

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

**10 FEBRUARY 2021**

**DAY 341**



**Gauteng Transcribers**  
**Recording & Transcriptions**

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 10 FEBRUARY 2021**

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

**ADV SELEKA SC:** Morning Chairperson.

**CHAIRPERSON:** It is ten o'clock we should start at ten o'clock.

**ADV SELEKA SC:** Yes Chair.

**CHAIRPERSON:** Whoever needs to go to wherever they must go before ten. Ten o'clock we must start. Okay let  
10 us start.

**ADV SELEKA SC:** Thank you Chair. Chairperson we have Dr Naidoo Pat Naidoo who will be the first witness today. Dr Pat Naidoo is ready to take the oath or affirmation Chairperson.

**CHAIRPERSON:** Please administer the oath or affirmation.

**REGISTRAR:** Mr Naidoo will you be taking the oath or the affirmation? Which one of the two will you be taking? The oath?

**DR NAIDOO:** Yes.

20 **ADV SELEKA SC:** The microphone is off.

**DR NAIDOO:** Oh sorry. Thank you.

**REGISTRAR:** Please state your full names for the record.

**DR NAIDOO:** Pathmanathan Naidoo.

**REGISTRAR:** Do you have any...

**CHAIRPERSON:** I am sorry. I am not sure that we can

hear you might have to take your mask off.

**DR NAIDOO**: Thank you Chair. I will take it off.

**CHAIRPERSON**: Ja. Okay.

**DR NAIDOO**: My full name for the record Pathmanathan Naidoo.

**REGISTRAR**: Do you have any objection to taking the prescribed oath?

**DR NAIDOO**: No Ma'am.

10 **REGISTRAR**: Do you consider the oath binding on your conscience?

**DR NAIDOO**: Yes Ma'am.

**REGISTRAR**: Do you solemnly swear that the evidence you will give will be the truth; the whole truth and nothing but the truth; if so please raise your right hand and say, so help me God.

**DR NAIDOO**: So help me God. Thank you.

**CHAIRPERSON**: Thank you; you may be seated Dr Naidoo.

**DR NAIDOO**: Thank you Chair.

20 **ADV SELEKA SC**: Thank you Chairperson. Chairperson Mr Naidoo will testify mainly on the transactions eish and will give the Chairperson a background in regard to his appointment on the board and the transaction is mainly the R1.6 billion submission that was made to the board in December 2015.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Thank you. Dr Naidoo thank you for assisting the commission.

**DR NAIDOO:** Thank you.

**ADV SELEKA SC:** Chairperson we will use Bundle – Eskom Bundle 16 Exhibit U36.

**CHAIRPERSON:** Thank you I have got it.

**ADV SELEKA SC:** You have it as well Dr Naidoo? Dr Naidoo has provided the commission with three affidavits  
10 Chairperson.

**CHAIRPERSON:** Huh-uh.

**ADV SELEKA SC:** The first of which is found on page 3 of the Eskom Bundle 16. Dr Naidoo we follow the black pagination on the left hand corner – top left hand corner.

**DR NAIDOO:** Top left.

**ADV SELEKA SC:** Yes. So that is the first one  
Chairperson.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** And I – once I have identified them  
20 Chair I will then ask leave to have them admitted.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** I will take them one by one. Dr Naidoo on page 3 I think you are now on page 4.

**DR NAIDOO:** Page 3 ja.

**ADV SELEKA SC:** Go back. Just go back. Ja.

**DR NAIDOO:** Page 3.

**ADV SELEKA SC:** Is that page 3?

**DR NAIDOO:** This is page 1 – but this page 3 on page 1.

**ADV SELEKA SC:** The – no. Right at the top.

**DR NAIDOO:** Use the left or right?

**ADV SELEKA SC:** Ja the left.

**DR NAIDOO:** The left.

**ADV SELEKA SC:** The black pagination.

**DR NAIDOO:** Eskom 16.3

10 **ADV SELEKA SC:** That is right.

**DR NAIDOO:** Right I have got it.

**ADV SELEKA SC:** Yes.

**DR NAIDOO:** Thank you.

**ADV SELEKA SC:** Forget for a moment the 003.

**DR NAIDOO:** Okay.

**ADV SELEKA SC:** Just concentrate on the number 3.

**DR NAIDOO:** Thank you.

**ADV SELEKA SC:** So that is the one affidavit of  
Pathmanathan Naidoo that affidavit goes until page 27 Dr

20 Naidoo.

**DR NAIDOO:** Yes.

**ADV SELEKA SC:** And there is a signature there by the  
deponent.

**DR NAIDOO:** Confirmed.

**ADV SELEKA SC:** Is that your signature?

**DR NAIDOO:** Yes Sir.

**ADV SELEKA SC:** On the 30<sup>th</sup> November 2020 the date is right next to the signature. Go back to the signature page which is page 27.

**DR NAIDOO:** Ja. 26, 27 got it.

**ADV SELEKA SC:** You confirm that?

**DR NAIDOO:** Confirm.

**ADV SELEKA SC:** Thank you Dr Naidoo. Chairperson I will beg leave to have this affidavit admitted as Exhibit  
10 U36.1.

**DR NAIDOO:** Okay I have got it.

**ADV SELEKA SC:** 36.1

**CHAIRPERSON:** The affidavit of Dr Pathmanathan Naidoo starting at page 3 will be admitted as Exhibit U36.1.

**ADV SELEKA SC:** Thank you. Then Dr Naidoo on page 28.

**DR NAIDOO:** Thank you.

**ADV SELEKA SC:** There is another affidavit it runs up to page 47.

20 **DR NAIDOO:** Correct I have got it.

**ADV SELEKA SC:** You see the signature there; you confirm that to be your signature?

**DR NAIDOO:** Yes Sir confirm it is my signature.

**ADV SELEKA SC:** The affidavit dated 6 October 2020.

**DR NAIDOO:** Confirmed.

**ADV SELEKA SC:** Thank you. Chairperson I beg leave to have this affidavit admitted as Exhibit U36.2.

**CHAIRPERSON:** The affidavit of Dr Pathmanathan Naidoo starting at page 38 is admitted as Exhibit U36.2.

**ADV SELEKA SC:** Thank you Chair. Lastly Dr Naidoo the affidavit on page 47.1.

**DR NAIDOO:** Correct.

**ADV SELEKA SC:** You see that?

**DR NAIDOO:** Correct.

10 **ADV SELEKA SC:** That affidavit ends on page 47.22.

**DR NAIDOO:** Correct.

**ADV SELEKA SC:** You confirm the signature there to be yours?

**DR NAIDOO:** Confirm.

**ADV SELEKA SC:** The affidavit is dated 7 September 2020.

**DR NAIDOO:** Correct.

**ADV SELEKA SC:** You confirm the contents thereof.

**DR NAIDOO:** Yes.

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

**DR NAIDOO:** Thank you.

**ADV SELEKA SC:** Chairperson I beg leave to have it admitted as Exhibit U36.3.

**CHAIRPERSON:** The affidavit of Dr Pathmanathan Naidoo starting at page 47.1 is admitted as Exhibit U36.3.



**ADV SELEKA SC:** Thank you Chair. Dr Naidoo the issues of suspensions have been extensively traversed before the commission. What we would like you to focus on if really on the issues of transactions which is the pre-payments decisions that were made by the board relative to either OCM Optimum or relative to Tegeta.

**DR NAIDOO:** Thank you.

**ADV SELEKA SC:** Yes. So just by way of introduction we have seen from your affidavit that you confirm your  
10 appointment of the board of Eskom in December 2014.

**DR NAIDOO:** Correct so.

**ADV SELEKA SC:** Yes. That – could you tell the Chairperson whether that was your first service on the board of Eskom? Were you – was that your first appointment to serve on the board of Eskom?

**DR NAIDOO:** Yes Sir that is the appointment to serve on the board of Eskom. Correct.

**ADV SELEKA SC:** And when as you speak yes face to the Chairperson. Had you sat on any other board before that?

20 **DR NAIDOO:** Yes Sir. Chairman my career with Eskom commenced in the – with the Electricity Supply Commission. This was in the early '80's and I concluded my career with Eskom in 2010 as an employee.

During that period I served on the boards as Eskom representative, on the board of Motraco the Mozambique

Transmission Company, on Wesco as the Western Power Corridor Company and I also served in the capacity as official on the Eskom Holdings board. Thank you Chair.

**ADV SELEKA SC:** Thank you Dr Naidoo. Dr Naidoo did you have any relations or interactions with your board members – any of your board members prior to your appointment on the Eskom board?

**DR NAIDOO:** Certainly not – no one.

**ADV SELEKA SC:** No one.

10 **DR NAIDOO:** No one.

**ADV SELEKA SC:** With Mr Salim Essa?

**DR NAIDOO:** No Sir. I do not even know the gentleman.

**ADV SELEKA SC:** You do not even know him. With any of the Gupta brothers?

**DR NAIDOO:** Yes Sir. Atul Gupta. Some – at almost two decades ago 2003 I was a member of the Eskom Delegation that accompanied then President Mbeki on his inaugural state visit to India.

20 In India Mr Atul Gupta International introduced himself to us as an investor in South Africa. He was in – coming to invest in ICT and he had then at that stage launched Sahara Computers. And he invited us the business delegation to come and have a factory visit – Sahara Computers in Midrand.

When we returned to South Africa he had scheduled

a visit for us to visit his factory. We attended that visit and he conducted that visit personally. So that was the second time I met him. That was in 2003 as I documented in the affidavit. Thank you Chair.

**ADV SELEKA SC:** Thank you. Did you have any interaction with him during your appointment – I mean during your service on the Eskom Board.

**DR NAIDOO:** Certainly not – certainly not. Even during 2003 I had no interaction. It was in a public setting he had introduced himself and even at the factory visit it was in a public setting. We had no interaction.

**ADV SELEKA SC:** Any prior interaction or relations with Minister Lynn Brown?

**DR NAIDOO:** Certainly none. I met Minister Brown first time when I attended the – when I was inducted into the board.

**ADV SELEKA SC:** With the former President Jacob Zuma?

**DR NAIDOO:** Certainly not.

**ADV SELEKA SC:** Thank you.

**DR NAIDOO:** Thank you Chair.

20 **ADV SELEKA SC:** Let me just give you a sequence of how I would like you to lead your evidence. There is what has been referred to as the Cooperation Agreement concluded between Eskom and OCM in 2014 with the Fourth Addendum paving the way through amending their agreement between the two entities.

That is on the one hand. On the other then it will be the submission that is made in December 2015 regarding a pre-payment decision.

Let us start with the Cooperation Agreement because the Cooperation Agreement as you would recall it was an endeavour between Eskom and OCM to revise the terms of their agreement an existing.

That Cooperation Agreement came to the BTC on the 15<sup>th</sup> of April 2015. The BTC did not decide it; it  
10 referred the matter to the board.

Were you a member of the BTC at the time – April 2015?

**DR NAIDOO:** No Sir.

**ADV SELEKA SC:** You were not?

**DR NAIDOO:** No.

**ADV SELEKA SC:** The matter then came to the board on the 23<sup>rd</sup> of April 2015. You recall that? You recall that?

**DR NAIDOO:** Yes Sir.

**ADV SELEKA SC:** Yes. The board too did not decide the  
20 matter and I would like you to briefly tell the Chairperson why did the board not decide the matter and what it did – what did the board instead do with the matter in the meeting of the 23<sup>rd</sup> of April 2015.

**DR NAIDOO:** Thank you. Thank you Advocate. Chair Advocate is referring to an operational document between

Eskom as the company and OCM as the supplier. I had no details of the operational content of that – or no part in its structure or in its promotion.

Chair I want to reflect a little bit on Optimum Coal Mine, on Hendrina Power Station and give you a little bit of a background if I may? Thank you.

Chair Hendrina Power Station and as you will Chair sorry I was an employee of Eskom so I have been to Hendrina many times. Hendrina Power Station in the  
10 category of lowest cost producers of electrical energy. It is in the company of Koeberg the Nuclear Station in the company of Cahora Bassa the Hydroelectric Station that brings us power from Mozambique.

Very, very low cost power. The station was built in the 70's and its coal supply agreement then commenced with the miners. And the coal at Hendrina Sir is on the ground. You literally scoop up the ground and you feed it into the 00:14:24 that is how simple it is.

It is continuous operation 24/7 365 for many  
20 decades. And over the time period almost 50 years it has generated a lot of electricity for South Africa – lowest cost electricity and that is what gave Eskom that sort of lowest cost position.

And it was very much an agreement that benefited all parties Eskom, a mine, the community. Everyone was a

win-win type agree. The design of the power station of Hendrina was such that it consisted of ten machines of 200 megawatts. So small capacity but lots of it. So that it can take in the sort of very, very low quality coal, virtually the ground and make electricity.

And during the term of its agreement there were one or two addendums attached to that agreement and one of the addendums I recall was the addendum around hardship. A supplier can say to Eskom I have got hardship  
10 and he can declare hardship. Because the price is very, very low.

And then Eskom in its – in its methodology of setting up the mine at all initially prepaid for all the capital infrastructure. So that is where that whole pre-payment concept comes in.

So the mine supplies the coal, the capital infrastructure is all prepaid and in all of those addendums Chair Eskom allowed the mine to export the higher grade coal to international or to 00:15:55 so that they could make  
20 more cash.

And that gave Hendrina the position of ...

**CHAIRPERSON:** And if I can ask...

**DR NAIDOO:** Please do Chair.

**CHAIRPERSON:** Was it like part of the deal that you will charge us low prices but in return we will allow you to

make money.

**DR NAIDOO:** Agreed.

**CHAIRPERSON:** With the export section of the mine?

**DR NAIDOO:** Agreed.

**CHAIRPERSON:** So to make up for whatever losses you may suffer on the domestic side.

**DR NAIDOO:** Agreed.

**CHAIRPERSON:** Okay.

**DR NAIDOO:** But – and that gave the mine an export  
10 allocation quota at Richards Bay.

**CHAIRPERSON:** Hm.

**DR NAIDOO:** On the MLO Richards Bay coal line that high grade coal will then go into the export. Eskom made that allowance and that is part of the- one of the addendums Chair.

But again the price was kept low. And then Chair as the – the agreement was coming towards a closure I recall the agreement was scheduled to end December 2018. So this is a development now in 2015 and the  
20 Optimum Coal Mine then said I need a higher price of coal. They want to reset the base price because there is a potential that is a new agreement could be reached post 2018 for another ten years, twenty years, thirty years at a higher price.

And I was part of that discussion at the investment

and finance committee and I knew a little bit of the history of this all and I said no ways we cannot adjust that because then we are changing the design of the power station, we changing the whole model that we put on the ...

When 2018 concludes you will have an opportunity for both parties to decide on a new contract going forward. And Eskom can decide whether it still wants to operate Hendrina or do not operate.

That was basic where the push came and where the  
10 resistance from Eskom came in terms of not allowing the higher 00:17:50.

**CHAIRPERSON:** Well the hardship clause as you understand it or as you understood it at the time was it meant to cater for a situation where it would appear for example that Glencore did not do a due diligence before taking this contract over and it looks like later on when it was complaining about the coal price being too low and suffering hardship that seems to be at least in part because it did not do what it is supposed to have done  
20 from the beginning because one would have thought that if you want to take over somebody else's contract such as this one of the things you would look at particularly when you talk about the – such a long term contract is – is there a provision in the contract for the escalation or the increase of the price annually or at whatever intervals



because the problem seems to have been that the parties were locked into this price that had been determined a long time before.

**DR NAIDOO**: Yes Chair.

**CHAIRPERSON**: And then when it complained about hardship one gets the impression but if you had done your – your homework and you had raised this issue you would not be in this situation.

**DR NAIDOO**: Certainly Sir.

10 **CHAIRPERSON**: But you can enlighten me maybe there is something I – I do not understand but that was one of my queries about Glencore's OCM's so called hardship.

**DR NAIDOO**: Yes Chair. Chair if we reflect it was a very long term contract. If it is 2018 built in the 70's it is almost a fifty year type contract. It is coming towards the end now 2018 it is almost sort of days to ending.

20 The boilers at Hendrina as I said earlier Chair they were designed to burn this ground literally not coal call it the ground here or there. And – and that whole model was packaged around it. If you changed – change that model then the whole thing falls apart. And again Hendrina was – was a cash machine – a cash machine for Eskom. It made a lot of cash for Eskom. A lot of electricity sales. And you do not want to disturb that model Chair that is basically what it was and that is why that price was fixed long term.

And again this hardship clause was introduced and an addendum to that effect was introduced to give the supplier relief export on the coal mine.

And around 2015 Chair the external coal market also collapsed so you could see where Glencore's position was or the shareholder of OCM position was. He was not making money on the export market and not making money on the domestic market incurring costs.

And again saying to Eskom I need more cash, I  
10 need more cash. That sets the basis for that pre-payment, that then arrived thereafter. So that is it the foundation.

**CHAIRPERSON:** Yes but is your answer that the hardship that OCM while it was under Glencore complained about was not largely due to it not having done its homework?

**DR NAIDOO:** Agreed Chair.

**CHAIRPERSON:** Yes.

**DR NAIDOO:** That is very clear.

**CHAIRPERSON:** Yes.

**DR NAIDOO:** That is very clear.

20 **CHAIRPERSON:** Ja, ja.

**DR NAIDOO:** I fully agree.

**CHAIRPERSON:** Yes okay alright.

**DR NAIDOO:** Thank you Chair.

**CHAIRPERSON:** Mr Seleka.

**ADV SELEKA SC:** Thank you Chair. Dr – Dr Naidoo so

you saying that hardship experienced by OCM and the request by OCM for an increase in the purchase price would have set the ground work for the pre-payment?

**DR NAIDOO:** Correct. Correct Chair. In fact there an – another development before pre-payment that was business rescue. The shareholders of OCM then put the company into business rescue and now we are dealing with business rescue practitioners and again the – the message conveyed to Eskom jobs will be at stake. We are going to  
 10 stop the production; people are going to lose jobs. And again when I reflected on that particular position of the job Chair I said power stations has been there for fifty odd years it has created jobs for the community. It is a matter of days before it is going to stop working and again it has done its share for the community so let us not make jobs a particular issue to focus on. Let us focus on the – on the national grid security and make sure the machines are working, make sure there is continuity of operations.

And again Chair during that business rescue  
 20 operations unknown to the business rescue practitioners Eskom had been in deep distress, load shedding was at its all time high – there was – there was a lot of disturbance within the operational end of Eskom. But unknown to them we had already commenced the recovery of Eskom Generation. And Eskom Generation Energy availability

factor was already on the recovery. We could accommodate one or two machines being disturbed because remember these are small units 200 megawatts. So if you do bump it you are going to bump 1 200 or 2 200 or so but not all of them. And we could accommodate that disturbance on the national grid without disturbing security of ...

We knew that and that is why we sort got into a little bit of an entrenched position regarding this price of  
10 coal. And we said we would like to hold onto the - this - whatever is in the contract – you, me renegotiate that end of December 2018. And we feeling comfortable we will manage national grid security. We were very happy.

**CHAIRPERSON:** Now are you talking about the period where OCM/Glencore was pushing for an increase of – on the coal price?

**DR NAIDOO:** Correct.

**CHAIRPERSON:** Is that what you are talking about?

**DR NAIDOO:** Correct Chair correct. So they were pushing  
20 on the increase of the coal price and then simultaneously they throwing business rescue, simultaneously they throwing loss of jobs for the community. So it is compounding itself. It is getting more and more difficult.

But again at that time Chair I was very confident that we will maintain national grid security that was always

my reference. Are you going to hold national grid security before we break?

**CHAIRPERSON:** Now I asked you a question earlier on and you gave an answer but I think although the information you gave me was I think useful it did not go to the question namely whether what – whether the situation that Glencore/OCM found itself in when it invoked the hardship clause was the situation for which the hardship clause had been created?

10 **DR NAIDOO:** Well

**CHAIRPERSON:** In other words was it – did it fit within as you understood the kind of hardship that was contemplated?

**DR NAIDOO:** Yes Chair in fact the hardship clause I think was initiated by the commencement of the agreement. Never really ...ever really ...

**CHAIRPERSON:** Yes.

**DR NAIDOO:** Pertained to any particular supplier.

**CHAIRPERSON:** Yes, yes.

20 **DR NAIDOO:** It was there it was embedded in the original agreement.

**CHAIRPERSON:** Yes, yes.

**DR NAIDOO:** Because of Eskom holding the price of coal delivered to its lowest level and Eskom agreed we will prepay for the capital infrastructure to mine the coal and

deliver it throughout.

**CHAIRPERSON:** But of course ultimately OCM did not pursue the arbitration process to the end arising out of the invocation of the hardship clause. As I recall you – if you invoke the hardship clause if the parties meet and cannot reach agreement you go to arbitration.

**DR NAIDOO:** Yes.

**CHAIRPERSON:** Is it correct that Eskom's position was okay you have invoked the hardship clause we can go  
10 through it and let the arbitrator decide?

**DR NAIDOO:** No Chair it did not go arbitration. I think Glencore...

**CHAIRPERSON:** No, no but what I am saying is I think you – you agree and I wanted you to confirm that once a party to that coal supply agreement had invoked a hardship clause.

**DR NAIDOO:** Yes.

**CHAIRPERSON:** The hardship clause.

**DR NAIDOO:** Yes.

20 **CHAIRPERSON:** The route ultimately if the parties could not reach agreement.

**DR NAIDOO:** Is arbitration.

**CHAIRPERSON:** Is arbitration.

**DR NAIDOO:** Agreed, correct.

**CHAIRPERSON:** Yes. But I am saying as I recall the

matter ultimately never reached arbitration.

**DR NAIDOO:** Never, correct Chair.

**CHAIRPERSON:** But I am asking whether Eskom's position was that you OCM have invoked the hardship clause and we are happy for that to take its course.

**DR NAIDOO:** Correct. Correct Chair.

**CHAIRPERSON:** And so to speak we will see what happens.

**DR NAIDOO:** Agreed.

10 **CHAIRPERSON:** But it is your right to take that route.

**DR NAIDOO:** Agreed. Agreed – correct Chair that is correct.

**CHAIRPERSON:** Yes. Okay alright. So – so OCM to the extent that they may complain about Eskom having taken a hard line on the issue of – on their request or proposal for an increase of the coal price on the basis that they were suffering hardship to the extent that Glencore/OCM criticised Eskom's hard line. One answer from Eskom would be but if you thought we were unjustified in taking  
20 the hard line that we took you had a remedy.

**DR NAIDOO:** Agreed.

**CHAIRPERSON:** Namely to pursue arbitration up to the end.

**DR NAIDOO:** Agreed.

**CHAIRPERSON:** Because if the arbi – if you pursued

arbitration and the arbitrator found against us as Eskom we would comply with the award of the arbitrator.

**DR NAIDOO**: Agreed.

**CHAIRPERSON**: You did not pursue that line.

**DR NAIDOO**: Agreed.

**CHAIRPERSON**: And it may well be that the reason you did not pursue it because you realised that you were not going to have a strong case.

**DR NAIDOO**: Agreed Chair.

10 **CHAIRPERSON**: Yes.

**DR NAIDOO**: Chair and I want to also add Chair. Had the arbitrator ruled in the favour of the supplier rather than in Eskom's favour we would have rearranged the operation of the power station such that we reduce the quantity of coal that we get. We would have shared that load across the fleet of power stations.

**CHAIRPERSON**: Okay.

**DR NAIDOO**: So instead of burning X volumes at Y price we would have adjusted the volumes to burn at that price  
20 so that we can keep the cost to the company constant.

**ADV SELEKA SC**: Well, I want to make sure I understand what you have just said because I want to understand whether it amounts to saying we would not comply with the arbitrators award if he or she found in favour of OCM or whether it says we would comply. We would just need to



make certain arrangements in order to handle the situation.

**DR NAIDOO:** Agree. We will comply Chair.

**CHAIRPERSON:** Yes.

**DR NAIDOO:** But we will make operation requirements to handle the impact on the company.

**CHAIRPERSON:** The operational arrangements that you would make, would they not result in OCM's victory in the arbitration awarded being an empty victory?

**DR NAIDOO:** Chair, ja it could result in them seeing it as  
10 a victory but in terms of the net or the focus costs to either company, it will be constant.

**CHAIRPERSON:** Yes. Well, I am sure you might not make look into it further but yes I am concerned whether you would effectively be saying: Well, let us go to arbitration. If you win, we know how we fix you.

**DR NAIDOO:** That is the name of the game.

**CHAIRPERSON:** [laughs]

**DR NAIDOO:** [laughs]

**CHAIRPERSON:** You see that is what Eskom was  
20 planning.

**DR NAIDOO:** Yes.

**CHAIRPERSON:** That is why they were saying: Okay, go to arbitration.

**DR NAIDOO:** [laughs]

**CHAIRPERSON:** [laughs]

**DR NAIDOO:** Thank you Chair.

**CHAIRPERSON:** Okay. Mr Seleka.

**ADV SELEKA SC:** Yes. Dr Naidoo, let us go back to the meeting of the 21<sup>st</sup>. So the Coal Operation Agreement is before the board and the terms you are proposing in terms of the 4<sup>th</sup> Agenda. Just tell the Chair how the board dealt with that matter.

**DR NAIDOO:** Yes, Chair if I may. I think the decision that there was not taken to board.

10 **ADV SELEKA SC:** Yes.

**DR NAIDOO:** Was it not cancelled out again?

**ADV SELEKA SC:** It was transferred to ...[intervenes]

**DR NAIDOO:** To the Chief Executive.

**ADV SELEKA SC:** To the Chief – the new Chief Executive.

**DR NAIDOO:** To the new Chief Executive.

**ADV SELEKA SC:** Yes. That was Mr Brian Molefe.

**DR NAIDOO:** Mr Molefe, correct.

20 **ADV SELEKA SC:** Yes. So this is a meeting on the 23<sup>rd</sup> of April. It is at the same meeting that the board approves the secondment of Mr Molefe.

**DR NAIDOO:** Yes, Chair.

**ADV SELEKA SC:** To be with effect from the 20<sup>th</sup> of April.

**DR NAIDOO:** Yes.

**ADV SELEKA SC:** So he is new at Eskom.

**DR NAIDOO:** Correct.

**ADV SELEKA SC:** Ja. Is there a reason why the matter was not referred to the team, back to the team that was negotiating the transaction?

**DR NAIDOO:** Yes, Chair it would go back to the team but via the Chief Executive. It is an operational accountability. Sorry, Chair. It is an operational accountability. It goes back into the organisation and the point of entry into the organisation as the chair.

10 **ADV SELEKA SC:** Ja.

**DR NAIDOO:** But that is all that it was. And again, as the earlier discussion we had. There are lots of complexities around it.

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

**DR NAIDOO:** Thank you, Chair.

**ADV SELEKA SC:** So we have seen from various affidavits of board members who are yet to testify including yourselves, that there was an expectation that Mr Molefe will come back to the board on that issues.

20 **DR NAIDOO:** I would expect so.

**ADV SELEKA SC:** But he would report back.

**DR NAIDOO:** He would report back, ja.

**ADV SELEKA SC:** H'm. The question was then asked which you addressed in your affidavit, whether were you aware as the board... Well, let me ask you whether – did

Mr Molefe come back to the board? You have any recollection of him coming back to the board?

**DR NAIDOO:** Specifically no sir but the Chief Executive does report to the board on a monthly basis. At the board meeting there is the Chief Executive's report. I am not sure whether it was contained in that report.

**ADV SELEKA SC:** Thank you. Let me ask you this then. We have seen from the evidence that he terminated the negotiation and corporate agreement with OCM. Was the  
10 board aware of that termination?

**DR NAIDOO:** No, sir.

**ADV SELEKA SC:** Prior to it happening, you were not aware?

**DR NAIDOO:** No, that is an operational accountability.

**ADV SELEKA SC:** Yes. Now, so there is – the parties are trying to negotiate a new agreement, a new term, increase the price. The matter is given to Mr Molefe who has just arrived at Eskom. He ultimately terminates that process in July 2015. You are saying the board is not aware of it.  
20 Can you recall when the board does become aware of it or you personally?

**DR NAIDOO:** Chair, the ...[intervenes]

**ADV SELEKA SC:** If you cannot recall, you cannot recall.

**DR NAIDOO:** No, I think the – the best I can give you Chair is. At the Investment and Finance Committee when I

made that – when I chaired that committee, there was this issue of the prepayment and in that prepayment conversation, my best understanding was that Glencore was still the owner of OCM.

And I did make my comment in that conclusion of that meeting that given the two parties to come to some agreement, Eskom and OCM, that the chairman of Eskom and the chairman of Glencore should make a joined statement of that effect. I made that and I put it in my  
10 records.

**ADV SELEKA SC:** Okay. Okay Chair that – Chairperson, that accelerates the matter. So let us go into that.

**DR NAIDOO:** Right.

**ADV SELEKA SC:** Dr Naidoo, let us go into that.

**DR NAIDOO:** Right.

**ADV SELEKA SC:** So the termination is made of the negotiation process between the two parties, Eskom and OCM. In December 2015, the 8<sup>th</sup> of December 2015, the board gets an email from Ms Suzanne Daniels.

20 **DR NAIDOO:** Correct.

**ADV SELEKA SC:** About the request for the board to consider a submission for a prepayment of R 1.6 billion.

**DR NAIDOO:** Correct.

**ADV SELEKA SC:** Now that submission and that is where you are.

**DR NAIDOO:** Yes.

**ADV SELEKA SC:** Tell the Chairperson what you understood the submission to request the prepayment to be made?

**DR NAIDOO:** Right. Thank you, Chair. Chair, this was – this did not come to a formal meeting. We got a request electronically. It was an emergency request. It came through electronically.

And I was a member of the Investment and Finance  
10 Committee. That is where it came to. And the chairperson of the Investment and Finance Committee recused himself and I found myself in the chair now chairing this meeting, not in a formal setting but on a Round-robin resolution.

And I looked at the request of prepayment. Prepayment for coal from Optimum Coal. And the prepayment value of R 1.68 billion.

**CHAIRPERSON:** It was how much?

**DR NAIDOO:** R 1.68 billion.

**CHAIRPERSON:** Oh, billion rands?

20 **DR NAIDOO:** Ja. Ja, that was there.

**CHAIRPERSON:** H'm.

**DR NAIDOO:** And when I looked at it and I looked at the submission that was tabled, it motivated firstly this agreement between Eskom and OCM.

Remember they had a strained relationship, they

have now come to an agreement. They are happy together. OCM requires cash in advance to give them liquidity so that they can get on with their business.

Deliver the coal to Hendrina Power Station plus also take the coal and sell it to the export market and they will make more money of it. That was there sort of motivation.

And they also said they are in the process of taking on more Black Economic Empowerment in terms of  
10 their contractual relationships within or shareholder relationships within OCM itself.

And they have got some support and we could assist them with this R 1.68 billion. We will ensure security of delivery of coal to Hendrina Power Station.

Also, they extended the delivery to another national power station, Arnot. And they also said they will secure the jobs of the people.

So when we looked at all that we said prepayment is certainly an industry practise. Eskom does this all the  
20 time, not just on the coal side, even on the electricity sale side.

You can be a prepaid customer to buy electricity. And when we looked at it we said the security in terms of that R 1.68 billion, the security and the inventory – as I said the coal is at Hendrina's, not to anyone else's. It is

right outside. We have got security on that inventory against that R 1.68 billion.

And we said the R 1.68 billion prepayment would be absorbed by operations within a few weeks literally. So that we be used. And it is a win-win situation for Eskom and for OCM.

And it is in that response, I said towards the end of my note, this is a positive development given the distress of where we coming from.

10 And I think the chairman of Eskom and the chairman of Glencore should make a joint statement to this effect that we both came together and we working together.

**ADV SELEKA SC:** Yes.

**DR NAIDOO:** Thank you, Chair.

**ADV SELEKA SC:** Yes, thank you. Thank you for clearing that out. So Dr Naidoo, your understanding was that OCM, which is one owned by Glencore, was – there was going to be this prepayment.

**DR NAIDOO:** Yes, yes.

20 **ADV SELEKA SC:** The relationship has – the soured relationship is now revitalised.

**DR NAIDOO:** Agreed.

**ADV SELEKA SC:** And we are going to assist OCM, come out of business rescue, safe jobs, supply ...[intervenes]

**DR NAIDOO:** Agreed.



**ADV SELEKA SC:** ...Hendrina supply and Arnot.

**DR NAIDOO:** Agreed.

**ADV SELEKA SC:** And so on. So that is the IFC.

**CHAIRPERSON:** So was the... It is quite clear from what you say, what you have said, that as far as you are concerned, your intention – and you may go further and say you think it was the intention of all the board members, I am not sure, you can deal with that just now. Your intention was that Eskom was granting or the board was  
10 approving prepayment to OCM under Glencore.

**DR NAIDOO:** Correct.

**CHAIRPERSON:** And not to Tegeta.

**DR NAIDOO:** Not to Tegeta.

**CHAIRPERSON:** Yes.

**DR NAIDOO:** No, there is no Tegeta Chairperson.

**CHAIRPERSON:** Yes, yes.

**DR NAIDOO:** And Chair, this was done in my apartment in Parktown. I am at home.

**CHAIRPERSON:** Yes.

20 **DR NAIDOO:** I am not in a boardroom.

**CHAIRPERSON:** Okay.

**DR NAIDOO:** And that is why I wrote down those points and I have communicated that to my fellow colleagues.

**CHAIRPERSON:** Yes.

**DR NAIDOO:** I said: Colleagues, this is the reason why I

am giving the approval.

**CHAIRPERSON:** Yes.

**DR NAIDOO:** And I was now in the chair of the Investment and Finance Committee.

**CHAIRPERSON:** Ja, okay alright.

**DR NAIDOO:** That is the reason I tabled.

**CHAIRPERSON:** Okay.

**DR NAIDOO:** Yes. Thank you, Chair.

**ADV SELEKA SC:** Chairperson, just by way of reference.

10 **DR NAIDOO:** Dr Naidoo, maybe you should go to Eskom Bundle 18 because that note you are referring to is to be found in 18(A).

**DR NAIDOO:** 18...?

**ADV SELEKA SC:** Bracket A.

**DR NAIDOO:** Please help.

**ADV SELEKA SC:** Ja, ja.

**CHAIRPERSON:** Somebody must assist him to get to the right bundle.

**DR NAIDOO:** Thank you.

20 **ADV SELEKA SC:** Yes. It is 18(A) Chairperson, page ...[intervenes]

**CHAIRPERSON:** They will identify the bundle and give it to you Dr Naidoo.

**DR NAIDOO:** Yes.

**CHAIRPERSON:** What is the page Mr Seleka?

**ADV SELEKA SC:** It is page two... It starts at page 281.  
Just...

**CHAIRPERSON:** H'm.

**ADV SELEKA SC:** Page 281.

**DR NAIDOO:** Right. I have got it.

**ADV SELEKA SC:** You have got it? Okay. Ja, stay on  
281.

**DR NAIDOO:** Okay, I got it.

**ADV SELEKA SC:** Ja. Because I want to refer you to 281  
10 and 286.

**DR NAIDOO:** And 286?

**ADV SELEKA SC:** And 286.

**DR NAIDOO:** Okay, I have got it.

**ADV SELEKA SC:** Yes.

**DR NAIDOO:** Right. I have got it.

**ADV SELEKA SC:** You have?

**DR NAIDOO:** Yes, that is my note. Correct.

**ADV SELEKA SC:** Yes.

**DR NAIDOO:** Confirmed.

20 **ADV SELEKA SC:** Yes.

**DR NAIDOO:** Thank you gents.

**ADV SELEKA SC:** So the Chairperson the document on  
page 286, Dr Naidoo as well, that is the submission that  
came before the board, also served before the IFC. If you  
...[intervenes]

**DR NAIDOO:** Yes, yes. I have seen it.

**ADV SELEKA SC:** Alright. You have seen it.

**DR NAIDOO:** Correct, ja.

**ADV SELEKA SC:** Yes. And the page ...[intervenes]

**CHAIRPERSON:** Which document are you starting with, 281?

**ADV SELEKA SC:** 281 Chairperson.

**CHAIRPERSON:** Okay alright.

**ADV SELEKA SC:** He has just confirmed.

10 **CHAIRPERSON:** Okay.

**ADV SELEKA SC:** And it is the submission that served before the IFC and the board.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Ja. Motivating for the prepayment.

**CHAIRPERSON:** But he – the submission that he has confirmed as having served in both, is it the one 281 or the one 286?

**ADV SELEKA SC:** Both.

**CHAIRPERSON:** Both?

20 **DR NAIDOO:** Both.

**CHAIRPERSON:** Okay alright.

**ADV SELEKA SC:** Chair, 286 is a different document.

**CHAIRPERSON:** Oh.

**DR NAIDOO:** Ja, this is my document here. It is my response.

**CHAIRPERSON:** Oh, okay alright.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay let us do ...[intervenes]

**DR NAIDOO:** Chair, if you look at the ...[intervenes]

**CHAIRPERSON:** ...one at a time.

**ADV SELEKA SC:** Yes.

**DR NAIDOO:** Ja.

**CHAIRPERSON:** Probably – should we not start with his document?

10 **ADV SELEKA SC:** Okay.

**CHAIRPERSON:** But would you know. Ja.

**ADV SELEKA SC:** Okay. He has confirmed the submission. Let us go to his document. Your document Dr Naidoo on 286.

**DR NAIDOO:** Yes.

**ADV SELEKA SC:** Yes. Because you are explaining to the Chairperson ...[intervenes]

*[Parties intervening each other – unclear]*

20 **CHAIRPERSON:** I am sorry Mr Seleka. Maybe you are right. We should start with his submissions because you – as I understand it, his note was made after ...[intervenes]

**ADV SELEKA SC:** That is right.

**DR NAIDOO:** Correct, after the submissions.

**CHAIRPERSON:** Yes. Let us start with what persuaded him.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** What told him what this was about.

**ADV SELEKA SC:** Yes.

**DR NAIDOO:** Right.

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

**DR NAIDOO:** Thank you, Chair.

**ADV SELEKA SC:** Dr Naidoo, you understand the question?

**DR NAIDOO:** Yes.

10 **ADV SELEKA SC:** That the Chairperson... Ja, you can simply just point out to the Chairperson what made you ...[intervenes]

**DR NAIDOO:** Why I went that direction?

**ADV SELEKA SC:** Ja.

**DR NAIDOO:** Yes. Chair, on page 283, there is 3.2.21 highlighted yellow. I think this was my highlighting of yellow.

**ADV SELEKA SC:** Oh.

**DR NAIDOO:** Ja, this is – because on my note I say:  
20 Salient point were noting. Are highlighted in yellow on the tax submission.

**CHAIRPERSON:** Sorry, Dr Naidoo. You are too fast.

**DR NAIDOO:** Sorry, sir.

**CHAIRPERSON:** I thought you were starting at page 281. Now I hear you are talking about 283.

**DR NAIDOO:** No, I migrated to 283. Starting at 281, we skipped all of that, we have gone to page 283.

**CHAIRPERSON:** Okay.

**DR NAIDOO:** 3.2.1 ...[intervenes]

**CHAIRPERSON:** Well, we must start first. Oh, you must tell me what this document is that starts at 281.

**DR NAIDOO:** Oh, sorry Chair.

**CHAIRPERSON:** 281. How did it come before you and what was it about.

10 **DR NAIDOO:** Oh.

**CHAIRPERSON:** Then you can take me to 283.

**DR NAIDOO:** Right. Chairperson, the – let me go to 279, a little bit before that.

**CHAIRPERSON:** Yes?

**DR NAIDOO:** 279. This the minutes of the Special Telephonic Investment and Finance Committee held on 9 December 2015 at 08:30 in the morning.

**CHAIRPERSON:** Yes.

20 **DR NAIDOO:** The chairperson had recused and Dr Naidoo is the acting chairperson.

**CHAIRPERSON:** Yes.

**DR NAIDOO:** Right, Chair. That is the document. And then the submission, the Round-robin submission to the Board of Directors, page 281.

**CHAIRPERSON:** Hang on one second. Just for the sake

of completeness. What you were reading at 279 was the heading which is the minutes of that meeting that you mentioned.

**DR NAIDOO:** Correct.

**CHAIRPERSON:** But let us say what the meeting was about.

**DR NAIDOO:** Okay.

**CHAIRPERSON:** Matters for approval.

**DR NAIDOO:** Yes.

10 **CHAIRPERSON:** There, 6.1.

**DR NAIDOO:** 6.1, ja.

**CHAIRPERSON:** A request to approve the pre-purchase of coal from Optimum Coal ...[intervenes]

**DR NAIDOO:** Optimum Coal (Pty) Ltd.

**CHAIRPERSON:** ...(Pty) Ltd.

**DR NAIDOO:** Correct.

**CHAIRPERSON:** That was the subject.

**DR NAIDOO:** Correct. Just one agenda item.

**CHAIRPERSON:** Okay.

20 **DR NAIDOO:** And the submission for that agenda item was – is on page 281.

**ADV SELEKA SC:** Yes.

**DR NAIDOO:** The Round-robin submission to the Board of Directors.

**CHAIRPERSON:** Yes.



**DR NAIDOO:** Submission. Pre-purchase of coal of Optimum Coal Mine.

**CHAIRPERSON:** Yes?

**DR NAIDOO:** Right. Ja, the same submission. I am going to jump and go to page 283 and highlighted 3.2.1:

“Optimum is formally declared not to be in business rescue as required by the provisions of the Companies Act.”

**CHAIRPERSON:** H’m.

10 **DR NAIDOO:** That is the point highlighted in yellow.

**CHAIRPERSON:** H’m?

**DR NAIDOO:** Then 3.4.1 highlighted yellow:

“The advanced purchase of R 1.68 billion will secure future supply of coal to Eskom and ...[intervenes]

**CHAIRPERSON:** I am sorry. You are reading from 3.4.1?

**DR NAIDOO:** Yes.

**CHAIRPERSON:** Okay. Just restart afresh.

**DR NAIDOO:** Right.

20 “The advanced purchase of R 1.68 billion will secure future supply of coal to Eskom and will be funded by a reduction of Eskom’s coal stockpile from 54 days to 40 days.”

So that is the benefit there. And 3.4.2:

“OCM will seek the unsupplied portion of coal

under the pre-purchase agreement as security.”

And then I go ...[intervenes]

**CHAIRPERSON:** What you did not mention or unless I missed it, which is important just to say at 3.4 deals with benefits of the advance purchase of coal.

**DR NAIDOO:** Yes, yes. That is...[intervenes]

**CHAIRPERSON:** And 3.4.1 and 3.4.2 that you have just read ...[intervenes]

10 **DR NAIDOO:** Oh, ja.

**CHAIRPERSON:** Oh, that is heading, the benefits.

**DR NAIDOO:** Yes.

**CHAIRPERSON:** Okay.

**DR NAIDOO:** Yes. Then Chair... Oh, sorry Chair, let me go a little bit slow. At 3.6 we talk about risk including environmentally legal or contractual risks and other considerations. We go to 3.6.1:

“Operational and Supplier Risk Mitigation by pledge insertion of coal practise.”

20 3.6.2:

“The proceeds of R 1.68 billion prepayment of coal are to be used by OCM to distinguish existing liabilities to ensure that the business continues as a growing concern.”

**CHAIRPERSON:** H’m?

**DR NAIDOO:** 3.6.3:

“The proposed purchaser will lift current empowerment ownership from 30% to 51%.”

That was the point I highlighted in my note dated 9 December and this is on 286. 286 Chair before the following page. 9 December 2015, Eskom Board of Directors, IFC (Investment Finance Committee) proceedings. December 2015, Round-robin resolution. Title of submission: Pre-purchase of coal from OCM.

10 “The resolution has submitted, it is supported and approved.

Salient points were noting are highlighted in yellow on the tax submission document.”

That is what we have done.

**DR NAIDOO:** I have just read to you.

**CHAIRPERSON:** H’m.

**DR NAIDOO:** One:

“OCM and the Companies Act:

20 The Board of Directors’ approval will support and allow OCM to migrate from the status of business rescue to that of a growing concern.”

That was very important.

**CHAIRPERSON:** H’m.

**DR NAIDOO:** Yes.

“Their full rights, responsibilities and

accountabilities will be as per the Companies Act.

They plan to use the pre-purchase proceeds to address the liability and liquidity challenge.

This will be a positive development, both for OCM and for Eskom.

It will address the present day contractual obligations and create the platform for the future sustainability of mutual take, business and job continuity for fellow South Africans.”

10

Point 2:

“As part of the proposed solution, OCM undertakes to increase their transformation accountability and responsibility from 30% to 51% ownership.

This is a positive development.

It is noted and acknowledged.”

Point 3:

“The business case for pre-purchase of coal for both Hendrina and Arnot is robust and strong.

The cash flows are managed and absorbed by good inventory management of stockpile.

A reduced holding base has not risk to electricity production.

20

The profitability of the proposal is noted that it should be ring fenced and reported when it is realised.”

Point 4 Chair:

“The positive outcome from the joint management solution of Eskom and OCM is noted and acknowledged as a nationality.

It allows for business continuity and security o  
jobs, security of electricity production at  
10 national key-point power stations, Hendrina  
and Arnot.

And so South Africa and our customers will  
send their...”

Point 5 Chair:

“A further recommendation is that the chairman  
of Eskom and the chairman of Glencore jointly  
communicate this achievement to South  
African and the international community.

Thank you, Nath Naidoo”

20 **CHAIRPERSON:** H’m.

**DR NAIDOO:** Thank you very much for handing this.  
Thank you. I could not find it. But thank you sir.

**CHAIRPERSON:** H’m.

**DR NAIDOO:** Yes, members of the ISCS(?) Board of  
Directors.

**CHAIRPERSON:** Well, Mr Seleka and Dr Naidoo it quite – a lot of things... [laughs]

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

**CHAIRPERSON:** I think it is important to – for the sake of business.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** To just go back to the minutes of the Investment and Finance Committee that he referred to.

**DR NAIDOO:** 279.

10 **CHAIRPERSON:** 279. And say this is the outcome of the that meeting.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And if the reasons for that outcome are set out there to articulate them.

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

**DR NAIDOO:** Yes.

**CHAIRPERSON:** And this was now – or then the question of the minutes of the board where the approval was given, where would that be?

20 **ADV SELEKA SC:** The board itself Chairperson.

**CHAIRPERSON:** The board itself, ja. Because I am assuming that ...[intervenes]

**DR NAIDOO:** This is a recommendation from IFC.

**CHAIRPERSON:** After the Investment and Finance Committee has ...[intervenes]

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** ...has come to this conclusion, it must be the recommendation or ...[intervenes]

**DR NAIDOO:** Correct.

**CHAIRPERSON:** ...or its decision must go to the board for approval.

**DR NAIDOO:** Correct.

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

**DR NAIDOO:** Can I read that resolution Chair from the  
10 minutes?

**CHAIRPERSON:** Uh...

**ADV SELEKA SC:** Oh, we will find it.

**CHAIRPERSON:** Ja, they will ...[intervenes]

**ADV SELEKA SC:** I will find it Chair.

**DR NAIDOO:** Oh, you are find it?

**CHAIRPERSON:** Ja. [laughs]

**DR NAIDOO:** Thank you, Chair.

**ADV SELEKA SC:** I will find the page because Chair the  
board did not need – the board sent approvals by Round-  
20 robin.

**DR NAIDOO:** Oh, okay.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Okay that is fine. As long as we get to say here is the formal approval by the board and confirming what was before the board, whether it was the

same documents that were before the Investment and Finance Committee.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** H'm.

**DR NAIDOO:** Thank you, Chair.

**ADV SELEKA SC:** Ja, thank you. Ja, I will get the page reference of the Chairperson.

**DR NAIDOO:** Ja.

**CHAIRPERSON:** Well, let me ask this question while  
10 Mr Seleka is looking at whatever he is looking at. Dr Naidoo...

**DR NAIDOO:** Thank you, Chair.

**CHAIRPERSON:** Are you able to say, having been part of that telephonic meeting of the Investment and Finance Committee that the understanding of the committee was that it was recommending approval of this prepayment on the basis that the prepayment was for OCM/Glencore?

**DR NAIDOO:** Correct.

**CHAIRPERSON:** You are able to confirm that?

20 **DR NAIDOO:** Hundred percent.

**CHAIRPERSON:** And you are the chairperson of the committee.

**DR NAIDOO:** Correct.

**CHAIRPERSON:** Yes.

**DR NAIDOO:** Yes, Chair.



**CHAIRPERSON:** Now you have said that this executive summary starting at page 281, served before both the committee as well as the board. When you look at paragraph 2.1.2 on page 281, that is that summary, that submission for Round-robin.

That paragraphs makes it clear that the Group Chief Executive of Eskom together with the Group Executive for Generations and Chief Financial Officer, I suspect that those were Mr Brian Molefe and Mr Koko and  
10 Mr Singh, were being authorised to negotiate and conclude a pre-purchase of coal agreement, not with the owners or current owners at the time of OCM but with the proposed owners. How – did you see that at the ...[intervenes]

**DR NAIDOO:** Yes, Chair I saw that.

**CHAIRPERSON:** Yes.

**DR NAIDOO:** Yes.

**CHAIRPERSON:** But if you saw that, how could you and your committee think that you were authorising prepayment to Glencore? Because the proposed owners of OCM were  
20 not Glencore?

**DR NAIDOO:** No, sir This – in terms of this, the Business Rescue Practitioners were still present.

**CHAIRPERSON:** H'm?

**DR NAIDOO:** So the ownership of OCM was still in that sort of greyish area but for now the record speaks very

clearly that the contractual relationship is with Glencore, not with anyone else.

**CHAIRPERSON:** No ...[intervenes]

**DR NAIDOO:** No, but I appreciate it.

**CHAIRPERSON:** I understand that but I am saying the words in paragraph 2.1.2 ...[intervenes]

**DR NAIDOO:** Yes, Chair.

**CHAIRPERSON:** ...were starring you in the face and they were not saying the request is that you must authorise  
10 these three officials of Eskom to negotiate and conclude an agreement with the owners of OCM. Owners as at that time. It was saying you are requested, you are deemed requested to authorise these three officials of Eskom ...[intervenes]

**DR NAIDOO:** Yes.

**CHAIRPERSON:** ...to negotiate with and conclude a pre-purchase of coal agreement with the proposed owners. Who was the proposed owners at the time?

**DR NAIDOO:** No, we had no details of them.

20 **CHAIRPERSON:** H'm.

**DR NAIDOO:** We had no details of the proposed owners. It was still, in our mind, Glencore is the owner and in the submission it states that the proposed purchases – 3.6.3:

“Proposed purchaser will lift current empowerment ownership from 30% to 51%.”

So ...[intervenes]

**CHAIRPERSON:** But that makes it worse for your case because you should be asking: Why is this submission all about proposed owners when we are being asked to authorise payment to the current owners?

**DR NAIDOO:** Let me answer it this way Chair. The agreement, the Coal Supply Agreement is between two companies.

**CHAIRPERSON:** Yes.

10 **DR NAIDOO:** Eskom and OCM.

**CHAIRPERSON:** Yes.

**DR NAIDOO:** That is it.

**CHAIRPERSON:** And at that stage, OCM under Glencore.

**DR NAIDOO:** Under Glencore. Yes.

**CHAIRPERSON:** Yes.

**DR NAIDOO:** Yes, that is correct. But there is something happening in the background ...[intervenes]

**CHAIRPERSON:** Yes.

**DR NAIDOO:** ...that we do not have details of that. We  
20 only stayed within the contractual boundaries between Eskom and OCM.

**CHAIRPERSON:** No, but I am saying to you. How could you think along those lines when in black and white the executive summary, the Round-robin submission that was placed before your committee ...[intervenes]

**DR NAIDOO:** Yes, Chair.

**CHAIRPERSON:** ...and before the board made it quite clear what you have been requested to authorise, that this submission, this summary did not ask your committee or the board to authorise the three officials of Eskom to conclude an agreement with the owners of OCM because if it had said owners of OCM, it would have meant Glencore/OCM because those are the owners. It said proposed owners.

10 **DR NAIDOO:** Yes, Chair.

**CHAIRPERSON:** So I am asking how you could have – you said you did see this, if I understand ...[intervenes]

**DR NAIDOO:** Yes.

**CHAIRPERSON:** So if you so decide, why did you not raise an issue to say: Hang on. Why are we – why are you saying we must conclude a contract with proposed owners when there are current owners that we should be dealing with?

**DR NAIDOO:** Yes, Chair. The contractual, as I said Chair  
20 is still Eskom/OCM, OCM, that is the contract. The contract is not between Eskom and Glencore. The contract is not between Eskom and proposed owners. The contract is not between Eskom, Glencore and maybe more BEE partners, the contract is Eskom OCM, so that is what we focused on, Eskom OCM.

**CHAIRPERSON:** But what I am putting to you, Dr Naidoo  
...[intervenes]

**DR NAIDOO:** I know, I see that, Chair.

**CHAIRPERSON:** What I am putting to you is that  
precisely the point you are emphasising counts against the  
decision that you took. It counts against the version you  
have given that you were intending to authorise  
prepayment to the Glencore/OCM because that is what I  
should be saying to you, to say but why did you not say  
10 change the submission ...[intervenes]

**DR NAIDOO:** Yes.

**CHAIRPERSON:** ...because we cannot authorise the  
conclusion of a contract with proposed owners when they  
are current owners, what we are going to authorise is the  
conclusion of a contract with the current owners, you must  
change the submission.

**DR NAIDOO:** Yes, Chair, you are correct, Chair. That  
word proposed opens a big door.

**CHAIRPERSON:** And, you see, it makes it difficult – it  
20 raises the question how was it possible that x number of  
members of the investment and finance committee all did  
not see this point? How is it possible that the entire board  
also did not see this point because Dr Ngubane I think also  
gave evidence along the lines that you have given.

**DR NAIDOO:** Yes.

**CHAIRPERSON:** But how could none of you say but hang on, change this submission.

**DR NAIDOO:** Ja, it should have been, Chair, I agree with you. Should have had, with the existing or current owners of it.

**CHAIRPERSON:** Because now ...[intervenes]

**DR NAIDOO:** But the heading is correct, the title of submission is correct, pre-purchase of coal from Optimum Coal.

10 **CHAIRPERSON:** It may well be that somebody might say well, despite the fact that your committee and the board did not raise this issue about proposed owners. When you look at the final resolution maybe it was worded in a way which made it clear that you were authorising prepayment to Glencore/OCM and not to Tegeta but those who asked your committee and the board to authorise payment would be entitled to say it was there in black and white, we did not mislead you, we wrote it there and you said we should go ahead but now you are turning around and say all of  
20 you are now saying but as far as we were concerned we were authorising prepayment to Glencore but they say it is there, it is black and white, how come?

**DR NAIDOO:** Ja, you are correct, Chair, you are correct.

**CHAIRPERSON:** Mr Seleka?

**ADV SELEKA SC:** Chair, I found the page reference for

the board resolution.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** On the matter. In the same bundle, Eskom bundle 18(A) page 352.22.

**CHAIRPERSON:** Before the board can we go to the investment and finance committee decision.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Let us go back and let us see whether there is anything there that suggests that they were not  
10 approving what had exactly been placed before them by way of the submission or executive summary. In terms of the outcome they specified – they said something that suggests quite clearly that there were not authorising what they had been asked to authorise.

**ADV SELEKA SC:** Yes, those minutes.

**DR NAIDOO:** The minutes.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Are on page 279.

**DR NAIDOO:** 279. And the resolution is on page 280.

20 **ADV SELEKA SC:** Yes. I do have the signed minutes, Chairperson.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Because those ones are not signed.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** They are further down on page 584.

**CHAIRPERSON:** Okay, just before – I take it that they are the same as...

**DR NAIDOO:** Same.

**CHAIRPERSON:** Okay, let me just...

**DR NAIDOO:**

“It is recommended that board approves the transaction as set out in the submission to the board relating to the pre-purchase of coal from Optimum (Pty) Ltd.”

10 **ADV SELEKA SC:** Ja, it does say Optimum (Pty) Ltd.

**DR NAIDOO:** Ltd.

**CHAIRPERSON:** On the minutes at 279 and 280 there does not appear to be anything that suggests either way.

**DR NAIDOO:** Either way, correct.

**CHAIRPERSON:** Yes. And you say I must also look where, Mr Seleka?

**DR NAIDOO:** The signed minutes, page?

**ADV SELEKA SC:** No, it is the signed, Chair, so what Dr Naidoo was reading ...[intervenes]

20 **CHAIRPERSON:** The signed one is exactly the same.

**ADV SELEKA SC:** Ja, it is exactly, it is on page 584.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** The resolution is the same, page 584.

**CHAIRPERSON:** Let me just get there.

**ADV SELEKA SC:** So the minutes starts there at page



584, the resolution is on page 585.

**CHAIRPERSON**: Okay, okay.

**DR NAIDOO**: Ja.

**CHAIRPERSON**: Okay. And then let us go to the board to see – we know it was the same submission that was placed before them, ja.

**DR NAIDOO**: Yes.

**ADV SELEKA SC**: But what Dr Naidoo wanted brought to your attention, Chair.

10 **CHAIRPERSON**: Ja.

**ADV SELEKA SC**: It said the resolution does read pre-purchase of coal from Optimum (Pty) Ltd.

**DR NAIDOO**: Yes.

**CHAIRPERSON**: Yes but that was not going to change, is it not, because it is a question of whether you talk about Optimum coal under Glencore or Optimum Coal ...[intervenes]

**DR NAIDOO**: Under Tegeta.

20 **CHAIRPERSON**: Tegeta, that is the – still OCM but ...[intervenes]

**DR NAIDOO**: Still OCM, ja.

**CHAIRPERSON**: Ja. The question is under which one.

**ADV SELEKA SC**: Ja, except, Chair, a distinction might have to be made when you add (Pty) Ltd at the end because then it relates to the entity.

**DR NAIDOO:** Changing the shareholding.

**ADV SELEKA SC:** I beg your pardon?

**DR NAIDOO:** Changing shareholding.

**ADV SELEKA SC:** Yes, it relates to the entity as opposed to the mine itself.

**DR NAIDOO:** Ja.

**CHAIRPERSON:** But after Tegeta took it over did it not remain and Ltd but as a subsidiary of – I do not know whether Oakbay or Tegeta?

10 **DR NAIDOO:** I do not know whether they changed the name of the entity but they purchased shareholding in OCM and they carried calling it OCM and ...[intervenes]

**CHAIRPERSON:** I do not remember seeing anything saying they changed the name.

**DR NAIDOO:** Ja, because, Chair, the contract is still the supreme document.

**ADV SELEKA SC:** Ja.

**DR NAIDOO:** You see, the contract, the supply contract, that is the supreme document, it still refers to this also.

20 **ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Ja. So it is a question of who was in control of the entity.

**ADV SELEKA SC:** Yes.

**DR NAIDOO:** Yes.

**CHAIRPERSON:** Was it Glencore or was it – so but let us

go to the ...[intervenes]

**ADV SELEKA SC:** The board.

**CHAIRPERSON:** The board resolution.

**ADV SELEKA SC:** That is page 352.22.

**CHAIRPERSON:** Okay. Yes?

**ADV SELEKA SC:** So it is by round robin, Chair, and the resolution, resolution required. So what you – the Chairperson will see there, is what was required from the board on the first page, page 352.22. On the next page  
10 the – and I believe it is Ms Suzanne Daniels, would have populated the table to indicate which of the board members send their approvals.

**CHAIRPERSON:** Oh, before that I am just looking at the resolution.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** You see, with the board, their resolution is quite clear because they take paragraph 2.1.2 of the executive summary that I read earlier on, they take it as it is. So what they resolved was in 2.1.2:

20 “The Group Chief Executive together with Group Executive for Generation and Chief Financial Officer are hereby authorise, negotiate and conclude a pre-purchase of coal agreement with the proposed owners of OCM, coal supply agreement.”

Now the investment and finance committee, when you go to

their minutes, as I indicated, it could go either way.

**DR NAIDOO:** Yes.

**CHAIRPERSON:** But this is clear and categorical.

**DR NAIDOO:** Yes.

**CHAIRPERSON:** What the board approved was not the conclusion of an agreement, a pre-purchase of coal agreement between the owners of OCM at the time and Eskom but it authorised pre-purchase of coal agreement with the proposed owners.

10 **DR NAIDOO:** Yes.

**CHAIRPERSON:** So – and you were part of that board.

**DR NAIDOO:** Yes, that was just a cut and paste proposal.

**CHAIRPERSON:** Yes.

**DR NAIDOO:** That is what happened.

**CHAIRPERSON:** And again – and Dr Ngubane also gave evidence along the same lines as yourself.

**DR NAIDOO:** Yes.

**CHAIRPERSON:** And what is troubling me is how it is possible for so many members of the board not to have  
20 seen what is written here in black and white. That is what is troubling me.

**DR NAIDOO:** Yes, Chair. Yes, I agree with you.

**CHAIRPERSON:** H'm.

**DR NAIDOO:** I agree with you.

**CHAIRPERSON:** The board was about how many people

at the time, about 12?

**DR NAIDOO:** 10 – 12.

**CHAIRPERSON:** About 12?

**DR NAIDOO:** Ja, around there.

**CHAIRPERSON:** And some of the board members were people with high qualifications.

**DR NAIDOO:** Yes.

**CHAIRPERSON:** You know?

**DR NAIDOO:** Ja, Chair, this is the point where I think  
10 trust and integrity comes to the fore, you have to have trust and integrity otherwise it is very difficult because you are working in a high-pressured environment, volumes of work coming through very quickly and coming through in high speed, you need trust and integrity. Without trust and integrity it does not hold.

**CHAIRPERSON:** Yes, but you see, when you serve in a body such as the board of an entity such as Eskom, or any board...

**DR NAIDOO:** Yes.

20 **CHAIRPERSON:** You are playing a kind of supervisory role over the executive management.

**DR NAIDOO:** Agreed.

**CHAIRPERSON:** You have oversight.

**DR NAIDOO:** Yes.

**CHAIRPERSON:** And you have to put the interests of the

entity at the forefront.

**DR NAIDOO:** Yes.

**CHAIRPERSON:** Whatever decisions you take you have got to ask yourself the question is this decision in the interests of this entity?

**DR NAIDOO:** Yes.

**CHAIRPERSON:** You see, obviously, all decisions you take must be lawful and comply with the law, you know?

**DR NAIDOO:** Yes.

10 **CHAIRPERSON:** So it is – I mean, when I read that this executive summary for the first time but now I do not know, maybe he drew my attention to it but I think I picked up this proposed owners, negotiate and put an agreement with proposed owners, that sounded strange, you know? But maybe it was because of the evidence that I had heard for some time.

**DR NAIDOO:** Yes.

**CHAIRPERSON:** But is it troubling me that a board, members of the board of such an important state entity  
20 know that they are being asked to authorise payment to an entity of a very large amount.

**DR NAIDOO:** Yes.

**CHAIRPERSON:** 1,6 billion.

**DR NAIDOO:** Yes.

**CHAIRPERSON:** And they do not take the trouble to make

sure that they are authorising the conclusion of a contract with the right entity.

**DR NAIDOO:** Yes, Chair.

**CHAIRPERSON:** They do not take the trouble to say let us make sure that this money goes to the right entity or the right person, it must not go to somebody we do not intend.

**DR NAIDOO:** No, Chair. I think, Chair, I just want to raise this point. The supreme document, as I said here, I is the coal supply contract between Eskom and Optimum  
10 Coal. The money will go from Eskom to Optimum Coal, that is where. But again what happens thereafter, Chari ...[intervenes]

**CHAIRPERSON:** Hang on, hang on, no, no, Dr Naidoo – and we have been dealing with this point. If the money goes to Glencore and your resolution says it should go to Tegeta then whoever sends it to – the money to Glencore, is doing something contrary to your resolution and they are not allowed to do that, they must comply with the resolution of the board.

20 **DR NAIDOO:** Agree, Chair.

**CHAIRPERSON:** You see?

**DR NAIDOO:** Agree.

**CHAIRPERSON:** There is a great responsibility...

**DR NAIDOO:** Yes.

**CHAIRPERSON:** On the board when it deals with monies

and other decisions and I am saying particularly when you are being asked to authorise payment of such a large amount from Eskom to somebody else, there is a greater responsibility for you to scrutinise the documents placed before you to make sure that there is proper justification for this money to be authorised, there is payment to be made, is it being – are you authorising it to be paid to the right person and so on and so on? And certainly what is in the resolution of the board here suggests to me that to say  
10 the least the board was very negligent. It may well be that it is much more than that but I am not saying that at this stage and it may well be that within the board it was negligence on the part of some members but on the part of some other members, maybe they knew more than others, I do not know. But it is troubling.

**DR NAIDOO:** Agreed, I agree.

**CHAIRPERSON:** You accept that.

**DR NAIDOO:** I agree.

**CHAIRPERSON:** Yes. Okay.

20 **DR NAIDOO:** Thank you, Chair.

**CHAIRPERSON:** Mr Seleka, we have gone past quarter past.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** But I do not know whether you would like to complete the evidence of Dr Naidoo, it depends how



much time. I am easy to adjourn now, we continue with him or complete with him if you are not far from finishing.

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

**CHAIRPERSON:** It just depends how much you have covered of what you intended to cover.

**ADV SELEKA SC:** I think I have covered sufficient. Dr Naidoo, the next question is about the guarantee because this pre-purchase was not made to either Glencore – oh well, in fact not OCM at all. Do you know that? Chair, let  
10 me gather my thoughts, we could adjourn, I can finish in five minutes.

**CHAIRPERSON:** Ja, no, that is fine. Let us take the tea adjournment now. We will resume at twenty to twelve. We adjourn.

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

**DR NAIDOO:** Thank you, Chair.

#### **INQUIRY ADJOURNS**

#### **INQUIRY RESUMES**

**CHAIRPERSON:** Just to round off from my part, Dr  
20 Naidoo. So your situation is not that you did not see that you were being asked to authorise the three Eskom officials to negotiate and conclude pre-purchase of coal agreement with the proposed owners, you did see that is what the submission said but – and you did not raise an issue.

**DR NAIDOO:** Yes.

**CHAIRPERSON:** But somehow you say you thought that – or your intention was to authorise the conclusion of pre-purchase of coal agreement between Eskom and OCM as owned by Glencore.

**DR NAIDOO:** Correct, Chair.

**CHAIRPERSON:** Yes and – but if somebody says how you could have thought you were doing that in the light of this clear statement, are you able to explain how you could  
10 have thought along those lines in the light of the statement? In other words, I just want to have your explanation.

**DR NAIDOO:** Yes, Chair. Yes, Chairperson, our understanding was that the – as I said earlier, Chair, the supreme agreements, the coal supply agreement between Eskom and OCM, Optimum Coal Mine, as owned by Glencore. The change of ownership of OCM had not yet occurred.

**CHAIRPERSON:** Okay, alright, I have made – I have said  
20 what I have to about that reason, ja.

**DR NAIDOO:** Thank you, Chair.

**CHAIRPERSON:** Okay, Mr Seleka?

**ADV SELEKA SC:** Thank you.

**CHAIRPERSON:** I see that I think we have taken longer with Dr Naidoo than you had planned but that is probably

my fault not yours, I have had quite a number of questions to ask but I think it was important evidence.

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

**CHAIRPERSON:** Okay, Mr Seleka.

**ADV SELEKA SC:** Yes, Dr Naidoo, we will finish off because – may I just – let us take it further because the – you have made, as the board, as IFC, made a decision for a prepayment.

**DR NAIDOO:** Yes.

10 **ADV SELEKA SC:** And in your understanding it is a prepayment to OCM owned by Glencore to come out of business rescue, supply to Hendrina, also probably supply t Arnot and save jobs.

**DR NAIDOO:** Correct.

**ADV SELEKA SC:** That decision is made on the 9 December 2015. Did the board know what happened insofar as the execution of the decision was concerned?

**DR NAIDOO:** No, sir.

**ADV SELEKA SC:** Did you know that on the 10<sup>th</sup>, the next  
20 day, after you have made that prepayment decision, a guarantee was instead prepared? Did you know that?

**DR NAIDOO:** No, sir.

**ADV SELEKA SC:** And that the guarantee was ultimately issued in favour of Tegeta on the 10 December?

**DR NAIDOO:** No, sir.

**ADV SELEKA SC:** You did not. Did you ask the executives – we made a R1.6 billion decision the other day, what is the position, what is happening?

**DR NAIDOO:** Chair, there will be feedback back to the board. At the next board meeting we will receive feedback and I think that the feedback that we received was to the effect the coal was procured, the coal was used up and that whole prepayment has been completely absorbed. So we bought the coal in advance, we received the coal, we  
10 burnt up the coal, we made electrical energy and that whole prepayment concluded. That was basically the feedback. Thank you, Chair.

**ADV SELEKA SC:** Ja, so – but did they give you the details of who was supplying coal?

**DR NAIDOO:** No, not.

**ADV SELEKA SC:** No. Okay. There was another prepayment made in April 2016. I know that you have not dealt with that in your affidavit but do you know anything about that prepayment of R659 million?

20 **DR NAIDOO:** No, sir, not.

**ADV SELEKA SC:** No. It was made – it was a decision of the BTC. Are you saying it did not come to the board?

**DR NAIDOO:** No.

**ADV SELEKA SC:** It was not reported to the board.

**DR NAIDOO:** No.

**ADV SELEKA SC:** Okay. Chair that – well, I – you know, there was evidence here – and I do not know whether you will know, evidence by Ms Mosilo Mothepu on how McKinsey, Regiments were appointed at Eskom.

**DR NAIDOO:** No, sir.

**ADV SELEKA SC:** Would you have knowledge of meetings that are allegedly – were allegedly held with Mr Anoj Singh prior to him coming to Eskom?

**DR NAIDOO:** No, sir, I would not have knowledge.

10 **ADV SELEKA SC:** You would not. Okay, that concludes my questions for Dr Naidoo. Dr Naidoo says he is a professor.

**CHAIRPERSON:** H'm?

**ADV SELEKA SC:** He says he is actually a professor.

**CHAIRPERSON:** Yes.

**DR NAIDOO:** No, thank you, thank you, Chair. No, thank you, Chair.

**CHAIRPERSON:** Well, you are entitled then to the title of professor and I think if you were in Germany you would be  
20 called Professor Doctor.

**DR NAIDOO:** Yes, that would be in Germany yes. That is fine, Chair.

**CHAIRPERSON:** Thank you very much Professor Naidoo, we appreciate you coming to assist the Commission, you are now excused.

**DR NAIDOO:** Thank you, Chair.

**CHAIRPERSON:** Okay. Yes, Mr Seleka?

**ADV SELEKA SC:** Thank you, Chairperson, the next witness is going to be Ms Venete Klein and as per the arrangement yesterday and the request from her, she will testify via video link.

**CHAIRPERSON:** Okay, alright. Do I need to adjourn to allow something to be set up or not necessarily?

**ADV SELEKA SC:** I think a five minute adjournment  
10 would be preferable, Chair.

**CHAIRPERSON:** If I adjourn?

**ADV SELEKA SC:** A five minutes adjournment, yes.

**CHAIRPERSON:** Ja, okay, let me adjourn for five minutes.  
We adjourn.

**ADV SELEKA SC:** Thank you.

#### **INQUIRY ADJOURNS**

#### **INQUIRY RESUMES**

**CHAIRPERSON:** Good morning Ms Klein.

**MS KLEIN:** Good morning Chairperson and Advocate  
20 Seleka.

**CHAIRPERSON:** Welcome back even though you are not here physically, welcome back to the Commission and thank you for coming back to continue with your evidence.

Registrar please administer the oath of affirmation.

**REGISTRAR:** Please state your full names for the record?

**MS KLEIN:** Venete Jarlene Klein.

**REGISTRAR:** Do you have any objection to taking the prescribed oath?

**MS KLEIN:** No I do not.

**REGISTRAR:** Do you consider the oath binding on your conscience?

**MS KLEIN:** Yes I do.

**REGISTRAR:** Do you solemnly swear that the evidence you will give will be the truth, the whole truth and nothing  
10 but the truth. If so, please raise your right hand and say so help me God.

**MS KLEIN:** So help me God.

**VENETE JARLENE KLEIN:** [duly sworn, states]

**ADV SELEKA SC:** Thank you Ms Klein. Chairperson we are going to use Eskom Bundle 2, and just before we go into it Ms Klein is testifying not for the first time before the Commission. Last time when she appeared, we dealt with the issues of suspensions of the executives and we ended well, when we adjourned her testimony we were dealing  
20 with the removal of Mr Tsotsi and the reasons given by the Board for that removal or vote of no confidence.

That matter has extensively been traversed Chairperson, we were from there going to go into the removal of Mr Norman Baloyi and that would have been the issues in regard to the suspension it would have covered

those issues and what we would have been left with are the transactions, which is what we have been dealing with now.

**CHAIRPERSON:** Okay, thank you.

**ADV SELEKA SC:** So the bundle Chairperson is Eskom Bundle 2, Ms Klein has provided three affidavits so far, the third of those affidavits deals with the transactions. The first affidavit Chair – well now the pagination Chairperson on my side because this is an old file. It has a red pagination, only the red pagination it has a red pagination, only the red pagination, yes. It changes later on in the file to the black and the red.

**CHAIRPERSON:** Do you propose to use the red pagination?

**ADV SELEKA SC:** No I can use the black because the main affidavit we would be dealing with on the transactions has the two paginations. But what I wanted to do was I see the first affidavit does not seem to have been admitted as an exhibit to have them all three admitted and then go to where I need to be.

**CHAIRPERSON:** Well the first one which I said page 7 black numbers, page 2 red numbers.

**ADV SELEKA SC:** Correct.

**CHAIRPERSON:** That one deals with the suspension.

**ADV SELEKA SC:** That is the suspensions only.



**CHAIRPERSON:** Yes, but will you remember what exhibit number it should have been?

**ADV SELEKA SC:** It will be you U14.1.

**CHAIRPERSON:** That is what should have been done.

**ADV SELEKA SC:** Correct Chair.

**CHAIRPERSON:** Okay and she confirmed everything?

**ADV SELEKA SC:** She would have confirmed it on the first occasion when she appeared.

**CHAIRPERSON:** Yes.

10 **ADV SELEKA SC:** Ms Klein you follow?

**MS KLEIN:** I am trying to, so where are we now, which page are we now Advocate?

**CHAIRPERSON:** Bundle 2, Eskom Bundle 2 page 7 black numbers or page 2 red numbers, your first affidavit. The affidavit that comes first in that bundle. Yes, you did confirm previously that this is your affidavit and that the first signature at page 29 black numbers, page 24 red numbers is your signature, is that right?

**MS KLEIN:** I am going there now, that is correct sir.

20 **CHAIRPERSON:** Yes, okay. You want to admit it as exhibit U14?

**ADV SELEKA SC:** As Exhibit U14.1, thank you Chair.

**CHAIRPERSON:** Ms Venete Klein's affidavit starting at page seven black numbers, page 2 red numbers in Eskom Bundle 2 is admitted as Exhibit U14.1.

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

**CHAIRPERSON:** And that is together with its annexures.

**ADV SELEKA SC:** Correct. The second affidavit is on page, black pagination 400.1, 400.1. This one is new Chairperson. Ms Klein are you there on page 401.1?

**MS KLEIN:** Yes, I am.

**ADV SELEKA SC:** Yes, between ten lines, you see the words supplementary affidavit by Venete Klein?

**MS KLEIN:** I will find it, yes I see that there.

10 **ADV SELEKA SC:** Yes, and go to page 400.5.

**MS KLEIN:** Okay, ja I am going there 400.5.

**ADV SELEKA SC:** Yes, your name appears...[intervene]

**MS KLEIN:** I have got it, thank you.

**ADV SELEKA SC:** Yes, your name appears there Venete Jarlene Klein above that is a signature. Do you confirm that to be your signature and the affidavit is dated...[intervene]

**MS KLEIN:** That is correct, yes.

**ADV SELEKA SC:** Can you see us on the screen?

20 **MS KLEIN:** No I cannot actually, I just see myself on the screen here but can you see me? Okay there I see you on the screen now.

**ADV SELEKA SC:** Okay, so the affidavit is dated is it 18 or 15 January 2021, 18?

**MS KLEIN:** Looks like 18, hey.

**ADV SELEKA SC:** Yes, that is 18, do you confirm that to be your affidavit?

**MS KLEIN:** Yes, that is correct Chairperson.

**ADV SELEKA SC:** Chairperson I beg leave to have this affidavit admitted, as Exhibit U14.2.

**CHAIRPERSON:** The affidavit of Ms Venete Klein starting at page 400.1 is admitted as Exhibit U14.2.

**ADV SELEKA SC:** Together with the annexures, thank you Chair. That affidavit just by way of information deals  
10 with issues that arose during Ms Klein's testimony. So she has filed that supplementary affidavit in order to reduce those issues which were new to writing. Then Ms Klein turn to page 400.43.

**MS KLEIN:** I am there Chairperson.

**ADV SELEKA SC:** Thank you.

**MS KLEIN:** Yes.

**ADV SELEKA SC:** That is an affidavit that runs up to page 400.50.

**MS KLEIN:** Yes, that is correct Chairperson.

20 **ADV SELEKA SC:** Do you confirm at the bottom of - above your name there to be, your Signature?

**MS KLEIN:** I do.

**ADV SELEKA SC:** The affidavit is dated 3 February 2021.

**MS KLEIN:** Yes, that is correct.

**ADV SELEKA SC:** Do you confirm this to be your

affidavit?

**MS KLEIN:** I do.

**ADV SELEKA SC:** Chairperson I beg leave to the have it admitted as Exhibit U14.3.

**CHAIRPERSON:** The affidavit of Ms Venete Klein starting at page 400.43 is admitted with its annexures as Exhibit U14.3.

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

**ADV SELEKA SC:** Chairperson I could or we could show  
10 the extent is necessary on Mr Tsotsi's issues.

**CHAIRPERSON:** Yes, try and cover everything that needs to be highlighted with Ms Klein so that we do not reach a point where she no longer wishes to appear before me. So let us try and cover everything if we can, ja.

**ADV SELEKA SC:** Thank you, Chair. Ms Klein...[intervene]

**CHAIRPERSON:** I am not suggesting Ms Klein that you have had had enough of the Commission.

**MS KLEIN:** Thank you very much for your consideration,  
20 Chairperson I appreciate it.

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

**ADV SELEKA SC:** Thank you Chair, Ms Klein just quickly on the aspect of suspensions we were dealing with the removal of Mr Tsotsi and there was the issue about Mr Tsotsi having failed to give a report which he had said was

an investigation report available on the basis, and being a document on the basis of which the President wanted the inquiry to be conducted. Do you recall that?

**MS KLEIN:** Yes, I do sir, I do Chairperson.

**ADV SELEKA SC:** And the - those of you Board members who came to testify, placed some emphasis on his failure to produce the document in order for you to make the decision that was ultimately made.

**MS KLEIN:** Correct, sir.

10 **ADV SELEKA SC:** And according to the testimony that we heard, that was one of the reasons why the Board took a decision that he should be charged.

**MS KLEIN:** Yes.

**ADV SELEKA SC:** But the way in which the charges are formulated, one could not find the charge relating to his failure to provide the Board with such a report.

**MS KLEIN:** Chairperson at the time when the decision was taken that there was this vote of no confidence of Mr Tsotsi, what had happened was in the formulating of the  
20 actual charges, the company secretary at that time might have set up a ...[indistinct – distortion] and met with the attorneys who had helped us in the actual drafting of the charges because there were various charges that were being brought. And it was on the basis of the recordings of the discussion of the 19th that Mr Matshela Koko together

with the attorneys of record at the time, I forget the name, and formulated the actual charges.

Those were definitely one of the things that I can talk for myself that made me lose confidence in Mr Tsotsi, I cannot speak for anybody else. But if you say it is not one of the charges, the charges were formulated based on the actual recording of what was discussed on that particular day.

**ADV SELEKA SC:** Yes. Let me take that further because  
10 you see some of - at least most of the Board members who have provided affidavits to the Commission, they have placed on or set out in their affidavits that when the Minister arrived on the 11<sup>th</sup> of March 2015, the Minister essentially repeated what Mr Tsotsi had said, at least insofar as the inquiry is concerned.

But the Minister went further and identified four areas which he said were of concern to her, and said that the executives in those areas should step aside while the inquiry is ongoing. My question is, did the Board ask the  
20 Minister about the report prior to the Board having to take a decision? The report allegedly, the Board wanted Mr Tsotsi to produce.

**MS KLEIN:** Chair that is a very difficult question for me to answer, you made a call. I was not at the meeting on the 9<sup>th</sup> where this not report but where the meeting or what had

transpired to get this particular resolution from the Board was discussed.

So when the Minister came in at that point in time there was to my knowledge, I did not have any idea about the report. The way I remember that was the report was only discussed at the meeting that transpired after the Minister had left.

**ADV SELEKA SC:** So if we accept your recollection that the report trans – the mention of the report was made only  
10 after the Minister had left. Did you consider as the Board whether it was necessary to go back to the Minister and say, wait Minister before we implement what you have put to us should we not follow due process? Should we not first obtain this report, which Mr Tsotsi has told us about and then see whether and how we implement what you have put to us?

**MS KLEIN:** Well, Chairperson I can only talk for myself. But when I heard about the report like I said it may have been discussed in the meeting of the 9<sup>th</sup> and I am sure you  
20 will test that with other members of the Board. But I first heard about that in a discussion when Mr Tsotsi after the Minister had left so he told us how much work had already been done. So I would not have thought it needed to go back to the Minister because Mr Tsotsi who had effectively now had - we have heard the Minister saying that there is

work that needs to happen to get the company stabilised.

If I could just maybe add on Chairperson whenever you sitting here in load shedding stage three, were in crisis. The Minister has told us when she first met us, I think at the end of December and she told us again, guys get a handle on the business. Now we sitting and we facing an investigation or an inquiry rather, which quite frankly I supported when I heard all about it because I thought it would be a way of ruling or getting a line in the sand and  
10 in understanding what one is dealing with.

But the report came up later when, if I remember that correctly, when Mr Tsotsi was telling us more about what he believes or why he believes, you know that we need to do this and we need to do this quickly. So I did not think at the time personally I did not see the need to go back to the Minister and talk about the report because she did not mention the report Mr Tsotsi did.

**ADV SELEKA SC:** Okay, finally on that, did the Board not itself render the report unnecessary? If we recall Dr  
20 Ngubane when in response to Mr Norman Baloyi's question to Mr Tsotsi saying:

"But Chair, you have said there is a report that exists, should we not first obtain that report before we make the decisions."

Dr Ben Ngubane's response was that:



“There might be a report out there but it is not Eskom’s report, we must make this decision, it is our decision.”

And the Board ultimately went along with that, within the Board itself rendered the report unnecessary.

**MS KLEIN:** Chairperson on the question on what the evidence leader is asking me now is obviously the report was important, you know to us because it was certainly used as motivation to say guys you got to kick start the  
10 process. But like I said is the charges that were formulated against Mr Tsotsi was based on the recordings of the discussion of that day, which is possibly why he was not charged with it because it could be like to say, maybe that was part of the reason he was not charged with this because another Board member maybe felt that let us just move ahead and get this done.

**ADV SELEKA SC:** Thank you. In regard to Mr Norman Baloyi who it seems was a troubled child for the Board from the very beginning. Can you recall why the Board  
20 moved for his removal?

**MS KLEIN:** Chairperson I do not think that I actually addressed it in my affidavit at all advocate, Chairperson if you can help me I do not think I addressed it in my affidavit so I am going to speak from memory if that is okay with you.

**CHAIRPERSON:** Ja, if you can.

**MS KLEIN:** At the time when...[intervene]

**CHAIRPERSON:** Yes, you can if you can remember but if we need to go and have a look at the document then we will have a look.

**MS KLEIN:** Yes, okay, please direct me if there is a document. But I do not think that I addressed it in my affidavit. I do not think that I would have called Mr Baloyi a problem child. What I think I myself that is talking here,  
10 is that the Board would make a decision and after the Board decision was made - and understand how difficult it is, as a Board member sitting there not every decision is made in agreement with you.

At the end of the day, whether you agree or not you kind of need to accept that the majority of the Board members have made this decision and if you go - you cannot constantly be objecting of that sorry I do not agree; I do not agree. There are certain times in critical decisions gets made then you do that. But what I battled with  
20 personally and like I say I am talking from memory is that we would agree as a Board on various things, we would then later on the same night get emails and email trails - and Chairperson I think you would be in a better place because you probably got Mr Baloyi's affidavits where he will then disagree with what the agreement was earlier in

the day. I mean can I give you an example maybe just to demonstrate the point.

On the removal of Mr Zola Tsotsi we had gone through an entire discussion, which obviously the attorneys allow them to use to then formulate the charges because we just formulated it. Norman Baloyi then comes and adds on what he thinks must goes into it and I think that made you know, fulfilling the fiduciary responsibility very difficult to add stuff on after you know, after a Board meeting.

10 And I think that was if you are asking my opinion I am talking from, I am talking from my memory and total recollection right now but I think that to me was the charge. Chair, I hope that answers the question.

**CHAIRPERSON:** Mr Seleka, continue.

**ADV SELEKA SC:** Thank you Chair, yes I recognise the disadvantage because you have not dealt with it in your affidavit. I am going to move on Ms Klein just by...[intervene]

**MS KLEIN:** Thank you, Chairperson.

20 **ADV SELEKA SC:** Yes, insofar as the Board members are concerned, your fellow Board members, did you have any relations any interaction with them prior to your appointment on the Board, Eskom Board and the 11<sup>th</sup> of December 2014?

**MS KLEIN:** No, Chairperson I did not know one of them.

Other than obviously the only person that I could say that I know something about was Romeo Kumalo because I mean he was a public figure but beyond that, no.

**ADV SELEKA SC:** But you did not know him personally?

**MS KLEIN:** No, no I never met him personally.

**ADV SELEKA SC:** Any of the Gupta brothers?

**MS KLEIN:** No, sir never met them.

**ADV SELEKA SC:** Did you come to know them during your time serving on the Eskom Board at a personal level?

10 **MS KLEIN:** No, never met any of them, no never.

**ADV SELEKA SC:** Mr Salim Essa?

**MS KLEIN:** Like I said in my affidavit I was at one of the breakfast and I was introduced to him but beyond that no, I never got to know him personally.

**ADV SELEKA SC:** Yes, what breakfast was this?

**MS KLEIN:** It was one of those breakfasts that I think Eskom was, you know, one of those EMA things I think so, it was at a particular breakfast I remember him coming up and introducing himself at it.

20 **ADV SELEKA SC:** And you say in your affidavit it was during about March, April 2015?

**MS KLEIN:** Correct, yes.

**ADV SELEKA SC:** So you did not know him before then?

**MS KLEIN:** No.

**ADV SELEKA SC:** Minister Lynn Brown?

**MS KLEIN:** Minister Lynn Brown Chairperson I got to know in my job as head of retail, bank of ABSA. We had a couple of functions and because of her profile she was invited to one or two of them and that is where - if I remember correctly, the first time I interacted with her personally was with the opening of Private Bank in the ...[indistinct] of the Baxter, that is the first time I actually got to meet her.

**ADV SELEKA SC:** So did you come to know her on a  
10 personal level?

**MS KLEIN:** Chairperson obviously I got to know her better when I became a member of the Board of Eskom because there were always meetings that I was invited to where she was present.

**ADV SELEKA SC:** Yes, and the former President Jacob Zuma prior to your appointment on the Board, did you know him personally?

**MS KLEIN:** No, I did not but in my time at Eskom I also went onto the Board of the Reserve Bank and I attended a  
20 meeting with the former President at his residence when we had to go and discuss with him – I was the Chairperson of the Remuneration Committee of the Reserve Bank and as that I was called upon to go with the Governor and one or two other Board members to go and discuss the renewal of the contract of one of the Deputy Governors.

**ADV SELEKA SC:** Okay. Now there is an issue I want to draw to your attention before we go into the transactions because it is relevant to what I have, what I am dealing with now. And this is what Mr Koko says in his submission is an invitation you made to him to come to your home, to your house. You know about that allegation?

**MS KLEIN:** Yes, I do Chairperson.

**ADV SELEKA SC:** If I could read to the Chairperson to put the Chairperson on the same page just before you respond  
10 to that allegation.

**CHAIRPERSON:** Ja okay please do.

**ADV SELEKA SC:** It is in Eskom Bundle 15 – Eskom Bundle 15(b) on page 10 – 1039. Ms Klein I know I have provided you with this affidavit or submission.

**MS KLEIN:** Yes – thanks Chairperson I am just trying to pull it up on the screen myself but the – okay (not audible).

**ADV SELEKA SC:** Chair just read – I will read what he says there. Page 10 – Eskom Bundle 15(B) page 1039 the black pagination Chairperson paragraph 147 is Mr Koko's  
20 submission to the Parliamentary Portfolio Committee.  
Paragraph 147 says:

“Ms Klein has in – has in the proceedings before the Portfolio Committee attempted to put me in a bad light because she harbours resentment against me as a result of the fact

that I had refused to assist her husband Mr Harold Klein procure a project management contract for his company in respect of the conversion of Eskom's diesel driven OCGT Generation plants to gas driven plants."

Paragraph 148 on page 1040.

10 "Ms Klein during the second week of January 2017 after I had been appointed interim GCE phoned me and requested that I should meet with her at her home in Mooikloof Pretoria. She stated that she had a private issue that she wanted to discuss with me. I complied with the request and met with Ms Klein at her home on Saturday 14 January 2017. Her husband participated in the meeting. They informed me that they had a problem and Ms Klein said that she needed me to solve it. They explained the problem as being that Dr Klein's company had tendered for project  
20 management contracts on the conversion of the OCGT units to Guess Projects. It was not getting the jobs."

Ms Klein what is OCGT?

**MS KLEIN:** Open Cycle Gas Turbine sorry I am not the technical person please do not just ja. Open – open cycle

gas turbine.

**ADV SELEKA SC:** Thank you. Then I carry on reading.

10 “Ms Klein said that she had taken her ABSA pension money and had invested it in her husband’s business and he now could not get Eskom contracts due to her being a director of Eskom while his competition was getting these – his competition was getting these irregularly. Ms Klein stated that she wanted me to do something about it. I was surprised by what she put across because it was contrary to every Eskom rule regarding conflicts of interest. I informed her and husband that I had no knowledge of the intricacies of the conversation – conversion project at that time or any irregularities in relation to the awarding of tenders in respect thereof. I told her that I would however look into the matter. I then phoned Dr Klein on I

20 believe Monday 16 January 2017 and I arranged a meeting with him. I for purposes of meeting – of the meeting called in Eskom’s Chief Audit Officer as well as members of the OCGT Guess Conversion Project team. I introduced Ms Klein to them



– Mr Klein to them when he arrived and asked him we hear him out regarding his complaints. I then stepped out of meeting. Ms Klein's attitude towards me tinged from that time. She must have expected that I would course the contracts that had allegedly been irregularly awarded to be channelled to her husband."

Ms Klein can you comment on that?

10 **MS KLEIN:** Chairperson let me ask you do you have my supplementary affidavit that was after that had been presented to Parliament I put through an affidavit to Parliament dealing with the exact matter. Do you have that in front of you as well? I mean I can talk you through it but I am just asking do you have that because it was 00:05:18.

**ADV SELEKA SC:** Chairperson I received the affidavit from Ms Klein we have it but it is not – it has not been incorporated in the bundle yet.

**CHAIRPERSON:** Well do you want to do that now so that it  
20 is in when any reference is made to it – we know it is in.

**ADV SELEKA SC:** We could certainly do so.

**CHAIRPERSON:** Or you do not have enough copies?

**ADV SELEKA SC:** I think my – my – one of our investigators will run copies.

**CHAIRPERSON:** Ja okay. Let that be done.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** It would be better ...

**MS KLEIN:** I am happy to respond Chairperson in the meantime.

**CHAIRPERSON:** Ja just respond and then when the affidavit comes we can see whether you wish to add anything.

**ADV SELEKA SC:** Yes.

**MS KLEIN:** Alright, alright. Thank you Chairperson. If you could – I refute Mr Koko's version completely. Let me put it  
10 to you this way you know it is – I know that this is not a life  
matter but you know in front of this really commission I was  
literally accused of bringing Mr Koko back you know or  
literally on my volition which obviously is not true.

So why would I wait literally fifteen months to ask Mr Koko for business for my husband in the first place would be my response. But now let me just deal with the matter that – that the evidence leader put to me.

The reason Mr Koko was called and he was not called  
to my house – my husband was on a panel of project  
20 managers that had been appointed by Eskom in that time.  
So it is not like – I would not ask him to work with none of  
them. My husband has been appointed as a Project Manager  
because he – he holds a Doctorate in Civil Engineering. So  
he was appointed as a specialist if you will.

During that time in fact before Mr Koko became the

acting CEO my husband's company and by the way you can go and check all the conflicts of interest. I had a record of that time after time that you know he was on this particular panel. He was then given a piece of work to provide Eskom with a number of civil engineers for particular work that needed to get done.

When he provided the CV's of the people those were just not good enough. It was struck off. Whilst all this toing and froing was happening my husband got a call from  
10 somebody by the name of a Gavin Sheer or if my memory serves me correctly I am talking from memory here now. Gavin Sheer who said something like this to my husband; he said look I am working for Eskom your company has been given the opportunity now to find these specialists to work on OCGT's but this is how it is going to go. And please excuse me if I do not get the numbers right because I am talking purely from memory now.

What he said was – or what he said to Harold was the total that you will get paid was something like R1500 an hour  
20 but the total that you will get as a company is R100.00 and I will keep the R1400 because I am already here and you will just get the R100.00 per hour.

Obviously because I was a board member my husband came to me and says to me what do you think of this? I said well this is nothing short of fronting. He said so

what do we do with it? I said to him I do not know what to do with it but let us try and escalate it within Eskom.

I was not going to take it to the board because I did not consider it a board related matter. It was an operational issue. That all happened at the time when Mr Koko became the acting CEO. Mr Koko was asked to speak to my husband in that particular week because everything came to a head just after Christmas I think that was January 2017 to speak to Mr Koko but because he could not make it he was busy  
10 obviously now acting as CEO and my husband could not make it – it ended up that the meeting happened to be at my home.

That was the reason that he came there to point out the fronting which he as the CEO had to go and investigate. Now by the Monday following that particular Saturday there was a meeting and a whole host of people were called to the meeting. Obviously I was not part of it but there was an investigation done and Mr Koko did call forensics, audit and forensics and a whole range of other people and as part of  
20 my submission to Parliament with my version this is Mr Koko's version I attached a copy of that report which had been redacted which I am sure that the commission could call and just see if it was about – if the meeting was – my husband was about work for my husband's company which by the way he had already been allocated but it was a whole

fronting arrangement or whether it was to get more work from Mr Koko.

**ADV SELEKA SC:** Okay. We..

**MS KLEIN:** Chairperson I hope that brings some clarity to the point that evidence leader has raised.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Mr Seleka.

**ADV SELEKA SC:** Yes, no it does we will have a look at the report as well. I know you have given me the affidavit but I  
10 do not think it has the attachment – any attachment to it. But we can arrange after the hearings.

**MS KLEIN:** It was yes okay.

**ADV SELEKA SC:** Yes.

**MS KLEIN:** We can – look apparently it was sent Advocate but we can certainly make sure that all the other things will be sent to you as well if you do not have it. Alright.

**ADV SELEKA SC:** Okay. Thank you. Now let us go into the affidavit on transactions – the evidence that you set out there. And we start first and foremost with this  
20 cooperation...

**CHAIRPERSON:** I am sorry you say the evidence she sets out where?

**ADV SELEKA SC:** She sets out in the affidavit Exhibit U14.3.

**CHAIRPERSON:** Okay. Thank you.

**ADV SELEKA SC:** Which is Eskom Bundle 1 page 400.43.

**CHAIRPERSON:** Bundle 15 will not be necessary anymore or will it come back?

**ADV SELEKA SC:** It will not be necessary anymore.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** That is the extent to which I needed to refer to it.

**CHAIRPERSON:** Ja. Okay you may continue.

**ADV SELEKA SC:** Yes thank you. So we are back in your  
10 affidavit Eskom Bundle 2 page 400.43. Ms Klein we – I  
would like you – let us deal with the Cooperation Agreement  
and the Fourth Addendum which was concluded between  
Eskom and OCM owned by Glencore at the time in 2014.

That Cooperation Agreement is intended to make  
certain changes to the agreement that then existed between  
Eskom and OCM in order to increase first and foremost the  
price of coal OCM was selling – the price at which OCM was  
selling coal to Tegeta – to Eskom.

The Cooperation Agreement came to the BTC for  
20 consideration on the 13<sup>th</sup> of April 2015. You were not a  
member of the BTC, correct?

**MS KLEIN:** That is correct Chairperson.

**ADV SELEKA SC:** The BTC did not decide the matter it  
referred the matter to the board. The board had a meeting in  
Cape Town on the 23<sup>rd</sup> of April 2015. You recall that?

**MS KLEIN:** I do Chairperson.

**ADV SELEKA SC:** This – at this meeting apparently this matter came to the board's attention for decision making and we understand that the matter was not decided by the board as well but that the board referred the matter to Mr Brian Molefe. You recall that?

**MS KLEIN:** That is correct. Yes I do.

**ADV SELEKA SC:** Now Mr Brian Molefe's approval the secondment – approval for his secondment was only made in  
10 that meeting of the 23<sup>rd</sup> by the board. And the approval being made with effect from the 20<sup>th</sup> of April 2015 to request. Can you tell the Chairperson what were the board's reasons for – well before I ask that question let me ask you this one.

Is it – who would have requested that the matter be referred to Mr Molefe instead of being decided by the board?

**MS KLEIN:** That is correct Chairperson.

**ADV SELEKA SC:** Ja but who would have suggested on the board that the matter be referred to Mr Molefe instead of being decided by the board? Can you recall?

20 **MS KLEIN:** No I do not. As I said in my affidavit I do not recall who made it but I can certainly tell you why I supported it if that is going to be your next question?

**ADV SELEKA SC:** Yes you can go into it.

**MS KLEIN:** Alright. Chairperson what was being brought to the board was something that to my mind at the time

management after having taken it to BTC where for some reason or other it was not concluded brought it to the board but in drilling down I mean I do not have all the details because I did not sit at BTC but if I try and remember this thing questions such as extending the tenure of a particular contract was one. The price increase going from I think R150 to R400 odd where questions were being asked of management and he alerts me to this because like I said I was not part of the original discussion at BTC. Management  
10 did not seem to have the answers until when somebody proposed that this gets given as an operational matter back to the Chair – oh sorry back to the acting CEO at the time. I did not see that as a major problem I thought it was probably the best thing because management clearly did not have all the answers.

Also remember that the tenure of that current transaction was until 2018 and we were talking about 2015 so it was not something that according to my mind needed to be drafted immediately.

20 Just by way of record – reference if I can just get back a minute or two if you will allow me? Remember we were sitting with load shedding stage 3, we were sitting without money, basically we had so many boards in the air that for me something that did not need to be decided today  
00:17:38 is okay if management had not got the answers



take it off the table and let us deal with the critical matters that it could work. So that is why I would have supported that.

**ADV SELEKA SC:** Yes. When you say mana – there were questions that management did not answer or could not answer did the board specifically raise questions with – with management? But I do not want to say management.

**MS KLEIN:** My recollection is that ...

**ADV SELEKA SC:** Can I narrow it down to the team that  
10 was negotiating the Cooperation Agreement and the Fourth Addendum. Did management raise questions with this team?

**MS KLEIN:** Sorry management or board? Are you referring to board raised questions with ...

**ADV SELEKA SC:** No sorry the board – did the board raise questions...

**MS KLEIN:** That is my recollection. My recollection was there were questions and I personally I can talk just for myself. I got the sense that they did not have all the answers and I almost – I remember sitting there albeit a long  
20 time ago and thinking well that is probably why it is with board and not with BTC because maybe this – I thought that BTC got was not satisfactory which is why it was brought to the board. I do not know. But I got a 00:19:02 that the questions were not being satisfactorily answered which is why it was given back to management to take – to give back

into 00:19:11.

**ADV SELEKA SC:** Yes. Well I am – I have put this version to Mr Andre Van Heerden who is preparing an affidavit for the commission and he - which will be provided to you in due course but let me say what he says and I hear your view. He said the team that negotiated and presented to BTC was not called to present to do the same in respect of the board and did not receive any questions from the board on the matter. So that is why I am asking you whether do you personally  
10 know – whether do you personally know that questions had in fact been raised with that team?

**MS KLEIN:** Chairperson so you – I just need to – you broke up just slightly there so you said somebody had – who had dealt with it? You had asked this question of somebody else I did not get that.

**ADV SELEKA SC:** Yes the - I said Andre but it is actually Mr Johan Bester – ja it is actually Mr Johan Bester who was involved in the negotiation he testified previously before the commission. He said although they did the presentation at  
20 BTC they were not invited to do the same for the board and that they did not receive questions from the board in regard to the Cooperation Agreement and the proposal made by OCM. Hence my question to you whether do you personally know that the board had raised questions with the negotiating team?

**MS KLEIN:** Chairperson obviously now I do not know what Mr Bester – I did not listen to his testimony but let me put it to you this way. It would not be unusual that the negotiation team does not recall. I mean that is why we have got X official members of the board. I would imagine at the time whoever was presenting it and it would probably if memory serves me correctly has been the acting CEO at that time would have probably have been the one sending the questions. I cannot – like I said I do not remember or I  
10 cannot say who was in the room exactly. But if he says he was and very, very clearly the questions was not asked of him.

**ADV SELEKA SC:** As we understand from your affidavit and the affidavit of – affidavits of other board members the matter was referred to Mr Molefe for the purposes of him getting information and giving feedback to the board. Is that also your understanding?

**MS KLEIN:** That is correct Chairperson.

**ADV SELEKA SC:** We have as the legal team have seen  
20 from other board members affidavits that they have no recollection of Mr Molefe reporting back on the matter to the board. What is your recollection?

**MS KLEIN:** My recollection Chairperson is that I picked it up I think it was something under legal in the month of September. That is where I picked up the next – you know

where I pick it up next. I am not sure what is – I have not read – I have not had the benefit of reading through the affidavits of any of the other board members but I remember seeing it for the first time in September and it was under legal when it looked like this had already progressed quite far.

**ADV SELEKA SC:** Yes. Chairperson was in the – what Ms Klein is referring to is on page 400.55. Ms Klein you might – you may want to turn there. But now this is in September  
10 2015.

**MS KLEIN:** That is correct Chairperson.

**ADV SELEKA SC:** Before we get to and will see Chairperson under 6.3 but before we go to that Ms Klein let me ask you this. Did you know that Mr Molefe had terminated the Cooperation Agreement and negotiation process with OCM in July 2015?

**MS KLEIN:** No Chairperson I was not aware.

**ADV SELEKA SC:** You were not aware. So then we come to September and you call it a report of the Chief Executive  
20 Officer. Are you on that page 400.6...

**MS KLEIN:** It was the legal report. Yes that is correct Chairperson.

**ADV SELEKA SC:** Is that under paragraph 6.3?

**MS KLEIN:** That is correct yes this is the legal update. The CEO report but it is with the legal update.

**ADV SELEKA SC:** Okay there is a heading there after the first paragraph there is heading Optimum Coal Mine Proprietary Limited and Optimum Coal Holdings Limited.

**MS KLEIN:** That is correct yes.

**ADV SELEKA SC:** Is that the paragraph there under is that what you want to refer the Chairperson to?

**MS KLEIN:** Yes that is the one I am referring to.

**ADV SELEKA SC:** Yes. As where you...

**MS KLEIN:** Correct.

10 **ADV SELEKA SC:** As where you picked up that he was reporting back to the board.

**MS KLEIN:** Effectively because that was his report back to the board. So yes that is the one I am referring to.

**ADV SELEKA SC:** I have read this paragraph and the reporting is not of the kind that I thought he was required to do. In fact here it is a report that the negotiations have been terminated as opposed to I have obtained information and this is what – these are the facts let us decide how to go forward with the matter.

20 **MS KLEIN:** Yes Chair.

**ADV SELEKA SC:** What is your comment on that?

**MS KLEIN:** Chairperson not being a technical person myself I was at that stage it did not look strange to me at all. I mean this is him giving feedback. Remember the contract that was brought to us in – in April spoke about something

that was happening at one of the you know – with one of the suppliers of coal and they were asking for more money and they were asking for an extension of tenure. So then I looked at this I think at that stage to think there was anything strange with that. Obviously now at the benefit of hindsight I now realise I should have asked a lot more questions.

**ADV SELEKA SC:** Okay. Yes but let me hear your answer to this. I accept that that with the benefit of hindsight you realised that you should have asked more questions. What I was saying to you is if the board's decision on the 23<sup>rd</sup> of April 2015 was for him to get information and come back to the board – report back to the board what is happening here in September is not that kind of reporting. In fact what he is telling you is that he has terminated the negotiations with OCM.

**MS KLEIN:** My response to that will be very simple Chairperson maybe simple to me but maybe you see something else there is that remember we got a board sub-committee you will remember on the – on the matters of the suspensions because of me serving on PMG you already you know asked me for many answers. I expected when I looked at this that this is probably had been dealt with would have been dealt with at one of the sub-committees. So it did not – it did not come across as strange to me that this was clear

or that he should have. I did expect him to come back but I mean the fact that he did not and it was here – and none of the other board members raised it I did not find that as being strange at the time.

**ADV SELEKA SC:** Yes but is that not problematic because BTC which is a sub-committee of the board had specifically referred the matter up to the board and the board not the BTC or any subsidiary for – committee of the board made the decision to refer it to Mr Molefe on the basis that he will  
10 obtain information and come back to the board. But not to make a decision that he made.

**MS KLEIN:** No I – I do hear you Chairperson and I am giving you – if you saying to me it is problematic I accept that it is. I understood this at the time because remember we sitting with BTC members in the board that if this was the incorrect approach or this was wrong that is then would have been flagged as wrong. I just – it was when you asked all the questions that I went back to go and reread it that I realised that this is the first time it actually came back to the  
20 board. And I am not trying to make – I am not trying to trivialise the matter but rather to say to you that you – as board members we were sitting with many hands in the fire dealing with many things at the time. Now today when I look at it and obviously having heard everything I realise we should have asked – I should – I thought should have asked

more questions here. So you say problematic I accept that it is.

**ADV SELEKA SC:** Yes because – the impression Ms Klein created and you would know from the investigation by the Parliamentary Portfolio Committee or the oversight role they played the impression created is that Mr Molefe was brought to Eskom for a particular purpose and that purpose on the face of it appears to be to assist the Gupta brothers in order to obtain contracts with Eskom. Do you have any comment

10 on that?

**MS KLEIN:** Other than what I have read in the media and obviously what has played out in terms of the commission I can understand how you could tell me that this is problematic. Further than that I cannot comment because at the time when this happened I did not think that it was irregular because remember in my mind being a non-technical person we are talking about something that was supposed to only have been decided in 2018 so I did not attach any – it has got to be decided now. But with the

20 benefit of having listened to you know different evidence pieces and certainly the kind of questioning that you put to me I can understand how you can see this was problematic. I see it as problematic now.

**ADV SELEKA SC:** Yes. But what is also more troubling is that the impression is created that the board also created an



enabling environment for that ulterior purpose to be achieved. I mean you as the Chairperson earlier said you – some board members may not have known, maybe acted to say the least negligently. There might have been other board members who knew what was happening as an ulterior motive the real purpose for making certain decisions but I am just putting that to you so that you can comment to the Chairperson that the more troubling issue is that the board which is the gatekeeper or should have been the gatekeeper  
 10 in the exercise of its fiduciary duties making decisions of this nature that you nonetheless created an enabling environment for some of these decisions to take place. Your comment?

**MS KLEIN:** Chairperson it is actually very difficult to even – sorry.

**ADV SELEKA SC:** Yes your comment, proceed.

**MS KLEIN:** Sorry. Obviously when I look at things today it looks very different to what it looked like back then. If you were to ask me directly whether I was involved or I knew my  
 20 answer to that is no. If you were to ask me did I see myself as enabling this you know all I can say to you is you know as board members I can talk for myself. We were dealing with so many different things coming at us. Load shedding was still an issue. We were dealing with lack of money. We were – it was just coming from all angles so it is really difficult to

say you know who may have known what other than what I knew. So yes I understand and I do hear you when you say this is what emerges but I cannot really comment on that because I was part of the board and should I have asked more questions on that – now I know that I should have. But way back then you know it is – I did not.

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

**CHAIRPERSON:** We need to take the lunch break it is one o'clock.

10 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** We are going to take the lunch break and we will resume at two o'clock.

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

**CHAIRPERSON:** We adjourn.

**MS KLEIN:** Thank you.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay let us continue Mr Seleka.

20 **ADV SELEKA SC:** Yes, Chairperson. We can proceed.  
Ms Klein, you can still hear us?

**MS KLEIN:** Yes.

**ADV SELEKA SC:** Thank you.

**MS KLEIN:** Yes, I can hear you.

**ADV SELEKA SC:** Thank you. I was about to move to the

second or the – ja, the second point in the transactions which is what you deal with on page 400.47, Eskom Bundle 2.

**MS KLEIN:** [No audible reply]

**ADV SELEKA SC:** Yes. Ms Klein, before I ask you a question on this. It was brought to my attention during the lunch adjournment that that report we referred to of Mr Brian Molefe, although it was there in the pack to the board, it was in fact not presented to the board. Can you –  
10 do you recall that?

**MS KLEIN:** No, I do not Chairperson. All I remember is that in going back, being asked questions by yourselves, I went and I found that report in amongst the documents in my packs. So if it was not presented, then I cannot respond to that. It certainly was in my amongst my board pack, thereabout.

**ADV SELEKA SC:** Yes, I do not know whether you have also a copy of the minutes of the meeting of the 10<sup>th</sup> of March 2015(sic) which would have ...[intervenes]

20 **MS KLEIN:** 10<sup>th</sup> of June?

**ADV SELEKA SC:** 10 September 2015. I beg your pardon.

**MS KLEIN:** I can refer. Do you have a reference point for me on it?

**ADV SELEKA SC:** No, remember ...[intervenes]

**MS KLEIN:** Because I can go and...[intervenes]

**ADV SELEKA SC:** Ja, remember his report is dated 9 March. I mean, 9 September. Sorry.

**MS KLEIN:** Okay.

**ADV SELEKA SC:** Ja, 9 September 2015 and it was meant to be presented to the board on the meeting of the 10<sup>th</sup> of March(sic). No, 10 September.

**MS KLEIN:** Yes, Chair?

**ADV SELEKA SC:** Yes. I know that you have a collation  
10 of the minutes of the board meeting. So I was asking whether you do not have that one as well of the 10<sup>th</sup> of March(sic)?

**MS KLEIN:** Oh, sorry.

**ADV SELEKA SC:** Of the 10<sup>th</sup> of September.

**MS KLEIN:** Are you asking me if I have a copy of the board meeting with me for the 10<sup>th</sup> of September?

**ADV SELEKA SC:** Yes.

**MS KLEIN:** Just hold on. Let me see if I can find it. Yes, I have Chairperson.

20 **ADV SELEKA SC:** Yes. Under paragraph 8.2 where he talks about the Chief Executive's report. It reads ...[intervenes]

**MS KLEIN:** Oh.

**ADV SELEKA SC:** It was noted ...[intervenes]

**CHAIRPERSON:** Sorry, Mr Seleka. Are you talking about

the CEO's report or are you talking about the minutes of the meeting of ...[intervenes]

**ADV SELEKA SC:** It is the minutes Chairperson.

**CHAIRPERSON:** And where would I find them?

**ADV SELEKA SC:** The Chairperson will find them in Eskom, Bundle 14(C), page... Bracket C.

**MS KLEIN:** Chairperson, I do not seem to have that but I am happy to listen to what you have got to say and see how I respond.

10 **ADV SELEKA SC:** Page 841.

**CHAIRPERSON:** Okay Ms Klein.

**MS KLEIN:** Yes, Chairperson?

**ADV SELEKA SC:** Ja, the Chairperson is getting the... And I will just read.

**CHAIRPERSON:** Did we forget ...[intervenes]

**MS KLEIN:** Please Chair.

**CHAIRPERSON:** Did we forget to allow Ms Klein's lawyers to place themselves on record today?

**ADV SELEKA SC:** Ja.

20 **CHAIRPERSON:** [laughs]

**ADV SELEKA SC:** We did, ja.

**CHAIRPERSON:** Shall we correct that now?

**ADV SELEKA SC:** Yes. No, you are correct there.

**CHAIRPERSON:** Ja.

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

**CHAIRPERSON:** [laughs]

**ADV SELEKA SC:** Yes, and they did tell me they will join the meeting. They will join the hearing but they will blank themselves and keep themselves on mute.

**CHAIRPERSON:** Oh, okay. [laughs]

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Oh, there is an understanding between the two of you.

**ADV SELEKA SC:** Yes.

10 **CHAIRPERSON:** Okay I will leave it at that. [laughs]

**ADV SELEKA SC:** No, but they can place themselves on record Chair. I think you are correct.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Advocate Don Mahon(?).

**CHAIRPERSON:** H'm?

**ADV DON MAHON:** Thank you, Chairperson. Advocate Don Mahon instructed by ...[indistinct] attorneys.

**CHAIRPERSON:** Thank you, thank you.

**ADV SELEKA SC:** Thank you, Chair. Yes, let us have  
20 Ms Klein back.

**CHAIRPERSON:** But I have got the minutes that are or that... I do not know what page they start but I have got 841 in front of me.

**ADV SELEKA SC:** Yes, they start on page 834.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** The only relevant portion Chair is 841.  
And Ms Klein, you are back? Under paragraph  
...[intervenes]

**MS KLEIN:** Yes, I am.

**ADV SELEKA SC:** Ja, just under paragraph 8.2. It says:

“The acting CE report as at 7 September 2015  
was tabled for information, details of which  
were included in the meeting pack.

It was taken as read.

10 It was noted that the pack had been distributed  
late and members could direct any queries  
around the acting CE’s report to the acting CE  
and resolve that. It is noted.”

Well, I understand it was not presented but I see  
they say taken as read. Can you – do you have – my  
question is whether you recall as to whether or not that  
report was presented?

**MS KLEIN:** No, actually I do not remember Chairperson  
and like I said, you know, with the benefit of hindsight,  
20 even if I did read it and if I knew then what I know now, I  
probably would have had a lot more questions.

**ADV SELEKA SC:** Yes.

**MS KLEIN:** But I do not recall that specific point being  
discussed.

**ADV SELEKA SC:** Yes.

**MS KLEIN:** I mean, like I said I picked it up when I went through my documents when I got your questions. That is when I really went and wrote down.

**ADV SELEKA SC:** Okay thank you. Now let us get to the submission, requesting the board to make the prepayment decision of R 1.6 billion. That submission is drafted and submitted to the board on the 8<sup>th</sup> of December 2015.

**MS KLEIN:** That is correct Chair.

**ADV SELEKA SC:** The board, in terms of that submission,  
10 is requested to make a decision, to make a prepayment.  
Correct?

**MS KLEIN:** Correct. Correct, Chair.

**ADV SELEKA SC:** We have referred to that submission which you will find in Eskom Bundle 18(A) on page 281.

**MS KLEIN:** [No audible reply]

**ADV SELEKA SC:** Page 281, Eskom Bundle 18(A). In our previous session or the session with the previous witness, we went into this submission Ms Klein. So we are familiar with it. I hope you are also familiar with it?

20 **MS KLEIN:** I am Chairperson.

**ADV SELEKA SC:** You are?

**MS KLEIN:** [No audible reply]

**ADV SELEKA SC:** And so just to sketch the picture. This document is drafted against the backdrop of negotiations between Optimum and Eskom regarding the existing Coal



Supply Agreement at the time between the two parties.

Optimum goes into business rescue when it appears that negotiations between it and Eskom are collapsing in regard to the increase of the coal price.

In that process, OCM seeks to – it gets offer to sell its share. You have at the same time Mr Koko who engages with the DMR, drafting a letter a response to which would form the basis of the submission as well.

Do you see from his affidavit that the submission  
10 incorporate that letter to the board?

**MS KLEIN:** [No audible reply]

**ADV SELEKA SC:** On the 8<sup>th</sup>, an email is sent to the board, asking the board to make a decision the next day at 12:00 which is on the 9<sup>th</sup> of September.

**MS KLEIN:** Yes.

**ADV SELEKA SC:** To make that decision by way of a Round-robin. Please explain to the Chairperson, what was your understanding of this submission in the sense that which party, that the submission proposed that the  
20 prepayment be made?

**MS KLEIN:** Chairperson, my understanding was that there was this big need to do a prepayment to OCH because of the coal requirements.

I must say to you upfront that because of my probably lack of technical knowledge I then wrote – I was

the one – and I know that there had been other people who said that they call for an IFC.

This request was sent to the entire board. I then said, I will only sign this off if we can get an IFC going because I wanted Dr Pat Naidoo who is or for me was the most technically experienced person, to talk me through why something of this nature being R 1.68 billion would come to the board with less than 24-hours and see in which way the board will make a decision.

10 I was not comfortable with that and I requested that an IFC be held which obviously was not held afterwards and Dr Pat answered the questions that I had.

**ADV SELEKA SC:** Okay. Talking about the request for IFC. What we see from the documentation provided to the commission by the witnesses, is that the member of the board who had requested, at least made a request for the matter to go to IFC, was Ms Viroshini Naidoo in an email reply to Ms Daniels.

We do not see any other member requesting that  
20 the matter be referred to IFC. Your comment on that?

**MS KLEIN:** Chairperson... Yes, I would like to comment.

**ADV SELEKA SC:** Yes.

**MS KLEIN:** I responded by way of a Whatsapp signed document then subject to IFC and I sent that. I think counsel sent that to you, yesterday or the day before.

Mine was underway over Whatsapp because of the urgency of this.

**ADV SELEKA SC:** Yes, I have not personally received that but ...[intervenes]

**MS KLEIN:** You have not?

**ADV SELEKA SC:** ...you could send it to the investigators.

**MS KLEIN:** It was sent – it was sent to the investigators Chairperson. It was sent two days ago.

10 **ADV SELEKA SC:** Two days ago?

**MS KLEIN:** Yes.

**ADV SELEKA SC:** Okay I will ask ...[intervenes]

**MS KLEIN:** [Indistinct – distortion], yes.

**ADV SELEKA SC:** So. But then let us go further in order to answer the question now. What did you understand was the prepayment made – for which entity was that prepayment meant for?

**MS KLEIN:** My understanding was always that it was meant for OCH who was in business rescue and was  
20 engaging with whoever but my understanding was that the prepayment of R 1.68 billion was for OCH.

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

**MS KLEIN:** And so in the documents says for the liquidating of their debt. So that was always my understanding, OCH.

**ADV SELEKA SC:** Yes, so by OCH, you mean the company that was owned by ...[intervenes]

**MS KLEIN:** Correct. OCM. I am sorry. OCM.

**ADV SELEKA SC:** No, that is fine. That means the company owned by Glencore?

**MS KLEIN:** That was my understanding Chairperson.

**ADV SELEKA SC:** Yes. So that means – I mean ...[intervenes]

**CHAIRPERSON:** Well, was not there an OCH being the  
10 holding company at Glencore/OCM? Was there not a holding company called OCH?

**ADV SELEKA SC:** That is correct Chair.

**CHAIRPERSON:** Ja.

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

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** So you are not necessarily wrong  
Ms Klein.

**MS KLEIN:** Thank you, Chairperson.

**ADV SELEKA SC:** Ja. So by that understanding, just  
20 confirm to the Chairperson. That means the prepayment was not meant for Tegeta?

**MS KLEIN:** Not according to what I read back and understood. Yes, Chairperson.

**ADV SELEKA SC:** Yes. And what made you understand that the prepayment was meant for OCM owned by

Glencore and not Tegeta?

**MS KLEIN:** Because when I looked at the writer, it actually said pre-purchase of coal to OCM. That is what made me understand that that is where the money was supposed to go to.

**CHAIRPERSON:** Well, I was going to say Mr Seleka, please ask the question much directly because we know what the whole issues is about. Ms Klein, I do not know whether you might have listened when or watched when  
10 Dr Naidoo was giving evidence? Did you? You did?

**MS KLEIN:** Yes, I did Chairperson.

**CHAIRPERSON:** Yes, okay. So you know the context.

**MS KLEIN:** Yes, I do.

**CHAIRPERSON:** The Executive summary or submission that was placed before the board made it clear in paragraph 2.1.2 that the board was being asked to authorise three officials of Eskom.

**MS KLEIN:** H'm?

**CHAIRPERSON:** The Group CEO, Group Executive for  
20 Generation and Chief Financial Officer to negotiate and conclude a pre-purchase of coal agreement with the proposed owners of OCM, that is coal supplier. You accept – do you know that the proposed owners of OCM were Tegeta?

**MS KLEIN:** Chairperson, at that time I was not looking at

who the proposed owners were. I cannot argue the words away as you correctly say but bear in mind that this organisation or this operation was in business rescue. So I did not know ...[intervenes]

**CHAIRPERSON:** I am sorry. Just ...[intervenes]

**MS KLEIN:** ...who negotiate ...[intervenes]

**CHAIRPERSON:** I am sorry. Just repeat the sentence with which you started, bear in mind...

**MS KLEIN:** Okay. I can talk about my understanding at  
10 the time. And that is, that this was an operation in business rescue. I did not know who the Business Rescue Practitioners were talking to or who were the proposed owners or not.

The way it was presented to me by management was that it was with the OCM or OCH. That is what was my understanding right through the transaction Chairperson.

**CHAIRPERSON:** Did you at that time read this Executive summary?

**MS KLEIN:** I obviously did.

20 **CHAIRPERSON:** Yes.

**MS KLEIN:** But from a perspective...

**CHAIRPERSON:** H'm.

**MS KLEIN:** Sorry.

**CHAIRPERSON:** H'm?

**MS KLEIN:** From a perspective of, we are dealing with an

operation in business rescue. We are dealing with a group that needs money to liquidate their debt. So I was not... I must admit, I was not looking at proposed owners at all. My understanding was always, I am dealing with OCH.

**CHAIRPERSON:** Yes.

**MS KLEIN:** Chairperson.

**CHAIRPERSON:** So are you able to say, as did Dr Naidoo, you did see the paragraph, that is 2.1.2, and you did notice that it said the agreement was to be  
10 concluded with the proposed owners of OCM but nevertheless you understood the issue differently.

Or is the position that you did not take note of the fact that paragraph 2.1.2 sought your authorisation as the board that the three Eskom officials should conclude an agreement, not with the owners of OCM at the time but with the proposed owners.

So I just want to establish whether you did see it like Dr Naidoo but thought in a certain way or whether you read it but you did not take note of what was being said  
20 here?

**MS KLEIN:** Ja. Chairperson, let me start by saying the paragraph that you have referred to giving the Executive the right to do what they needed to execute. That would be standard in every resolution because obviously board members are not operation.

But having said that, my understanding always has been this is a company in distress. There is a Business Rescue Practitioner. They are interacting with various people.

So according to me, my understanding was always that I am singing off R 1.68 billion to OCM/OCH. I never – I must say, you ask me now if I see it? I probably did see it but I did not think anything of it because it is a company in business rescue where the practitioners would need to  
10 engage with a whole range of people.

So if I should have taken interested into it because that is what you are asking me, then maybe I should have but I always, in my head it has been clear, it has been OCH.

**CHAIRPERSON:** Well, as I said to Dr Naidoo. What troubles me is that as a member of the board you are being asked to authorise quite a large – a payment of a large amount of money from Eskom and the document being provided to you as the board by management makes it  
20 quite clear that what they are asking you to authorise is the conclusion of pre-purchase of coal agreement with people who are not yet owners of OCM.

But it looks like either the whole board saw that but did not appreciate or did not note its significance or maybe some did not read it but you said you probably read



it but you probably did not understand.

And you must tell me if I am putting words in your mouth. Understand its significance. Am I correct that that is the effect of what you are saying?

**MS KLEIN:** Yes. Chairperson, all I can say to you is. You know, with the benefit of hindsight, I find that the wording was actually quite clumsy.

**CHAIRPERSON:** H'm.

**MS KLEIN:** And I always think that management  
10 purposely putting words there because they were part of the IFC when the questions were being asked and being deliberated and never...

I mean, that docket packs said this morning. We spoke about why did this happen, why was it necessary. Nowhere in that discussion did any of the management say to us: Guys, do not forget that this is going to a different person than OCH. I mean, you can see according to the minutes that that was not discussed.

So if you are saying to me I should have paid more  
20 attention to it, the actual wording... I do not want to sound like a pop-up because as a board member, I take responsibility for the decisions that we make.

**CHAIRPERSON:** H'm.

**MS KLEIN:** But Chairperson, my understanding always was. A company in distress, in need of money, the need of

money urgently. And that is why we signed it within less than 24-hours. Nowhere in the deliberation was it about not going to ever to OCH.

**CHAIRPERSON:** But you see, as I see it, it may well be that the whole idea from management that they should ask the board to authorise that pre-purchase of coal agreement be concluded with the proposed owners of OCM was a wrong idea, was a bad idea and maybe much more than that.

10 But it does not seem to me that the board can criticise management for having mislead them on that point because they put it here.

They did not say owners of OCM. They said proposed owners. And this was a board, some of whose members are quite well-qualified with high qualifications.

And it is just difficult to understand how it is possible that so many people on the board did not pick this up because... I mean, you say Ms Klein that paragraph is a standard paragraph in your submission.

20 That I understand because these things are based on a certain template or format that you know that if they place a submission like this before you, paragraph 1 is about what the whole issues is about, paragraph 2 resolution. Then they specify.

But I want to suggest to you that that part which

says resolution required, and that is where paragraph 2.1.2 falls under, that must be one of the most important parts in this document that board members must look at because they know they have been asked to authorise something.

So the first thing they must understand is. What are we being asked to authorise? And if it is payment, there are certain pertinent questions they must look for when they look for answers for in this document.

One, what is the payment for? Two, who is it to be  
10 made to – who is to be made to? Why? What are the reasons? What is the justification?

And the larger the amount that is talked about, the higher the obligation on the board or members of the board to scrutinise the document properly. Would you not agree with me on all of these propositions?

**MS KLEIN:** Chairperson, I completely agree with you except for the one point.

**CHAIRPERSON:** H'm?

**MS KLEIN:** That who is it made, who is it made to?

20 **CHAIRPERSON:** H'm?

**MS KLEIN:** The who is it made to part, is the part which is quite coming for me in terms of the wording.

**CHAIRPERSON:** H'm?

**MS KLEIN:** Remember we as a board now know about OCH being in business rescue.

**CHAIRPERSON:** H'm.

**MS KLEIN:** We also know now that they are engaging with a whole range of people we do not know who.

**CHAIRPERSON:** H'm?

**MS KLEIN:** So my understanding, which is why I was – I really wanted ...[indistinct - distorted]. Is this something that would typically happen? Is this something that could happen? And I am not satisfied there was. The who it was made to, in my mind – I cannot talk for anybody else –  
10 business rescuers typically would go out and deal with a whole range of people, so I didn't see that as being strange at all.

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

**MS KLEIN:** So you're ...[intervenes]

**CHAIRPERSON:** But you would agree, would you not, that if you are a member of a Board, of the Board of an entity such as Eskom and you are authorised to, you are asked to authorise such a serious, such a big amount to be paid, one of your duties is to make sure that you only authorise  
20 payment of this amount to the right person, because if you authorise payment to a wrong party that would be very serious, is it not? So ...[intervenes]

**MS KLEIN:** I totally agree with you Chairperson.

**CHAIRPERSON:** Yes, what I am suggesting to you which would apply to all the board members is there probably was

a failure on the part of the board to do its job properly if it authorised payment to an entity that if they agreed to a request for authorisation to an entity – to one entity but they thought they were authorising payment to another entity and yet there was a document in front of them telling them exactly the entity that the executive management, the management, wanted to be paid the money. Would you not concede that?

**MS KLEIN:** Chairperson, I completely concede with what  
10 you have said. I just want to add that from my perspective – and it is not a defence, this is where my mind is.

**CHAIRPERSON:** Yes.

**MS KLEIN:** That is all I can talk – I cannot talk for the other board members.

**CHAIRPERSON:** Yes. No, I accept that.

**MS KLEIN:** We have got a company in distress in business rescue. My understanding with that means that the business rescue practitioner is interacting with our organisation. What they have got and who they are doing  
20 that with is not who I – I do not know because that is not what has been put in front of me. Which is – I go back to the wording, I concede with what you say, I do concede, the point I am making is, in my mind, I do not know who those people are and if I could have asked more questions at the time because what I know now, I would never have

agreed(?).

**CHAIRPERSON:** Yes, you see, what I would suggest is that if you – you needed to make sure that you authorised the right entity to be paid and I suggest that reading this paragraph 2.1.2, once you saw that it was saying the payment must be to the proposed owners, I think the immediate question should have been why pay to proposed owners and not to current owners and that is when you should have asked management please clarify this, why are  
10 you saying we must authorise payment to proposed owners and not to current owners? And then if they gave you an explanation which you thought was valid, it is one thing, if they did not give you an explanation that was satisfactory, you may have refused and said well, I am only prepared to authorise payment to current owners, so this would have to be changed. Do you understand that?

**MS KLEIN:** I hear you, Chairperson, and like I said, I concede with your position. I, like I said, cannot answer for anybody else.

20 **CHAIRPERSON:** Yes.

**MS KLEIN:** I can just talk for myself and my position then. If this was not a business rescue transaction then that would have been a very – then I would immediately have [indistinct]. I guess from my perspective, so what I understood it at the time was that because they are in

business rescue they are talking to a whole lot of people and maybe this is okay. So I cannot argue with what you are saying, Chairperson, other than that was my position for supporting it ultimately which obviously now I know was wrong.

**CHAIRPERSON:** Yes.

**MS KLEIN:** I wish I knew then what I know now.

**CHAIRPERSON:** Yes. Mr Seleka?

**ADV SELEKA SC:** Thank you, Chair. Ms Klein, talking of  
10 a company in distress, what is also maybe of consideration for you to comment on is the fact that eight months before in April 2015 this very company had indicated that it is in distress and it had declared a hardship or invoked the hardship clause seeking to get Eskom to increase the price of coal, not on a prepayment basis, but on a monthly basis. So increase the price of coal from R150 per ton per month to I think what I have seen from the affidavits to R442 per ton and this is prior to it going into business rescue. Could the same sentiment not have applied eight months  
20 before which you say applied now in December 2015 because the company is the same insofar as the board is concerned?

**MS KLEIN:** Chairperson, like I said to you, I think – I heard your question and I reckon it probably would have, the same sentiments would have applied but remember at

the time when that came to us, it was not seen as a matter of urgency we were told that this contract runs until 2018 and my understanding was if this was really a case of, you know, they can go out of business tomorrow, out of – ja, tomorrow, that we would have – that I certainly would have paid more attention to it. At the time there was not as much of a rush to sign anything off.

**CHAIRPERSON:** Was the management – did the board or anybody on the board ever ask management what was so  
10 urgent about this, why was it not brought to the board earlier?

**MS KLEIN:** Chairperson, to respond to you, that was the reason – I cannot talk for Ms Naidoo but I can talk for me finding subject to IFC approval, I needed to understand, you know, is this a done thing? This is a lot of money they are wanting us to commit to, why do we need to do it immediately and I say Dr [indistinct] gave me comfort in his explanation based on his many years of working for Eskom and knowing the organisation better than anyone else.

20 **CHAIRPERSON:** But what is the answer to my question, is it that members of the board did ask this question of the executive and if so, what answer did the executive give as to why they did not bring this issue to the board earlier?

**MS KLEIN:** Chairperson, I cannot answer that for you, I cannot tell you for sure that that is the question that was



asked of the executive. I remember requesting an IFC and I hear another board member also did and that was - you know, was discussed as per the minutes. I do not remember asking executives why this was such an urgent thing. I wanted to hear that from a fellow board member who had worked at Eskom and understood the running and mechanics of Eskom better than certainly than I did.

**ADV SELEKA SC:** Yes. Yes, indeed, that question is very significant, Ms Klein, because when you look at the timelines the company, OCM, went into business rescue in August 2015 and this is before the report that was tabled by the Chief Executive – Acting Chief Executive Officer at the meeting of the 10 September 2015. So if there was anything urgent, by virtue of going into business rescue, that urgency would have arose at that early stage.

**MS KLEIN:** I hear you, Chairperson, I really – I cannot really comment on that.

**ADV SELEKA SC:** Yes because it seems to be given as a reason. If you read paragraph 2.2.1 of the submission document on page 281, Eskom bundle (8) A, it says:

“Eskom faces a supply risk of coal to the Hendrina power station of 5.5 Mtpa by OCM as a result of business rescue proceedings.”

But by this time business rescue had long started in August already. But ...[intervenes]

**MS KLEIN:** Like you pointed – sorry, Chairperson.

**ADV SELEKA SC:** No, go ahead.

**MS KLEIN:** I said like you correctly pointed out, at that time it was not top of mind for me. I had been in a board meeting in April where it was brought in for discussion, it was referred back to the CEO. As you have correctly pointed out it was not even presented, it was taken as read, so this was not top of mind for me.

**ADV SELEKA SC:** Yes.

10 **MS KLEIN:** That this was something that is in business rescue until it arrived on the 1<sup>st</sup> – or sorry, the date in December. So, you know, it is not something that I could have argued at the time because it was not top of mind. So you say to me now it should have been mind, the reality now, now I realise it should have been but it was not at that stage.

**ADV SELEKA SC:** Okay.

**CHAIRPERSON:** Well, before you proceed, Mr Seleka.

**ADV SELEKA SC:** Yes.

20 **CHAIRPERSON:** I do not know whether the summary of facts which is on page 282 was going to deal with this but I am looking at 2.2, the executive summary and conclusion. That point made in paragraph 2.2.1 does not tell the board the degree of urgency, it says:

“Eskom faces a supply risk of coal to the Hendrina

power station of 5.5 Mtpa by OCM as a result of business rescue proceedings.”

It does not say if you do not approve today, in a week's time there will be no coal. It does not say whether this is something that is going to happen in three months time, in two months time. You understand, Ms Klein?

**MS KLEIN:** I heard you, Chairperson.

**CHAIRPERSON:** Yes. Well, Mr Seleka, you might know whether this issue of the level of urgency is dealt with as well in the executive summary.

**MS KLEIN:** Chairperson, can I maybe respond.

**CHAIRPERSON:** Yes.

**MS KLEIN:** I am sorry, advocate, can I maybe respond?

**CHAIRPERSON:** Yes, yes.

**MS KLEIN:** I understand that we are sitting in an organisation which was in dire straits just months before that with load shedding. We are being guided by executives, when they say to you they need something signed tomorrow, I mean, it is not for me as a board member to come and say but hold on, guys, you know, we are not going to sign this. I mean, urgency was something that I took very, very seriously. If management comes and says something is urgent, then it is urgent, which is why I called – phoned the IFC and as you correctly say, you know, Ms Naidoo also wrote about that, and I wanted an

explanation before I signed, Dr Naidoo, you're working for this organisation for more than 30 years, tell me what this is what we are signing. Why is this urgent?

So, Chairperson, I am not sure if that that answers your question about the fact that he did not say it was urgent, I was guided by the fact that I am asked to sign for something within less than 24 hours and that is what I was responding to.

**CHAIRPERSON:** Yes, you see, my – what I have an issue  
 10 with in terms of what have said, is to the extent that you may be saying if management says it is urgent then I take it it is urgent. I do not think that is correct, I think that as a board member you must satisfy yourself that it is indeed urgent. So if management says this is urgent, you say why is it urgent? They give you an explanation, if you are persuaded it is urgent that is fine especially if it is something in respect of which you would have liked to have more time to reflect like authorising payment of such a large amount of money, 1,6 billion.

20 So if they cannot satisfy that it is so urgent that it has got to be signed today, it can be signed in a week's time, you might say well, you know, a few days will help me to make up my mind properly on the submission, so why are you saying we must meet today at whatever time. You understand what I mean? I do not think that just because

management says it is urgent then board members must not question, they must take it it must be urgent. You understand that?

**MS KLEIN:** Chairperson, I hear you completely, I just want to put it on record that I considered it to be urgent after hearing from somebody who works at Eskom for 30 years.

**CHAIRPERSON:** Ja.

**MS KLEIN:** That this was...

10 **CHAIRPERSON:** Yes.

**MS KLEIN:** But I hear you.

**CHAIRPERSON:** Ja.

**MS KLEIN:** I should have maybe asked more questions, but – ja.

**CHAIRPERSON:** Okay, alright.

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

**CHAIRPERSON:** Of course, of course he did not tell you the level of urgency, did he? He did not say if it s not done within – if it is not done today this is what is going to  
20 happen tomorrow or in a week's time or anything like that, he did not tell you that.

**MS KLEIN:** No, no, he did not, Chairperson, but I – let me put to you, and maybe incorrectly so, the mere fact that the ISP was arranged so urgently gave me comfort that this thing is what it said it was and maybe, you know, a lot of

what is coming today, one stands back and say, you know, I should have asked more and I should have done. Just a pity I did not know more at that stage about what was really happening, clearly behind the scene.

**CHAIRPERSON:** Okay, thank you. Mr Seleka?

**ADV SELEKA SC:** Thank you, Chair. The closest, Chair, one comes to in regard to urgencies on page 284, under paragraph 3.6.

**CHAIRPERSON:** Yes.

10 **ADV SELEKA SC:** The degree of urgency, if there is anything.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** It reads:

“Risks and other considerations.”

The paragraph there says:

“The risk identified at this stage relate to security of supply being compromised, regulatory approvals not timeously obtained and that there would be no contract in place by end December 2016.”

20 Ja.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** I think ...[intervenes]

**CHAIRPERSON:** And this was on the 9 December.

**ADV SELEKA SC:** This is on –well, the submission is dated the 8<sup>th</sup>.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Given to the board to make a decision on the 9 December 2015.

**CHAIRPERSON:** Yes, I mean, another day – if members of the board wanted another day to reflect properly would not have made a big difference. Okay, alright. Mr Seleka?

**ADV SELEKA SC:** But, Chair – Ms Klein, I do not know whether you are aware of this, the facts on the other side on OCM's part is that they were engaging with Mr Koko and  
10 by this time, when he writes this document to the board, he had been advised on the 24 November and on the 1 December 2015 that Glencore has taken a resolution to take OCM out of business rescue and it will provide funding to OCM and OCM will honour their agreement as it then existed to the end of that agreement, December 2018. Did you know about that?

**MS KLEIN:** Chairperson, if I knew about that I would not have signed this. I was not aware of that.

**ADV SELEKA SC:** And in fact when you read the affidavit  
20 of the legal representatives of Eskom who advised Eskom on these transactions between OCM and Eskom itself, that is CDH, they say in their affidavit that OCM continued to supply coal to Eskom from August 2015 and they put it to July 2016. It may well be that it is shorter than that, April 2016, because after April Tegeta takes over but the period

in December, in January, February, March is covered by OCM supplying coal to Eskom. Did you know that?

**MS KLEIN:** No, Chairperson, I would only have received the information as per the board packs, nobody ever discussed it with me. Maybe – I do not know, maybe your BTC members would have been warned, you know, I cannot respond that, I [indistinct] of that including the legal opinion which obviously did not come to me.

**ADV SELEKA SC:** Okay. Then the next day, the 10  
10 December, there is – a prepayment resolution is used to obtain – I mean, to do a conversion to a guarantee, a guarantee of the same amount but not to OCM, guarantee to be issued in favour of Tegeta, the very next day on the 10 December 2015. Was the board aware of that?

**MS KLEIN:** Certainly not, Chairperson, it has all become part of, you know, the investigations and things but the board – well, I cannot talk for the board, I certainly was not aware.

**ADV SELEKA SC:** Did you and/or the board make any  
20 follow-up in regard to the decision that was made on the 9 December 2015 and, by the way, this was decision made by way of a round robin, the board didn't meet to discuss and ask questions. Did you make a follow-up? We have made a R1 billion decision, over a billion rand decision, what is going on? Is OCM out of business rescue? Are we getting



supply, have we avoided load shedding? Those questions to the executives. Were they asked?

**MS KLEIN:** Certainly not and just so that – just to remind you that load shedding had stopped, if I remember correctly, either August or September of that year. So we would not – I mean, once something like that – and we could say in terms of quantum, it is huge, which it is, but remember, we are talking about a company with R175 billion turnover, we were brought a lot of big transactions  
10 to sign and once it was signed off it would have been ratified – obviously, the resolution would be ratified at the next board meeting but we had been rapped over the knuckles how many times for becoming operational. So to answer the question, I would not have gone back and asked. I satisfied myself at the time, rightfully or wrongfully so, that that was what was required for the business but I would certainly not have gone and done a follow-up, there was just too much going on.

**ADV SELEKA SC:** What do you say about – because the  
20 people we see involved in the guarantee on the side of Eskom is Mr Anoj Singh, Ms Caroline Henry, who prepared the submission, is Ms Suzanne Daniels who ultimately put together this guarantee, get it to the bank, the bank issues a guarantee in favour of Tegeta and then the underlying agreement is signed for the pre-purchase of coal by Mr

Anoj Singh. And just before I ask you this question – sorry, I am reminded of something, did Mr Anoj Singh take part in the IFC meeting, the teleconference? He did?

**MS KLEIN:** Yes, Chairperson, he was there.

**ADV SELEKA SC:** So he was privy to discussions at IFC.

**MS KLEIN:** He was there, he definitely was.

**ADV SELEKA SC:** Okay, then he takes part in the guarantee. Do you have anything to say about that, about his conduct?

10 **MS KLEIN:** Chairperson, all I can say to you, you know, with the benefit of hindsight, I am actually perplexed that what I believed I signed was something completely different. I would be keen and I actually [indistinct] to see what the guarantee that was issued to the bank actually looked like and how that compares with what we were given as a board.

**ADV SELEKA SC:** Yes. Okay, I want to move on to the next point in your affidavit, the next and last point, on page 400.49, Eskom bundle 2.

20 **CHAIRPERSON:** Before you do that, is the position not that – and I am asking you, Mr Seleka, not the witness because the witness might not know.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Is the position not that around about exactly the time when the board was asked to authorise

this pre-purchase agreement, to authorise prepayment to Tegeta, namely they met on the 9 December 2015, is that no – was that not the gate on which Mr Mosebenzi Zwane, who was then Minister of Mineral Resources, was having a meeting in Switzerland with the Chief Executive of Glencore where it would appear he facilitated the conclusion of a deal between Glencore and Tegeta/Oakbay?

**ADV SELEKA SC:** The meeting was on the 1 December,  
10 Chair.

**CHAIRPERSON:** The meeting was on the 1 December?

**ADV SELEKA SC:** Yes, the first meeting is on the 1 December, it is followed up on the 2 December.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** There is a verbal agreement.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** To sell.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** On the 10<sup>th</sup>...

20 **CHAIRPERSON:** Ja.

**ADV SELEKA SC:** The significance of the 10<sup>th</sup>, the date of the 10<sup>th</sup> coincides with the conclusion of the agreement.

**CHAIRPERSON:** Between Tegeta and Glencore.

**ADV SELEKA SC:** Between Tegeta and Glencore.

**CHAIRPERSON:** And Mr Tony Gupta was to attend that

meeting.

**ADV SELEKA SC:** I do not know about him attending the meeting.

**CHAIRPERSON:** You see, my recollection is that on the day on which Mr Mosebenzi Zwane met with the Chief Executive of Glencore in Switzerland...

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And you say that was on the 1 December 2015.

10 **ADV SELEKA SC:** Correct.

**CHAIRPERSON:** In that meeting there were three of them, Mr Mosebenzi Zwane, Mr Salim Essa and the Chief Executive of Glencore.

**ADV SELEKA SC:** Mr Glasenberg.

**CHAIRPERSON:** Yes, Mr Glasenberg.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And it is that meeting that Mr Glasenberg says in an affidavit Mr Salim Essa was introduced to him as an adviser to Minister Zwane.

20 **ADV SELEKA SC:** Minister Zwane, yes.

**CHAIRPERSON:** And then, if I recall correctly, an arrangement was made – I do not know whether in that meeting but an arrangement was made for Mr Tony Gupta to meet with Mr Glasenberg, I do not know who else, I do not know whether the following day or on the 10<sup>th</sup> or

whatever.

**ADV SELEKA SC:** Okay, that is the meeting of the 2<sup>nd</sup>.

**CHAIRPERSON:** Yes. So but it is all happening, you know, in the first half of December 2015.

**ADV SELEKA SC:** Correct, that is the meeting of the 2<sup>nd</sup>.

**CHAIRPERSON:** Yes. Okay, alright.

**ADV SELEKA SC:** I mean, the signing is on the 10<sup>th</sup>.

**CHAIRPERSON:** After the board had just authorised.

**ADV SELEKA SC:** Ja, the day the guarantee is issued.

10 **CHAIRPERSON:** Ja, then the signing happens.

**ADV SELEKA SC:** There is the signing happening, subject to suspensive conditions until the 31 March 2016.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** The guarantee also has suspensive conditions.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** The date is the same.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** 31 March 2016.

20 **CHAIRPERSON:** So the agreement concluded between Tegeta and Glencore has a suspensive clause that says until 31 March 2016.

**ADV SELEKA SC:** Correct, so – that is correct.

**CHAIRPERSON:** And the guarantee that is issued on the 10 December back in South Africa also has a suspensive

clause that shares the same date.

**ADV SELEKA SC:** The same date, 31 March 2016.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Because the payment, the full payment is due I think on the 13<sup>th</sup> or 15 April.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** And so by the time – so the date of the suspensive conditions is made in such a way that it is very close to the payment, the full payment date. That is in 10 April 2016. And that is where you start seeing from the 8<sup>th</sup>, before the 13 April, before the 15<sup>th</sup>, from the 8 to the 11<sup>th</sup> of April an unprecedented action is taken on the part of Eskom to do a prepayment again of 659.

**CHAIRPERSON:** H'm, ja.

**ADV SELEKA SC:** Despite the Board meetings, PTC meeting scheduled for the 13<sup>th</sup> ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** They push for them to meet on the 11<sup>th</sup> at night.

20 **CHAIRPERSON:** Oh yes that is the other meeting which ...[intervenes]

**ADV SELEKA SC:** Yes, Dr Nteta was testifying about.

**CHAIRPERSON:** Yes, yes, yes.

**ADV SELEKA SC:** They push to have that meeting on the night of the 11<sup>th</sup> of April at nine o'clock.

**CHAIRPERSON:** And was that the Board or the BTC?

**ADV SELEKA SC:** I think it is BTC.

**CHAIRPERSON:** And nobody in the BTC says why are you rushing us to a meeting on the 11<sup>th</sup> when we have a meeting scheduled for the 13<sup>th</sup>, in two days time?

**ADV SELEKA SC:** Exactly Chair. That is exactly what I was putting, the version of Mr Khoza I was putting, obviously Mr Khoza himself has to answer questions in regard to this.

10 **CHAIRPERSON:** Yes, yes, yes.

**ADV SELEKA SC:** But the coincidence, at least for now the impression created is remarkable.

**CHAIRPERSON:** Ja, ja.

**ADV SELEKA SC:** Absolutely remarkable.

**CHAIRPERSON:** Okay, alright, you follow the discussion Ms Klein?

**MS KLEIN:** Yes Chairperson, I must tell you when I followed this discussion it just made me feel like I should have run away from Eskom long before I actually did.

20 **CHAIRPERSON:** [laughing]. Yes, continue Mr Seleka.

**ADV SELEKA SC:** Ms Klein I was referring to page 400, point 49 of Eskom Bundle 2.

**MS KLEIN:** 400?

**ADV SELEKA SC:** 400 point 49, it is the McKinsey matter. I am simply going to read from your affidavit, in

paragraph 11 you're answering a question that has been asked to you. Now you see we're focusing on a particular aspect of McKinsey/Trillian as introduction to Eskom. We have a witness who has testified that when she was at Regiments and they were servicing Transnet they had meetings with Mr Anoj Singh prior to him commencing his duties as a seconded CFO at Eskom, they had meetings with him at private hotels, talking about matters of Eskom. You may or may not know about it, do you know?

10 **MS KLEIN:** No Chairperson I don't. I have no knowledge of that.

**ADV SELEKA SC:** Regiments ultimately the directors or shareholders separate and Mr Eric Wood in particular incorporate a company called Trillian and he does so together with Mr Salim Essa. They then start or it, Trillian, start rendering services to Eskom and you would recall that they in fact did not have an agreement with Eskom, Trillian.

**MS KLEIN:** Ja, from what I remember they never did.

20 **ADV SELEKA SC:** And some payments were made to them without any agreement in place?

**MS KLEIN:** I think that has come out recently Chairperson yes. I am not talking – it is not in my affidavit but I am talking to what I can remember.

**ADV SELEKA SC:** Yes, In fact Ms Mthepu in her



affidavit and her testimony before the Commission is that in March 2016 Glencore – not Glencore – McKinsey conducted a global review assessment in respect of Trillian to determine whether they can have Trillian as a business development partner at Eskom, which is a sub-contractor to McKinsey and the outcome of their assessment was negative and they decided and told Eskom we will not have Trillian as a support development partner, did you know that?

10 **MS KLEIN:** No Chairman.

**ADV SELEKA SC:** You didn't?

**MS KLEIN:** I'm hearing it now, I am not aware of this.

**ADV SELEKA SC:** Okay, well to the extent you have dealt with the matter involving McKinsey in your affidavit just tell the Chairperson then what you would like to draw to his attention, it involves a submission to the Board to make a decision on the 10<sup>th</sup> of September 2015 about procuring the services of McKinsey.

**MS KLEIN:** Chairperson from what I remember a  
20 submission was made to the Board for us to sign off like R100 000 for McKinsey. At the beginning of the – when it was put on the table I actually asked to be recused because I am a management consultant, when I left ABSA in 2010 and started my own company, Klein Management Consultants, I was obviously being in touch with various

consulting firms, so they obviously get the lion share of the work when it comes to Banks, so I spoke to Deloitte, KPMG, McKinsey, as well as ...[indistinct – distorted], so when I saw something on the table from McKinsey I immediately asked to be recused, I said guys I am in discussions where I may get a piece of work from McKinsey so I did not want to be part of the discussion.

At that stage I was asked you know what is the detail of the work and I explained look I am a retired  
 10 banker and they saw that I was obviously engaging to see could I require an opportunity that worked in the different banks, but I think what complicated matters for me was that I went onto the Board of Reserve Bank in August so the work that they had planned for me to do could not happen in South Africa, it wouldn't have – it would have been in the rest of Africa. That is the reason I put up my hand and said look I don't want to be part of any McKinsey discussion because I made – that is the wording is the possibility of a conflict.

20 Does that answer the question Chairperson?

**ADV SELEKA SC:** Yes, I was asking a different question but because of ...[intervenes]

**MS KLEIN:** Sorry okay, ask again.

**ADV SELEKA SC:** No because of the preparation session you anticipated another question.

**MS KLEIN:** I'm sorry Chair. Okay, can I try and answer it for you Chairperson if it wasn't that question.

**ADV SELEKA SC:** Yes, no I will ask that question ...[intervenes]

**MS KLEIN:** ...[Indistinct – distorted]

**CHAIRPERSON:** He will ask it again.

**ADV SELEKA SC:** Yes, I will ask again.

**MS KLEIN:** Please do, please do.

**ADV SELEKA SC:** The information as contained in your  
10 affidavit was that a submission was brought to the Board at its meeting on the 10<sup>th</sup> of September 2015 for the sole sourcing of McKinsey and that what you have discovered is that even as the submission was brought to the Board on the 10<sup>th</sup> of September 2015 the agreement had already been signed on the 8<sup>th</sup>, is that ...[intervenes]

**MS KLEIN:** That is correct Chairperson.

**ADV SELEKA SC:** It is correct?

**MS KLEIN:** That is correct and I apologise, for ja, that is exactly what I said yes.

20 **ADV SELEKA SC:** And I think you do say it was Mr Koko who had already signed the sole-sourcing agreement.

**MS KLEIN:** I believe so and if memory serves me well I think it was signed with the Chairperson at the time being Dr Ben, I think so, I am not ... ja.

**ADV SELEKA SC:** So what did they want the Board to do,

if the sole-sourcing agreement is already signed a few days prior even coming to the Board.

**MS KLEIN:** Well remember at the time I was not aware that had already gone, the sole-sourcing agreement had already been signed. My understanding was that we were signing off for McKinsey to help us with the Corporate plan and the reason I didn't think there was anything wrong with that is because previously, the previous Board also had help in getting the Corporate plan effected to sign off all  
10 levels and it goes into the public domain.

**ADV SELEKA SC:** Oh so you were not aware at the time.

**MS KLEIN:** Sorry, maybe I didn't get the question right Chairperson, can you just then ask the question – was I aware of the sole-sourcing agreement in paragraph 8, is that the question?

**ADV SELEKA SC:** Yes.

**MS KLEIN:** No I was not aware.

**ADV SELEKA SC:** You were not aware.

**MS KLEIN:** No I was not aware Chairperson.

20 **ADV SELEKA SC:** Okay then let's go to the question you anticipated and you answered.

**MS KLEIN:** Okay. I apologise Chairperson.

**ADV SELEKA SC:** No that is alright, regarding your – what you refer to as a potential conflict of interest, and I pick that up from Mr Khoza's affidavit as I indicated to you,

that in the meeting there was talk about, or you raised that you might have a potential conflict of interest because according to him you were in negotiations with McKinsey to render services to McKinsey.

**MS KLEIN:** Absolutely.

**ADV SELEKA SC:** Yes, however the minutes of the meeting record that you had in fact done work for McKinsey, now can you explain that ...[intervenes]

**MS KLEIN:** That is correct.

10 **ADV SELEKA SC:** Would you please explain ...[intervenes]

**MS KLEIN:** Yes I - ja I think the first part of that sentence actually quotes me where I said I wanted to be recused because there could be a potential conflict of interest, like I explained I was looking to do a piece of work for them in the banking system in South Africa, but then I went onto the Board of the Reserve Bank in August of that year which is why I could not then carry on doing the work, so we were talking at that stage about me doing  
20 a piece of work in the financial services sector outside of South Africa. I had never done any work for McKinsey, we were still busy negotiating at that stage.

**ADV SELEKA SC:** Yes I want us to refer the Chairperson to that minute, can you recall it?

**MS KLEIN:** Sorry, sorry Chairperson?

**ADV SELEKA SC:** The minute where the conflict, the potential conflict is reflected, I want us to refer the Chairperson to that.

**MS KLEIN:** Yes it was on the 10<sup>th</sup> of September, I think that was the date, ja the 10<sup>th</sup> of September.

**ADV SELEKA SC:** Yes, get to the page where he deals with McKinsey. I want you to find and read it to the Chairperson Ms Klein.

**MS KLEIN:** Are you asking for me to – sorry. Right let me  
10 read it to you, it says:

“Ms Klein declared a possible conflict of interest in her company, in that her company did some work for McKinsey.”

**ADV SELEKA SC:** Yes, give us ...[intervenes]

**MS KLEIN:** But what I am saying to you is ...[intervenes]

**ADV SELEKA SC:** Give us the page reference. The page reference.

**MS KLEIN:** I don't have the page, I don't have that in front of me, I am reading it from the screen, remember you  
20 sent me everything in digital form ...[intervenes]

**CHAIRPERSON:** Speak up a little bit Mr Seleka.

**ADV SELEKA SC:** Thank you Chair, I see she is struggling to hear me.

**MS KLEIN:** Chairperson what I am saying is I received it in digital form, but I cannot give you a page reference.

**CHAIRPERSON:** Oh, okay, you heard that Mr Seleka?

**ADV SELEKA SC:** I did. Yes I am looking for that minute where it is recorded Chair, because it is important what is recorded there *vis-a-vis* what Ms Klein is explaining, but just read it to us because the minutes of the 10<sup>th</sup> of September don't seem to have that, isn't it a different ...[intervenes]

**MS KLEIN:** Ja, it says – do you want me to read it Chairperson?

10 **ADV SELEKA SC:** Yes please.

**MS KLEIN:** It says:

“Ms Klein declared a possible conflict of interest in that her company did some work for McKinsey. Members agreed that there was no conflict of interest and declined her request to recuse herself for the discussion.”

**ADV SELEKA SC:** Yes, so the minute explicitly says potential conflict in that you said the company did some work for McKinsey.

20 **MS KLEIN:** That is what the minute says Chair.

**ADV SELEKA SC:** Ja, are you saying – but what are you saying about that? Is that a correct reflection?

**MS KLEIN:** I am saying I [inaudible – no sound] no, the first part of it is the possible conflict of interest is correct, the ...[indistinct] is absolutely not correct because I did not

do any work for McKinsey for which I was paid.

**ADV SELEKA SC:** Were you – did you recuse yourself from the meeting or not?

**MS KLEIN:** I wanted to recuse myself but after explaining like I did to you earlier that is what they – possible work in the financial – not possible – work in the financial services sector which was originally going to be in South Africa but when I went onto the Board of the Reserve Bank in August of 2015 the discussion with McKinsey became doing work  
10 for them in the rest of Africa, when the Board heard that they were comfortable that there was no conflict of interest and asked me not to recuse myself.

**ADV SELEKA SC:** Did you do work with McKinsey after that?

**MS KLEIN:** No, I have never done work with McKinsey.

**ADV SELEKA SC:** Chairperson that concludes the questions I have for Ms Klein.

**CHAIRPERSON:** I saw that in her second affidavit she deals with a matter that I am not sure she has dealt with in  
20 oral evidence, am I wrong about that? It is about the matter that and the suspension letters that she got from Mr Khoza which it looks like there has been a ...[indistinct].

**ADV SELEKA SC:** She testified about it Chair.

**CHAIRPERSON:** Oh, did she cover that last time?

**ADV SELEKA SC:** Yes she did, and ...[intervenes]



**CHAIRPERSON:** Okay, what you haven't done I guess is to get the expert who did the analysis to come and testify.

**ADV SELEKA SC:** Yes, that is what we haven't done.

**CHAIRPERSON:** Yes, I think you should work on that, because they have got the report already, it shouldn't be – it shouldn't take long for them to be available.

**ADV SELEKA SC:** Yes Chair.

**CHAIRPERSON:** Ja, so I think that is important that an expert gives evidence who conducted the analysis and is  
10 able to justify the conclusions that they reached with regard to saying that the letters of suspension seem to have been dealt with or dealt with ...[indistinct] by Suzanne Daniels as well as Mr Salim Essa.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** That's what they seemed to have had those letters – so that is important, I think that should be given some priority.

**ADV SELEKA SC:** Okay.

**CHAIRPERSON:** Thank you very much Ms Klein, we  
20 ...[intervenes]

**ADV SELEKA SC:** Sorry Chair.

**CHAIRPERSON:** He doesn't want me to release you. Yes Mr Seleka?

**ADV SELEKA SC:** That supplementary submission Ms Klein referred to I thought we should just place it on record

and admit it as well before she leaves.

**CHAIRPERSON:** Which one is that?

**ADV SELEKA SC:** The one ...[intervenes]

**CHAIRPERSON:** Didn't we admit all of them, three or two?

**ADV SELEKA SC:** There is one which she refers to in response to Mr Koko's version that she had invited Mr ...[intervenes]

**CHAIRPERSON:** This bundle?

10 **ADV SELEKA SC:** No it is not there yet.

**CHAIRPERSON:** Oh it's – oh.

**ADV SELEKA SC:** It is here, or we can incorporate it.

**CHAIRPERSON:** Yes well we can – well if you want to add it to this bundle at the end that might be convenient.

**ADV SELEKA SC:** Yes, Chair I will beg leave to have it admitted as – I now the Chairperson doesn't ...[intervenes]

**CHAIRPERSON:** Have you got the original or copy?

**ADV SELEKA SC:** I have the original here.

20 **CHAIRPERSON:** Have you got copies or you don't have copies?

**ADV SELEKA SC:** I do have my copy.

**CHAIRPERSON:** Oh, okay.

**ADV SELEKA SC:** And one which I can hand up.

**CHAIRPERSON:** Let me have the original. Do you want to briefly say what it deals with in terms of the gist or is it

quite involved?

**ADV SELEKA SC:** It is a – well Ms Klein has given the Commission this submission.

**CHAIRPERSON:** I thought you said it is an affidavit, I see correspondence here.

**ADV SELEKA SC:** Ja, she calls it a submission Chair, it is a supplementary submission to be submitted to the ...[intervenes]

**CHAIRPERSON:** Ja, but this one while she may have  
10 intended it as a statement I think there is a letter addressed to the Chairperson and then there is a statement, she has signed it, what you can you do is get her to confirm its contents are true and correct under oath then we – do we need the first page, the correspondence? Oh it starts one, two and then three.

**ADV SELEKA SC:** I think it is – Ms Klein you can assisting us there.

**CHAIRPERSON:** Well it looks like we must just take it as  
20 it is, this one, there are two, oh this is an annexure to the statement.

**ADV SELEKA SC:** Correct, those are annexures.

**CHAIRPERSON:** Oh but now why did you staple them separately or you had a small stapler that couldn't ...  
[laughing] you see I think it should only come in here when it is properly ...[intervenes]

**ADV SELEKA SC:** Ja, let me do, let me right it.

**CHAIRPERSON:** But what you can do is get her to confirm it under oath.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Get her to confirm it under oath while she is here.

**ADV SELEKA SC:** Well should I do that?

**CHAIRPERSON:** Ja, I think do that and then maybe tomorrow morning when it is properly stapled and you can  
10 then ask that I admit it as an exhibit and you add it at the end of this.

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

**CHAIRPERSON:** Of this bundle.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay just go ahead then.

**ADV SELEKA SC:** Ms Klein what you have provided to the Commission it is a document dated 10 April 2018 which is on the face of it addressed to the Chairperson of the Portfolio Committee of Public Enterprises and you have  
20 relied on this document or drawn it to our attention as a response by you to Mr Koko's allegations. Can you hear me?

**MS KLEIN:** That is correct Chairperson.

**ADV SELEKA SC:** Yes, the document ...[intervenes]

**MS KLEIN:** Yes, yes, I can hear you.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** The document is signed by you, unfortunately it is not paginated, page 1, 2, 3, 4, 5, 6, 7, 8, 9, the very last page is signed by V J Klein, do you confirm that to be your signature?

**MS KLEIN:** I do Chairperson.

**ADV SELEKA SC:** And the date is 10 April 2018.

**MS KLEIN:** Correct, that is correct Chairperson.

**ADV SELEKA SC:** And you would like the Commission to  
10 refer to this document together with the annexures thereto as a response by you to Mr Koko's version or allegation in regard to you inviting him to your house to meet with you and your husband.

**MS KLEIN:** Correct Chairperson.

**ADV SELEKA SC:** And you confirm the contents of this document?

**MS KLEIN:** I do.

**ADV SELEKA SC:** As correct?

**MS KLEIN:** That is correct Chairperson, I do.

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

**CHAIRPERSON:** Thank you very much Ms Klein, you are now excused, thank you.

**MS KLEIN:** Thank you very much Chairperson.

**CHAIRPERSON:** Thank you.

**ADV SELEKA SC:** Thank you Chair. Chair the time is

3.26, we have Ms Viroshni Naidoo as the next witness. We could take a short adjournment.

**CHAIRPERSON:** We can take a short adjournment while you reorganise and then – will ten minutes be enough?

**ADV SELEKA SC:** Ten minutes will be certainly enough Chair.

**CHAIRPERSON:** Okay, alright. What was your estimate of how long you might be with her?

**ADV SELEKA SC:** I had estimated three hours  
10 Chairperson.

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

**ADV SELEKA SC:** I am speaking with her, see whether we can't do it shorter.

**CHAIRPERSON:** Well I think you took shorter with Ms Klein than you had estimated, I am going to assume that it is going to be the same with her, but obviously as I always say in the end the issues must be dealt with.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Properly, but at the same time there is  
20 no need to take longer than one should.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Okay, we will adjourn for ten minutes. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay Mr Seleka.

**ADV SELEKA SC:** Yes Chair.

**CHAIRPERSON:** Are you ready?

**ADV SELEKA SC:** Yes we are ready Chairperson thank you.

Now Chairperson the next witness as I have already indicated is Ms Naidoo. Ms Naidoo is legally represented by my learned friend Mr Barry Roux and we will give him an opportunity to place himself on record.

10 **CHAIRPERSON:** Yes. If – you may do so from where you are if you – I think your voice is quite audible yes. Thank you. Thank you. Yes. Alright.

**ADV SELEKA SC:** Ms Naidoo is ready to take the oath or affirmation.

**CHAIRPERSON:** Please administer the oath or affirmation. I am sorry, I am sorry. I am going to start afresh. Ms Naidoo you are speaking very softly so just speak up a little bit

**MS NAIDOO:** My apologies.

20 **CHAIRPERSON:** Okay please start afresh.

**REGISTRAR:** Please state your full names for the record.

**MS NAIDOO:** Devapushpam Naidoo.

**REGISTRAR:** Do you have any objection to taking the prescribed oath?

**MS NAIDOO:** No.

**REGISTRAR:** Do you consider the oath binding on your conscience?

**MS NAIDOO:** I do.

**REGISTRAR:** Do you solemnly swear that the evidence you will give will be the truth; the whole truth and nothing but the truth; if so please raise your right hand and say, so help me God.

**MS NAIDOO:** So help me God.

**CHAIRPERSON:** Thank you; you may proceed Mr Seleka.

10 You may keep your microphone on Ms Naidoo. Ja.

**ADV SELEKA SC:** Thank you Chair. Ms Naidoo is appearing for the first time Chairperson before the commission. She has submitted an affidavit which is found in Eskom Bundle 14(A) on page – the affidavit is on page – it starts on page 269.1 Exhibit U29. Ms Naidoo you will have the same ...

**CHAIRPERSON:** Okay the actual affidavit starts at page 269.2 is that right?

**ADV SELEKA SC:** Correct Chairperson. Ms Naidoo you are  
20 there?

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** The – that is your first affidavit to the commission it runs up to page 269.56 - 259.56. You see that?

**MS NAIDOO:** Yes.



**ADV SELEKA SC:** There is a signature there above the deponent do you confirm that to be your signature?

**MS NAIDOO:** Yes I do.

**ADV SELEKA SC:** The affidavit is dated 8 December 2020.

**MS NAIDOO:** Correct.

**ADV SELEKA SC:** You confirm this to be your affidavit yes.

**MS NAIDOO:** Yes I do Chair.

**ADV SELEKA SC:** Thank you. Chairperson there is another affidavit and I will come to it. I will beg leave to have this  
10 affidavit the main one I will call it admitted as Exhibit U29.1.

**CHAIRPERSON:** The affidavit of Devapushpum Naidoo I hope I pronounced that name correctly starting at page 269.2 is admitted as Exhibit U29.1. Was that pronunciation of your name correct Ms Naidoo?

**MS NAIDOO:** Sorry Chair what did you say?

**CHAIRPERSON:** Was my pronunciation of your first name correct?

**MS NAIDOO:** What did you say? You may call me Viroshni it is my calling name. I know it is a mouthful.

20 **CHAIRPERSON:** Viroshni.

**MS NAIDOO:** Viroshni yes.

**CHAIRPERSON:** Okay alright. Okay.

**MS NAIDOO:** Sorry Chair what was the supplementary  
00:05:04?

**ADV SELEKA SC:** Yes I am going there.

**MS NAIDOO:** Oh okay my apologies.

**ADV SELEKA SC:** Yes there is the next affidavit Chairperson is the – is a supplementary affidavit on page 269.238.

**CHAIRPERSON:** Just repeat the page?

**ADV SELEKA SC:** 269.238.

**CHAIRPERSON:** Okay I have got it.

**ADV SELEKA SC:** Now the third one Ms Naidoo runs up to page 269.261.

10 **MS NAIDOO:** Correct that is my signature.

**ADV SELEKA SC:** Is that your signature?

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** Affidavit dated – what is it 8?

**MS NAIDOO:** February. Oh sorry.

**ADV SELEKA SC:** Yes I think so. 8 February 2021 so that is two days ago. Chair I would beg leave also to have this affidavit admitted as Exhibit U29.2.

**CHAIRPERSON:** The affidavit of Ms Viroshni Naidoo starting at page 268 that is a supplementary affidavit starting  
20 at page 23 – 269.238 is admitted as Exhibit U29.2.

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

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Chair the – ah yes the legal representatives and I have spoken about this particular affidavit which is a supplementary affidavit of Ms Naidoo. I

received it last night I think it would have been sent during the day I cannot recall but to the extent – to that extent Chairperson that it was being received that time we have agreed and I believe Ms Naidoo has been told as well that the issues traversed in that affidavit may have to be dealt with at a later stage after the parties who are implicated have been provided with a copy of 00:07:26.

**MS NAIDOO:** Advocate Seleka may I please draw the attention of the commission to two amendments in my  
10 affidavit?

**ADV SELEKA SC:** Yes certainly.

**MS NAIDOO:** So on page what is that? Page 2 paragraph 4 my articles was not 93/94 that is 95 and 96.

**ADV SELEKA SC:** Are you on the main affidavit?

**MS NAIDOO:** Yes correct.

**ADV SELEKA SC:** Okay let us go.

**MS NAIDOO:** And then on page...

**ADV SELEKA SC:** Just hang on.

**CHAIRPERSON:** Hang on. Let us get there. What is the  
20 page for the main affidavit? I see where it ends.

**ADV SELEKA SC:** Yes 26 – 269.2.

**CHAIRPERSON:** Ja okay.

**MS NAIDOO:** Page 2. On page 2 paragraph 4 the year of my articles was 95/96.

**ADV SELEKA SC:** So I completed my articles at More

Naidoo and RC

**MS NAIDOO:** RC

**ADV SELEKA SC:** RC from?

**MS NAIDOO:** 95 to 1996.

**ADV SELEKA SC:** Oh 1995.

**MS NAIDOO:** To 1996.

**CHAIRPERSON:** I am sorry 1995 should be?

**MS NAIDOO:** 1993 should be 1995.

**CHAIRPERSON:** Oh okay.

10 **MS NAIDOO:** And 1994 should read 1996.

**CHAIRPERSON:** 1994 should read?

**MS NAIDOO:** 1996.

**CHAIRPERSON:** 1990?

**MS NAIDOO:** Yes it was two years that I did...

**ADV SELEKA SC:** 1996.

**CHAIRPERSON:** 1996?

**MS NAIDOO:** Correct yes.

**ADV SELEKA SC:** Yes 96.

**CHAIRPERSON:** Ja.

20 **ADV SELEKA SC:** Does it affect the next – the 1995 in the next line?

**CHAIRPERSON:** Okay.

**MS NAIDOO:** Yes correct.

**ADV SELEKA SC:** Does it affect it?

**MS NAIDOO:** Yes so that should read High Court in 1997

when I was a ...

**CHAIRPERSON:** Where is that now the second – the next line?

**MS NAIDOO:** Yes correct.

**CHAIRPERSON:** 1995 should be 1997?

**MS NAIDOO:** Should read 1997 yes.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** And then the next one I would like to draw the commission's attention to is on page 2 paragraph 19.3.4 it  
10 reads:

"17 February."

**CHAIRPERSON:** I am sorry, I am sorry let us get to the page first.

**ADV SELEKA SC:** Oh.

**MS NAIDOO:** Oh it is my apologies.

**CHAIRPERSON:** Use the...

**ADV SELEKA SC:** Use the...

**CHAIRPERSON:** Use the pagination on the top left of the page to tell us which page we should go to.

20 **MS NAIDOO:** So in your version...

**ADV SELEKA SC:** Black pagination.

**MS NAIDOO:** So it would read: Eskom 14-269.9 and then U29D and 27.

**ADV SELEKA SC:** 269.9?

**MS NAIDOO:** Correct.

**ADV SELEKA SC:** Okay paragraph number?

**MS NAIDOO:** So it will read 19 – paragraph 19.34.

**ADV SELEKA SC:** 19.34 17 February 2015?

**MS NAIDOO:** Yes so that should actually be 16 February – ah no the 17 February it was not a board induction it was a meeting – it was a board meeting.

**ADV SELEKA SC:** Okay.

**CHAIRPERSON:** So what is the correction that should be made there?

10 **MS NAIDOO:** You should delete induction and put in meeting.

**CHAIRPERSON:** You will have to do a supplementary affidavit that will ...

**MS NAIDOO:** Okay.

**CHAIRPERSON:** Contain all these corrections. We are just making notes.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** But you need to – your Counsel will or your Counsel will assist you to do a supplementary affidavit which  
20 points out the corrections that you have pointed out.

**MS NAIDOO:** Okay Chair. Thank you Chair.

**CHAIRPERSON:** But have you pointed out all of them now?

**MS NAIDOO:** Thank you Chair.

**CHAIRPERSON:** Okay alright.

**ADV SELEKA SC:** Yes. Thank you Ms Naidoo. Chairperson

Ms Naidoo is called mainly to deal with the issue of the transactions but as an introduction to that we could deal with – could lead evidence on your background Ms Naidoo and your appointment to the board of Eskom in December 2014 – 15 – 14 or 15?

**MS NAIDOO:** 14.

**ADV SELEKA SC:** Yes. Ja. Please tell the Chairperson your occupation briefly including your – the work you do yes.

**MS NAIDOO:** Chair I am an admitted attorney. I did ten  
10 years of private practice thereafter I moved to Johannesburg and I joined corporate. I climbed the corporate ladder as they say. I worked for Telkom, Bytes Technology, American Tower and Impact Limited. Around 2014 I applied for the board position at Eskom and I was appointed I think it is the 12<sup>th</sup> of December 2014.

**ADV SELEKA SC:** 11 well I do not know in your case but...

**MS NAIDOO:** Oh no I think it was 12 I got the date yes.

**ADV SELEKA SC:** Was it 12?

**MS NAIDOO:** Yes correct.

20 **ADV SELEKA SC:** Were you – were you appointed to the board of Eskom?

**MS NAIDOO:** Correct.

**ADV SELEKA SC:** On the 12<sup>th</sup> of December 2014?

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** I – I see from your affidavit that – ja page

269.2 – ja paragraph 3 that you are an admitted attorney indeed if you turn the page to 269.3 in paragraph 7 you mentioned – well 6 in 2007 I relocated to Johannesburg and joined Telkom SOC Telkom as a legal advisor. In 2008 I left Telkom and joined Bytes Technology American Tower SA and Impac Limited as senior legal counsel and in the latter two I was Group Leader or counsel. You go on to say in 2000 I established the petroleum business which supplied fuel to Transnet ...

10 **CHAIRPERSON:** Do you not – do you want to spend time on that Mr Seleka?

**ADV SELEKA SC:** No that is all I want to read to you. What I want to ask her is which petroleum company is that?

**MS NAIDOO:** I try – I traded for a very short period of time it was for a period of about two years.

**ADV SELEKA SC:** If you could face the Chairperson.

**MS NAIDOO:** Oh sorry Chair.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** It was for about two years so it may have  
20 ended in 2002 ja.

**ADV SELEKA SC:** Ja but what is the name?

**MS NAIDOO:** Africa 00:14:18

**ADV SELEKA SC:** Africa. Okay. So I went to your CV which is on page 269.58 – 269.58 it starts there but I want to refer to page 269.60 because you list the companies that you



have worked at but I see in your affidavit there is one company you did not mention which is Albertime Pty Ltd the period of employment there being from 2015 to 2017 position held legal.

**MS NAIDOO:** Correct.

**ADV SELEKA SC:** Is there a reason why it is not being mentioned?

**MS NAIDOO:** I think it was just an error.

**ADV SELEKA SC:** Okay what – which company is that?

10 **MS NAIDOO:** Well perhaps your question in terms of...

**CHAIRPERSON:** Hang on one second. Ms Naidoo I think you are quite fast.

**MS NAIDOO:** Sorry Chair.

**CHAIRPERSON:** You speak quite fast and you speak quite soon after or just before he finishes. Okay what is an error on page 269.60 I seem to have understood that there was something – something you were saying was an error.

**MS NAIDOO:** On page?

**CHAIRPERSON:** On page 269.60.

20 **ADV SELEKA SC:** So let me repeat the question Chair so that the Chair – in her affidavit she mentions the companies that she has worked for.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** But there is one company which she did not mention in the affidavit but it is found in her CV.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** And the company's name is Albertime Pty Ltd.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** And I was asking her how is it that it is not mentioned in her affidavit.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** I am – I – it was probably an error but either it  
10 could have also been in terms of the question that ...

**ADV SELEKA SC:** Phased it.

**MS NAIDOO:** So the questions that the commission had sent it was in terms of what we had done prior to being appointed. So maybe that is why I specified all the jobs that I had. This one I was appointed 2015 when I was already an Eskom board member.

**CHAIRPERSON:** Okay Ms Naidoo I am sorry you will have to repeat that.

**MS NAIDOO:** Oh.

20 **CHAIRPERSON:** I do not know whether there is something wrong with your microphone or with your voice or both but...

**MS NAIDOO:** My apologies Chair.

**CHAIRPERSON:** Or it is how fast you are when you speak. Ja well – the question was how come

**MS NAIDOO:** Yes.

**CHAIRPERSON:** You did not mention Albertime Pty Ltd in your affidavit. Now what is the answer?

**MS NAIDOO:** Chair I think it was an error alternatively it could have been my answer in terms of the questions that were sent to me by the commission in terms of what roles I held prior to joining Eskom.

**ADV SELEKA SC:** So what is this company?

**MS NAIDOO:** So Albertime is an investment company and a consulting business and I joined...

10 **CHAIRPERSON:** Well – well maybe the – maybe the first point is not finalised. What is it in that question that would have made you not to include Albertime?

**MS NAIDOO:** Nothing Chair I think it was just an error because I am the one who inserted my CV with you know all my details of my employment.

**CHAIRPERSON:** Yes okay no I thought you said there may have been something in – how the question from the commission was formulated and it is about your role so I was trying to understand.

20 **MS NAIDOO:** If I - I cannot recall the exact question but I know the questions was in terms of what positions we had, what degrees and qualifications. And maybe my understanding was before I joined Eskom. So that is why I stipulated the employment prior to joining Eskom.

**CHAIRPERSON:** Hm.

**MS NAIDOO:** But – but as I said it was just an error because I attached my CV.

**CHAIRPERSON:** Hm. Ms Seleka – Mr Seleka.

**ADV SELEKA SC:** Yes. And – so the next question was what does the company do Albertime or did do at the time you were there?

**MS NAIDOO:** It is an investment and a consulting company. I was employed by Albertime but Albertime had business relations with a debt collection business in the intention of  
10 me joining was to work with the debt collection business. But I did not work directly with Albertime I worked actually in the debt collection area of the business.

**ADV SELEKA SC:** Whose company is Albertime?

**MS NAIDOO:** It is my husband's company.

**ADV SELEKA SC:** I have picked up from the Parliamentary Portfolio Committee transcript of your testimony that your husband is Mr Kuben Moodley.

**MS NAIDOO:** Correct.

**ADV SELEKA SC:** And that he was an advisor to Minister  
20 Zwane.

**MS NAIDOO:** Correct.

**ADV SELEKA SC:** And this would have been from the 1<sup>st</sup> of October 2015 to 31 March 2016.

**MS NAIDOO:** Correct.

**ADV SELEKA SC:** Did that present any problem for you

serving on the board of Eskom in 2015?

**MS NAIDOO:** Not in 2015; 2016 yes.

**ADV SELEKA SC:** Problem of what sort?

**MS NAIDOO:** So in 2016 there were various articles in January concerning Mr Zwane and Tegeta and OCM and what you have addressed with Ms Klein the particular visit to Switzerland and therefore I was very concerned and – sorry Chair I should be speaking to you. I then wrote to Eskom and I said that my husband is an advisor to Minister Zwane and I do not think I should be involved in any tenders where we award contracts to any mining companies. And so from that period I was excused.

**ADV SELEKA SC:** Yes so what transaction was being discussed?

**MS NAIDOO:** It was for OCM. So are you asking what transactions happened while I was – during that period?

**ADV SELEKA SC:** No this particular one where you said..

**MS NAIDOO:** In January there was articles with Minister Zwane making his trip to Switzerland.

20 **ADV SELEKA SC:** Yes and you tell the board in which meeting about which transaction?

**MS NAIDOO:** I did not tell them in a meeting I wrote to the company secretary around January and I said I – you know I think – at first I did not think that there was a conflict because we are very different enterprises but after that

article and there was so much involvement I felt I should not be involved in any transactions leading to mining companies.

**ADV SELEKA SC:** Oh I see okay.

**MS NAIDOO:** So then the...

**ADV SELEKA SC:** I understand now what you are saying.

**MS NAIDOO:** Yes so the first tender meeting for February I excused myself when they awarded contracts for mining companies and I know one of those specific companies was OCM. Then in March I brought it to their attention again but  
10 they were not appointing any tenders in the March meeting they were only doing strategies. The board deliberated and said I could attend that meeting or should I say continue in all the transactions which I did.

**ADV SELEKA SC:** What was the board's view when you say you did not want to be involved in any transactions involving mining companies?

**MS NAIDOO:** The board deliberated but they respected my exclusion or wanting to be you know excluded from those meetings so it was agreed that I will be allowed to.

20 **ADV SELEKA SC:** So – so why is it a problem only in 2016 because he is appointed on the 1<sup>st</sup> of October 2015 and here you have a transaction coming up on the – in December on the 9<sup>th</sup> of December 2015 involving a mining company Tegeta or OCM?

**MS NAIDOO:** I did not really see a conflict as such because

it is not like we were discussing what we were both doing. There was no sort of interaction or association in terms what the Department of Minerals and Energy was doing together with what Eskom was doing. Even I will be honest with you when that matter for the pre-purchase came to me I did not for one second believe there could be a conflict. But however in January when I saw there were the articles about Minister Zwane being involved with the company that you know was dealing with Eskom I was very uncomfortable and I  
10 felt you know I should actually excuse myself.

**ADV SELEKA SC:** Yes. Well and the article was obviously reporting on what had already happened.

**MS NAIDOO:** Correct.

**ADV SELEKA SC:** Because Mr Zwane had gone to Switzerland on the 1<sup>st</sup> of December. He was there on the 2<sup>nd</sup> December and had made it possible for the deal between Tegeta, Oakbay and OCM Glencore to be concluded – struck – the deal to be struck. Insofar as you say the company Alvertime was an investment and consulting company you  
20 rendered investment consulting services did the company have anything to do with Tegeta related entities?

**MS NAIDOO:** No.

**ADV SELEKA SC:** Not Tegeta sorry the Gupta related entities.

**MS NAIDOO:** No.

**ADV SELEKA SC:** Oakbay, Tegeta.

**MS NAIDOO:** No.

**ADV SELEKA SC:** Nothing at all. How did you get appointed to the board would you tell the Chairperson – of Eskom?

**MS NAIDOO:** Chair around end of 2014 I started applying for board positions and I applied for the Eskom board position and then I was contacted by a Ms Rothnam who advised me that you know I had been nominated and do I  
10 accept the position. After deliberation I did.

**ADV SELEKA SC:** Yes were you – was this the first board you had to serve on?

**MS NAIDOO:** No I have served on other corporate boards – commercial boards.

**ADV SELEKA SC:** But never in SOE?

**MS NAIDOO:** No, no.

**ADV SELEKA SC:** How did you come to know about it?

**MS NAIDOO:** There was an article in the newspaper.

**ADV SELEKA SC:** Oh. Was this the first time you came  
20 across an article that indicates – or what is the effect of the article that they...

**MS NAIDOO:** It is applying for an Eskom board position.

**ADV SELEKA SC:** Eskom's...

**MS NAIDOO:** So there were quite a few I had applied for quite a few.



**ADV SELEKA SC:** I see.

**CHAIRPERSON:** I am sorry Ms...

**MS NAIDOO:** Accident fund board.

**CHAIRPERSON:** Ms Naidoo. What is the article that you are talking about now?

**MS NAIDOO:** It was an advertisement for the board position.

**CHAIRPERSON:** Oh okay.

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** Yes. Tell the Chairperson whether did  
10 you know any of your board members prior to their appointment?

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** I knew Mr Mark Pamensky and I knew of Mr Zethembe Khoza because I was at Telkom and he was also at Telkom.

**ADV SELEKA SC:** How did you know Mr Mark Pamensky?

**MS NAIDOO:** From a social perspective you know gatherings and ...

20 **CHAIRPERSON:** From where?

**MS NAIDOO:** Social perspective. We attended very similar functions.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** What should we consider him to have been a family friend?

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** Family friend. So he – you and your husband would have known him.

**MS NAIDOO:** Correct.

**ADV SELEKA SC:** Did you – oh – well you say Mr Khoza you knew him but did you know him personally?

**MS NAIDOO:** No.

**ADV SELEKA SC:** No. So you knew of him?

**MS NAIDOO:** Yes.

10 **ADV SELEKA SC:** From Telkom?

**MS NAIDOO:** Correct he was an Executive at Telkom.

**ADV SELEKA SC:** Other than that you did not know any?

**MS NAIDOO:** No.

**ADV SELEKA SC:** Of the board members. May – the Gupta brothers.

**MS NAIDOO:** No.

**ADV SELEKA SC:** Did you know them.

**MS NAIDOO:** No I do not know them and I have never met them.

20 **ADV SELEKA SC:** Ms Salim Essa?

**MS NAIDOO:** Yes. I know Mr Salim Essa.

**ADV SELEKA SC:** Did you know him before coming – before your appointment?

**MS NAIDOO:** Correct, yes.

**ADV SELEKA SC:** And how did you know him?

**CHAIRPERSON:** How well did you – did you know him?

**MS NAIDOO:** He is known to my husband. I do not know him personally so I would not consider him my friend.

**CHAIRPERSON:** Ja.

**MS NAIDOO:** But my husband knows him so that is how I know him. As I said in my affidavit and I took the guidance from your affidavit you know exactly times I had met him. Ja and the last meeting was in 2015 I think it was at a wedding and we sat at the same table.

10 **CHAIRPERSON:** Hm okay.

**ADV SELEKA SC:** So you came to know him as a result of your husband knowing him.

**MS NAIDOO:** Correct.

**ADV SELEKA SC:** He is friends with your husband?

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** Did they do any business together?

**MS NAIDOO:** No.

**ADV SELEKA SC:** Not at all?

20 **MS NAIDOO:** Not when I was at Eskom no they have not done any business together. I do not think they have done any business together.

**ADV SELEKA SC:** Before or after?

**MS NAIDOO:** No, no.

**ADV SELEKA SC:** So they know each other as what – friends?

**MS NAIDOO:** Well more like associates yes.

**ADV SELEKA SC:** Okay. And in that process you came to know him?

**MS NAIDOO:** Correct.

**ADV SELEKA SC:** I think you have mentioned occasions where you would have met with him?

**MS NAIDOO:** Mr Essa?

**ADV SELEKA SC:** Ja Mr Essa where you would have met with Mr Essa. Can you tell the Chairperson those occasions  
10 again?

**MS NAIDOO:** They were mostly at gatherings. I think there were more than 100 people at all three of the gatherings – there were three gatherings. I have not met him on a personal basis to discuss any Eskom matters or my business relations. I have never had coffee with him but I have never interacted with him on a social basis one and one. So he is known to my husband he is not my friend.

**ADV SELEKA SC:** Did your husband play any role in your decision to apply to serve on the Eskom board?

20 **MS NAIDOO:** No.

**ADV SELEKA SC:** He did not advise you to apply?

**MS NAIDOO:** No.

**ADV SELEKA SC:** Or discourage from applying?

**MS NAIDOO:** No I – I have not discussed my appointments or my job you know with my husband. I am very

independent. It is quite offensive when somebody says to you got to your husband.

**CHAIRPERSON:** I am sorry. Just repeat the sentence before this last one?

**MS NAIDOO:** I have not discussed with my husband you know my employment or where I am planning to go if I am applying for a new position. I have never done that.

**CHAIRPERSON:** Is that not strange?

**MS NAIDOO:** No why?

10 **CHAIRPERSON:** Generally ask between couples?

**MS NAIDOO:** No I...

**CHAIRPERSON:** If you want to change from one job to – from working from one company for example to working for another company would you not talk to your partner, spouse and say this is what I am thinking?

**MS NAIDOO:** If I got ...[intervenes]

**CHAIRPERSON:** What do you think? It might have an impact on certain matters in the family. You might be coming back late because it is far in terms of the norms or  
20 that is the type of company that you are going to work for. Obviously, in the end you decide.

**MS NAIDOO:** Yes.

**CHAIRPERSON:** But one, I would have thought that couples would talk about those things.

**MS NAIDOO:** Well, what I was trying to say to you that if I

wanted to apply for a new job, I would not go to him and ask him or tell him or whatever. If I did get a new appointment, yes, of course, I would tell him that I got a new appointment but I would have already accepted it.

I never really addressed that with him. To be honest, I think it was one of my head of legal positions where I did get accused by one my girlfriends who said: Did my husband get you this job?

So, and I was very defensive. No, Judge I really  
10 did not go and ask him: You know what, I am looking at taking a new job. Maybe if I were unhappy somewhere I would have told him.

**CHAIRPERSON:** H'm.

**MS NAIDOO:** But in terms, I only have an agent and my agent would normally refer me to different jobs and then I go for the interview and things like that. So if it means I got the letter of appointment, then I would call and tell him.

**CHAIRPERSON:** Oh, so you would tell him after you had been appointed?

20 **MS NAIDOO:** Yes, yes. But I not like I would not ask him: Do you think it is a good idea? Or whatever. We are in different professions.

**CHAIRPERSON:** H'm. Oh, no, no. I understand. The suggestion is not that you ask for permission but it is just that discussion and consideration.

**MS NAIDOO:** Yes, of course. Yes. My job towards – you know as it is on photo 2, it was in and around my children. As my kids got older, I started – if you have noticed, I worked in a job from Pretoria. Then I started moving closer to my home. And that is why I reflected on taking board positions because I did – I thought it would allow me to have a bit more time as opposed to the 12-hour job. Ja. So.

**CHAIRPERSON:** Okay. Mr Seleka.

10 **ADV SELEKA SC:** Thank you, Chair. Yes, so you – you say your husband did not play any role in your decision making. You have said – I just saw something. You said you knew Mr Pamensky socially.

In his affidavit, Mr Pamensky says he knew or he knows Mr Salim Essa. I have known him for the past 11-years. At the time when he was deposing to an affidavit. Have you and Mr Pamensky ever been with Mr Salim Essa, all together?

**MS NAIDOO:** Yes, I think so. At a function, at a – what is  
20 it? It was an ANN7 thing. My husband got invited and I think mister... If I recall, Mr Pamensky was also there. But this was while I was an Eskom board member.

**ADV SELEKA SC:** Yes, this is ...[intervenes]

**MS NAIDOO:** My husband was invited by Mr Zwane.

**ADV SELEKA SC:** Oh.

**MS NAIDOO:** But I could be mistaken. Ja.

**ADV SELEKA SC:** The ANN7 ...[intervenes]

**MS NAIDOO:** Yes, it was their award function.

**ADV SELEKA SC:** Is that the ...[intervenes]

**MS NAIDOO:** It was the news channel.

**ADV SELEKA SC:** It is the news channel that was owned by?

**MS NAIDOO:** Tegeta.

**ADV SELEKA SC:** Yes.

10 **MS NAIDOO:** One of those companies, yes.

**ADV SELEKA SC:** Yes, one of the interrogated entities. Okay. Now at the Parliamentary Portfolio Committee, you were also asked about Albertyn (Pty) Ltd having apparently or allegedly made a financial contribution in favour of Tegeta for the acquisition of OCM. I cannot recall what was your response to that question.

**MS NAIDOO:** I was not asked the question. I put that in my statement because that was what ...[intervenes]

**ADV SELEKA SC:** Oh, you did.

20 **MS NAIDOO:** ...in the Public Protector's report. The Public Protector's report came out in November. Ms Thuli Madonsela's last day, if I recall, was the Friday, the 12<sup>th</sup> of October.

The day before that I was contacted by Eskom at about eight o'clock at night to say: Please look at your



emails. It is because they replied to the Public Protector's report and I did not know what they were talking about because I had left on the 30<sup>th</sup> of June 2016.

Then when I looked – opened the document – I literally opened it on my phone and I realised that the Public Protector had sent them questions relating to the Eskom board members, specifically those of us that had left.

And one of the questions – well, my question was  
10 not there about whether my husband's company, Albertyn, had contributed.

**ADV SELEKA SC:** Ja. Alright. Okay let us do this. Let us deal with the factual premise of the question, whether or not Albertyn did in fact make a contribution to Tegeta for the acquisition of OCM and whether you knew about it?

**MS NAIDOO:** My husband has told me no. I have met with his accountant and auditor and they have proven to me no. I have done this numerous times to numerous journalists. I have written to the press about that. I have  
20 tried to – I did write to the Public Protector but she had already left.

**ADV SELEKA SC:** Okay.

**MS NAIDOO:** And the new one could not address the matter because she said the matter was closed. She could not deal with it anymore. So yes I have tried to deal with

this aspect for a very long time.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** And I have lived with four years now. And Advocate Seleka, my husband's company did not contribute to Tegeta.

**ADV SELEKA SC:** Yes. I mean, he has told he did not.

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** The company did not.

**MS NAIDOO:** And I have also verified by visiting his  
10 accountants and they have provided me proof.

**ADV SELEKA SC:** Good. I know the investigators are doing something about it but if we find anything we will share it with you.

**MS NAIDOO:** [No audible reply]

**ADV SELEKA SC:** Let us – I know that your supplementary affidavit deals extensively with issues of the suspensions ...[intervenes]

**MS NAIDOO:** Correct. I gave you ...[intervenes]

**ADV SELEKA SC:** ...Mr Tsotsi.

20 **MS NAIDOO:** Yes.

**ADV SELEKA SC:** Ja.

**MS NAIDOO:** So if I ...[intervenes]

**ADV SELEKA SC:** Yes. Just remember, the arrangement because the suspension has been an issue we dealt with first and foremost before the transactions in a

chronological sequence because it comes first.

The people are moved out of Eskom, the executives and they are making a way for new people to come in and from there we see how the Corporation Agreement is dealt with between Eskom and OCM. Ultimately the prepayment in December 2015. Decision. The guarantee thereafter.

And then you have the April 2016 prepayment decision. So what I am going to do is, is to put aside for a  
10 moment the suspension issues insofar as they are dealt with in your supplementary affidavit because we have not – I have not even read it. We have not even shared with the people who might be implicated. We have to make that determination.

So I will go into the transactions and starting with the Corporation Agreement. That agreement reach – dates back to 2014. It comes to the BTC in April 2016 on the 15<sup>th</sup>. The BTC does not decide the matter.

I understand that from the evidence there is a  
20 question mark there because the matter fell within the BTC's delegated authority. Is that correct?

**MS NAIDOO:** Correct, yes. Seven-fifty to a billion or ...[indistinct] BTC.

**ADV SELEKA SC:** Yes, okay. You are fast.

**MS NAIDOO:** My apologies.

**ADV SELEKA SC:** Just give us the threshold again.

**MS NAIDOO:** So the BTC threshold is R 750 million to a billion.

**ADV SELEKA SC:** R 750 million to a billion>

**MS NAIDOO:** Yes, correct.

**ADV SELEKA SC:** That will be the BTC.

**MS NAIDOO:** Correct. And ...[intervenes]

**ADV SELEKA SC:** So the BTC can make decisions on those?

10 **MS NAIDOO:** Correct. And then from one billion to 1.5, its board and thereafter it has got to the Department of Public Enterprises.

**ADV SELEKA SC:** Yes. So the Corporation Agreement despite falling within the BTC's delegated authority, the BTC does not make a decision on. It refers it to the board. The board sits in Cape Town on the 23<sup>rd</sup> of April 2016.

**MS NAIDOO:** Ja.

**ADV SELEKA SC:** Were you present in person?

**MS NAIDOO:** Yes, I was.

20 **ADV SELEKA SC:** You were?

**MS NAIDOO:** Yes, we were.

**ADV SELEKA SC:** You did not join by telecom?

**MS NAIDOO:** No. So it is important to understand why we were in Cape Town. We were presenting to the Parliament – it was our first meeting where the board was

presenting to Parliament and then we also presented to the Ministers.

So the day after we had this board meeting. I think we were there for two days Chair. So basically all of us were there.

**ADV SELEKA SC:** Ja, except for two.

**MS NAIDOO:** Sorry. We were in Cape Town for two days.

**ADV SELEKA SC:** Yes. No, I am saying, you are saying basically all of you were there but I think two joined by  
10 teleconference.

**MS NAIDOO:** Oh, I will be corrected who they were. I am sorry but I assumed we were all there.

**ADV SELEKA SC:** Ja. Anyway. But they would have participated in the meeting. In that meeting, it is unclear what – whether this item is properly on the board's agenda. Can you recall? The Corporation Agreement and the addendum form?

**MS NAIDOO:** No.

**ADV SELEKA SC:** No? You do not have any independent  
20 recollection?

**MS NAIDOO:** So let me give an insight into what transpired.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** I know you have addressed this with Ms Klein.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** That we had basically on that day ratified Mr Molefe's secondment.

**ADV SELEKA SC:** No, approved it.

**MS NAIDOO:** Sorry?

**ADV SELEKA SC:** It was not ratified, approved it.

**MS NAIDOO:** Yes, correct. But you must remember. Even though we did that, that was a formality. It actually started a few days before. What day – do you know what  
10 date – what kind of a day was it? Was it a Tuesday or a Wednesday?

Because I remember we all met on a Sunday and we met with Mr Molefe because we were preparing for Parliament. It was the first we were going. He was very new and we all had to discuss the questions they were going to put to us.

And there were lots of very stringent questions. And if the Commission wants, I can tell the questions together with the answers because one of the questions  
20 Ms Mzo put to us was the issues concerning the War Room and the fact that incorrect information was going to the War Room and in that minutes that is being reflected.

So that meeting then stopped. We had this particular day where we were preparing on the Sunday. Then I think the next day or the day after, we flew to Cape

Town. We spent at Parliament. And then the following day we had a board meeting.

And it was a very introductory one where the Minister, you know, got to meet all of us properly and then we met Brian again for the second time. And then obviously – it was sort of a very informal board meeting.

**ADV SELEKA SC:** Oh, it was a very informal board meeting?

**MS NAIDOO:** Yes. It was not like we had a list of items  
10 we read through it and whatever.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** It was very informal. It was very last minute.

**ADV SELEKA SC:** H'm. Was it scheduled?

**MS NAIDOO:** Sorry?

**ADV SELEKA SC:** Was it a scheduled board meeting?

**MS NAIDOO:** Uhm ...[intervenes]

**ADV SELEKA SC:** Well, if it informal, maybe not.

**MS NAIDOO:** No, I do not think it was.

20 **ADV SELEKA SC:** So in that meeting, the matter of the Corporation Agreement between Eskom and OCM is referred to by Mr Molefe. You recall that/

**MS NAIDOO:** Yes, I do.

**ADV SELEKA SC:** And you deal with the basis on which it was referred to him. You can tell the Chairperson quickly.

**MS NAIDOO:** Okay. So it was – so the matter came before us. It was for the extension of the – no, it was for the amendment of the agreement. They currently had an agreement but they were requesting from Eskom an increase in the price.

There was also a clause in relation to the extension. That was addressed with us. It was a fairly large extension. It was, I think, for an additional 20 years.

The contract was going to expire in 2018 but  
10 Eskom was looking at another 20 years for the life of the mine but I remember the submission said that the life of the mine was under the 20-years but it could be extended to accommodate the OCM deal.

The matter was – they were paying R 150,00 a ton and it was going to increase to R 442,00 until the end of 2016 and from there to 2018, I think it was going to go to R 472,00. I could be mistaken but after 2018 it was going to go to R 472.00.

**ADV SELEKA SC:** Ja, but just tell the Chairperson the  
20 basis on which it was referred to Mr Molefe.

**MS NAIDOO:** So when we started – because it was such a huge amount in the sense that it was a big jump. It was an extra 200% mark-up. I mean, you were going from what? R 300 million a year to R 3.5 billion. You are looking at an R 60 billion contract.



It kind of triggered – it was – we were in a financial strain. We were not – we were a growing concern issue during this time and we were not in a situation to commit ourselves.

I do also remember and I know tried to go back to the BTC minute. I was not a BTC member at that stage. But I think one of the reasons they then pushed to the board was because it was above their threshold. Oh, no, no. Sorry. It was out of their budget.

10 **ADV SELEKA SC:** It was out ...[intervenes]

**MS NAIDOO:** Out of the budget. So you must remember, you have every year a coal budget.

**ADV SELEKA SC:** The budget of BTC?

**MS NAIDOO:** No, the budget within Eskom for coal.

**ADV SELEKA SC:** The budget within Eskom?

**MS NAIDOO:** Yes. So that was the reasoning why I think it is mentioned of the minutes of the BTC that the matter must go to the board. So there were various questions put to management.

20 Remember, Advocate Seleka. Every matter that is presented to the board or the Board Tender Committee is presented by CV's or the level of management.

So for example, Eskom has got almost 42 tender committees below the board level, Board Tender Committee. Directly below us we have ESCOs which is an

executive committee consisting of the executives.

Their threshold is R 300 million to R 750 million. They then will rectify, go through the submission and they submit it to the board tender and from there or alternatively either to the board.

So it is very likely that we got this from either ESCOs or senior management and there were lots of questions put to the board. I mean, put by the board. And there were very few answers that could be answered.

10           Mr Brian Molefe, on the Sunday I recall was very impressive. I mean, he was there two days but he was so well-glued up on the business. Even if you go back and you look at the minutes for that parliamentary thing, he answered most of the questions.

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

**MS NAIDOO:** So we were very confident ...[intervenes]

**ADV SELEKA SC:** Sorry, Ms Naidoo. He what?

**MS NAIDOO:** He answered most of the questions that the parliamentarians put towards the board.

20           **ADV SELEKA SC:** No, but ...[intervenes]

**CHAIRPERSON:** Is this Brian Molefe?

**MS NAIDOO:** Mr Brian Molefe.

**CHAIRPERSON:** Yes.

**MS NAIDOO:** So on that day, on the 23<sup>rd</sup> ...[intervenes]

**ADV SELEKA SC:** No, hang on. We are talking about the

meeting of the 23<sup>rd</sup> of April 2015 and the questions, you say, the board had.

**MS NAIDOO:** Yes, I am coming to that.

**ADV SELEKA SC:** On that occasion. Ja, but on that occasion.

**CHAIRPERSON:** He had been there for about three days or what?

**MS NAIDOO:** Correct. He was there for three days.

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

10 **CHAIRPERSON:** But at the meeting that you talk about when you he answered most of the questions.

**MS NAIDOO:** Maybe the day before when we went to Parliament. Because you see, on the Sunday before we prepared, we all got together, together with him and we went obviously through the financials, the possibility of what questions would be put to us.

And the thing is, you must be prepared irrespective of the fact that the man is there every job. He knew he had to deliver. And he – so we all prepared together, the  
20 board members and him and we were there with the senior managers as well as the executives.

Then the next – when we arrived in Cape Town, I think our first thing – we arrived the night before, the next day we all went to Parliament.

The questions were put to us. We answered it. He

answered the majority of the questions. I am sure the minutes will reflect that. And then the next day we had a board meeting.

He came across very confident and he was very authoritative in the sense that he knew what he was doing. So when we started putting questions to management, he could not answer them, obviously, because he was also – he did not know much about the matter.

And then we said: Well, we have got now a CEO,  
10 a proper – a real life CEO.

**ADV SELEKA SC:** Ja.

**MS NAIDOO:** Let us give him to address the matter and come back to us.

**ADV SELEKA SC:** Okay. How did you put the questions to management?

**MS NAIDOO:** The questions I think were related in terms of what ...[intervenes]

**ADV SELEKA SC:** No, how did you put them to management?

20 **MS NAIDOO:** In terms of how did I ask the question?

**ADV SELEKA SC:** In which way, yes. Did you send an email, did you send a letter?

**MS NAIDOO:** No, no. We had a discussion ...[intervenes]

**ADV SELEKA SC:** Or was management there, present and you had done putting question to them?

**MS NAIDOO:** Yes, yes, yes, yes.

**ADV SELEKA SC:** And which would be management in this case.

**MS NAIDOO:** Yes. So with due – Advocate Seleka, as I have said to you.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** There is a form of management that will submit to us, a tender. So there would have been a line of managers or an executive. Actually, an executive has to  
10 present or be present on a particular tender if it is in relation to these aspects. So I cannot verify exactly who the executive was.

**ADV SELEKA SC:** No, there was no executive. We heard Ms Klein said there was no executive. You are meeting in Cape Town. It is an informal meeting. It seems not to have a prearranged meeting. The minutes of the meeting are here. All we see is all of the board members except for two who are joining in by teleconference. Ms Khumalo and Mr Pamensky. Then there is Phukubje the Company  
20 Secretary and the Committee Secretary, Mr Wayne Vellore.

Even Mr Molefe is not listed here but he was there in that meeting.

**MS NAIDOO:** No, I ...[intervenes]

**ADV SELEKA SC:** Was it not?

**MS NAIDOO:** I recall asking questions. We would not

have asked it to board members. That does not seem right. Our board members ...[intervenes]

**ADV SELEKA SC:** Yes, it was.

**MS NAIDOO:** ...be able to answer on a particular matter.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** We could have addressed issues maybe to board tender but management would have definitely had to be there to present a board matter.

**ADV SELEKA SC:** Yes. That you heard when Ms Klein  
10 was testifying. I also said to her, on this very question, that... Well, firstly she confirmed management was not there and that it was not expected of management to attend board meetings.

But now it is even – what is it – I did not want to say – it is even more – ja, telling that it was an informal board meeting.

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** So management clearly was not there. But the second thing is. I said to her. Mr Johan Bester  
20 who was on the Negotiating Team on behalf of Eskom. He says he did not receive questions from management. I mean, from the board.

But you – I think you say what you know happened. If it did not happen ...[intervenes]

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** If management was not given questions, from your recollection, it was not. If it was, then say it was and then you will have to say how it was given those questions so that we move faster.

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** Ja. If you can recall.

**MS NAIDOO:** I disagree the fact that there could have been no managers at this meeting.

**ADV SELEKA SC:** Ja.

10 **MS NAIDOO:** Because they would have had to join us when we went to Parliament and we had certain managers or executives. So the executives were definitely all there. Are you talking about managers like Mr Johan Bester or are you excluding executive members?

**ADV SELEKA SC:** Okay. The minutes of that meeting... Chairperson, they are in Eskom Bundle 12. Eskom Bundle 12 ...[intervenes]

**MS NAIDOO:** Am I supposed to...

**ADV SELEKA SC:** No, she will help you.

20 **MS NAIDOO:** Oh, okay.

**ADV SELEKA SC:** The minutes ...[intervenes]

**CHAIRPERSON:** Did you manage to go there or...?

*[Parties intervening each other – unclear]*

**ADV SELEKA SC:** No, I just want Ms Naidoo ...[intervenes]

**MS NAIDOO:** Eskom Bundle 12?

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Ja. Ja, okay.

**MS NAIDOO:** Ja. What page?

**ADV SELEKA SC:** Eskom Bundle 12, page 241. That is the Reference Bundle.

**CHAIRPERSON:** I take it you are just going there for the names of ...[intervenes]

**ADV SELEKA SC:** Correct. The members who were  
10 present at the meeting.

**CHAIRPERSON:** Ja.

**MS NAIDOO:** 241?

**ADV SELEKA SC:** 241. Is that bundle... Eskom Bundle  
12.

**MS NAIDOO:** Oh, yes I have got it.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** Ja.

**ADV SELEKA SC:** So you see...

*[Background noise interruption]*

20 **ADV SELEKA SC:** You see who were present at that meeting?

**MS NAIDOO:** Yes, I do.

**ADV SELEKA SC:** In person and by way of telecom, telephone.

**MS NAIDOO:** [No audible reply]



**ADV SELEKA SC:** But to the extent that you want to say executives were there in this meeting, that will be inconsistent with what Ms Klein said.

**MS NAIDOO:** I find it very difficult to understand. Then who were the questions addressed to?

**ADV SELEKA SC:** Yes, you are right.

**MS NAIDOO:** You understand?

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** It is very likely that it could have been...

10 **ADV SELEKA SC:** Yes.

**MS NAIDOO:** So, I – honestly, we did have a discussion on the Sunday.

**ADV SELEKA SC:** Ja.

**MS NAIDOO:** We could not have made a decision without asking questions, you know.

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

**MS NAIDOO:** But I want to reverse the question to members of the executive or the CEO that was present and that is very likely why we addressed the matter to him or  
20 referred it to him.

**ADV SELEKA SC:** Ja. And... Okay so, what were you expecting him to do?

**MS NAIDOO:** I think the intention was for him to provide more information.

**ADV SELEKA SC:** Okay.

**MS NAIDOO:** That was very clear.

**ADV SELEKA SC:** Okay.

**MS NAIDOO:** I remember one of the robust things was that during or prior to this particular meeting, we were constantly told about the so-called cost coal mines and how we were investing all this money.

And at the beginning of every year, we would give them their budget and thereafter we would also pay for the coal which did not make sense because you did not own  
10 these mines, they were owned by other parties but you like basically running them. It was like sort of a neck lease.

And we had an issue with that. So when this matter came to us, it was like as if we were told now you need to increase this, pay more money, you do not have to budget. So how you care going to deal with it.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** So go and get us more information. And one of the things that we discussed.

**ADV SELEKA SC:** Yes.

20 **MS NAIDOO:** Was if this company is having difficulty, can Eskom then not take a shareholding in the company, not anybody else, Eskom so that Eskom can use the coal that it needs and thereafter sell or export the coal that it does not need because you are already doing that for the cost plus mine.

And if you look at the minutes that is reflected and it says then the matter was referred to Mr Molefe for further information. That was it. As simple as that.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** There was no malice or there were ...[intervenes]

**ADV SELEKA SC:** No ...[intervenes]

**MS NAIDOO:** ...a Public Protector indicated...

*[Parties intervening each other – unclear]*

10 **MS NAIDOO:** ...like a strategy. You know as Dr Ben said.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** That was the furthest thing from our minds.

**ADV SELEKA SC:** Yes. No, no ...[intervenes]

**MS NAIDOO:** And in the submission itself was intense.

**ADV SELEKA SC:** Yes. Leave the Public Protector aside for a moment. In their proposal by OCM was increasing the price of coal from R 150,00 per ton to R 442,00 per ton. So that, you were saying, was too much for the board.

**MS NAIDOO:** Yes.

20 **ADV SELEKA SC:** Ja. So you referred the matter to Mr Molefe. From Mr Molefe to come back with this information.

**MS NAIDOO:** Yes. The minutes is clear.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** For him to get us more information.

**ADV SELEKA SC:** Yes, more information.

**MS NAIDOO:** Correct.

**ADV SELEKA SC:** And does he do that?

**MS NAIDOO:** No.

**ADV SELEKA SC:** He did not?

**MS NAIDOO:** Okay so what transpired is that. I did not know – the matter never came back to the board. We had various board meetings thereafter. When the Commission is now sending me questions as to whether Mr Molefe  
10 reported this matter ...[intervenes]

**ADV SELEKA SC:** That is in 2020?

**MS NAIDOO:** Yes, in November. You guys sent me questions for the first time ...[intervenes]

**ADV SELEKA SC:** In 2020.

**MS NAIDOO:** ...on the 9<sup>th</sup> of November.

**ADV SELEKA SC:** Ja?

**MS NAIDOO:** So I then started going through all the minutes again and I picked up on the minutes of the 10<sup>th</sup> of September, there is a submission for a CEO's  
20 report. And in the CEO's report he talked about this particular transaction and that he had, I think, cancelled or I do not know the exact details.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** But he advises that the negotiations had stopped or something like that.

**ADV SELEKA SC:** Yes, we were looking at earlier on.

**MS NAIDOO:** Yes. So let me explain to you what happened over there. The 10<sup>th</sup> ...[intervenes]

**ADV SELEKA SC:** No. No, wait. [laughs] You want to explain what happened, what?

**MS NAIDOO:** On the 9<sup>th</sup> of - or the 10<sup>th</sup> of September where I picked it up that there was mention ...[intervenes]

**ADV SELEKA SC:** No, before you do that. Before you do that.

10 **CHAIRPERSON:** Ja, this is what happens when you lead the lawyer. [laughs]

**ADV SELEKA SC:** [laughs]

**MS NAIDOO:** Chair, I have waited for yours to sit on this chair.

**ADV SELEKA SC:** To come and testify. [laughs]

**CHAIRPERSON:** [laughs]

**MS NAIDOO:** You understand?

**ADV SELEKA SC:** [laughs]

**CHAIRPERSON:** [laughs]

20 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay. Take it easy Ms Naidoo. [laughs]

**ADV SELEKA SC:** Ja. Well, before you go into that. It is because when I read your affidavit and I am looking for where you are dealing with this prepayment or rather this meeting. Ja, it is on page – it starts on page 269.35. No,

that is your main affidavit. Eskom Bundle 14(A), page 269.35 going over to page 269.36.

**MS NAIDOO**: Sorry, what page did you say?

**ADV SELEKA SC**: 269.

**MS NAIDOO**: Yes?

**ADV SELEKA SC**: Point 35. 269.36. Ja, Eskom Bundle 14. So paragraph 87, it just goes right into the issue.

**MS NAIDOO**: Okay I am here.

**ADV SELEKA SC**: You are here?

10 **MS NAIDOO**: [No audible reply]

**ADV SELEKA SC**: Oh, it is alright. But the paragraph 87 reads:

“The board did not have enough information at the time to make a decision on the matter and there were too many unanswered questions.

Eskom also had growing concern issues which played a role in me being cautious to commit.

We simply request Mr Molefe to come back with more information.

20 Since we had been appointed as the board and we finally had a CEO who was more present, it seemed the logical thing to do.”

So the matter is referred to him. And if you turn the page to 269.37. Paragraph 92 says:

“It was expected for the CEO to table the

submission but I cannot recall that it actually was tabled to the board.

I have reviewed subsequent minutes and could not find any discussion.”

Paragraph 83:

“The current agreement was in place until 2018 and that is the agreement between Eskom and OCM at the current price.

10 Eskom would continue receiving such a supply until an agreement was concluded.

I was not aware of the fact that Mr Molefe terminated discussions with OCM but only found out much later after my resignation.”

And your resignation was 30 June 2016.

**MS NAIDOO:** Correct.

**ADV SELEKA SC:** So on that ...[intervenes]

**CHAIRPERSON:** I am sorry Mr Seleka.

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

20 **CHAIRPERSON:** Ms Naidoo, that second sentence in paragraph 93:

“Eskom would continue receiving such a supply until an agreement was concluded.”

You mean a new agreement?

**MS NAIDOO:** No, the current. So the agreement was in 2018.

**CHAIRPERSON:** Ja. It had not... Ja, but there was a current agreement, is it not?

**MS NAIDOO:** Yes, correct there was a current agreement.

**CHAIRPERSON:** So what did you mean until an agreement was concluded?

**MS NAIDOO:** [No audible reply]

**CHAIRPERSON:** You say:

“Eskom would continue receiving such a supply until an agreement was concluded.”

10 **MS NAIDOO:** It would have meant a new agreement.

**CHAIRPERSON:** Yes.

**MS NAIDOO:** Because remember, they come to you for an addendum.

**CHAIRPERSON:** Ja-no, that is what I am talking about.

**MS NAIDOO:** Okay. So perhaps ...[intervenes]

**CHAIRPERSON:** To say, did you mean a new agreement?

**MS NAIDOO:** Yes, the amendment on the increase.

**CHAIRPERSON:** No, no, no.

**MS NAIDOO:** Oh, okay. Oh, sorry. You are right.

20 **CHAIRPERSON:** It is the meaning of what you say.

**MS NAIDOO:** Yes.

**CHAIRPERSON:** That ...[intervenes]

**MS NAIDOO:** Yes, you are right. You are right.

**CHAIRPERSON:** Because if you are – if there is a current agreement ...[intervenes]



**MS NAIDOO:** Yes, you are right.

**CHAIRPERSON:** ...and you are receiving a coal supply in terms of that document Eskom would continue receiving coal supply until an agreement was concluded ...[intervenes]

**MS NAIDOO:** You are right.

**CHAIRPERSON:** Does not make sense.

**MS NAIDOO:** No, you are right, Chair.

**CHAIRPERSON:** Ja.

10 **MS NAIDOO:** I would mean a new agreement, correct.

**CHAIRPERSON:** Okay, so your supplementary will also ...[intervenes]

**MS NAIDOO:** Include that.

**CHAIRPERSON:** ...need to deal with that. Yes, Mr Seleka?

**ADV SELEKA SC:** Yes. Thank you, Chair. That sentence, Ms Naidoo, is important for a different reason or another important reason. If you knew and are stating here that the current agreement and that is the agreement  
20 between Eskom and OCM would continue or was in place into 2018 at the current price, Eskom would continue receiving such a supply until an agreement was concluded, which is a new agreement. In other words, the status quo remains until 2018, until you conclude another agreement. And having said that, let us see what happens here

because the board then will have to explain given that fact how does it deal with – or rather, explain how you – the manner in which you dealt with the submission for a prepayment of R1.6 billion in December 2015. So Mr Molefe has terminated the cooperation agreement. You say you did not know about that. He has given ...[intervenes]

**CHAIRPERSON:** Hang on, do say no so that that goes into the record. When you shake your head it will go into  
10 the record.

**MS NAIDOO:** No, no, so basically I do not recall the matter coming back to me to say that he terminated because I think that was the question.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** Did he come back to say to us that he terminated and no that ...[intervenes]

**ADV SELEKA SC:** Not even terminated but he has to come back to you to give feedback.

**MS NAIDOO:** Correct.

20 **ADV SELEKA SC:** Because he is given the matter to go get more information and give to the board because there are unanswered questions or questions that cannot be answered by the team.

**MS NAIDOO:** Correct, Chair.

**ADV SELEKA SC:** Yes, so – now he has to come back to

you but he does not.

**MS NAIDOO:** No.

**ADV SELEKA SC:** In July he terminates the agreement, you come to learn about it only after your resignation from the board.

**MS NAIDOO:** Correct.

**ADV SELEKA SC:** After 30 June 2016.

**MS NAIDOO:** In the Public Protector's...

**ADV SELEKA SC:** Ja, when reading the Public  
10 Protector's report.

**MS NAIDOO:** Correct.

**ADV SELEKA SC:** Which is in November.

**MS NAIDOO:** Correct.

**ADV SELEKA SC:** 20..?

**MS NAIDOO:** '16.

**ADV SELEKA SC:** 2016. So that minute, what is it, that legal report which Ms Klein referred us to is not part of your evidence.

**MS NAIDOO:** Which legal?

20 **ADV SELEKA SC:** It is not the legal report, the CE report which has the legal part.

**MS NAIDOO:** Oh yes, it is in my submission.

**ADV SELEKA SC:** Is it in your submission?

**MS NAIDOO:** Yes, it is, it is actually the very next page.

**ADV SELEKA SC:** Okay, but you only came to know about

that ...[intervenes]

**MS NAIDOO:** Yes, correct.

**ADV SELEKA SC:** ...now when we gave you the request for information .

**MS NAIDOO:** Yes, so on your questions, when you asked me...

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** I had to go through all my minutes.

**ADV SELEKA SC:** Yes.

10 **MS NAIDOO:** Because I did not want to miss something and then Advocate Seleka cross-questions me. So when I went through everything I noticed on the 10 September minutes there was a submission and the CEO's report had this report about OCM.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** So I went – that was in the submission papers, then I went to look at the minutes. The minutes says the CEO's report is noted, the board members got it late, they have not read it- I am not sure exactly not read  
20 it, but the impression is implied...

**ADV SELEKA SC:** That is right, yes.

**MS NAIDOO:** That we have not read it. We can go back, read it and then revert to him.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** To be honest with you, Chair, that was a two

day breakaway. I did not go back and read his reports, you know? And let me tell you how that meeting originated, the ...[intervenes]

**ADV SELEKA SC:** No. No, no.

**MS NAIDOO:** Sorry.

**ADV SELEKA SC:** Mr Barry said I should control you.

**MS NAIDOO:** Sorry.

**ADV SELEKA SC:** I should do that.

**CHAIRPERSON:** We will ask Mr Roux to intervene.

10 **MS NAIDOO:** To clarify, you know, I was not ...[intervenes]

**ADV SELEKA SC:** Ja, he said if I do not he will intervene and stop you. Ja, okay, so you came to know about the termination when you read the Public Protector's report. But the question is this, which is what we asked Ms Klein, we asked Dr or Prof Naidoo, how is that the board did not follow up with the executive after the matter is referred to him, which is a serious matter, involves lots of money, and what is generally, we have told, regarded as a key power  
20 station, Hendrina power station, why does the board not follow up?

**MS NAIDOO:** Adv Seleka, a very transactional matters actually came to the board and in hindsight – I hate using that word but it is truthful in the sense that the matters that did go to the board, even below our threshold, seems to be

all the matters in contention that we are sitting and discussing now. So what happened on the 23 April, it would have been an action item and it should have invariably been called up at the next meeting because it automatically gets. I was not the Chair of the board so I can really not explain as to why this matter was not. I was the Chair of bills and recovery, so I understood the process that it was my responsibility and duty to make sure that I go through these minutes, tabulate the action items and  
10 make sure that it goes to the next meeting. I really cannot explain this to you.

Then I think sometime in about June/July I got appointed to BTC, so that was the very first time transactional matters starting coming to me but prior to that I do not recall very – or any matters coming to me, this may have been one isolated matter and from there, between that period to June/July we were dealing with Denton's, we were dealing with the executives, we were dealing with the going-concern crisis, the last thing would  
20 have been a transactional issue and I would have had to have some sort of interest in this matter for me to go back and say but I am waiting for you to come back with a reply, it is an operational matter, we gave it to the CEO and we left it with him.

I do even recall the September meeting, or I could

be mistaken, or August, where it came to the board that we were being too operational and that we need to step back and let the executives do their job.

**ADV SELEKA SC:** Ja.

**MS NAIDOO:** And that is minuted.

**ADV SELEKA SC:** Okay.

**MS NAIDOO:** And I correct that at parliament.

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

**MS NAIDOO:** So I can clearly understand why it was – but  
10 I cannot answer for Dr Dan, he was the Chair at that time.

**ADV SELEKA SC:** Yes. So the short answer is you do not know why he did not come back.

**MS NAIDOO:** No.

**ADV SELEKA SC:** Or why the board did not follow up. You do not know why the board did not follow up.

**MS NAIDOO:** No.

**ADV SELEKA SC:** Because the prepayment of R1.6 billion is also a transactional matter, is it not?

**MS NAIDOO:** Correct.

20 **ADV SELEKA SC:** And it came to the board.

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** And the board decided it overnight and by round robin.

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** Without a meeting.

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** Without discussing it amongst yourselves. Yes, the Chair was saying do not nod, speak to; the microphone.

**MS NAIDOO:** Sorry, Chair.

**ADV SELEKA SC:** So you say yes?

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** Yes. Let us deal with this because – so the impression, as I said to Ms Klein, is that Mr Molefe  
10 is coming there on a placement, if you like, so he is being sent to Eskom. Mr Salim Essa has spoken about him at a meeting in 2014 that you will see how powerful we are and we have decided who is going to be the CEO of Eskom, in 2014, to one of the witnesses who came here, Mr Bester, and he says Mr Molefe is going to be.

When in March 2015 Mr Matona is on suspension for reasons that the board members who have come here have not been able to explain and Mr Matona is fighting to come back and fighting, meaning he is taking legal action  
20 to come back ...[intervenes]

**CHAIRPERSON:** Mr Seleka, do not forgot what you wanted to say.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** But I think that some of the board members have said they believe that the suspensions were



justified because there was to be an inquiry I think some – I do not know if some might not have gone along with that, but where I do recall quite clearly is that many, if not all the board members who have testified here, have struggled to explain the exit of the three executives that have been suspended and I think the retention of one, Mr Koko. So I just thought I do not want any member of the board who has testified to say you made a sweeping statement that they all could not explain the suspensions.

10 **ADV SELEKA SC:** Yes, thank you, Chair. So ja, they did have reasons that were not related to what was stated in the letters of suspension and given to the members.

**CHAIRPERSON:** What of course you can say – there is nothing wrong if you say they have given explanations that in your view are not sustainable if that is what you think.

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

**CHAIRPERSON:** I just wanted to be careful that we do not say they have not been able to explain suspensions when at least some of them have said well, we thought that in terms of the fact that there was going to be this inquiry, we thought that it was an acceptable reason for the executives who headed those portfolios, that they should be suspended pending the finalisation of the inquiry.

20

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Of course whether or not that is ...

**ADV SELEKA SC:** Sound.

**CHAIRPERSON:** Sustainable reason, is another matter.

**ADV SELEKA SC:** Yes, thank you. So that clarification accepted, Chair. So while Mr Matona is on suspension and fighting to come back and having taken legal steps, that is what is meant by fighting to come back, on the 17 April 2015 Minister Lynne Brown makes the announcement that she had decided – she has taken a decision to second Mr Molefe with immediate effect to Eskom. So there is no  
10 waiting or awaiting of the outcome of Mr Matona's issue and seeking to resolve that issue before making that decision to have Mr Molefe come to Eskom. And when he comes three days, or whatever days it is, certainly at the very most – if he started on the 17 April then at the very most on the 23<sup>rd</sup> he has six days at Eskom, he is given this matter. He is given this matter which has been handled by the inside team at Eskom since 2014 and I believe dating back to 2013. But he is new, the matter does not go back to the team, it goes to him with the instruction, if you want,  
20 or the decision by the board that he should get information and come back. But he does not do that, he does not come back to the board.

**MS NAIDOO:** No.

**ADV SELEKA SC:** One. Two, he terminates what was being negotiated and there, the board does not follow up

with him, please report back, because we have given you this matter, it is about supply of coal to one of our key power stations.

And I said this to Ms Klein, with that impression in mind, that he has been sent to Eskom, the incidental impression which arises on the part of the board is that the board may have acted in concert with his conduct in that it created an environment to enable him to do what he did in failing to call him up to account on what the board had  
10 decided he should do. What would be your comment?

**MS NAIDOO:** I think that is such an unfair comment on the basis that when this matter came to us on the 23 April, you are asking me for a 200% increase, you are asking me to write up a R2.1 billion penalty, you are asking me to extend I think for another 25 years and I was the Chair of – I was not the Chair, I was member of bills and recovery and I remember that went to the life of mines would be, so I understood that you could never enter into a contract with a particular company over the life of mine and this  
20 particular submission it says that you would need this extra 25 years to mine, I think it was five years left, but it is very likely we can extend it but there is no answer telling me how you are going to extent if the mine is going to expire five years earlier. So we made a logical [indistinct] from an economical perspective to say no, sorry, we need more

information. There was absolutely no malice or intention to push back on it and play into the hands of Mr Essa or Mr Molefe in terms of what you have implied.

**ADV SELEKA SC:** Yes. Ja, well ...[intervenes]

**MS NAIDOO:** Because, Adv Seleka, there has been so many issues on the penalty with Tegeta and the reduction and I know certain board members are being sued. Imagine if I had agreed to write up R2.1 billion the 23 April, I would be sued. So let us be fair to this board. On  
10 what was presented to us was not fair, it was not the right submission, it was not the right situation for Eskom and I still stand by that.

**ADV SELEKA SC:** But the submission did not include an extension for 25 years, the submission proposed that you, as Eskom, should reserve a right ...[intervenes]

**MS NAIDOO:** Correct.

**ADV SELEKA SC:** Yes, reserve a right, if you so wish, to extend it.

**MS NAIDOO:** Correct.

20 **ADV SELEKA SC:** To that period. That was the proposed, that you reserve that.

**MS NAIDOO:** Yes, but I take that value of the reserving of a right very seriously.,

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** You know, there are legal implications.

**CHAIRPERSON:** I am sorry, Ms Naidoo, what is the point you want to make about the reservation of the right?

**MS NAIDOO:** For me there were serious legal implications to that ...[intervenes]

**CHAIRPERSON:** It was?

**MS NAIDOO:** There were legal implications to that if Eskom committed to it in advance because then it would have meant that Eskom would have had to negotiate or at least give them an opportunity to negotiate in terms of  
10 [inaudible – speaking simultaneously]

**CHAIRPERSON:** Please look this side.

**ADV SELEKA SC:** Yes, face that side.

**MS NAIDOO:** Oh, sorry, Chair.

**CHAIRPERSON:** Ja, okay. What was wrong with a proposal that Eskom should reserve to itself the right to extend?

**MS NAIDOO:** The right was referred to a price, it was linked to a price and the price was still R475 ...[intervenes]

**ADV SELEKA SC:** 4 ...[intervenes]

20 **MS NAIDOO:** 520. So it was a right that went further.

**CHAIRPERSON:** What was your understanding of what ...[intervenes]

**MS NAIDOO:** That about 20 ...[intervenes]

**CHAIRPERSON:** Hang on, hang on, hang on. What was your understanding of what would go with the reservation

of that right, you reserve the right and then what?

**MS NAIDOO:** So basically Eskom had agreement with them for 2018, they were negotiating or looking at extending it for another 10 years. Correct? 10 years. But the intention was to actually get – reserve a right for another 25 years but ...[intervenes]

**CHAIRPERSON:** Was that the right to extend the contract?

**MS NAIDOO:** Correct.

10 **CHAIRPERSON:** Right, was there a condition attached to that or anything?

**MS NAIDOO:** I do not remember any ...[intervenes]

**CHAIRPERSON:** To that reservation of the right?

**MS NAIDOO:** I do not remember all of it but I know there was a price attached to it.

**CHAIRPERSON:** The thing is normally if you reserve a right, on the face of it that is in your favour ...[intervenes]

**MS NAIDOO:** Correct.

**CHAIRPERSON:** Because you can decide to use it or you  
20 can decide not to use it in the future.

**MS NAIDOO:** But then you are ...[intervenes]

**CHAIRPERSON:** So unless you say there was something else linked to the reservation of the right that would prejudice Eskom in some way and that is what I want to understand.

**MS NAIDOO:** So the reservation of the right had attached to it a price, a price that was far higher than the 150. It was even higher than the 442. So for me ...[intervenes]

**CHAIRPERSON:** What did it say?

**MS NAIDOO:** I do not know the exact figure.

**CHAIRPERSON:** What was your understanding of what he said.

**MS NAIDOO:** So my understanding would be that if I commit now, at a later ...[intervenes]

10 **CHAIRPERSON:** If you reserve your right as Eskom.

**MS NAIDOO:** Correct.

**CHAIRPERSON:** Right?

**MS NAIDOO:** A few years later down the line Eskom management would take that right on and continue to supply them at this increased price as opposed to benchmarking at that stage whether that was the right price. So I was not in favour of the long term agreement or the commitment, as such, I would have preferred a shorter agreement of 10 years or shorter and then benchmark in  
20 terms of what was the current economic situation at that stage. I just felt it was too much of a commitment on the likes of the mine.

**CHAIRPERSON:** Well, I am not sure of how much importance this particular point might be, Mr Seleka, we might not need to spend much time on it.

**ADV SELEKA SC:** Ja, no, certainly, Chair.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** I think the right to reserve  
...[intervenes]

**CHAIRPERSON:** We can move on, ja.

**ADV SELEKA SC:** Ja, the right to reserve is – the benefit  
of the one who reserves it can exercise it or not extend it.  
Ms Naidoo, then – okay, we have gone through that, let us  
look at the submission - eight months later the board is  
10 approached with this submission for a prepayment of R1.6  
billion. The board is approached by email in the evening of  
8 December 2015, the email comes from Ms Suzanne  
Daniels in which she is asking the board to make a  
decision by 12 noon on the 9 December 2015.

The two members of the board who testified before  
you have said that they understood that submission to  
require a prepayment to be made in respect of or to OCM  
owned by Glencore. Now this is a decision that would be  
made by way of a round robin. How did you understand  
20 that submission to require the board to decide?

**MS NAIDOO:** If I recall, the submission was based on the  
fact that OCM was now in business rescue, the business  
rescue ...[intervenes]

**ADV SELEKA SC:** Face...

**MS NAIDOO:** Sorry, Chair.



**ADV SELEKA SC:** Ja.

**MS NAIDOO:** The company was now in business rescue, there were discussions with the business rescue practitioner and at the time when the submission had come to us, by that stage there was no final decision made by the business rescue practitioner in terms of a commitment. I think there was a clause that said that the business rescue practitioner had at the previous meeting said that they would continue with the agreement or they would  
 10 remove the company out of the business rescue process but there was no commitment. Then there was indication that one of the particular mines, I think it is Koperfontein(?) that was being supplied by OCM, that agreement was coming to an end in January 2016 which would have been the following month. So there was a sense of insecurity in terms of coal for the particular power station and therefore, this pre-purchase was coming to us to have a commitment and a security of coal. So my understanding of Eskom's business is that one of our basic  
 20 assets is our coal stockpile. Without that you can never – you cannot practice, you cannot deliver on your strategy, so you needed to ensure that you had constantly sufficient coal. You do not buy it on an *ad hoc* basis you buy it on a long term plan.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** So the understanding was at that stage there was a lack of commitment from this company because of their financial implications and that this particular pre-purchase will give you a commitment where we could now have the coal, because it is already available, it is on stockpile, by pre-purchasing the coal basically be [indistinct].

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** So that was my understanding.

10 **ADV SELEKA SC:** Ja, so which entity was going to receive the prepayment?

**MS NAIDOO:** OCM. I have put that in my affidavit. And, Judge, to the question that you put to Ms Klein about whether we noticed the proposed owner. To be – I am going to be very honest with you, I did not. I have looked at it a hundred times since then as to who could I have missed that word and I can only explain the reasoning behind the heading that it said a pre-purchase to OCM. Throughout the submission they talk about the proposed  
20 purchaser, so obviously my understanding is the proposed purchaser is somebody that will want to buy but in terms – they never referred to a proposed owner throughout the submission where they talk about it. So I am going to be absolutely honest with you, I did not notice.

**CHAIRPERSON:** Ja, well you probably heard what I said

to Ms Klein and maybe to Dr Naidoo in the morning as well that – well, what is troubling me about it ...[intervenes]

**MS NAIDOO:** Is how it makes sense.

**CHAIRPERSON:** What troubles me more in regard to you, because you are a lawyer.

**MS NAIDOO:** Yes, I totally accept that.

**CHAIRPERSON:** But I think Ms Klein is a chartered accountant, there would be very – I think the two of you would be more or less the same in terms of – surprisingly.

10 I mean, that part which – of the submission that requested the board to authorise is a very important point.

**MS NAIDOO:** Of course.

**CHAIRPERSON:** Because before you come to the meeting or to discuss this by way of – or look at this by way of a round robin, you would know that the management is asking the board for an authorisation of something, number one. Number two, an authorisation for prepayment. So obviously if you are being approached as a board to authorise something, you know there are very important  
20 pertinent questions, what must I authorise? Why must I authorise it. How is authorising it in the interests of Eskom? If it is a payment obviously you want to know to whom? Are they entitled it? Are there grounds that they should be – we should authorise payment to that particular entity. Those questions are pertinent questions that should

arise in your mind and when you read the submission you are looking for answers to those questions. So I certainly would have expected that you would pick that up.

Dr Naidoo said he did see but he did not – I think the effect of his evidence may well be that he did not think that – he did not appreciate its significance, I am not sure, I do not want misrepresent what he said, but he said he saw that the paragraph 2.1.2 of the submission refers to the agreement for prepayment being concluded with the  
10 proposed owners of OCM.

Ms Klein did not say she did not see it, I think she said she probably saw it. I think she could not remember but she did not say I did not see it, she said I probably saw it and it may well be that – I think she said that the focus for her was on the fact that OCM was in a business rescue situation and then they wanted to secure the supply of coal.

Dr Ngubane was here, I am not sure whether we asked him how he could have missed it but he said also as  
20 far as he was concerned he intended – he was authorising a prepayment to go to OCM under Glencore, not Tegeta.

So you have a professor, Prof Naidoo, you have a chartered accountant, you have a medical doctor, Dr Ngubane, you have an attorney, they all – some maybe see this, these two words, proposed owners, but do not attach

to them the significance they should attach to them. Maybe others do not see them. So it is – and yet you are dealing with a very large amount. I think Ms Klein may have suggested indirectly that in the context of Eskom maybe R1,6 billion is not so large an amount, you know, but I think most people will agree that it is a large amount that you are dealing with. The larger the amount you are being asked to authorise, the greater the duty on you to double-check that this money will go to the right entity, the right person. You do not want to authorise money that should go to A, you authorise it to go to B. You understand?

**MS NAIDOO:** Yes.

**CHAIRPERSON:** So that is part of what is troubling me, how it is possible that in a board of – I think I was told about 12.

**MS NAIDOO:** Yes.

**CHAIRPERSON:** And that is apart from the investment and finance committee. Of course their members would be members of the board as well.

**MS NAIDOO:** Correct.

**CHAIRPERSON:** But it would mean that they got two chances of looking at the same thing, firstly at the level of the committee and secondly at the level of the board and nobody said hang on, hang on, hang on, we are being

asked here to authorise a prepayment to proposed owners, not current owners, why is that? What is going on?

**MS NAIDOO:** Chair, if I had noticed that, the first question would have been who are the proposed owner, so I can definitely tell you because of the heading said pre-purchase to OCM, that stuck in my head, not that I am not trying to find an excuse for what I did in terms of not realising proposed order, but I did send questions to Ms Daniels on this matter, she did not mention my questions,  
10 she did mention that I'd you know signed off on the matter and then I said refer it to IFC. I did ask her the two questions was from the current agreement – can I refer you to the other?

**ADV SELEKA SC:** Maybe for the Chairperson you can, or for the record.

**MS NAIDOO:** Yes, from the current documents, does not mean we buying coal at the price in terms of our current agreement and the person that has applied was either Mr Matshela Koko or Anoj Singh...[intervene]

20 **CHAIRPERSON:** I think come closer to the mic.

**MS NAIDOO:** Oh, so the either two executives that replied was Mr Anoj Singh or Matshela Koko because she has got that on the email, she has got Anoj/ Matshela and they say confirmed. The coal price is asked to the current coal supply agreement with OCM.

So I am being told this, then I said further advice if there is any other means of getting coal elsewhere and this is no other means of getting coal for him at a price of R150,00 per ton, the open inquiry for the smoke coal qualities for Arnot power station has not yielded positive results. So I think when I got this, you know, the first impression was that this is coming from OCM. So it has to be OCM. The price is now R150,00 as opposed to the 442 they were asking in April and that was what I thought was  
 10 the right decision for Eskom and that is why I do not come back on that but it still does not take away that I did not...[intervene]

**CHAIRPERSON:** Except that it is remarkable to say the least.

**MS NAIDOO:** But with due respect Chair.

**CHAIRPERSON:** Hang on, hang on. You accept that it is quite remarkable that from the entire Board does not look like anybody's says anything about there is something that needs clarification here, on the point of who is going to  
 20 benefit, who are we authorising payment to pre-payment to?

**MS NAIDOO:** But I think we were all thinking on the same line. That is why I eventually, I think they were all thinking on the same lines. That is why I see...[intervene]

**CHAIRPERSON:** How is it possible so many people,

highly...[intervene]

**MS NAIDOO:** Because it is seen as a round robin the night before you are given a few hours.

**CHAIRPERSON:** Hang on, hang on Ms Naidoo, highly qualified people and I think some of them quite experienced.

**MS NAIDOO:** It is the urgency of the matter and the fact that it was not at a meeting, so it was no discussion.

**CHAIRPERSON:** But even that urgency they did not  
10 question did they?

**MS NAIDOO:** No because - well, I can tell you I did not.

**CHAIRPERSON:** That issue could have waited even another week from what I can see. So why did they not say hang on, we need more time, this thing can wait. Why do you rush us to make a decision on this, they did not do that. They do not – it is in black and white, it is in front of them. all of them do not say hang on what is going on here?

**MS NAIDOO:** I cannot answer for other members but for  
20 me personally because I was already in tenure for about four months, everything at Eskom was very urgent and it had to be dealt with immediately. I mean you would see from my affidavit, I gave you lots of examples where we had round robins for hundreds of millions of rands, and they had to be dealt with overnight or as a round robin.



**CHAIRPERSON:** But you were the Board, you were for all intents and purposes the ultimate authority at Eskom. Nobody should rush you to making decisions, where you are not satisfied that there is reason to make a decision now, now, now.

**MS NAIDOO:** The perception is that it is true.

**CHAIRPERSON:** If you need more time, you can get more time.

**MS NAIDOO:** It was not played out that way. You were  
10 told that if you do not do this, we go into load shedding.

**CHAIRPERSON:** But who tells the Board?

**MS NAIDOO:** Management, management is operational we are not operational.

**CHAIRPERSON:** But because you are not asking questions. You are not saying to them, what is going to happen if we only decide this in a week? You do not ask those questions.

**MS NAIDOO:** Yes, we dealt with urgent matters urgently, we did not push back that is true. But with due respect  
20 Judge this was never signed off to OCM, I mean to Tegeta. This was signed off to OCM, IFC signed this to OCM.

**CHAIRPERSON:** Well, this, this submission that you authorised says proposed owners of OCM, it does not say current owners of OCM.

**MS NAIDOO:** But eventually IFC held a meeting and it

was agreed OCM.

**CHAIRPERSON:** But that does not justify this failure on the part of this Board to appreciate that they were being asked to authorise payment to proposed owners as opposed to current owners. It was there in front of them, it was black and white. You cannot blame management and say they did not tell you that they were asking you to authorise pre-payment to Tegeta.

**MS NAIDOO:** With due respect Judge I am not blaming  
10 them, I think was the drafter was very clever. The drafter was extremely clever to make the heading OCM. talk about OCM, talk about proposed purchaser and then in one clause talk about the proposed order, but yes I do accept.

**CHAIRPERSON:** But in a clause that his entitled or she is entitled whoever it was, is entitled to expect you to look at because it is about what you are asked to do.

**MS NAIDOO:** Correct. I do accept that was an oversight on my part.

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

20 **ADV SELEKA SC:** Yes, thank you Chair. Ja, Ms Naidoo on the one hand those questions arise that why urgency and the convolution between the two entities which one actually was going to get payment but if the Board understood it to be OCM as under Glencore, that statement in that paragraph 93 of your affidavit, becomes even more

significant. It says:

“The current agreement was in place until 2018.”

And you are talking about this in the context of the cooperation agreement, the matter being referred to Mr Molefe and he was going to come back to the Board, he did not. And then you go to the paragraph:

“The current agreement was in place until 2018 at a current price, Eskom would continue receiving such a supply until an agreement was concluded.”

10 If that was the case as we know from the evidence that it was in fact the case. It even makes a mockery of the allegation of urgency because the status quo remain until the new contract will be concluded. Do you see that?

**MS NAIDOO:** Yes, but things changed in December they were in business rescue, they were not in business rescue on the 23<sup>rd</sup> of April.

**ADV SELEKA SC:** Ja, but business rescue started in August 2015.

**MS NAIDOO:** Correct, before the submission in  
20 December.

**ADV SELEKA SC:** Way before.

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** So if there was any urgency, you say the urgency was that, there will be load shedding?

**MS NAIDOO:** So what my understanding was that there

was a lack of commitment on the coal supply.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** And for me they needed a commitment from this particular company that they were going to supply so much of coal at a certain price. And with due respect, Advocate Seleka business rescue is not the ideal situation for any company. So when I am being told that this company is business rescue, they have agreed that they will continue with the agreement but as of the date of the  
10 submission, there is no final commitment. But here is a proposal being put forward by the business rescue practitioner on the pre-purchase for R150 a ton, as opposed to the 442million, I definitely saw it as a better deal for Eskom.

**ADV SELEKA SC:** Ja, I get lost in your explanation.

**MS NAIDOO:** Oh.

**ADV SELEKA SC:** It is fast and you know without breaks, but let me – let us say this to you, you make the decision for this pre-payment. You believing it to be going to OCM  
20 for business rescue. You are making a decision for a pre-payment of 1.6 billion whereas eight months earlier you refuse to increase R150,00 per ton.

The price of a R150,00 to 442, four, four two which would have been a monthly payment, as opposed to a pre-payment of a huge amount all at once. How did you deal

with this?

**MS NAIDOO:** There is the difference Chair because in April 23<sup>rd</sup> when it came, there was an increase. Yeah, it is a continuation of an existing agreement at the same price and you have been told that you will now save I think it was like R215million on the basis that you are getting it at the same price because you would address, I think it was the working capital.

So my understanding was that if you budgeted  
 10 R100,00 per month going forward, if you pre-paid that same R100,00 or R20,00 out of that R100,00 in December the following month you will only be incurring R80,00. So it is not like you are taking money out of your budget because you have already committed to this particular budget at this price but I thought it was a good deal.

**ADV SELEKA SC:** Yes, in addition to that by this time in December 2015, Glencore had already made a decision that it is taking OCM out of business rescue, it will fund OCM and OCM will comply with the agreement to the very  
 20 end.

**MS NAIDOO:** Yes, but then the submission says as of the date of the submission they had not got a commitment. So it does give you these two clauses, giving you the impression that they have made these promises but they have not committed to it and we are now in the situation.

So my understanding at the time was that there is no final commitment and this is what now they are committing to and yes sign a deal.

**ADV SELEKA SC:** The commitment was made on the - conveyed in the meeting of the 24<sup>th</sup> of November 2015 and finally resolved by the end of that month and certainly given to Mr Koko on the 1<sup>st</sup> of December 2015. Did you know of that fact?

**MS NAIDOO:** No, there is no date, the way it is drafted it  
10 gives you the impression that you had these initial meetings and then nothing transpired. And then you are at the situation now where you have not heard from them and everybody's quiet. So I am hearing obviously the dates for the first time. I can only tell you what was in the submission.

**ADV SELEKA SC:** I see, so on the 1<sup>st</sup> of December 2015 there is a meeting taking place in Switzerland convened by Minister Zwane with Mr Glasenberg and Minister Zwane is there with Mr Salim Essa. You would not have known  
20 about that meeting?

**MS NAIDOO:** No.

**ADV SELEKA SC:** That meeting deals with the transaction of Tegeta acquiring OCM. The meeting is concluded on the 2<sup>nd</sup> of December when Mr Tony Gupta is present and they have called Mr Ephron the CEO of OCM

South Africa to come and join them. The deal is verbally concluded; did you know that?

**MS NAIDOO:** No.

**ADV SELEKA SC:** For the price of R2.1billion purchase price by Tegeta of OCM. And what we see here it is a parallel process, what is happening within Eskom and what is happening outside of Eskom. And it seems to have been that Eskom is taking, the Board of Eskom is taking decisions that were intended to assist, financially assist  
10 Tegeta in their acquisition of OCM. Your comment?

**MS NAIDOO:** The Board did not do that, if that was the intention of management or executive it was not the intention of the Board. Chair, Advocate Seleka lead evidence with Ms Daniel, I think it was with Ms Daniel concerning correspondence between Mr Singh and I think it is Eric Wood.

**ADV SELEKA SC:** That is right.

**MS NAIDOO:** Concerning...[intervene]

**ADV SELEKA SC:** And Mr Atul Gupta.

20 **MS NAIDOO:** Yes, it was concerning the submission document.

**ADV SELEKA SC:** That is right.

**MS NAIDOO:** Yes and they did not want the submission to go to IFC, they did not want it go to the DPE. Advocate Seleka my letter to Ms Daniels on the 9<sup>th</sup> or the 8<sup>th</sup> of

September was exactly in contradiction of what Mr Essa so called Mr Gupta, Mr Eric Wood was saying, I asked that it goes to IFC, I said that we need DPE approval and I said we need PFMA approval.

So I find that actually, it is totally a contradiction of what I did. I acted against what they were wanting to happen and there is no way I could have known that this agreement was signed. And if this agreement was signed between these two companies, why would they bringing the  
10 submission to us and saying that the business rescue practitioner wants to save OCM. The submission in itself is incorrect or is unethical if there was an agreement as you said now for the sale of this particular company.

**CHAIRPERSON:** Mr Seleka I think you have a question, so I will hold back. I thought you might want to follow up on that answer. Okay, no, that is fine.

**ADV SELEKA SC:** Ask the question, Chair.

**CHAIRPERSON:** How would you know if the Board was facilitating this deal if they did not say so in the meeting?  
20 You say the Board did not do that.

**MS NAIDOO:** Okay, when I say the Board okay I cannot speak for everybody.

**CHAIRPERSON:** Ja, you speak for yourself, ja

**MS NAIDOO:** My apologies, let me speak for myself.

**CHAIRPERSON:** Ja.



**CHAIRPERSON:** But the only way we are going to find out about everybody is to ask everyone. Nobody's asked me for four years, what I did. I did not know about the so called correspondence that was happening between all these parties. I found out about it three weeks before - a few weeks ago. So it is - I find it very hard to accuse people of things when there is evidence out there and people are just ignoring it.

**CHAIRPERSON:** Well you see Ms Naidoo and you may  
 10 have heard me say this in the past if you listened or watched when some of the members of the Board or other former members of the Board of Eskom officials who had testified. There is something that seems to suggest that at least some of the members of this Board, this Eskom Board may have been working in cahoots with people who were outside of Eskom, or may have known of some agenda on the part of people who were outside of Eskom and who were allowing themselves to advance that agenda, and it may be that some members of the Board didn't know about  
 20 those agendas but may have dealt with certain decisions of them having – certain decisions which enabled an agenda, or some agenda that belonged to people who were outside of Eskom.

So some might have known what was going on and others might have been going on with what they believed

was their normal duty.

**MS NAIDOO:** Can I say something?

**CHAIRPERSON:** Not now. You have this situation Mr Seleka pointed out to you, in 2014 Mr Salim Essa, according to Mr Johan Bester – is it Johan Bester?

**ADV SELEKA SC:** Hank.

**CHAIRPERSON:** Hank Bester who gave evidence here, in 2014 already tells Mr Hank Bester that the next boss for Eskom will be Mr Brian Molefe. At that time Mr Brian  
10 Molefe is Group CEO at Transnet and he has not applied for any job at Eskom and somebody is appointed as Group CEO of Eskom, that is Mr Matona, I think at the end of – at the beginning of October.

**ADV SELEKA SC:** 1 October 2014.

**CHAIRPERSON:** 1 October 2014, before that he was DG of the Department of Mineral Resources if I recall correctly.

**ADV SELEKA SC:** He was at the DPE.

**CHAIRPERSON:** Oh, at DPE ja, but he was DG.

**ADV SELEKA SC:** DG at DPE.

20 **CHAIRPERSON:** Ja, at DPE, so he is familiar with Eskom also. So within a few months while he was still trying to present his turnaround plan for Eskom he is suspended together with other executives under circumstances that raise questions and he goes to the Labour Court, tries to fight to come back and according to him he is told by one

of the members of the Board that going back to Eskom is out of the question for him, they can talk about money but not going back.

The executives concerned as suspended they get – it is said that they have done nothing wrong and a lot those executives you know said we were pushed out and they are given a lot of money and I asked Board members who have testified here why did you give them such a lot of money to leave if as far as you were concerned they could still come  
10 back, you had no problem with them. They couldn't give me any satisfactory explanation.

And then of course on the 17<sup>th</sup> of April 2015 Minister Brown announces, as a media conference, announces that Mr Brian Molefe will be seconded to Eskom as Acting Group CEO. I think Mr Molefe is hardly three months there, or two months/three months, then according I think one witness or some affidavit I may have read he then recommends to the Eskom Board that Mr Anoj Singh who was at Transnet as the CFO must also be brought to  
20 Eskom, and there is a huge question as to how Ms Molefe, Tsholofelo Molefe, who was Financial Director in March 2015 at Eskom, therefore CFO of Eskom, how she got to be included in the list of executives to be suspended because at the meeting of the 8<sup>th</sup> of March 2015 at Mr Zuma's official residence in Durban where the issue of the

suspension of the Eskom executives was discussed and Mr Zuma is said to have been there as well in the discussion, Ms Tsholofelo or her portfolio was not included, and then Ms Daniels and Mr – what is the name Abraham, Masago, say that on the 10<sup>th</sup> of March, one day before the day on which the Board suspended these executives they both say separately they were called by Mr Koko to a meeting at Melrose Arch where they met with Mr Koko and Mr Salim Essa, separate meetings, and they were told the names of

10 the executives who were going to be suspended and for the first time Ms Molefe's name was included and when the Minister – Minister Brown, arrived and came to speak to the Board on the morning of the 11<sup>th</sup>, she also – when she spoke about the suspensions, she included Ms Molefe in terms of her portfolio, she had not been included in the original, and then she when there were discussions for her to leave between members of the Board who were mandated by the Board to talk to her, the Board had given a mandate through those Board members who were talking

20 to these executives that in terms of money it should be I think 12 months, 12 months remuneration, not more than that, she was not prepared to take that, she resisted leaving, but instead of them saying okay come back because after all they were not saying she had done anything wrong, they increased the offer to her I think to

1.8.

**ADV SELEKA SC:** 18 months Chair.

**CHAIRPERSON:** To 18 months, ja, not 1.8, 18 months' salary and you ask the question but why, why did you have to pay so much if you had no problem with these executives coming back, and it becomes difficult not to say well could it be that this whole thing was planned, that Mr Molefe should be brought to Eskom and maybe Mr Anoj Singh should be brought to Eskom as well, but of course  
10 they couldn't be brought there if there were people in those positions, those people needed to leave and then you go back to Mr Hank Bester's evidence that already in 2014 Mr Salim Essa told him that you will see how powerful we are, Mr Brian Molefe is going to be the next boss of Eskom.

So – and then you think about emails, evidence that has been led here, emails that seems to come from people outside of Eskom and outside of government, sending messages, sending emails to Eskom including an email that went to Dr Ngubane who was Chairperson of the Eskom  
20 Board, which was in effect dictating to the Board what decision they should take about certain newspapers which had published certain articles about Eskom and Transnet, I can't remember who else, and Dr Ngubane has confirmed here that he took that email and went through to the Board and the Board made exactly those decisions.

So I am just saying when you say the Board did not intend to facilitate anything for – about the deal of Tegeta and Eskom, it may well be that some members of the Board knew of some agenda.

**MS NAIDOO:** Chair I can only ask that you look at the evidence and you treat all of us fairly. It has been a hell of a four years for me, I am not going to get emotional on TV, but we did not want an inquiry, the inquiry was put to us by the President and the Minister. We did not ask for the  
 10 suspensions, that was put to us by the Minister and Mr Tsotsi. On the issues of the suspensions I have addressed it in my supplement, you really need to listen to the 19<sup>th</sup> recording, the 19<sup>th</sup> of March recording sets the platform in terms of how Mr Tsotsi got the misdemeanours and I think that created a platform which scared the Board members that the Executives would have far bigger claims against Eskom, and I know that will be dealt with later, but it is in my supplementary affidavit.

On the issue of the transactions you can see now  
 20 for the very first time on the evidence that some of us pushed back and we were working in favour of Eskom, so I can only plead with you to look at the evidence for the first time, take cognisance of that fact.

**CHAIRPERSON:** Yes.

**MS NAIDOO:** You know there's numerous people that it

reports in terms of the GAP analysis that is presented to you, not a single one of those people have contacted me, yet I tried to contact them.

**CHAIRPERSON:** You see part of the reason why I am telling you what I am telling you is exactly to be fair to you, to say this is what is going on in my mind, what can you tell me, you see that is part of being fair to members of the Board, to say I am not hiding from you what is going on in my mind, I want you to influence my thinking, this is what I  
10 am thinking.

**MS NAIDOO:** No, I do respect that.

**CHAIRPERSON:** It is not final.

**MS NAIDOO:** I do respect that, and that is why I tried to give the Commission as much tangible evidence.

**CHAIRPERSON:** Yes.

**MS NAIDOO:** I am not here sitting on this chair accusing people of State Capture of doing anything, unless I have attached a tangible document, so I hope you will take cognisance of that.

20 **CHAIRPERSON:** Ja, no, no, no that is fine. Mr Seleka we are at quarter to six. Let us talk about how long we – you still need to be and we might need to take a short adjournment. I am not necessarily saying finish now, I just want that we all have an idea of how much longer you will still need.

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

**CHAIRPERSON:** I can still sit longer, I just want to have an idea.

**ADV SELEKA SC:** Yes, I don't want to sit until seven.

**CHAIRPERSON:** Yes especially some of the matters which have been dealt with you know there might not be a need to go all over through them again but at the same time in terms of fairness it is important to give Ms Naidoo a chance to say something, but on some of the matters I  
10 guess I mean she could even finish a response on certain points even by way of affidavits, but while we are here, if we can, let's use the time as much as possible.

So we have to do justice to the issues even with whatever time constraints.

**MR SELEKA SC:** Yes.

**CHAIRPERSON:** Ja, so what is your assessment?

**MR SELEKA SC:** If we don't stop now ...[intervenes]

**CHAIRPERSON:** No, I don't think we should stop now.

**MR SELEKA SC:** Then we could possibly finish before  
20 half past six.

**MS NAIDOO:** I am fine, but my counsel will need ...[intervenes]

**CHAIRPERSON:** Yes, let us check with you first then we check with your counsel, are you fine?

**MS NAIDOO:** Oh absolutely.



**CHAIRPERSON:** Okay Mr Roux?

**ADV ROUX:** I am fine.

**CHAIRPERSON:** You are fine with that, okay, no, no that is fine, let's take a ten minutes adjournment now.

**ADVOCATE SELEKA SC:** Oh.

**CHAIRPERSON:** And then we come back and then we continue and try and see if we are able to finish by half past six.

**ADVOCATE SELEKA SC:** Ja, but Chair my estimation is if  
10 we don't take a break.

**CHAIRPERSON:** Oh, okay, no, no I think let's take a break, the witness might wish a break.

**MS NAIDOO:** I am fine Chair.

**CHAIRPERSON:** Okay we will take a ten minutes break, we will bear in mind what you said, yes.

We adjourn.

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

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

20 **INQUIRY RESUMES**

**CHAIRPERSON:** Okay let us continue.

**ADV SELEKA SC:** Yes thank you Chairperson. Yes Ms Naidoo I was paying attention as you were using the word you pushed back. I do not know is it you as the board members or you in particular please remember to put on your

microphone that you pushed back and I am trying to see whether did you in fact push back in regard to this pre-payment we are dealing with because I recall seeing your email saying yes you approve but simply saying let the matter go to IFC and ...

**MS NAIDOO:** PFMA approval.

**ADV SELEKA SC:** PFMA approval.

**MS NAIDOO:** Yes and then whether this needs to go to the DPE because it was over the R1.5 billion.

10 **ADV SELEKA SC:** Yes. Yeah but where is the pushback? Because I understand pushback to be that you would have been opposed to the decision being made.

**MS NAIDOO:** I did ...

**ADV SELEKA SC:** Is that right?

**MS NAIDOO:** No I was not pushed – I was not pushing back on the decision.

**ADV SELEKA SC:** Okay.

**MS NAIDOO:** I did support the money to go to OCM.

**ADV SELEKA SC:** Yes.

20 **MS NAIDOO:** But I pushed back in terms of you led evidence that the particular person that was communicating with Eskom in terms of the submission did what – wanted to avoid the matter going up for discussion. Wanted to avoid the matter going to IFC and in that respect I had brought all those scenarios back into the – into the situation and that is

how this matter ended up going to IFC.

**ADV SELEKA SC:** Yes just face...

**MS NAIDOO:** Sorry Chair but I did support the transaction.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** I did believe the money should go to OCM.

**CHAIRPERSON:** Ja okay. Can I just interpose to complete an issue we discussed earlier on which should have been discussed I was mentioning because I do not want to forget. Please do not forget your next question.

10 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Were you present or do you recall the meeting that I was talking about earlier where Dr Ngubane as I understand his evidence asked the board to consider making – taking the resolutions that were set out in some letter or memo that had come from outside of Eskom?

**MS NAIDOO:** Yes. So...

**CHAIRPERSON:** That was in relation to the Mail and Guardian, City Press.

**MS NAIDOO:** Correct. Yes.

20 **CHAIRPERSON:** I do not know which other paper yes.

**MS NAIDOO:** Yes.

**CHAIRPERSON:** Do you recall that?

**MS NAIDOO:** Yes I do. So we had a meeting a week before in September where we had a discussion on the – in fact the journalist were writing the wrong information and giving the

wrong information out and in those minutes it is clearly reflected for us to approach the journalist. I think we even spoke about a gentleman called Mr Yelland because he was very proactive on Eskom and we wanted to liaise with him so that he would give out the right information and the whole intention was to get South Africa on board of understanding what was happening at Eskom with the load shedding and whatever.

**CHAIRPERSON:** Yes, no, no.

10 **MS NAIDOO:** That happened a week before ...

**CHAIRPERSON:** Do not – do not into the contents of the articles.

**MS NAIDOO:** Okay.

**CHAIRPERSON:** Ja. I just want to – so you were present – you attended that meeting?

**MS NAIDOO:** That meeting...

**CHAIRPERSON:** Where the resolution was taken?

**MS NAIDOO:** No, no.

**CHAIRPERSON:** Oh that is what I am interested in.

20 **MS NAIDOO:** The resolution was done via a Round Robin.

**CHAIRPERSON:** Oh okay but you – you had...

**MS NAIDOO:** And why I remember it is because it was on my daughter's birthday and we were in the US.

**CHAIRPERSON:** Yes okay thank you.

**MS NAIDOO:** So I do not remember us signing off on it.

**CHAIRPERSON:** Yes.

**MS NAIDOO:** So I do not understand how a resolution was taken because about five of us were in the US.

**CHAIRPERSON:** But are you saying that you did not take part in that Round Robin?

**MS NAIDOO:** No.

**CHAIRPERSON:** Oh okay.

**MS NAIDOO:** No because we were away – we were overseas. I think it was something that was you know going  
10 to happen or a resolution – but we did not sign off because as I said we were overseas.

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

**MS NAIDOO:** And I think Mr Koko has also said it was never implemented or something like that I heard in his evidence.

**CHAIRPERSON:** Ja he said so ja.

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Mr Seleka.

**ADV SELEKA SC:** Thank you Chair. The – yes Ms Naidoo  
20 perhaps – well for what it is worth you know the email of your reply to Ms Daniels it is on the 8<sup>th</sup> of December 2015 at half past seven where it says:

“Hi I confirm my support a Round Robin  
kindly ensure all governance issues is  
complied with in terms of PFMA and others

that to the regulations. Does the value require its consent from DPE. The IFC committee has approved the purchase. Session contracts are in place for the coal. Do you still need me to sign the document? I do not have access to a printer just now. Regards Viroshni.”

So there is no...

**MS NAIDOO:** There was no pushback on the transaction but  
10 in terms of what the implication was.

**ADV SELEKA SC:** Ja.

**MS NAIDOO:** Yes there was a pushback.

**ADV SELEKA SC:** Yes. In terms of?

**MS NAIDOO:** You led evidence that this particular inter-portal person did not want...

**ADV SELEKA SC:** Okay.

**MS NAIDOO:** So it was pretty obvious from your evidence that whoever was liaising with Eskom did not want this matter discussed openly.

20 **ADV SELEKA SC:** Yes.

**MS NAIDOO:** They wanted to avoid a discussion.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** And that is why they insisted that the matter does not go to IFP.

**ADV SELEKA SC:** Yes what Ms Naidoo is talking about are

those emails exchanged with Mr Anoj Singh and Eric Wood and...

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** I think they go – did they go to infoportal?

**MS NAIDOO:** I do not remember but you put it with Ms Daniels. The person that was...

**ADV SELEKA SC:** No but we talking the outside person.

**MS NAIDOO:** Yes.

10 **ADV SELEKA SC:** Who was ...

**MS NAIDOO:** Was emailing and advising that this matter must never – take out the IFC submission it must not go to the DPE.

**ADV SELEKA SC:** Ja but if you talking pushback in that context are you trying to say to the Chairperson that you knew that this was going on and you were pushing back on that?

**MS NAIDOO:** No I only found out about it when you led evidence with Ms Daniels that this had transpired and then I

20 ...

**ADV SELEKA SC:** But – ja but then pushback is a misnomer because you did not know what this (speaking over one another).

**MS NAIDOO:** No correct yes. But you must also remember the implication is that this board was helping in a particular

company like Tegeta and we were not and there is the evidence.

**ADV SELEKA SC:** No but you are not asking for the matter to go to IFC you say that; that IFC committee has approved purchase.

**MS NAIDOO:** Correct which meant they would have had to have a meeting or would have had to approve it.

**ADV SELEKA SC:** Ja and Ms Klein is also saying...

**MS NAIDOO:** Sematic. Semantic. At the end of the day I  
10 wanted IFC to approve it.

**ADV SELEKA SC:** Okay. Ms Klein also says that is what she wanted.

**MS NAIDOO:** And that is what happened.

**ADV SELEKA SC:** No but the...

**MS NAIDOO:** It did go to IFC.

**ADV SELEKA SC:** No but were you aware that she wanted it?

**MS NAIDOO:** So – no I do not know she gave her evidence.

**ADV SELEKA SC:** Okay.

20 **MS NAIDOO:** I know Ms Daniels confirmed my email.

**ADV SELEKA SC:** No your email is here. Your – so the board then with all the questions the Chairperson has asked you, I have asked you has made this pre-payment decision R1.6 billion you say in your understanding it was going to OCM. The next day the 10<sup>th</sup> of December 2015 something



alarming takes place which is a conversion of that decision into a guarantee not in favour of OCM but in favour of Tegeta. Was the board aware of that?

**MS NAIDOO**: Absolutely not. We found out about it – there was a media briefing – it was a couple of months after I had even left. There was a media briefing I think it was Dr Ngubane and Mr Singh were sitting and one of the journalists asked Dr Ngubane I think it was about the guarantee and he was taken aback and then I saw from the media briefing Mr  
10 Singh explaining to him and then he explained what it was. No so none of us knew about it. And if you see that video you can see he was like shocked.

**ADV SELEKA SC**: You say you had already left?

**MS NAIDOO**: Yes I...

**ADV SELEKA SC**: You left.

**MS NAIDOO**: I think I definitely left. I left on the 30<sup>th</sup> of June. I think this was after. I think it was even – it could have been after the Public Protectors Report.

**ADV SELEKA SC**: Yes.

20 **MS NAIDOO**: Because she did not deal with it in her report.

**ADV SELEKA SC**: Yes. I have a faint recollection of something said in Mr Pamensky's affidavit but I do not have it here. So I will not mention it because I might be confusing the two pre-payments. Because he questioned – he said it came out in the newspaper – he read it somewhere and he

questioned sending an email to the board members that we should not be rubber stamping – I just do not recall where was his email. I hope we can check when the email was sent. My impression was that email was sent before you resigned as a board member.

**MS NAIDOO:** So I attached in my affidavit an annexure from Mr Pamensky which was sent in I think it was around June/July 2015 where he addresses Mr Anoj Singh appointment.

10 **ADV SELEKA SC:** Okay not that one.

**MS NAIDOO:** Ja.

**ADV SELEKA SC:** No not that one.

**MS NAIDOO:** And he mentions I think rubber stamping there also because we were not made aware of Mr Singh – ja.

**ADV SELEKA SC:** Oh the board was not made aware of his appointment.

**MS NAIDOO:** No not at that stage. We – that – yes. So that email was dated 24<sup>th</sup> of June 2015 we were made aware on the 25<sup>th</sup> of June.

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

**MS NAIDOO:** But by then it already happened.

**ADV SELEKA SC:** Ja. Tegeta – Tegeta needed funds – needed funds to pay the R2.1 billion for the acquisition of OCM and you have this guarantee issued in its favour on the 10<sup>th</sup> of December which is the same date when they signing

the agreement for the sale of shares of OCM – in fact of OCH on the same date. According to the evidence of Mr Pearce Marsden Tegeta needed to show that it has the funds to do the purchase and it needed to show the bank of consortiums – the consortium of banks because the consortium of banks was loaning money to OCH – OCM. So when you look at what was happening it would seem that either the pre-payment decision or the guarantee itself was meant to assist Tegeta in showing that it has the necessary  
10 funds to do the purchase. Do you have any comment on that?

**MS NAIDOO:** On the basis Chair of that submission proposed owner yes that is the thing here.

**ADV SELEKA SC:** Yes.

**ADV SELEKA SC:** But thank God IFC held a meeting the next day and their minutes were absolutely clear that the money goes to OCM. So how they then facilitated a guarantee in the favour of another entity that is nowhere in this transaction is beyond me. But that was not the intention  
20 of the board and that was not what we signed off.

**ADV SELEKA SC:** Yes. Did the board make a follow up on the decision it had made?

**MS NAIDOO:** No so what happens with a Round Robin it gets ratified at a later stage. After the 8<sup>th</sup> of September when I sent that email I never heard back from Ms Daniels

so I did not know that this matter eventually went to IFC and that this happened. As I said on that particular media briefing I found out about it. I went back and I looked at the submission I found it and then when I went to Parliament I advised them that you know I had never been told or nobody came back to me and said even there was an IFC meeting and this is what happened. When I was preparing for IFC – for Parliament Ms Klein told me yes there was an IFC meeting. She sent me the minutes and the one with Dr Pat  
 10 and that is how I knew about it.

**ADV SELEKA SC:** Yes but this goes back...

**MS NAIDOO:** So it is my understanding the matter ended on the 8<sup>th</sup> of December.

**ADV SELEKA SC:** Yes let us go back to December because the decision is made on the 9<sup>th</sup> of – yours is actually given – your approval is given on the 8<sup>th</sup> of December. So you did not wait for twelve on the 9<sup>th</sup> to find out if you made this IFC requirement a prerequisite for your decision you did not wait for it to be fulfilled you gave your consent and then you say  
 20 – you say semantics that IFC committee has approved the purchase. From December 2015 to June 2016 when you ultimately resigned is a period of seven months. What did you do in that period to find out what happened with this massive amount of a decision that was made by the board by way of a Round Robin?

**MS NAIDOO:** So in my email to be clear Advocate Seleka I said kindly ensure – ensure means you need to come back and validate with me that these things had happened. I know Ms Daniels has argued in Parliament that the word ensure is not subject to. But if you google it it comes to you have validate and come back to that person.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** So as a board member I am telling her to do this. The right thing would have been for her to come back to  
10 me and the fact that she failed or did not come back I assumed that the matter had ended there.

**ADV SELEKA SC:** Yes that is right.

**MS NAIDOO:** And you must understand we get so many transactions it is not – I do not always go back and follow up and say what you know what happened here or whatever. Normally it will come back as an agenda item at my next meeting or it is reflected in the minutes and then you enquire what transpired on the matter. I mean I showed you a screen shot of our meeting for two months there were over  
20 twenty meetings. So it is – you know it is phenomenal how many meetings we had which is – I did not follow up.

**ADV SELEKA SC:** So – oh he is busy I am sorry. Ja because I was going to ask you what is the answer to the question. Neither did the board follow up. But why?

**MS NAIDOO:** Because...

**ADV SELEKA SC:** But why because...

**MS NAIDOO:** Because we assumed that the matter – as I said to you – I said I thought the matter had ended there and then. But the matter was never approved. Remember it would have to then go to DPE approval and things like that. And it becomes an operational issue. It falls back into an operational issue.

**ADV SELEKA SC:** So are you saying it should not in the first place have come to the board?

10 **MS NAIDOO:** The 1.6 had to come to the board because of ...

**ADV SELEKA SC:** Yes and the board makes the decision because – on an urgent basis.

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** For reasons of the risk of supply and I think you did say there might be load shedding if you do not make the decision but I mean it is a – it is an explanation in the submission also talking about business rescue. Ja somewhat confusing.

20 **MS NAIDOO:** So what would have transpired it would have been in terms of a Round Robin it gets ratified. Ms Daniels in her affidavit says that this was ratified on the 19<sup>th</sup> April. I went and I looked at the minutes. There is a submission on the 19<sup>th</sup> April for a ratification.

**ADV SELEKA SC:** Is that 2016?

**MS NAIDOO:** 2016 but there is no record of it in the minutes. So this was never – no sorry there is a record of it in the minutes. But to be honest with you I do not ever remember that.

**ADV SELEKA SC:** So what did you ratify because the...

**MS NAIDOO:** But the ratification – according to Ms Daniels ...

**ADV SELEKA SC:** No, no. why – no I am asking you. What  
10 did you ratify?

**MS NAIDOO:** I do not remember it being ratified but when I go back now and I look at the minutes the minutes is saying a pre-purchase of coal from OCM is ratified on the 19<sup>th</sup> of April 2016. So even four months later knowing full well that the pre-purchase never happened and instead a guarantee happened company secretaries ratifying a pre-purchase and it is not ratified I think the word says noted if I am not mistaken.

**ADV SELEKA SC:** So you did not know about the  
20 guarantee?

**MS NAIDOO:** No not at all.

**ADV SELEKA SC:** Did you know that the guarantee the terms of the guarantee came about – came from an email of infoportal to Mr Koko from Mr Koko to Ms Daniels and Ms Daniels instructing the attorneys CDH to draft the terms of

the pre-purchase agreement.

**MS NAIDOO:** No I did not know that.

**ADV SELEKA SC:** You heard the evidence we led.

**MS NAIDOO:** Yes I did yes.

**ADV SELEKA SC:** All the more to the Chairperson's point about how outside people were influencing what was happening inside Eskom. I mean in that trail of emails it leaves one with no doubt that that guarantee does not come from within Eskom. It is a decision from somebody outside  
10 of Eskom because he provides the terms of what should be in the guarantee.

**MS NAIDOO:** And further to that it is a total violation of what the board ruling was on the meeting of the 10<sup>th</sup> or the 9<sup>th</sup> the IFC minutes where the – Mr Singh I have read his affidavit he says he was on that call and I think Ms Klein also confirmed it that he was on the IFC call when they said that the – they approve a pre-purchase of coal to OCM. So these are two different legal entities I do not understand how they took the – and they were guaranteed to a third party  
20 that has no relation to this particular transaction. And further in terms of our delegation a guarantee for the board is R250 million.

**CHAIRPERSON:** Are you coming to the realisation that indeed maybe there is truth in the suggestion that this board of Eskom or at least maybe some members of it may have



been party to some agenda by people who were outside of Eskom and influencing what decisions were being taken inside Eskom both by the board and by officials?

**MS NAIDOO:** Chair I am going to be very careful with my words.

**CHAIRPERSON:** Yes.

**MS NAIDOO:** I do not believe it is the board because on the basis of the evidence and what happened with OCM on the 9<sup>th</sup> of December there was no authorisation towards Tegeta.

10 **MS NAIDOO:** So with due respect I leave out peoples' lives and I am not going to make the...

**CHAIRPERSON:** Look – look – have you looked at the resolution in the minutes of the board?

**MS NAIDOO:** For? For the IFC?

**CHAIRPERSON:** The resolution of – that was passed by the board at the meeting where – is it on the 9<sup>th</sup> of December?

**ADV SELEKA SC:** On the 9<sup>th</sup> of December.

**CHAIRPERSON:** On the 9<sup>th</sup> of December 2015 with regard to the pre-payment. Have you looked at those minutes?

20 **MS NAIDOO:** I have looked at the minutes of the IFC yes.

**CHAIRPERSON:** Have you looked the resolution is at the end of the minutes. Have you looked at them?

**MS NAIDOO:** I am sure I have I just do not recall.

**CHAIRPERSON:** Yes. They – that resolution is quite clear. It quotes verbatim clause or paragraph 2.1.2 that we talked

about earlier which had proposed owners.

**MS NAIDOO:** Has it been signed?

**CHAIRPERSON:** Sorry.

**MS NAIDOO:** Was that signed by the IFC Chair or the Chairman?

**CHAIRPERSON:** Well I do not – I cannot remember whether it is signed but that is what it says and it is not – it is not surprising because that is what has been – been the – the Executives had asked the board to authorise and what  
10 seems to have been done is to take that out from the submission and put it in the resolution. As – were the minutes signed that we are talking about?

**ADV SELEKA SC:** These minutes are not signed Chair.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** They indicate a Round Robin decision.

**CHAIRPERSON:** Yes but there may be signed ones I do not know but there would have been I would imagine after a meeting there would circulate minutes the time to sign might be another time but at some stage they would be circulated,  
20 would they not? And I would imagine if they did not circulate them the secretary – company secretary, members of the board would want – would demand that they be circulated so that they see whether what they decided is correctly captured in the minutes and the resolution.

**MS NAIDOO:** Dr Naidoo's minutes were signed.

**ADV SELEKA SC:** Yes that is the...

**CHAIRPERSON:** That is the committee?

**MS NAIDOO:** Yes.

**CHAIRPERSON:** I am talking about the board.

**MS NAIDOO:** And the resolution would have been – have to be in drafted from those minutes.

**CHAIRPERSON:** Yes.

**MS NAIDOO:** But I do not know what transpired after that. I have only got these minutes that he signed.

10 **CHAIRPERSON:** Yes but the board you were part of the meeting of the board and the resolution might not be – the minutes might not be signed but they reflect basically what was in paragraph 2.1.2 which you had seen.

**MS NAIDOO:** Yes but ...

**CHAIRPERSON:** And they are quite – they are quite clear. That paragraph was clear – that one you – you ...

**ADV SELEKA SC:** I have conceded.

**MS NAIDOO:** You might not have seen but it was quite clear. So it seems to me that even if we might not be having  
20 this signed minutes and if they exist somewhere I suspect they reflect exactly what was written in paragraph 2.1.2 which is in the unsigned minutes and if they are quite clear the board authorised the conclusion of pre-purchase of coal agreement with the proposed owners. So you cannot say the board authorised pre-payment to Glencore OCM because it

is there.

**MS NAIDOO:** But Chair...

**CHAIRPERSON:** In terms of what they were asked all you can say or some members of the board may say is I never intended to authorise pre-payment to the proposed owners of OCM and then we can talk about how probable that is but in terms of what you intended that is one line.

**MS NAIDOO:** Yes.

**CHAIRPERSON:** But in terms of what you objectively  
10 authorised that is what you authorised.

**MS NAIDOO:** But Chair those – that resolution that is signed – that resolution in terms of what you make reference to is an unethical document because it is not what the board decided on. So somebody at a later stage signed the resolution are not what I see agreed they were being unethical.

**CHAIRPERSON:** But – but you do not dispute that the document that was placed before you the submission or the executive summary asked you to authorise pre-pay – a pre-  
20 payment to Tegeta. You – you say you did not see that other members say or one member says he saw it but did not appreciate its significance because he knew that the existing contract was with OCM Glencore and so – so I am suggesting to you that if there are any – if there are existing minutes that are signed in all probability they will be along

the lines of paragraph 2.1.2.

**MS NAIDOO**: And Chair that is then...

**CHAIRPERSON**: But I do not know if the record ...

**ADV SELEKA SC**: There can be minutes.

**CHAIRPERSON**: Hm.

**ADV SELEKA SC**: There can be minutes for a Round Robin.

**MS NAIDOO**: Yes.

**CHAIRPERSON**: Oh by the way it was a Round Robin.

**ADV SELEKA SC**: Yes.

10 **MS NAIDOO**: Yes.

**CHAIRPERSON**: Yes okay but the fact of the matter is – but in the Round Robin.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: Where is the document that has – is it – where is the document that they were – the resolution that they were asked to sign – to approve?

**ADV SELEKA SC**: Yes.

**MS NAIDOO**: The submission.

20 **CHAIRPERSON**: If it is the submission then you autho – you authorised pre-payment.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: Pre-payment to OCM – to Tegeta then.

**MS NAIDOO**: But it was overwritten by the IFC minutes.

**CHAIRPERSON**: Hm.

**MS NAIDOO**: It was overwritten by the IFC minutes.

Irrespective what happened on the 8<sup>th</sup> of December.

**CHAIRPERSON:** No. No. No Ms Naidoo you know that what you are saying is – cannot be right I mean you cannot have a lower body – the minutes of a lower body overriding the minutes of a higher body. The higher body makes the final decision.

**MS NAIDOO:** Yes.

**CHAIRPERSON:** And it is clear from that submission.

**MS NAIDOO:** Chair with due respect the matter went to IFC  
10 the next day and – because the board requested that. And they made the final decision.

**CHAIRPERSON:** But Dr Naidoo was here and he was chairing that meeting.

**MS NAIDOO:** Yes.

**CHAIRPERSON:** You heard – you heard what he said.

**MS NAIDOO:** Yes.

**CHAIRPERSON:** He could not – he could not defend the proposition as – that was my assessment – this as - the proposition that they authorised anything other than pre-  
20 payment to Tegeta but what he did say was in his mind and in the mind of the committee that is what he said they thought they were authorising pre-payment to Glencore OCM but the questions that I have asked you know and he kept on advancing as his reasons to justify his evidence that they intended to authorise pre-payment to Glencore OCM. The

reason he kept on advancing is a reason that actually goes against him.

**MS NAIDOO**: But Chair his minute which he signed.

**CHAIRPERSON**: Hm.

**MS NAIDOO**: His minute of IFC which he signed.

**CHAIRPERSON**: If I recall correctly we looked at them in the morning to say the favourable interpretation of those minutes favourable to you would be that it could go either way.

10 **MS NAIDOO**: No it does not talk of any proposed owner.

**CHAIRPERSON**: No, no, no have you looked at those minutes? When did you last look at them?

**MS NAIDOO**: I have got it in my submission.

**ADV SELEKA SC**: And – ja...

**CHAIRPERSON**: Just draw his attention – her attention to them.

**ADV SELEKA SC**: Yes.

**CHAIRPERSON**: At least what we looked at in the morning seemed to me to say the least that it was neutral.

20 **MS NAIDOO**: No it is not – it is clear OCM.

**ADV SELEKA SC**: A distinction.

**CHAIRPERSON**: Well you see OCM – OCM does not have.

**ADV SELEKA SC**: Yes.

**MS NAIDOO**: Right.

**CHAIRPERSON**: Saying OCM does not have because for

the owners of OCM before Tegeta came into the picture was Glencore. The owners as I understand it of OCM after Glencore got out of the picture were Tegeta. So if you say pre-payment to OCM it does not necessarily mean you mean Glencore or you mean Tegeta. But when you say pre-payment to the proposed owners of OCM it is clear that you are not talking about Glencore you are talking about Tegeta.

**MS NAIDOO:** But the IFC meeting was absolutely black and white OCM.

10 **CHAIRPERSON:** Well – ja but that is the point we are talking about to say that does not help you either way that is why I am saying to say the least that could be neutral because OCM – is it OCM under Tegeta or OCM under Glencore? The submission that was placed before the board talked about OCM the proposed owners of OCM.

**MS NAIDOO:** But Chair I did not know OCM on the 9<sup>th</sup> of December was owned by Tegeta?

**CHAIRPERSON:** No, no, no. Otherwise, the submission would not say proposed owners.

20 **MS NAIDOO:** [No audible reply]

**CHAIRPERSON:** Mr Seleka.

**ADV SELEKA SC:** Yes, the...the minutes. I will refer you to the signed minutes. They are in Eskom Bundle 18, page 584.

**MS NAIDOO:** Sorry, which page?



**ADV SELEKA SC:** Page 584, Eskom Bundle 18, one eight.

**CHAIRPERSON:** I think I might not need to see if you just read.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Ja. Because we looked at them in the morning.

**ADV SELEKA SC:** Bracket A.

**MS NAIDOO:** Is it 18(A) or 18(B)?

10 **ADV SELEKA SC:** 18(A)..

**MS NAIDOO:** Ja?

**ADV SELEKA SC:** 18(A). So ...[intervenes]

**MS NAIDOO:** Page?

**ADV SELEKA SC:** Page 854, five eight four. So there is only item on the agenda.

**MS NAIDOO:** Yes, I have got it.

**ADV SELEKA SC:** Yes, paragraph 5.

20 “Noted that there was only one item on the agenda which as discussed around a Round-robin resolution for the urgent request to approve the pre-purchase of coal from Optimum Coal (Pty) Ltd.”

Then 6.1:

“The Round-robin resolution and supporting documents circulated to members.

The urgent request to approve the pre-purchase of coal from OCM (Pty) Ltd, OCM was discussed, details of which were circulated to board members on 8 December 2015.”

On the next page, 585:

“The resolution. It is recommended that the board approve the transaction as set out in the submission to the board relating to the pre-purchase of coal from Optimum (Pty) Ltd.”

10

**CHAIRPERSON:** So it still says in the submission?

**MS NAIDOO:** But it says from Optimum.

**CHAIRPERSON:** But what is in the submission?

**MS NAIDOO:** Proposed owners.

**CHAIRPERSON:** Proposed owners.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** But then we are ...[intervenes]

**CHAIRPERSON:** So you cannot say when the resolution makes the basis of your decision, the submission, incorporates it and the submission is quite clear. It does not look like to me you can ...[intervenes]

20

**MS NAIDOO:** A lawyer ...[intervenes]

**CHAIRPERSON:** ...run away. It does not seem that you can run away from saying ...[intervenes]

**MS NAIDOO:** No, the lawyer and he is going to argue the

intention of the parties was ...[intervenes]

**CHAIRPERSON:** [laughs] I think you might wish to leave that to Mr Roux. [laughs]

**MS NAIDOO:** [laughs]

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Yes, okay continue.

**ADV SELEKA SC:** Okay Chair.

**CHAIRPERSON:** Ja.

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

10 **CHAIRPERSON:** I see I have just gone past half-past five – half-past six.

**ADV SELEKA SC:** Half-past six, yes.

**CHAIRPERSON:** Finalise.

**ADV SELEKA SC:** Let me finalise. Indeed. So Ms Naidoo, you see the sequence of events. In December 2015, the board does not ...[indistinct] say. And four months later or less than four months later, in April 2016 the deal has been concluded.

The deal is subject to suspensive conditions, the  
20 purchase of shares in OCM. That would expire on the 31<sup>st</sup> of March 2016. The full payment has to be made on 13 or 15 April 2016.

On the 11<sup>th</sup> of April 2016, the Business Rescue Practitioner, Mr Piers Marsden is approached by Mr Nazeem Howa. And he says to him, Tegeta has a

shortfall. He is Tegeta's CEO.

Tegeta has a shortfall of R 600 million. We cannot. We are struggling to do – to service the balance. And could you approach the consortium of banks for a bridging loan of them to defer the amount.

11 April 2016, a response is given to Mr Howa around 15:00 on that day that the banks have declined that request. So Tegeta is having its back open. And that is what is happening on the one side.

10           Something else is happening within Eskom. Tegeta which has been giving coal to Eskom pursuant to an interim agreements dating back to January 2016, now comes to Eskom in April.

Roundabout the 8<sup>th</sup> of April, Ms Nteta said even before the 8<sup>th</sup> of April she is approached by Mr Nath with an unsolicited offer to supply coal but that offer is not plain and simple. It incorporates a prepayment request all of a sudden.

20           There has been the short-term agreements where prepayment was not given but now this one, when they want to enter into the first interim contract, they are asking for a prepayment and a prepayment of six hundred-and...

Well, firstly, it is unclear how much they want. Dr Nteta – you would have heard her if you watched. She came up with an amount of R 500 million which ultimately

gets up to R 659 million.

Something that she was dealing with for the first time, she says, prepayment. And the board again... Oh, and this time it is the BTC. I beg your pardon. The BTC again, this time around, is told and asked to act on an urgent basis in order to approve the prepayment of R 659 million.

They draft a submission document over the weekend without a written offer from Tegeta. They get the  
10 written offer only on the 11<sup>th</sup> of April 2016 after half-past four. Mr Nazeem Howa by this time knows that he is not getting the assistance from the consortium of banks.

The BTC is urged to meet after-hours, late at night, at nine o'clock to make a decision on the prepayment by way of a telephone conference.

And they do so despite the meeting of the BTC being scheduled beforehand for the 13<sup>th</sup> of April 2016 and the decision is made to prepay Tegeta.

The decision is finalised on the 13<sup>th</sup> of April. So  
20 the BTC meeting does take place and they finalise the payment, the decision on the payment and the payment is made despite issues that Tegeta had growing concern problems.

The banks have closed Tegeta's bank – well, frozen their bank accounts because of State Capture

allegations.

So you see a continuation of efforts on the part of Eskom to assist Tegeta in this acquisition of OCM at least on the facts that what it appears to be. Did you know of these facts?

**MS NAIDOO:** No.

**ADV SELEKA SC:** Do you have any comment?

**MS NAIDOO:** So we ...[intervenes]

**ADV SELEKA SC:** Ja, sorry just before that because I  
10 know that you served on BTC.

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** At this stage. Okay so you went, if I recall, this request for BTC to meet by way of a teleconference would have come to you as well.

**MS NAIDOO:** Correct.

**ADV SELEKA SC:** Why was it so urgent?

**MS NAIDOO:** Well, according to what I was told that this contract is about to expire. I think the covering letter says in two days or three days which maybe could have been  
20 the day of the particular BTC meeting and they could not wait for that day to negotiate or finalise this matter.

And if they do not deal with this matter on that particular day, there would have been no coal for Arnot and as a result we would have to go into load shedding.

So when I got the call from Ms Daniels – I think

she either called us or SMS'd us and then I expressed to her my concern. She said no it is very urgent but they will address it on the call.

And that is when she sent me the submission or she could have sent me the submission first and then she sent me a message to say: Go read your email. And then I had this conversation with her. I do not know whether it was via SMS or a call but we did discuss it.

And then we went on the call. We got – I think the  
10 call was set for nine o'clock and all of this happened between quarter past eight and nine o'clock at night.

She said it was very urgent and that we needed to do this. So because of the urgency, I did not object to it and the fact that the submission was already put to me, I had to deal with it.

But between that time, then I started emailing her questions and she said it will be dealt with on the call.

**ADV SELEKA SC:** So... Yes, I... If you followed the testimony of Dr Nteta. She said and repeating what is in  
20 her affidavit. That she did not see a reason why the meeting should be convened on the 11<sup>th</sup> because the decision could comfortable be made on the 13<sup>th</sup> of April 2016. What do you say to that?

**MS NAIDOO:** I have listened to her evidence and I was very surprised because why would I agree to have a

meeting at nine o'clock at night on a Monday? I have got small kids. This was already annoying me enough.

So they definitely expressed to the urgency or we would have never ever held that meeting. Even if you look at my questions. My questions relate to why this was being so late.

I have even sent doctor – Mr Zethembe Khoza an email after the telecon to say: You need to stop calling these meetings so late. Who was the executive on the  
10 call? I was very upset.

I was very angry about it. And the irony is that, that call is not recorded as usual.

**ADV SELEKA SC:** Well, the teleconference is not recorded. You say as usual.

**MS NAIDOO:** Yes, because the lifeline of this board right now are the recordings of the minutes that we have. But it seems the 23<sup>rd</sup> of April recording, it was never recorded. On the 11<sup>th</sup> of March, the recording starts at twenty past twelve instead of twelve o'clock.

20 The recording for this particular one is not recorded yet on the call I remember asking specifically if it is recorded. I even sent an email to say send me the minutes. So I only find out later that there is no recording being held.

**ADV SELEKA SC:** Ja. The other thing that I want to put



to you from Dr Nteta. I asked her whether could this supply plan of April 2018, which is relied upon in the submission, be used to justify the alleged urgency. And her answer was no. She said I know where you are going. My answer is no. Because I know where you are going.

**MS NAIDOO:** In her evidence she said that there was no urgency.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** So why would was she party to a meeting at  
10 nine o'clock at night if she felt that there was no urgency? Why was she then responding on questions that we asked? No board member in their right mind will hold an urgent meeting at that nature and be so upset about it when you have got the BTC two days later.

**ADV SELEKA SC:** Yes. Did the BTC member not ask this question?

**MS NAIDOO:** Yes, we did. We even asked why this was coming to us because it was below our threshold. I think the figure was 659.

20 **ADV SELEKA SC:** That is right.

**MS NAIDOO:** Our threshold is 750. The answer given, and it is in the minutes to say: Well, the BTC had signed off on a previous agreement so therefore it is a continuation. Now when I went back and I looked. The BTC never signed off on the Tegeta short-term addendum.

It signed off on a strategy, I think in February or March.

**ADV SELEKA SC:** You are right. The mandate?

**MS NAIDOO:** Yes.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** So we were so caught up with all these things that they are telling us, that you have so much trust and faith in them. Why would you for a second believe that somebody is being unethical?

**ADV SELEKA SC:** I asked the question whether did they  
10 mislead the BTC. Should I ask you that question whether you feel that you had been misled?

**MS NAIDOO:** Of course, I was misled. When I heard Ms Nteta... You know, Judge. When the Public Protector's report came out, I was so confident because I believed the people that I worked with like Brian and Matjila and all of them, which will come back and defend all of that. And some of them did.

So hearing evidence now, it gives me – it is absolutely shocking. People are not taking responsibility  
20 for their actions.

I know that matter came before me. I accepted to deal with the matter at nine o'clock at night because I am told it is urgent.

You can see from the questions that I sent that I was not happy. I was irritated and annoyed. Then I said to

the chairperson why are you calling this meeting because I was not happy.

So it was a reflection of what I was going through at that particular night but I believed them in terms of the urgency and the fact that when Brian came in August. So at that stage there was no load shedding.

I understood the implications of load shedding on South Africa and the economy and I was a proud board member that time to say but I stopped load shedding. So  
10 of course the intention was to do whatever is necessary to make this company run.

**ADV SELEKA SC:** Yes, the other thing is ...[intervenes]

**CHAIRPERSON:** Wait. We are at quarter to Mr Seleka.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** I am just alerting you to the time.

**ADV SELEKA SC:** Yes, Chair. The last thing is. Did I say the last? The other thing. The other thing is. At that time, Tegeta did not have a contract with OCM. It had not concluded the contract with OCM to procure the coal which  
20 it was offering to Eskom. It did not have the contract.

In fact, the written offer explicitly says to Eskom that they will be buying this coal from OCM and selling it to Eskom. I am paraphrasing. But they will purchase from OCM to sell to you.

So there are two things. The one is, they do not

have. The second thing is. Why did you not deal directly with OCM? Why this middleman, this intermediary?

**MS NAIDOO:** It is ironic you ask me that question because Advocate Banaras(?) called me to ask me the same question. And he kept going on and on and on.

And I could not understand what he was trying to say because one of the questions that I put – I sent about nine questions why the RFP was late, why are we dealing with these companies, can we justify to the DPE that we  
10 are doing the best deal for Eskom before this matter is in the public domain.

And one of the questions was. Is this company the company that Tegeta bought? Is OCM the company Tegeta bought? Are they now being run by the Business Rescue Practitioner?

And is one of the issues that if it is run by the Business Rescue Practitioner, we do this deal with them. Is there a possibility Eskom could lose its money? The answer is: Yes. The answer I am told is yes.

20 I am given the impression that OCM – that Tegeta owns OCM. But I recalled in February when I – when my husband was an advisor and I said I do not be part of any mining transactions but there was a submission put to us and I excused myself from it.

The submission was the session of contracts from

Eskom... No, sorry. From OCM to Tegeta. But in my mind – and that is why I asked that question – is Tegeta taking over OCM and they own that particular company.

So I did not understand why Vignale(?) they kept pushing that question. I only found it later on in Parliament when the evidence was led that the transaction, it only finalised in August 2016.

But to answer you even further. On the 13<sup>th</sup> of April, when we had called Mr Anoj Singh to come  
10 and give us a verification on the guarantee, Mr Singh started his conversation by saying: Yes, I have looked at the submission. Which means the submission went to himself.

He was happy with it. He apologised to us for overseeing the growing concern issue. He said thank you to us for bringing it to his attention. Because initially the guarantee he had was the cession of the revenue and the coal.

But now the fact that this may be a growing  
20 concern, he did not foresee in six months what will be happening. Therefore, he has now gone back to Tegeta and now they will give us a pledge of the shares of the mine.

We will now own the mine. It will be unencumbered. Why then must I doubt that I am not

sufficiently covered in terms of my 659? He is telling me that I will own it, he said it will be unencumbered.

And he says I will then also get a copy of their financials and I would see what is unencumbered and what is an encumbered asset.

And then he goes further by saying: No, I understand we are not in the business of owning mines. We will give them this temporary for 14-days and then we will get a better guarantee.

10                So I am absolutely confident firstly and I am doing it for the benefit of Eskom. I am helping. And so by this call, create the stockpile, get the discount and then further my money is...

So I would have had... Why if I know that this company had not taken over this particular mine, why would I ask for a company that has got nothing for a guarantee? I am unencumbered ...[intervenes]

**ADV SELEKA SC:** Did you get that information?

**MS NAIDOO:** I have been told by my CFO. Yes, this is  
20 what Tegeta will give us.

**ADV SELEKA SC:** Yes, but did you get that information?

**MS NAIDOO:** Yes, we got it on the 13<sup>th</sup> of April. The recording is absolutely clear. It is in my submissions.

**ADV SELEKA SC:** Unencumbered assets?

**MS NAIDOO:** Unencumbered assets. I have quoted it

verbatim. And we have, you know, quoted it - I may have missed out a line or two.

**ADV SELEKA SC:** Okay.

**MS NAIDOO:** But you can do the part.

**ADV SELEKA SC:** So you are saying to the Chairperson. You gave this company R 659 million repayment despite knowing that it had growing concern issues?

**MS NAIDOO:** The growing concern issues is not with – nothing about whether it had money or it was a revenue  
10 issue. It was whether they would have a bank account. And that is why I needed – and it was not a set thing. It was a possibility that after five months that would be the scenario. And that the expense was by the CFO on the 13<sup>th</sup>.

**ADV SELEKA SC:** No, the banks had frozen their account.

**MS NAIDOO:** Okay I think the... Well, the advice that I was given by the CFO that it was a four month or a six month. It is actually in the recording, the situation.

20 **ADV SELEKA SC:** Chair, I am going to finish with this. One is that. Why did you not ask: But we having been interim agreements with this company, short-term agreements? Why did they know what a prepayment?

**MS NAIDOO:** Yes, one of the questions were: Why is this different to what our normal transactions were?

**ADV SELEKA SC:** No, no. Not a normal transaction.

Tegeta ...[intervenes]

**MS NAIDOO:** With this particular company.

**ADV SELEKA SC:** Yes.

**MS NAIDOO:** Yes, with this company and the submission even says it. You are getting better quality coal from a stockpile. My interpretation of a stockpile is the coal is there. It is ready to go and take it. It is in your submission. It is on the second page of the submission to  
10 say this is coming from the OCM stockpile.

**ADV SELEKA SC:** Okay but now the reason given in that very submission is that Tegeta have requested a prepayment in order – and I paraphrase – to reopen the export component of the mine.

**MS NAIDOO:** I do not think they said reopen. I think they said something about production or whatever.

**ADV SELEKA SC:** No, in the submission itself, not the written offer made by Tegeta on the 11<sup>th</sup>. Because Dr Nteta said that one was not placed before the board.

20 **MS NAIDOO:** I... Sorry. Are you talking about the submission ...[intervenes]

**ADV SELEKA SC:** Yes, the submission itself.

**MS NAIDOO:** Okay.

**ADV SELEKA SC:** It talks about the export component of the mine.



**MS NAIDOO:** Yes, it talks about that. The Tegeta/OCM is going to give you the coal from the export component of OCM Mine ...[intervenes]

**ADV SELEKA SC:** No, it does not say it is going to give you coal from there.

**MS NAIDOO:** Your very first paragraph on the top of the second page.

**ADV SELEKA SC:** Ja, let me... That submission, when it talks about the prepayments, it says:

10                   “Both suppliers have indicated the willingness  
                          to extend current contracts.”

                  And this is the only paragraph talking about that effect.

                  “However, Tegeta has requested that Eskom consider some form of prepayment to enable it to meet the production requirements from the export component of the mine.”

**MS NAIDOO:** Okay now read the paragraph right at the top.

20   **ADV SELEKA SC:** It is a long, long paragraph.

**MS NAIDOO:** The first two lines above the six hundred thousand that it is coming from OCM export stockpile. So even on the...

                  Well, they told us that this is a good, better quality and the reasoning behind it is that this company could

export is and therefore it now says if you want us to keep it for you, you will have to pay a prepayment.

And the whole idea was to get this and to commit to it because Arnot would not have coal and as a result we were load shedding.

**ADV SELEKA SC:** Yes, but if you are saying to the Chairperson the coal that was going to be supplied was from the stockpile. Why did you let them to make a prepayment?

10 **MS NAIDOO:** Because they would have exported it because it was export quality and there was no reason for them to ...[indistinct] they could sell it to somebody else. That is what I have been told to say you need it. You are in a situation. You prepay me for it. This is now yours. You committed to it.

**ADV SELEKA SC:** Ja, but that is not Dr Nteta's evidence.

**MS NAIDOO:** Yes, Dr Nteta's evidence is now a totally different scenario as to what was told to us on that meeting. She is even saying now that this was not an  
20 urgent matter.

Why would I sit down at nine o'clock at night for a meeting? For my convenience? Absolutely not. And then insist on an unencumbered guarantee from a company that everyone is alleging did not have money.

**ADV SELEKA SC:** Yes. Chair, I will bring it to

...[intervenes]

**CHAIRPERSON:** Obviously, Ms Naidoo should come back.

**ADV SELEKA SC:** Yes, we will... [laughs]

**CHAIRPERSON:** [laughs]

**ADV SELEKA SC:** [laughs]

**CHAIRPERSON:** Well, in regard to the supplementary affidavit, also to finalise.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Because she is going to come back.

10 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Then to finalise some of these issues. But I see from her affidavit that there may be some issues in relations – there may be some issues on her version in relation to the meetings of the 11<sup>th</sup> of March.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And the suspensions and so on. I think certain things need to be raised with her.

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

**CHAIRPERSON:** So I think let us stop here for now and  
20 we will just have to find another – probably in the evening again. If Mr Roux, if we are looking at a date within two weeks, we will ...[intervenes]

**ADV LE ROUX:** [No audible reply]

**CHAIRPERSON:** You... Okay no that is fine. That is fine. So let us leave it at that for now. Thank you to everybody

for being able to work until this time. We will find another date.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Hopefully within the next two weeks.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And make it an evening session. Okay.

**ADV SELEKA SC:** Chair, tomorrow?

**CHAIRPERSON:** Tomorrow, who are your witnesses?

**ADV SELEKA SC:** There are two witnesses scheduled for  
10 tomorrow Chairperson. We will – the first one is Mr Mark  
Pamensky.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** The second who is oversees is  
Ms Suzanne Daniels.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** And I know that there might a slight  
change in regard to that...

**CHAIRPERSON:** Ja. Okay. No, that is fine. Alright. We  
are going to adjourn. Or we should start early if possible  
20 tomorrow, is it not?

**ADV SELEKA SC:** We should be able to finish  
...[intervenes]

**CHAIRPERSON:** We should be able to ...[intervenes]

**ADV SELEKA SC:** ...with Mr Mark Pamensky.

**CHAIRPERSON:** Okay. You think he might be how long?

**ADV SELEKA SC:** He might be – based on what we need to have him cover, about three hours Chair.

**CHAIRPERSON:** About three hours?

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Oh, so we might not be able to get to Ms Daniels tomorrow.

**ADV SELEKA SC:** It might. It might not be possible.

**CHAIRPERSON:** Oh, I thought Mr Pamensky was going to be much shorter from what you have said before.

10 **ADV SELEKA SC:** Ja, he has given us a supplementary affidavit which I am yet to read.

**CHAIRPERSON:** Oh. It could implicate other people?

**ADV SELEKA SC:** Ja, we may have to deal with it along the lines with Ms Naidoo.

**CHAIRPERSON:** Ja. So maybe we should rather start, at least, at half-past nine.

**ADV SELEKA SC:** Okay.

**CHAIRPERSON:** Because remember I am not sitting for the whole day tomorrow.

20 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Ja. I am sitting only for half of the day.

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

**CHAIRPERSON:** Okay alright. We start at half-past nine tomorrow. Okay we are going to adjourn for the day. We adjourn.

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

**INQUIRY ADJOURNS UNTIL 11 FEBRUARY 2021**