister Gigaba...[intervenes]

ADV PHILLIP MOKOENA SC: After your departure?

MS BARBARA HOGAN: Yes, the Transnet cabinet memorandum that I proposed for to go before cabinet in early November, by which time I had already been dismissed that was withdrawn from the cabinet process and about, it must have been about two weeks later at the next cabinet meeting Minister Gigaba put forward proposals for Transnet board which were approved.

Some of the people who I recommended in my document he had incorporated into – onto that board, some of them not.

CHAIRPERSON: I am sorry, Mr Mokoena, I may have missed something. The last communication that you – I just want to go back to prior to the dismissal before we go to what happened after your successor took over. I just want to go back to events that may have preceded your dismissal as cabinet Minister.

Now I think the last letter that – I think it was L.

ADV PHILLIP MOKOENA SC: L, annexure L, Mr Chair.

CHAIRPERSON: Was 28 September, is it not – was dated, that you wrote to the President?

MS BARBARA HOGAN: Yes, the 27th. The last letter I sent to the President was actually 27 October.

CHAIRPERSON: Okay, let me just get there. Mr Mokoena...[intervenes]

MS BARBARA HOGAN: I am not sure if it is in this pack.

ADV PHILLIP MOKOENA SC: It is page 366.

CHAIRPERSON: Page 366.

MS BARBARA HOGAN: No, that is the September one. Sorry, I – sorry, I sent a letter to the President requesting that the Transnet memo be expedited and placed on the cabinet agenda for 15 September. Sorry, for the November one, sorry, it is complicated. I sent a letter to the presidency on 27 October requesting his assistance to expedite the placing of the Transnet cabinet memo onto the cabinet agenda. That was for November. The cabinet was meeting shortly in November.

CHAIRPERSON: Yes, yes.

MS BARBARA HOGAN: And then four days later he fired me.

CHAIRPERSON: Yes.

MS BARBARA HOGAN: I do not have that letter, sorry.

CHAIRPERSON: Okay, you might have learned to deal with this differently, but I would rather let us deal with it now. Events such as the Maroga incident, have you dealt with them?

ADV PHILLIP MOKOENA SC: They are the ones that we are just going to – just about to canvas with the witness after the Transnet.

CHAIRPERSON: Yes, no, no, I think they should come before the dismissal, because they reflect the disagreements between the Minister and the President in relation to certain people occupying certain positions. I would like to hear those prior to us getting to what happened after her successor came over, took over.

So I would like to hear about those and I do not know if she had said enough about SAFCOL and I do not know whether the Mumbai one was adequately dealt with as well. I would like all of those prior to the dismissal, because I think that is where they fit in properly.

ADV PHILLIP MOKOENA SC: Mr Chair, yes, we have structured the evidence differently, but we appreciate your point.

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: What we intended to do was to deal first with all the relevant issues pertaining to Transnet so that you must be able to equate them with what now transpires at Eskom and thereafter we deal with SAFCOL and we deal with the question of Mumbai roads, so that at least the evidence must be led in that structured manner, for us to be able to follow for her to be able to follow. But we are easy...[intervenes]

CHAIRPERSON: Ja, ja, ja.

ADV PHILLIP MOKOENA SC: We will be able to...[intervenes]

CHAIRPERSON: I think that if you have regard to the terms of reference that you are dealing with, dismissals and appoints of members of the executive, the – what our terms of reference require is what were these dismissals about? What were these appointments about? And in regard to her, her statement reflects certain sharp differences between herself and the former President in relation to a number of entities, and not just one.

Therefore, I think it makes sense to canvas all of those differences of opinion between herself and the former President leading up to the dismissal.

ADV PHILLIP MOKOENA SC: We appreciate that, Chair, we can do that. Let us now jump and deal with the Eskom issues to link them with your evidence. You preface those issues by referring to an Eskom board...[intervenes]

CHAIRPERSON: Okay, I am sorry, I just want to complete the picture, just so that you appreciate where I am coming from, because it may well be that the dismissal, her dismissal was not just about her differences of opinion with the former President in regard

of Transnet. It may be that it was as a result of the many differences of opinion which arose in regard to the various state owned enterprises. Okay, thank you.

ADV PHILLIP MOKOENA SC: Ms Hogan?

MS BARBARA HOGAN: Yes?

ADV PHILLIP MOKOENA SC: You are dealing with the issues of Eskom and you preface them by referring to a breakaway board session which was held on 28 October 2009, am I correct? --- Correct.

Can you share with the, Chair, what transpired in that session and what you were told occurred in relation to Mr Maroga?

MS BARBARA HOGAN: Chair, on 28 October the board was having a breakaway session to discuss the strategy going forward as is normal with boards and bearing in mind that Eskom was facing huge challenges both from a funding point of view and an operational point of view. I hesitate to use that word that I used yesterday that blacked out the lights, but the lights – certainly the operational challenges around providing a reliable energy was certainly uppermost in all the board's mind.

A very tense discussion ensued, and it was very robust and in that process the CEO of Eskom, Mr Maroga got up and said that he, you know, if this was the case he was going to resign, that he was resigning and he left the board and he left the room and said the board must makes its decisions.

At that point the Chair of the board, Mr Bobby Godsell said well if that is the case, because there has been conflict between us at this meeting, myself and him, strong differences of opinion, I too will stand up and leave and then the board must make a decision.

CHAIRPERSON: I just want to confirm that what you are relating in regard to what happened at that meeting of the board is based on reports that you received. You yourself were not there, or were you there?

MS BARBARA HOGAN: I was not present.

CHAIRPERSON: Yes. Okay.

MS BARBARA HOGAN: And later court cases and whatever.

CHAIRPERSON: Okay.

MS BARBARA HOGAN: Now this is a very difficult situation, you have got a CEO, you know who is about to resign of the most important state owned enterprise. Anyway the board then, to move matters on, the board then unanimously agreed that they would accept Mr Moroga's resignation and there were grounds for that. It was not just what had happened at that meeting.

And Mr Godsell and of course a delegation from the board was then dispatched to me, it was Mr Maroga to inform him of the decision and to look at the modalities of his departure, and he met with them and was informed, and there was an agreement that they would meet in the morning to discuss the modalities of his departure.

I was informed by Mr Godsell that this has taken place, I was down in Cape Town, I flew up and I immediately the next day went to the Eskom Head Office and was being briefed by Mr Godsell, when Mr Maroga walked in with a letter, which he gave to me and I had given to the Chair, saying that he had in fact not offered to resign...[intervenes]

ADV PHILLIP MOKOENA SC: And that is now the Friday, 29 October 2009?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: When you say that you flew down and went to Eskom's offices?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And that is where you got a detailed briefing of what transpired?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And at that moment you say that Mr Maroga then?

MS BARBARA HOGAN: He came into the office and he said that it was not true and it is the annexure here, yes, that was a letter that I was given that he was not accepting that he had resigned, he had not resigned.

ADV PHILLIP MOKOENA SC: May I refer you to page 368. Mr Chair, that is annexure M, which the witness is referring to. Ms Hogan is that the letter that you say that you were furnished with by Mr Maroga on 29 October?

MS BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: Then...[intervenes]

CHAIRPERSON: May I just take you a few steps back. From your own personal knowledge, prior to these events happening at this particular meeting of the board of Eskom, were you aware whether there were any challenges or strong differences between the Chairperson of the board, Mr Bobby Godsell and the then Chief Executive Officer of Eskom Mr Maroga that may have been making it difficult for the two of them to work together or for the board to work smoothly with the Executive or was this coming to you as a complete surprise?

MS BARBARA HOGAN: I am trying to recollect now...[intervenes]

CHAIRPERSON: But if you cannot remember it is fine.

MS BARBARA HOGAN: I was not intimately involved with understanding the tensions, it has been kept in-house. I do know that when Mr Maroga came into the office and handed over the letter where Mr Godsell and I was present where they proceeded to

have a very, very harsh interaction and it was then that I perceived just how difficult that relationship was, but one of the things that alerted me, which you know as a Minister you just put it in the back of your head, was that one of the senior, senior black Managers at Eskom had been at Eskom and I had just heard that he was resigning and we saw each other in the lift, or you know, some place, I did not ask to see him or anything. It was just per chance and I said I am very sorry that you are leaving and he said to me if you do not sort out the CEO a lot of us, you know, a lot more are going to leave.

And that quite shocked me, but you know all through this period when this happened I was not quite aware of the intensities of the conflicts and whatever. It came to me fairly new. I had only been a Minister for about four/five months when this all blew up. Ja, so you are correct, in a sense I was not fully appraised.

CHAIRPERSON: Okay, alright, you may proceed.

ADV PHILLIP MOKOENA SC: Yes, now you received the letter annexure M, what did you do?

MS BARBARA HOGAN: This was...[intervenes]

CHAIRPERSON: I am sorry, do you want her to tell us the main important points made in the letter?

MS BARBARA HOGAN: Yes, the letter was written the next day by Mr Maroga and basically he was saying this is a matter of national importance. My remarks of frustration cannot be construed as an offer to resign. The Chairman has expressed similar frustrations numerous times and is not being treated in this manner.

I was stunned by the response of the board to say they accept my offer and then he goes on to say what he thought the real issues were.

CHAIRPERSON: Feel free to read the letter if you cannot remember the points. Feel free to read the letter.

MS BARBARA HOGAN: He gave this letter and he had given it, I think to members of the board as well, I am not sure, because to me and to Mr Godsell, I got the letter in the office, yes.

ADV PHILLIP MOKOENA SC: Yes, the Chair, was saying that you are at liberty to read...[intervenes]

MS BARBARA HOGAN: Oh, I must read, Oh, I am sorry.

ADV PHILLIP MOKOENA SC: The letter so that you can...[intervenes]

CHAIRPERSON: Yes...[intervenes]

MS BARBARA HOGAN: I am sorry, okay.

CHAIRPERSON: The letter reflects at least maybe reflecting at least Mr Maroga's view of why there were the events that had happened. So I think it is important to just...[intervenes]

MS BARBARA HOGAN: Okay.

CHAIRPERSON: Read what he says.

MS BARBARA HOGAN: So the letter is addressed to the Eskom board and not to myself and it says:

"Dear board members. I have reflected on this matter overnight. I believe this is a matter of national importance. This matter is about the rail of the SOEs in this phase of a democracy. It is about the future of this country. It is not about the relationship between the Chairman and the Chief Executive. My remarks of frustration in the board meeting can be in no way be construed to be an offer to resign. The Chairman has expressed similar frustrations numerous times and has not been treated in this manner. I was stunned by the response of the board to say they

accept my offer and wish to communicate with the following immediate effect. The real issues are the following: I have put before the board a very comprehensive strategy document about the direction I propose Eskom should take. The strategy articulates very key matters of national importance relating to our contribution to this developing democracy. I am of the firm view that the board must engage on the matters articulated in this strategy document as this is the most important duty of the board. The real issues between the Chairman and myself are rooted in the differences of the role of Eskom in this phase of our democracy and the role clarity between the Chairman and the Chief Executive. I believe as a board we will be facing the country if we do not show leadership on this matter. Conclusion. I have not offered to resign and I am not offering to resign. I believe the role of Eskom is key to the development of our country during this phase of the democracy. It is the view, I believe strongly in, and a view that I am willing to fight for, for whatever the consequences. Yours sincerely Mr Maroga."

And it is CC'd to myself and Minister Depour Peters.

ADV PHILLIP MOKOENA SC: Now you received that letter. At that time you are still at the offices of Eskom. Did you engage the board members to then try to interrogate that he as Mr Maroga telling me something different from what was conveyed to me?

MS BARBARA HOGAN: The board was still at the – was present at the Eskom offices, because this was more than a one day board meeting, and I was aware that they were sitting in the boardroom next door. So when I got this letter and I hear the fierce

interchange between the Chair and the CEO I thought I wanted to consult with the board to get their view.

So I went to the board, I asked Maroga not to be present, because I wanted the board to be able to express their views as the board itself and I asked, I said at the preface I said I am going to ask each and every one of the board members to give me their view on whether – on what happened and whether Mr Maroga had indeed offered to resign, and whether that offer, the board's view had been communicated to him and what their view was, had he resigned.

And I did say that if there is any person sitting here who has a different view to another board member they must express their different view. There will be no repercussions for that, but I want an honest account from all those board members.

I went round the board and each board member confirmed that Mr Maroga had offered to resign. That they have discussed it, that they felt that they will accept that resignation, and the board – there was a fair amount of anger within in the board itself and some board members were more frank and said that they felt that he was not performing to par as CEO.

So I then left the boardroom and I requested – I had also requested that the head of the legal department in my department come to head office plus my advisor, my ministerial advisor and I asked them to bring in a senior counsel, because I wanted legal guidance, because this is a tricky matter, and Michael Katz was called in. I consulted with him. I consulted with my Deputy Minister and with my legal advisor and my political advisor.

Both the Deputy Minister and myself were of the view that the relationship between Mr Maroga and the board had deteriorated very significantly and that this final denial that he had resigned was actually – was the final nail in the coffin as it were.

I did not want to get involved in this matter as a Minister, but I did feel that we need to get a very quick solution. So then I requested my Deputy Minister who does not have my executive authority, but my Deputy Minister who is an exceptionally – who is able to engage very well with people...[intervenes]

ADV PHILLIP MOKOENA SC: Who was your Deputy, Minister?

MS BARBARA HOGAN: Minister Enoch Gordon Ngwana.

ADV PHILLIP MOKOENA SC: Yes?

MS BARBARA HOGAN: I asked him to meet with Mr Maroga and say listen is there not an elegant way of dealing with this? It is clear the relationship has broken down...[intervenes]

CHAIRPERSON: Just one second. When you were listening to board members give you their accounts of what had happened, was your Deputy Minister with you or not really?

MS BARBARA HOGAN: I cannot recall. I think he was. I think – I cannot recall.

CHAIRPERSON: You cannot recall.

MS BARBARA HOGAN: Ja.

CHAIRPERSON: Okay, I am sorry.

MS BARBARA HOGAN: But you know, he and I worked very closely together and...[intervenes]

CHAIRPERSON: If he was not there I assume you would have briefed him?

MS BARBARA HOGAN: He would have been briefed afterwards.

CHAIRPERSON: Before asking him to speak to Mr Maroga?

MS BARBARA HOGAN: Definitely.

CHAIRPERSON: Yes.

MS BARBARA HOGAN: He was part of the discussions with senior counsel. We spent quite a long time discussing all of the ins and outs of this. And so we – I was just simply trying to facilitate a process, but not to instruct the board or to take sides in this matter, but I wanted the Deputy Minister to convey that, you know, there was almost what one calls an irretrievable breakdown in the relationship between the board and Mr Maroga.

The Deputy Minister then went ahead, I think arranged to meet with him. There is some confusion how often he met in the court papers there were differences, but in anyway, Mr Maroga – I was told that Mr Maroga would like to think about that. The Deputy Minister proposed to him saying let us not make a big public event out of this. Let us find a dignified way for you to move on, let us talk about the modalities of your exit and let me say upfront, I have never ever had any reason to believe that Mr Maroga was in anyway corrupt.

He was a very fine engineer. And it has always been regrettable for me that, you know, the turn of events that finally took place, did take place, because he was not one of those people who was just there for himself, he truly wanted to serve the country in his capacity.

So I wanted a dignified exit for him to consider a dignified exit to both help the board and to stop this whole thing from blowing out of control. Eskom was in too vulnerable a position to afford this kind of confrontation.

ADV PHILLIP MOKOENA SC: Yes. Now did Mr Maroga accept, did he accept that he must, you know, exit the Eskom as you had proposed or as the Deputy has proposed?

MS BARBARA HOGAN: He said that he had to attend a family funeral in Limpopo and he would come back after that to meet, and he would like to think it through.

ADV PHILLIP MOKOENA SC: Did he come back?

MS BARBARA HOGAN: The Deputy Minister met with him again, which is my understanding, and he said that he did not want to talk to the Deputy Minister, he wanted to speak to the Minister.

CHAIRPERSON: This would have been on what date now?

MS BARBARA HOGAN: On the Monday.

CHAIRPERSON: The meeting of the board was it on the 29th or did it start on the 28th?

MS BARBARA HOGAN: It was on the Friday – it was on the Thursday, wait, the meeting of the board was on the 28th.

CHAIRPERSON: Ja.

MS BARBARA HOGAN: The 29th...[intervenes]

CHAIRPERSON: And Mr Maroga's letter...[intervenes]

MS BARBARA HOGAN: Was when I spoke to the board. The 30th was the Friday when Mr Gordon Ngwana spoke to him and then it was the weekend and then Mr Gordon Ngwana met with him on the Monday and he said that he would like to meet with me, not with the Deputy Minister.

CHAIRPERSON: Yes and Monday would have been what date, that would have been the 30th?

MS BARBARA HOGAN: That would have been the 2nd November.

CHAIRPERSON: Oh.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: Okay, okay. Based on what? We know in terms of when you were dismissed, it would have been after you had been dismissed?

MS BARBARA HOGAN: Yes.

CHAIRPERSON: Okay.

MS BARBARA HOGAN: It would have been – well you see what had happened in the

interim was, the Board was getting extremely edgy. They were not willing and I perfectly understood that, to allow this process to go on and on all the time. I think they were uncertain what position I was going to take and they were wanting to ensure that no incorrect political interference happened and they correct on that. So I had a few engagements telephonically with the Chair of the Board who was conveying to me the sentiment of Board members and I was saying to the Chair, I fully understand that sentiment, but we do need to try and have as dignified and exit – as unproblematic and exit, because this can affect the reputation of Eskom.

The Board, as I understood in late testimony into court and whatever, the Board took legal opinion on this from Senior Counsel, informed them that they have the authority to dismiss or to accept or whatever. So the Board then sent a letter, which I was not aware of at the time, saying that they have accepted his resignation and even if that resignation does not hold as accepted, on the basis and I forget the exact words, but on the basis of ...[intervenes]

ADV PHILLIP MOKOENA SC: You are dealing with that on paragraph 70?

MS BARBARA HOGAN: Mm?

ADV PHILLIP MOKOENA SC: Seven zero, paragraph 70 on page 16.

MS BARBARA HOGAN: So yes and stating that incapacity as a manager constituted further grounds for terminating the relationship, should the resignation dispute not be settled. Now I had concerns about that second aspect of the letter, because I had concerns about due process. If you are going to dismiss someone on the grounds of due process, then due process must occur. I then instructed Head of my Legal Department to engage with the Chair of Eskom on this matter, to hear their views and they put forward opinion from their Senior Counsel that what they had done was in accordance with the opinion that they had received.

So when I met with Mr Maroga, I was still had not sight of that letter. Mr Maroga actually showed me the letter, or informed me of its contents.

ADV PHILLIP MOKOENA SC: In terms of your statement, just to assist the Chair with the chronology, you said that you met with Mr Maroga on the 4th November?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: 2009.

MS BARBARA HOGAN: Yes, yes.

ADV PHILLIP MOKOENA SC: And that is in terms of your paragraph 71, you can talk to it.

MS BARBARA HOGAN: So then ...[intervenes]

CHAIRPERSON: I am sorry. So is this 2009 or 2010 that you are talking to?

MS BARBARA HOGAN: This is 2009.

CHAIRPERSON: Ja okay alright.

MS BARBARA HOGAN: I just put the Gama story down and I had another story.

CHAIRPERSON: Okay, then I think I was mistaken and I think you were mistaken too, because you went along when I said the 2nd November, I do not what Mr Maroga was going to have done. I said, you would have been dismissed by then because of what you have said.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: But actually if it was 2009, you were still Minister in November.

MS BARBARA HOGAN: Yes oh sorry, sorry.

CHAIRPERSON: Ja.

MS BARBARA HOGAN: Yes sorry I confused matters.

CHAIRPERSON: Ja okay.

ADV PHILLIP MOKOENA SC: That is the reason why I am highlighting the statement

Chair.

CHAIRPERSON: Yes sure that is important ja, ja.

MS BARBARA HOGAN: Ja.

CHAIRPERSON: Okay we are talking about 2000 ...[intervenes]

MS BARBARA HOGAN: Too much detail for the ...[intervenes]

CHAIRPERSON: September/October 2009.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: November 2009 okay.

MS BARBARA HOGAN: 2009 was a hard year. So I then met with Mr Maroga.

ADV PHILLIP MOKOENA SC: On the 4th November 2009 yes.

MS BARBARA HOGAN: Yes. I met with him and South African Airways gave us a facility, I wanted to meet with him offsite, privately and we spent about 4 and a half hours in a meeting and he was insistent that I as a Minister must exercise my leadership. Now that was being echoed already outside when the Youth League was shouting that there should be leadership. The Chair of the Portfolio Committee would later, you know, later in those days talk about the Minister must exercise her leadership.

CHAIRPERSON: Was that being said at that time in relation to the Eskom issue, or just in general?

MS BARBARA HOGAN: The Eskom issue, the Eskom issue and Mr Maroga's issue. I made it clear to him and I was not being harsh, but I said, it is not on my authority to intervene in this matter. It is a matter for Corporate Governance and that is why I am trying from behind the scenes to resolve this matter. I said that I was surprised at that letter and that I would ask my department to look at the second part of that letter from Transnet around and if the view was that it was incorrect, I had Eskom to rescind that part of the letter. But he was absolutely, I can say arrogant and saying, Minister you must

exercise your authority, your leadership, you must affirm that I am the CEO. I said to him, look we can set in a process of mediation on this matter. He said, no I am not interested, you must exercise your leadership. I offered him arbitration, he said no, you must exercise your leadership. At the end of that ...[intervenes]

CHAIRPERSON: What was your understanding of what he was meaning by insisting that you must exercise your leadership?

MS BARBARA HOGAN: That I must exercise my executive authority to confirm that he had not resigned and to confirm him in the position as CEO of Eskom.

CHAIRPERSON: In other words, to resolve or decide the dispute between himself and the Board about whether he had offered or not offered to resign?

MS BARBARA HOGAN: Ja.

CHAIRPERSON: Okay.

MS BARBARA HOGAN: He was insistent that he remained the CEO and he wanted me simply to affirm that that he was the CEO of Eskom. We spent nearly 4 and a half hours there. My leader advisor was next door and the Deputy Minister, because he only wanted to speak to me on his own. And you know, finally I had to say to him, you know I have offered you a dignified exit, I have offered you mediation, I have offered arbitration, beyond that I cannot go. We then finished the meeting. I contacted the Chair, the Chair – the Board had been quite anxious about my meeting with Mr Maroga, but I did say I needed to hear him out. But they had already issued that letter without my knowing at that point.

ADV PHILLIP MOKOENA SC: The letter that you are referring to it is where the Board has confirmed?

MS BARBARA HOGAN: That he resigned.

ADV PHILLIP MOKOENA SC: That he resigned yes.

MS BARBARA HOGAN: But they had accepted his resignation and if that was not held to be a resignation, it was on the basis of incapacity and whatever.

ADV PHILLIP MOKOENA SC: Of incapacity.

MS BARBARA HOGAN: I then contacted the Chairman of the Board and told him what had taken place that I had not been able to effect – have any effect on the process and that in my opinion the Board had to do whatever the Board saw fit and how they were advised to do.

President Zuma was not in the country at that time, he was abroad.

ADV PHILLIP MOKOENA SC: Who was acting?

MS BARBARA HOGAN: The Deputy President Motlanthe. The next morning I went and I briefed President Motlanthe about everything that had taken place. I also briefed him about my concern and unease about the particular letter. But I briefed him that the Board was going to go ahead with whatever processes, because I had withdrawn as trying to facilitate a resolution on the matter.

ADV PHILLIP MOKOENA SC: What was the reaction of President Motlanthe?

MS BARBARA HOGAN: President Motlanthe he just said, you know you need to do what you need to do here. He did not try to intervene. There was – the Board and the Chairperson had called a meeting of all the senior management at Eskom Head Quarters the next day.

CHAIRPERSON: Would that have been the 5th November then? Your meeting with Mr Maroga was the 4th?

MS BARBARA HOGAN: Yes, yes there is a mistake – there seems to be a mistake here in my affidavit, that is – it says the 4th, but I believe it was the 5th. I would have to double check that.

ADV PHILLIP MOKOENA SC: Are you referring to paragraph 72?

MS BARBARA HOGAN: 72 yes.

ADV PHILLIP MOKOENA SC: So that you can check that, but according to you it was the next day, it must have been the 5th?

MS BARBARA HOGAN: Ja I think it was that, we must just check that.

ADV PHILLIP MOKOENA SC: Now if you go to paragraph 73 you are now talking about that meeting which was called by the Chairperson?

MS BARBARA HOGAN: Yes, yes that is right yes.

ADV PHILLIP MOKOENA SC: Would that meeting had been on the 5th or the 6th?

MS BARBARA HOGAN: That meeting must have been on the 5th.

ADV PHILLIP MOKOENA SC: Was it after you have briefed President Motlanthe, a day after you had briefed President Motlanthe or the same day?

MS BARBARA HOGAN: The same day.

ADV PHILLIP MOKOENA SC: The same day oh yes.

MS BARBARA HOGAN: Ja.

ADV PHILLIP MOKOENA SC: Alright, tell us about that meeting which was called by the Chairperson of Eskom?

MS BARBARA HOGAN: It was called and the Chair had announced that Mr Maroga had resigned. In the media this had become a big issue and it was not good for Eskom, had Mr Maroga resigned, had he not resigned, what was going on, why is the Minister not confirming, not confirming. It was becoming a bit of a political football out there. So the media was invited to a press conference immediately after informing Senior Management, so they were out in full force to hear what the Chair of Eskom had to say, to clarify what the status – what the position was.

ADV PHILLIP MOKOENA SC: Ms Hogan before you go into the details of what transpired in that meeting. Mr Chair I am told by Mr Pretorius who appears to be very

thirsty that it is now 11:15.

CHAIRPERSON: I am sorry, it is 11:15, we will take the short adjournment and resume at 11:30 thank you.

HEARING ADJOURNS

HEARING RESUMES

(MISSING AUDIO)

MS BARBARA HOGAN: And he said what, you know, what do you think you are doing. He said it a little bit stronger and I said, what? He said, Maroga, you have got to stop it, tell them that they have got to stop now. I said, the President, you know they ...[intervenes]

CHAIRPERSON: I am sorry, just go back to that sentence, tell who to stop that?

MS BARBARA HOGAN: Board that they must now.

CHAIRPERSON: Oh okay.

MS BARBARA HOGAN: I tried, you know, to speak, to reason, to find out what it was all about, he said "I do not have time, I am in transit through the country I am on my way to Mozambique, you can call me, you know like in a half an hour's time, or whatever and we can discuss further." I tried to phone him and he just never answered my calls.

ADV PHILLIP MOKOENA SC: When you say "him" are you referring to the President, the ex-President?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: I informed – that was the ex-President yes.

CHAIRPERSON: This was still on 5 November?

MS BARBARA HOGAN: Yes. This was as the processes were unfolding in Eskom. I spoke to the Deputy President who was the Acting President at the time and I said, I have

been giving an instruction from the President of the country to stop a process and short of just to find him, I am bound to, you know, it was a very confusing situation. I have never – I think it is very difficult when a President just issued an instruction and I did not have any knowledge if the President had any further matters which he could not disclose with me. You know, I had no insight into why this instruction was being issued. So I phoned Mr Godsell and I said to him, I have just received this call from the President and he is saying that this process must be stopped. Mr Godsell said, but we are in the midst of the process, I have just informed the senior management, you know, we are shortly going to go before the media, what do I say? I said, I honestly do not understand it and he said, well if this is the President giving us instruction, you know we cannot ignore. So he then cancelled the media briefing.

ADV PHILLIP MOKOENA SC: Yes. Were you able to arrange the meeting with the President in order to address these issues and surrounding Mr Maroga?

MS BARBARA HOGAN: Well you know it was – then everything went absolutely ballistic, you know from Parliament to every commentator, it became the story of the day, you know, who is, you know this is Eskom, you know, who is the CEO, who is not the CEO, why are we called to press briefing, why is the Minister not informing us who is the CEO, why is the Board quiet. It was a complete and utter nightmare and should never have taken place. I requested to see the President and finally I was told that I could meet with him on the morning of Friday the 6th November at his official residence. He gave me 10 minutes there. He said he has not got time, he is going to a meeting, a MEC meeting or something and he will meet with me at lunchtime.

CHAIRPERSON: I am sorry, I am sorry Ms Hogan. Is it correct that at the time that the former President gave you that instruction, the Deputy President Motlanthe was Acting President, is that correct?

MS BARBARA HOGAN: That is correct.

CHAIRPERSON: Okay.

MS BARBARA HOGAN: You know that places anyone in a dilemma, because actually the President of the country is President Motlanthe at that time, as an Acting President. You know it is through me, it is through the Board, it is through all of us into dilemmas where you did not want to be disrespectful to a President. But you know the issues were so profound from a Constitutional point of view that you did not have time to even think this through.

ADV PHILLIP MOKOENA SC: Yes you are still relating the 10 minutes that you were offered by the President in the meeting of the 6th November. Did you discuss all the issues that you wanted to discuss with the President?

MS BARBARA HOGAN: The President merely said that, you know that he would meet with me, for a fuller meeting at lunchtime.

CHAIRPERSON: I am sorry. I have just been given a note by my registrar that when we started, the person who is in charge of the transcript was not in his place and that there was no recording happening until he walked in. I suspect that that means there is some evidence that was lost. But I suggest that what we do is, we proceed and then at a certain stage somebody must listen to the evidence as recorded and see what we may have lost and then we can cover it later on. Would that be fine Mr Mokoena?

ADV PHILLIP MOKOENA SC: That would be fine Mr Chair.

CHAIRPERSON: Yes thank you.

ADV PHILLIP MOKOENA SC: Mr Chair I did indicate to Ms Hogan that she is very strong, since she has commenced her evidence, either we get the lights out, or the Chair gets stuck in the lift and now it is the transcription. She must be very powerful.

MS BARBARA HOGAN: I am one crisis of energy [laughter].

CHAIRPERSON: I do not think that she will take responsibility for all of those things.

ADV PHILLIP MOKOENA SC: You may proceed.

CHAIRPERSON: Okay thank you, let us proceed.

ADV PHILLIP MOKOENA SC: Yes and then did you finally meet with the President?

CHAIRPERSON: I am sorry again.

MS BARBARA HOGAN: Yes when I met with the President at breakfast ...[intervenes]

CHAIRPERSON: I am sorry again. You talked about the lights going out yesterday. But I do feel like there is no air-con now, I do not know whether everybody feels it seemed to be quite warm.

ADV PHILLIP MOKOENA SC: That is the reason why I am saying that she is very powerful.

CHAIRPERSON: Those who – the relevant technicians should attend to that, but we do not want too much – we do not want it to be too cold please. Okay alright thank you let us proceed.

MS BARBARA HOGAN: So I had a 10 minutes slot with the President at his official residence. He said he could not meet with me longer and that he would meet with me at lunchtime, you know during the – in his "C" meeting or whatever it was that was attending in Kempton Park. I then went to Kempton Park and I got no call to see the President at all and it really was very bad, because that was the only story that was really out there in the public domain. The consequences for Eskom, you know, Ratings Agencies, not that we are governed by them, but you know this is a company that was facing real financial constraints, it did not need this kind of turmoil.

ADV PHILLIP MOKOENA SC: Did you finally meet the President?

MS BARBARA HOGAN: Yes I was – you know I registered my disapproval with Jessie Duarte who was in the President's office and various people that I was not getting

to see him and it was urgent. So finally on the Sunday I met with him at lunchtime and he said, this is the deal.

CHAIRPERSON: That would happen what date now Sunday?

MS BARBARA HOGAN: The Sunday the 8th.

ADV PHILLIP MOKOENA SC: The 8th November 2009?

MS BARBARA HOGAN: Ja 2009. And I met with him and he said, this is the deal. He said, I will confirm Maroga back as the CEO, he will come back to his office and he will then write his story and the Board will write their story and then I as a Minister will determine the merits of each case.

ADV PHILLIP MOKOENA SC: And how did you react to that?

CHAIRPERSON: So the approach of the former President was, let Mr Maroga write his version about this issue of him offering to resign allegedly and let the Board write their version on the issue of Mr Maroga allegedly offering his resignation and then you, as the Minister in charge of Public Enterprises would look at the two versions and decide, that is what he was saying to you?

MS BARBARA HOGAN: Yes.

CHAIRPERSON: Okay alright.

MS BARBARA HOGAN: I was not happy with that and I explained my concerns about that that did not really advance us much further and you know, how could I adjudicate something like that. But I said, if that was the President's view, I was not going to convey that as my view to the Board, or to Mr Maroga. If the President wanted that kind of instruction, he himself should take ownership of that instruction. Bear in mind I was mindful of, you know, of just the executive authority of a Minister, of a President and I felt under these circumstances, I could not assume responsibility for an act which I felt, fell out of the purview of my executive authority. So the President agreed. So we agreed

that I would speak to the Board who was sitting waiting to meet with me at a hotel in Johannesburg and I would convey to the President's decision, not my decision and he would meet with Mr Maroga.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: So when you said to him that you would want him to take ownership of the proposal that he was making, what you meant was that you did not want to go to Mr Maroga and the Board and put this as your proposal.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: You wanted to be able to tell Mr Maroga and the Board that this is the proposal from the President or instruction whatever it was.

MS BARBARA HOGAN: Yes because you know I would be implicating myself in terms of that instruction, because I felt that instruction was invalid in terms of my powers and authority. I could not just issue a thing saying, Mr Maroga comes back this gets – what done whatever. It would really be interfering with the Board process and the process of a CEO.

ADV PHILLIP MOKOENA SC: Yes. Flowing from that answer, on paragraph 77 line number 2 you say that:

"He really, meaning that President, he really did not want to discuss anything, he just informed me that he had decided that Mr Maroga will return to Eskom over a period of time."

Then you proceed with the lines in which you have now discussed with the Chair. But what I want to know is that, at the time when the President told you that, was he aware that the Board had already decided and accepted Mr Maroga's resignation?

MS BARBARA HOGAN: Oh yes, oh yes he was completely aware of that.

CHAIRPERSON: Let us go back just a step to what Mr Mokoena just read from your

statement to you. Can I hear coming from you, can you just speak naturally that exchange?

MS BARBARA HOGAN: Yes. I met with the President at the venue at which the meeting was taking place, and he just sat down and he said, "this is the deal". You know I was wanting to discuss the merits you know, I wanted to understand why he had issued an instruction that the process must be halted. He was just wanting to discuss the deal.

CHAIRPERSON: Yes. Now, part of the reason why I said I wanted to hear that coming from you is that, from what Mr Mokoena read, it appears that you say in the statement that he said "I have decided".

MS BARBARA HOGAN: Yes.

CHAIRPERSON: So you had not put it that way.

MS BARBARA HOGAN: Ja.

CHAIRPERSON: So I want to know if that is what he said "I have decided this is the deal."

MS BARBARA HOGAN: Ja he just informed me, "this is the deal".

CHAIRPERSON: Okay alright continue.

ADV PHILLIP MOKOENA SC: What the Chairperson is trying to get out of your mouth is not that "this is the deal" what exactly did the President say to you? Did he say to you that, "I have decided Mr Maroga will come back" or did he simply say that "this is the deal"?

MS BARBARA HOGAN: Well he informed me that this is the deal, that is what I understand you know, this is his decision.

CHAIRPERSON: You see some of things you might have a different appreciation of them and we as lawyers and judges might have different you know understandings of them.

MS BARBARA HOGAN: Oh okay.

CHAIRPERSON: And sometimes you might not understand why we particularly want to hear certain aspects. But one of the issues that arise is whether, what he put to you was put to you as subject to Mr Maroga and the Board accepting the proposal, or it was put to you as that is it, they must take it or leave it. I want to understand whether this was – this was a proposal, or this was, take it or leave it, or there might not been enough time to understand those nuances?

MS BARBARA HOGAN: I was not sure, but the fact that we had agreed that I would inform the Board and he would inform Mr Maroga, probably leads me to believe that this had not been discussed beforehand and this was – he was first informing me that this was what he wanted done.

ADV PHILLIP MOKOENA SC: And you told the President that he must take ownership of that proposal and what then happened?

MS BARBARA HOGAN: He was happy to do that and we agreed that I would inform the Board, but inform them that it was his instructions and that he would call Mr Maroga and inform Mr Maroga.

ADV PHILLIP MOKOENA SC: Did you meet with the Board?

MS BARBARA HOGAN: Yes I met with the Board later that afternoon.

ADV PHILLIP MOKOENA SC: What was the Board's reaction to that?

MS BARBARA HOGAN: The Board was ...[intervenes]

CHAIRPERSON: I am sorry, maybe before you tell us about the Board. You said that you had difficulties with playing the role that the President was proposing you should play in the resolution of the dispute and you said that was because of your awareness of your executive authority and so on. Can you please elaborate more on that, before we get to hear what the Board said?

MS BARBARA HOGAN: In terms of Corporate Governance in a company, the relationship between the CEO and the Board is one of accountability and as a Minister, as a shareholder it is, you know the corporate governance framework does not allow the shareholder now to intervene in that relationship and you can try and mediate and sort out things, but you cannot make a decision about what must now take place.

And I felt that the President was trying to put me in a position where I would now give an instruction, which I knew the board absolutely did not agree with and that I was forcing the board to take on a decision which they had made very clear to me that they were not happy with.

So I said, you know, I conveyed this to the President. You cannot interrupt, you know, a process and I said if that be the case then this must be seen to be a presidential instruction, not my instruction and he agreed.

CHAIRPERSON: I would imagine and you must just tell me what you think. I would imagine that how strongly the board felt about the correctness of their view and how strongly Mr Maroga may have felt about the correctness of his view should not have been a factor on whether or not you should play that role. I am mentioning that, and you must just give me your comment, I am mentioning that, because is the position not that when you are in a leadership position you have to take sometimes decisions that people will be unhappy with? Assuming that you had – it is a role that in law you could play?

MS BARBARA HOGAN: Assuming that it was a role that I could play, I did play that. I met with Mr Maroga. I asked my Deputy Minister to meet with him. I spent hours and hours with him. I offered him mediation. I offered him arbitration. He was insisting that I affirm that he is a CEO and that I could not do, because the board had informed him, informed me each individual board members had informed me that that was not the case.

And it would be very indelicate of me to have then intervened in the process of saying no, Mr Maroga is still the CEO, despite what you told me he is still the CEO.

CHAIRPERSON: If legally you had the authority to play that role, are you saying that you would still not want to play that role, just because the board felt strongly and you might have to find – make a finding that they would be unhappy about?

MS BARBARA HOGAN: It is a hypothetical situation that you are posing to me. You know from a corporate governance point of view when a relationship between a board and a CEO has broken down irretrievably as I was a witness to the shareholder, I think would seldom want to intervene and tell the board this must happen, even though you are not happy with it.

It would not lead – it would not have a good outcome for the company from a fiduciary point of view to impose someone that the board felt that they did no longer have the confidence in. So hypothetically I was never presented with that situation, but hypothetically after having consulted each individual board members and ascertained their views I would have been reluctant to have moved in there and said this is how it goes, because what I could see down the line is that Eskom in trying to resolve the immense operational and financial problems that were facing them, that these would continually be a sight of contestation, given the lack of a harmonious relationship at that time.

So I did not think that it was solving the problem. The problem had to be resolved satisfactorily, not in a way of just insisting this and nothing else.

CHAIRPERSON: Your preference – was your preference that, that dispute be resolved by an outsider? A mediator, an arbitrator?

MS BARBARA HOGAN: Well my preference was that the matter should have been resolved satisfactorily when it arose between the board and the CEO. When a CEO

contested that I then had suggested various deadlock breaking mechanisms that are available in terms of the Labour Relations Act and whatever, mediation all sorts of things to try and sort that out, but Mr Maroga simply would not go along with that.

And so my preference then was for the board, given that I as a Minister had gone to the – as far as I could in those circumstances as I saw in terms of my discretion as far as I could, I then said to the board they must now handle this process going forward. My attempts at mediating this conflict is certainly not working.

CHAIRPERSON: So in other words your position at the time that the President – the then President made his proposal or decision your position was that the resolution of this matter should be left to the board?

MS BARBARA HOGAN: And in later, you know, during the two judgments Mr Maroga went to court on these issues and on appeal. And both courts held that the CEO position, although the Minister has authority to appoint at an AGM the CEO at Transnet, in effect the employment contract is with the board and therefore it is not with the Minister and therefore the Minister does not have the powers to intervene in that employment contract.

And in fact that was the advice that was given me by Michael Katz the senior counsel when I first met with him when this all blew up. He said there are two aspects here, one is Mr Maroga's position as a Director and Mr Maroga's position as a CEO. So the courts confirmed my position on that.

CHAIRPERSON: But your position at the time that the former President spoke to you and said you must decide which version is correct in effect. Your attitude was let us leave this matter to the board to do what it believes it should do?

MS BARBARA HOGAN: Yes.

CHAIRPERSON: Yes?

MS BARBARA HOGAN: But I undertook to convey and to try and pursued the board to go along with the President's decision on this matter. I was not trying to stop him, but I wanted it to be conveyed that this was a presidential decision and not my decision.

CHAIRPERSON: Does that suggest that if the board and Mr Maroga had accepted this proposal, if it was a proposal, does that suggest that you would have been prepared for purposes of having finality on this matter to play the role that had been suggested by the former President?

MS BARBARA HOGAN: Yes, because the board had consented to that process then.

CHAIRPERSON: Okay, thank you very much.

ADV PHILLIP MOKOENA SC: Can we now move to what was the reaction of the board? Remember that you have now had...[intervenes]

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: The meeting with the President. He has conveyed what he has conveyed to you. Then you met with the board, what was the board's reaction?

MS BARBARA HOGAN: So I met with the board. Of course it was Sunday, they were trying – they were anticipating that on Monday they would have to, you know, speak to South Africa and explain who was the CEO and what was going on and whatever and I conveyed the President's view of how this must be resolved.

They were dismayed and I had to do a lot of persuasion and talking through and whatever, and Bobby Godsell then said look in the view of the fact that the President is trying to resolve this matter, we will take it in good faith that he is, but on one condition that we meet with the President ourselves and put forward our point of view on this matter.

ADV PHILLIP MOKOENA SC: Did the board meet with the President?

MS BARBARA HOGAN: They did, they went ahead and I arranged for them to meet with the President later that afternoon. They met with the President and the President

had met, well I was uncertain, because I was told that the President had previously met with Maroga, but I know that the President at a certain stage met with Mr Maroga.

ADV PHILLIP MOKOENA SC: Now what I want to know is that if the board, you know, before I go there, what was the outcome of that meeting? What was the agreement between the board if any, with the President?

MS BARBARA HOGAN: Yes, the board said that they would go along with that process on condition that if when Mr Maroga is reaffirmed as a CEO that he immediately takes leave, because it was creating problems in the organisation, you know, in the office, no one understanding from the staff, who is now running the organisation and whatever.

And so the President agreed to that.

ADV PHILLIP MOKOENA SC: Yes, and if...[intervenes]

CHAIRPERSON: I am sorry Mr Mokoena, just for the sake of completeness, were you present at that board meeting, the meeting of the board with the President or not really?

MS BARBARA HOGAN: No, I felt that the President needed to meet with the board...[intervenes]

CHAIRPERSON: Yes.

MS BARBARA HOGAN: Without my intervention.

CHAIRPERSON: Okay, thank you.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: But were you informed as to what transpired at that meeting?

MS BARBARA HOGAN: Well, yes. The board then came back later that evening and we met, because we then had to discuss the modalities of how this is conveyed to the public, how it is conveyed to the senior management, you know, how we take this process forward to defuse a really confusing situation.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Now before you finalise I think my – the question that I asked caused some problem between you and Mr Mokoena. You, I think he was still wanting to establish from you in terms of what was reported to you by the board.

MS BARBARA HOGAN: Okay.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: The full extent of what was agreed between the board and the President.

MS BARBARA HOGAN: Ja.

CHAIRPERSON: You have said that one aspect was that Mr Maroga would take – Maroga would take special leave or something, but I think you had not said as to what would then happen in his absence, or until when...[intervenes]

MS BARBARA HOGAN: He would take special leave...[intervenes]

CHAIRPERSON: That special leave would be.

MS BARBARA HOGAN: Sorry, I interrupted you.

CHAIRPERSON: Sorry, until when, how long that special leave would be and what would happen in the meantime.

MS BARBARA HOGAN: He would take special leave in order to prepare his statement to me and the board equally would produce a statement, but the board wanted him not to be in office until the issues of whether he stays on as CEO was properly resolved.

ADV PHILLIP MOKOENA SC: What I fail to understand and what brings confusion on this aspect of the evidence is that, if the board believed that their decision was correct and that they were acting in the best interest of Eskom at the time, and they have made a decision, why did they agree with the approach which was proposed by the President?

MS BARBARA HOGAN: I cannot speak for the board, so I cannot exactly say what was their motivation. I know that I had to engage very robustly...[intervenes]

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: With the board, because the board was not happy with this decision, but finally as Mr Godsell said, you know the President is trying to resolve this matter, it would be disrespectful of us not to take the President's views into consideration and therefore, you know, we are all trying to resolve this very difficult matter, and so therefore we would take the advice of the President and this is what we will do.

CHAIRPERSON: So it was – it seems to have been a way of reaching some compromise by effectively making a suggestion of something as that should be incorporated into the President's proposal? The President's proposal did not originally include that Mr Maroga should take special leave?

MS BARBARA HOGAN: Yes.

CHAIRPERSON: But they made that suggestion to the President that if you include this as part of the proposal we would accept.

MS BARBARA HOGAN: Correct.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: I understand the issues of respect and you know how the board wanted this issue to be resolved. I am asking this question simply having in mind the duties and obligations of the board members, with reference obviously to the company law and the PFMA that they have taken a decision...[intervenes]

MS BARBARA HOGAN: Sorry, could you just speak a bit in the mike, it is going, the sound is going, sorry.

ADV PHILLIP MOKOENA SC: Yes. I am saying that I was asking this question, you know having in mind the duties of the board members in terms of the PFMA, the

obligations in terms of the company's Act, they have taken a decision where they have actually accepted a resignation. I take it that it was in terms of a resolution of the board. Now how does one deal with the proposal *post facto* of the President whereby Mr Maroga has to come back? That was what I was trying to interrogate with you.

MS BARBARA HOGAN: Yes. You know they accepted it, there was a lot of reservation. They accepted it in good faith, but they were not happy, but, you know, the one condition was that he does not come back to office, because it was too confusing.

ADV PHILLIP MOKOENA SC: And then do you know as to why did Mr Bobby Godsell resign?

MS BARBARA HOGAN: Well, as the board had come back and reported to me about their discussions with the President and as we were having discussions on the way forward about how this process would now evolve I got a telephone call from the President to say that Mr Maroga, you know, this deal is off, because Mr Maroga does not accept it. That he...[intervenes]

CHAIRPERSON: Did not accept the proposal?

MS BARBARA HOGAN: Yes, the proposal that he be placed on leave.

CHAIRPERSON: Ja, he still wanted simply to be affirmed...[intervenes]

MS BARBARA HOGAN: Ja.

CHAIRPERSON: As the CEO and did not want to take special leave?

MS BARBARA HOGAN: And at that point, I remember one board member just, you know, the board was furious, and this board member said, you know, who is he to think that he has got these powers to do this to us? You know, Mr Maroga, who does he think he is? And then the board was really angry, because they themselves against their better judgment had gone along with this process in order to try and resolve a situation that was not good for the country or for Eskom.

At that point Mr Godsell said I am now resigning. I can take no further responsibility for this. The other board members were wavering whether they should resign or not, and my understanding was that they felt they would go on and we would have to try and resolve the situation.

It was enormously embarrassing for me as a Minister...[intervenes]

CHAIRPERSON: I am sorry before you proceed, when the President called you while you were getting the report from the board and said Mr Maroga was not accepting the proposal did he put forward what should then happen in the light of that?

MS BARBARA HOGAN: Ja, he just said the deal was off.

CHAIRPERSON: Okay.

MS BARBARA HOGAN: Mr Maroga does not accept it.

ADV PHILLIP MOKOENA SC: In the context of that answer you also say in paragraph 80 that you had a heated argument with the President on this matter. Are you able to share with us the details of that debate?

MS BARBARA HOGAN: Paragraph?

ADV PHILLIP MOKOENA SC: Paragraph 80, 8-0.

MS BARBARA HOGAN: Well that is the following day.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: The following day I was going to Eskom. I was en-route to Eskom...[intervenes]

CHAIRPERSON: Okay, I am sorry, before the following day, for the rest of that day is there anything of importance that happened?

MS BARBARA HOGAN: Well this was already past midnight. Remember I had spoken to the President at lunch time. There had been meetings with the President in Pretoria,

discussions going forward, so the board – you know, we had all stayed awake right until very late at night.

CHAIRPERSON: Had Mr Godsell withdrawn after saying he was resigning or did he still say on and not implemented his...[intervenes]

MS BARBARA HOGAN: No, he said he was resigning. Mr Godsell had earlier in that confrontation with Mr Maroga before me said that the stress of the situation of being Chair at Eskom has caused him to have shingles, it affected him physically not only just mentally and I could see that he just saw no way forward on this matter. So...[intervenes]

CHAIRPERSON: Sorry, so he withdrew from the meeting after saying he was resigning, or not? So did you go on without him with the board?

MS BARBARA HOGAN: I cannot remember.

CHAIRPERSON: You cannot remember, okay.

MS BARBARA HOGAN: But he did not – I cannot remember him trying to influence, but in any way, we then decided that we would meet the next morning to discuss, you know, what was going to be conveyed, how we were going to manage this, you know, we were left once again without a decision.

So on route there the President phoned me.

CHAIRPERSON: That is now the following day?

MS BARBARA HOGAN: The following day.

CHAIRPERSON: The 9th?

MS BARBARA HOGAN: Yes.

CHAIRPERSON: Okay.

MS BARBARA HOGAN: On the following day I was on route to the Eskom headquarters when I received a phone call from the President to say that he had given Mr Maroga

permission to return as the CEO of Eskom. Of course we had a heated discussion on that.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Well tell us about the heated discussion.

MS BARBARA HOGAN: Well I said, you know, Mr President, that is not going to solve anything and you now using your authority above the board to resolve this matter and this is not going to solve any problem. Nevertheless he said I have given him the permission to go back as CEO over the board.

ADV PHILLIP MOKOENA SC: Now when the ex-President said that he had given Mr Maroga permission to return to Eskom, do you know whether he had engaged with the cabinet before he had actually given that instruction?

MS BARBARA HOGAN: No, this was the weekend.

ADV PHILLIP MOKOENA SC: And do you know whether did he at least engaged with the board prior to him giving Mr Maroga that decision to return back?

MS BARBARA HOGAN: No, he had spoken to me. This was the first the board had heard of it.

ADV PHILLIP MOKOENA SC: Now may I also refer you to – and on the same paragraph you are talking about – you are saying that on the same day, if you look on paragraph 80, I think it is the fourth line, you say that on the same day 9 September, you meant – it should be amended to say November, am I right?

MS BARBARA HOGAN: Yes, it is 9 September on the same day, 9 September.

ADV PHILLIP MOKOENA SC: No, no, if you look at the top the first line it says...[intervenes]

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: It says 9 November 2009.

MS BARBARA HOGAN: Yes, it is 9 November, yes it is 9 November.

ADV PHILLIP MOKOENA SC: Now when you say the same day it should be 9 November not September?

MS BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: Am I right?

MS BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: If you may...[intervenes]

CHAIRPERSON: What paragraph is that?

ADV PHILLIP MOKOENA SC: It is paragraph 80, page 19.

MS BARBARA HOGAN: Ja.

CHAIRPERSON: Oh, okay.

MS BARBARA HOGAN: It is 9 November, yes.

CHAIRPERSON: We will correct that. Thank you.

ADV PHILLIP MOKOENA SC: It should read, Mr Chair, on the same day, 9 November 2009.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Mr Maroga arrived at Eskom accompanied by Jimmy Manyi and a few others and went upstairs to his office. Now...[intervenes]

CHAIRPERSON: Let her tell us about that.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: Let us hear from her.

MS BARBARA HOGAN: I was not there at the time, because after I had received that information I returned to my office and I...[intervenes]

CHAIRPERSON: I am sorry, you were on route to Eskom headquarters?

MS BARBARA HOGAN: Yes, but once the President had indicated that Mr Maroga was to return I returned to my office...[intervenés]

CHAIRPERSON: Yes, now...[intervenés]

MS BARBARA HOGAN: I needed to consult with my staff, but there were some of my staff members already there at the offices, because they were awaiting, you know to give me advice and whatever on the process going forward. So I was informed that a small posse of people kind of brought – accompanied Mr Maroga through the building, into the lifts and up to his office and that Mr Manyi was part of that.

That I understand is incorrect, so I withdraw that. Mr Manyi had a lot to say about this via the black management forum and you know, the persecution. Once again I was being accused of persecuting a black Executive, but I am quite happy to withdraw that Mr Manyi was part of that posse.

I checked with Eskom itself, the Chair of the board, who was later the Chair of the board and he says it was Anumsa collective that escorted Mr Maroga back to his offices.

ADV PHILLIP MOKOENA SC: That was the reason why I was reading that part of the statement in order to refer you to the second file of EXHIBIT L, if you may turn to page 634?

CHAIRPERSON: So in effect you are saying to the extent that your statement in paragraph 80 includes that Mr Manyi was there when Mr Maroga returned to Eskom that is not correct, Mr Manyi was not there?

MS BARBARA HOGAN: Yes.

CHAIRPERSON: Okay, thank you.

ADV PHILLIP MOKOENA SC: So as it relates to the sworn affidavit of Mr Manyi which was submitted to the Commission, you will see on page 634 he in fact dispute your paragraph 80 and that is as per paragraph 3 of that affidavit?

MS BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: So that is exactly what you are saying you were mistaken about?

MS BARBARA HOGAN: Yes, yes.

CHAIRPERSON: Let us go back to the telephone call from the President when you were on route to Eskom. Did what the President tell you then, what was your understanding of what the way forward was then?

MS BARBARA HOGAN: I had no understanding. It was part of the reason why I wanted to go back to my office to discuss this matter through with my Deputy Minister and others, because this was now a very serious crisis.

CHAIRPERSON: But on the face of it, it seems to me, and you are free to comment, it seems to me that unless you tell us something else that happened that might have a bearing on this, it seems to me that what you were told on the phone by the former President amounted to saying Mr Maroga was going to continue as CEO of Eskom and there was nothing really to be done about – as far as the President was concerned, about the board's view that he had offered to resign and they had accepted that. But having said that I think I must say that should not necessarily mean that he did not have in mind that the board could do whatever it considered it had a right to do. In other words if it decided that it would dismiss him it may well be that he was not excluding that, but the – what he said to you just seem to say look, Mr Maroga will continue as CEO and then the board must decide whether they accept that or they decide to do whatever they decide.

MS BARBARA HOGAN: That is one possibility, certainly. Another possibility is that the board would resign and I had seen the exasperation of the board members and that would have been an even further disaster.

CHAIRPERSON: Of course you must be right that there would be a risk that if the board was not prepared to accept that Mr Maroga was to continue as CEO and that they would therefore see this as the President taking the side of Mr Maroga, that they could then resign. That must have been a logical possibility.

MS BARBARA HOGAN: It would have been perceived that the President had taken the side of Mr Maroga.

ADV PHILLIP MOKOENA SC: Ms Hogan may I refer you to Annexure N, you will find it on page 370. You will see that it is a letter dated the 9th of November addressed to you and signed by Mr Maroga. Are you there?

MS BARBARA HOGAN: Do you want me to speak to this letter?

ADV PHILLIP MOKOENA SC: Please, maybe in all fairness to Mr Maroga, read the contents of the letter and you can comment about what is written there.

MS BARBARA HOGAN: Yes, on the same day that Mr Maroga returned to his office, he issued a letter addressed to me and the Eskom Board, and CC'd, obviously to the Board, the executive committee of Eskom, all managing directors of Eskom, the Minister in the Department of Energy, the Portfolio Committee in Parliament, of Public Enterprises and the Portfolio Committee of Energy in Parliament but it was addressed to me. It said:

"Dear Minister, I wish to affirm the following with regard to my status as chief executive and director of Eskom.

1. I remain the chief executive and the director of Eskom.
2. The shareholder at the highest level have confirmed that any

action regarding my status as chief executive and director of Eskom, must be requested formally and granted by the shareholder. I have affirmed that no request has been formally lodged and none has been granted.

3. I have been told that all unauthorised actions taken by the Board of Directors since the 28th of October 2009 are not rescinded.

4. I am at work in my office in Megawatt Park.

5. Everyone should cease and desist from any action or communication that undermines the confidence in Eskom and demoralises the employees during this critical time; and

6. As a director I will fully participate in all Board activities."

And then it ends off:

"In the interest of Eskom and the country, I am continuing the leadership process that is transparent and collaborative, as well as moving forward with the vision I have outlined, and the changes I intend to make to build the Eskom required for this critical economic developmental stage of our democracy.

Your sincerely PJ Maroga, the chief executive of Eskom."

m And this letter was written by Mr Maroga after the ex-President having said that he has decided that he must return to Eskom?

MS BARBARA HOGAN: Well my understanding of the shareholder at the highest level, he was referring to the President yes, and the President confirmed with me that he had given him the permission to return.

ADV PHILLIP MOKOENA SC: Yes, do you wish to comment any further on this letter

MS BARBARA HOGAN: Well you know this letter was almost a declaration of independence of the Board and of the Minister, and saying from henceforth I will only, any action taken against me will have to – or taken in relationship to me will have to be taken with the ascent and consent of the President.

It was a complete flouting of everything relating to corporate governance in Eskom and in any company, and a completely arrogant, a complete arrogance about his position, the Board, what he was saying, and you know it is in this last paragraph, that plan that he had for taking Eskom forward, which constituted the heart of the criticisms of what the Board had, that he will now implement that plan.

It was in effect a CEO who had gone rogue completely, on the understanding that the President would back him. When I received this letter, the Deputy Minister and I were completely angered ... [intervenes]

CHAIRPERSON: I am sorry, before you proceed, I do not want to disturb your train of thought, is it your understanding that whatever Mr Maroga says in his letter he had been told, which it stipulates here, is it your understanding that he seems to say he was told by the shareholder at the highest level or could he – is your understanding that it might mean he has been told by other sources?

MS BARBARA HOGAN: Well my understanding is that the President confirmed certain aspects of this letter. Firstly the President had confirmed that Maroga remains the chief executive officer. Now the second part where he says the shareholder at the highest level, in other words the President, has confirmed that any action regarding my status as the chief executive and the director of Eskom must be requested formally and granted by the shareholder.

Now which shareholder is he referring to? Is he referring to the President or to me? But he ... [intervenes]

CHAIRPERSON: [Indistinct] did you get an impression that there might have been private meetings between the President and Mr Maroga?

MS BARBARA HOGAN: Yes, and that impression, it is in paragraph, I forget which paragraph here but when I was making arrangements through my office for the President to meet with Mr Maroga, you know after that Sunday meeting. The housekeepers, because you went through the housekeeper, then the housekeeper said but Mr Maroga has already been here.

ADV PHILLIP MOKOENA SC: I think it is paragraph 77 on page 18.

MS BARBARA HOGAN: Ja paragraph 77, he said but Mr Maroga has already met with the President, you know, is he coming again? And I sent an SMS to Mr Maroga and it said it appears that this meeting with the President is no longer necessary, and I really did it in good faith. And in his court application Mr Maroga then said that I had lied to him, that he need not go and see the President.

So this is all very confusing to me but it does seem to appear that at some stage the President did meet with Mr Maroga, and when the President spoke to me, he confirmed that he had given Mr Maroga the permission to return to Eskom.

ADV PHILLIP MOKOENA SC: Now you have received Annexure N, what happens? How do you react to the contents of Annexure N?

MS BARBARA HOGAN: N yes. As I was saying the deputy Minister and I were just completely devastated by this you know. It was clear that the President had encouraged a CEO to believe that he was above company law, above corporate governance, and only saw himself as personally accountable to the President.

CHAIRPERSON: And did this letter, as you understand it, mean that according to Mr Maroga any disciplinary action, for example against him, would have to be sanctioned by the President?

MS BARBARA HOGAN: Yes.

CHAIRPERSON: Okay.

MS BARBARA HOGAN: So that you know it was out of the hands of the Board, it was now – and then the defiance, I will continue with my strategic plan even though the Board is unhappy with it, I will continue regardless of the Board.

Now Chair, I had already gone through the previous months, June, July, August, September with matters relating to Mr Gama in that same year, and I had previously experienced how the President saw his role.

We then come to an issue with the CEO of Eskom, and the President goes further than he did with Mr Gama, and he actually just installs someone in the position as CEO, does not even consult with me. And my view at that point was that my executive authority had been completely taken away by the President. I did not see my way clear of that, you know, or you know what was to happen in the future, and I was of the view that because I no longer enjoyed the confidence of the President or could exercise my responsibilities as a Minister, that I should resign.

I thought that I should address Parliament, because as a Cabinet Minister I am accountable to Parliament and ... [intervenes].

CHAIRPERSON: Now just before you proceed, just in terms of timelines, just help us there. Are you now talking as around the time of the Eskom issue or are you talking in terms of an earlier time?

MS BARBARA HOGAN: I am talking ... [intervenes]

CHAIRPERSON: About thinking of addressing Parliament.

MS BARBARA HOGAN: I am talking about the cumulative effects of the President's behaviour throughout that whole year, and you know there are other things which I did not bring to the Commission because I can talk a lot about all sorts of other things.

But the Eskom thing, situation, finally crystallised to me, the extent to which the President himself would just assume authority on which he did not have the authority, but would just act outside of his broad mandate.

And I decided that I would resign. I made arrangements to go to Parliament. I requested of the speaker ... [intervenes]

CHAIRPERSON: I am sorry I know you would like to tell us at this stage yes, but I am trying to make sure that my interruption does not put Mr Mokoena into a problem in terms of what he wants.

ADV PHILLIP MOKOENA SC: Not at all Chair.

CHAIRPERSON: I asked you a question at a time when he had asked you a question about what happened after this letter, and you had begun to tell us that you had a discussion with your deputy. Then I asked you a question.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: After you had answered my question then you began to tell us about ... [intervenes]

MS BARBARA HOGAN: Yes.

CHAIRPERSON: How you were feeling. So maybe you should first finish.

MS BARBARA HOGAN: Oh well that is what I am doing.

CHAIRPERSON: Oh, that is what you are doing.

MS BARBARA HOGAN: I am responding to Adv Mokoena's leading.

CHAIRPERSON: Yes. Okay, no, that is fine. That is fine.

MS BARBARA HOGAN: Oh here. Oh what did I do afterwards?

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: So I then decided to resign. I requested formally of the speaker for a slot in Parliament. The reason why I did that is that firstly a Minister is

accountable to Parliament, but secondly my experience of what was happening, filled me with a foreboding of what would come, and I felt that it was necessary that in my going I at least give an alert of how the President was exercising his authority to the country at large.

And this is not an easy thing to do but you try, as a Cabinet Minister, and I saw many Cabinet Ministers, you will protect a President, you will defend a President because a President is often under attack for all sorts of reasons. You do not act without integrity on that. But it was my view at that stage that the President was showing very unfortunate signs of imposing his authority without due consideration of his office and of the constitutional framework in which we operated, and I felt it was necessary to do that.

Anyway what in effect happened, do you want me to go on?

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: The deputy Minister was also enraged and he then went to Luthuli House.

CHAIRPERSON: This is now after ... [intervenes].

MS BARBARA HOGAN: I did not go down to Cape Town yes.

CHAIRPERSON: After you had discussed with your deputy the letter Annexure N.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: That came from Mr Maroga.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: Ja.

MS BARBARA HOGAN: And he was enraged, and he went, he knew that there was a meeting taking place, of the senior office bearers, and he went and he requested permission to address, as I understand it, and he presented them with this letter from

Mr Maroga, and said do you see what you have done to the President.

I then received a call from the President. No, Mr Maroga then received a telephone call from the President to say that he must vacate that office immediately, and that he would only go back on my authority. Mr Maroga then vacated his office and I went down to Parliament to make a public statement about the position of the CEO in – of Eskom.

ADV PHILLIP MOKOENA SC: Before Mr Maroga vacated the office, did Mr Yunus Shaik play any role in these issues?

MS BARBARA HOGAN: Yes, yes. Mr Yunus Shaik had been appointed, he is a labour lawyer, and has done extensive work with the CCMA as a mediator, and in Minister Alec Erwin's time he acted as a labour advisor to the ministry and the department on labour related matters. And when I was there he was dealing with a grievance from a particular employee arising from a time before me. And when the – when all of this first started up at the – you know when Mr Maroga first denied that he had resigned, the director general at the time suggested that we bring in Mr Shaik because of his labour expertise. And I can confirm, in 2010 Mr Shaik and other people, via the CCMA, managed to resolve some very serious labour disputes both in Eskom and in Transnet. So I can confirm that.

So we briefed Mr Shaik, the DG briefed Mr Shaik, and his view was that he was quite horrified, and his view at that point was that the President had disregarded all protocols on corporate governance. And he undertook, because of he knew the President, to speak to the President and try and persuade the President that you know this was not acceptable. And he would on occasion phone me and you know, talk about what he was trying to achieve.

Anyway at that point we had to now discuss Mr Maroga's departure from

Eskom. This was not going to be any now that you know Mr Maroga will come back and disciplinary proceedings, this had been a total flouting of authority. And the President was aware that this was taking place, and I requested the acting Chair of Eskom, Mr Mpho Makwana, to meet with Mr Maroga and with Mr Shaik, to negotiate an exit package.

Mr Makwana later gave evidence in court that he had been informed that Slakela Kaunda from the President's office would be present, I am not sure, she was not present but there was a three-way thing; you know Mr Maroga, myself, the President and of course Mr Shaik and Eskom. And after they had met I received a report from Mr Makwana, the Chair, to say that they had met for several hours with Mr Maroga, and Mr Maroga simply refused accept any notion that he should exit, any discussion an exit package.

I understand that Mr Shaik lost his temper at that point and said who the hell do you think you are, etcetera, etcetera with apologies for language, and Mr Maroga, and then the negotiations ceased and it was then – you know I then announced that Mr Maroga, his resignation had been accepted and he had left Eskom in Parliament.

ADV PHILLIP MOKOENA SC: But he left ultimately? Mr Maroga left Eskom ultimately?

MS BARBARA HOGAN: Yes he left. Then phoned me, it was probably in the next day or two, asked me when I was going to allow him to return, and I said there is not that possibility, ja.

CHAIRPERSON: And this was around what date now?

MS BARBARA HOGAN: This was around – his letter is 9 November.

MS BARBARA HOGAN: Yes, this – I addressed Parliament on the 12th of November, so it must have been the 10th and the 11th, and it must have been around the 11th of

November. We could get the exact date from the court records.

CHAIRPERSON: Now when you announced that in Parliament, that he had resigned, was that because you – were you basing that on the alleged resignation offer to resign that the Board had said it had accepted or was the position that after all the discussions involving Mr Yunus Shaik, there as a fresh resignation from him?

MS BARBARA HOGAN: I simply said he was no longer CEO, as I recall. I have not got the speech before me, but that he was no longer the CEO. I did not want to go into details.

CHAIRPERSON: Oh okay. Oh you did not say he had resigned, you said he is no longer the CEO?

MS BARBARA HOGAN: CEO of Eskom ja.

CHAIRPERSON: Okay, alright.

MS BARBARA HOGAN: Ja, and I spoke about the politicisation of boardrooms in my speech. Incidentally I had requested that the President be present when I gave that speech, he was down in Cape Town at that point, and he did not make himself available but the deputy President sat there.

ADV PHILLIP MOKOENA SC: Do you know as to who was appointed after Mr Maroga has left?

MS BARBARA HOGAN: Then later Mr Brian Dames, who was a senior manager at Eskom, he was also a nuclear engineer but long time in Eskom, was appointed as the CEO, but in the interim I requested and was allowed to appoint Mr Makwana as both the Chair and an acting CEO. It is not good ever, to have the conflation of those two roles, and my view at that time was that Eskom had gone through severe crisis. No one knew who was a manager, no one knew who could give authority on anything, it was totally bewildering in the staff and it was all rumours and things flying around, and

Mr Makwana is an exceptionally calm man with a huge amount of gravitas and integrity, and I felt more than ever he needed to hold that organisation together, to see it through a very rocky time, and that his stint as a director of Eskom for a fair amount of time, had enabled him to understand what was necessary going forward. And he very, very graciously accepted to do that, and that is a huge task, to try and bring calm and stability back to an organisation that had been thrust into crises, and I will always be grateful to him for the role that he played.

ADV PHILLIP MOKOENA SC: Now Ms Hogan you have also testified, I mean you have now testified about what you referred to as improper and irregular interferences in relation to the appointments of the Boards and the CEOs of the SOEs, with reference to Transnet and Eskom. Now how does SAFCOL feature within that?

MS BARBARA HOGAN: Yes.

CHAIRPERSON: I am sorry.

MS BARBARA HOGAN: I am sorry.

CHAIRPERSON: Before you start on that can we go back a little bit. You began to say that after your deputy had gone to Luthuli House with the letter from Mr Maroga, you received a call from the President, but if I recall correctly before you could tell us what that call – what the President said to you, you jumped to talking to saying the President called Mr Maroga. You understood that he had called Mr Maroga and said what he said. But I think if I am not mistaken you did not complete the picture by telling us what the President said to you?

MS BARBARA HOGAN: My apologies for that. The President did call me afterwards and said that he had instructed Mr Maroga to vacate the position, and that he had told Mr Maroga that he would only go back on my authority.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Yes, now before you also go to SAFCOL can we clarify something on paragraph 85.

CHAIRPERSON: 85?

MS BARBARA HOGAN: 85.

ADV PHILLIP MOKOENA SC: 85 on page 19.

MS BARBARA HOGAN: 19, on page 85?

ADV PHILLIP MOKOENA SC: Just to complete the picture about Mr Godsell.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: What then happened about him?

MS BARBARA HOGAN: After the discussions had been final, well had been finished with Mr Maroga, Mr Shaik also phoned me to give, you know an account. The Chair at first phoned me, of Eskom, and in that he said he had reported back to the President, and the President had said to him that I should consider requesting Mr Godsell to come back into the position as Chair. We all know that Mr Godsell is a longstanding businessman with a huge amount of executive experience and Board experience and knowledge.

On those grounds I then contacted Mr Godsell and I said this had been a request, and he said he would like to think about it. I saw in the media that the President denied later on, that he had made that request of me. Mr Mantashe contacted me and said that Mr Godsell must not be asked that, and he put it as crudely, if a black guy has got to go then a white guy must also go. And the President then phoned me and said that Mr Godsell must not come back. I pointed out that Eskom would now have an acting Chair and once again there was no response to that.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: When you – when Mr Mantashe spoke to you and said if a black

guys goes the white guy must also go, this was at a time when you had already conveyed to Mr Godsell, the President's request that he should come back. Did you then have to go back to Mr Godsell?

MS BARBARA HOGAN: I had to. It was extremely embarrassing but Mr Godsell appreciated the fact that if the President did not have confidence in him it would be futile for him to go back. That is not a way to treat, once again I say that is not a way you treat members of a Board and the Chair of a Board. COSATU issued a statement in support of Mr Godsell you know, and said that he had been one – you know and spoke of him in very praiseworthy terms. So this was not, you know pressure from the tripartite alliance or whatever, I do not know what did that but I was grateful to Mr Godsell and said that he had been one, you know, and spoke of him in very praiseworthy terms. So this was not pressure from the tripartite alliance or whatever. I do not know what did that but I was grateful to Mr Godsell for his understanding but extremely embarrassed.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: But of course the fact that the President asked you to ask Mr Godsell to return as Chair cannot be an indication that the President did not have confidence in Mr Godsell.

MS BARBARA HOGAN: No, what was conveyed to me by Mr Shaik was that the President had requested it. The President later denied it, as I saw in media, and the President phoned me and said Mr Godsell must not come back as the Chair.

CHAIRPERSON: Oh.

MS BARBARA HOGAN: He was – he had in effect resigned and he should stay resigned.

CHAIRPERSON: Yes, and then you had to speak to Mr Godsell a second time about

the latest developments. Okay, alright thank you.

ADV PHILLIP MOKOENA SC: I take it that by nodding you are saying to the Chairperson's question?

MS BARBARA HOGAN: Oh yes, sorry, thanks.

ADV PHILLIP MOKOENA SC: Now what seemed to confuse me a little Ms Hogan, about this testimony, is the last sentence on paragraph 85, where you say that Gwede Mantashe made a similar demand, that we have not clarified. But the second portion you are saying that although during this entire episode he had made it quite clear to me that he did not support what the President was doing. Can you please you know, elaborate on that and just clarify that issue?

MS BARBARA HOGAN: Yes, what I mean there, and I agree it is ambiguous, is that throughout this tussle with Mr Maroga, Mr Mantashe was saying I am not getting involved with this. I do not agree with what the President is doing and I am not getting involved, and he did stay more or less right out of that. There was not, you know the series of statements from the ANC or anything like that. It was only when the issue of Mr Godsell came up that he intervened.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Well you guess it may or may not well be that it was just a suggestion that in the light of what had happened it might not be good for Eskom if one of them continued. It might just have been just a suggestion.

MS BARBARA HOGAN: You now it could have been.

CHAIRPERSON: Yes.

MS BARBARA HOGAN: You know.

CHAIRPERSON: Okay, ja.

MS BARBARA HOGAN: There might have been real reasons for that.

CHAIRPERSON: And, well one might not know what the reasons were for it, for the suggestion that if the one goes the other must go, but it may well be that it was not a bad thing in the sense that if Mr Maroga had been – if the final decision had been that Mr Maroga must continue, the Board would have felt very aggrieved and maybe, well not maybe, I think from what you have told us, certainly Mr Godsell would have resigned, maybe more members of the Board would have resigned than just him.

And then maybe if Mr Maroga left and Mr Godsell continued in circumstances where it appeared that the two of them had very sharp differences and maybe that is why there was this big problem, it may be that it would be seen as one of them has won and the other one has lost, whereas maybe if you say look we do not necessarily say who is right, who is wrong but just to solve the problem going forward it might be better to do without both of them. Maybe that might be another way of looking at it.

MS BARBARA HOGAN: It is hypothetical certainly. Another way of looking at it too is that Mr Godsell had resigned.

CHAIRPERSON: No that is true, yes.

MS BARBARA HOGAN: And so then to ask him to come back might have been problematic.

CHAIRPERSON: Ja. Thank you.

ADV PHILLIP MOKOENA SC: On page 20 of your witness statement, from paragraph 88 to page 21, paragraph 92, you are dealing with the issues relevant to SAFCOL. Can you please take us through those issues and explain to us how they are relevant to the improper interferences that you have testified about thus far?

MS BARBARA HOGAN: Yes, SAFCOL is the South African Forestry Company Limited. During a period of restructuring and whatever, a large amount, a wide area of forests that belonged to the South African Government were sold off and SAFCOL

is a small component of a larger component.

CHAIRPERSON: Okay, I just want to make sure that I do not make the mistake that I made earlier on in regard to the Eskom issue. Can we – can you just confirm in terms of timelines when is this SAFCOL issue happening?

MS BARBARA HOGAN: This is now happening in 2010.

CHAIRPERSON: Okay thank you.

MS BARBARA HOGAN: Ja, this is closer to the time that I was ... [intervenes].

CHAIRPERSON: September 2010?

MS BARBARA HOGAN: Yes.

CHAIRPERSON: This is when I was trying to get the Transnet Cabinet memorandum through and a SAFCOL memorandum.

ADV PHILLIP MOKOENA SC: This was before the offer to Finland?

MS BARBARA HOGAN: It was?

ADV PHILLIP MOKOENA SC: Before the offer to Finland?

MS BARBARA HOGAN: Yes, yes, before I was going to go off to Finland yes. I submitted a Cabinet memorandum for – the AGM of SAFCOL was due on the 28th of September. So I submitted a Cabinet memorandum in anticipation of that, to be able to appoint a Board, a Board to SAFCOL at the annual general meeting, and I – you know I had been informed by the Cabinet secretariat that the President wanted to discuss certain matters before it goes to the subcommittee, relating to both Transnet and to SAFCOL. I spoke to the President telephonically and the President wanted a CV and more understanding of the person I was appointing as the Chair of SAFCOL.

So I sent two letters to the President, confirming our telephonic conversation, and attaching the CVs of candidates for Chair of Transnet and of SAFCOL.

ADV PHILLIP MOKOENA SC: Would those letters be Annexure O?

MS BARBARA HOGAN: Yes, that is correct.

ADV PHILLIP MOKOENA SC: Before we go to Annexure O Mr Chair, I am informed that it is now lunch adjournment.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: Yes. No thank you very much. We are going to take the lunch adjournment.

MS BARBARA HOGAN: Okay.

CHAIRPERSON: And we will resume at 14:00. We adjourn.

MS BARBARA HOGAN: Yes thank you.

HEARING ADJOURNS FOR LUNCH

HEARING RESUMES AFTER LUNCH

CHAIRPERSON: Yes, Mr Pretorius?

ADV PAUL PRETORIUS SC: Chair, may we interpose with an application for postponement to be brought on behalf of Mr Jonas who is represented by Advocate du Plessis and Advocate Norman will handle the matter on behalf of the legal team.

CHAIRPERSON: Thank you. Mr du Plessis.

ADV DU PLESSIS: Thank you, Chair, and thank you for allowing us the opportunity to interrupt the evidence of Ms Hogan to bring the application. Chair, if I might just introduce the application by saying that Mr Jonas is clearly committed to the work of the Commission. He previously testified on 24 August and he certainly wishes to complete his testimony and to face cross-examination but exceptional circumstances have required him to request this postponement and he does so on account of his on-going work as you will have known as the special envoy on investment. As the affidavit shows which has been filed on his behalf there are effectively three points we wish to highlight and we do so briefly.

First of all, Mr Jonas' difficulty with the potential date of 14 November was raised immediately by him when he had heard that this was a problem. Secondly, through his legal team he sought to raise his concerns in meetings and correspondence and he did so as he thought best with his lawyers attempting to approach him formally with the Commission's legal team. And then on 2 November when it became clear that he had to bring an application for condonation then he immediately did so and that application was brought on 6 November and on 11 November the final letter confirmed that the hearing would be today and I am here today briefed on his behalf.

We would submit that those exceptional circumstances assist in understanding his difficulty. In October Mr Jonas followed up with the evidence leaders and he informed them that it was likely that he would be asked – he was informed rather that it was likely that he would be asked to appear on 14 November. The date had not yet been confirmed then but it was a possibility and already at that time on 17 October Mr Jonas indicated that he did not have his diary with him but he mentioned that he had several pre-arranged overseas commitments during November. This is the point that immediately he realised there might be a problem he indicated that to the Commission.

The next day he flew to Copenhagen, on 18 October and while he was abroad his legal team then received the letter which confirmed that he would be requested to appear on 14 November and a further letter which indicated that there was a summons for him to appear and immediately after his return from Copenhagen his affidavit shows that he then instructed his legal team to highlight that he had two particular concerns with that date. The first concern was that he was scheduled to attend meetings as a special envoy for investment in Norway during the week of 5 November and his second concern was that the further meetings which he had anticipated might in fact be scheduled for Russia. Those dates had been confirmed and it was possible in other words that he

would not be able to be in two places at the same time.

His legal team then on 24 October onwards sought to engage with various members of the Commission and those as I have said were informal approaches and they were in an attempt to ensure that the scheduling issue such as it now had arisen could be resolved and a letter was eventually sent by the legal firm Boqwana Burns requesting a postponement. That was on 30 October. That letter was sent and is at MHJ1 in the papers and a letter by return from Mr Mabunda was given the next day on 31 October and it said that we are not able to grant the postponement on the basis of the discussions that we have had to date.

There were then further efforts by Mr Jonas' legal team leading up until 2 November again to try and see if there was an informal way in which the scheduling issue could be resolved and when on 2 November it was made clear to that legal team on behalf of Mr Jonas that no, indeed a formal application would have to be brought it was then prepared and it was launched on 6 November and as I say I was instructed to appear here on short notice in order to honour to the indication that on 13 November application had to be made.

And so in the circumstances we respectfully submit that there are grounds made out for the exceptional circumstances for Mr Jonas' absence, his inability to appear here. He simply cannot be in two places at the same time. His work before the Commission as a witness he understands is a vitally important role. He wants to fulfil it properly but at the same time he is unfortunately dedicated to be part of meetings abroad. Those meetings are important in the interests of the country. Those meetings are similarly unfortunately with very many other role players and they engage questions at the end of the day are in the interests of the Republic more broadly.

And so he asks for a date for him to appear before this Commission shortly

after his return. He returns from Europe on 19 November and he asks for a date shortly thereafter which will allow him sufficient time to obviously settle back in and have the opportunity to prepare for the hearing. In those circumstances ... [intervenes]

CHAIRPERSON: I will ... [intervenes]

ADV DU PLESSIS: Yes, sorry, Chair.

CHAIRPERSON: Yes, well, Mr Jonas to the best of my knowledge has really been in the past helpful to the Commission, has been co-operative and I would therefore be inclined to assist him. I must however refer to the fact that while on the one hand one appreciates the commitments of witnesses who may be required to appear before the Commission to give evidence and the fact that those commitments might make it difficult for them to appear before the Commission at a time when the Commission requires them to do so, while one appreciates that and the fact that people have got lives to run and some of the commitments relate to, in regard to some of the witnesses to the country, one must balance that against the challenge that would arise if the only way the Commission would run would be on the basis that every witness must appear before the Commission on a date that suits him or her. So because then we will not finish within the time that we have in mind.

So one needs to try and strike a balance and when I postponed the hearing of the evidence of Mr Gordhan, Minister Gordhan last time when he was supposed to – he was scheduled to appear before we took the break and I had to postpone it because his statement had not reached the legal team and implicated persons would still need to be given time to look at it and see what rights they needed to exercise I did raise the issue that I hoped that in his case he would be able to appear before the Commission this week because I fixed then the date of 15 November and I did say that I hoped that he would try to honour that date and only ask for a postponement if really there were very

compelling reasons.

Of course he has since asked for a shifting of that date for reasons that I accepted and I have shifted that – the date for his appearance before the Commission to Monday 19 November but already you can see that the unavailability of people who – of witnesses, maybe Ministers might create problems without one making any suggestion that they are not making the best effort to make themselves available. So I am just going to reiterate my appeal and I intend it for even those who are not here but who might be required to appear before the Commission that everyone should try the best they can to appear during the dates – on the dates that the Commission allocates and only really when there are really compelling reasons should they try to get other dates but because otherwise we just will not be able to function and that is why in a court of law once you have got the subpoena whatever you are doing, it does not matter how important your engagement is, your obligation is to appear in court or otherwise approach the court to get another date arranged.

So there are those concerns and... But I am happy that from what you say it seems that Mr Jonas' attitude is any date that we can schedule him for after he has returned giving him enough time to prepare for the hearing should be fine, you know, and that is helpful. So I will hear what Mr Mokoena, I think I was told he is the one who will deal with it on the basis – on behalf of the legal Commission or whoever it is. I understand that they are not opposing but I think it would be good if we could fix that date today.

ADV DU PLESSIS: We agree.

CHAIRPERSON: And to the extent that the issue of the actual date might not have been discussed between the two legal teams maybe we can just arrange so that later on after Mr Mokoena has said what he may have to say when we adjourn we could return to the matter and then the date can be specified if at all possible. So I will be inclined to grant

it but I will prefer that when I grant the application for a postponement we fix the date.

ADV DU PLESSIS: Not *sine die*, Judge.

CHAIRPERSON: Yes. Thank you.

ADV DU PLESSIS: Thank you.

CHAIRPERSON: Thank you, how ... [intervenes]

ADV THANDI NORMAN SC: Thank you ... [intervenes]

CHAIRPERSON: Ms Norman, I ... [intervenes]

ADV THANDI NORMAN SC: I object [indistinct], thank you, Chair.

CHAIRPERSON: I attempted to make you Mr Mokoena.

ADV THANDI NORMAN SC: Thank you, Mr Chairman.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you, Mr Chairman, we agree with the sentiments of the Chairman as expressed. In fact those are very clear in the correspondence that is attached to the application, that the legal team has no powers whatsoever to change dates for any witness and that must be done by the Chairperson because the Chairperson has given directives and he has scheduled those dates so to the extent then that at least Mr Jonas has realised that he needed to actually bring a formal application then the legal team is not opposing the application and, Mr Chairman, a date has been fixed being... We have already plotted it subject to the Chairperson's directive.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: That he should come back on 26 November.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: And we have established, my learned friend would confirm that.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: That they had communicated with him and he has confirmed that he is indeed available on that day.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: And may then the Chairperson adjourn the matter to the 26th and that then Mr Jonas be directed to appear.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Before the Commission at 10:00 on 26 November.

CHAIRPERSON: Yes. I did not ask Mr du Plessis but I should have asked him whether we should not actually – I should not set aside the summons that is calling him to appear is it tomorrow?

ADV THANDI NORMAN SC: Today. Tomorrow, tomorrow on the 14th.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes, Mr Chairman.

CHAIRPERSON: I think it should be set aside too.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: The application does not say anything about it.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So it should have dealt with that.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Because if it is not set aside it ... [intervenes]

ADV THANDI NORMAN SC: Then it remains, yes. Yes.

CHAIRPERSON: Yes, yes, and

[DEAD SPACE]

CHAIRPERSON: Notwithstanding the fact that the evidence earlier on related to Eskom so it does not look like Eskom has got anything to do with this load shedding. So I think

the summons would need to be set aside ... [intervenes]

ADV THANDI NORMAN SC: The other ... [intervenes]

CHAIRPERSON: Yes?

ADV THANDI NORMAN SC: I beg the Chair's pardon.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: The other alternative, Mr Chairman is to perhaps change the date on the summons to reflect the 26th but then the only difficulty that is the time period allowed in the summons ... [intervenes]

CHAIRPERSON: Yes, but then you have to re-serve the summons ... [intervenes]

ADV THANDI NORMAN SC: Re-serve the summons ... [intervenes]

CHAIRPERSON: Why do you want to do that ... [intervenes]

ADV THANDI NORMAN SC: Then it becomes a problem, yes.

CHAIRPERSON: Yes, yes.

ADV THANDI NORMAN SC: Yes, yes.

CHAIRPERSON: Okay. Now you say that the date of 26th has been agreed between both sides ... [intervenes]

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: And Mr du Plessis nods in agreement.

ADV THANDI NORMAN SC: That is correct, yes.

CHAIRPERSON: Is that on the basis that he would remain until his evidence is finalised so if it goes into the next day he would remain. Is that the understanding?

ADV THANDI NORMAN SC: He is coming back into the country, Mr Chairman, on 19 November and he has requested in his affidavit to be allocated some time to prepare and maybe if he is jet-lagged then he can recover from that and we have made provision for that being the 20th, 21st, 22nd and 23rd and then coming back then if he testifies on the

26th I think what we would try and do because the Chairperson had allocated times for his cross-examination and ... [intervenes]

CHAIRPERSON: Well, I do not remember that I have allocated the time ... [intervenes]

ADV THANDI NORMAN SC: Well, at least suggestions ... [intervenes]

CHAIRPERSON: I think I had indicated a provisional view and I was waiting for the lawyers for implicated persons to indicate – to make their submissions whether that allocation ... [intervenes]

ADV THANDI NORMAN SC: On those times ... [intervenes]

CHAIRPERSON: Would be acceptable and I have never received any submissions to say whether they are happy with those allocations or they are asking for more so I think I may ... [intervenes]

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: I may – I had indicated a provisional ... [intervenes]

ADV THANDI NORMAN SC: A provisional ... [intervenes]

CHAIRPERSON: Allocation but I had specifically said – invited the lawyers of implicated persons to indicate – to give me their submissions because the Commission's legal team had made their submissions.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: But I had never received submissions from them. I got an impression at some stage that they – everybody seemed to accept those but I do not have confirmation that that is so.

ADV THANDI NORMAN SC: Have confirmation. We will look into that, Mr Chairman.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: What you could do is I think we will be able to accommodate if Mr Jonas does not complete his cross-examination on the 26th we will

look into making provision for the 27th, but he is here ... [intervenes]

CHAIRPERSON: Well, Mr du Plessis has noted that he will be available until he has finished ... [intervenes]

ADV THANDI NORMAN SC: Also on the 27th?

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: And then that is the normal rule.

ADV THANDI NORMAN SC: Yes. Thank you.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Until he is released.

CHAIRPERSON: Yes. Okay. All right. Unless there is something else you want to say about this.

ADV THANDI NORMAN SC: No.

CHAIRPERSON: And unless Mr du Plessis has anything further to say I am ready to make the order.

ADV THANDI NORMAN SC: As the Chairperson pleases.

CHAIRPERSON: Okay. All right. Mr du Plessis, nothing? Mr Jonas has brought an application for the postponement of his evidence that was scheduled for tomorrow and the legal team for the Commission and Mr Jonas' legal team have reached an agreement with regard to the date when he must appear. I am satisfied that I should grant the postponement, however it is also necessary to set aside the summons that had been issued requiring him to appear before the Commission tomorrow. The order that I make therefore is the following:

1. The summons issued against Mr Jonas for him to appear before the Commission tomorrow is hereby set aside.

2. The hearing of Mr Jonas' evidence is postponed from tomorrow to 26 November 2018.
3. Mr Jonas will remain available for the hearing of his evidence beyond 26 November to the extent that it may be necessary.

That is the order. Thank you. Mr Mokoena?

ADV MOKOENA: Thank you, Mr Chair. Ms Hogan, just before the lunch adjournment we were just about to deal with the issues relating to SAFCON. You were still laying the basis and you were at the point where you wanted to also refer us to one of the annexures, if you may capture that. But, Mr Chair, before Ms Hogan does that, during the lunch adjournment I did the homework which I was required to do.

CHAIRPERSON: Yes.

ADV MOKOENA: Pertaining to whether we might have missed some of the recordings as a result of what transpired just shortly after we have resumed. I was informed that we might have actually lost four seconds of the evidence of Ms Hogan and I had to look also at the recording, to listen at the recording. It would appear that what was not recorded was her responses in relation to page 17, paragraph 73 and 74 and you would recall, Mr Chair, that is those which dealt with the meeting of Eskom where the ex-president was saying that Mr Kotzen must stop with the announcement. I am not sure how to deal with it, whether she must read those paragraphs into the record or she must recount her evidence on that score.

CHAIRPERSON: Well, you could ask her the question or you can ask her to read what is in her statement as long as you believe that whatever we missed gets covered.

ADV MOKOENA: Yes. Ms Hogan, just for completeness, in relation to paragraph 73 and 74, you were telling the Chair about the meeting which was arranged by the Chairperson of Eskom and while that meeting was just about to commence you also

received a telephone call from the ex-president.

[END OF AUDIO POWER FAILURE]