

**COMMISSION OF INQUIRY INTO STATE CAPTURE**  
**HELD AT**  
**CITY OF JOHANNESBURG OLD COUNCIL CHAMBER**  
**158 CIVIC BOULEVARD, BRAAMFONTEIN**

**12 JANUARY 2021**

**DAY 326**



**Gauteng Transcribers**  
Recording & Transcriptions

22 Woodlands Drive  
Irene Woods, Centurion  
TEL: 012 941 0587 FAX: 086 742 7088  
MOBILE: 066 513 1757  
[info@gautengtranscribers.co.za](mailto:info@gautengtranscribers.co.za)

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 12 JANUARY 2021**

**CHAIRPERSON:** Good morning Mr Seleka, good morning everybody.

**ADV SELEKA SC:** Morning.

**CHAIRPERSON:** Are you ready?

**ADV SELEKA SC:** We are ready Chairperson.

**CHAIRPERSON:** Okay let us start.

**ADV SELEKA SC:** Thank you.

**CHAIRPERSON:** Dr Nteta good morning to you.

10 **DR NTETA:** Good morning Sir.

**CHAIRPERSON:** The oath you took yesterday continues to apply today, you understand that?

**DR NTETA:** Yes I understand that.

**CHAIRPERSON:** Okay alright.

**ADV SELEKA SC:** Thank you Chairperson.

**CHAIRPERSON:** Proceed.

20 **ADV SELEKA SC:** Yes. Chairperson the – Dr Nteta was giving her apology from yesterday. She can see us but we can see her. So she is unable to see whether we have stopped talking. So sometimes there was a overlap between us talking and her talking.

**CHAIRPERSON:** Oh why is that?

**ADV SELEKA SC:** I do not know Chair. I do not know why it was not possible.

**CHAIRPERSON:** Well the technicians – have you asked

the technicians?

**ADV SELEKA SC:** I have asked the Reverend.

**CHAIRPERSON:** Why is that because we – we have never had that situation. Let the Reverend tell you what is going on.

**ADV SELEKA SC:** Chair the Reverend says the witness can – the witnesses can only see you if they have the laptop in front of you but once they have disconnected your laptop then the witnesses cannot see you.

10 **CHAIRPERSON:** They can only see me if what?

**ADV SELEKA SC:** If your – if a laptop for you is connected to the – to the meeting link.

**CHAIRPERSON:** And why is it not connected because it is always connected on other occasions.

**ADV SELEKA SC:** Chair – ja should we address it at tea time Chairperson it is - he --what the Reverend is explaining is the laptop was once there and on the Chairperson's request it was removed but it could probably be connected somewhere else I do not know.

20 **CHAIRPERSON:** Ja no I am going to – to adjourn and to get this sorted out. What should – what should have been done – what should not have happened.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Is that it should not have been removed without me being told that its removal would have this

effect.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Nobody said if it was removed this would be the consequence. And – and if I have been told that that is what would happen I would have said it should be kept.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So nobody said this is what would happen. How long can it take for it to be connected  
10 because I do not like this idea that the witness cannot see us.

**ADV SELEKA SC:** Yes. He is indicating about ten minutes  
Chair.

**CHAIRPERSON:** Ja we are going to adjourn. That must be sorted out quickly so that we can then continue.

**ADV SELEKA SC:** Thank you Chair.

**CHAIRPERSON:** We adjourn.

**INQUIRY RESUMES**

**CHAIRPERSON:** Can Dr Nteta see us now?

20 **ADV SELEKA SC:** She can see us Chair.

**CHAIRPERSON:** Dr Nteta can you see me?

**DR NTETA:** Yes I can see you.

**CHAIRPERSON:** And the evidence leader you can see him as well?

**DR NTETA:** I think I will see him when he – now I can see

him.

**CHAIRPERSON:** Oh when he speaks.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay alright. Now – Reverend Stimela is this light the way it should be? Okay. You putting me in the dark – in darkness. I think he is – maybe he is not happy that I said they must make sure the witness sees us so he is retaliating by putting me in darkness.

**ADV SELEKA SC:** There is vengeance to it.

10 **CHAIRPERSON:** Okay alright. Okay alright let us proceed then.

**ADV SELEKA SC:** Thank you Chairperson. Dr Nteta yesterday we were about to go into your second meeting with Mr Atol Gupta – Tony Gupta.

**CHAIRPERSON:** I am sorry Mr Seleka before we proceed.

**ADV SELEKA SC:** Yes Chair.

**CHAIRPERSON:** Can we have an understanding of – a common understanding of how much time you need to finish with her evidence?

20 **ADV SELEKA SC:** We...

**CHAIRPERSON:** What is your assessment?

**ADV SELEKA SC:** Let me see Chair.

**CHAIRPERSON:** I think yesterday you may have gone to just before half of her statement I am not sure.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So I was wondering – I was having in mind that you might need one and a half hours or so or at most two hours.

**ADV SELEKA SC:** Let us try two hours Chairperson.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Let us ...

**CHAIRPERSON:** Okay but I think just up the pace as you ask questions.

**ADV SELEKA SC:** Yes.

10 **CHAIRPERSON:** So that we try and get as much done as possible within the time.

**ADV SELEKA SC:** Thank you Chair.

**CHAIRPERSON:** Okay alright.

**ADV SELEKA SC:** Yes Dr Nteta we are about to go into your second meeting with Mr Tony Gupta. Just before I do that just one thing I need to clear with you and that – that is going back to the reasons why you left Eskom. We have seen from Mr Jabu Mabuza the former – was is the Chairperson or a CEO of Eskom? Chairperson in 2018.

20 **DR NTETA:** Chairperson.

**ADV SELEKA SC:** Yes. That his evidence was to the effect that you – you resigned while there were disciplinary – there was a disciplinary action pending against you. Could you – could you comment on that quickly?

**DR NTETA:** Okay. So – and I would take the liberty of

relating from the beginning of my affidavit and I indicated in my affidavit that I had mainly two reasons for leaving Eskom.

The first reason was to continue with my studies and the second reason was really because I felt that the incoming board and executives at the time I felt and it is my opinion that the continued undue interest in various transactions within the Primary Energy space this trend was going to continue.

10 So having been requested to provide submission for a transaction another transaction which was adjudicated in the evening of a Friday and some other discussions that I did have with some executives I felt that I wanted to leave Eskom because I did not want to continue to endure what was unpleasant.

And I at the time my direct line manager was the CFO. I had a conversation with the CFO in March of that year indicated to the CFO that I would like to exit my employment at Eskom and it was – to indicate what my  
20 notice period would be and having – wanting to have a cordial discussion with him. Of which we did in terms of when would I like leave. He asked me when am I thinking about leaving etcetera.

If I am going – if I am elaborating too much you will interrupt me.



**ADV SELEKA SC:** Okay I will...

**DR NTETA:** So at – at that point we then – I indicated well I will then come through with a letter of resignation at the end of the month but I did want to have a discussion with him prior to that. It was around about the middle of the month.

I then was then later probably the next week I think it was I was then called in by the Group Executive for Generation. At this point I want to note that I did not  
10 report to the Group Executive for Generation.

**CHAIRPERSON:** I am sorry – I am sorry Dr Nteta.

**DR NTETA:** And they then handed me...

**CHAIRPERSON:** I am sorry Dr Nteta. Just tell us who the CFO was? You have just told us you had a discussion with the CFO tell us who he or she was?

**DR NTETA:** Mr Cassim – Ms Cassim.

**CHAIRPERSON:** Ms.

**ADV SELEKA SC:** Is it Calib Cassim? Calib Cassim.

**DR NTETA:** Calib, Calib sorry Calib Cassim.

20 **CHAIRPERSON:** Mr Calib Cassim.

**DR NTETA:** Yes I think his surname is Cassim but Calib – Calib.

**CHAIRPERSON:** Okay alright. Okay continue. It is just important as you talk about positions to tell us who was occupying that position at that time so we ..

**DR NTETA:** It was Calib.

**CHAIRPERSON:** Ja okay alright. Continue.

**DR NTETA:** Thank you. It was Calib. I then had later when we had – I then had a – I was called in by the acting Group Executive Generation which was Mr Willie Majola and for a meeting. I entered the meeting and he had somebody from labour – from HR there and at that point they handed me a suspension letter.

I indicated to Mr Majola that I have in the previous  
10 weeks had a discussion with my immediate manager indicating that I did want to resign and I then asked – asked the HR person as well so what would be the process going forward with this.

At the time they seemed surprised I must say. And I – then they said well we are giving you – listen you are asked to vacate the premises with immediate effect of which I did. I vacated the premises with immediate effect.

So that is the – the letter of suspension. Having done that I then wrote to – a few days later I think it was –  
20 I wrote to my immediate manager which is Mr Calib the CFO and I indicated to him that – I actually indicated to him that you know our discussion and I then indicated to him that I subsequently from his colleague received a letter of suspension.

However in light of our discussion that we had had I

would like to still continue the process in terms of the – serving my notice even though I was asked to leave with immediate effect – suspension. And that is quite – that letter is actually quite – is documented and I am sure they have it. I can provide a copy.

And – and so I then served my notice in terms of that Eskom it was a month's notice that I was required to do.

I think probably two weeks in that notice they  
10 indicated to me that they would be scheduling I think it was a disciplinary. Once again that was not coming from my immediate manager it was coming from his colleague and my limited understanding of HR is that it is your immediate manager who disciplines you and not colleagues within the organisation.

And then I received documentation from my manager in terms of resignation – the normal documentation and they engaged with me – HR engaged with me and then I had my last day at Eskom that – April  
20 2018.

**ADV SELEKA SC:** Ja. So...

**DR NTETA:** The reasons for the suspension – sorry?

**CHAIRPERSON:** So – so

1. You had a discussion with your immediate manager where you indicated that you intended resigning and

before you could submit your letter of resignation you were served with a suspension letter.

Is that sequence correct?

**DR NTETA:** Yes. I had agreed with my manager – sorry Sir.

**CHAIRPERSON:** After you had been served with a letter of suspension you immediately left Eskom to comply with the suspension letter. Is that correct?

**DR NTETA:** Correct.

10 **CHAIRPERSON:** How long after you had received your suspension letter did you submit your letter of resignation? About a week?

**DR NTETA:** I am going to – I am going to say for about a week or so.

**CHAIRPERSON:** Ja more or less. More or less. Okay.

**DR NTETA:** More or less ja.

**CHAIRPERSON:** Ja okay alright. And then they told you about scheduling a disciplinary hearing but that never happened because then your resignation took effect, is that  
20 correct?

**DR NTETA:** Yes. So during that – the period of my notice about two/three weeks into that they sent me the letter.

**CHAIRPERSON:** Yes. And was the disciplinary hearing scheduled for a date within your notice period or outside of the notice period?

**DR NTETA:** They did not give a date.

**CHAIRPERSON:** Oh as yet.

**DR NTETA:** It was – it was more – ja they did not give a date or a venue. In fact I think it was more of just stating what the...

**CHAIRPERSON:** The charges.

**DR NTETA:** Issues because the four days suspension they need to then tell you you know what...

**CHAIRPERSON:** The charges are.

10 **DR NTETA:** What the charges are.

**CHAIRPERSON:** Oh [speaking over one another].

**DR NTETA:** Ja it was – it was more like charges.

**CHAIRPERSON:** They were telling you what the charges were going to be.

**DR NTETA:** Yes.

**CHAIRPERSON:** Okay alright. So – but then your resignation took effect before there could be a hearing?

**DR NTETA:** Yes before they came back to me.

20 **CHAIRPERSON:** Yes. You said you served your notice. Does that mean that you came back and actually worked or you – you served your notice on suspension?

**DR NTETA:** I served my notice on suspension. I came in at the end of my – my notice at the request of the then chairman to attend to some – in the other investigations that were on-going to provide evidence for that.

**CHAIRPERSON:** Okay alright Mr Seleka.

**DR NTETA:** So I – I – ja.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay Mr Seleka.

**ADV SELEKA SC:** Did those investigations pertain to your conduct where you were called in to give ...

**DR NTETA:** Which ones?

**ADV SELEKA SC:** The ones you say you were called in to give

10 **DR NTETA:** No it was to do with – it was do with – it was to do with – it was actually some of it was Tegeta related matters that to do with coal contracts not specifically my...

**ADV SELEKA SC:** Your conduct.

**DR NTETA:** My conduct.

**ADV SELEKA SC:** I see. Okay. Did the charges relate – the charges against you they were – if you can recall did they relate to the Tegeta transaction?

20 **DR NTETA:** So the charge is correct. They related to the Tegeta transaction. It was quite specifically related to – as a – in my role as a senior primary energy – senior General Manager Primary Energy. There was a temporary relief that had provided to Optimum/Tegeta for coal coming through and it was relief in terms of the qualities for a said period. So that is what they were. And then they indicated that there is a breakdown of trust.

**ADV SELEKA SC:** Yes. I saw that you deal with that in your affidavit. The temporary relief that had been given to Tegeta.

**DR NTETA:** Yes.

**ADV SELEKA SC:** Yes.

**DR NTETA:** Yes.

**CHAIRPERSON:** Did they indicate what the factual basis was of the allegation that there was a breakdown of trust? In other words did they say...

10 **DR NTETA:** Oh.

**CHAIRPERSON:** There is a breakdown of trust because you did ABCDE and that is why there is a breakdown of trust. Did they indicate that?

**DR NTETA:** So the – they indicated that there was a breakdown of trust based on the providing of the temporary relief.

**CHAIRPERSON:** So that was the sole basis as you understood it?

20 **DR NTETA:** Yes as I recall. I am actually trying to see if I can find the – the actual letter.

**CHAIRPERSON:** Letter. Yes.

**DR NTETA:** Because I am feeling that I may have ...

**CHAIRPERSON:** You might not recall everything.

**DR NTETA:** But – yes I might not recollect fully. But it was based on the temporary relief and – and I – what I do

recall is that it was indicated as a breakdown of trust.

**CHAIRPERSON:** Yes okay. Well if Mr Seleka have got the letter somewhere in their bundles or he indicates they do not have.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Okay alright. So if and when you have found it you will let – you will let us know. In the meantime you may continue Mr Seleka.

**ADV SELEKA SC:** Yes thank you Chair.

10 **DR NTETA:** Sorry Advocate Seleka if I may just interrupt you?

**ADV SELEKA SC:** Yes.

**DR NTETA:** Do you want me to look for it now and send it during my time with you or do you want me to get it later? I can get it at tea time if it is going to ...

**CHAIRPERSON:** Maybe she can – she can get it through during a break or something.

**ADV SELEKA SC:** I think so Chairperson.

**DR NTETA:** Not a problem.

20 **CHAIRPERSON:** How much time do you think you need to get it or you are not sure?

**DR NTETA:** No I have it it is just looking on my computer but I do not want to do that whilst I am..

**CHAIRPERSON:** Yes no, no that is fine.

**DR NTETA:** I am providing evidence.



**CHAIRPERSON:** Okay, okay we will do it ...

**DR NTETA:** So it will not take long.

**CHAIRPERSON:** We will do it during some break. Okay.

**ADV SELEKA SC:** Yes thank you Chair.

**CHAIRPERSON:** Let us continue.

**ADV SELEKA SC:** Thank you Chairperson. The aspect Ms  
– Dr Nteta regarding the temporary relief afforded to  
Tegeta is of importance to some extent in regard to the  
Tegeta issues and maybe you could explain to the  
10 Chairperson briefly on this temporary relief. What does it  
entail because you say it related to – or as I understand it  
it related to the quality and the quantity which is the  
volume of coal? Correct?

**DR NTETA:** So with regards to the temporary relief the  
temporary relief that I signed was to do with coal quality  
and in terms of the volumes. So in – and which are  
operational issues. So the temporary relief that I signed  
was – is firstly an annex based on a previous temporary  
relief that was provided to them. And it was for a limited  
20 period. What tends to happen in terms of mining  
operations is that as you mining through certain areas you  
might get to an area where you would experience what they  
would call a dyke or some aspects that affect the quality  
and the volume that you are able to provide through.

So what is – what we allow for our suppliers is that

in that particular aspect they would advise us that due to technical issues we are not able to provide you with the volumes and sometimes it is volumes and quality; sometimes it is both etcetera.

And then we will then say for that period whilst you are mining through that dyke then you can then provide us with either reduced quantities if it is affecting your operations or we would then look in terms of the qualities if they would be still – we will still be able to use them.

10           You can then reduce that quality. It is normally one particular aspect of the quality or two. They mine through that particular area. Once they have mined through that particular area then they would then revert back to you know the contractual volumes and qualities etcetera.

So that relief was for three months to allow them to address their operation issues that they have which is what we do for – it is just how we would manage contracts because of the robustness of mining operations.

**ADV SELEKA SC:** Yes not a – it is alright because what –  
20   what we – what I am trying to understand from you in regard to the relief is not so much the reasons but what relief entailed. So that relief if I understand you correctly when you give a relief in respect of quality that means you will then accept as Eskom quality – I mean coal that does not need the required quality.

**DR NTETA:** Yes. So – and why we call it temporary – ja it is relief in terms of that particular quality.

**ADV SELEKA SC:** Ja.

**DR NTETA:** Or the volume as well.

**ADV SELEKA SC:** Or the volume.

**DR NTETA:** It can sometimes the volumes.

**ADV SELEKA SC:** Yes so if they are supposed to provide by way of example 10 000 tons of coal per – per – is it per month or per week? You would compromise that and say  
10 okay I will accept 5 000 volumes of coal. Is that what the relief means?

**DR NTETA:** Yes.

**ADV SELEKA SC:** Yes.

**DR NTETA:** As a – yes that type of relief.

**CHAIRPERSON:** Just raise your voice.

**DR NTETA:** For a period.

**CHAIRPERSON:** Just raise your voice Mr Seleka.

**ADV SELEKA SC:** Thank you Chair. And for the purposes for this aspect you deal with that in your affidavit on page  
20 69. Chairperson that is Eskom Bundle 14.

**CHAIRPERSON:** Just before that. Dr Nteta when you grant the kind of relief that you are talking about to a service provider is the effect of the relief you grant to them namely is it that you condone what would otherwise have been a breach of the contract?

**DR NTETA:** Yes.

**CHAIRPERSON:** So – so you – you effectively say for the reasons that you have given us we understand that you are going to provide us with coal that does not meet the contractual standards either in terms of quality or in terms of volumes or both for this following period and we accept that. That is the effect of the relief?

**DR NTETA:** Correct.

**CHAIRPERSON:** Okay alright.

10 **ADV SELEKA SC:** Yes. Thank you Chair. So insofar as quality is concerned Dr Nteta we understand that these coal contracts have penalties clauses in them that if you do not – if you fail to provide coal of a specific quality penalties will be imposed. Correct?

**DR NTETA:** Correct.

**ADV SELEKA SC:** Yes. In this case I see in – I referred you to the page number; page 69 of Eskom Bundle 14 Chairperson paragraph 7.4. Or we can actually start at 7.3. You are there Dr Nteta or you are moving?

20 **DR NTETA:** Yes I am.

**ADV SELEKA SC:** To there. So that paragraph 7.3 says:

“During April 2016 the ownership of OCM changed from Glencore to Tegeta as per sale of shares agreement. April 2016. Subsequent to the cooperation agreement

being signed Eskom issued the temporary relief agreement to OCM on 20 December 2016 for the period of 1 September 2016 until 31 July 2017.”

So that relief on 20 December 2016 is in fact issued to Tegeta as the new owner of the mine.

**DR NTETA:** Yes. Yes I do not know who it was issued to but yes.

**ADV SELEKA SC:** Ja because Tegeta is not – well if you  
10 read that with your paragraph 7.3 because ownership changes hands you say April and Glencore is no longer the owner Tegeta is the owner and on 20 December 2016 only Tegeta would be the owner at this stage. Did you issue that relief?

**DR NTETA:** So the first relief I did not issue. The first relief I think was – so the relief – sorry the relief that you are referring to in this statement I did not issue.

**ADV SELEKA SC:** Yes okay.

**DR NTETA:** It was issued by my predecessor.

20 **ADV SELEKA SC:** Okay. Now I am taking you down...

**CHAIRPERSON:** I am sorry – I am sorry.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Did you say there is a first relief that you did not issue you issued a later one?

**DR NTETA:** Yes. So the relief that Advocate Seleka is

referring to in this paragraph 7.4.

**CHAIRPERSON:** Ja.

**DR NTETA:** Is the relief that I did not issue it was issued by my predecessor.

**CHAIRPERSON:** And who was your predecessor?

**DR NTETA:** That relief was issued by Mr Edwin Mabelane.

**CHAIRPERSON:** Oh okay.

**ADV SELEKA SC:** Yes Chair I see annexure.

**CHAIRPERSON:** Yes okay.

10 **ADV SELEKA SC:** AK – AKL08 – AKLN08 which is on page 187.

**CHAIRPERSON:** Please speak up Mr Seleka.

**ADV SELEKA SC:** That is annexure AKLN08 which is on page 187.

**CHAIRPERSON:** Yes okay.

**ADV SELEKA SC:** Yes. Indeed it is a relief issued by Mr Edwin Mabelane Chief – but he is the Chief Procurement Officer at the time Dr Nteta. 20 December 2016.

20 **DR NTETA:** Yes at some point within Eskom Mr Mabelane played the role both Chief Procurement Officer and senior General Manager for Primary Energy.

**ADV SELEKA SC:** Yes.

**DR NTETA:** So it is possible that during that period he was – he had both portfolios.

**ADV SELEKA SC:** Yes. And then there was subsequent

reliefs granted to Tegeta you say further in your affidavit.

**DR NTETA:** Yes that is the one that I am referring to which is linked to the suspension.

**CHAIRPERSON:** Just tell me these temporary reliefs that you granted and that Mr Edwin Mabelane also granted the power to grant that relief was it contained in the coal agreement or was it provided for in some other instrument within Eskom? What was the source of that power?

**DR NTETA:** So the power and I am – and I am going to  
10 give you my interpretation of it. The power to grant that relief lies in the coal operations as it is an operational issue that we would have to look at and look at in terms of the merits.

**CHAIRPERSON:** Am I correct to understand you to say as far as you know it was not in the coal agreement?

**DR NTETA:** So in terms of the coal agreement that particular agreement is linked to a mine. I would understand that it would be part of the coal agreement in terms of coal managing – the contract management and  
20 contract management which is indicated in the agreement would then deal with issues of operations and how do you manage it. Because the Department within Primary Energy that is called coal operations is delegated to manage and they would look at issues of volumes within – within the contract up – moving them up down. If there are issues in

terms of ramping up qualities etcetera as part of their function.

**CHAIRPERSON**: Okay let us take this step by step.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: Are you saying that your understanding was that the coal agreement gave that power to those to whom the responsibility to manage the contract was – was given. Is that what you are saying?

**DR NTETA**: Correct.

10 **CHAIRPERSON**: That it was your understanding.

**DR NTETA**: Correct.

**CHAIRPERSON**: In other words you are saying the – the power to manage the contract you understood to include the power to grant this kind of relief?

**DR NTETA**: Correct.

**CHAIRPERSON**: Yes. Is there anything else other than the contract that you understood to be the source of this contract.

20 **DR NTETA**: It would be the contract. It would also be the delegations that are granted to the contract managements department.

**CHAIRPERSON**: Yes. And those delegations, did you understand to have an express provision that talks about temporary relief or not necessarily anything express but you understood them to include the power to grant this relief?



**DR NTETA**: I understood that there would be – I understood it as such sir, that those powers that are delegated relate to be able to provide a temporary release.

**CHAIRPERSON**: But would I be correct in understanding you to say. You are not saying, if we go to the delegation we will find an express wording that said you could – you had this power but there might be no express wording but your understanding was nevertheless that it was part of what was delegated, the power delegated in terms of delegations.

10 **DR NTETA**: So my understanding is that the delegation that is provided to Primary Energy is to, one, is to negotiate and conclude contract as well as to manage the execution of those contracts which includes quality price and elements like that. So that is my understanding of the delegation provided to Primary Energy.

**CHAIRPERSON**: H'm. Other than granting this temporary relief to Tegeta on this occasion, had you had other occasions where you granted this type of relief to another supplier or other suppliers?

20 **DR NTETA**: Myself personally, no. But within the Primary Energy Division we would – so noting at the time that I was now the Senior General Manager for Primary Energy which oversaw various departments. Before, I used to in terms of under sourcing as side of things. So I would not have been involved with that personally before.

However, within the Coal Operations Department, they on a daily basis would manage and look in terms of those particular aspects.

So I was aware that that is their role. Hence the motivation to provide this temporary relief, came from the Coal Operations Department.

**CHAIRPERSON:** So is the position that even though you might not yourself have had other occasions where you granted this type of relief to a supplier. You were aware that  
10 this type of relief had been granted to other suppliers by the relevant authorities within Eskom in the past.

**DR NTETA:** Yes, I understood it as the practise. Yes. Not myself personally but correct.

**CHAIRPERSON:** Ja, okay. Mr Seleka.

**ADV SELEKA SC:** Yes, thank you Chair. That, obviously, will be – it be surprising if you were to be charged for doing something that is the practise at Eskom.

**DR NTETA:** Correct.

**ADV SELEKA SC:** So then Eskom seems to have had a  
20 different view about whether or not you were authorised to do or offer the temporary relief.

**DR NTETA:** Correct. Which is why they would have charged me.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Did you understand the basis of the

charges against you or the charge against you to be the mere the fact that you granted the relief? Or did you understand the basis of the charge against you or the charges against you?

Not to be the principle of granting relief but the circumstances under which you granted them, granted the relief, that made it, as far as Eskom was concerned, you granted relief in circumstances where you knew it should not be granted.

10 Which one of these two was your understanding of the basis of the charge?

**DR NTETA**: Okay. My understanding and I did not get any engagement if I can put it that way with my principles on it. So I am reading – my understanding is based on the letter that I received. My understanding is that Eskom believed that I did not have the delegation to grant that relief.

**CHAIRPERSON**: Okay alright. But as far as you are concerned. Obviously, you reflected on the charge and you had time to think about it. As far as you are concerned, you  
20 did have the delegations?

**DR NTETA**: As far as I am concerned, I did have the delegation. It had been done before. There was a Corporation Agreement with Glencore for three years based on the same principles which was signed by my predecessors as well.

**CHAIRPERSON:** Yes, okay alright. Mr Seleka.

**ADV SELEKA SC:** Thank you, Chairperson. Dr Nteta, you do refer to a Corporation Agreement in paragraph 7.4 of the affidavit. You say ...[intervenes]

**DR NTETA:** Yes.

**ADV SELEKA SC:** You have actually also referred to it in paragraph 7.2, the Corporation Agreement with OCM. But the Corporation Agreement of 2014 was terminated by Mr Brian Molefe after he seconded to Eskom in May or  
10 June 2015. Are you aware of that?

**DR NTETA:** Yes.

**ADV SELEKA SC:** H'm. Now after that there was no Corporation Agreement between Eskom and Optimum. So which corporation ...[intervenes]

**DR NTETA:** Yes.

**ADV SELEKA SC:** Yes. Sorry. Which Corporation Agreement are you referring to in paragraph 7.2? 7.4, I beg your pardon.

**DR NTETA:** So there is Corporation Agreement in 7.4,  
20 would be that – would be the temporary – the first temporary... No, Corporation Agreement is the one that you are referring to in terms of the one that was terminated by Mr Molefe.

**ADV SELEKA SC:** Oh. So you – is it my understanding that you thought that it still the same agreement in place in

2016?

**DR NTETA**: No, if I may?

**ADV SELEKA SC**: Yes?

**DR NTETA**: My thought processing at the time and also in providing this affidavit, was to provide the – I refer to the Corporation Agreement because in that Corporation Agreement that was terminated by Mr Molefe ...[intervenes]

**ADV SELEKA SC**: Yes.

**DR NTETA**: ...had spoke to issues of quality and it spoke to  
10 issues of volumes as well, where there was relief provided in terms of that agreement for those two aspects, right. So when I was then providing this particular narrative, I was referring to it based on the reasons of the information that is in that agreement.

But the temporary relief, the first one, is the one that was then signed by Mr Mabelane which was for, I think, for six months or so. I stand to be corrected. Or more than that. I stand to be corrected.

So that is the second document that I am referring to.  
20 And then there is a third one, the one for which I did sign.

**ADV SELEKA SC**: Yes, okay. So what I was just saying to you is. By this time, there is no Corporation Agreement between Eskom and Tegeta, that we are aware of. So what you see is a temporary ...[intervenes]

**DR NTETA**: Correct.

**ADV SELEKA SC:** Sorry, sorry. I should give you a chance to respond, yes. What we, however, see. On the 20<sup>th</sup> of December 2016 ...[intervenes]

**CHAIRPERSON:** I am sorry Mr Seleka. I am sorry to interrupt you.

**ADV SELEKA SC:** Ys, Chair.

**CHAIRPERSON:** You did earlier on mention on which page I will find this Annexure AKL and 08. I want to go there as you ask those questions.

10 **ADV SELEKA SC:** Page 187, Chair.

**CHAIRPERSON:** Is it 187?

**ADV SELEKA SC:** Yes, Chair.

**CHAIRPERSON:** Okay alright. Then you may continue. I am sorry I interrupted you.

**ADV SELEKA SC:** Not a problem Chair. So what we see then Dr Nteta, on 20 December 2016, is the temporary relief being granted to Tegeta on paragraph 7.4. And the temporary relief applies retrospectively from the 1<sup>st</sup> of September. Do you see that?

20 **DR NTETA:** Correct.

**ADV SELEKA SC:** Yes. It will apply retrospectively to over four months before it is issued. And then it applies from December, January to July 2017 going forward. So that is adding seven months into it because ...[intervenes]

**DR NTETA:** Correct.

**ADV SELEKA SC:** ...it ends on the 31<sup>st</sup> of July 2017. So that is more than six months.

**DR NTETA:** Correct. I did say approximately, yes.

**ADV SELEKA SC:** In 2017 alone is seven months. In 2016 alone it is five months. Four or five months. So that is, what, some ten months there. But I want to ask you this in relation to this because... Well, it does not end there because you also give a temporary relief on the next page. You give it on the 18<sup>th</sup> of August 2017. You give it for the

10 period ...[intervenes]

**DR NTETA:** That is correct.

**ADV SELEKA SC:** Thank you. You give it for the period 1 August 2017. This is now immediately after the 31<sup>st</sup> of July 2017. 1 August 2017 to 31<sup>st</sup> October 2017. Correct.

**DR NTETA:** Correct.

**ADV SELEKA SC:** H'm. Now let us try and understand this. I heard you mention that the motivation for temporary relief would come from the Coal Operations Department.

20 **DR NTETA:** Correct.

**ADV SELEKA SC:** So that is the Coal Operations Department of Eskom?

**DR NTETA:** Correct.

**ADV SELEKA SC:** Would the supplier itself make an approach to Eskom to ask for temporary relief?

**DR NTETA:** Correct.

**ADV SELEKA SC:** And they would give reasons for that request?

**DR NTETA:** Correct.

**ADV SELEKA SC:** And in this case, you were also given reason in order for you to grant a temporary relief.

**DR NTETA:** From our Corporations Department, yes.

**ADV SELEKA SC:** Okay. So you did not receive the reasons directly from the supplier?

10 **DR NTETA:** No, I received from the Coal Operations.

**ADV SELEKA SC:** H'm.

**CHAIRPERSON:** Would... Did Coal Operations say we received a request from the supplier for temporary relief of or the extension of the existing temporary relief? And these are the reasons they have given.

We support their request for the reasons that they give or here are our reasons for supporting the request. Did they say anything along those lines?

20 **DR NTETA:** So. Yes. So the Coal Operations Department at Eskom manages the coal contracts. So they are on a daily basis engage with the supplier in terms of the running of the operations. So they would receive the request from the supplier.

There would also have been – they would understand the operations of the mine because their job is to manage in



terms of those particular elements.

So it should have been an engagement from them. They then provided me a memo supporting, as you have indicated sir, the reasons for the temporary relief extension.

**CHAIRPERSON:** Okay. Mr Seleka.

**ADV SELEKA SC:** Thank you, Chairperson. So the picture that emerges is this – is like this and you can comment on this. After Tegeta took over Optimum Mine, which is around April 2016, as you say in the affidavit. Tegeta, a couple of  
10 months later, are granted this temporary relief with effect from the 1<sup>st</sup> of September 2016. The temporary relief applies to the quality of coal and the volume of coal. Correct?

**DR NTETA:** Yes.

**ADV SELEKA SC:** That applied for ten months until 31<sup>st</sup> July 2017. The period of ten months from 1 September to 31 July. Immediately thereafter, you also issued a temporary relief for three months from 1 August 2017 to October 2017. In total it is 13-months, in October. And we  
20 know from the evidence that in February 2018, Tegeta goes into business rescue. February 2018. You know that?

**DR NTETA:** Yes. February 2018?

**ADV SELEKA SC:** Yes.

**DR NTETA:** Okay.

**CHAIRPERSON:** Mr Seleka, on what page do I find

Dr Nteta's temporary relief to Tegeta?

**ADV SELEKA SC:** Yes, it is the next page Chairperson.

**CHAIRPERSON:** After the earlier or other one?

**ADV SELEKA SC:** Yes, correct, 188.

**CHAIRPERSON:** Oh, okay. Thank you.

**ADV SELEKA SC:** The next page.

**CHAIRPERSON:** You may continue.

**ADV SELEKA SC:** Thank you, Chairperson. So that business rescue Tegeta goes into after the temporary relief  
10 is three months thereafter, three months after the temporary relief.

**CHAIRPERSON:** Well, before you proceed Mr Seleka. Can I ask this question Dr Nteta?

**ADV SELEKA SC:** Yes, Chair.

**CHAIRPERSON:** I see that your letter to Mr Jacques van der Merwe, COO of Optimum Coal Holdings where you granted the temporary relief, just like the one that had been done by Mr Mabelane previously.

Although it allows Tegeta to deviate from its contract  
20 obligations but there seems nothing said on both occasions about how the price of the coal would be affected by this, insofar as for example quality is concerned.

I would imagine that if you are going to give me Grade A of coal, I am going to pay a price that is appropriate for Grade A. If you are now going to give me Grade B of – in

terms of quality, I cannot be paying for Grade A.

But I do not see anything in the letter that deals with that. Was that dealt with elsewhere or is there some explanation for why there seems to be nothing dealing with that?

**DR NTETA:** Chair, if I may? If you allow me the indulgence to talk a little bit about the contract? The contract, it was quite an old contract which was signed – it was made on a Rand per ton basis. So coal would have been a certain coal  
10 quality. So the – and the contract then talks to.

If, for example, you do not meet your obligations in terms of a certain range, a certain volume, et cetera, then that is when it begins to affect the price.

So. And I am going to provide the narrative to also try and answer mister – Advocate Seleka. Apologies. So the temporary relief which you talk to in terms of – is a ten months' period.

The issues that they had in terms of that mine, continues from even the temporary – the Corporation Agreement which  
20 in fact was a temporary released as signed previously. So which was for three years. So those issues continued.

Now the temporary relief that I then granted to them, spoke to the volume and the quality for a prescribed period. However, they needed to ensure that they have done certain things.

At the end of that period, of the temporary relief, which I think it was roundabout October. In November, I then instructed the department to institute the penalties because they did not meet for the terms that I had for those three months, the obligation. They did not meet those obligations.

So in November of 2018 – of 2017, we then instituted the penalties and that resulted in us actually receiving coal for them for free.

So from – and then they seem to supply – because they  
10 have indicated that they are unable to supply us anymore. And that is then also what then led to them, I would say, going into business rescue.

So the financial aspects were then attended within those mechanisms and that is what allowed me to be able to institute those penalties.

**CHAIRPERSON:** Okay. I take it that your answers means that, as a matter of principle, you accept that if they were going to provide coal of a lower quality, that should affect the price. But you are saying that, although in the letter you  
20 did not address that, you say there was a mechanism in terms of which it could be addressed. Is that correct?

**DR NTETA:** Within the overall contract.

**CHAIRPERSON:** Yes. But ...[intervenes]

**DR NTETA:** So the contract had the penalties, et cetera.

**CHAIRPERSON:** Yes. But the idea of temporary relief, is it

not – is the idea of enforcing penalties for the provision to Eskom of coal that has been supplied of coal of a lower quality for example that has been supplied to Eskom during a period where Eskom has provided temporary relief to the supplier.

That notion seems to be inconsistent with temporary – in relation of temporary relief. You remember earlier on, I asked you whether granting temporary relief effectively meant you were condoning a breach or breaches of the  
10 contract. And you said yes. You remember that?

**DR NTETA:** Yes.

**CHAIRPERSON:** Yes. So what I am raising is that the idea that Eskom could later on impose penalties for – on a supplier for supplying coal that is of a lower quality than the coal provided for in the coal agreement, seems to me to be inconsistent with the whole notion of granting temporary relief.

Because as I understand your evidence. Granting temporary relief is actually giving permission to the supplier  
20 to act in breach of the agreement because of the reasons given by the supplier which you as Eskom found to be sound. You understand what I mean?

**DR NTETA:** Yes, sir.

**CHAIRPERSON:** So what do you say to the proposition that when you grant temporary relief, you cannot be, at the same

time, contemplating that you will impose penalties on the supplier later on for providing you with coal of a lower quality than what is specified in the agreement. It cannot be. You cannot be contemplating both.

**DR NTETA:** Yes, sir.

**CHAIRPERSON:** You accept?

**DR NTETA:** I accept. And I will agree with you that in terms of our negotiations with suppliers, they agree with your sentiment. That you cannot allow me – you cannot say  
10 that I am going to – I can provide you with a relief in some form and later on, you then penalise me.

**CHAIRPERSON:** Yes.

**DR NTETA:** Now the rationale and I will speak from Eskom's perspective.

**CHAIRPERSON:** H'm?

**DR NTETA:** Most of the times when we provide temporary relief – not most of the times, but a lot of the times – it is for the quality and for the volume. The quality, it is an – I am going to say this and Eskom will have to deal with the  
20 suppliers to them in the sense that...

So the quality that they – that reduction that they have, in essence, is acceptable to us. Sorry, to Eskom. It is within a range that have the potential to be acceptable. Whether it means that we move this to another power station or the boilers can then be adjusted to receive that coal.

Because one of the big issues that we have is the security of coal supply. We would rather say that we will receive the quality that we can burn for a period but we do want the volumes.

So often times when they provide you with the supplier with the temporary relief, it will say that for this period – and because we are looking for monthly volumes. Instead of providing us with ten thousand tons, you can provide us with eight thousand tons.

10        However, on the end of it, you must go back to your volumes that you require. The contracts also allows us to catch up with volumes. So sometimes we can then say, at the end of that, give us more volumes.

And that is – because we are looking to secure the volume of the coal. So in your analyses – you are correct, that the supplies do feel that you cannot say that it is fine and then you later want the coal but we need to secure coal.

**CHAIRPERSON:**    You see, as far as you or Eskom may provide temporary relief in respect of volumes. I do not have  
20 any problem about that as far as the prices are concern because I take it that you will only pay for eight thousand if they – eight thousand tons of coal if they provide eight thousand. You will not pay for ten thousand.

But when it comes to the quality where you grant temporary relief in regard to quality, that is where my

concern is. Namely, in terms of the coal agreement, you would have impose an obligation on Tegeta to supply coal of Grade A quality and maybe for a certain period they did that and the – your obligation is to pay a price that is appropriate for Grade A quality of coal.

After some months they say to you, please provide us – grant us some temporary relief. We cannot grant you Grade A coal for the next ten months for the following reasons which you as Eskom find acceptable.

10 And I am saying that when you then grant a relief to say they can give you Grade B, you should be saying we will adjust the price as well, we cannot be paying you for grade A coal for the next ten months when you will be providing us with grade B coal. That is what I am raising because I do not see it addressed in the letter. I would have expected it to be addressed. Why was it not addressed?

**DR NTETA:** It is not addressed because it is addressed in the overall of the contract and when you talk about an A grade coal, A grade coal is a band so when we are putting  
20 it - for example, if a supplier came and said we normally give you A grade coal which is a band from a CV – I am just going to give an example – of 26 CD to 30 CD, if I give that an example.

The grade B is maybe a 25 CD. Jumping between a band is significant but within the band it is an acceptable



because we are able to adjust in terms of our operations and the implication is smaller. So we would then accept it.

The contract then addresses those various mechanisms in terms of how we would accept this particular coal to come through.

I also gave an example is that there are various aspects that, when you look at the coal quality, so you might have an issue of sulphur that we say that we will accept – sorry, Eskom says they will accept up to 1% and  
10 the supplier then says can you provide us with temporary relief on the quality of the sulphur for 1.1 or 1.2? And we have looked at in terms of the significance and then we would make a decision in terms of that. So it is not as clear to be able to then say X and then try and cater for it within the contracts.

**CHAIRPERSON:** Are you saying the letter might not deal with that, namely the adjustment of the price but the contract would have had a provision or did have a provision that effectively said if the supplier provides coal  
20 of a lower quality than grade A then this is how the price will be adjusted. Is that what you are saying?

**DR NTETA:** Yes, so the contracts in general would do that and also, as we moved further, a lot of the contracts are now based on a rand per gigajoule which talks to the energy content. So the later contracts that I was in

involved in, then – we were then – it talks to that particular mechanism.

**CHAIRPERSON:** And this particular contract, do you remember whether it had a provision for the adjustment of the price in the event of the supplier providing coal of a lower quality?

**DR NTETA:** So this particular contract, if my memory serves me correctly, has quite an extensive penalty calculation and regime that talks to elements in terms of  
10 the type of the quality, the kind of volumes, etcetera, and that is some calculations that are there.

**CHAIRPERSON:** Yes, but provisions relating to penalties, would not apply, I would imagine, based on what you and I have discussed earlier on, namely, where you grant temporary relief to a supplier of coal you cannot at the same time be contemplating that you will impose penalties for – against the supplier because during the period of the temporary relief the supplier provided coal of a lower quality, you cannot be contemplating that.

20 So what I am looking for is whether you are saying if we go to the contract in this case we will find provisions that say, in effect, where Eskom provides temporary relief, this is how the price will be adjusted or where it says in the case of the supplier providing quality – providing coal that is of a lower quality than stipulated in the contract,

this is how the price will be adjusted. That is now separate from the penalties because the penalties will not apply if you grant temporary relief. Are we going to find a provision that says that, as far as you remember?

**DR NTETA:** As far as I remember the contract does not talk about the issues of temporary but it would talk to the issues in terms of how you manage the contract. I do want to say that I do not want to start delving into the details of this particular contract because I have not looked at it  
10 recently but my understanding would be that it would then deal in terms of the mechanisms of it or the management of it.

**CHAIRPERSON:** Yes. Well, part of the reason why one is looking at some of these things is because there is an allegation that before the change of ownership Eskom was very hard on OCM. They for a long time were complaining that they were operating on a very – under a contract that brought a lot of hardship on them and wanted Eskom to accommodate their situation in various ways and Eskom,  
20 after Mr Brian Molefe had arrived, took a very hard line against them but once there was a change of ownership and Tegeta was involved, the attitude – Eskom's attitude was very favourable to them.

There was inconsistency if you look at how Glencore was treated and how Tegeta was treated. So that

is part of the reason why we are looking at this. Here is a situation where Mr Mabelane grants them temporary relief for 10 months or 11 months, I am not sure, and then you also come and you grant them and when I look at the letter, it does not say anything about adjusting the price. It seems, on the fact of it, that although the quality of the coal is lowered, that will be provided, the price remains the price for grade A coal. That is why I am trying to establish but I think from what you have said it seems that:

- 10           1. You accept that the letter granting them relief, both your one and Mr Mabelane's one, does not deal with that.

That is point one.

- 20           2. I think you also say, as far as you can recall - and you have said that you would need to look at the agreement because you have not looked at it recently - but as far as you can recall, the agreement did also not deal with the adjustment of the price during the period where temporary relief has been granted. It had provisions about penalties and you and I agree that penalties cannot be applicable for a situation where temporary relief has been granted.

Is my summary of your evidence a fair summary?

**DR NTETA:** Yes, I would like to add, if I may, Sir?

**CHAIRPERSON:** Yes.

**DR NTETA:** With regards to the allegations that Optimum had a difficult time prior to the new owners, I do not want to talk to that in the sense because I dealt with Optimum in terms of trying to look in terms of that particular agreement. I will – and I do not want to also deal with the temporary relief that was granted by Mr Mabelane, I would rather provide my thinking behind the temporary relief that I provided to them. I provided to them a temporary relief  
10 of three months and it was quite specific in terms of the period because my understanding is that if you are having difficulty with your operations and you have indicated to the operations team, Eskom operations team, then it will take you three to four months to resolve it, that then we are willing to look at that.

But you will also note that of the different reliefs that were provided, my relief was linked to in November where we then instituted because, in my opinion, you had been allowed three months to sort out your operations, you  
20 were not able to do so, so then we will then begin to institute and take, you know, institute penalties in terms of your agreement and actually not pay for anything that we get from you.

And that was my thinking at the time, it did not mean that because it was now Tegeta, it was simply in

terms of trying to get the coal – you are not able to supply us with the coal, we are putting penalties, etcetera. They did complain that they felt it was unfair but that was the contractual understanding and obligation that I believed served from my temporary relief.

**CHAIRPERSON:** Just to round off on this point because one may be trying to look at this only to find that maybe the foundation of one's thinking is flawed, you would know whether or not the price, the prices that Eskom paid for coal were dictated, at least in part, maybe wholly, by the  
10 quality of the coal that would be supplied.

In other words, I know we have been talking about different grades, you know, do you know whether that that was – there was that distinction or was there no distinction about, you know, whether the quality was part of what was taken into account in saying we will pay so much for this coal? I would have imagined that [inaudible – speaking simultaneously].

**DR NTETA:** In the later years the quality was linked to –  
20 the price was linked to the quality and as we moved towards more of a rand per gigajoule contracting, so it was linked to the quality, it was also linked to the market.

**CHAIRPERSON:** And at the time of you granting this relief, does this fall within those years or does it not fall within those years, the time when you granted the relief?

**DR NTETA:** It was in the later years. However, the contract was linked to a rand per ton.

**CHAIRPERSON:** Yes.

**DR NTETA:** So the contract was signed I think in the 1960's.

**CHAIRPERSON:** Yes.

**DR NTETA:** I stand to be corrected. So we were operating on an older pricing mechanism within a current period.

10 **CHAIRPERSON:** Ja. Okay, Mr Seleka?

**ADV SELEKA SC:** Thank you, Chairperson. Dr Nteta ...[intervenes]

**CHAIRPERSON:** I have – we have not gone on the tea break.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** We have gone past the tea break. We can take the tea break if somebody feels that they need a tea break, otherwise we could take it at 12 o'clock. Dr Nteta, do you need a tea break right now or comfort break?

20 Or we can take the break at twelve? From your side?

**DR NTETA:** You can take the break at twelve, Sir.

**CHAIRPERSON:** Mr Seleka?

**ADV SELEKA SC:** I am also fine, Chairperson.

**CHAIRPERSON:** You are fine.

**ADV SELEKA SC:** To continue.

**CHAIRPERSON:** Your junior is fine as well.

**ADV SELEKA SC:** She takes the cue from me.

**CHAIRPERSON:** Okay, alright. Okay, let us continue, we will take it at twelve.

**ADV SELEKA SC:** Thank you. Dr Nteta your explanation regarding your own temporary relief that you granted must have caused the – understood against the background of the previous temporary relief, which was given for ten months, is it not?

10 **DR NTETA:** Yes.

**ADV SELEKA SC:** Because in fact in your affidavit what you are saying is you were not giving them a new – well, the essence is you were not giving them a new temporary relief, you were extending the existing temporary relief.

**DR NTETA:** Correct.

**ADV SELEKA SC:** So if it was an extension of a ten months temporary relief, now you are adding three months to it, one wonders whether did you have different reasons at a time when you granted yours that were different from  
20 the reasons that were given to Mr Mabelane, ten months before. I mean, in fact, in December, 2016.

**DR NTETA:** So one of the questions that I asked the coal operations team is that what has happened since December to up to this date, were they not able to resolve their issues that they had which was their operational



issues and in terms of the area that they were mining. And response that they provided is that they were not able to resolve those areas, they are still mining in that particular area. So there will be still be issues in terms of the volume.

Now for those kind of engagements and understanding I would rely on the people mandated to manage the contract to use their judgment and then say whether it works or not.

10 So – and when you talk about in mining operations, it can take you three weeks to mine through an area, it can take you a year to mine through an area.

**ADV SELEKA SC:** Yes, but ...[intervenes]

**DR NTETA:** So in them saying that it had ...[intervenes]

**ADV SELEKA SC:** Sorry, let me interrupt.

**DR NTETA:** Yes.

**ADV SELEKA SC:** Because that is a general statement, one always has to confine oneself to this particular request, this particular relief that was granted.

20 **DR NTETA:** Yes.

**ADV SELEKA SC:** The reasons why it was granted and why you signed for it instead of making a general last statement because it does not assist us know the facts of what transpired here.

**DR NTETA:** Specific to this agreement I asked the coal

operations department as to what had changed.

**ADV SELEKA SC:** yes.

**DR NTETA:** Because they had the temporary relief. Had they gone and mined through the area that they need to mine through and the answer was that no, we have not.

**ADV SELEKA SC:** Ja.

**DR NTETA:** They still have challenges on their operations.

**ADV SELEKA SC:** Yes. So the Chairperson has  
10 accelerated the matter because it is exactly – I wanted to go exactly to where the Chairperson was talking about, that – and I just need to make that statement for you, that prior to Tegeta taking over, the position of Eskom regarding Optimum, after they entered into that cooperation agreement and they were also doing, as you quite correctly point out, it was a relief. It was a temporary relief in regard to the quality of coal and the values.

However, when Mr Molefe comes on board, he terminates that and there is an insistence on the part of Mr  
20 Molefe and Mr Koko that we want the penalties to be paid of 2.17 billion. You are aware of that?

**DR NTETA:** Yes.

**ADV SELEKA SC:** And that is the stance that was adopted throughout until Optimum is – the mine is taken over by Tegeta and now we see, after that, there is a

different attitude on the part of Eskom, they are willing to compromise on the coal and the value, the quality and the value and for a long period of time, thirteen months. Shortly before Tegeta is unable to operate and it goes into business rescue. You see the picture that emerges?

**DR NTETA:** Yes.

**ADV SELEKA SC:** Yes. So then – Chair, I will move on. Well, just before I do that, the penalties that were imposed, you say in November 2017, were those the only penalties

10 ...[intervenes]

**DR NTETA:** Sorry, I did not hear the question?

**ADV SELEKA SC:** The penalties imposed in November 2017, were those the only penalties imposed, to your knowledge, in respect of – in regard to Tegeta?

**DR NTETA:** I do not know, I request that you ask the finance department.

**ADV SELEKA SC:** Okay. As far as I know, it was the only one but I am not sure.

**CHAIRPERSON:** Dr Nteta, paragraph 2, number 2 of your  
20 letter granting relief, says that in effect, I think, Eskom reserves its rights on all penalties and not deduct the same. What did that mean?

**DR NTETA:** So – sorry, I cannot get to that letter now but ...[intervenes]

**CHAIRPERSON:** Page 188.

**DR NTETA:** So one of the elements in terms of reserving the rights is that though we are providing you with this temporary relief we reserve the rights to impose our penalties at a – we reserve our rights in terms of the contract so that we can institute aspects of the contract, which is the clause that I used to then impose the penalties, accept that we – because we are reserving our rights.

**CHAIRPERSON:** But you remember what you and I got to  
10 understand each on ...[intervenes]

**DR NTETA:** Yes.

**CHAIRPERSON:** ...with regard to the place of penalties during a period of temporary relief. This gives one the impression that you, Eskom, would be saying we are granting you temporary relief but we reserve the right to impose penalties on you for doing exactly what we have decided to condone. That does not seem to make sense to me, if that is what it means. Does it mean that or does it mean something else?

20 **DR NTETA:** That is my understanding because it is an open ...[intervenes]

**CHAIRPERSON:** Just to make sure – but just to make sure you understand what I mean. When I read this, I understand Eskom to be saying we are granting you temporary relief which means you can provide us less

volumes of coal, you can provide us a lower quality of coal and that conduct on your part would normally be a breach of the contract and if you were acting in breach of the contract we would be entitled to do a number of things including penalties. Now we are granting you temporary relief, we are saying you may do those things but at the same time we are saying we are reserving our rights to impose penalties. Is my understanding of what it says correct?

10 **DR NTETA:** It is correct, Sir, which is why I said earlier that the suppliers would agree with you because they say that you give us this opportunity but you have something hanging over our head because you can come back and impose.

**CHAIRPERSON:** Are you saying, therefore, that although this is what is written here, you did not really intend to do that because it would not make sense to provide temporary relief and still impose penalties?

20 **DR NTETA:** So the intention was to provide temporary relief but we want to ensure that we reserve our rights. So if there is – for whatever reason that comes out in that period, if something comes up, we want to be able to still institute and impose penalties. So it is a letter that is saying you can – we understand your issues, however, we are keeping the door open for ourselves.

**CHAIRPERSON:** But did you accept that it does not make sense, the two cannot live together during a period where you have granted temporary relief?

**DR NTETA:** At the time my thinking, whether it is floored or not, was that we need to ensure that we leave the door open for Eskom so that they can institute their penalties. So that was my thinking at the time.

**CHAIRPERSON:** Yes but as you speak now you can see the challenges with that.

10 **DR NTETA:** Yes, I see the challenges of the supplier.

**CHAIRPERSON:** Yes, okay, alright. Well, also for Eskom because you want to be genuine. If you grant temporary relief genuinely, you cannot be – you cannot grant with one hand and take away with the other. You accept that?

**DR NTETA:** So you are asking a practitioner, a procurement practitioner, so I will say I understand it but I would also want to leave the door open for my company. Yes, I hear you.

20 **CHAIRPERSON:** No, no, I – ja, but you understand now that although at that time that is how you thought but when you – we interrogate it now, you can see where the challenges are with having that clause.

**DR NTETA:** Yes.

**CHAIRPERSON:** Ja, okay.

**ADV SELEKA SC:** Thank you, Chair.

**CHAIRPERSON:** Mr Seleka?

**ADV SELEKA SC:** Ja. And, I mean – ja, your penalties, the penalties imposed by you, Dr Nteta, if it is you who imposed the penalties, it is ...[intervenes]

**CHAIRPERSON:** Maybe – I am sorry, Mr Seleka, just to make sure we round off on this at least as far as my issue is concerned, Dr Nteta.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Do you accept as you testify now that  
10 where you have granted, as Eskom, where Eskom had granted temporary relief to a supplier of coal to in effect say I am allowing you to provide me with a lower quality coal for this period, Eskom could not subsequently impose a penalty on a supplier for supplying Eskom with a lower quality in terms of their own temporary relief. Do you accept that it could not do that?

**DR NTETA:** Yes, Sir.

**CHAIRPERSON:** Yes. So, therefore, where Eskom granted temporary relief such as the temporary relief that  
20 you granted – and I know you said you did not want to talk about Mr Mabelane's temporary relief but this would also apply to his, then in that case where this temporary relief was granted, by implication, it meant that the supplier would not be visited with penalties for providing Eskom with lower quality coal. You accept that?

**DR NTETA:** Yes.

**CHAIRPERSON:** Okay, alright.

**ADV SELEKA SC:** And, in fact, Dr Nteta, it was not for that period.

**DR NTETA:** Pardon?

**ADV SELEKA SC:** The supplier was in fact not visited with a penalty – penalties for the period of the temporary relief.

**DR NTETA:** Yes. So we did the penalties, I think it was in  
10 November.

**ADV SELEKA SC:** Yes, after that period going forward.

**DR NTETA:** For that month, yes.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** But the penalties that you are talking about, they did not relate, did they, to the period of temporary relief.

**DR NTETA:** So I would have to look in terms of the actual period because one of the issues was the volumes that they had to ensure that they provided a certain volume  
20 period. I do not recall the details in particular but I think that they did not but I am not too sure. So it would be to look to those particular requirements in terms of that.

**CHAIRPERSON:** But I think you also said at some stage something to the effect that you imposed those penalties because they did not meet certain conditions that you had



imposed for the temporary relief, is that correct?

**DR NTETA:** Ja. I would like to have a look in terms of the penalty that was imposed.

**CHAIRPERSON:** Ja.

**DR NTETA:** If my memory serves me correctly, there was issue I think of the volume. So that three month period, I – and memory, I need to check, they did not provide the minimum that they were requested to do.

**CHAIRPERSON:** So, in other words, what you  
10 ...[intervenes]

**DR NTETA:** But I would really like to check that.

**CHAIRPERSON:** In other words, as the penalties that you are talking about that you sought to impose are concerned, you would be saying we did not impose penalties in regard to conduct on the part of the supplier that we had condoned. We imposed penalties for conduct that we had no condoned. In other words, if they had said we will provide 8 000 tons and you had said that is fine, you only imposed penalties when they provided less than 8 000, is  
20 that correct?

**DR NTETA:** I think, yes.

**CHAIRPERSON:** Is that your understanding?

**DR NTETA:** Like I said, I would like to have a look in terms of that, ja.

**CHAIRPERSON:** But that would be your understanding.

**DR NTETA:** Yes, ja, I think so.

**CHAIRPERSON:** Ja. Okay, alright.

**DR NTETA:** Yes, ja.

**ADV SELEKA SC:** Yes. In other words, they would have breached the relief that was even given. So they went lower than the relief that was even given and for that they would have attracted penalties insofar as they even breached the relief that was granted.

**DR NTETA:** Yes insofar as they did breach that relief,  
10 yes.

**CHAIRPERSON:** So the principle, if your recollection is correct, would be we will not impose penalties as long as you, the supplier, stay within the ambit of the temporary relief but once you go outside of the ambit of the temporary relief, namely you – we have agreed that you may give us 8 000 instead of 10 000, you then give us 6 000, then we will impose penalties because you are now outside of the relief we have granted but as long as you stay within the four corners of the temporary relief we have  
20 given you, there will be no penalties and as far as quality is concerned, if you continue to give us the quality that we have said is acceptable to us, for example grade B instead of grade A, there will be no penalties. But if you then begin to give us grade C or grade D, then there will be penalties. Those will be the principles as you understand

how you would have applied them.

**DR NTETA:** Yes. And also, within that period we will almost like leave you but as soon as that period is finished then it is a different discussion.

**CHAIRPERSON:** Yes, you go back, ja. Okay.

**ADV SELEKA SC:** Chair, I want to go to a different topic. I see it is three minutes before twelve.

**CHAIRPERSON:** Yes, okay. Let us take the tea break then.

10 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** We take a fifteen minutes tea break. We adjourn.

**ADV SELEKA SC:** Thank you, Chair.

#### **INQUIRY ADJOURNS**

#### **INQUIRY RESUMES**

**CHAIRPERSON:** Let us continue, I see we were not able to keep within the two hours that we had agreed upon, but that is not your fault Mr Seleka, it is I had lots of questions for Dr Nteta which took some time.

20 **ADV SELEKA SC:** It is not yet up Chair; we still have some time.

**CHAIRPERSON:** Well we started at half past so the two hours will be up at half past twelve, we started at half past ten, after the technical issue. So I do not think you will finish within fifteen minutes, but let us continue.

The bottom line is that why we want to finish as early, as soon as possible, we do not want to leave issues not dealt with properly, we seek to strike a balance between not being too slow and taking a lot of time, but at the same time being able to do justice to the issues.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay, alright.

**ADV SELEKA SC:** Thank you Chair. Dr Nteta I want to move on to a different aspect which is your second meeting  
10 with Mr Tony Gupta. Now that is the meeting that comes after the contract with Tegeta in regards to Brakfontein has been concluded on the 10<sup>th</sup> of March 2015. You had the first meeting, subsequent to that, you cannot recall exactly when, and then you also talk about the second meeting.

Let us now go into that second meeting. I have a question in regard to the address of Tegeta's premises or offices, Tegeta. The address ...[intervenes]

**CHAIRPERSON:** I am sorry Mr Seleka I missed some of the things you said earlier on.

20 **ADV SELEKA SC:** Yes, Chair.

**CHAIRPERSON:** Are you saying you going to a second meeting she had with Tegeta or at Saxonwold...[intervene]

**ADV SELEKA SC:** With Mr Tony Gupta.

**CHAIRPERSON:** With Mr Tony Gupta?

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay, alright.

**ADV SELEKA SC:** But there was just something I needed to clarify with her in regard to the first meeting because of the address. I understand Dr Nteta that the Tegeta's offices are in Sandton, the address is in Sandton?

**DR NTETA:** Yes.

**ADV SELEKA SC:** And is it correct that you would have known that address during the time of engagement with them prior to them being given the contract or awarded the  
10 contract?

**DR NTETA:** No.

**ADV SELEKA SC:** From your communication with them.

**DR NTETA:** So I just – the communication that I had with them was basically via email or on the phone or in person.

**ADV SELEKA SC:** Yes, okay now let us go into the second meeting. Could you please tell the Chairperson how that meeting came about and what was discussed?

**CHAIRPERSON:** And when it was.

**DR NTETA:** Okay in terms of when it was I cannot recall  
20 the exact date but with regards to how it came about Mr Tony Gupta called me on my cell phone...[intervene]

**CHAIRPERSON:** Sorry you cannot recall the exact date but would you recall the year and month more or less, which year was it? You cannot remember that either.

**DR NTETA:** What I can say it was I cannot remember it

would have been after the contract was signed which is from March 2015 but I cannot recall exactly when.

**CHAIRPERSON:** Okay no that is fine, okay alright continue.

**DR NTETA:** So Mr Tony Gupta gave me a call and requested that he would like to meet with me. I indicated I would meet with him and the reason why I opted to meet with him it is because we have been engaging with the CEO who is Mr Ravindra Nath with regards to the current  
10 coal supply agreement that Tegeta had with Eskom.

Myself and I do not believe I was alone in that thought that that coal supply agreement frankly put it was badly written. It was – there were grammatical errors within it and we in terms of fuel sourcing had been looking to clean it up and just improve it and also what I had been working on with the team was a master coal supply agreement which is a standard template. So also wanting to move it into our standard master supply agreement template.

20 So the team I had requested the team to engage with Mr Ravindra Nath the CEO on several occasions and there were not getting any traction in terms of that agreement and in fact there was almost a stubborn not moving.

They would agree to meet you he would be given

the agenda, he would then get to the meeting they would discuss issues he would say okay he will attend to it and then he would not and this has been going on actually for a while for some months.

So when Mr Tony Gupta requested for the meeting I had thought to assist the team in being able to unblock because I felt that Mr Nath was acting, was being instructed actually not to engage with us and not to do anything with the contract.

10 So I was hopeful or I can say rather ambitious in wanting to then address it with the shareholder to request Mr Tony Gupta to actually to instruct his CEO to engage with us so that we can then start to access the contract and move it towards the master supply agreement. So upon arrival at the residence...[intervene]

**ADV SELEKA SC:** Ja, just before you move on, Dr Nteta just before you move on. You say Mr Tony Gupta called you, telephoned you?

**DR NTETA:** Yes.

20 **ADV SELEKA SC:** So would you have given him your contact details?

**DR NTETA:** No.

**ADV SELEKA SC:** So how was he able to telephone you?

**DR NTETA:** I will assume that he would have received the number from maybe from Mr Nath, I cannot answer where

he got my number from.

**ADV SELEKA SC:** Could you have exchanged your details with him in your first meeting, could you have?

**DR NTETA:** No.

**ADV SELEKA SC:** When he telephoned you did he tell you the reason for asking to meet with you?

**DR NTETA:** So when he called me he indicated that he would like to talk to me with regards to the coal supply agreement.

10 **ADV SELEKA SC:** Yes but what about it?

**DR NTETA:** He just said that I would like to talk to you about the coal supply agreement. I will be quite frank and say when I received the call it was for me I thought great now we can talk about this coal supply agreement and then I can request that he ask his CEO to engage with the negotiations.

**ADV SELEKA SC:** If he did not tell you the details he just mentioned coal supply agreement, did you ask him what about the coal supply agreement so that you can prepare  
20 yourself for the meeting?

**DR NTETA:** No I did not do so because one what was forefront in my mind at the time was the difficulty we were having with the CEO. So when I received the call what came to my mind immediately was the opportunity to have him speak to his CEO because we are not getting any



traction.

**ADV SELEKA SC:** By this time which is either in – middle 2015 or later 2015. Did you now after your first meeting have knowledge of who Mr Tony Gupta was?

**DR NTETA:** I had knowledge of who he was after the first meeting, correct.

**ADV SELEKA SC:** Did you tell your immediate director at Eskom that I was called into this meeting and low and behold thinking that I was going to meet with Mr Nath it  
10 was Mr Tony Gupta meeting with me.

**DR NTETA:** So I did not inform my directors sorry my immediate bosses with regards to that and quite frankly because the environment within Eskom was not one of great trust, comfort so I did not.

**ADV SELEKA SC:** Oh I see. Did you tell anybody because you mentioned to him in the first meeting that what he wants, the information that he wants falls within the primary energy division. Did you tell anybody within that division that there is this enquiry by Mr Tony Gupta?

20 **DR NTETA:** So I informed yes so I informed the coal operations team with regards to – that there seems to be a requirement or a query with regards to the management and operations of that so they should expect a discussion with Mr Nath because at my first meeting I had indicated to Mr Gupta that through his CEO he should engage the coal

operations people.

**ADV SELEKA SC:** But you did not mention to the division that you had a meeting with Mr Tony Gupta?

**DR NTETA:** No, I did not.

**ADV SELEKA SC:** Okay back to the second meeting what – you cannot remember when but do you drive again to Saxonwold?

**DR NTETA:** Yes, I do.

**CHAIRPERSON:** Just before that I may have missed  
10 something Dr Nteta the difficulties to which you have alluded that you say that you had or Eskom had with the CEO. Is that the CEO of Tegeta?

**DR NTETA:** Yes it is with the CEO of Tegeta.

**CHAIRPERSON:** And who was the CEO of Tegeta at the time?

**DR NTETA:** Mr Ravindra Nath.

**CHAIRPERSON:** Yes, what were those difficulties?

**DR NTETA:** So the difficulty that we were having was in  
20 regard to him engaging with us on discussing and moving it towards our master coal supply agreement template and cleaning up the grammatical issues that were there in the agreement.

**CHAIRPERSON:** So there was an agreement that was in place already between Eskom and Tegeta?

**DR NTETA:** There was an agreement, yes.

**CHAIRPERSON:** Yes, but there were concerns that you as Eskom had about the agreement, is that correct?

**DR NTETA:** Yes, the quality of the agreement.

**CHAIRPERSON:** The quality of the agreement.

**DR NTETA:** Yes.

**CHAIRPERSON:** And you wanted Tegeta and Eskom to actually adopt another agreement, I think you call it master coal agreement or something like that?

10 **DR NTETA:** Yes, so we wanted to move it to the master coal supply agreement template that we had been engaging with legal on and we wanted to use it as a template going forward for all our suppliers and also there were grammatical issues mistakes in the agreement so it was to clean it up.

**CHAIRPERSON:** Yes, okay and he was – was he reluctant to do so or was it just taking long to do what he needed to do for the two parties to get to the master agreement?

**DR NTETA:** He was reluctant.

20 **CHAIRPERSON:** He was reluctant and that is where your issues were with him.

**DR NTETA:** Yes.

**CHAIRPERSON:** Okay alright but from what you are saying in substance there might not have been a problem with the agreement that was in place then but it was simply

not the Eskom template agreement and maybe because of grammatical mistakes and so on it was a little embarrassing to Eskom.

**DR NTETA:** So yes there was no issue in terms of generally – let me not say that. One of the elements that came out there was a PWC audit that was done on a few suppliers within the primary energy space and one of the things that the PWC audit came up with was in terms of the agreement the quality of the agreement and their  
10 recommendation had been that we need to improve it and we need to move it towards, we need to improve it and for me the suggestion was to move it towards the master template that I have been working on.

**CHAIRPERSON:** I would imagine that Eskom would have maybe a template would have a precedent an agreement to say whenever we are going to conclude the coal agreement with a supplier this is the type of agreement we conclude and that most of the time the supplier would fit within the terms of that standard agreement obviously there maybe be  
20 changes here and there but most of the time the supplier would accept the agreement that Eskom normally uses to conclude coal arrangements. Would that be correct?

**DR NTETA:** Your thinking is correct however there was no, excuse me...[intervene]

**CHAIRPERSON:** You want to drink water?

**DR NTETA:** I think I am fine now I needed to clear my throat.

**CHAIRPERSON:** Oh okay, alright.

**DR NTETA:** Your thinking is correct in the sense that there should be a standard template that particularly in the environment, well a standard template that can be used for if I use it as coal supply agreement.

However, there was no specific template and what the practise and what would happen is that we would then  
10 indicate to legal that we need an agreement in place for the supply of coal these are the details in terms of the supplier etcetera and we would engage and they would engage and draft individual agreements per supplier.

Whether they in the background had some form of template that they would have used in general then you would have to ask them.

**CHAIRPERSON:** You do not know, yes.

**DR NTETA:** So what I had said because one of the issues is that it would take a lot of time and there would be a lot  
20 of backwards and forwards. So I had started working with the legal department to come up with that very template but we have standard clauses that if there are deviations that we get approval from legal for the deviations.

**CHAIRPERSON:** And this particular agreement with which you were not so happy had it been prepared by Eskom's

legal department or had it been prepared by Tegeta or their lawyers?

**DR NTETA:** Eskom legal department.

**CHAIRPERSON:** Oh what had happened they had always been preparing these agreements and I assume that the quality was fine what happened this time do you know or you also do not know what had happened?

**DR NTETA:** I do not know what had happened I have had the opportunity last night to read Mr Bester's...[intervene]

10 **CHAIRPERSON:** Affidavit.

**DR NTETA:** Affidavit and in Mr Besters affidavit he indicates that he was instructed to get an agreement in place within 48 hours. So I can only deduce based on Mr Bester's affidavit that that is why the quality was not to my standard.

**CHAIRPERSON:** Yes was not, ja okay I am sorry I interrupted. I just wanted to understand why you were welcoming a proposal for a second meeting with Mr Tony Gupta so I wanted to understand that. But back to the  
20 conversation where Mr Tony Gupta called you...[intervene]

**ADV SELEKA SC:** Chair may I ask something before we move on.

**CHAIRPERSON:** Yes okay.

**ADV SELEKA SC:** Because it is important for yes, Dr Nteta if you turn to page 66 paragraph 6.7 just before the

Chairperson moves onto a different point, paragraph 6.7. In the light of the answers that you have given to the Chairperson regarding a template how should we understand that paragraph?

That on 7 November 2014 – this is before March 2015 when the agreement was concluded, you say you sent an email to Mr Nath of Tegeta attaching coal supply agreement template for their perusal this is a normal occurrence particularly for new suppliers that have never  
10 contracted with Eskom. So there seems to be a template.

**DR NTETA:** So what I sent through to Mr Nath as I indicated to you each engagement that we have with the supplier we go to legal and we then indicate to them this is – we want to have an agreement with them and they will then draft a CSA template or a CSA agreement and then it would then get sent.

But at the time there was no – perhaps it is just my thinking there was no signed off coal supply agreement that had standard clauses that day or night whoever we are  
20 dealing with these are the standard clauses that we always use. The legal department would send us a coal supply template, sometimes we would simply delete from a previous one we would delete the supplier and even send it but there was nothing that was for what I believe it should be correct is a signed off template.

**ADV SELEKA SC:** Yes, that may well be so but I think...[intervene]

**DR NTETA:** So what I sent to him was something that I had received from legal because I had indicated to them that we would be what talking to the supplier and it is something that is an agreement that should have been used for another coal supply agreement.

**ADV SELEKA SC:** Ja but the entire paragraph of your affidavit 6.7 conveys the message that this was your  
10 standard practice or normal practices as you used the word in regard to new suppliers.

So a template was there whether it is signed off or not but there is this template that you would share with the new supplier prior to the agreement being concluded so that you give them the opportunity to familiarise themselves with what would be the terms of the agreement to raise concerns if they so wish and discuss the matter with you.

**DR NTETA:** Correct so when I say this was standard in  
20 terms of new suppliers. So when we – and when I say with standard if a new supplier is engaging with the organisation they have no sight of the type of agreements that are in place.

**ADV SELEKA SC:** Yes.

**DR NTETA:** So what we try and do provide them an



example of the type of agreements in place and that is why I said the standard, yes.

**ADV SELEKA SC:** Yes and this is the point.

**DR NTETA:** So...[intervene]

**ADV SELEKA SC:** Carry on.

**DR NTETA:** Exactly, yes Sir.

**ADV SELEKA SC:** You can go ahead.

**DR NTETA:** So the issue and the concern that I am trying to raise here is that even though we sent them the type of agreements in place when we engage with legal they then draft and one against the other it is not necessarily all the time that it is the same it would depend on who within the legal department is drafting the agreement.

10

Who within the legal department I could be working with as opposed to my colleague and they would then provide an agreement but there is nothing that is, what I was looking for is something that would come and be signed off by the head of legal which is what we always should send through because yes.

**ADV SELEKA SC:** Yes, but the point is this that prior to the contract being signed on the 10<sup>th</sup> of March 2015 the supplier, potential supplier had been given the template of a contract about four months before which template you would have seen, you created an email attaching the template and sending it to the supplier.

20

**DR NTETA:** Yes.

**ADV SELEKA SC:** It is surprising that after such a long period of time prior to concluding the contract once it is concluded it is concluded with mistakes that needed to be amended or improved.

**CHAIRPERSON:** In other words why did you not correct it before you signed?

**DR NTETA:** Yes, it is surprising.

**CHAIRPERSON:** In other words why did you not as Eskom  
10 correct the mistakes before you signed?

**DR NTETA:** So I sent the agreement four months earlier as indicated by Advocate Seleka and that is where it is. Now when the 48 hours before that Mr Bester refers to what could have happened is that when I say they legal would have sent an agreement because there would have been a request can you send an agreement and then that agreement get sent again.

It does not necessarily mean the same agreement that was sent four months ago is the same agreement that  
20 was sent later because there is no generic signed off template. So the question is why would it not be corrected and not been fixed before it was signed. I am going to then deduce from the information from Mr Bester the 48 hours is that there was a rush to sign that particular agreement and the legal department did not thoroughly go

through the agreement because the element of the agreement would be something that – it is within the domain of legal and I do not want to answer that particular aspect.

So what I observed on after the fact is that there is grammatical issues in it and what grammatical issues led us move to what the journey that we are taking to go to a master coal supply agreement template that is signed off by legal.

10 **CHAIRPERSON:** Do you know what the grounds of urgency were that justified imposing this 48 hours' period within which it had been signed and from what you are saying it looks like that imposition that period might not have been imposed by Eskom maybe it was imposed by Tegeta.

Do you know what reasons were given why it had to be rushed like this in circumstances where four months earlier or even five months earlier you had sent a template to Tegeta that being ample time for both sides to look at  
20 the agreement correct whatever mistakes and sign it. Do you know what reasons were given for this 48 hours' ultimatum?

**DR NTETA:** No I do not know because I was not given the reasons as I indicated, as I had an opportunity to look at Mr Bester's affidavit that is where I then see that he was

requested within 48 hours.

**CHAIRPERSON:** Yes, okay alright Mr Seleka.

**ADV SELEKA SC:** Yes, take us then Dr Nteta into your second meeting.

**CHAIRPERSON:** Yes, before the second meeting let us go to the conversation arranging the second meeting.

**DR NTETA:** Yes, as I indicated he gave me...[intervene]

**CHAIRPERSON:** Did the two of you agree what the venue would be for your meeting that is Tony Gupta and yourself?

10 **DR NTETA:** Yes, so he requested that I come through to Saxonwold and to discuss the coal supply agreement.

**CHAIRPERSON:** And you agreed?

**DR NTETA:** Yes, and I agreed.

**CHAIRPERSON:** Why did you agree to go to him rather than him coming to you?

**DR NTETA:** The reason why I agreed to go...[intervene]

**CHAIRPERSON:** You had already been there before in terms of the first meeting. I would normally have expected that a supplier who wants to have an agreement with  
20 Eskom comes to Eskom you know generally but I will allow for the fact that there may be circumstances where you might say let us meet at a neutral venue maybe even let us meet at the supplier's place. But I would have normally have expected that Eskom would say you come to us you know but here you had already been there first time why do

you agree to go to the venue to be there venue second time around?

**DR NTETA:** I concede with you that we normally would meet - at Eskom we would sometimes meet suppliers at a neutral venue at the financiers' etcetera. We do that. And I also concede to you it is not this practice that to do so. At the time I was just hoping that I would be able to resolve the matter and unblock – and which is why I agreed. But I will concede that it general we should [00:00:20] at Eskom only.

10 **CHAIRPERSON:** Mr Seleka.

**ADV SELEKA SC:** Yes. I thought the Chairperson might also be interested in this. When I asked Dr Nteta whether you mentioned to anyone particularly your immediate superiors at Eskom that you had a meeting with Mr Tony Gupta the first time around you said no you did not because of issues of trust.

**DR NTETA:** Yes.

**ADV SELEKA SC:** You think you can elaborate on that?

20 **DR NTETA:** Yes I can. So in the lead up to the initial agreement if you – the Brakfontein agreement.

**ADV SELEKA SC:** Yes.

**DR NTETA:** I had been engaging with the supplier for about I do not know about 12/18 months prior to that. From the time of about January 2015 when my immediate supervisor joined us for the meeting with Tegeta – from that time from

January 2018 to I will say until about March there was continued – there was continued requests that – from the senior General Manager for me to be providing weekly reports with regards to the progress on the transactions etcetera. And for me it built a level of lack of trust or lack of understanding of the genuineness of the engagement and I at the time when I was meeting I did not know that if I then go and let us say complain or inform my superiors that you ;know I have had this meeting or I am trying to you know for  
10 whatever reason I did not feel that they would then support me and – and it might be detrimental to – to myself and my job.

**CHAIRPERSON:** Okay I am not sure that I follow that. As I understand it Mr Seleka's question was whether you shared with the information with anybody that you were going to have a meeting with Mr Tony Gupta – the second meeting. Is that correct Mr Seleka

**ADV SELEKA SC:** That she had the – that she had the first meeting with him.

20 **CHAIRPERSON:** Yes, yes. So your answer is yes you did not tell anybody.

**DR NTETA:** No.

**CHAIRPERSON:** Is that right?

**DR NTETA:** Yes correct.

**CHAIRPERSON:** And you say the reason why you did not

tell anybody was because the environment at Eskom at that time was such that the – you did not trust. What did you not trust that is what I want to get?

**DR NTETA:** I did not trust the people that I worked with at Eskom.

**CHAIRPERSON:** Hm.

**DR NTETA:** I did not trust that I would get the support for what I would want to do at Eskom. That is the trust that I did not have.

10 **CHAIRPERSON:** Well the – the one person one could expect you to share the information with would have been your immediate boss, is that correct?

**DR NTETA:** Correct.

**CHAIRPERSON:** And at that time who was that?

**DR NTETA:** My immediate boss at that time was Mr Mboweni.

**CHAIRPERSON:** Mr Mboweni. You say you did not trust that they could support you. What kind of support are you talking about? You were going to have a sitting with Mr –  
20 well Mr Nath this is the first meeting which ended up being with Mr Tony Gupta. What support are you talking about that you thought they would not give you?

**DR NTETA:** So my immediate boss was Mr Mboweni. Prior to when he was signing the agreement he had requested that I provide him with weekly reports. I did not understand

where, why and where those reports were going and why. So I was not feeling comfortable. I did not know quite frankly you know where he stands. So in answering you in terms of the person you should have told immediately would be Mr Mboweni. I was not comfortable in understanding what would happen to me and sharing with – the information. The kind of support that I am also talking about.

So for the second meeting we from the field sourcing division were wanting to open the contract and engage with  
10 the contract and the supplier was not known. So I did not know as to whether there would be support for us to fix that contract or they would then say leave it alone. And I just felt that it needed to move to a master supply agreement.

**CHAIRPERSON:** Did you believe that there was a risk that if you shared this information with Mr Mboweni he could ask you not to pursue the line that you wanted to pursue about the contract or did you believe that he might give information to Tegeta that you did not want to be given to Tegeta except through yourself at the right time or both?

20 **DR NTETA:** I would say it would be both in terms of just a lack of general trust and comfort. I also believed that I could potentially lose my job and they could look for something or you know for reason to do so. So it was not – it was not a pleasant environment in which to work on and there was fear.



**CHAIRPERSON:** What is it that you thought they would fire for?

**DR NTETA:** Sir I do not know what they would fire me for but just judging in terms of the corporate environment they can be anything that – they can look for something. So I cannot say I thought it was X or Y but I just felt that it is not something – they would then decide to make my – my time there very unpleasant or find reason to fire me.

**CHAIRPERSON:** Did you believe at the time that Mr  
10 Mboweni was in one way or another on the side of Tegeta or the Gupta's on certain issues between Eskom and Tegeta?

**DR NTETA:** I did not know. At the time I did not know.

**CHAIRPERSON:** Hm. You see I am trying to understand your reasons for not sharing the information with him and the issue of the absence of trust that you have talked about – that you did not trust him. Because if you told him that you had just been to a meeting with Tony Gupta and this is what happened you thought you had an arrangement to meet with Mr Nath and this is what happened. I do not see on the face  
20 of that anything that should make you think if you shared that information with him you could be fired. So that is why I am trying to understand why would you think along the lines of losing your job if you simply shared the information with him that you had been to a meeting with Mr Tony Gupta and this is what happened.

**DR NTETA:** The reason why I would feel that way as I indicated before he had been requesting me earlier to give him weekly reports. What – face value would be that why would somebody need weekly reports? Where is it going? Why is it going? And if it is not something that should be requested why is he not in a position to indicate to whoever is requesting those reports that they will not be forthcoming. So I did not feel that even in his position he was able to resist any pressures that he was getting and what would  
10 happen is that instead of protecting myself or people within the division what simply happened is that then we would then be – I am going to use a strong word “persecuted”. So the environment though it is – what I am trying to share with you is that it was not pleasant. It was toxic and there was lack of trust within the organisation. So whether it is my immediate supervisor or someone up – people within above him there was a lack of trust in terms that I had.

**CHAIRPERSON:** Did you think that Mr ....

**DR NTETA:** So sharing with him – yes Sir.

20 **CHAIRPERSON:** Yes continue, continue.

**DR NTETA:** So sharing with him in terms of meeting with them and you know the irritation that I felt I did not feel that it is something that would remain between the two of us and it was a safe environment.

**CHAIRPERSON:** So you – are you saying that what you did

not want to share with him is that fact that you were irritated by what had happened but it would not be in the sharing of information that you had had a meeting with Tony Gupta that you had a problem with. In other words you – the part you did not want to share with him is that you were irritated.

**DR NTETA:** No the part that I did not want to share was:

1. That I was irritated.
2. That I had had a meeting with Mr Gupta.
3. It was you know under the guise of reaching with the  
10 supplier.

I did not want to share with him because I did not know the implications. At the time I did not know. If he was aware of it I did not know if they – if he was aware that they were going to ask for it. I did not know. Because we did not know where information was going, what was the consequences of it etcetera. So that is why I did not feel safe.

**CHAIRPERSON:** Did you think that he would not have liked the idea of you having met with Mr Tony Gupta?

**DR NTETA:** I do now know. As I – I do not know whether if  
20 he would not have liked it or he would have been upset that within fifteen minutes I left. You know I do not know. I did not know where he stood. I was uncomfortable about it and yes. So I did not know. Whether even if he was aware and I did not know but I did not feel comfortable and I did not feel safe.

**CHAIRPERSON:** But how would you report to him seeing that he was your immediate boss? How would you report to him on progress about this matter if you were not going to tell him that you had had a meeting with Mr Tony Gupta? How could you report to him?

**DR NTETA:** So...

**CHAIRPERSON:** Be a reasonable one or accurate one if you are going to not tell him about such a meeting.

**DR NTETA:** So I would report to him in terms of the  
10 progress on various transactions. It is not – the reporting to him on the transactions is not – it was not regular meetings where I would run him through various transactions. Because we – we dealt with quite a few transactions. So the – it was – it is not a – the repertoire that we had it was not a regular you know one on one meetings. Just quite purely because of the share volume of his responsibility.

**CHAIRPERSON:** Did he know that you were uncomfortable with the agree – with the existing agreement and that you wanted the parties to move to what you called I think Master  
20 Coal Agreement. Did he know that you had that problem with the existing agreement? Did you share that with him?

**DR NTETA:** I do not – I do not – I cannot recall if he knew but he may have known because if I indicated to you TWC provided a report on it. So I cannot answer. I cannot answer if we knew at the time.

**CHAIRPERSON:** If he did know do you know whether he would have known because you told him or he might have known from other sources?

**DR NTETA:** So he might – like I have indicated he might have known having – because the TWC report would have been sent to him. So through reading it he would have then picked up that the agreement needed to be improved.

**CHAIRPERSON:** Hm.

**DR NTETA:** I do not – I do not recall having a discussion  
10 with him specifically on that. Ja I – ja I do not recall but he  
– I am going to – I know that the report was sent to him. I  
cannot answer to you whether he read the report or not.

**CHAIRPERSON:** Hm. Okay Mr Seleka.

**ADV SELEKA SC:** It is lunchtime Chair.

**CHAIRPERSON:** I know I interrupted you. We – we are  
three minutes – four minutes past one.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** But if there are two or three questions that  
you then should not wait for after lunch you can deal with  
20 them but if you ...

**ADV SELEKA SC:** No I think I am fine Chair.

**CHAIRPERSON:** Are fine we could adjourn at this stage.

**ADV SELEKA SC:** I am fine Chairperson. It will be the next  
issue, the next issue.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Ja so ...

**CHAIRPERSON:** Or maybe should we try if we can and finish with the content of the second meeting or is that – how long do you think that will take?

**DR NTETA:** Can we do – yes I would accept that proposal  
Chair.

**CHAIRPERSON:** Ja let us do that ja.

**ADV SELEKA SC:** Yes. Dr Nteta just before we go on a break just go into the second meeting then and what gets to  
10 be discussed in that meeting?

**DR NTETA:** So what gets to be discussed is that one of the issues that – that Mr Gupta asked me about was to – looking at the – he was interested in the difference between the med – what we call medium term coal supply agreements so which Tegeta falls within and also interested in terms of a cost plus agreements. Cost plus contracts which is where the traditional agreements that were signed in about 1960's. So he was interested to understand what are the differences between the two, who gets a cost supply agreement, who  
20 gets a medium term supply agreement, why do we no longer move provide cost plus agreements? So those are the contents of the discussion that we had. Also the content of the discussion is that I raised with him I said we – speaking of your medium term agreement we would like to move it to template and we feel that your CEO is not – is not engaging

us on it and requesting that he instruct his CEO to engage with us on it.

**ADV SELEKA SC:** Yes. Okay.

**DR NTETA:** That is the content of the discussion.

**ADV SELEKA SC:** Ja. You give us some of that content on page 83 of Eskom Bundle 14 paragraph 9.6. What I picked up as you go there between the first and the second meeting is that which is one thing you have left out in your explanation. There is one commonality there the sampling  
10 process. Coal sampling. It was discussed in the first meeting. It is also discussed in this meeting.

**DR NTETA:** Yes. So in the discussion in looking in terms of the two the coal sampling that happens more on the cost plus agreements is because those mines have a conveyor directly to the power station that they are feeding. So the sampling process is – is different because there is not necessarily stock piles. Whereas in the medium term agreement there are – the coal is mined – it is placed on a stock pile and then it is sampled and the samples are taken  
20 to labs etcetera. So looking in terms – so those are the differences in terms of the two agreements. When I was saying – I was asking in terms of what are the differences etcetera and also discussed looking in terms of why is the case that on the cost plus they do not have stock piles etcetera.

**ADV SELEKA SC:** But does this discussion not make you uncomfortable?

**DR NTETA:** The discussion about the cost – the cost plus elements?

**ADV SELEKA SC:** No what Mr Tony Gupta...

**DR NTETA:** The discussion in general?

**ADV SELEKA SC:** Yes with Mr Tony Gupta is seeking to discuss with you does it not make you uncomfortable?

10 **DR NTETA:** It makes me uncomfortable and it raises concern.

**ADV SELEKA SC:** Yes.

**DR NTETA:** It raised a concern to me in terms of also upon leaving because it was also a very short meeting. Was because I then said to myself I was wondering if they were looking to move towards a cost plus arrangement because they are currently in a medium term agreement. So I made a note to myself that you know be prepared that if they then do  
20 decide to open this agreement because I was hopeful that they would that they might want to then change the agreement in totality and move it towards a cost plus agreement because of – asking in terms of how those mechanisms work.

**ADV SELEKA SC:** Yes but the point I am making with you is this. You said one of the reasons why you did not tell your immediate boss is that you do not know what he might say



about you meeting with a supplier.

**DR NTETA:** Yes.

**ADV SELEKA SC:** And that is where my focus is. But here you are.

**DR NTETA:** Yes.

**ADV SELEKA SC:** An employee of Eskom. You go out of your office. This is not a weekend on a Saturday you mind your business – you are on duty.

**DR NTETA:** Yes.

10 **ADV SELEKA SC:** And you come being called from your office. You go to this – to the man at his private residence to discuss matters of your work.

**DR NTETA:** Yes.

**ADV SELEKA SC:** That is my question does that not make you uncomfortable? Is that not something that you in fact could have been disciplined about?

**DR NTETA:** I cannot answer as to whether I could have been disciplined about with regards to that because in terms of meeting with suppliers leaving our place of work that is  
20 something that – that does happen. I indicated at the beginning of this discussion to the Chair that I concede that it is not best practice and go and meet a supplier outside of the organisation. I concede to that fact.

**ADV SELEKA SC:** Okay.

**DR NTETA:** Whether it was done and in terms of a practice

at Eskom it is because not only myself but even our seniors meet suppliers outside of the premises of Eskom. And it is not best practice. Making me feel uncomfortable yes I did feel uncomfortable. One of the elements that I was also uncomfortable about is that where did he learn about cost plus agreements?

**ADV SELEKA SC:** Yes.

**DR NTETA:** You know so – and how much information does he know? Is he verifying this? So those are the kinds of  
10 things and I just said to myself I need to be – the team needs to be wary that if we are going to open these agreements that might be something that comes up.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Well do – do you agree that the fact that you did not share with – or maybe let me ask this question first. We know that you did not share with anybody the – within Eskom the fact of your meeting – first meeting with Mr Tony Gupta, is that right?

**DR NTETA:** Yes.

20 **CHAIRPERSON:** Ja at least not with your immediate boss?  
At least not with your immediate boss.

**DR NTETA:** Yes not.

**CHAIRPERSON:** Yes ja.

**DR NTETA:** Yes, yes.

**CHAIRPERSON:** Is that what happened also in regard to the

second meeting with Mr Gupta? Did you also not share it with your immediate boss?

**DR NTETA:** Yes. Yes I did not share with my immediate boss.

**CHAIRPERSON:** Did you share it with other people within Eskom?

**DR NTETA:** No I did not share with anyone within Eskom.

**CHAIRPERSON:** Yes.

**DR NTETA:** I did not share with my immediate boss.

10 **CHAIRPERSON:** Yes.

**DR NTETA:** But I did not share with anybody period.

**CHAIRPERSON:** Yes. Would you not concede that therefore it makes your two meetings with Mr Tony – this makes your two meetings with Mr Tony Gupta to really be secret meetings within the context of Eskom. You did not want anybody within Eskom to know about these two meetings you had with Mr Tony Gupta. So you kept them as a secret to yourself. What do you say to that?

20 **DR NTETA:** I – yes I concede that I did not tell anyone at Eskom.

**CHAIRPERSON:** Yes.

**DR NTETA:** That I met with him.

**CHAIRPERSON:** Yes.

**DR NTETA:** Yes. And I kept it to myself.

**CHAIRPERSON:** Yes.

**DR NTETA:** Correct. I did not feel comfortable and I did not trust.

**CHAIRPERSON:** Yes. Okay maybe we should adjourn at this stage. We will adjourn at this stage Dr Nteta. It is about twelve minutes past one we will resume at quarter past two. We adjourn.

**ADV SELEKA SC:** It is a lunch adjournment Dr Nteta.

**DR NTETA:** Thank you I...

**ADV SELEKA SC:** You can make your way by twelve  
10 minutes past two or ten past two.

**DR NTETA:** Will – will do.

**ADV SELEKA SC:** Thank you.

**DR NTETA:** Thank you.

### **INQUIRY ADJOURNS**

### **INQUIRY RESUMES**

**CHAIRPERSON:** Are you ready?

**ADV SELEKA SC:** Yes, Chair.

**CHAIRPERSON:** Mr Seleka, before we proceed. Where are we with regard to the witness who was scheduled for today?

20 **ADV SELEKA SC:** He is around. They have gone out for lunch.

**CHAIRPERSON:** He is around?

**ADV SELEKA SC:** Yes. That is Mr Koko.

**CHAIRPERSON:** Mr Koko?

**ADV SELEKA SC:** Yes, Chair.

**CHAIRPERSON**: Okay.

**ADV SELEKA SC**: And his legal representatives.

**CHAIRPERSON**: H'm?

**ADV SELEKA SC**: His legal representatives as well.

**CHAIRPERSON**: Yes. Should we not talk about what is to happen ...[intervenes]

**ADV SELEKA SC**: Yes ...[intervenes]

**CHAIRPERSON**: With regard to that before we proceed?

**ADV SELEKA SC**: I think so Chair.

10 **CHAIRPERSON**: Because there should be certainty about what is going to happen.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: Oh, are they outside at the moment?

**ADV SELEKA SC**: Yes, they are out for lunch.

**CHAIRPERSON**: H'm? Ja, out?

**ADV SELEKA SC**: Outside for lunch, yes.

**CHAIRPERSON**: Well, maybe somebody could call them in. And once they are in, then we will stop.

**ADV SELEKA SC**: Yes.

20 **CHAIRPERSON**: And then discuss what is going to happen. So in the meantime, you can continue but once they are in, you can indicate to me. Then we can ...[intervenes]

**ADV SELEKA SC**: Thank you, Chairperson.

**CHAIRPERSON**: Ja.

**ADV SELEKA SC**: Certainly. Chair, I think we are done

with the second meeting.

**CHAIRPERSON**: Yes, we are done. But let me ask this question Dr Nteta. You asked Mr Tony Gupta to instruct his CEO to cooperate, as I understand it, with Eskom with regard to moving to a Master Coal Agreement. Is that right? That is what you said, you asked him to do?

**DR NTETA**: Correct.

**CHAIRPERSON**: What was his response to that request?

**DR NTETA**: He said he will do so.

10 **CHAIRPERSON**: Yes. Do you – did the CEO of Tegeta subsequently behave in a manner that suggested that he had been instructed to do so?

**DR NTETA**: No. So to answer you. The agreement was never changed.

**CHAIRPERSON**: That agreement was never changed?

**DR NTETA**: Correct.

**CHAIRPERSON**: Did you speak to the CEO after your meeting with Tony Gupta with regard to amending the agreement or changing it, and if so, what was his attitude?

20 **DR NTETA**: I did so on several occasions. And he indicated that he would but the team never progressed.

**CHAIRPERSON**: Was there a problem from Eskom's team as such now or as opposed to a problem on his side or do you not know where the problem was now?

**DR NTETA**: The problem was always from the – the

beginning from the supplier's side. So the Eskom team that was working on it, continually tried to move that agreement.

**CHAIRPERSON:** Ja. Okay alright. Mr Seleka.

**ADV SELEKA SC:** Thank you, Chairperson. Sorry, a question came to mind as you were asking the questions. Now it is slipping my mind. Dr Nteta, I would like us to look at the – before I go into the pre-payment. There is a meeting on the 24<sup>th</sup> of November 2015 which you attended. Can you recall that?

10 This meeting – in that meeting, it was yourself, Mr Koko, Ms Daniels on behalf of Eskom and the representatives from Tegeta ...[indistinct] [00:04:41] and representatives from ...[indistinct] [00:04:41] [background noise interference present] You recall that meeting?

**CHAIRPERSON:** Yes, I do.

**ADV SELEKA SC:** Can you tell the Chairperson how it came about that you were invited to the meeting and who invited you?

20 **DR NTETA:** I recall the meeting. I will confess that I recall a meeting more from the documents that I got sight of which enabled me to recall the meeting. With regards to how I got invited, I am not – I cannot remember if I was asked verbally or if there was a meeting requested. I cannot remember ...[intervenes]

**ADV SELEKA SC:** H'm.

**DR NTETA:** ...how I got the invitation to the meeting.

**CHAIRPERSON:** what meeting was that Mr Seleka? I have missed your question.

**ADV SELEKA SC:** This meeting... Chair, what gets to be discussed in that meeting is Glencore introducing Tegeta Oakbay as the potential buyer.

**CHAIRPERSON:** So it is a meeting involving Eskom, Glencore and Tegeta?

**ADV SELEKA SC:** And Tegeta.

10 **CHAIRPERSON:** Ja. Where about in terms of year, month?

**ADV SELEKA SC:** It is 25 November 2015.

**CHAIRPERSON:** Okay alright.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Yes. I think, Dr Nteta may be seeking to refer to it. In paragraph 8.2 of your affidavit Dr Nteta on page 71. Eskom Bundle 14, page 71. Except that your date is different here. Unless if you are talking about a different meeting in paragraph 8.2.

20 **DR NTETA:** So I believe that we are talking about the same meeting.

**ADV SELEKA SC:** Yes.

**DR NTETA:** As I have indicated to you, is that, my recollection is more from having seen subsequent documents. So when I was saying it was in December 2015,



it may have been in November, end of November.

**ADV SELEKA SC:** Yes. So ...[intervenes]

**DR NTETA:** But in reference to the participants that you are speaking to like December 2015, is regarding that.

**ADV SELEKA SC:** Yes.

**DR NTETA:** With regard that meeting.

**ADV SELEKA SC:** Okay. Let me cut to the chase by saying this to you. What I wanted to find out from you is why you were invited to that meeting, who invited you and what was  
10 your role in that meeting? There is one particular aspect about that meeting which I want you to address the Chairperson on. And I will come to is. So it is, who invited you, why were you invited and what was your role in that meeting?

**CHAIRPERSON:** Before she answers. Have we got the – Mr Koko and his lawyers around already or not? Are they all there?

**ADV SELEKA SC:** Chair, I see it is only Mr Koko present. They are outside. Ja, Mr Koko, if you do not mind. Please  
20 call them in.

**CHAIRPERSON:** Okay alright. Let us continue in the meantime.

**ADV SELEKA SC:** Yes. Ja, those three questions Dr Nteta, if you can recall.

**DR NTETA:** As I have indicated. I do not recall who invited

me to that meeting. I was present. Correctly, I was present in the meeting.

**ADV SELEKA SC:** Yes.

**DR NTETA:** My understanding or my recollection is that I would have been invited because it had to do with coal supply and working with the Fuel Source Department of Primary Energy.

**ADV SELEKA SC:** Okay.

**DR NTETA:** I cannot recall the third question. Sorry.

10 **ADV SELEKA SC:** The third question is, what role did you play in the meeting?

**DR NTETA:** Okay. So. And I am going to indicate that, I am having read documents to refresh my memory. So some of this is based on what I read but I do not recall if there was a formal indication as to my role. But one of the things was to take minutes and I think Mr Koko's affidavit, it was taking minutes. I cannot recall.

**ADV SELEKA SC:** Yes.

**DR NTETA:** But to take minutes of that particular meeting.

20 **ADV SELEKA SC:** Yes. Well, if you cannot recall, that is fine. I think we will deal with the contents of the meeting in more detail when the other witnesses come. But briefly, this meeting comes against the background Chairperson of negotiations for Tegeta to acquire Optimum.

Optimum is in business rescue and there is an offer to

buy it from Oakbay/Tegeta but as that point – and Dr Nteta you should also confirm this – as that point, the sale is or the contemplated acquisition is only in respect of OCM, Optimum Coal Mine, not the holding company.

**DR NTETA:** Correct.

**ADV SELEKA SC:** Not the holding company, Optimum Holdings. But the minutes ...[intervenes]

**DR NTETA:** Correct.

**ADV SELEKA SC:** Thank you. The minutes... Ja, I get a  
10 note, the transcribers are saying there is a background noise or that they cannot hear the witness.

**DR NTETA:** By me?

**ADV SELEKA SC:** Sorry. They cannot hear the witness when she testifies.

**CHAIRPERSON:** The transcribers... Where ...[intervenes]

**DR NTETA:** Can they not hear me because my voice is soft? Should I bring the mic closer? Is this better?

**CHAIRPERSON:** No, I suspect it is some other technical issue.

20 **ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Where is Reverend Stimela? He is not here.

**ADV SELEKA SC:** He is not here.

**CHAIRPERSON:** Transcribers, are you not able to hear the witness but you can hear everybody else?

**TRANSCRIBERS:** [No audible reply]

**CHAIRPERSON:** Is that so?

**TRANSCRIBERS:** [No audible reply]

**CHAIRPERSON:** Okay. So we may need to ...[intervenes]

**TRANSCRIBERS:** There is no sound.

**CHAIRPERSON:** ...adjourn for them to fix that. We may need to adjourn for them to fix that but before we adjourn, let us – address me on the issue of the witness who was scheduled for today, Mr Seleka.

10 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** I see Mr Barrie is here.

**ADV SELEKA SC:** Correct Chair.

**CHAIRPERSON:** Representing Mr Koko and Mr Koko is here.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Mr Barrie, we are still busy with the witness who started yesterday but I thought that we need to stop that and Mr Seleka can address me with regard to what the position is with regard to the witness scheduled for  
20 today, your client, so that there can be certainty about what is going to happen. Okay.

**ADV SELEKA SC:** Yes, Chair.

**CHAIRPERSON:** Mr Seleka. Firstly, I think the first thing is, how long you think you still need with this witness.

**ADV SELEKA SC:** Yes, Chair.

**CHAIRPERSON:** Then you can address the question of what is going to happen with regard to Mr Koko. Are you going to be able to proceed or what is the position?

**ADV SELEKA SC:** Yes. Chair, I think with this – with Dr Nteta, going into the issue of pre-payment, we might take an hour on that issue to an hour/30 minutes. So that is going to take us to roughly, what, half-past three to four. That is the first thing.

Mr Koko, as I understand, was ready to proceed today  
10 and we were ready to proceed with his evidence. I know that there are documentation they are exchanging with us but I suppose that does not stand in the way of us, if we are able to proceed, to do so. If not in full, at least in part. Because I know that the Chairperson's hands are full and I am mindful of that as well.

**CHAIRPERSON:** Yes. What did you say about – was there any issue about 3.3. Notices in regard to Mr Koko's evidence?

**ADV SELEKA SC:** We have – there was that issue in  
20 December. The beginning of the year as well. Chairperson, the Eskom work stream has attended to the 3.3. Notices. So insofar as persons may have been implicated or are – may be implicated by what Mr Koko has to say, those people have been notified. So we have picked it back on our previous notifications and done fresh notices for the people who we

see might be implicated in Mr Koko's evidence.

**CHAIRPERSON**: Well, Rule 3.3. contemplates that anybody who is implicated in statement by a witness who is going to give evidence, should be given a notice of the existence of that statement or affidavit and should be given the relevant portions, at least, of the statement.

And then the second part is that, of course, the 3.3. Notice tells him or her, her rights or his rights. And then the next part is that he or she should be notified of the date  
10 when the witness will testify.

**ADV SELEKA SC**: Correct.

**CHAIRPERSON**: For quite some time what has happened is that Rule 3.3. Notices would be served even if the date when the witness would be – would testify is not known yet but once the date is known then the witnesses – the implicated person is notified. So if that has been taken care of then there has been compliance.

**ADV SELEKA SC**: Ja.

**CHAIRPERSON**: Is that been taken care of?

20 **ADV SELEKA SC**: Yes. Chairperson, Mr Koko has come previously to testify. He has come on two occasions.

**CHAIRPERSON**: Yes.

**ADV SELEKA SC**: He has given us or the Commission two affidavits. The second of which is a comprehensive affidavit. It includes all the matters.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** So his affidavits would have already been shared ...[intervenes]

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** ...with whoever is implicated.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Or thought to be implicated by his evidence previously.

**CHAIRPERSON:** Ja.

10 **ADV SELEKA SC:** Already.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** So right now, it would simple be, Mr Koko is coming back.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** And this time around, he will be testifying on this.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** You already have the affidavit.

**CHAIRPERSON:** Ja.

20 **ADV SELEKA SC:** You will be notified of the next date, yes.

**CHAIRPERSON:** Okay alright.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So from your side. Once this witness is done and you estimate that might be at half-past three or four.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Then you would be ready to proceed with Mr Koko. And in terms of how much time is required for him, how much time is required for his evidence on your assessment?

**ADV SELEKA SC:** Yes. We have scheduled Mr Koko for the whole day.

**CHAIRPERSON:** For the whole day?

**ADV SELEKA SC:** Yes, Chair.

10 **CHAIRPERSON:** Okay. So you think what is necessary is the whole day?

**ADV SELEKA SC:** Correct, Chair.

**CHAIRPERSON:** So if we start when we are done with this witness, we could go up to a certain point and then ...[intervenes]

**ADV SELEKA SC:** We will have to reconvene.

**CHAIRPERSON:** And then maybe, subject to their availability, maybe continue tomorrow to finish before we take tomorrow's witness.

20 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Mr Barrie, you have heard what the situation is now. What is your attitude?

**ADV BARRIE:** I have no particular attitude regarding the issue, apart from the fact that we have arranged to be here today but not tomorrow. We have no idea that there is any



possibility.

**CHAIRPERSON:** Yes.

**ADV BARRIE:** This is not a rolling ...[intervenes]

**CHAIRPERSON:** Ja. No, no, no. We – I said ...[intervenes]

**ADV BARRIE:** Yes.

**CHAIRPERSON:** I talked about tomorrow on the basis of saying if you are available.

**ADV BARRIE:** I ...[intervenes]

10 **CHAIRPERSON:** Obviously, you have not been told about tomorrow.

**ADV BARRIE:** I go back to the Western Province tomorrow morning.

**CHAIRPERSON:** Yes. No. So you would be available that ...[intervenes]

**ADV BARRIE:** Yes.

**CHAIRPERSON:** We us whatever time is available today but if we do not finish, then another date would have be arranged.

20 **ADV BARRIE:** As you pleases.

**CHAIRPERSON:** Yes. Okay alright.

**ADV BARRIE:** Chairman, there is just another issue.

**CHAIRPERSON:** Yes.

**ADV BARRIE:** My colleague here, is in relation to the issue of the Eskom application to cross-examine. It would be

appropriate for some arrangements to be made about that particular issue.

**CHAIRPERSON**: I have been told by Mr Seleka about an Eskom application for leave to cross-examine. I have not seen it. So it must be somewhere within the secretariat's offices. And I indicated that I cannot say anything about that until I have seen it and read it. So obviously, that is not your fault that it has not reached me. I have asked Mr Seleka to speak to the secretariat to make sure that I get it

10 ...[intervenes]

**ADV BARRIE**: Well, we oppose the application. There are reasons. But we will probably have to deliver a short answering affidavit to the affidavit that was delivered.

**CHAIRPERSON**: Yes.

**ADV BARRIE**: That is besides Mr Koko as a party.

**CHAIRPERSON**: Yes.

**ADV BARRIE**: Which we can do. It is just a question of arranging the logistics and when that application will be heard.

20 **CHAIRPERSON**: Well, the process is that once an application for cross-examine a witness has been lodged, the person lodging that application, I think, is supposed to serve on the witness of the application. But in any event, if they do not do that, the secretariat would check whether a copy has been served on the witness.

**ADV BARRIE**: Okay.

**CHAIRPERSON**: And if it has not been served, then  
...[intervenes]

**ADV BARRIE**: That has indeed happened.

**CHAIRPERSON**: Yes.

**ADV BARRIE**: We do have the application, yes.

**CHAIRPERSON**: Ja. And I think then the rules are  
supposed to indicate within what period the witness should  
file an answering affidavit if they oppose. But if they do not  
10 do that, namely the rules, then I should issue directions as  
to when that application should be filed. But as I say, it has  
not reached me. So I did not know about it until  
...[intervenes]

**ADV BARRIE**: I am not aware of any provisions of the rules  
that make ...[intervenes]

**CHAIRPERSON**: Ja, there might not be.

**ADV BARRIE**: ...a particular provision.

**CHAIRPERSON**: There might not be anything in the rules.  
Well, you already have the ...[intervenes]

20 **ADV BARRIE**: Yes.

**CHAIRPERSON**: You already have the application. Why do  
we not deal that now? Can you find your answering affidavit  
within seven days – how many days from now?

**ADV BARRIE**: We would be able to, yes.

**CHAIRPERSON**: Ja, let us take that as the direction as to

when to file.

**ADV BARRIE**: Ja, the real issue relates actually to the date of the hearing.

**CHAIRPERSON**: Sorry?

**ADV BARRIE**: The real issue relates to the date of the – when the application will be argued.

**CHAIRPERSON**: Yes. Ja, but we need to have all the papers in first. Then we can talk about the date for hearing. Some of the applications, we do not have oral argument. We  
10 just ask the parties to file the argument and then I decide in chambers. So. But I take if you on that, once I see all the papers.

So I think file your answering affidavit within seven calendar days from today and Eskom should then file their replying affidavit if they wish to do so within seven days after you have filed yours.

**ADV BARRIE**: Ja, ja.

**CHAIRPERSON**: Okay alright. Thank you.

**ADV SELEKA SC**: Thank you, Chair.

20 **ADV BARRIE**: But the upside of all of that is, apart from the Eskom application, we will stay here.

**CHAIRPERSON**: Yes, yes. Okay. Ja, ja. Stay. Stay here. Obviously, the Commission's legal team, if they want to oppose, then they must also file within seven days if they want to oppose, within seven days from today.

**ADV SELEKA SC:** That is the order Chair. [laughs]

**CHAIRPERSON:** Ja, okay alright. Okay. Let us continue then.

**ADV SELEKA SC:** Thank you, Chair. The technical issue has been sorted out. They can now hear the witness.

**CHAIRPERSON:** Okay alright.

**ADV SELEKA SC:** Dr Nteta, yes.

**DR NTETA:** Thank you.

**ADV SELEKA SC:** Ja. And then in regard to that meeting,  
10 quickly back to that meeting. As at the time – as at – or  
prior to that meeting, what was on the table between the  
parties negotiating for the sale of OCM, it was that only OCM  
was to be sold. Do you recall that or you have no  
recollection?

**DR NTETA:** Yes, when the meeting commenced, we were  
discussing OCM.

**ADV SELEKA SC:** Yes.

**DR NTETA:** Optimum Coal Mine.

**ADV SELEKA SC:** And in that meeting, in particular in  
20 regard to the sale, the minute indicates that Mr Koko then  
advised the other parties that Eskom will consent to the sale,  
and I paraphrase, only if OCH Assets are also – are to be  
sold.

**DR NTETA:** I am silent because I do not recall the details.  
So I will take it that the minutes would be a true reflection

unless otherwise indicated. For example, who suggest OCH, et cetera. Personally, I do not recall it.

**ADV SELEKA SC:** You do not recall it?

**DR NTETA:** But I will take... Ja, but I will take that the minutes reflects the discussions.

**ADV SELEKA SC:** Yes. But you have seen both the affidavit of Mr Koko and Ms Daniels?

**DR NTETA:** Yes, I have seen them. Mr Koko's I received last night. So I did not – and it is 1040 pages. So I did not  
10 go through everything.

**ADV SELEKA SC:** Yes. And Ms Daniels? Because she also talks about this.

**DR NTETA:** Yes. Yes. And that is where most of my recollection comes from and I am relying on the information that she has indicated there.

**ADV SELEKA SC:** I see. Okay we will deal with the matter with them when they come in due course. Let us go to the pre-payment. The R 659 million pre-payment that the BTC resolved to make on the evening of the 9<sup>th</sup>... of the 11<sup>th</sup> of  
20 March 2016.

**DR NTETA:** 11<sup>th</sup> of April?

**ADV SELEKA SC:** 11 April 2016. Thank you, Dr Nteta. This decision that gets to be made by the Board, Tender Committee starts with the drafting of a submission which ...[intervenes]

**DR NTETA:** Correct.

**ADV SELEKA SC:** Yes. Which you started.

**DR NTETA:** Correct.

**ADV SELEKA SC:** But then something would have triggered the drafting of that submission. And I want you to tell the Chairperson about what triggered the drafting of that submission.

**DR NTETA:** The drafting of the submission emanated from a discussion that I had – was several discussions that I had  
10 with Mr Ravindra Nath who is the CEO of Tegeta. They were currently supplying coal and the agreement for that was due to an end(?). He indicated that they have access to the coal and they would like to continue supplying Eskom with the coal.

**ADV SELEKA SC:** Okay. Just pause there for a moment.

**DR NTETA:** And as a ...[intervenes]

**ADV SELEKA SC:** Just pause there for a moment. Now we know that Tegeta, at this time, this is April 2016, it has an agreement, a coal supply agreement with Eskom in respect  
20 of Brakfontein Mine.

**DR NTETA:** Correct.

**ADV SELEKA SC:** That agreement was concluded on the 10<sup>th</sup> of March 2015. So that is the year before this.

**DR NTETA:** Correct.

**ADV SELEKA SC:** Now Mr Nath is coming back to you in

respect of a contract for a different mine.

**DR NTETA:** Correct.

**ADV SELEKA SC:** And which mine is this?

**DR NTETA:** Optimum Coal Mine.

**ADV SELEKA SC:** And when he comes to you, then I think you can tell the Chairperson when exactly does he come to you and what is he saying to you?

**DR NTETA:** So Mr Nath – came to me – I am not going to – I do not know the exact date but I am going to say  
10 around about end of March, beginning of April when we had discussions with regards to coal from Optimum Coal Mine, at that discussion.

**CHAIRPERSON:** When you – I am sorry?

**DR NTETA:** Should I continue?

**CHAIRPERSON:** When you mention the month please always mention the year as well because we deal with different years so that we are all on the same page as to March of which year that you are talking about.

**DR NTETA:** March 2016.

20 **CHAIRPERSON:** Okay, continue.

**DR NTETA:** So we had a discussion with regards to availability of coal for them to supply to Eskom and there were few discussions that we had. Adv Seleka, I have actually forgotten the question, sorry.

**CHAIRPERSON:** Oh, please repeat the question, Mr



Seleka.

**ADV SELEKA SC:** Oh. Yes, what – okay, you have indicated when does he approach you and I think you have touched about – you have touched a bit on what does he discuss with you but go a little bit in the details. Here is Mr Nath, how does he communicate with you? Is it telephonically or is coming to see you and go into the details of what he is asking you.

**DR NTETA:** So the discussion that I had with him were  
10 both telephonic and also meeting with him in terms of the discussion also because that would be the nature of the engagements that I would have with him on the supply, either telephonically or meeting with him.

**ADV SELEKA SC:** Or in person?

**DR NTETA:** And both.

**ADV SELEKA SC:** Meeting in person?

**DR NTETA:** Meeting in person, yes.

**ADV SELEKA SC:** And where do you meet?

**DR NTETA:** So the ...[intervenes]

20 **ADV SELEKA SC:** Where do you meet with him?

**DR NTETA:** We meet ...[intervenes]

**ADV SELEKA SC:** It is not Saxonwold?

**DR NTETA:** At Eskom. No, at Eskom.

**ADV SELEKA SC:** Okay. So he comes to Eskom.

**DR NTETA:** Yes. So the discussion ...[intervenes]

**CHAIRPERSON:** Speak up, Mr Seleka, your voice is very soft.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So raise your voice.

**ADV SELEKA SC:** So Mr Nath comes to Eskom to meet with you.

**DR NTETA:** Yes. So the majority of the engagements that I would have with Mr Nath would actually be telephonic, he would sometimes come through to Eskom. So in  
10 responding to your question in terms of the engagements that we had that led up to the drafting of the submission, the majority of the engagements were telephonic and I do think he would have – I would have met him as well in person, maybe once, but mainly telephonic discussions.

**ADV SELEKA SC:** Yes, did – were ...[intervenes]

**DR NTETA:** The discussions ...[intervenes]

**ADV SELEKA SC:** Was it you initiating this engagement or was it him?

**DR NTETA:** It was him.

20 **ADV SELEKA SC:** It was him?

**DR NTETA:** Yes. The nature of supply to Eskom is that the suppliers would then indicate that they do have coal availability and then we take the discussion further.

**ADV SELEKA SC:** Unsolicited?

**DR NTETA:** Unsolicited, yes.

**ADV SELEKA SC:** Yes, so even in this case  
...[intervenes]

**DR NTETA:** If that you called it.

**ADV SELEKA SC:** Go ahead?

**DR NTETA:** So even in this case he indicated that there  
is availability for coal.

**ADV SELEKA SC:** Yes, so you – I want to be absolutely  
clear, you did not invite him and ask him whether they have  
coal or not?

10 **DR NTETA:** No, he indicated that they have coal.

**ADV SELEKA SC:** Okay. So what then does he say to  
you?

**DR NTETA:** So the initial discussions were that we have  
coal available. At the time – I cannot recall if we actually  
spoke about the exact tonnages that were available but I  
would expect that it would have been maybe similar to the  
tons that they were currently supplying but anyway, they  
indicated that they have got tonnage and coal available.  
So those were the initial discussions.

20 **ADV SELEKA SC:** And where would they obtain this coal?

**DR NTETA:** From Optimum Coal Mine.

**ADV SELEKA SC:** And supply which power station?

**DR NTETA:** So to supply Arnot Power Station and it could  
also supply Kriel Power Station as well as Hendrina but the  
main issue was for Arnot Power Station based on the coal

quality.

**ADV SELEKA SC:** Yes. Remember, I want you to tell the Chairperson what he told you.

**DR NTETA:** Yes.

**ADV SELEKA SC:** Yes.

**DR NTETA:** So the initial discussions were in terms of we have coal to supply. As I indicated to you, they were previously supplying coal to Arnot Power Station so it was just so that we do have this coal for this particular quality  
10 on – that we can provide to yourselves. As I indicated, I cannot recall if he gave the volumes or not and we had a few engagements with regards to – purely on the supply of coal.

**ADV SELEKA SC:** Was price indicated?

**DR NTETA:** The price indicated, yes, would have been discussed at one of the engagements that we had.

**ADV SELEKA SC:** Was Arnot Power Station not been supplied?

**DR NTETA:** So the history behind Arnot Power station is  
20 that Arnot Power Station, had previously been supplied coal through an agreement with Exxaro. However, for a quite a few years they were not able to meet the demand, the coal volumes that are required for Arnot Power Station so there were several suppliers that would supply a coal to Arnot and this was more on an *ad hoc* basis. There was no

stable, secure supply for Arnot Power Station. One, because of the volume that is required for the power station. Secondly, because of the qualities, it was a – the requirement was a higher quality and the market and the market that was generally a bit difficult.

**ADV SELEKA SC:** Yes. So what do you do with Mr Nath's approach to you in regard to Tegeta having to supply coal?

**DR NTETA:** So we discuss it and we discuss also in terms of the volumes and availability. Later on in the – as I  
10 indicated we had several engagements on the topic.

**ADV SELEKA SC:** Ja.

**DR NTETA:** Later on in the engagement he then indicates that in one of the conditions that they have for the supply of coal is that they would require Eskom to prepay for that coal.

**ADV SELEKA SC:** Okay. Well, just make us understand. The engagement is over a number of days.

**DR NTETA:** Yes, I even want to say maybe even a week or two but it was – ja, it was over some – a period.

20 **ADV SELEKA SC:** Yes. You have said in your affidavit at the beginning of his approach to you he did not indicate that they required a prepayment.

**DR NTETA:** Correct. So the initial engagements that I had with him was that we have coal on offer to supply to yourselves and there was not a discussion with regards to

prepayment. As I indicated that there were several discussions. It was actually to the end of the discussions in April where he then indicated to me that one of the conditions for the supply of this coal would be that Eskom prepays for this particular coal.

**CHAIRPERSON:** How did that sound to you? Here is somebody who wants ...[intervenes]

**DR NTETA:** How does it sound to me?

**CHAIRPERSON:** Here is somebody who wants business  
10 from Eskom but now he is already putting conditions. Was that not strange?

**DR NTETA:** So for me what it sounded like is that he was gauging our appetite and I would say it was a negotiation that he used. He was gauging our appetite in terms of are we interested in the coal and yes, I did indicate that we are interested in the coal because we have a requirement for it and then once understanding that we do need the coal then to say well, now that I know that you need the coal, this is the prepayment. So for me it was a negotiation tactic that  
20 he used and so at that point was then when I then realised that okay, because if it is a pure requirement for coal, it goes through term mandate where it is a sign-off in terms of the head of primary energy. But the prepayment for me, it indicated to me to me that this was something that had to be discussed in terms of in the area of finance because

they deal with payments.

**CHAIRPERSON:** Well, you see, part of what comes across as strange to me is the language that you say he used. He wants business from Eskom but he is putting a condition. He is not saying, you know, we would request you to agree to a prepayment because we are in this particular situation, he is saying I want business from you but before I can have business with you I am going to put a condition that you must comply with as if you are the one  
10 who needs him more than he needs you and maybe that was the situation in terms of his knowledge of how dire Eskom's need was for coal but it comes across as strange to me for somebody who is looking for business to start putting conditions as opposed to making a request or just a proposal.

**DR NTETA:** Noted, Chair, and I will ask the Chair excuse my language that I used. I did not indicate what he said verbatim. One, because of the time that has taken...

**CHAIRPERSON:** Yes.

20 **DR NTETA:** Yes, so it was not verbatim, perhaps I should have said there was a request. Yes, there was a request for a prepayment.

**CHAIRPERSON:** Oh, he put it as a request or you cannot remember?

**DR NTETA:** I cannot remember his words verbatim.

**CHAIRPERSON:** Oh, okay.

**DR NTETA:** In terms of what exactly that he said.

**CHAIRPERSON:** Okay.

**DR NTETA:** I am saying that I have used my language which I do not want misrepresent.

**CHAIRPERSON:** Yes.

**DR NTETA:** That that is what he said.

**CHAIRPERSON:** Okay.

**DR NTETA:** For me it was that before I can accept this  
10 coal there is prepayment, so I used my own language.  
Apologies.

**CHAIRPERSON:** Okay, alright, Mr Seleka?

**ADV SELEKA SC:** Yes. But I think also the emphasis or  
the focus, rather, Dr Nteta, was in your observation that  
this might have been a negotiation tactic that once I  
...[intervenes]

**DR NTETA:** It could have been.

**ADV SELEKA SC:** Yes. Once I have gotten you to agree  
that you needed coal, now I can move to my next step of  
20 negotiation which is but can you pay me up front before I  
give you the coal?

**DR NTETA:** As I indicated that possibly could have been  
a negotiation tactic.

**ADV SELEKA SC:** Let us get certain things in place here.  
The Arnot Power Station, you say it had been supplied coal



by Exxaro, a company called Exxaro.

**DR NTETA:** Correct.

**ADV SELEKA SC:** Do you know until when did Exxaro supply Eskom with coal at the Arnot Power Station?

**DR NTETA:** Exxaro supplied Arnot with coal up until I believe it is December 2015 when their contract ended. They had a 40 year contract with Eskom.

**ADV SELEKA SC:** December 2015. Now after December 2015 do you know what happened in regard to the supply  
10 of coal to Arnot?

**DR NTETA:** So the supply of coal to Arnot even prior to December 2015 was being supplied by several contracts, short term contracts to supply Arnot. So some of those shorter term contracts continued post 2015 and in another instances we sought to find additional suppliers to Arnot Power Station. I had also issued an RFT which looked to find additional sources for Arnot.

**ADV SELEKA SC:** I heard you say that Tegeta had a contract and it was about to expire. Could it be one of the  
20 short term contracts you are referring to, that Tegeta had to supply to Arnot?

**DR NTETA:** Ja, Optimum – yes, they had a – they were supplying Arnot with coal in the period up to April.

**ADV SELEKA SC:** Yes, as I see the evidence, there was an agreement with Tegeta in January 2016 to supply Arnot.

You are aware of that agreement?

**DR NTETA:** Yes.

**ADV SELEKA SC:** There was also ...[intervenes]

**DR NTETA:** So I think there were two agreements, if I remember correctly, but perhaps you can clarify.

**ADV SELEKA SC:** Yes. Then there was one in February 2016. I think there was a third one or if not that particular one, which was about to end sometime in April 2016.

**DR NTETA:** If my memory serves me correctly there were  
10 two.

**ADV SELEKA SC:** Yes.

**DR NTETA:** And the ones – the second one was the one that was due to expire, yes, in March or April.

**ADV SELEKA SC:** Yes. Now to your – according to your recollection, were those agreements with Tegeta based on a prepayment?

**DR NTETA:** No.

**ADV SELEKA SC:** Then in April 2016 when Mr Nath approaches you, was this the first time that prepayment  
20 was mentioned to you?

**DR NTETA:** It was the first time that prepayment was mentioned to me by – yes, by Nath of Tegeta.

**ADV SELEKA SC:** Yes. And this would have been still to supply the same power station, Arnot?

**DR NTETA:** Yes.

**ADV SELEKA SC:** Why do you take such a long time to answer is it because the sound comes late to you?

**DR NTETA:** Yes, it does, particularly when I speak I – then I hear an echo.

**ADV SELEKA SC:** Oh.

**DR NTETA:** So I was just trying to figure out what that was.

**ADV SELEKA SC:** Okay. If you have – well, just for the purpose of the Chairperson. Chair, the aspect regarding  
10 the prepayment is dealt with from page 71. Eskom bundle 14, page 71, of Dr Nteta's affidavit under paragraph 8.

**CHAIRPERSON:** Ja, I have got it.

**ADV SELEKA SC:** So, Dr Nteta, if this was then the first time – well, the first time you are approached by Mr Nath regarding prepayment but had you dealt with a contract that required prepayment before this approach by him?

**DR NTETA:** Personally?

**ADV SELEKA SC:** Yes.

**DR NTETA:** No.

20 **ADV SELEKA SC:** No. So what did you do? How did you handle the matter?

**DR NTETA:** So at the end stage when he indicated that he required a prepayment I thought it could not because I have not dealt with personally prepayment myself and I also recognised that through the segregation of duties it is

not something within my domain and realm. It is something that, you know, would have to be looked at elsewhere. So what I then did is I actually went and I sought a guidance from my principles.

I initially went through to Mr Mboweni's office. He was not available and then I, because they sit in the same area, I then went to Mr Mabelane who at the time was a CPO for Eskom and indicated to him that I have approached by the supplier to supply us with coal for  
10 Arnot.

While, yes, we do require the coal, they have then requested a prepayment and I sought his guidance in terms of how would I then handle this particular matter.

**ADV SELEKA SC:** Yes and what was his guidance?

**DR NTETA:** Under his advice he then indicated that he thought it best that we take the request through to the BTC so that they can then – board tender committee, so that they can then apply their mind in terms of this particular request that we received from the supplier. He felt that it  
20 was rather prudent to do that instead of within primary energy adjudicate it because of the issues of the requirement for prepayment.

**CHAIRPERSON:** At the time that ...[intervenes]

**DR NTETA:** So based on that then that is when I then said okay, I will do so, and then start – sorry?

**CHAIRPERSON:** Ja, continue?

**DR NTETA:** So based on that I then – based on that I then said okay and then began to start working on a submission to the board tender committee.

**CHAIRPERSON:** At the time you started working on a submission that would go to the tender committee did you have something in writing from Tegeta formally making this request and giving motivation for it?

**DR NTETA:** No, Sir.

10 **CHAIRPERSON:** Is the position that all you had was just either a telephone conversation that you had with Mr Nath or a meeting where he made this request?

**DR NTETA:** Correct, Sir. So often times when we get unsolicited offers to provide coal, those unsolicited offers come in the form of a meeting or a discussion where suppliers will come through to us and then say we have got particular coal requirements, etcetera, and then we would work from that.

20 At some point within the discussions we would then say okay, provide an offer. I will say that not all my colleagues do that because it is not something that is – it is not all my colleagues do that but would normally refer to an approach, to say the approach was made by a supplier. So at the time that I started working on the document there was no formal letter. We had been discussing for about a

week or so and there was not a formal letter that I received.

**CHAIRPERSON:** During your discussion with Mr Nath did he indicate to you how much amount he was talking about in respect of prepayments?

**DR NTETA:** He did not indicate the rand value. As I indicated before, the beginning of our discussion, I cannot recall if we spoke about when the issue of the monthly volumes were but he did not indicate the figure in terms of  
10 the 659.

**CHAIRPERSON:** So when you were preparing your submission to the BTC what amount were you going to talk about if you had not asked him what amount he was talking about?

**DR NTETA:** So the submission for the BTC was based on volume and the cost of coal. So the request was we would like for you to prepay for the coal that we are going to provide to you over a – I think it is five month period. So it was rand per gigajoule times the volume.

20 **CHAIRPERSON:** So are you saying although he did not mention the amount, that is Mr Nath, the amount was ascertainable, easily ascertainable?

**DR NTETA:** Yes, he mentioned the volume and the gigajoule, so we multiply the volume by the rand per gigajoule, the figure.

**CHAIRPERSON:** So at that time there had been no agreement or there had been agreement on the price, so tons or whatever?

**DR NTETA:** There was an indication of the price in terms of a rand per gigajoule.

**CHAIRPERSON:** And there was an indication of the price that Eskom was prepared to pay and that seemed to be acceptable to them or what was the position?

**DR NTETA:** So in terms of the unsolicited offer is that the  
10 suppliers would indicate the amount of coal that they have to offer and then they would then indicate the cost of that coal and that is what they would advise us in the approach to say that we believe that we will sell this coal at – I am going to use a simple – at R10.

**CHAIRPERSON:** Ja, ja.

**DR NTETA:** And we have got a 100 000 tons.

**CHAIRPERSON:** Yes. And your – and the position was that whatever price they had indicated was acceptable to Eskom as far as you were concerned as [inaudible –  
20 speaking simultaneously]

**DR NTETA:** When they provide us with the – no, so they would indicate what the price is and so what we then do is then we would one, look at negotiating in terms of their pricing, we would also then – or if we are taking it to the board tender committee, we would then indicate that this is

their offer price and then come – get a mandate to then enter into negotiations with them and then we would negotiate as well from there.

**CHAIRPERSON:** Okay. So then at some stage you would go back to them to say your price is acceptable or your price is not acceptable, here is our counter offer as far as the price is concerned.

**DR NTETA:** Yes.

**CHAIRPERSON:** Okay. So when he spoke, he requested  
10 a prepayment, is the position that what he meant was before we deliver to you so many volumes of coal we will ask you to give us the payment for that coal, that amount of coal. In other words, whereas normally we would deliver coal first and then you pay after, this time we want to reverse the arrangement, we want you to give us the money first then we deliver the coal. Is that what his request meant?

**DR NTETA:** Yes.

**CHAIRPERSON:** So the prepayment, the money that  
20 Eskom was going to pay if it went along with his request was always going to be determined by the price that is agreed for coal and the volumes of the coal. Is that right?

**DR NTETA:** Yes.

**CHAIRPERSON:** Okay, alright. Mr Seleka?

**ADV SELEKA SC:** Thank you, Chair.



**DR NTETA:** Correct.

**ADV SELEKA SC:** Yes. Dr Nteta, in paragraph 8.4 or your affidavit ...[intervenes]

**CHAIRPERSON:** I am sorry, Mr Seleka, again.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** You did confirm that at the time that you started preparing the submission that would go to the BTC to ask for approval for the prepayment arrangement that was requested by Tegeta you did not have anything in  
10 writing from Tegeta making this request for prepayment and giving motivation as to why in their case there should be a reversal of the arrangements namely you must pay them first for call that you have not received and then they deliver the coal.

Now what reasons had he give you verbally when you were talking about this? What motivations did he give?

**DR NTETA:** So the motivation that he gave in terms of the prepayment requiring the money upfront was that they  
20 required to open up the export portion of the mine because when they went, when Optimum went into business risk and I think it was actually from August the year before, but I stand to be corrected on the time, they had closed down the export portion of the mine, so in order to, they needed to restart the mine and the they needed the funding to

restart to the mine so that they can provide us.

**CHAIRPERSON:** Effectively you are saying that Tegeta didn't have money to restart one of its operations, is that correct, and therefore that's why they wanted Eskom to pay in advance for coal still to be delivered so that they could restart one of their operations, is that right?

**DR NTETA:** Correct.

**CHAIRPERSON:** Yes. Would that be a sound reason for Eskom to engage in a prepayment, I know that you said  
10 that I think you had not dealt with prepayments before but I am – you were, I don't know whether the chief negotiator but you were the senior person talking to the CEO of Tegeta, that just doesn't sound right to me. If you – if I wanted to do business with you we must do it the same way I do it with everybody normally. We must have an agreement that you provide me with coal, once we have delivered coal and I have looked at the coal is it acceptable, the quality is fine, then I pay you, this idea that I must pay you first for coal that I have not yet  
20 received because you want to run your business or restart one of your operations doesn't sound right to me. Does it sound right to you?

**DR NTETA:** So in terms of the understanding this particular principle had been applied before, it started in 2008 when we had some emerging miners who needed

some funding upfront so that they are able to beneficiate because we also recognise that the industry of coalmining is quite capital intensive and it is quite cash intensive, so it had happened before and a lot of times the suppliers do indicate to us that you know they are generating the initial cash is an issue so it made sense to me because I understood that their export operation was no longer operational and we needed some funding, so it made sense to me but with regards to the operations etcetera that  
10 should have been in the domain of the operations department to ascertain those elements.

**CHAIRPERSON:** Does this type of situation, let's leave out the question of maybe assisting previously disadvantaged suppliers maybe who might need some assistance, leaving that consideration aside, when a supplier make this kind of request for the reasons that Mr Nath gave you wouldn't that give you some discomfort that you may be entering into a very important contract with somebody who doesn't have financial stability and that that  
20 might threaten the contract that you might enter into with – that you might conclude with them, that their financial situation might be precarious, and it might not be in the interest of Eskom to go into a very important contract involving millions of Rands, maybe billions, with an entity that maybe go into business rescue anytime, or which

could be liquidated anytime because they are not in a financially strong position, with that situation that they had be a kind of a red flag to say you know should we really continue with this arrangement, is that not too much of a risk?

**DR NTETA:** So one of the challenges that we have within the procurement facility and we look at unsolicited bids is that when we receive an unsolicited bid we need to look at that bid and entertain that bid and see if it is something  
10 that can be done, because we then follow the other side, if we then independently, and I say myself, if I independently then say no to a particular supplier and yes to another supplier then there's often challenges, so one of the issues that we have, we had was when suppliers come and they put in certain requests, we would look at them and entertain the requests and see if it is something that can be done.

So when the supplier and in this particular case it was Tegeta, comes through and says that we have coal,  
20 this is we requested to prepay for this coal then we – I would look at that request and then see which is the appropriate mandate to then further interrogate, at face value I would not be able to say no to them or to any other supplier and that is a challenge of unsolicited offers.

**CHAIRPERSON:** But do you accept or you do not accept

that it would be in the interest of Eskom to look at what the chances are that an entity that they might conclude a contract with that involves lots of money over and long period of time might not be an entity that is going to be around for a long time.

**DR NTETA:** Yes, so the agreement, when you look at the agreement it was five months, so in the timeframe of Eskom five months is considered a short time, so it is not – we don't consider it a long agreement, so it was  
10 considered for a short period of time and then we would then look in terms of what can we do to mitigate our risks.

**CHAIRPERSON:** Mr Seleka?

**ADV SELEKA SC:** Thank you Chair. Dr Nteta this matter also has to be looked at against the background facts that prevailed at the time, so Tegeta had the short term contracts already from January 2016 with Eskom supplying to Arnot. In fact those contracts are three in number and the one – one of those was about to expire, the third one was about to expire in April.

20 Now those contracts you have said, well you understand them to be two but there are in fact three, they were not concluded on the basis of a prepayment. Do you recall that you did the fuel sourcing in respect of those contracts?

**DR NTETA:** Correct.

**ADV SELEKA SC:** You did?

**DR NTETA:** Yes I think the question, you broke up a bit, was they were not concluded in terms of a prepayment and I am saying correct.

**ADV SELEKA SC:** Yes, but also that you were involved in the sourcing of that fuel, of those contracts?

**DR NTETA:** Yes.

**ADV SELEKA SC:** So you know that there was no prepayment?

10 **DR NTETA:** Yes.

**ADV SELEKA SC:** Now this is the third or the fourth, I beg your pardon, this would be then the fourth agreement in respect of which they are making an approach to Eskom in 2016, correct.

**DR NTETA:** Yes.

**ADV SELEKA SC:** Which is also a short term agreement.

**DR NTETA:** Yes.

**ADV SELEKA SC:** For five months you say? For five months?

20 **DR NTETA:** Yes.

**ADV SELEKA SC:** But when they come this time around they are asking for a prepayment?

**DR NTETA:** Correct.

**ADV SELEKA SC:** But they didn't ask for it at inception of approaching you?

**DR NTETA:** Correct.

**ADV SELEKA SC:** You don't know, or do you, what suddenly made them to come up with a prepayment requirement or request?

**DR NTETA:** No I don't know what suddenly made them come with a prepayment requirement, except for what they indicated to me.

**ADV SELEKA SC:** Yes. Were you – was that reason you gave, that reason you gave about they needed funding to  
10 open up the export coal mine, is that their reason?

**DR NTETA:** That is the reason that Mr Nath gave me yes.

**ADV SELEKA SC:** You can recall that for sure?

**DR NTETA:** Ja, he spoke to me on the phone because when he asked me for the prepayment I did ask him why he wanted the prepayment and then he said no he required it for the funding etcetera. I also indicated to him on the phone, I said I am just asking but I – you know I am not saying whether it is something; that we will look or something that we wouldn't look at, so that's what he  
20 indicated to me.

**ADV SELEKA SC:** Okay, can I accelerate my question because I will come back step by step. Did you give that reason to Ms Suzanne Daniels?

**DR NTETA:** I can't recall if I gave it to her verbally or not, I really cannot, I cannot recall if I gave it to her verbally at

any point. I know that Mr Nath did tell me about it but I can't – I really can't recall if I told her over the phone or I didn't tell her etcetera.

**ADV SELEKA SC:** Did you give it to her in writing?

**DR NTETA:** If it was in writing it would have been in the submission document.

**ADV SELEKA SC:** Well your submission documents ...[intervenes]

**DR NTETA:** So in terms of the submission document I had  
10 a lot of engagements with both Suzanne and a lot of engagements with Edwin and copying also Mr ...[indistinct].

**ADV SELEKA SC:** And Mr Koko?

**DR NTETA:** Giving feedback, so ...[indistinct] might be able to say if I told her on the phone or I didn't tell her, I would rather say you should look at the email trail to indicate as to if I told her or not because I would have put it in the submission if I did.

**CHAIRPERSON:** Maybe continue Mr Seleka, I have got some question but just continue.

20 **ADV SELEKA SC:** Okay, okay, we will go to that submission in due course Dr Nteta because in your email to Ms Daniels you specifically said you didn't deal with the prepayment, it is in the resolution but you didn't deal with it.

**DR NTETA:** Yes, so in one of the many engagements that



I had with Suzanne ...[indistinct] also spoken to her so in making amendments to the document. I wanted – I sent her an email with the document just to highlight to her that the issue of prepayment is only in the resolution, it is not in the body of the document, so that he is aware that it is not in the body of the document and she would then be able to provide guidance as to whether it needs to be the detail of the document or not.

**ADV SELEKA SC:** Yes, but what I am trying to find out  
10 from you is whether you told her in writing or you were saying you cannot recall verbally but did you tell her in writing?

**DR NTETA:** Advocate Seleka as I said to you I cannot recall I would have to go and look at the emails really because there were a lot of engagements back and forth, if it is not in the email then I would then say that I did not give it to her in writing.

**ADV SELEKA SC:** Because I am trying to get certainty from you in regards to is it as a matter of fact that Mr Nath  
20 gave you that reason, that this is the reason why we want a prepayment.

**DR NTETA:** Mr Nath gave me that reason on the phone yes when I asked him why do you want the prepayment and that was at the very initial request for the prepayment.

**ADV SELEKA SC:** Yes.

**DR NTETA:** For example ...[intervenes]

**ADV SELEKA SC:** Yes, I see that you have made a distinction between that request for prepayment and the initial approach which was as you say for coal.

**DR NTETA:** Yes I made that distinction because at the beginning of our engagement with Mr Nath it really was about coal.

**ADV SELEKA SC:** I see, and that means – tell me if that is a correct understanding, when they approach you  
10 regarding coal they are saying we have coal we can supply you immediately?

**DR NTETA:** You broke up a little bit, I am going to repeat what I think that you said, their approach to me was that we have coal that we are able to supply to you yes, and so in my first discussions with him was that we have coal that we are able to supply to you.

**ADV SELEKA SC:** Thank you. But the prepayment brings a completely different scenario in the picture.

**DR NTETA:** Correct.

20 **ADV SELEKA SC:** What it means then in terms of the prepayment is that we do not have the coal, we want to open the export coal mine, you say maybe it is the coal component of the mine, export coal component of the mine, and once we have opened it we will mine the coal and in due course we will have it available to supply to Eskom, is

that a correct understanding?

**DR NTETA:** Yes.

**ADV SELEKA SC:** Thank you.

**DR NTETA:** Yes.

**CHAIRPERSON:** Was this a situation where he was saying the money that we would like you to pay up front to us whatever we need to do with it is necessary for us to be able to then give you the coal that we are talking about, was it that kind of situation?

10 Or was the position that we will give you coal, not dependant on you giving us prepayment but we need you to give us prepayment for other operational reasons for our business.

**DR NTETA:** So it was – we require you to give us coal and to prepay for the coal that we will give you for the five month period.

**CHAIRPERSON:** So ...[intervenes]

**DR NTETA:** I ...[intervenes]

**CHAIRPERSON:** Yes continue.

20 **DR NTETA:** I want just to note is that my discussions with Mr Nath did not – on the prepayment aspect were very limited, because I really did not want to give him the impression that we are accepting his offer because of this requirement for the prepayment, so my discussions with him were more in terms of why do you want it so that we

are able then to you know to understand it and it was a question if he asked me for something I am going to ask him why do you want it, and when you then talk about payment those elements would be negotiated and there would be understanding on the payment aspect of it as to is it required, is it not required etcetera.

So it was not this long intensive discussions that I had with him.

**CHAIRPERSON:** Yes, I can understand that attitude at a  
10 certain level but I would imagine that before you put pen to paper in preparing submissions to the BTC you would want to have a full understanding of what they had in mind of what this money would be use for and what it would mean if you were to refuse as Eskom to make the prepayment so that is why I am asking the question whether you understood him to be saying we need the prepayment because whatever we are going to do with that money needs to be done if we are going to be able to give you the coal that we are talking about or whether the position was  
20 we – irrespective of the prepayment we will be able to give you the coal that you are talking about but we think you should give us prepayment for this and that and that reason.

**DR NTETA:** The scenario number one that you indicated.

**CHAIRPERSON:** It is scenario number one?

**DR NTETA:** Yes it wasn't irrespective; they were not going to give us coal irrespective.

**CHAIRPERSON:** Yes, so what was your understanding of what they do with the money in order to be able to give you coal?

**DR NTETA:** My understanding of what they would do with that money would be to beneficiate the coal so they were going to open up the export portion of it and so they are able to beneficiate the coal and then provide it to us. That  
10 was my understanding.

**CHAIRPERSON:** So in other words they were not in a position to enter into a coal agreement with you and deliver coal to you without you giving them a prepayment?

**DR NTETA:** That is my understanding.

**CHAIRPERSON:** Yes, now the prepayment was it going to be the whole amount or the total coal that they were going to provide during the contract period or was it going to be in tranches of certain amounts according to certain volumes that would be delivered at certain intervals?

20 **DR NTETA:** The prepayment was for the five months contract that they had where it was to be provided up front and then they would deliver over those five months.

**CHAIRPERSON:** So you would give them like half a billion rand straightaway and then over five months then they would be – they would deliver this coal to you?

**DR NTETA:** Correct, correct.

**CHAIRPERSON:** And did you apply your mind to the question of what security does Eskom have in terms of this money that you will pay in advance in case something happens to Tegeta and then they are not able to deliver this coal, what arrangement or what security did you think would be put in place to protect Eskom in that regard?

**DR NTETA:** So yes I applied – well not applied my mind I asked a question to Ms Daniels in the – looking at the  
10 submission to say that okay if Eskom agrees to this what security did we have and there needs to be some form of security.

**CHAIRPERSON:** And what did she say?

**DR NTETA:** So and that is where the discussion in terms of the security, in terms of there is a very – I just can't remember the wording, but security in the form of shares and – their shares in terms of Brakfontein was the suggestion that she had.

**CHAIRPERSON:** Was it something you understood that  
20 she told you about in terms of security or is it something that you didn't understand but you left it with her because she was a legal person?

**DR NTETA:** So I had limited understanding in terms of the security, because I believe that she is a legal person, I also then also believed that on the finance side they would

have to do the calculation as to whether whatever security that is being offered is that adequate, so for me it was how do we need to get the procurement risk and they said we can do that with regards to legally and then the finance would then look in terms of is that adequate.

**CHAIRPERSON:** Of course you ought not to support a submission that Eskom should agree to Tegeta's request for prepayment unless you understand that there would be an adequate security arrangement, you agree with that?

10 **DR NTETA:** Correct.

**CHAIRPERSON:** So if a legal person tells you some legal things that you don't understand you won't support until they can tell you in a language you can understand and you can reason it out yourself and say okay I do understand so I support this is that correct?

**DR NTETA:** That is correct, so as I indicated to you I had a vested understanding in terms of the securities that were available, also understanding that when you send the submission through to BTC the mandate is that for those  
20 that are best able to negotiate those particular aspects then they do so, so I understood that well we have a – I think it was a seven year contract and the shares and the value in terms of the aspect of the bigger security so it would make sense that we are able to then put in some sort of a claim on that coal should they not do so.

**CHAIRPERSON:** I would take it also that before such a prepayment would be made at least some investigation would be conducted by Eskom into Tegeta or any such entity because you don't want to put in half a billion Rand of your money into this entity because there is this agreement about coal and only to find that it is up to here in debts and in a few days time it is liquidated, so I assume that there would be an investigation conducted by Eskom to look at such risks?

10 **DR NTETA:** So there are two aspects of it, one is that when we are looking in terms of new suppliers there is an investigation that happens in terms of the financial statements etcetera. When it is suppliers that have been in the system and have been supplying coal we generally don't look in terms of their financial viability etcetera. However having said that, that when you then look in terms of there is a risk that is involved of paying certain sums up front then the – those then who say that we should take this risk would need to do some sort of risk mitigation in  
20 terms of that.

**CHAIRPERSON:** And then what I do find a little strange is that for something like this you were prepared to go to the extent of preparing the written submissions, submission that would go to the BTC without having asked Tegeta to put their request in writing and provide their motivation so



that as you prepare your own submission you have something from them in writing that says this is the request we are making, this is our motivation for it.

Is there any reason why you didn't ask them to give you something in writing?

**DR NTETA:** So I note that you say it is strange, however when you look in terms of the practice, what we do is we would draft a submission and we will indicate that we have been approached by the supplier, therefore it may be an  
10 approach in terms of an email, maybe an approach in terms of a meeting etcetera, and we then draft submissions. I did request the supplier while in the process of drafting the submission to then provide a formal offer letter for the coal.

**CHAIRPERSON:** And they did?

**DR NTETA:** But it is strange, as you indicate that is strange, but it is practice.

**CHAIRPERSON:** Yes, but did they provide it in writing after you had asked?

20 **DR NTETA:** Yes so the supplier provided an offer letter. In fact I contacted the supplier, I continued because I suspected Adv Seleka is going to ask me these questions, I contacted the supplier and asked them, I said I require an offer letter in terms of the coal that you are supplying. The supplier was taken aback in the sense that why would you

want this particular offer because we discussed it, I have given you the reasons etcetera, and then indicated to me why do you want it, what exactly are you looking for, can I send something as a draft so that I can understand if this is what you are looking for, which is what he did.

**CHAIRPERSON:** And that included the request for prepayment and the reasons for the request?

**DR NTETA:** It was a request for the prepayment but not the reasons for the request.

10 **CHAIRPERSON:** Yes.

**DR NTETA:** Yes.

**CHAIRPERSON:** Okay, so you had to rely on your recollection of what Mr Nath had said to you verbally in terms of the reasons when you prepared the written submission to the BTC?

**DR NTETA:** Yes that was – I relied on what Mr Nath had said, I relied on what Ms Daniels provided and I also relied on information that I received from Mr Madelani on the submission yes.

20 **CHAIRPERSON:** Okay, Mr Seleka?

**ADV SELEKA SC:** Thank you Chair. Yes Dr Nteta indeed those questions were going to come from me, but that is the difficulty I should express to you I have with the reason because you – we don't see you communicating the reason or the motivation for the prepayment to Ms Daniels and let

me just for the purpose of the Chairperson outline this. Remember you write in your affidavit that the last approach made to you is on the 8<sup>th</sup> of April 2016. This is on Friday. Now we don't know exactly when on that day were you approached, we don't know exactly – sorry if you nod, you probably need to speak out.

**CHAIRPERSON:** Just articulate your response because if you nod that doesn't get captured by the record.

**DR NTETA:** Okay, I can't recall why I was nodding, maybe  
10 it was for the last discussion on the 8<sup>th</sup>, I can't remember when I nodded.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** So I am saying apparently you were last approached either telephonically or in person by Mr Nath on the 8<sup>th</sup> of April 2016.

**DR NTETA:** Yes.

**ADV SELEKA SC:** This was on a Friday.

**DR NTETA:** Yes, yes.

**ADV SELEKA SC:** Shall I assume that you are at work at  
20 this time?

**DR NTETA:** Yes.

**ADV SELEKA SC:** When do you start to draft the submission?

**DR NTETA:** I don't recall exactly when I started to draft the submission, it could have been on the 8<sup>th</sup>, it could have

been on the 7<sup>th</sup>, I really can't recall the exact day when I started, it could have been on the 9<sup>th</sup>. I do know that I worked on the submission over the weekend.

**ADV SELEKA SC:** Yes, so 8<sup>th</sup> is a Friday, the next day is a Saturday, that is the 9<sup>th</sup>, the first communication received between you and Ms Daniels is on Sunday the 10<sup>th</sup> of April, remember to say yes or no.

**DR NTETA:** Yes, yes, Sunday the 10<sup>th</sup> sorry.

**ADV SELEKA SC:** Yes, the first communication we see  
10 between you and Ms Daniels is on the 10<sup>th</sup> which is on Sunday.

**DR NTETA:** Correct.

**ADV SELEKA SC:** That Chairperson is on page 199. I beg your pardon, 199 is a reply to you. 189 is your email to Ms Daniels, 189, I beg your pardon. But you will recall this – you will stop me because I am giving the page numbers for the purposes of the Chairperson, because Chair I see we are going to run out of our estimation.

**CHAIRPERSON:** Yes, but how far are you from finishing?

20 **ADV SELEKA SC:** We are very far from the end, we will still be a while Chair.

**CHAIRPERSON:** Is that so?

**ADV SELEKA SC:** Dr Nteta can confirm that.

**CHAIRPERSON:** Well if ...[intervenes]

**DR NTETA:** Unfortunately.

**ADV SELEKA SC:** Unfortunately ja.

**CHAIRPERSON:** If that is so maybe we should do what one would have liked to avoid, maybe we should stop with Dr Nteta because arranging for her to finish might not be a problem even maybe on short notice, I am not sure. I assume that it is not more than an hour that you might need? You think it might be more, but not more than two hours?

**ADV SELEKA SC:** It might, not more than two hours.

10 **CHAIRPERSON:** Ja, okay so that we could easily fit that into an evening, an evening session, so I think that is what we should do then we can release her on that understanding that we are going to arrange a date when probably in the evening we can slot her in one of these days before the end of next week I would hope, and then try and finish. Dr Nteta obviously you can hear what I am saying. Would you have any problem if we make arrangements along those lines?

20 **DR NTETA:** Chair I don't have a problem, but I must say a note to self next time I must get a lawyer because I think I am being de-prioritised because I don't have a lawyer.

**CHAIRPERSON:** [laughing] no Dr Nteta even if you had a lawyer the same consideration could come up, okay so I think we are going to release you but I am asking Mr Seleka and his team that they be in touch with you and

they will talk to me with a view that we find an evening between now and the end of next week if possible when you can come in maybe at four o'clock or five o'clock and then we try and finish but obviously if there is a day when you can come in during the day that will be explored as well, but because it is going to be short notice it is something that will be discussed with you to make sure that you are available.

So I think let us release her on that basis.

10 **ADV SELEKA SC:** Yes Chair.

**CHAIRPERSON:** Thank you very much Dr Nteta then and an arrangement will be made for you to complete your evidence in due course. Thank you very much for making yourself available.

**DR NTETA:** Thank you. I don't know the protocols, do I just hang up or do I have to wait for you to leave the room sir?

**CHAIRPERSON:** I am going to adjourn because the – Mr Seleka needs to make some arrangements for the next  
20 witness, so after I have adjourned then you can disappear from the screen in the manner that has been agreed between you and the technical team.

We will then take a ten minute adjournment, will ten minutes be enough.

**ADV SELEKA SC:** It will be enough Chair.

**CHAIRPERSON:** Okay, we adjourn.

**ADV SELEKA SC:** Thank you.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Are you ready Mr Seleka?

**ADV SELEKA SC:** Yes Chairperson.

**CHAIRPERSON:** Yes. Yes Mr Barrie.

**ADV BARRIE SC:** I am afraid that there again some issues  
10 of housekeeping that we need to refer to. In that regard  
Chair if I may hand up to you a letter or a copy of a letter  
that we received from Mr Seleka it is dated the 22 December  
of 2020 and there are certain aspects of this letter that we  
need to – that we need clarity on.

The first issue on which we need clarity is whether  
you are aware of this letter?

**CHAIRPERSON:** I am – I have not seen the letter but Mr  
Seleka did mention that there was a response to – to your  
side.

20 **ADV BARRIE SC:** Yes the...

**CHAIRPERSON:** And I did I think when I – when you were  
here last time I did ask my Registrar to give a copy of the  
letter that you gave me.

**ADV BARRIE SC:** No that was long.

**CHAIRPERSON:** In terms of [?]

**ADV BARRIE SC:** That was now the third.

**CHAIRPERSON:** To – to the Secretary of the Commission.

**ADV BARRIE SC:** That was to put on.

**CHAIRPERSON:** To discuss with me. I have made enquiries recently and it seems that the Secretary himself might not have done much about it. The last time I heard and he is supposed to see me about it so that I understand what is going on.

**ADV BARRIE SC:** Yes I – just if we can go – just go back  
10 into the history. What this relates to is a letter that was written on the 3<sup>rd</sup> of – it was actually incorrectly dated the 3 December it was actually delivered on the 2 December and it was addressed to you in your capacity as the Chairman of the Commission in which we raise those issues.

And then during the course of the testimony of Mr Koko on that day various issues were raised some which also were covered by the letter.

And what you Mr Chairman stated is that if there is any information that can be made available to the  
20 commission regarding potential corruption or malfeasance in Eskom then that should be made available by way of a written statement.

And you will then recall that what happened then was that such a – in the form of a supplementary affidavit was prepared which was then made available to the commission



on the 11 December when we appeared before you. You will recall in the evening.

And what is relevant now in this letter is that and I want to refer you – the letter has a particularly objectionable tone but we do not want to raise that with you at this time. But what we do need to raise with you and if you can possibly turn to page of the letter. It is [00:04:24] by Mr Seleka and it states on behalf of the commission. It is on that basis that we assume that it carries your authority.

10 And that is what the first point of clarity that ...

**CHAIRPERSON:** No, no it would simply be – it would simply be a response of the legal team as represented by Mr Seleka the legal team of the commission. It would not necessarily be my response. It would be a response of the legal team of the commission.

**ADV BARRIE SC:** Well then we

**CHAIRPERSON:** Ja.

**ADV BARRIE SC:** Ja as I say it was issued on your behalf and...

20 **CHAIRPERSON:** No, no, no.

**ADV BARRIE SC:** On that basis we – we take it at face value.

**CHAIRPERSON:** Well what is the issue on page 4 just talk to me about that?

**ADV BARRIE SC:** Yes we want to refer to you paragraph 7,

8 and 9 in the letter where it is stated you will recall that in the letter which you informed us on the 11<sup>th</sup> that you had read my client made various – or on his behalf his attorney speaking on his behalf averred that there were instances of corruption and malfeasance and irregularities in Eskom that are apparently not being investigated by the commission.

**CHAIRPERSON:** Hm.

**ADV BARRIE SC:** And you on that day on record said that well if Mr Koko has information in that regard it should not  
10 put forward in terms of a letter but the information should be provided to the commission by way of a formal statement which was then done.

**CHAIRPERSON:** Hm.

**ADV BARRIE SC:** At a later time by way of the affidavit. But what he stated in paragraph 7 and you will recall that there were various issues. The one relating to the preferential treatment that Glencore has received in the past and still receives at the hands of Eskom.

The second related to bribery and corruption of a  
20 company called Just Coal a supplier to Eskom which has been admitted by its Managing Director publicly and before the – the Parliamentary Select committee.

And then there are the matters of Sumi Tomo and then the matter of the contract at Madupi relating to Mr Masangu.

So what paragraph 7 in the letter states is as follows:

It says:

“What you have stated in your letter regarding Glencore is once again evidentiary material already contained in affidavits of witnesses before the commission including one of your client’s affidavit.”

Now we are only aware of one affidavit and presumably Mr Seleka is referring to that on your behalf.

10 “It is not for the commission to comment on such matters in correspondence. However insofar as your client alleges preferential treatment of coal suppliers in the Glencore’s [00:07:34] your client is at liberty to provide the commission with information to substantiate these allegations.”

Which has been done. And then it goes on. And to demonstrate its relevance to the commission’s terms of reference. Now that is the issue that we need to enquire  
20 about. Is because that was not when you addressed us and Mr Koko in that regard on the 3 December.

That was not stated by you as it were a precondition. I would think...

**CHAIRPERSON:** I am sorry – I am sorry. Are you saying that Mr Seleka says please show us the relevance of the

information or documents you are asking for and you are saying that was not an issue?

**ADV BARRIE SC:** That was not something and we would think that is for obvious reasons because it would be for the commission to investigate allegations and eventually to come up with an answer to the question whether in terms of the terms of reference this is something that requires to be addressed in the commission's final report. It is obviously not something that the commission can address until an  
10 investigation has taken place.

So what we need to require to know is is this now what is a – a requirement before the commission.

**CHAIRPERSON:** Well – well certainly.

**ADV BARRIE SC:** Is that people who have information to supply to the commission.

**CHAIRPERSON:** Well certainly if people supply information that they believe is relevant to the work of the commission we cannot spend a lot of time looking into that unless we are satisfied that it is relevant.

20 **ADV BARRIE SC:** Yes.

**CHAIRPERSON:** So relevance is important otherwise we do not want to be spending hours and hours on something that may not be relevant.

**ADV BARRIE SC:** But with respect you – you set that out very, very correctly and that it is for the commission to

assess the relevance.

**CHAIRPERSON:** Yes no, no, no.

**ADV BARRIE SC:** It is for the commission to look at the information which is provided.

**CHAIRPERSON:** Yes.

**ADV BARRIE SC:** And to decide whether that information should be further investigated.

**CHAIRPERSON:** Yes but what I am...

**ADV BARRIE SC:** Whether it warrants investigation.

10 **CHAIRPERSON:** Yes but what I am saying is I would see nothing wrong if the legal team says please tell us what the relevance of this information is because...

**ADV BARRIE SC:** So must we assume now that this...

**CHAIRPERSON:** In other words before they – they might take a view that it is not relevant or they cannot see the relevance. But you the person who submitted the information might have a certain perspective and might think it is relevant so when you respond to the legal team you say as far as I am concerned this is the relevance.

20 **ADV BARRIE SC:** Yes but that is...

**CHAIRPERSON:** And maybe they get persuaded maybe they do not get persuaded.

**ADV BARRIE SC:** Yes I again would say that the legal team is not the commission Sir. You are the commission.

**CHAIRPERSON:** No the legal team is there to assist – to

assist.

**ADV BARRIE SC:** Very well.

**CHAIRPERSON:** Me and they have a role to play and the play a very important role. So if they – certain things need to go to them first because they bring them to me and they some of the issues that I will raise and in order to make sure that when they bring those things to me the matters are ripe. They would explore those things because obviously they know they will say what is the relevance of this? What is –  
10 sometimes it is relevant but not so important that kind of thing.

**ADV BARRIE SC:** Now if we then go onto paragraph 8 and that refers to the entity Just Coal Pty Limited in which Mr Koko in his supplementary affidavit gave detailed information also of the fact that the Managing Director or CEO of that company admitted bribery and corruption and the bribery of Eskom [00:11:47]. But we nevertheless received a letter from the commission stating that we have to provide – and it is relevant in terms of the terms of reference of the  
20 commission. Well what is before you already it is very obviously relevant to the terms of reference of the terms of commission. And we do not understand why – if obviously regularity has been pointed out and bribery and corruption why there is now a requirement that you did not specify on the 3 December that is now put forward but not only do we

need to provide information in this regard.

**CHAIRPERSON:** Let – let...

**ADV BARRIE SC:** But we need to explain the relevance to the terms of reference.

**CHAIRPERSON:** Let us deal with this matter in this way. It seems to me that I do need to have a meeting with the members of the legal team Mr Seleka and Mr Seleka as well as the Secretary of the commission and that they should put together all the correspondence exchanged between yourself  
10 and the legal team or the Secretary and the commission and I get briefed fully as to where everything is.

1. Because I was concerned that the Secretary has not – does not appear to have done much about the [00:13:45] letter.

**ADV SELEKA SC:** Well we – we are making...

**CHAIRPERSON:** So I am going to – to make arrangements Mr Seleka I think talk to all concerned. There may be other people other than the Secretary. There may be other people are involved in some technical things. Let us find time  
20 before the end of this week if possible. Maybe – maybe after the hearings.

**ADV SELEKA SC:** Yes Chair.

**CHAIRPERSON:** To have a meeting so that with all the information so that I can be briefed fully what where the challenges may be with the request or some of the requests

made by Mr Koko's legal team.

**ADV BARRIE SC:** Well this is...

**CHAIRPERSON:** And after – after that briefing it may be necessary to – to involve – to have another meeting involving Mr Barrie. It might not be necessary depending on what the briefing will be.

**CHAIRPERSON:** Yes Mr...

**ADV SELEKA SC:** Yes Chair.

**CHAIRPERSON:** But I would like this matter to be finalised  
10 as soon as possible.

**ADV BARRIE SC:** Mr Chairman the issue is really that you gave a certain directive – directives regarding what we should do to bring these allegations to your attention which we have done. Now if you go on to paragraph 9 of this letter it states as follows:

“The commission is not investigating the matter of Sumi Tomo.”

That relates as you will remember of Mr Tsotsi having written unlawful – unlawful a letter to Sumi Tomo to  
20 undertake that for certain transformers that were not ordered payment would be made.

Now the statement is simply that the commission is not investigating the Sumi Tomo matter and the clarity that we require from you Sir is that correct?

**CHAIRPERSON:** Well we are going to have a meeting. I



know that whether it is Madupi or Kusile I know that there was a time when I was approached about whether there should be any investigation and I said we cannot start a new investigation we do not have the time in regard to whether it was both or one of those. Certainly I have – I have made that decision. But -

**ADV BARRIE SC:** Is that...

**CHAIRPERSON:** Mr Barrie there is no need to continue to discuss this now. I am going to have a meeting before the  
10 end of the week with the relevant members of the legal team of the commission who are involved in this matter and the Secretary of the commission and other people within the commission who might be relevant and I will have all the correspondence before me that has been exchanged. I will check what challenges there are and after that I will have taken a view on the matter and either you will then be informed or I might need to have a meeting that would involve you side before there is any finality.

**ADV BARRIE SC:** Yes.

20 **CHAIRPERSON:** But I think we must leave the matter at that.

**ADV BARRIE SC:** There is just one further issue in this regard that I do need point out. And it is as you have indicated that you rely heavily on the legal team. So this is representative at least of the legal teams albeit that it is

issued on behalf of the commission but in paragraph 9 it goes on to say that:

“The commission does not have the time and capacity to investigate the Kusile and Madupi matters.”

That is understandable albeit that it is within your terms of reference. But it then says – it goes on to say:

“It has taken a decision to confine itself primarily to matters identified in the Public  
10 Protectors Report.”

Now is that correct?

**CHAIRPERSON:** Yes it is correct that already last year not even last year 2019 in the extension application that was filed in the High Court I made it clear that in order for the commission to finish its work within the time that I asked for it would have to confine itself within the issues that are identified in the Public Protectors Report but I did say that those matters that fell outside of the Public Protectors issues but within the terms of reference of the commission that the  
20 commission had already started we would try and finish. And that if any matter that we had not started was brought to my attention which I thought in my own discretion were – was particularly important then I could make a decision to say we look into that. So that is in the – in the High Court papers already.

**ADV BARRIE SC:** Very well. So it does not imply a limitation of if we published or otherwise of the terms of reference?

**CHAIRPERSON:** Sorry?

**ADV BARRIE SC:** It does imply a limitation of the terms of reference to be published in terms of the Commission's Act in due course.

**CHAIRPERSON:** What?

**ADV BARRIE SC:** It does not imply or in any other manner  
10 some limitation of the terms of reference.

**CHAIRPERSON:** If you go and read what is said in the affidavit is that the – the commission would either the President to amend the terms of reference or the commission would make a recommendation that other matters that it could not deal with because of the constraints on time be dealt with by law enforcement agencies or by some other forum. So that is what it said.

**ADV BARRIE SC:** Very well.

**CHAIRPERSON:** Because otherwise if we were going to  
20 investigate everything that is covered by the terms of reference we would sit here for ten years.

**ADV BARRIE SC:** If there is an indictment the – the state of affairs.

**CHAIRPERSON:** Ja because when you see the terms of reference.

**ADV BARRIE SC:** But we obviously have an understanding.

**CHAIRPERSON:** You see the terms of reference contemplate us looking at every municipality in the whole country. Looking at every depart – national department. Looking at every provincial department. Looking at every SOE. It is just too wide.

**ADV BARRIE SC:** And insofar as you are unable to do that no doubt it will be covered by the recommendations that the commission will in due course make.

10 **CHAIRPERSON:** Sorry?

**ADV BARRIE SC:** I say that insofar as you are unable to deal with all those matters then I would assume it would be dealt with in the recommendations that the commission will make in relation to other matters that have come to the commission's attention.

**CHAIRPERSON:** Yes that ...

**ADV BARRIE SC:** Because that – the commission has been unable to attend to.

20 **CHAIRPERSON:** Yes what I said in the extension papers is that either we will ask the President to amend the terms of reference or we will ask that those matters that we are not able to deal with be referred to some other forum or law enforcement agency.

**ADV BARRIE SC:** I then want to go to the second matter of housekeeping and that relates to the request in terms of the

relation of Access to Information Act. You will recall that on the prior occasion on the 11 December we handed a copy of that personally to you but the original thereof had been delivered to the commission some days earlier.

Now in terms of the Act that had to have been responded to within 30 days and if it is not responded to then it is regarded as a refusal of the request.

Now we obviously have understanding that there were holidays etcetera in the intervening period of time.

10 **CHAIRPERSON**: Ja.

**ADV BARRIE SC**: But the question that now arises is whether we should regard the fact that the notice in terms of the promotional of Access to Information Act or request in terms thereof has not yet responded to is whether we should regard it as a refusal and unfortunately here you are the information officer.

**CHAIRPERSON**: Well I have just said...

**ADV BARRIE SC**: Whether we regard it as a refusal of that request.

20 **CHAIRPERSON**: Well I have just said to you that I made enquiries recently with the Secretary and I established that not much had been done and I have said that I am going to have a meeting involving the Secretary and the legal team and everyone concerned to look at all these requests that you have made and that includes that one. And I have said

that after that I will be able to take a decision. Either the decision will be taken without any further meeting with you or I might decide that before a final decision is made there should be a meeting involving your side. But it – that is a decision which one it will be is something that I will take a view on once I have had a full briefing as to what challenges if any there are in granting the request that you have made or granting – giving you the information that you request.

**ADV BARRIE SC:** Yes Chairman but Chairman the issue is  
10 then as I understand what you putting across to me is that despite the provisions of the act we should not regard the fact that the document has not yet been responded to as a refusal of the request.

**CHAIRPERSON:** No, no, no definitely at this stage I have not taken a view that you should not be given the information on the contrary my inclination is that the commission should give you as much information as possible that you are entitled to. Or if their grounds not to give you certain information that should be raised with you and let us hear  
20 what you have to say. So certainly there is no attitude to say in a blanket way you should not receive anything. Certainly I want to be briefed fully about what has been exchanged between your side and the legal team and the Secretary.

**ADV BARRIE SC:** Yes.

**CHAIRPERSON:** And what the Secretary's attitude is and other units of the commission. And then after that we can take it from there.

**ADV BARRIE SC:** Ja Mr Chairman the [00:25:16] request is a request that stands on its own legs in terms of the legislation.

**CHAIRPERSON:** Ja. Ja.

**ADV BARRIE SC:** And...

**CHAIRPERSON:** But I have said that I want in that meeting  
10 to discuss that plus this and all the requests that you have made to the commission I want to put finality to this.

**ADV BARRIE SC:** Chairman with respect on each occasion that we have prepared – that we have appeared before you you have expressed the sentiment that you have just expressed again and our attempts to get hold of the documents even via the issuing of a request in terms of [00:25:53] have met with no success. And the question is now how long is it going to take?

**CHAIRPERSON:** Well I have just told you Mr Barrie.

20 **ADV BARRIE SC:** Because the act – the limit that the act provides has already been exceeded..

**CHAIRPERSON:** Mr Barrie what I have told you is two things.

1. I want a meeting with the relevant people within the commission to be briefed fully about what is the

problem. Are there any challenges? Both in terms of the [00:26:24] request and in terms of this.

2. I have said to you that meeting is going to be – I want that meeting to be before the end of the week and I said after that you will be contacted.

Whether you are contacted to say let us have a meeting or to say this is the final position. That is what I have told you. Now I do not know what it is that you do not understand when it will take place.

10 **ADV BARRIE SC:** Well it is a question of when is the commission now going to ask for an extension?

**CHAIRPERSON:** Sorry?

**ADV BARRIE SC:** Is the commission going to ask for an extension of the time period provided for in the Act?

**CHAIRPERSON:** Well leave that to us. I have told you what is going to happen within this week.

**ADV BARRIE SC:** Very well.

**CHAIRPERSON:** Ja.

20 **ADV BARRIE SC:** Very well I hear that. And let us – on a third point of housekeeping the roof leaks and it drips water on these benches.

**CHAIRPERSON:** Thank you Mr Barrie.

**ADV BARRIE SC:** And I am not sure of that you are aware of it but...

**CHAIRPERSON:** Thank you Mr Barrie. Mr Seleka I want us



to continue.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** I see Mr Koko raises his hand. Mr Koko good afternoon.

**MR KOKO:** Good afternoon.

**CHAIRPERSON:** Your Counsel was speaking to me just now and I think when your Counsel was speaking you were speaking to me through him.

10 **MR KOKO:** I understood Chair but I have – I am burning in my chest.

**CHAIRPERSON:** Okay.

**MR KOKO:** So I am burning in my chest and...

**CHAIRPERSON:** Shall I give you one minute?

**MR KOKO:** Please give me one minute?

**CHAIRPERSON:** Okay one minute.

**MR KOKO:** When we came here people accused me of meeting people anywhere else.

**CHAIRPERSON:** People accused you of?

20 **MR KOKO:** Accused me of meeting people in dark corners including Melrose Arch.

**CHAIRPERSON:** Oh okay.

**MR KOKO:** I make – I – telephone records are very important to prove who is where. I have made this commission – commitment to the commission that I will give relevant telephone records to the commission. I have done

that. I may have done that late but I have done that.

**CHAIRPERSON:** Yes, yes.

**MR KOKO:** But I get a letter paragraph 6 on your letter that says:

**CHAIRPERSON:** This letter?

**MR KOKO:** Yes.

**CHAIRPERSON:** Ja.

**MR KOKO:** 506 that says:

10                   “Mr Koko you – we do not have telephone records of anybody.”

Now the Chairman said in this – when I was last here is that when you have records we have no reason to keep them from you. But when I get a letter from the commission that says we do not have these records when I know you have them it borders on a trust relationship. So Mr Seleka says to Ms Daniels on the 15 September day 67 he says:

20                   “But you know I have – we have obtained telephone records between you and Mr Koko in which we see that there is a telephone call from him to you the evening before. The night before three minutes before the evening.”

**CHAIRPERSON:** Yes.

**MR KOKO:** My telephone records show me that this telephone call that Mr Seleka is talking about here is factual.

**CHAIRPERSON:** Is?

**MR KOKO:** It is factual.

**CHAIRPERSON:** Ja.

**MR KOKO:** For Mr Seleka to then write back to me and say:

“I do not have telephone records of anybody.”

When I know he has them.

**CHAIRPERSON:** Yes. Yes.

**MR KOKO:** It is a trust issue.

10 **CHAIRPERSON:** Ja.

**MR KOKO:** It burns me.

**CHAIRPERSON:** Okay.

**MR KOKO:** It burns.

**CHAIRPERSON:** No I understand what you saying.

**MR KOKO:** It further supports what I have been saying to you all along that the only reason these telephone records are not coming out, it is because they are not telling you the story they want you to believe.

**CHAIRPERSON:** H'm.

20 **MR KOKO:** That is the only reason. I have ...[intervenes]

**CHAIRPERSON:** Ja.

**MR KOKO:** ...that the legal team writes to me to tell me what - in the townships, I will say it is a lie but I have not seen it in this area.

**CHAIRPERSON:** H'm.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** These things should be sorted out.

**ADV SELEKA SC:** Yes, Chair.

**CHAIRPERSON:** We should not really be taking so long about some of these things.

**ADV SELEKA SC:** Yes, Chair.

**CHAIRPERSON:** Now I do know that one of the witnesses – I do not know if it was Ms Daniels or – I do know that one of the witnesses was referred to cell phone records.

10 **ADV SELEKA SC:** Yes, Chair.

**CHAIRPERSON:** Why was that not given to Mr Koko.

**ADV SELEKA SC:** Chair, they should read the letter to you in totality because the letter says, the telephone records of the witness that were referred to hear, is the one of Ms Nomkuleko Molefe.

That has been conveyed on more than one occasion. It is repeated here because my telephone conversation with Mr Koko's attorney, he says we must give them the telephone records that were referred by the witnesses before  
20 the Commission.

And I say then, with that definition in mind, the answer is, the only person who has not only made reference to the telephone records but also undertook...

Sorry, before that Chairperson. Paragraph 5. Ms Nomkuleko Molefe is the one who referred. And that has

been conveyed to in a letter and the records were then again provided to you. So that is done.

Now if – and these issues can be dealt with in chambers, so that they can be dealt with, with us telephonically by virtual meeting that also on such and such date you referred to Ms Daniels to telephone records. He did not provide us with telephone records.

Then we can go to the transcript and say: Okay here it is. Let u see what we can provide then in regard to that.

10 But the request has been blunted and general. At least, specified insofar ...[intervenes]

**CHAIRPERSON**: Well, what you would know, of course, is what telephone records you have.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: They relate to certain witnesses which relates to conversations or alleged conversations with Mr Koko.

**ADV SELEKA SC**: Yes.

20 **CHAIRPERSON**: Why do you not just give them all of those irrespective of how the request has been formulated by his lawyer?

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: You say that you know Miss so and so and so and so and so and so. We have got telephone records where – which are connected or allegedly connected with

mister – conversation with Mr Koko.

And say, here are all of the telephone records that we have where one or other of the following witnesses seems to have had a conversation with you. Here they are.

What we have given you is everything we have. As long as it is a telephone record that allegedly relates to a conversation that you had with somebody who has given evidence in the Commission. To say, here they are.

**ADV SELEKA SC:** Yes. Chairperson, since their prior  
10 request.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** I have done that exercise with the relevant persons.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** After the December holidays  
...[intervenes]

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** ...I had meetings with them. We have made some progress in regard to that.

20 **CHAIRPERSON:** Ja.

**ADV SELEKA SC:** So the Chairperson – be consistent with the meeting that the Chairperson has in mind.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** You will then get the latest.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** In regard to what is happening now.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** And the request regarding that can be provided because either then personally also have knowledge of how much does the Forensic Investigation Team has in regard to that information.

**CHAIRPERSON:** Ja. Well, what you can do is to say, as far as us as the legal team leading evidence in regard to Eskom.

**ADV SELEKA SC:** Yes.

10 **CHAIRPERSON:** As far as we are concerned, these are the records that we are aware of.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So that we are aware of that relate to your conversations with some of the following people or the following people. When – what we are giving you is all that this legal team is aware of.

**ADV SELEKA SC:** Correct.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Correct.

20 **CHAIRPERSON:** Okay alright.

**ADV BARRIE:** Chairman, it is for that very reason why the prior request was delivered. It is because it was avert that my attorney had in some way or another limited the very, very detailed request that had been made in prior correspondence. So the prior request has to be responded

to in terms of the act.

**CHAIRPERSON**: Ja.

**ADV BARRIE**: And that means, we are asking for all those records if they are in the Commission's possession.

**CHAIRPERSON**: Ja.

**ADV BARRIE**: It is not a question of relevance. We do not have to provide a reason why we need those records.

**CHAIRPERSON**: Well ...[intervenes]

**ADV BARRIE**: We are asking them in terms of that  
10 ...[intervenes]

**CHAIRPERSON**: Well, let us talk ...[intervenes]

**ADV BARRIE**: If they are in their possession ...[intervenes]

**CHAIRPERSON**: Let us stop the conversation now  
Mr Barrie. I have indicated what my attitude is. But  
anything that can be furnished to Mr Koko's legal team  
without having to wait for the meeting that is going to  
happen, should be furnished. And then, of course, there will  
be the meeting. Okay alright.

**ADV BARRIE**: Thank you.

20 **CHAIRPERSON**: Please let us continue.

**ADV SELEKA SC**: Thank you.

**CHAIRPERSON**: I think let us administer the oath again  
because we have had quite some time lapsed.

**REGISTRAR**: Please state your full names for the record.

**MR KOKO**: Matshela Moses Koko.



**REGISTRAR:** Do you have any objections in taking the prescribed oath?

**MR KOKO:** No.

**REGISTRAR:** Do you consider the oath to be binding on your conscience?

**MR KOKO:** Yes.

**REGISTRAR:** Do you swear that the evidence that you will give, will be the truth, the whole truth and nothing but the truth? If so, please raise up your right hand and say, so help  
10 me God.

**MR KOKO:** So help me God.

**MATSHELA MOSES KOKO:** (d.s.s.)

**CHAIRPERSON:** Yes.

**FURTHER EXAMINATION BY ADV SELEKA SC:** Thank you, Chairperson.

**CHAIRPERSON:** Mr Seleka, you might just in a few minutes or a few sentences, just tell the public what Mr Koko's evidence will be about today so that they can follow.

**ADV SELEKA SC:** Thank you, Chairperson. Mr Koko has  
20 appeared before the Commission previously. He has appeared on two occasions. He was called to deal with matters pertaining to the suspensions of the four executives. That was the first part of his appearances.

This second part of his appearance relates to matters of, what we have called for ease of reference, the transactions.

They, primarily, relate to the transactions done between Eskom and the company called Tegeta.

And along with those transactions, what was happening simultaneously in regard to other entities, in this case such as Glencore, Optimum, entities such as Azaro.

And we will also look at matters pertaining to Trillion and McKenzie to the extent that we do not traverse issues that have already been done at court Chairperson.

So in regard to the transaction matters. Mr Koko has  
10 prepared an affidavit and he deals with the pre-payment or pre-payment decision of R 1 68 billion.

And then the process in regard to the motivation for that, he will deal with that because Mr Koko signed the submission that was submitted to the board to make that decision for that pre-payment.

There is – the build-up to the pre-payment, also Chairperson, is the interactions between Eskom in the acquisition of Optimum. The interactions with Tegeta, with Optimum with the DMR. Mr Koko will deal with that.

20 He will also testify then on the pre-payment we were busy dealing with, with Dr Nteta which comes in the following year, April 2016. Mr Koko also signed the submission in regard to that pre-payment. We expect that he will explain the details of it, the rationale. And ultimately, the penalties that were persuade against Optimum.

Mr Koko, then there will be a few questions from my side, arising from matters testified previously. I just want to tidy up the loose ends before I go into the transactions.

Now Chairperson, I am mindful of the time because I suppose we will have to stand still at the time agreed with Mr Koko's counsel.

**CHAIRPERSON**: Yes.

**ADV SELEKA SC**: Even though 40-minutes was taken in dealing with preliminary issues.

10 **CHAIRPERSON**: Yes. Ja.

**ADV SELEKA SC**: Yes. Further on housekeeping Chairperson. We have the bundles for the purposes of the record. We have Eskom Bundle 15. One five. That bundle Chairperson has been updated. So it will be ...[intervenes]

**CHAIRPERSON**: Yes, it is 15A.

**ADV SELEKA SC**: Ja, 15A and 15B.

**CHAIRPERSON**: Oh, I see. Ja, 15A and 15B.

**ADV SELEKA SC**: So that contains Mr Koko's affidavits with the annexures.

20 **CHAIRPERSON**: Okay.

**ADV SELEKA SC**: And it has been updated with other material relating to Mr Koko. Then we will use the Reference Bundle, Eskom Bundle 18. One eight. So there is also A and B in that Reference Bundle. On eight, A and B.

**CHAIRPERSON**: Are we going to need it later or now?

**ADV SELEKA SC:** No, I am not starting with it now Chair.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** I may in the process, yes. We can just have it handy.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Thank you. Mr Koko, a couple of matters then arising from your appearance previously. I just want to start with that and finish it off. You testified on one of the two occasions where we were dealing with the  
10 suspensions, that Ms Daniels and Mr Masango testified at the Parliamentary Portfolio Committee that they acted together to get rid of you.

And this was in response to the Chairperson asking you about: Why would they have on the 10<sup>th</sup> of March 2015 communicated to other persons the same information or similar information?

You have explained and explained but ultimately came to this: Chair, I can tell you this is what they testified at Parliamentary Portfolio Committee that they acted together  
20 to get rid of me. You remember that?

**MR KOKO:** Yes.

**ADV SELEKA SC:** But I have seen in your letter, which my learned friend said is incorrectly dated the 3<sup>rd</sup> because it was delivered on the 2<sup>nd</sup> of December 2020, that in a paragraph and I will read paragraph 71, you read there.

“Ms Masango also told the Parliamentary Portfolio Committee ...[intervenes]

**CHAIRPERSON:** Paragraph 71 of his affidavit or ...[intervenes]

**ADV SELEKA SC:** Is the letter from his attorney Chairperson.

**MR KOKO:** Ja, the one that that should refer(?) the 3<sup>rd</sup> but it is actually the second one.

**ADV SELEKA SC:** Yes, that is right.

10 **MR KOKO:** Thank you.

**ADV SELEKA SC:** Ja, I think I will have a copy for the Chairperson. I would presume that my learned friend has a copy.

**CHAIRPERSON:** Well, just – maybe you can read it aloud.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** But arrangements should be made for me to have a copy.

**ADV SELEKA SC:** Yes, Chair. Thank you. So it says:

20 “Mr Masango also told the Parliamentary Portfolio Committee that he worked extremely hard with Ms Daniels and an unnamed journalist to get Mr Koko out of Eskom.

This occurred after Mr Koko had removed Mr Masango from his position as Eskom’s Group Executive, Group Capital i.e. the Eskom division

responsible for new capital projects, including the massive Medupi projects.”

That is all in brackets, and then you say:

“In January 2017, because of his involvement in corruption.”

So the collaboration between the two of them, you are saying, it happened after you removed Mr Masango from his position in January 2017 because of his involvement in corruption. That is what is stated in that paragraph.

10 **MR KOKO**: That is correct. The collaboration between the two, when the two of them has never made a secret.

**ADV SELEKA SC**: Yes. So ...[intervenes]

**CHAIRPERSON**: I am sorry Mr Koko. I do not know whether it is the aircon. Ja, I think they need to adjust it. Mr Koko, please just repeat what you said because ...[intervenes]

**MR KOKO**: I am saying, it is correct. The collaboration between the two, the two of them have never made it secret.

**ADV SELEKA SC**: H'm.

20 **CHAIRPERSON**: Have never made it...?

**MR KOKO**: Secret.

**CHAIRPERSON**: What is that they never made it secret?

**MR KOKO**: The collaboration ...[intervenes]

**CHAIRPERSON**: To have you removed?

**MR KOKO**: To have me removed.

**CHAIRPERSON**: Okay.

**MR KOKO**: They have never made it secret.

**CHAIRPERSON**: Is that so?

**MR KOKO**: Independently and collectively.

**CHAIRPERSON**: Yes. And this is after a certain date or month in 2017?

**MR KOKO**: Certainly.

**CHAIRPERSON**: Okay alright. Yes Mr Seleka.

**ADV SELEKA SC**: Chairperson, thank you. Just for the  
10 benefit of the Chairperson. I want to hand up to the  
Chairperson a copy of that letter.

**MR KOKO**: Wait. They are not watching now.

**CHAIRPERSON**: Yes.

**ADV SELEKA SC**: Yes. The letter does not seem to be paginated Chair but the paragraphs are numbered. I was reading from paragraph 71.

**CHAIRPERSON**: Yes.

**ADV SELEKA SC**: Paragraph 71.

**CHAIRPERSON**: Yes?

20 **ADV SELEKA SC**: Yes. Mr Koko, but that does not seem to be an answer to the Chairperson's question which he was specifically asking in relation to 10 March 2015 because if, on your version, the collaboration started after you removed Mr Masango in January 2017, that means that collaboration would have only started nearly two years after the

suspension of the executives.

**MR KOKO**: I have no doubt that is the case.

**ADV SELEKA SC**: Thank you. Then there was again your statement made when you were testifying, that in 2015 and we are talking about Mr Salim Essa ...[intervenes]

**MR KOKO**: Mister...?

**ADV SELEKA SC**: Mr Salim Essa. That in 2015 you did not know Mr Salim Essa.

**MR KOKO**: That is correct.

10 **ADV SELEKA SC**: But if you go to – in fact, it starts with your disciplinary hearing. I will go to the email. You remember charge one of your disciplinary hearing related to emails you exchanged with Businessman.

**MR KOKO**: That is correct.

**ADV SELEKA SC**: And that was from July 2015 shortly after you came back from your suspension.

**MR KOKO**: It was like 2015.

**ADV SELEKA SC**: 2015. And those exchanges, they go all the way, at least in 2015, to December 2015. There are  
20 correspondence after in 2016 that ...[intervenes]

**MR KOKO**: That sounds correct.

**ADV SELEKA SC**: Yes. Chairperson, they are in the Reference Bundle, just for the Chairperson's ease of reference, page 10, 18B. Reference Bundle. Has Mr Koko has the...



**MR KOKO:** 18B.

**CHAIRPERSON:** Okay. And what page? Have you got the page?

**ADV SELEKA SC:** Page 1018.

**CHAIRPERSON:** One eight.

**ADV SELEKA SC:** Ten, one, eight.

**MR KOKO:** 18?

**ADV SELEKA SC:** 18B, yes.

**MR KOKO:** Okay. Page?

10 **ADV SELEKA SC:** 1018. Ten, one, eight.

**MR KOKO:** [No audible reply]

**ADV SELEKA SC:** But Chair, I am doing just for your benefit because Mr Koko ...[intervenes]

**CHAIRPERSON:** Yes, ja. No, that is fine.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Otherwise, I could move a little faster.

**CHAIRPERSON:** H'm.

20 **ADV SELEKA SC:** So you will see the email. In fact, the one is on the 20<sup>th</sup> of ...[indistinct] [00:21:36] [coughing in background] The first one is on the 20<sup>th</sup> of July. That is on the day from your return from your suspension. Are you on that page?

**MR KOKO:** Let me just...

**ADV SELEKA SC:** There...

**MR KOKO:** Remember, we followed the black ones?

**ADV SELEKA SC:** Yes, 1018.

**MR KOKO:** Ten, eighty?

**ADV SELEKA SC:** One, eight. Ten, one, eight.

**MR KOKO:** Ten, one... Ja. Yes.

**ADV SELEKA SC:** So that is the first email from Matshela Koko, kokomm@eskom.co.za, Monday, 20 July 2015 at 07:56 and the email is addressed to infoportal1@zoho.com, internal consulting directive. Print this, you say.

10 Now those emails... Chairperson, they go on. And I will ask Mr Koko – let me just go through the emails quickly. The email has an attachment which is the document there attached which is an Eskom document, Directive for Implementation of National Treasury Cost Containment Instruction.

Chairperson, then you go to page ten, thirty-two (1032). It is another email on the same date to infoportal1@zoho.com, also from Mr Matshela Koko. The subject is Top Engineers. And then you have an attachment.

20 On the next page: Approve all conditions agreed between acting CFO and acting GE, GC and T on Friday, 26 June 2015. And then there is a spelling error, it seems there. Top Engineers Development Programme.

You see that Mr Koko? I just give you the page numbers quickly. I will expedite this. Then on page 1035. There is

another email on the same date, 20 July 2015 from Matshela Koko to infoportal1@zoho.com. The subject is Eskom Resolution and the message is: Print this one too. It is a round-robin resolution date, 5 March 2014.

The next email is on page 1056. Also sent from yourself kokomm@eskom.co.za. This one is sent on Saturday, 8 August 2015 at twenty to twenty at night, also to the same email address infoportal1@zoho.com. The subject is: Online Vending. And the message...

10 Now these emails so far, they do not identify a person. There is no Dear Paul or Dear Ms so and so. It is just a message you say, print this. And this one simple says:

“We did not finish our discussions about this transactions. This is what is going to board (meaning to the board) of 18 August.”

I suppose 2015. The date is not indicated there. Would it be 2015 Mr Koko?

**MR KOKO:** [No audible reply]

**ADV SELEKA SC:** The date for that 18 August?

20 **MR KOKO:** [No audible reply]

**CHAIRPERSON:** What is the question?

**ADV SELEKA SC:** The 18 August Chair does not have a year number. So I am just asking whether that will be 2015.

**CHAIRPERSON:** H'm.

**MR KOKO:** Which one?

**ADV SELEKA SC:** At page 1056.

**CHAIRPERSON:** I am sure it is 2015.

**MR KOKO:** I am sure it is 2015.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Thank you. Then the document is attached to a person: Submission, document, executive summary. This is an Eskom document. The next email. Chairperson, you will find it on page 1075.

This one is sent on Monday, 21 September 2015 at 16:32  
10 also from Mr Koko to infoportal1@zoho.com. The subject is:  
Me(?) and E.

And the message is simple: RE. R-E. Nothing further. There is a document there attached of 31 August 2015 which pertains to Mr Pedra(?).

**MR KOKO:** Pedra.

**ADV SELEKA SC:** I think Mr Pedra, who was being suspended or given a notice of intention, rather, to suspend. Do you recall that document Mr Koko?

**MR KOKO:** Yes, I do.

20 **ADV SELEKA SC:** H'm. Then there is on page 1078 and email from Mr Koko on Wednesday, 30 September 2015 also sent to infoportal1@zoho.com. The subject is simple RE, R-E. There is no message in that email.

But there is an attachment of a letter addressed to Minister Lynne Brown by Dr Ngubane. Suspension of contact

in any form whatsoever and or commercial relationship with the Mail & Guardian, City Press and Sunday Times.

Chairperson, you will recall when Ms Daniels was here, there was a document, a round-robin – meant to be a round-robin resolution of, amongst others, Eskom, Denel and... I cannot recall if Transnet was part of it. But Dr Ngubane also testified about. It came from Businessman, then into Eskom and it was asking Eskom to take the resolution, to terminate any contact with these media houses. Were you aware of  
10 that communication Mr Koko?

**MR KOKO:** Was I aware of...?

**ADV SELEKA SC:** That communication that came from Businessman through Dr Ngubane and asking that the resolution be taken by the board, exactly from that subject line we see.

**MR KOKO:** Chairman, I have listened to the evidence before this commission so I am aware of what the discussion of Mr Seleka say.

**CHAIRPERSON:** But is your awareness based on what  
20 you heard in terms of evidence or you were aware at some stage during 2015 or...?

**MR KOKO:** Not at all, my – it came to my attention arising out of the evidence in this committee. I knew of this and I at your own time, I can go into the discussions around ...[intervenes]

**CHAIRPERSON:** You can deal with it, ja.

**MR KOKO:** But I only became aware of the information Mr Seleka is talking about.

**CHAIRPERSON:** Ja, okay.

**MR KOKO:** In this Commission.

**ADV SELEKA SC:** Okay, we will come to it. Then you have the email on the next page, page 1080 which is also from you sent on Saturday 14 November 2015 at 10.36 to info portal, again the subject is simply:

10 "RE no message"

And it attaches electricity load shedding review and way forward document. You were aware of this document as well?

**MR KOKO:** I am aware of this document.

**ADV SELEKA SC:** Then the next page is 1084. Again from yourself, Eskom, Kokomm@eskom, Wednesday 25 November 2015 to info portal. 1@zoho, the subject is simply – really no subject. The message is:

"Give the boss please"

20 That is the message, we do not know who is asked to give the boss please.

**MR KOKO:** I am aware of this.

**ADV SELEKA SC:** You are aware of that.

**MR KOKO:** Yes.

**ADV SELEKA SC:** And I think the last two emails, if you

turn to page 1087. I think there is an email missing in November. Two emails. But let me look at this one at 1087. So that is an email. The bottom email is from Businessman – and we know businessman from the evidence is the same info portal address. It is dated 10 December 2015. That date is significant because it coincides with other issues and it is sent to Matshela@2010.

10                   “Subject: Two pager. Two pager between Tegeta and Eskom, salient points.”

And the salient points are set out there. We will come to it in due course, this email. And at the top of it, seems to be you, Matshela2010@Yahoo on Thursday, the same date, 10 December 2015, forwarded the two pager to Ms Suzanne Daniels. Do you see that?

**MR KOKO:** Yes, Sir.

**ADV SELEKA SC:** She has already testified about you, you would have seen during her testimony.

**MR KOKO:** Certainly.

20   **ADV SELEKA SC:** Then on the next page, page 10.88. There is an email exchange at the middle of the page. Ja, but these are 2016 emails. They are not relevant for present purposes. So that is the 2015 exchange of emails starting on page 1018. Mr Koko, it was established that the disciplinary hearing of Mr (sic) Suzanne Daniels, she

has testified here about this info portal email address. She is not finished yet, I should emphasise, she is not finished, that this email address belonged to Mr Salim Essa. Your comment?

**MR KOKO:** Testified by who?

**ADV SELEKA SC:** I am saying it was established at the disciplinary hearing of Ms Daniels that this email of info portal [1@zoho.com](mailto:1@zoho.com) belongs to Mr Salim Essa.

**MR KOKO:** Chairman, I not that. I am shocked, I am  
10 flabbergasted and it angers me, if that is indeed the case. I received this Whatsapp email address from - after my suspension of 2015 from Ms Daniels and Ms Daniels, I have met him – I was unsuspected on the 15<sup>th</sup> or 16<sup>th</sup> July. I met her before the 20<sup>th</sup> and she, before my suspension, she was my assistant and overnight out of the blue she was in the Chairman's office.

When I was unsuspected I had discussions with her because I was concerned about how I ended up ...[intervenenes]

20 **CHAIRPERSON:** When your suspension was lifted?

**MR KOKO:** I beg your pardon?

**CHAIRPERSON:** When your suspension was lifted.

**MR KOKO:** Yes, I beg your pardon. When my suspension was uplifted I met with her.

**CHAIRPERSON:** Ja.



**MR KOKO:** And we discussed how to work around the new board, around the new Chairperson given my previous experiences with the Chairman because I still today am of the firm view that I was suspended because of my relationship with Mr Zola Tsotsi. Ms Daniels gave me the email address and say you need to deal – to keep the Chairman informed and we need to have three way meetings as often as possible so that they are not blindsided, so that they are properly informed and the  
10 problem with you, Mr Koko, is that you came to make up your mind and move on your own and isolate the board and the Chairperson. So this email, in her view, the Chairman uses this email, so if you have got information ...[intervenes]

**CHAIRPERSON:** The Chairman at that time being a reference to?

**MR KOKO:** Dr Ngubane.

**CHAIRPERSON:** Dr Ngubane, okay.

**MR KOKO:** Yes and if you have information that you think  
20 that the board think – Mr Ngubane thinks differently, send it, I will print it out and I will arrange a three way meeting between yourself, myself and Dr Ngubane that would clear a lot of the problems in terms of communication. And Chairman, without fail, without fail and I certainly wish that we can go one by one with these emails and I can talk you

through why I thought at that point it is important to bring them to the Chairman.

We had a meeting – the way it works at that level is that the Chairman hardly uses his computer. You know, I am sure he does, I mean, he is a doctor, but most of the time, when you sent the documents to him the assistant cleaned them out and then arrange a meeting and then when you walk into the Chairman's office for the meeting you find the documents are already served.

10           Chair, I suspect we have a pre-briefing before you come in and this is a document Mr Koko want to discuss with you and then sometimes I would have discussed previously with her or I would then get back into the details with it.

So, without fail, these documents, after I have sent them to Businessman, found their way to a three way meeting between me, Dr Ngubane and Ms Daniels. If it turns out that somebody else, Mr Essa, owns the email address or use the email address it makes me angry.

20    **ADV SELEKA SC:** Sorry, what is the last word you said?

**MR KOKO:** It makes me angry.

**ADV SELEKA SC:** It makes you angry, okay.

**CHAIRPERSON:** Well, let me say, Mr Koko, to the extent that you may deem it necessary that we go through those emails one by one, that arrangement – that should be done

at some stage. So you just mentioned that you wish that could be done, so I am just saying ...[intervenes]

**MR KOKO:** I wish that could be done. But what is also important, Chair ...[intervenes]

**CHAIRPERSON:** If it is not done now, at some stage it must be done.

**MR KOKO:** Yes, ja.

**CHAIRPERSON:** So that you can deal with them properly.

**MR KOKO:** Yes, what makes me even more upset is  
10 having listened to the evidence before this Commission and having read - the legal team had the decency to give me the records of Ms Daniels' testimony. I mean, Ms Daniels says my legal team and OUTA did extensive research on the identity of the Businessman email address and it belongs to Mr Seleke.

On both occasions both at the disciplinary hearing and here, when it was put to her that but hang on, Mr Richard Seleke.

**CHAIRPERSON:** This one is Seleka.

20 **MR KOKO:** Ja, so Mr Seleke. It is not Mr Seleke, it is ...[intervenes]

**CHAIRPERSON:** Ja, Richard Seleke.

**MR KOKO:** It is not Mr Richard Seleke because Mr Seleke was not even in the employ of the department when you – this email was used. Her body language – she just became

stubborn and say but, I hear you, but you have not proven who this email belongs to and I have read the subject matter expert or the forensic expert that emailed the computers.

I mean, even though the heads of argument in the disciplinary hearing says we could not conclusively say it was Salim Essa, that is the message that comes out of the heads of argument in the disciplinary hearing. We did not conclude – we did not conclusively conclude that it is  
10 Salim Essa but we have relied on the attachments that were sent on that email and we can see that some of those documents were originated or active by Salim Essa and therefore, in all probabilities, it belongs to Salim Essa.

Chairman, it does not matter for me whether it is Salim Essa or not. It does not matter. What matters to me is that if that email address belongs to an external party then it is a serious security breach for me. That concerns me.

Salim Essais neither here nor there but whenever I  
20 communicated on this email address, I never had the intention or the impression that there is a third party that does not belong to Eskom that is having access of that email address.

**CHAIRPERSON:** Mr Seleka?

**ADV SELEKA SC:** Thank you, Chair. Ja, we have got

time limitations.

**CHAIRPERSON:** I am sorry, I think we need to take a very short break.

**ADV SELEKA SC:** Okay.

**CHAIRPERSON:** Ja, just ten minutes and then we will resume.

**ADV SELEKA SC:** Thank you, Chair.

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS**

10 **INQUIRY RESUMES**

**CHAIRPERSON:** Okay, let us continue.

**ADV SELEKA SC:** Thank you, Chairperson. Mr Koko, talking of the version of Dr Ngubane and Ms Suzanne Daniels, you would also recall that between the two of them the one says the email was given to me by the other, the email address and that the one said it is an email address that belongs to Richard Seleke of the DPE and vice versa.

20 So Dr Ngubane says that is the explanation from Ms Suzanne Daniels, Ms Suzanne Daniels says when he gave it to me, he gave me that explanation. Do you recall that as well, that evidence?

**MR KOKO:** Yes, I do, Chair.

**ADV SELEKA SC:** But I think when they came here, and particularly referring to Dr Ngubane, he had to concede

that that email could not belong to Mr Richard Seleke.

**MR KOKO:** I do not believe so too.

**ADV SELEKA SC:** Ms Suzanne Daniels has ...[intervenes]

**CHAIRPERSON:** What you have – the answer you have given I guess means you do not believe that it belonged to Mr Richard Seleke not that you do not believe ...[intervenes]

**MR KOKO:** I apologise.

**CHAIRPERSON:** Ja, that is what you mean.

10 **MR KOKO:** That is what I mean, that is what I mean.

**CHAIRPERSON:** Ja, okay.

**ADV SELEKA SC:** I thought I heard Mr Koko say I do believe that that is what he conceded.

**MR KOKO:** Certainly.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Well – no, I think he went beyond that. I think he said he also does not believe it belonged to Mr Richard Seleke.

**ADV SELEKA SC:** Oh, earlier. Earlier, he said...

20 **MR KOKO:** Yes.

**CHAIRPERSON:** Well, he is stating his position. I think his position is, that is Mr Koko, I also do not believe that it belonged to Mr Richard Seleke.

**MR KOKO:** I agree with what you have set out here and I am saying over and above that...

**ADV SELEKA SC:** Yes.

**MR KOKO:** I do not believe that it belongs to Mr Richard Seleke.

**ADV SELEKA SC:** Okay, yes.

**CHAIRPERSON:** Yes, ja.

**MR KOKO:** Purely based on the evidence.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Okay, yes. I do not know whether you have also looked – you are aware of the Fundudzi report  
10 because it goes into this email of Businessman info portal and how CVs were exchanged with this email address to the DPE and people should be appointed at this board and that board.

**MR KOKO:** Chairman, only to the extent that I have heard through this Commission.

**ADV SELEKA SC:** Okay.

**MR KOKO:** The Fundudzi report, I did not have sight of it because it had nothing to do with me and what I can confirm is that I listened to the evidence and I can confirm  
20 what Mr Seleka is saying.

**ADV SELEKA SC:** Yes, thank you. Then the other item which you testified about – Chair, I am moving on. I do not know whether you have questions on the emails?

**CHAIRPERSON:** Well, do you intend dealing with them more at some other stage in terms of the individual emails?

**ADV SELEKA SC:** Not really, I will have – well, there is one or two that I will go back to.

**CHAIRPERSON:** Ja. Well, maybe let me ask this question. You must just tell me, Mr Koko, if I understood your evidence correctly. I understood you to say you were given this email address, info portal, is that what...?

**MR KOKO:** Info portal.soho.1.

**CHAIRPERSON:** Yes, yes. Now I understood you to say you were given this email address when you came back –  
10 after you had come back from your suspension.

**MR KOKO:** That is correct.

**CHAIRPERSON:** And that the person who gave it to you was Ms Daniels. And what I did not understand quite clearly and I would like you to deal with that again, I seemed to understand that she was saying to you here is an email address that you and I and Dr Ngubane can use but I did not understand use under what circumstances. So just tell me more about that conversation when she gave it to you.

20 **MR KOKO:** No, Chair, this is the email address that is used by the Chairman.

**CHAIRPERSON:** The Chairman.

**MR KOKO:** This is the Chairman's email address.

**CHAIRPERSON:** Yes, that is what she said to you.

**MR KOKO:** That is what she said.



**CHAIRPERSON:** yes.

**MR KOKO:** And, Chair, the Eskom security policy, information security is also given to me and the Commission has it. What did not make me uncomfortable is that without fail all board members used their private email addresses. I also used my private email address as far as when I was still at Duvha and that is typically triggered by the servers coming down, wara, wara. But it was not unusual, it was not something to raise my  
10 eyebrows because, I mean, you have got – I have seen, I have listened to this Commission, you referred to board emails left, right and centre. I do not have access of them but, I can assure you, almost most of them are on private email addresses.

So there was nothing that would make me suspicious because first, it is not un-procedural, the company policy does not prohibit it and the rest of the board members are using it. So I did not see anything wrong.

20 In fact, only when the Gupta emails saga blew then I started becoming very suspicious. In fact, worse things happened because after that my account was shut down by who because of suspicious activities on my yahoo email addresses. It was too much.

**CHAIRPERSON:** So was Ms Daniels effectively saying to

you – presenting this email address to you as one of the email addresses you can use to communicate with the Chairperson or as the only email address to use?

**MR KOKO:** No.

**CHAIRPERSON:** What was your understanding?

**MR KOKO:** No, the Chairman – the board members have got email addresses, they have email addresses. I have never sent Dr Ngubane and email address before I was suspended. I had no reason to interact with her. With him,  
10 my apologies.

When I came back, Ms Daniels was very clear, she did not say this is an email that a portal that hundred of us have got access to it, it was an email of Dr Ngubane. Whether it was an email of Dr Ngubane on the Eskom one or on a personal one, Ms Daniels has access to it, as the assistant. So again it was not a surprise that I will send it to it and printed it. My plea has the same as well. In fact I saw one of the – some of the emails. I am sure Mr Seleka will go to it. My PA sent it to somebody else on behalf of  
20 Mr Koko. So you do have that. It is common within Eskom.

**CHAIRPERSON:** Now there is something that seems unusual with regard to the use of this email address by I think – Mr Seleka will correct me if my recollection is wrong, by many, if not all the people, who seemed to have

used it. Namely, that there seems to be a conscious decision not reveal the identity of the person to whom the emails are addressed when this email address is used and on the emails to which Mr Seleka has drawn our attention, coming from you, I see that the same thing seems to happen, there seems to be no email where you address the person: Dear Chairman, Dear Dr Ngubane or anything like that.

Now it may well be that if it was just one person  
10 and we talk about three emails that one should not make much out of it but I just note that, if I am not mistaken, almost everyone else who has used it, does not reveal the identity of the person they are sending the email to.

**MR KOKO:** Good question. Chairman, I worked for Mr Molefe for over two years. Anoj was also my senior, Mr Singh was also my senior. I invite your investigators to go and check my communications, you have them, you have imaged my computers. See how – what I communicate with Mr Molefe. I never said Mr Molefe. I never do that.

20 **CHAIRPERSON:** That is quite important because it might show that that is how you normally ...[intervenes]

**MR KOKO:** Ja, even today, I do not call Mr Molefe by his name.

**CHAIRPERSON:** Yes.

**MR KOKO:** Even today I do not call Dr Ngubane by his

name.

**CHAIRPERSON:** Yes. So but what – are you saying that your emails will not have Dear Chairperson, Dear CEO.

**MR KOKO:** No, no, well ...[intervenes]

**CHAIRPERSON:** Dear Dr Ngubane.

**MR KOKO:** Let me say no.

**CHAIRPERSON:** Ja.

**MR KOKO:** Let me say no. That may sound stupid to say no but I am simply saying you will find by and large, if not  
10 most of them, I will either say Boss, Chief or Legoa. That is how I address...

**CHAIRPERSON:** Well, that is fine because I think in that way you are identifying the person if you say Boss or whoever or whoever. You might only be using the salutation or the name that you used to relate to that person but at least it is there, you know? If it was Mr Brian – not Brian, Mr Abram Masango, maybe you would say Maki.

**MR KOKO:** Yes, exactly, exactly.

20 **CHAIRPERSON:** It is a way of addressing him.

**MR KOKO:** In fact that is how I addressed him even in writing.

**CHAIRPERSON:** Yes, yes. So, therefore, to the extent that in emails to other people such as maybe Dr Ngubane or Brian Molefe you might say Dear Boss or Hi Boss or

Dear Chairperson or whatever, that would not say to me that is the way you normally – that would not say you do not address the person because, as I see it, the three or four emails that Mr Seleka referred to, there is no salutation like Hi Chairperson or Dear So and So, it is silent as to who you are referring to.

**MR KOKO:** There is a reason for that. It is all of them, Chair.

**CHAIRPERSON:** Yes. So that is the part that I am saying  
10 – then I am saying you are not the only one, it seems that other people who were sending emails to the same email address, it seems that they were also not addressing the person in the normal way in terms of salutation, that there seems to be nothing, you know, to say who are sending this to.

**MR KOKO:** Chairman, I cannot talk about other people.

**CHAIRPERSON:** Of course, yes.

**MR KOKO:** I cannot talk about other people.

**CHAIRPERSON:** Of course, yes, yes, yes.

20 **MR KOKO:** In fact, the more I talk about other people using this email address I get worked up but the emails that I sent, so there is an email for example that says print this, that is because I knew that the recipient on that one would be Ms Daniels because I would have discussed it with her. It would be, Ms Daniels, we have not finished

this discussion previously, so let us finish off this discussion. There is a next board meeting coming, I do not want to get to that board meeting without having discussed this because then I am – it happens, Chairman, and all of them, without fail, all of them without fail, these are the emails where I think I have a serious disagreement with the Chairman. All of them and I do not want to have a – that disagreement playing in the public.

**CHAIRPERSON:** Ja.

- 10 **MR KOKO:** The Chairman – the discussion will be there in the board and I will say my say but the Chairperson will know it is coming and he will not fully disrespect it and he will take it in good spirit.

I mean, let me give you an example. The email that bans Eskom from advertising on City Press, Sunday Times and Mail and Guardian, that is a resolution of the board. The person to give effect to that, it is the group executive commercial. Who is that? That is me.

- 20 But I know that it is irregular. It is irregular. The Eskom procurement procedure which I was a custodian of says if you think the supplier has committed a misconduct, you do not just suspend him. There is a process you take the supplier through and the outcome is to stop using him, it goes through a process.

But now I come in, there is a resolution of the

board, Suzanne gives me a letter from – addressed to the minister. Said but, Suzanne, I cannot give effect to this. I cannot. And, for the record, Chair – and I listed to the evidence of Dr Ngubane, that letter, that resolution was never implemented.

**CHAIRPERSON:** Was never?

**MR KOKO:** Implemented.

**CHAIRPERSON:** Yes.

**MR KOKO:** Certainly at Eskom precisely because of the  
10 discussion that I had with Dr Ngubane and Ms Daniels and  
he - once I talked to the [indistinct 16.40] Chairman, I am  
not going to break the rules, of course I am polite and Dr  
Ngubane is an adult and he is a better version of Mr Tsotsi  
and he listened. He listened.

But this is why I have a preference, God willing,  
that we take every single email, every single attachment  
and say did you have cause to serve it to Dr Ngubane?  
And what was that cause?

**CHAIRPERSON:** Ja. Okay, I think that will need to be  
20 done next time. I think it is important.

**ADV SELEKA SC:** Yes, Chair.

**CHAIRPERSON:** That it be dealt with firstly because Mr  
Koko wants to show by way of dealing with each email that  
as far as he was concerned he was communicating with Dr  
Ngubane but also I think it is important for establishing

exactly what the position was.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So next time when he is back just remember that we deal with that.

**ADV SELEKA SC:** Yes, Chair.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Yes, Chair, because we will also have to get the version of Dr Ngubane and Ms Daniels on that explanation.

10 **CHAIRPERSON:** Ja, okay. You said you were about to move to something else, is that the case?

**ADV SELEKA SC:** Ja, it is my – one of the points – yes, I was about to move to one of the other points.

**CHAIRPERSON:** Connected with emails or not with emails?

**ADV SELEKA SC:** Connected with my tidying up of the versions Mr Koko testified about last time.

**CHAIRPERSON:** Okay, I just want to mention this to Mr Koko for you to comment. It has got nothing to do with the  
20 emails. You remember that in your evidence you said and you have repeated today that you believe that your suspension was – I do not know if orchestrated is the right word – orchestrated or instigated by Mr Tsotsi. Do you remember that?

**MR KOKO:** That is correct.



**CHAIRPERSON:** Yes. I recently had reason to look at the executive of Mr Linnell and I saw that he said in his evidence at the Durban meeting of the 8 March where Mr Tsotsi was the and Ms Dudu Menyi was there, he says that when the issue of the suspensions of the executives of Eskom was raised, Mr Tsotsi's initial position was to oppose the whole notion of the suspension of executives and, of course, what that would mean, is that to the extent that what was being discussed at that time included your  
10 own suspension.

It would seem, according to Mr Linnell, that Mr Tsotsi's initial position was to oppose the entire suspension of the executives. So I just thought it is important to mention that you might or you might not wish to comment about it.

**MR KOKO:** Most certainly I would want to comment, Chair.

**CHAIRPERSON:** Yes, ja.

**MR KOKO:** I testified the last time I was here that Mr  
20 Linnell's version is that actually the idea of the suspension of the executives was his.

**CHAIRPERSON:** Yes, you said that, ja.

**MR KOKO:** It was not the President's or Ms Dudu Myeni.

**CHAIRPERSON:** Yes.

**MR KOKO:** Mr Linnell says once I was appraised about

the purpose of the investigation – I think that was the meeting of the 6<sup>th</sup> at the presidential guesthouse, the meeting before the 8<sup>th</sup>, I then suggested to Ms Myeni that you cannot do this investigation or this type of investigation and still have the executives in their jobs. That was the version of Mr Linnell. He then says we met at ...[intervenes]

**CHAIRPERSON:** The Durban official residence of the president.

10 **MR KOKO:** Yes. And they then discussed the areas of investigation with the clear understanding that the responsible executives of those areas would then be suspended and then he then says, after the meeting, because of the none of the people in those meetings knew Eskom. That is his version. So Mr Tsotsi is the one who emailed him the names of the people to be suspended and my name was one of the three.

20 My submission to you was that the reasons put forward by Mr Tsotsi to include commercial and used the gas, the OCTGs, conversion of OCTGs from base load – from peaking to base load based on the letter written by a certain Mr Jabu Maswanganyi, the sabotage letter that forced commercial to be included and using – pretending that I am responsible for generation when I am not was the work of Mr Tsotsi and he knew why he was doing it, he was

hitting two stones with one stone. He was taking – he was opportunistically taking advantage of the situation that he did not create but he found himself into.

**CHAIRPERSON:** Well, two things. As I understand the position, that you would be suspended, you were one of the executives to be suspended ...[intervenes]

**MR KOKO:** One of the three.

**CHAIRPERSON:** One of three.

**MR KOKO:** Yes. One of three, yes.

10 **CHAIRPERSON:** To be suspended, on my understanding of Mr Linnell's evidence was already contemplated initially ...[intervenes]

**MR KOKO:** On the 6<sup>th</sup> even.

**CHAIRPERSON:** Ja or maybe on the 6<sup>th</sup>, I might not be sure, but certainly at the start of the discussion on suspensions at the meeting of the 8<sup>th</sup>. Your portfolio was one of the three mentioned.

20 Now, for me, the importance of that in relation to your suggestion that Mr Tsotsi was behind your inclusion among those to be suspended is that even before Mr Tsotsi could say anything, it would appear that you were one of the three that were contemplated to be suspended and if that is factually true, what does it do to your suggestion that you only got included among the executives to be suspended because Mr Tsotsi was pursuing his agenda

about you.

**MR KOKO:** Chairman, let us take the affidavit of Mr Nick Linnell further. The affidavit of Nick Linnell says Mr Koko was going to be suspended because he slept with somebody under the garage or one of the parking lot and Mr Marokane is to be suspended because he erased the recordings.

**CHAIRPERSON:** Ja.

**MR KOKO:** And Mr Matona is to be suspended because  
10 he protected both of them. No one outside Eskom would create such a story other than Mr Tsotsi.

**CHAIRPERSON:** Now ...[intervenes]

**MR KOKO:** And that is the evidence of Mr Linnell.

**CHAIRPERSON:** Yes. Now I do not remember whether to the extent that Mr Linnell says that – he says that in relation to the meeting of the 8<sup>th</sup> or he says that in relation to the discussions at the board on the 11<sup>th</sup>.

**MR KOKO:** Mr Linnell goes further, Chair.

**CHAIRPERSON:** Yes, but what I am telling you that I  
20 remember quite well because I saw it recently in his evidence, Mr Linnell, is that he says Mr Tsotsi's initial position on suspensions at the meeting of the 8<sup>th</sup> was to oppose the suspensions and we know that he says that the suspensions that they were talking about related to three portfolios, which included your portfolio. So I am saying to

you at least at that point, maybe later that might be different, at that point if that evidence of Mr Linnell is correct, Mr Tsotsi does not appear to act in a manner that shows some vendetta against you. He is opposed even to your own suspension at that time. Maybe later on it changes but at that time, I just want us to – I want to see what you have to say about the proposition that if Mr Linnell's evidence is correct, that initially, at the meeting of the 8 March, Mr Tsotsi was opposed to the suspension of  
10 the executives that at that stage at least he might not have had an agenda to have you suspended.

**MR KOKO:** Chairman, the difficulty I have – the difficulty I have with that evidence is that I am saying to you Malesela Sekhasimbe, Mr Sekhasimbe is central to my reason of suspension. And guess what? Then the reasons for the suspension, by Mr Linnell, has that. I have no contact with Mr Linnell. I have no contact with the people who were in that meeting. But why do we have a same view about Malesela Sekhasimbe? Mr Koko must be  
20 suspended because he wants to – Mr Koko must be suspended, and I am trying to quote it now, because he is causing bad blood between the board and Mr Tsotsi because of the Sumitomo matter and Malesela matter. Where would that come from? It is written by Mr Linnell.

And, by the way, Mr Linnell says at no stage did the

Guptas get involved into the suspensions but where would Mr – where did Mr Linnell get the story of Mr Sekhasimbe? He can only get it from Mr Tsotsi.

**CHAIRPERSON:** You see, it may well be that at certain stage – and we can look at what stage that may have been – it may well be that at a certain stage Mr Tsotsi did give Mr Linnell that information and it may well be that Mr Tsotsi at a certain stage did adopt the attitude that, after all, it would not be a bad thing for you to be suspended because  
10 of the reasons that you give.

But what I am saying to you – and we will stop here because I think you – I have put it to you, you have said what you have to say, is it would seem that at least initially when Mr Tsotsi heard about the suspensions he may not have at that stage wanted you to do that, maybe later on he changed his mind. What is your final comment on that?

**MR KOKO:** Chairman I agree on one thing, that Mr Tsotsi did not, it was not Mr Tsotsi's idea to suspend all the executives, because we now know it is an idea of Mr  
20 Linnell, one. Two, I would buy in to your story if the reasons later that were put forward by Mr Linnell of my suspension did not include Mr Sekhasimbi. The fact that it includes Mr Sekhasimbi, what I relayed to him later or not makes me firmly convinced that Mr Tsotsi either – and it is possible that he may – first I concede that he did not come

to suspend people there, because that is the work – Mr Linnell says it is my idea.

But I am saying, given how Mr Tsotsi felt about me he used that opportunity to throw my name into the hat, that is why down the line the reasons for my suspension included Mr Sekhasimbi, but there is something more than that, that really I need you to consider.

If I was part of the plan to suspend the four executives so that I can come back why would I be accused  
10 of sabotage? Because once I play for your team, and you accuse me of sabotage you write me off, one. Two, when I addressed the meeting of the people in governance in the evening that suspended me and I pushed back on why I should not be suspended and gave reasons because allegedly we are playing for the same team the Board would have used that opportunity to say but leave this guy let him come back because his part of us and he is giving us a reason to bring him back and we would bring him back.

20 But thirdly when if I am part of a team and you employ teams to come and investigate me and Denton's comes up with allegedly demining allegations against me but I am part of your team surely if Denton – according to the version that Mr Seleka always put was part of the scheme you know Denton is part of the scheme that they

brought in to go through emotions and clear.

They would have said to Denton this guy is our man you cannot have findings about our man that will make it impossible for us to bring him back. In fact, to the contrary you must clean him up but we know based on the version of Ms Daniels however true it is I think she lies but if we carry on with her version they came with recommendations that was so damning that the Board had to take the report and clear it and hide it, it just does not  
10 make sense.

**CHAIRPERSON:** Well of course if the version is true that Denton's came with damning findings against you for example and they were that draft was buried as it were on would say that could only happen if the Board was part of the whole plan and the Board did not want to have something that would force them to fire you. Is it not?

**MR KOKO:** No in this – Chair my weakness is that I am an engineer that is a weakness. In today's time first to go and check the transcripts of Ms Daniels she says that the  
20 document was sent to me by email so you can trace it.

**CHAIRPERSON:** Ja.

**MR KOKO:** So we do not need to – and this is why Chair I am aggrieved that we cannot get telephone records, I mean if I say Mr Koko was at Melrose Arch and he makes a...[intervene]



**CHAIRPERSON:** No, no you will get telephone records that...[intervene]

**MR KOKO:** I apologies for going back.

**CHAIRPERSON:** Ja but also other checking of those things would happen, ja.

**MR KOKO:** I am simply saying Chair all what you need is what they have done it to me Chair.

**CHAIRPERSON:** Ja.

**MR KOKO:** I know how they have harassed me, I am the  
10 single person in Eskom whose IT information has been  
checked up left and centre and I am simply saying if this  
report was sent by email why do they just not do to them  
but finally...[intervene]

**CHAIRPERSON:** No that must be checked.

**MR KOKO:** Denton says finally; Denton says we have never done that.

**CHAIRPERSON:** Ja, let me go back to what you said  
about Mr Linnell you said that he testified that the idea of  
suspensions came from him and I think last time you said  
20 the same thing and Mr Seleka seems to have agreed with  
you.

**ADV SELEKA SC:** Correct.

**CHAIRPERSON:** Now I just want to say in the parts that I recently looked at of the transcript of his evidence what I came across is not evidence where he says that.

But what I came across is where he says and he has asked the question and I may have been the person who asked him is he says as far as this meeting of the 6<sup>th</sup> of March his meeting with Ms Myeni is concerned he says he is not sure whether the issue of suspensions came from Ms Myeni or from him. But what he does say is because of the way he works it may have come from him because he would not do this kind of investigation while the executives remained. So I am just mentioning that because it is  
10 important that if we attribute evidence to him we try as far as possible that we do so accurately.

It may well be that later on and it is a part that I am not reached of his evidence, it may well be that he is as categorical as both of you say he was. So if that is so I would like to get to that point.

**MR KOKO:** Chair let me tell you what I remember him saying. I do not remember him saying suspend executives in fact I do not think he said that.

**ADV SELEKA SC:** Yes.

20 **MR KOKO:** I do not think he said that, what I remember him saying is that in his experience of doing such work this type of enquiry when it is done cannot be done with the heads of the department in place that is what his done.

**CHAIRPERSON:** Okay no, no to the extent that that is what you say that is consistent what I have read as well.

**MR KOKO:** Yes, Chair I think I have clarified that.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay no that is fine Mr Seleka are you amending your own recollection or not?

**ADV SELEKA SC:** No I was in agreement with Mr Koko in so far as he has now clarified it Chair.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** It is as far as it is consistent with your  
10 explanation now that is exactly what Mr Linnell said so I know that is correct.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** So I know Mr Koko might have paraphrased but now he has clarified.

**CHAIRPERSON:** Ja know that is – the difference is quite important.

**ADV SELEKA SC:** Correct, it is.

**CHAIRPERSON:** Ja, okay alright.

**ADV SELEKA SC:** No, it definitely is.

20 **CHAIRPERSON:** You may continue.

**ADV SELEKA SC:** Yes, the other thing Mr Koko which I do not remember is that Mr Linnell would have mentioned that one of the reasons crafted for your suspension had to do with Sekhasimbi.

**MR KOKO:** Chair there is an eighth memo.

**ADV SELEKA SC:** I am saying that I do not remember that so.

**MR KOKO:** Chair there is an eighth memo. Now Chairman remember I am the affected party.

**CHAIRPERSON:** Pay more attention.

**MR KOKO:** I would pay more attention.

**CHAIRPERSON:** Yes.

**MR KOKO:** Go and read the eighth memo it is clear in black and white.

10 **CHAIRPERSON:** Ja, okay.

**ADV SELEKA SC:** I will also Chair as you can see I am doing in regard to the other ones.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Chair there was just one thing I know we will come back to the emails in due course but you were explaining something that I could not get clearly. So the email address of the portal you say it is given to you by Ms Daniels.

**MR KOKO:** That is correct Chair.

20 **ADV SELEKA SC:** So when you send the emails like this, like print this the is no dear so or hi Suzanne or Dr Ngubane. Who do you say your communicating with?

**MR KOKO:** Chair on that score I knew that the recipient on that specific topic would have been Suzanne. So I am saying being this bring it to the meeting with the Chair.

**ADV SELEKA SC:** No but it does not have that last part bring it to the attention of the Chair.

**MR KOKO:** No I am explaining, I am giving the context, the context is everything, print this print this for what.

**CHAIRPERSON:** Okay let just get that right. Are you saying when you send emails to this email address you were s far as you were concerned communicating with Dr Ngubane?

**MR KOKO:** Correct.

10 **CHAIRPERSON:** And Ms Daniels might just be the conduit in the sense that she might open the emails and then print it and then give it to Dr Ngubane.

**MR KOKO:** Correct.

**CHAIRPERSON:** But you are saying from your side the addressee even though you might not have identified it was Dr Ngubane.

**MR KOKO:** Correct.

**CHAIRPERSON:** Okay.

20 **ADV SELEKA SC:** Okay so all of them all of these emails ja, and I am trying to understand is that all of these emails are sent to Dr Ngubane...[intervene]

**MR KOKO:** Correct.

**ADV SELEKA SC:** ...but they will be opened by Ms Daniels.

**MR KOKO:** Correct in fact ja, the Chairman has two

executives who was his assistants but on this email by and large without fail it was Suzanne.

**CHAIRPERSON:** Yes, okay.

**ADV SELEKA SC:** Now on that note if you go to page 1087 Eskom Bundle 18.

**CHAIRPERSON:** I am sorry before you go there Ms Daniels would not have been Dr Ngubane's PA there would have been a PA for Dr Ngubane, is that correct?

**MR KOKO:** Yes, so what happens is that after a certain  
10 stage and I do not want to mention the date but it was as I suspect if I recall around August she was promoted to the company secretary.

**CHAIRPERSON:** Ja, okay and then being company secretary did that place her in the Chairperson's office or not necessarily?

**MR KOKO:** It placed her in the Chairpersons office.

**CHAIRPERSON:** Oh okay, alright Mr Seleka.

**ADV SELEKA SC:** Yes, I was saying on that explanation Mr Koko if you go to page 1087 Eskom Bundle 18, you see  
20 – you there? 1087, no 1087 Eskom Bundle 18.

**MR KOKO:** 1090?

**CHAIRPERSON:** Black numbers.

**MR KOKO:** Ja, the black numbers.

**ADV SELEKA SC:** The black numbers.

**MR KOKO:** Okay, yes.

**ADV SELEKA SC:** The email of the 10<sup>th</sup> of December comes from Businessman it goes to you.

**MR KOKO:** Yes.

**ADV SELEKA SC:** You forward that email to Suzanne Daniels.

**MR KOKO:** Yes.

**ADV SELEKA SC:** So how should we understand this?

**MR KOKO:** Yes, so if you look at the timing it is 7:31, if you go to my telephone records I have not given you my  
10 telephone records for December I am happy to give them to you.

**ADV SELEKA SC:** You may give them.

**MR KOKO:** I am saying I have not given you my telephone records of December but I am happy to give them to you.

**ADV SELEKA SC:** You are happy to give them, okay.

**MR KOKO:** Based on what I am going to make.

**ADV SELEKA SC:** Yes.

**MR KOKO:** Around five minutes before this I phoned  
20 Suzanne and she also said when you confronted her with this she says she thinks I called her.

**ADV SELEKA SC:** She said what?

**MR KOKO:** She said...[intervene]

**CHAIRPERSON:** I am sorry, I am sorry.

**MR KOKO:** She thinks I called her.

**CHAIRPERSON:** You called her?

**MR KOKO:** Ja, that is what she says.

**CHAIRPERSON:** Okay but I have missed something just go back to the beginning of your answer.

**MR KOKO:** Oh I am saying if you look at the timing its...[intervene]

**CHAIRPERSON:** Ja, 7:31.

**MR KOKO:** It is 7:31 in the morning, about twenty-five past, five minutes before this round about twenty-five past  
10 I phoned Suzanne and I said Suzanne I have received an email that comes from the Chairman it relates to the prepayment I am forwarding it to you because you are dealing with the prepayment.

I have not looked at it in details, look at it in detail and advise me on how to proceed because I know you are dealing with it. I forwarded it back to the email of Chairman where it comes to, of the normal email please discuss it with the Chairman because I do not understand what is it all about. And Chair I must tell you that I had not  
20 read it in detail but when I looked it is a prepayment and it is what Suzanne is dealing with it I sent it back to her. I say Suzanne please discuss with the Chairman what she sent me because I do not understand what is it, what the detail would be you know better.

And the reason I did not understand because I took



the transaction up to the approval stage but the giving effect of it was with Anoj, Mr Singh. That is the only reason why this was sent to Suzanne.

**ADV SELEKA SC:** Yes, but the email is not about the prepayment it is about the guarantee.

**MR KOKO:** That is what I am taking about.

**ADV SELEKA SC:** And the Chairperson was here who testified he knew nothing about this guarantee it was something they came to learn that it was done by Mr Anoj  
10 Singh and it did not even come to the Board. As far as they knew they had made a resolution for a prepayment on the 9<sup>th</sup> of December the day before this email is exchanged.

**MR KOKO:** And I must tell you why the Chairman would say that, understand why the chairman will say that preferably and the reason why I understand the Chairman would say that preferably is because I put together the submission to the Board and my affidavit tells you that I also did not know about the guarantee. So I am not  
20 surprised that the Chairman does not know about the guarantee. I was the recipient of this email but I still do not know about the guarantee.

**CHAIRPERSON:** Well from my point of view it seems awkward that the Chairman would send you an email dealing with these types of issues that are mentioned here

simply because I think that these would be matters that would be dealt with by the executives and the potential suppliers or suppliers and then the Board would be briefed at particular intervals but this email seems to be of somebody who is very involved in the actual contracts or terms of the contract.

**MR KOKO:** I agree with you; I agree with you Chairman.

**CHAIRPERSON:** So then what, the question that arises in my mind is that why this would not have made you say but  
10 the Chairman cannot be talking about this thing what is going on. Who is this Businessman because the Chairman cannot be talking...[intervene]

**MR KOKO:** Chairman I knew who is the Businessman.

**CHAIRPERSON:** Yes.

**MR KOKO:** It was the Chairman.

**CHAIRPERSON:** Yes, but that is the point namely how can the Chairman be talking about these things. In other words, you begin to say but why maybe you would seek an explanation because this is not the type of issues that you  
20 would expect the Chairperson to be involved in.

**MR KOKO:** Chairman now your reasoning makes sense but I did not have the reason to do that at that point in time, I did not and that is why I sent it to Suzanne I say come back to me let me know. In fact, later in the afternoon we met for lunch and I asked her did you receive

the Chairman's emails and she said yes and is aid is there anything that I should worry about, should I be worried about anything she said do not worry I am handling it.

And let me tell you my fault if any in many of these transactions is probably because I trusted to much, that is my fault. I think I should probably have said but Suzanne are you sure this is the Chairman I did not do it, if I am guilty maybe I am guilty of that.

**CHAIRPERSON:** So you gave email, this is the email you  
10 gave to Ms Daniels?

**MR KOKO:** Correct.

**CHAIRPERSON:** Ja, and you said, you say you had not read it, you had a glance.

**MR KOKO:** I had a glance of it.

**CHAIRPERSON:** Ja.

**MR KOKO:** And for me it was very clear that it has to do with the transaction that I started.

**CHAIRPERSON:** Ja.

**MR KOKO:** That I have delegated to Suzanne to finish off  
20 that the Board resolved that Mr Singh was finalised. So I said to Suzanne that the transaction that I have asked you to conclude this email relates to it and it comes from the Chair. So I cannot ignore an email from the Chair, I cannot others I ignore others but this one I cannot please look at it, action it let me know if we should go and see the

Chairman and when I met her later in the canteen I asked are you auctioning it and she says it is fine do not worry about it then I left it at that.

**CHAIRPERSON:** Is that where it ended or the whole thing was pursued later in terms of these items?

**MR KOKO:** Well that is where it ended but I have later now having listened to the evidence of Mr Seleka that the whole paragraph was inserted verbatim in the guarantee agreement but that I only know now.

10 **CHAIRPERSON:** Mr Seleka.

**ADV SELEKA SC:** Yes, Chair you see Mr Koko the way I recall Ms Daniels testimony in regard to her not being able to recall whether or not you called her it was about the next step that she took because I was asking her when you forwarded this email to her what were you expecting her to do with it.

20 What did you tell her to do with it, what was her recollection and she could not recall whether or not you telephoned her but the next step was that the contents of this very email as you have pointed out to the Chairperson they find their way into an email that went to CDH for instructions for them to draft an agreement and it is as I recall on that day. They draft an underlying agreement and they send it back which on the face of it, it suggest that that was the instruction that she had received from you to

instruct CDH to prepare that document for the purposes of pursuing the guarantee.

Two, it is precisely strange that you started a process that deal with a prepayment. You have a Board decide on the 9<sup>th</sup> because you started this thing on the 8<sup>th</sup> maybe a little bit before that but the submission is dated the 8<sup>th</sup>. The Board makes a decision on the 9<sup>th</sup> you get this email that now talks about of the guarantee of the same amount that was in you submission 1.68 billion that is why  
10 the Chairperson is asking.

But would you not say this is strange the Chairman of the Board was part of the decision making for a prepayment for cash. Why is he sending me an email about a guarantee, is this the Chairman?

**MR KOKO:** Ja, Chair two things I will testify here that there is absolutely nothing with the transaction of the 1.6 prepayment. In fact, it was the only alternative available to Eskom. Now Chair I have listened to the testimony of Ms Nteta and I am glad I have the privilege to be here.

20 **ADV SELEKA SC:** Chair if I may sorry if I may because I will come back to that issue...[intervene]

**MR KOKO:** Okay let me answer it directly.

**ADV SELEKA SC:** Yes.

**MR KOKO:** Okay let me answer it directly. I at that point saw absolutely nothing wrong. In fact, the prepayment was

very topical on that day. So when I received the email for me in that floor everybody should be talking about this because it was the single most important thing happening at Eskom on that day if anybody was focusing on something else then he should not have been at Eskom.

**ADV SELEKA SC:** But it would be those who know about it.

**MR KOKO:** I beg your pardon.

**ADV SELEKA SC:** It would be those who know about it  
10 who will talk about it.

**MR KOKO:** Chair if anybody at Eskom was not focusing on this problem on that day then he should not have been at Eskom. The 1.6 the prepayment at Eskom on that day on that week was the single most important part and that is why I want to say to you, you must judge me going forward.

You must judge me on Eskom memorandum of incorporation, you must judge me on Eskom delegations of authority, you must judge me on the compliance of Eskom directive, you must judge me on Eskom compliance of  
20 Eskom procedures and most of all having complied with that you must judge me on whether my decisions have been prudent or not, not whether somebody said this or that.

**CHAIRPERSON:** Yes.

**MR KOKO:** So I have no issue, when I received the email

from the Chairman dealing with the topic that I thought is very important I immediately reacted to it and sent it to Suzanne and I said please look at this it relates to that important topic I have sent you. If you need us to go and see the Chairman let me know.

**CHAIRPERSON:** Yes, well I wanted to say other people at Eskom there would have been other people at Eskom who have no role to play to – in regard in the prepayment and therefore they would they would not have to talk about it.

10 **MR KOKO:** Most of the time, I am just trying to.

**CHAIRPERSON:** No we do not have to take it further I know that you mean it literally.

**MR KOKO:** Yes, you have had two witnesses here Chairman, you have had two witnesses here. You have had witnesses who say it is fashionable to disown the right things that we have done so that we can be liked by the Deputy Chief Justice and by relevant people out there.

20 So we have had a lot of witness I mean I sit here and listen to Suzanne trying to disown the right thing and she looks stupid because she's trying to disown the correct thing. I will make a submission here to you Chair that every single signature on the document before you even though the document was prepared by somebody else I own the decision; it is my decision. I am never going to disown my decision. I am never going to say I signed this

because Mr Molefe said this.

**CHAIRPERSON:** Ja, know it is very important Mr Koko that all of us stand by what we believe to be true and right and so not move or change. If you had made a decision you believe it is correct you stand by that decision the fact that somebody else might think that you were wrong is neither here nor there but from your side if you think the decision was right and you still think it was right you stand by it.

10           Of course if having reflected or having heard what other people say about the decision you think you may have been wrong it is also a good thing to say at that time I thought it was right but I have listened to what so and so has said and I am able to say I think I may have been wrong I think he may be right; she may be right.

So in the end...[intervene]

**MR KOKO:** Most certainly.

**CHAIRPERSON:** Ja that is the right thing to do.

**MR KOKO:** Most certainly.

20   **CHAIRPERSON:** But not to say something is wrong when it is right or it is right when it is wrong. I see we have just gone half past six.

**ADV SELEKA SC:** I just saw that as well Chairperson.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** And...[intervene]



**CHAIRPERSON:** Did you have one or two questions to finalise or should we just adjourn now?

**ADV SELEKA SC:** Let me tidy up the last testimonies then when we come back the next time we could go straight into the transactions. I have just two more, Mr Koko there is another one but I have not given you the bundle so I will ask you when you have that bundle. The other one is this that your version both in the affidavit and orally and I see it is repeated in the letter Chair which I have handed up to you  
10 – the letter dated the 3<sup>rd</sup>. Is that Mr Matona telephone to you over the weekend prior to your suspension and he would have spoken with you again about the Sumi Tomo matter? Chairperson on that letter that I handed up that is paragraph 20 of that letter. I will just read it out. That is the letter from Mr Koko's attorneys. Paragraph 20 says:

20 “Mr Koko avers that he had a telephone conversation with Mr Matona on Sunday 8 March 2015 during which Mr Matona informed him that he had been instructed by Mr Tsotsi that Mr Sekhasimbi had to be unsuspending.”

Now I have noticed that this version is not the same as you gave the Parliamentary Portfolio Committee. Do you remember that?

**MR KOKO:** Chair no I gave the same – I gave the same

version.

**ADV SELEKA SC:** You gave the same version. Okay. Well because you are a man of remarkable memory. Bundle 15B.

**MR KOKO:** Can I put this away?

**ADV SELEKA SC:** 15B Just push it to the side.

**CHAIRPERSON:** Well I just want to say something in – with respect to what is written in paragraph 20 of the letter.

**ADV SELEKA SC:** Yes Chair.

**CHAIRPERSON:** Namely it would a straightforward matter  
10 for the commission's investigators to establish whether a  
telephone conversation as Mr Koko alleges took place on 8  
March 2015.

1. I do not know whether the investigators have checked  
that and what they found if they did but I do know that I  
have been told that telephone records I think for seven  
some of the service providers whether it is Vodacom or  
MTN or whatever I am not sure do not keep records  
beyond three years or beyond five years.

**ADV SELEKA SC:** Ja they keep ...

20 **CHAIRPERSON:** Now but I know that what I have been told  
is that where for example the Public Protector had obtained  
certain records during her investigation – certain records  
those are available. So I am just mentioning to you what I  
have been told.

**MR KOKO:** But Chair I gave the commission my telephone

records. I have nothing to hide. Twelve minutes – 12.3 minutes.

**CHAIRPERSON:** Ja.

**MR KOKO:** On the 8<sup>th</sup>.

**CHAIRPERSON:** Ja.

**MR KOKO:** That was how long the discussion Mr Matona and I had on the 8<sup>th</sup>.

**CHAIRPERSON:** Yes. Yes. No, no what I am saying is you – your attorneys say in that paragraph it would be an easy  
10 thing for the commission to obtain the records of that telephone conversation on the 8 March 2015.

**MR KOKO:** But I have done it for you and I have given it to you.

**CHAIRPERSON:** Well if you have given us that that is fine but I am just saying.

**MR KOKO:** Ja.

**CHAIRPERSON:** From what I have been told it might not be so easy if you are talking about something that happened more than three years ago or five years ago.

20 **MR KOKO:** Chairman I have nothing to hide. I may have made a mistake or two that is why I give you my telephone records.

**CHAIRPERSON:** Ja.

**MR KOKO:** I said Mr Matona called me. I called Mr Matona.

**CHAIRPERSON:** Ja.

**MR KOKO:** On the 7<sup>th</sup> and on the 8<sup>th</sup>.

**CHAIRPERSON:** Ja.

**MR KOKO:** I have highlighted those calls on my telephone records.

**CHAIRPERSON:** Yes.

**MR KOKO:** And I have given them to you.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Yes we will

**CHAIRPERSON:** I have not seen them but I am – I take it  
10 that the legal team has got them.

**ADV SELEKA SC:** Ja we..

**MR KOKO:** I can check – it is 2015 so I would have anticipated this

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Chair I believe we have been given some documentation this morning. I have not looked at it.

**CHAIRPERSON:** Ja okay alright.

**ADV SELEKA SC:** But here it is. Chairperson I gave the page number 15B page 1082 Eskom Bundle 15.

20 **CHAIRPERSON:** Do I need to look at it?

**ADV SELEKA SC:** Yes I think it is important Chair.

**CHAIRPERSON:** Okay. Okay.

**ADV SELEKA SC:** It is very important. This is Mr Koko this will be the transcript of your testimony at the Parliamentary Portfolio Committee.

**CHAIRPERSON:** B I have got 18B.

**ADV SELEKA SC:** 15. 15B.

**CHAIRPERSON:** 15B?

**ADV SELEKA SC:** Yes.

**MR KOKO:** 15. Ja this is 15 the page?

**CHAIRPERSON:** What is the page?

**ADV SELEKA SC:** 1082.

**CHAIRPERSON:** 1082?

**ADV SELEKA SC:** Correct Chair.

10 **CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Yes. So this is a transcript from the Parliamentary Portfolio Committee. It starts on page 1047 but – but I just want to deal with the point here under consideration. At the bottom of the page I think Mr Koko here was being asked questions by Dr Layenge. And the question was:

“You alleged that or have an assumption or a belief that Mr Tsotsi suspended you for a reason that you know.”

20 What do you think the reason behind that suspension means if it was unjustifiable by Mr Tsotsi? Then shall leave all that Mr Koko has given an answer there. But let us go to the – to the last – from the bottom 1, 2, 3, 4 where he starts with the CEO. From the bottom 1, 2, 3, 4 the third – the fourth line.

“The CEO of Eskom came to me said Mr

Koko you are making a problem for me because I have an instruction from the Chairman that you must suspend Mr Sekhasimbi.”

Now you will see you say:

“He came to me or both of us are going to be suspended. I said but Chief I have kept you in the loop. You know why I did what I did. I will not do it.”

10 You said that was on Thursday. I mean Mr Matona himself has confirmed that he met with you in the office where you showed him that letter signed by Mr Tsotsi. So you say that was on Thursday. But here is the part.

“On Sunday I got a call from the Chief Executive’s assistant.”

Who is the Chief Executive? Is it still Mr Matona?

**MR KOKO:** No. The Chief – the assistant of the Chief Executive.

**ADV SELEKA SC:** No who is the Chief Executive?

20 **MR KOKO:** It is Mr Matona.

**ADV SELEKA SC:** That is Mr Matona.

**MR KOKO:** Yes.

**ADV SELEKA SC:** Okay who is his assistant – was his assistant?

**MR KOKO:** Mr Ndou.

**ADV SELEKA SC:** Ndou?

**MR KOKO:** Yes.

**ADV SELEKA SC:**

10 “So on Sunday I got a call from the Chief Executive’s assistant so I will say Mr Ndou he said what is happening? I believe that there is an urgent board meeting on Monday to suspend you and the Chief. I said I do not know but I heard something similar from the Chief. On Monday I walked into the office I went to the Chief. The PA said that the Chief was not there that he was at the board meeting. Mr Koko I think it is about you and the Chief. I left the office and that was when I called Ms Daniels. We were not suspended on Monday.”

20 So there is different from what you are saying here in your letter – the letter repeats your version in the affidavits the version that you have said all along at least here before us that it was Mr Matona who called you on Sunday 8 March 2015. But you told the Parliamentary Portfolio Committee that under oath by the way that it was the Chief’s assistant.

**MR KOKO:** No, no, no. Chair my affidavit is very clear and if you want to nit-pick that I used the wrong terminologies or whatever I think Mr Seleka is trying to – to make an honest

error of memory on my part to suggest that a credibility issue is wrong is completely wrong. When I say it was – there is two issues here that I think he trying to bring to our attention. Mr Matona came to me so you cannot come to you on the telephone. That is what he is trying to say. So – so he did not come to me. If fact the telephone records shows that I called – I made the call. I do not – remember on my telephone records I can only see the calls that I made. I cannot see the telecom records that I have received. I  
10 remember very well having a discussion with the assistant of the CE Mr Ndou I remember very well. I mean I know how he speaks. Chief was going on. So that happened. So I – I think Mr – and it is up to you to make the decision.

**CHAIRPERSON:** Yes.

**MR KOKO:** But I think Mr Seleka is making a mountain out of nothing.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Chair may I?

**CHAIRPERSON:** Let me say Mr Seleka and then – you can  
20 then deal with it or address it. I thought that the evidence that Mr Koko received a call from the CE’s assistant may not necessarily have meant that he did not have a telephone conversation with the Chief Executive – Mr Koko. Because he says here when speaking to the assistant I do not know but I heard something similar from the Chief which may



suggest that he had spoken to the Chief Executive. And the Chief Executive had already told him the same thing. But whether that discussion was on Sunday the 8<sup>th</sup> or earlier might be another issue.

**MR KOKO:** Well I have been talking to the Chief on the 7<sup>th</sup>.

**CHAIRPERSON:** Yes.

**MR KOKO:** The telephone records will show extensively.

**CHAIRPERSON:** Yes. Yes. So – so I think – but to the extent that Mr Koko has provided telephone records that  
10 show that he had a telephone conversation with Mr Matona on the 8<sup>th</sup> I am not sure whether if he has provided that you would be able to take the point any further at least until what you have heard what Mr Matona has to say about that ...

**MR KOKO:** My disappointment Chair is that Mr Matona denies it. That is the only disappointment.

**CHAIRPERSON:** Yes. But he...

**MR KOKO:** But there it is factual.

**CHAIRPERSON:** But he has not – I assume he has not been shown your telephone records so it may well be that when he  
20 is shown your – because he should be shown.

**ADV SELEKA SC:** No of course he should be shown Chair.

**CHAIRPERSON:** Yes. But we would like to hear what he has to say about that.

**ADV SELEKA SC:** Correct Chair.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** We will also have a look at the telephone records.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** But what I am doing Chair because I see Mr Koko [00:13:43] a particular idea on me or view. All I have done is to read what he testified. He came to me. He said that was on Thursday. And then he goes on to say:

“On Saturday I was called by the Chief Executive’s assistant.”

10 And he does not say the Chief Executive also called me on Saturday but he says:

“On Monday I went to his office and the PA said he is not there he is a meeting I believe it is about you.”

**MR KOKO:** But I also say I heard from the CE.

**CHAIRPERSON:** I am sorry but – yes you see you have to explore first his – what he was talking about when he said I heard something similar from the Chief.

**ADV SELEKA SC:** Yes and similar Chair.

20 **CHAIRPERSON:** But if for example whatever the position is if he has provided proof that there was a telephone conversation between himself and Mr Matona on the 8<sup>th</sup> I do not think – I am not sure that you can take this forward until you have heard fully from Mr Matona about ...

**ADV SELEKA SC:** Of course Chair.

**CHAIRPERSON:** About that ja.

**ADV SELEKA SC:** Of course I was just saying to him this is how he testified.

**CHAIRPERSON:** Ja because Mr Matona might say oh then maybe we did have the conversation and take it from there. You know. So – but it is important that that be investigated.

**ADV SELEKA SC:** Correct Chair. I agree.

**CHAIRPERSON:** I think we should...

**ADV SELEKA SC:** I think we should stop.

10 **CHAIRPERSON:** I think we should adjourn.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Ja. We are going to have to – we will have to try and make sure that the date – the date that I will fix be a clear day for Mr Koko.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So that we can try and finalise his evidence. We will – I will try and determine a date quite soon.

20 **ADV BARRIE SC:** We appreciate that Chair because prior dates of the meetings were not canvassed with us at all despite the fact that we at all times made it very, very clear that we will do our best in all circumstances to be where we are requested to be. But nevertheless simply notices were issued to Mr Koko without any prior consultation. We are heading into the fourth terms it makes life difficult. So we

would appreciate that courtesy. Obviously at some stage or another you know there has got to be a date and the final – final decision lies with you and my learned friend. But we did appreciate the – what you have put on record. Thank you Sir.

**CHAIRPERSON:** No, no, no we – my plan is that I will allocate a full day for Mr Koko so that as far as possible he can complete his evidence. Thank you to all of you for all your cooperation that we have been able to have an evening  
10 session. Okay and my Registrar please arrange for that meeting that I said I would like to have. Communicate with Mr Seleka, the Secretary and Mr Seleka will tell you who the other people should be that should be brought into that meeting – coordinate and make all arrangements. I would like to have that meeting before the end of this week. Okay. Thank you very much we are going to adjourn. We adjourn.

**ADV SELEKA SC:** Thank you Chair.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 13 JANUARY 2021**