

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

**19 FEBRUARY 2021**

**DAY 346**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 19 FEBRUARY 2021**

**CHAIRPERSON:** Good morning... Good afternoon  
Mr Seleka. Good afternoon everybody.

**ADV SELEKA SC:** Good afternoon Chair.

**MS DANIELS:** Good afternoon Chair.

**CHAIRPERSON:** Good afternoon Ms Daniels.

**MS DANIELS:** Good afternoon Chairperson.

**CHAIRPERSON:** Good. Are we ready?

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

10 **CHAIRPERSON:** Yes, okay.

**ADV SELEKA SC:** I should indicate that Ms Daniels is  
overseas. So it is morning on her side.

**CHAIRPERSON:** Did we wake her up quite early?

**ADV SELEKA SC:** I think we have Chair.

**MS DANIELS:** Yes, Chairperson.

**CHAIRPERSON:** [laughs]

**ADV SELEKA SC:** [laughs]

**CHAIRPERSON:** So you are not an early riser. So.  
[laughs] But after this, you can go to bed early.

20 **MS DANIELS:** Yes. Thank you Chairperson.

**CHAIRPERSON:** [laughs] Okay alright.

**ADV SELEKA SC:** Thank you Chair. Because of the lapse  
of time.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** We may have to administer

...[intervenes]

**CHAIRPERSON:** Ja, administer the oath again.

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

**WITNESS:** Suzanne Margaret Daniels.

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

**WITNESS:** No.

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

10 **WITNESS:** Yes.

**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.

**WITNESS:** So help me God.

**SUZANNE MARGARET DANIELS:** (d.s.s.)

**CHAIRPERSON:** Okay thank you. You may proceed Mr Seleka.

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

20 **CHAIRPERSON:** Will you just briefly remind the public what you will be dealing or tell the public what we will be dealing with today.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Thank you Chair. Ms Daniels, the last

time when she was here, she testified on the transactions and there was a couple of aspects in regard to the transactions, the Tegeta transactions, which involved a prepayment decision of R 1.6 billion.

She took us through that, the submission and the decision made in respect of that aspect. We ended up with her, just having touched on the guarantee.

That prepayment decision ought to be converted into a guarantee on the 10<sup>th</sup> of December 2015. She  
10 touched briefly on that and we had to adjourn.

She will continue from there Chairperson and also touch on the prepayment in regard to the R 659 million that was decided in April 2016.

And she will show by virtue of correspondence emails how parties outside of Eskom, even in respect of the guarantee, even in respect of the drafting of the underlining agreement to that guarantee, got involved in that drafting process, which is what she did, also, in respect of the submission for the R 1.68 billion.

20 We will then touch on the McKinsey/Trillian matter insofar as Ms Daniels features there. It is not a long aspect. Just two aspects of the meetings of Trillian where she features Chair.

And for that purpose, we would use two of her affidavits. The one affidavit is already in Eskom Bundle

18A on page 236. That is marked Exhibit U-34.1.

**CHAIRPERSON:** Yes, I have got it.

**ADV SELEKA SC:** Then Ms Daniels provided an affidavit in the early hours of this morning Chairperson. It has incorporated in Eskom Bundle 8(a).

**CHAIRPERSON:** Oh, so it is this other bundle that I have got here?

**ADV SELEKA SC:** Correct Chairperson.

**CHAIRPERSON:** Okay alright.

10 **ADV SELEKA SC:** And that is on ...[intervenes]

**CHAIRPERSON:** And that has got to do with?

**ADV SELEKA SC:** She responds to certain allegations made against her by those who – some of the witnesses who have come before the Chairperson.

**CHAIRPERSON:** H'm?

**ADV SELEKA SC:** And then she gives a section dealing with the Trillian/ McKinsey matter.

**CHAIRPERSON:** H'm.

20 **ADV SELEKA SC:** And that is the last part we will be addressing with her.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** I might add also Chair. We will touch on the R 2.1 billion penalties but very briefly in regard to that. The new affidavit is on page 1079 in Eskom Bundle 8(a).

**CHAIRPERSON:** Ja, I have got it.

**EXAMINATION BY ADVOCATE SELEKA SC:** Ms Daniels, do you have the affidavit as well?

**MS DANIELS:** Yes, I do.

**ADV SELEKA SC:** Is your page reference, the numbering the same as I have been mentioning?

**MS DANIELS:** Uhm ...[intervenes]

**ADV SELEKA SC:** Eskom Bundle 8(a). It will on page ...[intervenes]

10 **MS DANIELS:** I have just got Eskom Bundle 8.

**ADV SELEKA SC:** Okay. Go to page 1079 of that bundle. I think the electronic bundles are not giving alphabetical numberings. Page 1079.

**MS DANIELS:** I do not think it is incorporated into this bundle Adv Seleka.

**ADV SELEKA SC:** Not on your electronic bundle?

**MS DANIELS:** No.

**ADV SELEKA SC:** Okay let us... You have ...[intervenes]

**MS DANIELS:** No, it is not.

20 **ADV SELEKA SC:** It is not incorporated. Okay the pagination – if we follow the pagination at the foot of the page on your – on that supplementary affidavit.

**MS DANIELS:** What page number would that be?

**ADV SELEKA SC:** If you have it separately it will be from page 1.

**MS DANIELS:** Oh, yes I do have it separately.

**ADV SELEKA SC:** Yes. On the cover sheet ...[intervenes]

**CHAIRPERSON:** Well, Mr Seleka. I wonder whether they could quickly paginate it, even at this stage, so that when you refer to pages, then we all have the same pagination. All she would need to do is, just put like 1079 and 8. From 8 one to the last page.

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

**CHAIRPERSON:** On the left-hand corner.

10 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Then when you refer to pages, you just stick to the pagination.

**ADV SELEKA SC:** Yes, I would use the pagination for the purposes of the record.

**CHAIRPERSON:** H'm.

**ADV SELEKA SC:** And then for her convenience, I could use the page numbers at the foot of the page.

**CHAIRPERSON:** H'm.

**ADV SELEKA SC:** So I will use it at the same time.

20 **CHAIRPERSON:** H'm.

**ADV SELEKA SC:** Simultaneously.

**CHAIRPERSON:** H'm.

**ADV SELEKA SC:** Is that...?

**CHAIRPERSON:** Well, if you think that is fine, we can go on with that.



**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Let us see. Let us try it.

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

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Ms Daniels, there is a cover sheet which is on or page 1079, a certificate of authentication.

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

**CHAIRPERSON:** With that affidavit?

**ADV SELEKA SC:** Correct Chair.

10 **CHAIRPERSON:** Okay alright.

**MS DANIELS:** Yes.

**ADV SELEKA SC:** I just wish you to place it on record so that we ...[intervenes]

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** I beg leave to have it admitted.

**CHAIRPERSON:** Okay alright. Oh, and also for its admission?

**ADV SELEKA SC:** Correct Chair.

**CHAIRPERSON:** Okay.

20 **ADV SELEKA SC:** Just for the purpose for now.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Yes. When you turn the page Ms Daniels, it is our page 1080. That will be the first page of the affidavit.

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

**ADV SELEKA SC:** Yes. The affidavit runs up to – on our side it is page 1102. On your side it is page 203.

**MS DANIELS:** That is correct.

**ADV SELEKA SC:** A signature appears there. Do you confirm that to be your signature?

**MS DANIELS:** I confirm that that is my signature.

**ADV SELEKA SC:** Just above signature of deponent. And the date of the affidavit is 18 February 2021.

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

10 **ADV SELEKA SC:** You confirm that. You confirm this to be your further affidavit – further supplementary affidavit to the Commission?

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

**ADV SELEKA SC:** Thank you. Ja, I beg leave to have it admitted as Exhibit U-18.

**CHAIRPERSON:** I guess what we should do is. Since the certificate of authentication is separate, we should admit it separately and give its own exhibit number and her affidavit which you were saying with the...

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

**CHAIRPERSON:** It is... I mean, I do not know – it seems to be separate although on my reference here it is one side of the same page as the first page of her affidavit.

**ADV SELEKA SC:** It is a separate document. Chairperson is correct.

**CHAIRPERSON:** H'm.

**ADV SELEKA SC:** However, it does relate to her affidavit.

**CHAIRPERSON:** H'm.

**ADV SELEKA SC:** It reads: I, the undersigned... And the person's name is there, of the South African Consulate General in Los Angeles. It is certified.

10 "It is Suzanne Margaret Daniels of whose identify I have just satisfied myself has this day signed the attached document in my presence, this day, 18 February 2021."

**CHAIRPERSON:** Yes, you see. Our normal... or she – or the Vice Consul General has also signed whereas commissioner of oaths.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** I guess the certificate of authentication relates to authenticating the actual affidavit and the commissioner of oaths, at the end of the affidavit, serves the normal purpose that is certificates ends. It does – but it does seem to me... Do you have it as on the same page  
20 as her first affidavit or you have it as a separate document all together, the certificate of authentication?

**ADV SELEKA SC:** It is printed out double-sided.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** So it is on the flipside.

**CHAIRPERSON:** Oh, so it is not part of the affidavit

itself?

**ADV SELEKA SC:** No.

**CHAIRPERSON:** You see, it is a standalone.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** It is a standalone document. Then this is the affidavit. I think we must give it its own exhibit.

**ADV SELEKA SC:** Exhibit number.

**CHAIRPERSON:** I think you can just confirm with her, confirm the certificate of authentication with her and then  
10 we can admit it.

**ADV SELEKA SC:** Yes. Ms Daniels, the – back to the cover of – covering sheet which is the certificate of authentication in the affidavit you gave us early this morning. Are you at ...[intervenes]

**MS DANIELS:** Yes, I have that.

**ADV SELEKA SC:** On that certification of authentication. I have read the contents thereof to the record. Do you confirm that to be a commissioner... Well, in this case it is a Vice Consul, South African Consulate General in Los  
20 Angeles certifying the contents of your affidavit.

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

**CHAIRPERSON:** And who has got the original of the certificate of authentication?

**MS DANIELS:** I have the original here Mr Chairman.

**CHAIRPERSON:** You have it? Oh, okay alright.

**ADV SELEKA SC:** It has not been send through yet.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay alright ...[intervenes]

**MS DANIELS:** And it ...[intervenes]

**CHAIRPERSON:** It is not sent through ...[intervenes]

**MS DANIELS:** So ...[intervenes]

**CHAIRPERSON:** ...in the meantime but you confirm  
Ms Daniels that this is the certificate of authentication that  
10 was signed by the Vice Consul in regard to your affidavit?

**MS DANIELS:** Yes, Mr Chairman I had to attend there in  
person.

**CHAIRPERSON:** Yes.

**MS DANIELS:** To have it signed and commissioned.

**CHAIRPERSON:** Okay alright. What exhibit number must  
we give it Mr Seleka? It will be separate from the exhibit  
number of the affidavit.

**ADV SELEKA SC:** Yes. Yes, Chair. It will be U18.4.

**CHAIRPERSON:** Okay the certificate of authentication  
20 signed by the Vice Consul of the South African Consulate  
General in Los Angels which appears on page 1079 is  
admitted and will be marked as Exhibit U18.4.

**CERTIFICATE OF AUTHENTICATION OF DANIELS  
MARGARET DANIELS IS ADMITTED AND MARKED AS  
EXHIBIT 718.4**

**ADV SELEKA SC:** Thank you Chair. And then the affidavit of Ms Daniels which appears – which starts on page 1080, I beg leave to have that admitted as Exhibit U18.5.

**CHAIRPERSON:** And she has confirmed, if I remember.

**ADV SELEKA SC:** She has Chair, yes.

**CHAIRPERSON:** The affidavit of Ms Suzanne Margaret Daniels which starts at page 1080 is admitted as an exhibit and will be marked as Exhibit U18.5.

10 **AFFIDAVIT OF SUZANNE MARGARET DANIELS IS ADMITTED AND MARKED AS EXHIBIT U18.5**

**ADV SELEKA SC:** Thank you Chair. Ms Daniels, shall we then proceed with your testimony? And you could have in front of you the affidavit, your affidavit on the transactions which is in Eskom Bundle 18, page 236.

**MS DANIELS:** What numbers are you using Mr Seleka, the red or the black ones?

**ADV SELEKA SC:** The black, the black numbers.

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

20 **ADV SELEKA SC:** Are you there? I will not ...[intervenes]

**MS DANIELS:** I am there.

**ADV SELEKA SC:** Okay. Ms Daniels, the last time you testified on how the board's decision to make a prepayment of R 1.6 billion about, you had been instructed by Mr Koko, as you said, to do – to draft the submission. That

submission was proceeded by ...[intervenes]

**MS DANIELS:** That is correct.

**ADV SELEKA SC:** Go ahead.

**MS DANIELS:** That is correct.

**ADV SELEKA SC:** That submission was preceded by a letter which you had also been asked by Mr Koko to draft and have it addressed to the DMR. Do you recall?

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

**ADV SELEKA SC:** That letter formed part of the  
10 submission that was submitted to the board in order to motivate for the board's resolution on the R 1.6 billion by way of a Round-robin. Remember?

**MS DANIELS:** That is correct. Yes, that is correct.

**ADV SELEKA SC:** Ja. And you took us through the drafting of that submission which went to Mr Eric Wood and ultimately to Businessman.

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

**ADV SELEKA SC:** Now, that Round-robin decision of the board was made on the 9<sup>th</sup> of December 2015. On the  
20 10<sup>th</sup> of December, we see new developments in regard to that decision of the board. And that new development is a conversion, for a lack of a better word, of the board decision for making the cash payment into a guarantee. Do you remember that?

**MS DANIELS:** Yes.

**ADV SELEKA SC:** Now we have provided with Mr Anoj Singh's affidavit. In his affidavit ...[intervenes]

**MS DANIELS:** Yes, you have.

**ADV SELEKA SC:** Yes. In his affidavit, Mr Anoj Singh makes an allegation that, to the effect that you came up with the idea for that guarantee. What is your response?

**MS DANIELS:** No, that is incorrect Mr Chairperson. I am not quite sure how the guarantee discussion came about but there was a memorandum from the Eskom Treasurer,  
10 Ms Caroline Hindley on the guarantee which Mr Singh discussed with me.

In it she sets out the advantages of not paying out the cash and limiting the risk to Eskom. It was on that basis that he then asked me is it possible to do that and I advised that yes it is in terms of the resolution that was provided by the board.

**ADV SELEKA SC:** Now can you tell the Chairperson, why did you hold the view that it was possible for that board decision to be converted into a guarantee?

20 **MS DANIELS:** Mr Chairman, in the resolution there is a tax all fares. I am just struggling to get to the submission.

**ADV SELEKA SC:** Is that the R 1.6 billion submission?

**MS DANIELS:** The R 1.68 billion so that I can read it.

**ADV SELEKA SC:** You have the – if you have the Tegeta reference.



**MS DANIELS:** I am at Eskom Bundle 18.

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

**MS DANIELS:** Is that the correct one?

**ADV SELEKA SC:** Yes, that is the correct one.

**MS DANIELS:** Uhm ...[intervenes]

**ADV SELEKA SC:** The submission ...[intervenes]

**MS DANIELS:** Can you just help me with...

**ADV SELEKA SC:** You want the one to the board or to the IFC?

10 **MS DANIELS:** To the board would be the one that I would reference.

**ADV SELEKA SC:** Go to page... Ja, do you want the submission or the resolution Ms Daniels?

**MS DANIELS:** The resolution would be fine Mr Seleka.

**ADV SELEKA SC:** Okay the board resolution then is on page 580.

**MS DANIELS:** And this is Bundle 18?

**ADV SELEKA SC:** Correct. Bundle 18, yes.

20 **MS DANIELS:** Okay I am almost there. Okay. The resolution that I – the part of the resolution that I relied on was the one that said:

“The Chief Financial Officer is hereby authorised to take all the necessary steps to give effect to the vote(?) including the signing of any consensus or any documentation

necessary or related thereto.”

**ADV SELEKA SC:** Okay so for the purpose of the record. You are on page 580 of Eskom Bundle 18? Are you reading from paragraph 2.1.4?

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

**ADV SELEKA SC:** Yes. But then, you would have seen Mr Koko’s affidavit where he says the submission he made and prepared to the board did not incorporate a guarantee. So the ...[intervenes]

10 **MS DANIELS:** No, it did not.

**ADV SELEKA SC:** Okay. Sorry, can you see me when I speak?

**MS DANIELS:** I can see you now, yes.

**ADV SELEKA SC:** Yes. Okay what did you want to confirm?

**MS DANIELS:** No, it did not – it did not specifically mention a guarantee.

**ADV SELEKA SC:** Yes. So that provision 2.1.4 you have just read, would have related to necessary steps in relation  
20 to the board decision for a prepayment?

**MS DANIELS:** That is correct.

**ADV SELEKA SC:** We heard from Ms Naidoo, Viroshini Naidoo... Oh, no that is in respect of the other two payments. Oh, yes. That Ms Cassim took part in the IFC meeting, teleconference of the board on the

9<sup>th</sup> of December 2015.

**MS DANIELS:** Yes, that is correct Mr Chairman.

**ADV SELEKA SC:** Now did you and him not discuss the possibility of taking the matter back to the board if you were going to convert a board decision into something else, other than what the board had decided?

**MS DANIELS:** Mr Chairman, not at that stage. On the 9<sup>th</sup>, there was no talk of a guarantee. It was purely a prepayment to the proposed purchaser of Optimum. On the  
10 – I think it was on the morning of the 10<sup>th</sup>, the email from the ABSA person came through and that was the first indication of a guarantee consideration.

**ADV SELEKA SC:** Well, in fact, there was an email much earlier than that Ms Daniels. Remember the email that Mr Koko receives from infoportal? And he forwards that email to you and on the basis of that email you gave instructions to CDH.

**CHAIRPERSON:** I am sorry ...[intervenes]

**MS DANIELS:** Are you referring to the email of Mr Koko?

20 **CHAIRPERSON:** I am sorry Mr Seleka and Ms Daniels. Please do not forget your question.

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

**CHAIRPERSON:** And please do not forget your answer Ms Daniels.

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

**CHAIRPERSON:** I just want to go back to the resolution. The – because you are giving evidence Ms Daniels to say Clause 2.1.4 of the Resolution appearing at page 580, Bundle 18 gave authority for the issuing of a guarantee, is that right?

**MS DANIELS:** That is correct, Mr Chairman.

**CHAIRPERSON:** Yes. Now I just want us to explore that a little bit before we go forward. There is no reference in the resolution to a guarantee, is that correct?

10 **MS DANIELS:** That is correct.

**CHAIRPERSON:** So to the extent that one would say that clause 2.1.4 authorises the issuing of a guarantee that would have to be on the basis that clause 2.1.4 implies such authority or is wide enough to include a guarantee, is that right?

**MS DANIELS:** That is correct, Mr Chairman, my view at the time that it was wide enough to include the guarantees based on the fact that the motivation set out by the Eskom Treasurer Ms Henry was to mitigate the risk of paying out  
20 that amount of cash.

**CHAIRPERSON:** Ja, I would like us to just explore that because I want to make sure I understand your reasoning correctly. The resolution that is said to have been required, which I take is the resolution that was given says:

“It is hereby resolved that the request from the Department of Mineral Resources is hereby noted.”

That does not seem to say much in terms of what we are looking for. In 2.1.2:

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

10 (a) 2.1.3:

“This agreement shall be subject to the necessary regulatory approvals having been obtained by Eskom and the supplier respectively as and when necessary.”

That might not mean much. So it seems that – because 2.1.4 has got to be read with clause 2.1.2 to see whether it produces that meaning but I think you also referred to the first paragraph which says:

20 1. “Having had due regard to all the following factors Eskom faces a supply risk of coal to the Hendrina power station of 5.5Mtpa by OCM as a result of business rescue proceedings.”

2. “There is potential proposal from the business rescue practitioners supported by the Department of Mineral Resources.

3. The solution relates to a pre-purchase of coal to the value of R1.68 billion which mitigates supply risk for the funding of the pre-purchase will be made by an inventory working capital reduction of 54 days to approximately 40 days. The proposal will result in a net present value benefit to Eskom of R238,9 million. In conclusion this proposal provides much needed coal for business operations and mitigates the supply risk and provides financial benefit for Eskom.”

10

As I read this, it seems to me, and I would like your comment, that the steps which the Chief Financial Officer is authorised to take under clause 2.1.4 are steps that are meant to ensure that the conclusion of the pre-purchase of coal agreement referred to in 2.1.2 happens. What do you say to that? Do you think the same or do you think differently?

**MS DANIELS:** Yes, Mr Chair, and one of those steps was to lay out the amount or pay the amount of R1.68 billion in cash to the supplier.

20

**CHAIRPERSON:** But that – but was that going to precede the conclusion of the coal agreement or was it going to come after?

**MS DANIELS:** It was going to come after the conclusion of the coal agreement.

**CHAIRPERSON:** Yes, so if it was going to ...[intervenes]

**MS DANIELS:** It was actually – if you look – if you...

**CHAIRPERSON:** Yes, go ahead?

**MS DANIELS:** If you look at the coal agreement it is actually in there upon signature that the supplier would be paid with the – paid the amount of 1.68 billion.

**CHAIRPERSON:** Are you saying in terms of the agreement that was concluded there was provision that the supplier would be paid upon signature?

10 **MS DANIELS:** That is how I recall it, Mr Chair.

**CHAIRPERSON:** Where do we find that agreement? I just want to quickly have a look at it.

**MR SELEKA SC:** The underlying agreement, Chair, is on page 442.7, the signed copy of that agreement. 442.7.

**CHAIRPERSON:** 442.7?

**MR SELEKA SC:** Point 7, that is on bundle 18.

**CHAIRPERSON:** Are you going there, Ms Daniels?

**MS DANIELS:** Yes, I am, Mr Chair.

20 **CHAIRPERSON:** Do you recall the clause that says what you are talking about.

**MS DANIELS:** Sorry, Mr Chair, I lost the sound there.

**CHAIRPERSON:** Well, I see clause 6.1 of the agreement at page 442.8. Ms Daniels, can you hear me now?

**MS DANIELS:** Yes, I can hear you now.

**CHAIRPERSON:** Ja, clause 6.1 may be the clause you are

talking about, I am not sure, it says:

“Eskom will make an advanced payment to OCM to pre-purchase crucial coal supply in terms of the existing coal supply agreement in the amount of 1.68 billion payment on fulfilment of the conditions precedent set out in clause 5.1.”

Is that what you are talking about?

**MS DANIELS:** That is what I am talking about.

**CHAIRPERSON:** 6.2 then says:

10 “Pursuant to clause 6.1 Eskom will issue a bank guarantee in favour of Tegeta in the amount of R1,680 billion, that is guarantee amount, to secure the payment of the advance payment. It is recorded that the issue of the guarantee will be conditional on the similar terms as set out in clause 5 hereof.”

Is that what you are talking about when you said ...[intervenes]

**MS DANIELS:** Yes, Mr Chairman.

**CHAIRPERSON:** So but now – okay, what the resolution  
20 said in 2.1.2 it that:

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



Now the resolution does not say what terms and conditions these three officials of Eskom should bind Eskom to, is that right?

**MS DANIELS:** That is correct, Mr Chair.

**CHAIRPERSON:** It simply says they were being authorised to negotiate and conclude a pre-purchase of coal agreement so it did not require them to come back to the board and say are these terms and conditions acceptable, can we go ahead and conclude an agreement,  
10 is that right?

**MS DANIELS:** That is correct it was a very open – what is the word, a blanket authority to conclude the agreement.

**CHAIRPERSON:** Ja, the three officials were basically even a blank cheque to agree to whatever terms and conditions they thought were acceptable without having to go back to the board, is that right?

**MS DANIELS:** That is correct, usually – that is correct, Mr Chairman, that was my understanding because when we do negotiate and conclude there is no need to go back to  
20 the board, you know, for permission to conclude.

**CHAIRPERSON:** I accept that if the board gives you the authority to negotiate and conclude an agreement, you have not obligation to go back to the board, that would be I guess on the basis that the board has confidence that the three officials knew what they were doing and that they

would were doing and that they would act in the best interest of Eskom, I would imagine. Would you agree that such a bank cheque ...[intervenes]

**MS DANIELS:** Yes, I agree with that.

**CHAIRPERSON:** ...be given on that understanding, generally speaking.

**MS DANIELS:** Yes, in general, Mr Chair, that would be the understanding.

**CHAIRPERSON:** Yes. And then what they then went on to  
10 do, the three officials, I assume, was to go and conclude an agreement which said they should – Eskom should issue a guarantee, that is clause 6.2, I think, that we read.

**MS DANIELS:** Yes.

**CHAIRPERSON:** And it may well be that once the board had given them that wide authority that the board should not complain if they acted – they issued a guarantee but the resolution, by the mere fact that it authorised the three officials to conclude a pre-purchase of coal agreement which I understand to be a prepayment, did that not  
20 necessarily imply that the agreement that the three officials were authorised to conclude was an agreement that allowed a prepayment, a payment for coal before coal was delivered.

**MS DANIELS:** Yes, Mr Chair, it in effect was the payment of cash up front, upfront cash of 1.68 billion.

**CHAIRPERSON:** Yes.

**MS DANIELS:** To the supplier. If you strip away all the legalities.

**CHAIRPERSON:** Ja, of what it was.

**MS DANIELS:** I mean, not the legalities, I mean, you know, the wording.

**CHAIRPERSON:** Ja.

**MS DANIELS:** What it effectively meant is that Eskom – that the board authorised upfront cash payment of 1.68  
10 billion.

**CHAIRPERSON:** Yes and therefore, the issuing of a guarantee in favour of Tegeta in circumstances, if this interpretation is correct, in circumstances where the resolution authorised in effect the payment of cash, the payment to be made was no worse than what was authorised and actually – I am not sure, it might have been – if they had taken cash and given it to Tegeta to this amount they would have acted within the resolution, is that correct?

20 **MS DANIELS:** Well, Mr Chair, that is correct, and that is why, you know, the issuing of the guarantee, as strange as it may seem, was actually a better risk mitigation factor for Eskom because can you imagine had we paid the money in cash over to the supplier, there would have been greater issues.

**CHAIRPERSON:** Yes.

**MS DANIELS:** So it was for that reason that, you know, I – when Ms Henry – she put it in a memorandum and you will see from her memorandum that she actually it is better for Eskom and I supported that within the ambit of what was provided because it was a better option for Eskom to hold on to the cash than to give it to a supplier because we would have given 12 months of cash actually.

**CHAIRPERSON:** Issuing the guarantee as opposed to  
10 paying cash certainly did not put Eskom in a worse position than Eskom would have been if cash had been paid in advance.

**MS DANIELS:** That is correct and that was the reasoning that we adopted.

**CHAIRPERSON:** Mr Seleka?

**MR SELEKA SC:** Yes.

**CHAIRPERSON:** I wanted to just explore this.

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

**CHAIRPERSON:** You are free to explore it further and  
20 feel free to indicate anything that might indicate a different interpretation or understanding.

**MR SELEKA SC:** Yes. Ja, no, that is alright, Chair. Ms Daniels, let us see this because, you see, we need to just get the facts right. When Tegeta was concluding a sale agreement with Oakbay OCH, the business rescue

practitioner says in his affidavit, that is Mr Marsden, that the consortium of banks required Tegeta to show that it has sufficient funds to do the deal, to pay the 2.1 billion purchase price. That is on the one hand.

Now Tegeta seems to have not had – and I say seems, you can comment on that, not to have had the funds required. What then happens is, early on the 10 December 2015 and this is immediately after midnight, Chairperson, you see that email that comes from a  
10 businessman, is sent to Mr Koko and it sets out what essentially became the terms of a guarantee to be issued by Eskom in favour of Tegeta.

So the memorandum and what happens thereafter is preceded by that communication which is forwarded to you by Mr Koko on the basis of which instructions are given to CDH.

So comment on this because based on those facts it would seem that even the idea of a guarantee did not originate from Eskom's officials, it seems to have come  
20 from outside of Eskom in order to do what presumably Mr Marsden is saying, Tegeta needed to demonstrate that they have sufficient funds to do the purchase of OCH. Your comment on that?

**MS DANIELS:** Mr Chairman, based on the communication, yes, it did come from outside but I think in our execution it

was better for Eskom to issue the guarantee. I just cannot remember the timing, Mr Seleka, if you can just show me the email.

**MR SELEKA SC:** Yes.

**MS DANIELS:** I think it came on the morning of the 10<sup>th</sup> as well.

**MR SELEKA SC:** Yes, I am going to give you that page reference, that is page 724 of Eskom bundle 18.

**CHAIRPERSON:** 724?

10 **MR SELEKA SC:** 724, Chairperson.

**CHAIRPERSON:** No but this one cannot have ...[intervenes]

**MR SELEKA SC:** Bundle 18, 18A.

**CHAIRPERSON:** Bundle 18 cannot go to 7 something, it goes up to 597, black numbers.

**MR SELEKA SC:** The black numbers?

**CHAIRPERSON:** H'm, my one.

**MR SELEKA SC:** 18A?

**CHAIRPERSON:** Yes, it is 18A.

20 **MR SELEKA SC:** You are there, Chairperson? Okay.

**CHAIRPERSON:** No, I am not on the page you are talking about, I am saying I have got bundle 18A but it does not go to page 700 and something, the last page is 597.

**MR SELEKA SC:** Oh. Yes, it is in – my junior says it is 18B, Chair, sorry.

**CHAIRPERSON:** Ja, okay.

**MR SELEKA SC:** 724, where it is the same email on 723.

Ms Daniels, are you there?

**MS DANIELS:** Yes, I am there.

**MR SELEKA SC:** Yes, so the email, the one below from businessman, dated 2015.12.10 at 00.15, to Matshela 2010, the subject is Two Pager:

“Two Pager between Tegeta and Eskom, Salient Facts. Eskom will provide bank guarantee

10 ...[intervenes]

**CHAIRPERSON:** Salient points.

**MR SELEKA SC:** Salient points.

**CHAIRPERSON:** Ja.

**MR SELEKA SC:** I beg your pardon, Chair, I beg your pardon.

**CHAIRPERSON:** To the extent that it makes a difference but in terms of what is written here.

**MR SELEKA SC:** Salient points.

20 “Eskom will provide bank guarantee for 1.68 billion.”

Chairperson, let me accelerate this because if you turn the page, Ms Daniels, when you go to the next page, which is page 725, it is Ms Daniels’ email to Mr Rishaban Moodley of CDH. That is on the 10<sup>th</sup> again of December 2015 but this time it is at 8.42 and Ms Daniels says:

“Please call me, I need your assistance in drafting this agreement. Urgent time pressure, I need the draft by 12.00.”

Then Chairperson, the two pager is on the next page which is page 726. Ms Daniels, you are following, hey?

**MS DANIELS:** Yes, I am following, Mr Chairman.

**MR SELEKA SC:** Yes. Then there is the two pager, two pager between Tegeta and Eskom Salient Points and we can compare point for point, Chair, what you see in the  
10 email which goes to Mr Koko and this two pager which is sent to the attorneys.

**CHAIRPERSON:** Yes, I wrote here previously when one of the witnesses was giving evidence, compare this document with the one at page 724. I think we compared it on that occasion.

**MR SELEKA SC:** That is correct, that was Ms Daniels, Chair.

**CHAIRPERSON:** Ja.

**MR SELEKA SC:** Yes.

20 **MS DANIELS:** Yes.

**CHAIRPERSON:** Remember that, Mr Seleka, the point which I wanted to clarify with Ms Daniels was simply about whether the issuing of the guarantee was authorised by the resolution and nothing else.

**MR SELEKA SC:** Yes.



**CHAIRPERSON:** So the question of who the idea of guarantee came from.

**MR SELEKA SC:** Yes.

**CHAIRPERSON:** Obviously that is separate but it was simply the question of whether the three officials and Ms Daniels could say that the issuing of a guarantee fell within the authorisation in the resolution.

**MR SELEKA SC:** Yes.

**CHAIRPERSON:** So I just want to make sure. Obviously  
10 at some stage you will indicate what your thinking is but you can go ahead. So I think she – Ms Daniels confirms that the idea of a guarantee came from outside of Eskom.

**MR SELEKA SC:** That is right, yes.

**CHAIRPERSON:** Ja and we can see that the document she attaches to her email, which is the email at page 725 and the attachment is at 726, we can see that the attachment insofar as it relates to the guarantee that [indistinct] 27.09 is the same as the document at page 724. If there are any differences they will be minor.

20 **MR SELEKA SC:** Correct, Chair, correct, Chair. Ms Daniels, yes, just to clarify and maybe make clear the response to the Chairperson's question, whether on the terms of the resolution of the board for the prepayment of R1.6 billion could one rely on those terms to make a conclusion that those terms also authorised the CFO, Mr

Anoj Singh to issue a guarantee in favour of Tegeta. Mr Koko says that submission did not incorporate a proposal regarding a guarantee.

The board is also surprised that there was a guarantee issued the day after they made that decision. They say they did not authorise a guarantee.

I know you have already said that you relied on paragraph 2.1.4 of the resolution but strictly speaking, what would be your answer to the Chairperson whether that  
10 reliance can be substantiated by the provisions of the resolution. Whether you look at it then or now you can make the distinction is up to you.

**MS DANIELS:** Ja, I am going to look at it then answer the aspects of your question in the following manner and tell me if I am interpreting correctly.

Number one, my instructions regarding the guarantee came from Mr Koko so for Mr Koko to say that he does not know about the guarantee, I mean, it is clear from the evidence that he forwarded the email to me. We  
20 had a discussion and that is how I instructed CDH on the matter.

**MR SELEKA SC:** Ja, can I, sorry ...[intervenes]

**MS DANIELS:** Second ...[intervenes]

**ADV SELEKA SC:** Sorry can I just, he does not necessarily say he does not know about the guarantee but

what I am saying to you is he says the submission did not incorporate a recommendation for a guarantee, that is all I was saying.

**MS DANIELS:** That is, that is – oh okay, that is correct in terms of the guarantee was not specified as an instrument, okay. However, what the Board did authorise was the upfront payment of cash, the amount of R1.68billion and it was in that context that we looked at the risk, to Eskom, I cannot remember what, I just lost my thought.

10 **CHAIRPERSON:** Well the question I am not sure that it went beyond that. You may, in dealing with it Mr Seleka the question of whether issuing of a guarantee was authorised for purposes of assisting me because Mr Singh's presence there does seem to me that the resolution was wide enough.

But it may be that there is something I am missing that you might be able to point out. It seems to me that this could be compared to a situation where I authorise you to pay somebody from my money in cash R100,00 and  
20 instead of paying them in cash you issue a cheque. How can I complain, unless that other person complains but the agreement was cash, so by you giving me a cheque but I do not see how I can complain, if it does not make a difference to the other person that you have given a cheque, if they are happy with a cheque.

**ADV SELEKA SC:** Yes, I hear what the Chairperson is saying.

**CHAIRPERSON:** In the end if the cheque is presented, then honoured money will go out and in terms of what I had authorised you, cash would have gone out probably earlier than, cash would go out by way of a cheque. The only complaint I can have, about you issuing a cheque instead of cash is if I think that the issuing of a cheque will prejudice the other person or the other person will  
10 complain because of whatever delays there may be before they get cash but if the other person is happy, I do not see why I would have a problem with the fact that you issued a cheque.

**ADV SELEKA SC:** Yes, I think Chair the ultimate issue turns on the purpose of either the cash payment, I mean for our purposes, either the cash payment or the guarantee. The ultimate purpose that was meant to be achieved or objective to be achieved by issuing either the cash or the guarantee.

20 **CHAIRPERSON:** Ja, no, no I do not have a problem with that that is important. It is just that all along I have understood that there is an issue about whether the Board had authorised the issuing of a guarantee.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And obviously, we need to apply our

minds to that but if the reasoning that indicated is correct it seems to me that the Board cannot complain or should not complain or blame the officials for issuing a guarantee in circumstances where they had authorised them actually to pay even cash, you see.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So obviously we can look at other issues, if there is no indication that this construction of the resolution is wrong but if there is anything that suggests  
10 that it is not sound, we can look at it. But on the face of it, that seems to be the, that seems to me to be the position and therefore the Board should have no grounds to criticise the officials if they did not apply their minds to the resolution that is there problem.

**ADV SELEKA SC:** Is it not the Chairperson looking at ultimately which one is the worst of the two? Because on the face of it, the resolution is, it contemplates a cash payment. So steps to be taken are in relation to the cash payment. What the Chairperson is saying is, but is that  
20 not in itself to take all the necessary steps to give effect to the above? Does that not open the door for them to do even the less of the two worst situation?

**CHAIRPERSON:** Well, you see, it seems to me that one has to start with what authority the three officials - what terms and conditions the three officials were authorised to

agree to in terms of the agreement, and it seems that the Board gave them a blank cheque as it were to say you will see what terms and conditions you agreed to and they decided to agree to among others a clause that says a guarantee would be issued.

Now, if you accept that, that fell within, that was left to them to decide what terms and conditions they should bind Eskom to, they bound Eskom to among others to that and once they had bound Eskom to that term they had to  
10 issue the guarantee.

If the Board did not, if the Board wanted to narrow the scope for their mandate, to say, you can agree to whatever terms and conditions except not about A, B, C, D it was free to say so in their resolution, they did not say so, they just gave them a wide the widest possible authority in terms of what terms to agree to.

It may well be that they were terms and conditions that are usually agreed to between Eskom and such suppliers in such a case and they expected the officials to  
20 agree to usual terms but they did not say so in the agreement, they did not say they must negotiate and conclude an agreement on the usual terms and conditions.

They just said you negotiate and conclude and the official decided one of the things we will agree to will be a guarantee but that was not voiced then what had been

authorised if one reads the resolution to mean that the Board authorised pre-payment which could be cash, ja.

**ADV SELEKA SC:** I mean, I have mulled over that Chairperson I know that the guarantee would have in the minds of the executive be more safeguarding to the interests of Eskom exactly for what Ms Suzanne Daniel is saying that the cash constraints at the time, financial constraints at the time in regard to Eskom and maybe the Board does not have a leg to stand on.

10 **CHAIRPERSON:** Ja, on the face of it unless the Board comes up with something else or unless somebody picks up in it something, it does appear that the resolution authorised this kind of thing, it left it to the three officials to agree the terms and conditions and one of the terms they agreed to was the issuing of a guarantee.

So that of course does not deal with the question whether it was right or it was proper, it was justified to agree to a pre-payment on the part of the Board in the first place.

20 **ADV SELEKA SC:** Yes.

**CHAIRPERSON:** But it answers the question whether the three officials were authorised to issue a guarantee.

**ADV SELEKA SC:** Well, Chairperson I wanted to add that in terms of the PFMA that you may well say well that is exactly what the Board did but in terms of the PFMA, the

guarantee can only be issued by the accounting authority in the case of Eskom. I think Ms Suzanne Daniels, you can explain that we did go through that and I know that the Parliamentary Portfolio Committee, there was a debate about whether it does not require ministerial prior approval, having lifted the provisions of the PFMA, actually, in this case, the accounting authority.

But I am also mindful of what Ms Naidoo said that the Board, I think she said the Board had the authority only  
10 up to R750million to issue a guarantee. So beyond that, according to her, then you will require ministerial approval. I think Ms Suzanne Daniels can explain that to us.

**CHAIRPERSON:** Ja, you see it is important to separate all the issues.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So far, all we were talking about and all I was raising was whether the issuing of a guarantee fell within the terms of the resolution.

**ADV SELEKA SC:** Yes.

20 **CHAIRPERSON:** That does not necessarily mean it was following the terms of the PFMA, it does not mean it was in order in terms of any other instrument. It may well be that one might say the Board did authorise by its resolution the issuing of a guarantee, but obviously could not authorise the issuing of a guarantee that falls on its delegated



authority or beyond its power. So if the guarantee was beyond its power, and one assumes the officials would know that because we are talking here about the chief executive officer of Eskom and chief financial officer that they would know what falls within, what fell within the mandate within the power of the Board in terms of amounts.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So if the argument is from the Board, we  
10 are not saying that the officials did not - the resolution did not authorise the issuing of a guarantee at all. We accept that the resolution did authorise in effect or by implication issuing of a guarantee, but it could not authorise the issuing of a guarantee that is your power in terms of amounts of the Board, then that is a different argument.

**ADV SELEKA SC:** Yes, I am with you.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Chair I think what - the way I have  
20 seen it is to restrict the resolution to a cash pre-payment by virtue of that paragraph which says:

“You take all necessary steps to give effect to the above, it does go on including the signing of any concerns or any other documentation necessary or related there too.”

Which is the above, it is a contemplation or a decision for

the pre-purchase of coal and I am separating that aspect from the lesser of the two evils, ultimately, a step being taken the next day. I mean, the executives might well have seen that well it will be risky for us to part with cash, as opposed to issuing a guarantee, let us rather resort to the lesser of the two evils and decided well it is not necessary to even go to the Board because we actually saving Eskom money. And the question obviously is on the face of it, if the resolution is restricted, in terms of the above and what  
10 is in relation thereto, where does it take us? Because ultimately the executives took a step that was favourable to Eskom, you know.

**CHAIRPERSON:** Well you see it seems to me that clause 2.1.2 of the resolution and I am not looking at I am just mentioning it from memory. Is so wide that for purposes of whether there was entitlement to issue a guarantee there might be no need to go to the clause that Ms Daniels was relying on because you say clause 2.1.2 gives the three officials complete discretion to what they must bound  
20 Eskom to in terms of that agreement.

And if they choose to bound Eskom to saying issue  
a  
guarantee, in circumstances where the resolution actually authorises the payment of cash that is within the resolution.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And once they have included that in the agreement, obviously it is going to be honoured and then maybe with or without clause 2, was it clause 2.1.4 the one that Ms Daniels relied on.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Maybe with or without it still they are authorised but certainly it seems you can say once they have included the issue of a guarantee in the agreement as  
10 a term or condition that clause 2.1.4 allows them to take whatever steps to give effect to that agreement.

**ADV SELEKA SC:** Ja, because, well, if you take it to its logical conclusion the guarantee would simply defer the date of payment.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Ja, because that is exactly what they even say here in their agreement.

**CHAIRPERSON:** Yes, so it seems that the Board unless they come up with something more convincing cannot really  
20 complain that in issuing the guarantee the officials did something that they were not authorised by the resolution to do.

Yes, but of course you feel free to - you can always come back later on if you reflect and you or you come across something that might change one's thinking. But in

the meantime, you can explore the other issues of you know, Ms Daniels has confirmed that the idea of this guarantee came from outside of Eskom. I do not know whether she may have dealt with this before, Ms Daniels you say it came from outside from whom outside of Eskom did it come?

**MS DANIELS:** Mr Chairman, at the at the time I did not know because you can see from the email it came from Mr Matshela Koko, and then it came from Businessman, based  
10 on the evidence and the other emails, you know, it was more than likely that this list of business plan is Mr Salim Essa.

**CHAIRPERSON:** Well...[intervene]

**MS DANIELS:** Because...[intervene]

**CHAIRPERSON:** Yes, continue.

**MS DANIELS:** Well because later on in the email exchange both the investigators, and I think it was in 2018 the Mail and Guardian showed me the emails and they are included in the bundle that the paperwork that we prepared  
20 inside of Eskom actually went to Mr Salim Essa and Mr Eric Wood.

**CHAIRPERSON:** Yes, now Mr Koko when he gave evidence here a few weeks ago said that, I think he said he was shocked or he would be shocked if the position was that Businessman was Salim Essa or was somebody from

outside of Eskom. I cannot remember how he put it because as far as he was concerned, he had been told and I do not know whether he said he had been told by you, I think he said, you had told him that Businessman was Dr Ngubane the Chairperson of the Board. What do you say to that?

**MS DANIELS:** Ah, no Mr Chairman, I think Mr Koko is trying to mislead the Commission. I at no stage told him that the info portal address or businessman address  
10 belongs to Dr Ngubane. I did not use it; I categorically deny that. Dr Ngubane had a personal email and it was Baldwin[?] - I am just reading from my affidavit that I - the latest one I submitted.

**CHAIRPERSON:** Ja.

**MS DANIELS:** It is baldwin.ngubane@gmail.com. That was his personal address that you used at Eskom and there would have been no reason.

**CHAIRPERSON:** Was that personal email address of Dr Ngubane known to Mr Koko at the time as far as you know?

20 **MS DANIELS:** Yes, it was as far as I know yes, it was. I think Mr Koko in his...[intervene]

**CHAIRPERSON:** I am sorry, I am asking whether, to your knowledge did Mr Koko also used the – Dr Ngubane's personal email address, or is that something you do not know?

**MS DANIELS:** I am not sure at the time was the Mr. Chairman, but he would have known about it because on the correspondence that I would have sent out, you would see on the correspondence to the Board and the executives, I would have used their Eskom and their personal addresses. So it would have been known to the executives.

**CHAIRPERSON:** Yes, so are you saying that there are documents, Eskom documents or emails that you sent to  
10 Board members and maybe some of the senior executives at Eskom which included Dr Ngubane's personal email address that you have just mentioned?

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

**CHAIRPERSON:** And Mr Koko would have been one of the recipients of such emails that you sent, which included Dr Ngubane's personnel email address that you have mentioned?

**MS DANIELS:** Yes, that is correct, Mr Chairman.

**CHAIRPERSON:** Do we by any chance have such  
20 documents Mr Seleka?

**ADV SELEKA SC:** I will check in suspension...[intervene]

**CHAIRPERSON:** Maybe I could ask her Ms Daniels she might know, in the bundles that we are using have you come across any documents that you send to, among others, Mr Koko which had Dr Ngubane's personal email

address that he used at Eskom that you mentioned?

**MS DANIELS:** I think if you actually look at the round robin resolution, Mr Chairman that I sent out, I am just trying to get the page it may just be on there as well.

**CHAIRPERSON:** Okay, ja, you can look.

**MS DANIELS:** I just would need help from the...[intervene]

**CHAIRPERSON:** Evidence Leader.

**ADV SELEKA SC:** I am looking for her email where she  
10 seeks, invites the Board members to a round robin.

**MS DANIELS:** It is on Eskom 18, oh no that is just Anoj Singh.

**ADV SELEKA SC:** Ja, this on page 524 Ms Daniels it does not show the email address it shows the name of Dr Ben Ngubane that is where you send an email requesting the Board to make a round robin decision on the 9<sup>th</sup> of March.

**MS DANIELS:** But I am sure we can find an email for you Mr Chairman where we, where I sent it to everybody.

20 **CHAIRPERSON:** Yes, and you think it might be quite a few that could be found?

**MS DANIELS:** Yes, there will be quite a few, Mr Koko was quite involved in some of the decisions that were made. So he would be well aware that Dr Ngubane's address is baldwin.ngubane@gmail.com.

**CHAIRPERSON:** Yes, if – have you found something Mr Seleka?

**ADV SELEKA SC:** I found it on page 571 on Eskom bundle 18, 571 but it is only an exchange between Ms Suzanne Daniels and Dr Ngubane.

**CHAIRPERSON:** Okay, it does not involve Mr Koko but Miss Ms Daniels says there will be quite a few. I guess whether in the bundles or not in the bundles, if they are not in the bundles you think they can be found easily Ms  
10 Daniels?

**MS DANIELS:** Yes, Mr Chairman, I think if you, if the investigating team does a search on the emails that I sent to the Board members and executives, you will find them.

**CHAIRPERSON:** Ja, then they should come across those.

**MS DANIELS:** Yes, you will definitely come across those.

**CHAIRPERSON:** Okay, do you know whether there would be a category of emails where you would include the personnel emails, email addresses or in other words, how would one know when you include personnel email  
20 addresses of the Board members and when you do not or does it happen when it happens and then it did not happen when did not happen?

For example, if you were sending minutes of the Board meetings, do you know whether you would include the personnel email addresses of the Board members, or at



least of Dr Ngubane or is it when you were dealing with a different category of documents that you would include it?

**MS DANIELS:** Mr Chairman, during this time, you know, in the early stages of let us say 2015/2016 Eskom's IT system did not - was not sort of compatible for some of the Board members. So they asked - so you would find that I had to send it to both the Eskom address and the personal email address.

So I did not have a defined category yet, you know,  
10 as to when I would send, so you would see on the emails that I would send it to the Gmail address and the Eskom address.

**CHAIRPERSON:** Okay, so that is fine. So...[intervenes]

**MS DANIELS:** So it was ...[intervenes]

**CHAIRPERSON:** ...or the period when you did that because that was because of the challenges ...[intervenes]

**MS DANIELS:** Yes.

**ADV SELEKA SC:** ...of the anti in Eskom?

**MS DANIELS:** Yes. And I think that even when Eskom  
20 developed an app for the board members, you know, a secure portal, there was still problems with the board members and they would ask that it be send to their personal emails. And that is why you see personal emails, work emails... You know, there is a mixture. It was not yet ...[intervenes]

**CHAIRPERSON:** A special ...[intervenes]

**MS DANIELS:** ...in terms of a board portal yet.

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

**ADV SELEKA SC:** Thank you.

**CHAIRPERSON:** You... the investigators or somebody must just pursue that.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Yes.

10 **CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Ja. Or I can address other emails to the board members with private email addresses which is not Eskom email addresses but Mr Koko is not in that correspondence.

Ms Daniels, just – okay so we have traversed the issue of the guarantee. It is issued in favour of Tegeta. We have read the agreement which says:

“It suspends the payment until the fulfilment of the conditions.

20 The conditions have an expiry date which is the 31<sup>st</sup> of March 2016.”

Do you recall that?

**MS DANIELS:** Yes, I do.

**ADV SELEKA SC:** Which is in Clause 5 of the Agreement by the ...[intervenes]

**CHAIRPERSON:** I am sorry Mr Seleka.

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

**CHAIRPERSON:** I just want to go back to this issue of Mr Koko saying that he was told by Ms Daniels that the infoportal address was for Dr Ngubane.

In your discussions – or when Mr Koko would send emails to Dr Ngubane, would those emails be opened by you and handed over to Dr Ngubane by yourself or would it be opened by his PA and handed over to him or would he  
10 open it themselves?

Or, sometimes he would do so, sometimes they would do so and sometimes you would do so?

**MS DANIELS:** It would be a combination of the three, the last scenario that you mentioned Mr Chairman.

**CHAIRPERSON:** H'm, h'm.

**MS DANIELS:** I did not have direct access to mister... Sorry, Dr Ngubane's email at Eskom. That would be the prerogative of the PA.

**CHAIRPERSON:** H'm.

20 **MS DANIELS:** And she would bring to my attention if there were emails that she was not sure what to do with.

**CHAIRPERSON:** H'm.

**MS DANIELS:** Dr Ngubane did attend at the Eskom office. Then he would also go through his emails.

**CHAIRPERSON:** H'm.

**MS DANIELS:** And if he received emails on his personal email that he needed, he would send them to me.

**CHAIRPERSON:** H'm.

**MS DANIELS:** So it really depended on what the nature of the email was and what he wanted done.

**CHAIRPERSON:** H'm. Did you ever have an occasion to discuss with Mr Koko any emails or documents that he sent to the email address of Businessman, the infoportal email address at any stage giving that while you were both at  
10 Eskom?

**MS DANIELS:** Chair, Businessman or... You see, it is a difficult one. The subject matter of the transactions, we did discuss. It was not – I was not aware that he had sent them to the infoportal.

You would see in my supplementary affidavit that I filed today or yesterday, that I do highlight some transactions based on Ms Matjeko's evidence but he would discuss with Dr Ngubane if it were a board matter.

**CHAIRPERSON:** So are you saying ...[intervenes]

20 **MS DANIELS:** And ...[intervenes]

**CHAIRPERSON:** ...you may have discussed documents that he would have sent to Businessman but if you – you would not know that he had sent them to Businessman. That is what you are saying?

**MS DANIELS:** That is what I am saying.

**CHAIRPERSON:** You never discussed a document that, to your knowledge, he had sent to Businessman?

**MS DANIELS:** Well, at the time Mr Chairman because if I – when I listened to the evidence that has been coming out, there have been documents that have been sent to Businessman that came before the board and were discussed with Mr Koko.

**CHAIRPERSON:** Yes, but what I am saying is. At the time of you discussing such documents. You are saying  
10 you would not have known that he had sent them to Businessman?

**MS DANIELS:** That is correct Mr Chairman.

**CHAIRPERSON:** You might found out later but at that time, you say you were not aware. You would have discussed documents which might later on turn out to be documents that he had sent to Businessman.

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

**CHAIRPERSON:** H'm. Mr Seleka, you may continue.

**ADV SELEKA SC:** Yes.

20 **CHAIRPERSON:** And you can take further whatever may arise from the evidence.

**ADV SELEKA SC:** Ja. I will send the broadcast Chair with Ms Suzanne Daniels interview at 07:02. In that broadcast Ms Daniels is the – a clip of a previous interview with Mr Koko. And he is asked: Who is Businessman? He

says: Suzanne Daniels. Do you remember that?

**CHAIRPERSON:** Is it Mr Koko who says that?

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Oh.

**ADV SELEKA SC:** It is exactly on these lines to say  
...[intervenes]

**CHAIRPERSON:** Oh.

**ADV SELEKA SC:** He is interviewed and he tells the  
interviewer ...[intervenes]

10 **CHAIRPERSON:** Ja.

**ADV SELEKA SC:** ...that the email address is – the  
infoportal1@zoho.com is Ms Daniels' email address. So he  
is asked: Who is Businessman? And he says: It is  
Suzanne Daniels. And Ms Daniels had to be asked exactly  
these questions about the email.

**CHAIRPERSON:** So that interview was between Mr Koko  
and somebody not involving Ms Daniels as well?

**ADV SELEKA SC:** Correct. Ja, it did not involve her.

**CHAIRPERSON:** Oh.

20 **ADV SELEKA SC:** So there is a previous interview with –  
of Mr Koko. This time Ms Daniels has – is on the station  
for an interview. Then they played the clip.

**CHAIRPERSON:** Oh.

**ADV SELEKA SC:** The previous clip of Mr Koko.

**CHAIRPERSON:** And asked for her comment?

**ADV SELEKA SC:** And asked for her comment, yes.

**CHAIRPERSON:** Ja. Well, what did you say on that occasion Ms Daniels?

**MS DANIELS:** He got me fixed up Mr Chairman.

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

**MS DANIELS:** To even be ...[intervenes]

**CHAIRPERSON:** Would the implication of ...[intervenes]

**MS DANIELS:** ...that ...[intervenes]

**CHAIRPERSON:** Would the implication of that version,  
10 Mr Seleka, be that what Mr Koko told the interviewer in  
that clip and what he told the Commission are contradictory  
in the sense that in the Commission he said he understood  
the infoportal email address to be belonging to Dr Ngubane  
but in the clip that you say that was played to Ms Daniels,  
he does not say that email is Dr Ngubane's but he says it  
is Ms Daniels?

**ADV SELEKA SC:** In the clip yes Chair. I should say  
that, I do not think they played the entire interview of  
Mr Koko.

20 **CHAIRPERSON:** H'm.

**ADV SELEKA SC:** They played a clip and then they asked  
Ms Suzanne Daniels to comment and they asked her  
further questions on that.

**CHAIRPERSON:** H'm.

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

**CHAIRPERSON:** But obviously, that clip – the entire interview should be obtained.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So that it can be looked at.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Ja.

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

**CHAIRPERSON:** So I think that should be done.

**ADV SELEKA SC:** Thank you.

10 **CHAIRPERSON:** Ja, okay.

**ADV SELEKA SC:** Ja. Ms Suzanne Daniels, quickly on... Okay so the board is approached on the basis that there is an urgent need for coal in terms of the submission. Or was it the submission on page 527 of Eskom Bundle 18?

But I suppose you accept this is the gist on which or the basis on which the board was approached to make a Round-robin decision overnight on the 9<sup>th</sup> of December 2015?

**MS DANIELS:** Yes.

20 **ADV SELEKA SC:** Ja. And when ultimately the board decision is executed or implemented, it results in a guarantee being issued but the guarantee is subject to suspensive conditions as well as the underlining agreement in that guarantee and that is the period of three months, for about three months, until 31 March 2016.



**MS DANIELS:** Yes.

**ADV SELEKA SC:** Which – on the basis of which Mr Anoj Singh testified at the Parliamentary Portfolio Committee that he was aware that coal was not going to be supplied during that period. Hence he opted for a guarantee as opposed to a cash payment. I do not know whether you know about that?

**MS DANIELS:** I saw it – you brought it to my attention in our discussions. I saw that. I really cannot make sense of  
10 it.

**ADV SELEKA SC:** Ja.

**MS DANIELS:** Because the – I think the coal supply and it was effective from the 1<sup>st</sup> of January 2016 subject to those suspensive conditions.

**ADV SELEKA SC:** Yes.

**MS DANIELS:** So it is really a much about muchness.

**ADV SELEKA SC:** Ja. Well, that is alright. And then – I mean at Clause 6.1 of the Pre-purchase Agreement which says:

20                                   “Payment will only be made upon the fulfilment  
  of the conditions.”

                                  So everything is deferred until the  
31<sup>st</sup> of March 2016.

**MS DANIELS:** Yes.

**ADV SELEKA SC:** The point I am trying to make is that,

the execution of the board decision by deferring everything for three months, it undercuts the motivation of an urgent need for coal to the Hendrina Power Station.

So it weakens the very motivation why the board had to make this decision on an urgent basis for to avert a risk which was said to be eminent at the time. You see the point I am making?

**MS DANIELS:** Yes, I see the point that you are making Adv Seleka.

10 **ADV SELEKA SC:** Yes.

**MS DANIELS:** Mr Chairman, I think the – you know if you look at the submission closely, the underlining issue was security of supply. And I think that was a little bit broader than just the urgency of like an immediate need. So yes it was premised on urgency but it was delayed at the end of the day.

**CHAIRPERSON:** Ja, but I think the part of the point that had been – that Mr Seleka seeks to make is, the board was prevented from discussing this issue in a proper board  
20 meeting. And it was sent a Round-robin resolution on the basis that this was urgent because there were – you were seeking to address an urgent coal supply demand. Is it not? That is what the resolution said, is that not so?

**MS DANIELS:** That is how it was framed Mr Chairman. So, yes, but I just want to point out that, you know, I think

that in the beginning it was supposed to be a meeting but because the board members were not available during that time, it then became a Round-robin resolution. And yes, the executives did push the urgency factor at that point in time.

**CHAIRPERSON:** Yes, but it seems that the board could have met in a week's time, it could have met in two weeks' time, it could have met even in a month's time to discuss this issue. Is that not so?

10 **MS DANIELS:** That is so Mr Chairman.

**CHAIRPERSON:** And then when the management wanted the board to authorise this matter. Are you saying that first there was an attempt to arrange for a board meeting to take place and there seems to be problems of the availability of members of the board and that is why the idea of a Round-robin was resorted to? Is that what you are saying?

**MS DANIELS:** Chair, my – what I am saying is, when Dr Ngubane approached me, he wanted me to convene a  
20 meeting.

**CHAIRPERSON:** H'm?

**MS DANIELS:** As the discussions went along, you will see there is an email of the CFO's office, Mr Singh's office, asking for it to be a Round-robin. And I do ask, as the Chairman knows about this, because my understanding was

that he wanted a meeting. It then became a Round-robin because it was urgent.

**CHAIRPERSON:** So the ...[intervenes]

**MS DANIELS:** And ...[intervenes]

**CHAIRPERSON:** The idea that it should be a Round-robin, from whom did it come from?

**MS DANIELS:** There is an email from the general manager from Mr Singh's office asking that it be sent out and now a Round-robin.

10 **CHAIRPERSON:** H'm. At that stage, do you know whether before the manager sent that memo or note or email. Do you know whether there had been attempts to communicate with the board members to ask them to avail themselves for a meeting on some date discussing the issue?

**MS DANIELS:** Well, Mr Chairman I was still checking availability during that time. It really happened so quickly. It was already the first week in December and people were already going on holiday.

20 **CHAIRPERSON:** So who would ordinarily speak to board members about a need for a meeting and who would talk to them about dates? Would it have been the company secretary?

**MS DANIELS:** Yes, that would have been – at that time that was me.

**CHAIRPERSON:** Yes.

**MS DANIELS:** I was the Company Secretary.

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

**MS DANIELS:** It was mister...

**CHAIRPERSON:** Yes, continue.

**MS DANIELS:** The Chief of Director also spoke to the board members directly.

**CHAIRPERSON:** H'm?

**MS DANIELS:** So, you know, Mr Singh and executive  
10 directors were the Chief Financial Officer and the Chief Executive. So they would – you know, as part of the board they would discuss it with the board members.

Sometimes I would just be told that we need a meeting, but in this instance, I had been approached by Dr Ngubane to say try and arrange a meeting and I would get the information from Mr Singh and Mr Koko.

As things unfolded, there was an email from – I think it was Ms Naidoo, asking that this go out on Round-robin and he was in the office of Mr Singh.

20 **CHAIRPERSON:** Okay. Is my understanding correct that you yourself did not engage with board members prior to this email or letter from Mr Singh's office? You did not engage with board members and with the chairperson of the board, Dr Ngubane about possible dates for a meeting?

**MS DANIELS:** I actually did not get a chance to do that.

I had already checked some of the people's availability. There were some committee meetings still happening at Eskom but there was no place for a board meeting at that point.

**CHAIRPERSON:** Okay but you say, Dr Ngubane was the person that approached you first and asked you to convene a meeting of the board?

**MS DANIELS:** Yes, he did. He called me.

**CHAIRPERSON:** Ja. So at that stage, he was talking  
10 about convening a meeting rather than talking about a Round-robin arrangement?

**MS DANIELS:** That is correct. That is correct.

**CHAIRPERSON:** Okay. But later on, an email from Mr Singh's office came which said: Let us go the Round-robin route.

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

**CHAIRPERSON:** You said – I think you said you asked somebody whether Dr Ngubane knew about this latest idea of the Round-robin as opposed to a physical meeting. Is  
20 that right?

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

**CHAIRPERSON:** And who did you speak to, the author of the email that was suggesting a Round-robin.

**ADV SELEKA SC:** Can I assist you?

**MS DANIELS:** Yes, I did. And I also subsequently spoke

to Dr Ngubane and asked him and he was fine. You will see – that is why the email says at the request of the chairman. I sent it out in Round-robin.

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

**ADV SELEKA SC:** Yes, thank you Chair. Ms Daniels, please check on page 492 of Eskom Bundle 18, please. There is an email there. You can identify it to the Chairperson and say whether this could be the email that you are talking about. Page 492 Chairperson.

10 **MS DANIELS:** Yes, that is the email that I am talking about Mr Chair.

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

**CHAIRPERSON:** Oh, yes I see it.

**ADV SELEKA SC:** Yes.,

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** It is the email... Tuesday, 8 December 2015 at 16:41. It is addressed to you Ms Daniels, Mr Anoj Singh, Mr Matshela Koko. Board Round-robin request, Optimum Coal Mine (Pty) Ltd. And it  
20 says:

“Hello, Suzanne. Can you please assist with a Round-robin to the board?”

Are you saying that is the email of the request for the matter to be decided by way of a Round-robin?

**MS DANIELS:** That... Yes, that is the request.

**ADV SELEKA SC:** But the draft that was prepared – I mean, there is an attachment to this email. The draft itself which comes before this email already bore the word Round-robin submission to the board if you go to page 481.

And I think all the drafts before them, even page 475. Page 475 even better because it has the track changes which I think were made by officials of Trillian. It is attached to the email of Mr Mohammed Bobat and Faheema Badat on page 474. They already had Round-robin submission to the board.

**MS DANIELS:** ...Chair.

**CHAIRPERSON:** Is that the same date Mr Seleka? Is that the 8<sup>th</sup>?

**MS DANIELS:** Yes, that is the 8<sup>th</sup> of December Mr Chairman.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** That email... Yes, Chair the email trails, they start way back. They are on the 8<sup>th</sup>. They are certainly before 16:41.

20 **CHAIRPERSON:** H'm. So it may be that you may not have been correct including that the idea of Round-robin came from Ms Badat(?) [00:24:34]

**ADV SELEKA SC:** [Indistinct]

**CHAIRPERSON:** H'm.

**MS DANIELS:** I might have got the time sequence wrong



there.

**CHAIRPERSON:** H'm.

**MS DANIELS:** But at this time, Mr Chairman the – so the availability of the board members was the issue.

**CHAIRPERSON:** Yes, okay. I think ...[intervenes]

**MS DANIELS:** So in this period, we would not have had been able to have a meeting but you are correct in saying it could have been pushed out by a week or two.

**CHAIRPERSON:** Or even a month if you ended up  
10 ...[intervenes]

**MS DANIELS:** But as of this ...[intervenes]

**CHAIRPERSON:** If you ended up waiting for end of March. Even in January, you could ...[intervenes]

**MS DANIELS:** Yes, that is correct. I mean, it was ...[intervenes]

**CHAIRPERSON:** It was not ...[intervenes]

**MS DANIELS:** It was not...

**CHAIRPERSON:** There are no ...[intervenes]

**MS DANIELS:** Alerts(?) ...[intervenes]

20 **CHAIRPERSON:** ...that suggests that it was urgent that the decision be taken by the 10<sup>th</sup> or somewhere around there by the board.

**MS DANIELS:** Not inside of Eskom, no.

**CHAIRPERSON:** Ja, ja. Okay. Mr Seleka.

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

**CHAIRPERSON:** We might have taken too long on this issue.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** I have in mind my own estimation that we should be able to finished about five, half-past five, six. You might say maybe not but just try and move. Of course, if there is still something of substance about the issue or urgency.

**ADV SELEKA SC:** Yes.

10 **CHAIRPERSON:** Then we can. But I think we can move.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** She has made the concession.

**ADV SELEKA SC:** Ja. Indeed Chair. I mean, the suspensive conditions in the pre-purchase agreement and the guarantee ...[intervenes]

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** ...the allegation of urgency.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Ms Daniels ...[intervenes]

20 **CHAIRPERSON:** I think let us take a short adjournment. It is four o'clock. Ten minutes' adjournment and then when we come back, we try and see if we can ...[intervenes]

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** ...go or another hour, hour and a half or two. But I think we can try and cover as much as possible.

**ADV SELEKA SC:** I will try less than two hours Chair.  
Let us see what happens.

**CHAIRPERSON:** Okay alright.

**ADV SELEKA SC:** Thank you.

**CHAIRPERSON:** We will adjourn for ten minutes. We  
adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay, let us continue.

10 **MR SELEKA SC:** Thank you, Chair. Ms Daniels, are you  
with us?

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

**MR SELEKA SC:** Okay. The same bundle, page 487,  
Eskom bundle 18, page 498. Just a follow up on the email  
you were referring to of Ms Bana.

**MS DANIELS:** Yes.

**MR SELEKA SC:** It is an email from you, Tuesday 8  
December 2015, 16.44, that is after Ms Bana's email of  
16.41 and there you are asking:

20 "Has the Chairman been notified or do I have to  
request him to allow?"

I think that is talking about a round robin, the email still  
appears below your ...[intervenes]

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

**MR SELEKA SC:** Could that be what you were trying to

explain to the Chairperson?

**MS DANIELS**: Yes.

**MR SELEKA SC**: That you enquired whether the Chairperson was aware that the meeting should proceed by way of a round robin?

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

**MR SELEKA SC**: Just to add, Chair, to the urgency of the situation, this alleged urgency, the pre-purchase agreement is subject to suspensive conditions. Coal is not  
10 supplied pursuant to that agreement and in its affidavit...”

In its affidavit, I say it is, that is CDH’s affidavit. Mr Moodley says that at that stage, this is December 2015, an even before that, I think from September 2015, OCM and Eskom had an interim arrangement in terms of which OCM was supplying coal to Eskom, Eskom’s Hendrina power station. Did you know that?

**MS DANIELS**: That is mentioned in the agreement but I did not know the specifics.

**MR SELEKA SC**: Well, you see ...[intervenes]

20 **CHAIRPERSON**: Can I interpose, Mr Seleka, just on something that goes back, I am sorry that I am taking you back, do not forget your question. Ms Daniels, tell me, how did Eskom’s need or even purportedly urgent need for – or to secure coal, coal supply, how was that addressed in December by a resolution authorising that a pre-coal a pre-

agreement of coal supply be concluded with people who did not own the coal that you are talking about at that time? The resolution itself says the agreement should be concluded with the proposed owners which obviously means conclude an agreement with not the owners but the proposed owners. How did that address the urgent or the need for the security of coal supply?

**MS DANIELS:** The (indistinct – recording distorted) Mr Chairman, it did not in the immediate address the coal supply urgency.

**CHAIRPERSON:** Yes because also this was not even a situation where the idea was let us conclude an agreement with the proposed owners to say if and when you become owners you will supply us with coal on the following terms and conditions, this is not what was authorised, is that right?

**MS DANIELS:** That is correct, Mr Chairman, in fact I think the underlying issue is here that this was actually to assist the proposed owners to acquire Optimum.

**CHAIRPERSON:** Yes because if you were in – if you – if Eskom wanted to secure coal supply, the idea was to conclude agreements with the owners of coal. Do you agree?

**MS DANIELS:** Yes, I agree with you, sir.

**CHAIRPERSON:** But at the time of the submission that

you made to the board did you not appreciate this?

**MS DANIELS:** Mr Chairman, you must remember that I was drafting it for Mr Singh and Mr Koko and at the time I must admit I did not really ask, you know, interrogate it to that degree, it has been on reflection and the subsequent questions that these issues have come to light.

**CHAIRPERSON:** But it is difficult to think that – let me ask this question first. Did Mr Koko say to you draft an agreement, draft a submission on the basis that we are  
10 asking the board to authorise that we conclude an agreement with the proposed owners of OCM for a pre-purchase. Is that what he said to you?

**MS DANIELS:** That was instructions, yes.

**CHAIRPERSON:** And did he advance to you his reason of Eskom seeking to secure coal supply as the reason why it was urgent that the board provides authorisation?

**MS DANIELS:** Yes, that is correct, urgency was in his mind and also the big security of supply about Hendrina.

**CHAIRPERSON:** Yes. One of the things that I have said  
20 to a few members of the board, maybe two, maybe three who have testified, is it is difficult for me to understand how they could not have seen that the resolution that was being asked for, from them, was a resolution that they authorise the three Eskom officials to conclude a prepayment agreement with the proposed owners with

Tegeta, so to speak and not with Glencore. I have said that it is difficult for me to understand that they all did not see that because those that have come here seem to – maybe one said she saw it or he saw it, I cannot remember, but I think Dr Ngubane said he did not see it, he was under the impression or he, as far as he was concerned, the board was authorising the conclusion of this pre-purchase agreement with Glencore and not with Tegeta. Dr Ngubane is a medical doctor, he has been a  
10 politician, he was a minister, he was a Premier of a province, he was an ambassador, I think he was or continues to be a businessman. Then I had Professor – was it Professor Naidoo?

**MR SELEKA SC:** Pat Naidoo, yes, Chair.

**CHAIRPERSON:** Ja, Prof Naidoo. I do not know whether he was the one who said he did see it but nevertheless he still continued to think he was authorising a prepayment agreement with Glencore and I think Ms Klein may have said she did not remember whether she saw it or not but  
20 she also still thought that she was authorising a prepayment agreement with Glencore. Now you are saying you did not pick up that point, is that right? You saw that it was – you say you were instructed to draft a submission that would ask the board to authorise the conclusion of an agreement for prepayment with the proposed owners but

you say it did not click to you that hang on, but why must we do that? Is that what you are saying?

**MS DANIELS:** No, that is not what I am saying, I am saying that when you talk about the urgency.

**CHAIRPERSON:** Yes, so – okay, so what is your position in terms of did you notice that the – you were drafting a submission that was saying the board should give a resolution that authorises the conclusion of an agreement with the proposed owners as opposed to the [indistinct]

10 12.30 owners at the time?

**MS DANIELS:** Yes.

**CHAIRPERSON:** You say you did – you knew you were doing that?

**MS DANIELS:** Yes, that was the intention because you will see that the underlying agreement refers to Tegeta.

**CHAIRPERSON:** Yes. I am sorry, you say the underlying what?

**MR SELEKA SC:** Agreement.

**CHAIRPERSON:** Just repeat.

20 **MS DANIELS:** Agreement.

**CHAIRPERSON:** Just repeat the part that relates to what is underlying something?

**MS DANIELS:** The coal supply agreement that we prepared, it refers to Tegeta, the sources.

**CHAIRPERSON:** There is a part that I could not hear



because I think there was a technical problem. Would you like to start that sentence again please?

**MS DANIELS**: I said that when you look at the underlying agreement that we were asked to prepare, the coal supply (indistinct – recording distorted) resources.

**CHAIRPERSON**: I think the technology does not want me to hear the whole sentence.

**MR SELEKA SC**: She says ...[intervenes]

**CHAIRPERSON**: But I think I understand you to be saying  
10 the submission and the resolution contemplated that the agreement would be concluded with Tegeta but I may be missing something else and I do not know whether it is something to say if you look at the submission or if you look at the resolution there is something that makes it clear that it is Tegeta that was contemplated. Is that what you are saying?

**MS DANIELS**: In the coal supply agreement that I was asked to draft, Mr Chairman.

**CHAIRPERSON**: Oh, okay, ja. No, no, that is fine.  
20 Obviously the agreement would have to reflect who all the parties to the agreement were and it had to reflect Tegeta as one of the parties because Tegeta was the proposed owner of OCM.

**MS DANIELS**: Yes.

**CHAIRPERSON**: Ja. But if you were aware that you were

drafting a submission that would ask the board to authorise the conclusion of a prepayment agreement with the owners of OCM and not – or the proposed owners, that is Tegeta, and not Glencore, why did you not ask the question why are we – why do we seek to conclude prepayment agreement with people who do not own OCM when there are people who own the OCM now? Why did you not ask Mr Koko that?

**MS DANIELS:** Mr Chairman, at the time there was a due  
10 diligence exercise underway so it really – it really did not strike me as odd and I did not think that, you know, it was my place to second-guess the executives at that stage, I took it at face value.

**CHAIRPERSON:** No but were you not the legal adviser as well as the company secretary at the time?

**MS DANIELS:** No, I was not.

**CHAIRPERSON:** Which one were you not, or both?

**MS DANIELS:** I was not the legal adviser, I was the company secretary.

20 **CHAIRPERSON:** Yes but is it not the job of the company secretary – does the job not of a company secretary include giving legal advice to the board? I thought so.

**MS DANIELS:** Ja, none of the board members actually asked for advice at that time ...[intervenes]

**CHAIRPERSON:** Ja, but they might not ask ...[intervenes]

**MS DANIELS:** I focused ...[intervenes]

**CHAIRPERSON:** But they might not ask because they do not know but you, as a legally qualified person, would see and then you can alert them to a potential legal problem, is it not? And if somebody does not know, if ...[intervenes]

**MS DANIELS:** That is – ja. That is correct.

**CHAIRPERSON:** If, as a judge, a scientist gives me a certain document that talks about some science, I might not pick up any danger but another scientist who looks at  
10 the document that might have been given to me might pick up something and say hang on, do not sign this, you realise that these are the implications? So you too, as a company secretary, legally qualified – and my understanding is that a company secretary does advise on legal compliance and so on, so it would have been your job, would it not have been, to advise the board even if they did not ask for advice to say there is a problem here or at least please appreciate that this request, this submission requires you to authorise a, b, c, d in  
20 circumstances where ordinarily this should not be the case. It seeks you to authorise that the pre-purchase agreement be concluded with none owners of OCM when they are current owners of OCM and you would need to say this is problematic, this is strange. Or if you thought there is no problem, advise them, having alerted them to this unusual

feature and advise them to say notwithstanding this, there is no problem because of a, b, c, d.

**MS DANIELS**: Mr Chairman, at the time I must admit I did not do that.

**CHAIRPERSON**: Ja, you see ...[intervenes]

**MS DANIELS**: I took it at - you know, I took at face value because it was the Chief Financial Officer and Mr Koko involved and I did not do that at the time.

**CHAIRPERSON**: You see, it is difficult for me to accept  
10 that. You know, as I see it, this is like a situation where you want to buy a car and you know that this car belongs to me but you go and conclude an agreement with Mr Seleka, you buy the car from Mr Seleka who does not own this car and you know I am the owner. How do you not pick that up?

**MS DANIELS**: You see, when the documents came back from Mr Koko and Mr Singh they were already signed.

**CHAIRPERSON**: They were already?

**MS DANIELS**: Signed.

20 **CHAIRPERSON**: Signed?

**MS DANIELS**: By the executives, yes. Signed off. So ...[intervenes]

**CHAIRPERSON**: I am sorry, but did you not draft the submission yourself?

**MS DANIELS**: Not all of it because they made some

changes as well.

**CHAIRPERSON:** Yes but also, if they made changes and if this was one of the changes, all the more reason why you would need to say to them what you have now put in here is problematic, what is your reasoning, why did you put this in? Because I am not sure ...[intervenes]

**MS DANIELS:** Mr Chairman, at the time ...[intervenes]

**CHAIRPERSON:** I am not sure that saying that it came from them already signed or they made amendments, changes, anything, because to me it seems that the  
10 moment you knew that this document was asking the board to authorise the three officials of Eskom to buy from Mr Seleka a car that belongs to me and you know it belongs to me, that should be problematic. Can you see that?

**MS DANIELS:** I can see that but at the same token, I would not want to be second-guessing these senior executives.

**CHAIRPERSON:** No, it is just a ...[intervenes]

**MS DANIELS:** It is for them to put the stuff before the  
20 board and the board to also interrogate the documentation.

**CHAIRPERSON:** No, no, I do not think, Ms Daniels, it is about second-guessing. None of these officials were lawyers, is it not?

**MS DANIELS:** That is correct but they are also senior executives in the company.

**CHAIRPERSON:** You are not suggesting that you did not want to give them correct advice just because they were senior, correct legal advice because they were senior?

**MS DANIELS:** No, that is not what I am saying.

**CHAIRPERSON:** Yes, that is why I am saying to you if it would have been correct legal advice to say to them legally you cannot buy coal – you cannot conclude an agreement for buying coal from somebody who is proposed to be the owner and therefore currently has no right to that coal. If  
10 that was correct advice it would not be wrong for you to raise that with them, would it?

**MS DANIELS:** Chair, I agree with you there.

**CHAIRPERSON:** You accept, h'm. Is there something you wanted to add earlier on and I interrupted you?

**MS DANIELS:** I am just checking the documentation just to make doubly sure. I think we covered it.

**CHAIRPERSON:** Ja, you see, you have – well, maybe the three executives will say well, we knew that we were asking the board to authorise that we conclude a pre-  
20 purchase agreement with non-owners, with people who were not owners of the coal but here are our reasons which make this thing that appears to be so unusual, justifiable, which make it justifiable, we will see, but it is strange that about 12 or so board members, some of whom I think are quite highly qualified and they say they either did not see

this in the resolution or if they saw it they did not think it meant anything, as far as they were concerned they were authorising a conclusion of an agreement with Glencore and this company secretary, who is legally qualified, says she saw it but she did not think it was her place to give legal advice to the officials. You must just tell me if I am summing up what you say incorrectly.

**MS DANIELS**: Mr Chair, in the documents that I have if you look at the draft that I sent, I think – let me just see, it  
10 is page – Eskom 18, 509.

**CHAIRPERSON**: Yes, 509.

**MS DANIELS**: Yes. There is an email to Mr Koko and the document attached is version one.

**CHAIRPERSON**: Yes.

**MS DANIELS**: And in there – I think in – on page 512 under the key assumptions, I do – we – this is the draft that I prepared.

**CHAIRPERSON**: Yes.

**MS DANIELS**: You will see that I put there the transaction  
20 between Optimum Coal Mine and Oakbay Investments being formally approved by the regulatory authorities.

**CHAIRPERSON**: I am sorry, just tell me which clause you are reading from?

**MS DANIELS**: It is number 3.2.2.

**CHAIRPERSON**: “The submission and decision required

set out herein is based on the following key assumptions.

3.2.2 The transaction between Optimum Coal Mine (Pty) Ltd and Oakbay Investments/Tegeta Resources is formally approved by the regulatory authorities.”

What does that mean in the context of the issue we are dealing with?

**MS DANIELS**: Okay, what I am saying is that this – these  
10 things were removed by the executives in the final submission.

**CHAIRPERSON**: Yes but before they were removed tell me what their presence would have meant in the context of the question we are dealing with?

**MS DANIELS**: In the context of the question, it would have given the board a fuller appreciation of what transaction was about.

**CHAIRPERSON**: The transaction that you were talking about there, namely clause 3.1.2, what transaction are you  
20 talking about?

**MS DANIELS**: Was that Oakbay/Tegeta was buying Optimum at the time.

**CHAIRPERSON**: Yes but still that did not change the fact that at the time of the – that did not change the fact that the board was being asked to authorise the conclusion of



this agreement at the time when Tegeta would not be the owners of OCM.

**MS DANIELS:** Yes.

**CHAIRPERSON:** Ja.

**MS DANIELS:** But you will also remember at the IFC discussion it was pointed out that the acquisition would improve the BEE status, so there was some appreciation that this was in transition and that there was going to be a new ...[intervenes]

10 **CHAIRPERSON:** Yes, but again even that still doesn't answer the question why conclude such an agreement with a non-owner at the time, when there is a non-owner that is known to you as Eskom and as officials.

**MS DANIELS:** I think that is a question that you would have to ask the Executives and the Board.

**CHAIRPERSON:** Sorry?

**MS DANIELS:** I think that is a question you would have to ask the executives and the Board.

20 **CHAIRPERSON:** Well, you too, because you were the legal advisor, you were the Company Secretary, as far as I am concerned you were supposed to alert them that you cannot conclude an agreement with a non-owner of the coal when there is an owner, isn't it? You accept that?

**MS DANIELS:** I accept that.

**CHAIRPERSON:** Yes, Mr Seleka?

**ADV SELEKA SC:** Thank you Chair. Ms ...[intervenes]

**CHAIRPERSON:** I am sorry, you might even have forgotten the question that you were on when I interrupted you but if you made a note – I hope you made a note and you remember.

**ADV SELEKA SC:** I did but she answered it during – ja her first interaction with you Chair, when she said the motivation was to help to get the purchase of this ...[indistinct] ...[intervenes]

10 **CHAIRPERSON:** Ja, ja.

**ADV SELEKA SC:** ...so because that can only be the explanation for this astounding decision, Ms Daniels.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** And Chair, you see, Ms Daniels the inclusion of this proposed owner, one can trace it back, the emails, well maybe you don't trace it back because by that time the submission was made but you could see when one of the Board members sent you questions, and I want to refer you to the page so we can run quickly, through what I  
20 want to – what I want you to point out to the Chairperson if you could please be on page 559. So, one of the Board members sends you questions after you've sent the submission to them, that the Board should make a round robin decision on the 9<sup>th</sup> of March and that's Ms Mariam Cassim on page 559.

**MS DANIELS:** Yes.

**ADV SELEKA SC:** The questions are there on the 8<sup>th</sup> of December 2015 you've just sent them your request which we see on – at the bottom of page 560 you sent it at 5h52pm on 8 December 2015, she responds at 9h28pm on the same date and that email goes to – she asks questions, you received the email and then you forward it to Mr Anoj Singh. Mr Anoj Singh takes that email on the 9 December, the next day and he forwards it to Mr Eric  
10 Wood. Mr Eric Wood takes that email on the 9<sup>th</sup> of March and he forwards it to Mr Mohamed Bobat, you see those emails on page 559?

**MS DANIELS:** Yes, I see them.

**ADV SELEKA SC:** And what does Mr Mohamed Bobat do with this is apparent on page 562. So, the email now comes from him, also 9 March 2015, he's replying to Mr Eric Wood and the subject line is,

“Urgent request to approve the pre-purchase of coal from Optimum”.

20 And now you see that there is a font in red colour which are inserted against the questions on page 562.

**MS DANIELS:** Yes, I see that.

**ADV SELEKA SC:** You there?

**MS DANIELS:** Yes, I'm there.

**ADV SELEKA SC:** Was it apparent to you that, the

answers to the questions were coming from outside and not from...[intervenues].

**MS DANIELS:** No.

**ADV SELEKA SC:** And not from Mr Anoj Singh himself?

**MS DANIELS:** No, it was not, the emails came from Mr Anoj Singh to me.

**ADV SELEKA SC:** So, to you they came from Mr Anoj Singh?

**MS DANIELS:** Yes.

10 **ADV SELEKA SC:** There – if you go to page 565, at the bottom of page 565 which goes over to page 566, there is, again this email from Mr Mohamed Bobat, 9 December 2015 at 8h04am to Mr Eric Wood and on the next page you see further additions to the answers that are being provided. Now you see both the additions in red and now there are those in blue, page 566.

**MS DANIELS:** Yes.

**ADV SELEKA SC:** Are you there?

**MS DANIELS:** I'm there.

20 **ADV SELEKA SC:** And the answer, this time around, the answer to the first question it incorporates the concept, potential buyer. So, the last – the answer to paragraph one, the last part, which is in blue, it says,

“Consequently, Eskom is thus in no worse financial position than before the transaction but has

mitigated the security of supply risk and has funded its working capital financing cost via the discounts being offered by the, and you see that word, potential buyer”.

You see that?

**MS DANIELS:** Yes.

**ADV SELEKA SC:** And these questions answered in this way by, what potentially looks to be Mr Mohamed Bobat, were ultimately forwarded to Ms Cassim. You remember  
10 you would have taken those answers and forwarded the email to her.

**MS DANIELS:** Yes.

**ADV SELEKA SC:** Let’s see because...[intervenes].

**MS DANIELS:** But my answers came from Mr Singh.

**ADV SELEKA SC:** Ja, on page, let’s see, on page 656 where I was, on the bottom of the page is that email of Mr Mohamed Bobat at 9 December 2015 at 8h04 about that...[intervenes].

**CHAIRPERSON:** What page is that again?

20 **ADV SELEKA SC:** Page 565, Chair.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Yes, at the bottom of that page. So, it is Mr Mohamed Bobat replying to Mr Eric Wood, they have kept the same email of Ms Mariam, they’re simply adding answers to her questions. Mr Eric Wood then forwards that

email to Mr Anoj Singh, 9 December 2015 at 8h11, so he received it at 8h04, he forwards it 8h11 to Mr Anoj Singh so he says,

“Please see responses below, as discussed, regards Eric”.

The email above, is then Mr Anoj Singh, Chairperson at 8h55 on the 9<sup>th</sup> of December he seems to reply to his PA, Polly Ndzotyana, that was Mr Singh’s PA, Mr Daniels?

10 **MS DANIELS:** Mr Seleka, can you just give me the page reference, I seem to...[intervenes].

**CHAIRPERSON:** I’m losing him or he’s losing me as well now.

**ADV SELEKA SC:** Page 565.

**CHAIRPERSON:** I am at 565 and I can see Mohamed Bobat but I see only the subject, I don’t see the actual content of the email.

**ADV SELEKA SC:** Yes, Chair, it starts on page – well it goes over to 566.

20 **CHAIRPERSON:** Well at 566 I see an email from Mariam Cassim.

**ADV SELEKA SC:** Yes.

**MS DANIELS:** Yes.

**CHAIRPERSON:** To Ms Daniels.

**ADV SELEKA SC:** Yes, but what you see there Chair, it’s

an edited email of Ms Mariam Cassim because her original email only has questions.

**CHAIRPERSON:** Repeat that.

**ADV SELEKA SC:** Her original email, Ms Daniels, only has her questions.

**CHAIRPERSON:** Questions?

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Question 1, 2, 3 and 4.

10 **CHAIRPERSON:** Ja.

**ADV SELEKA SC:** What you are seeing there now, the fonts which are in red and blue are the answers to those questions.

**CHAIRPERSON:** And who is giving the answers?

**ADV SELEKA SC:** So, then you see – if you go back to 565, when Mr Eric Wood forwards the email to Mr Anoj Singh, he says,

“Please see responses below as discussed”.

20 **CHAIRPERSON:** So, the email at the bottom of 565 comes from Mr Mohamed Bobat?

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

**CHAIRPERSON:** And this is on the morning of the day on which Mr Nhlanhla Nene was fired, 9 December 2015?

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

**CHAIRPERSON:** Yes, well on this day, Mr Mohamed

Bobat, who the following day, I think on the 10<sup>th</sup> or 11<sup>th</sup> met with Mr Des van Rooyen and they discussed that Mr Bobat would be – his advice, our Chief of Staff, I forget who was Chief of Staff and who was advisor, but on the morning of the 9<sup>th</sup> of December he is engaged in some discussions involving what is happening or about to happen in Eskom in relation to Tegeta and coal and so on.

**ADV SELEKA SC:** Indeed.

**CHAIRPERSON:** Okay, alright but – so are you saying  
10 that Mr Eric Wood was he sending to Mr Bobat the document on page 566?

**ADV SELEKA SC:** Yes, Chair so that Chairperson can follow, let's start where I started, page 559.

**CHAIRPERSON:** 559?

**ADV SELEKA SC:** 559.

**CHAIRPERSON:** Right.

**ADV SELEKA SC:** Those are the original email.

**CHAIRPERSON:** Ja, this is an email starting with the one on the top or the one at the bottom?

20 **ADV SELEKA SC:** We should start with the one in the middle.

**CHAIRPERSON:** That is the one from Mr Singh, Anoj Singh?

**ADV SELEKA SC:** The one from Ms Mariam Cassim.

**CHAIRPERSON:** Ja, that is addressed to Ms Daniels.



**ADV SELEKA SC:** Correct, Chair and Mr Singh...[intervenes].

**CHAIRPERSON:** And who was Mariam Cassim?

**ADV SELEKA SC:** She was one of the Board members.

**CHAIRPERSON:** One of?

**ADV SELEKA SC:** One of the Board members.

**CHAIRPERSON:** Okay, of Eskom?

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Alright.

10 **ADV SELEKA SC:** So they would have received the email from Ms Daniels on page 560.

**CHAIRPERSON:** Oh yes, that is – they would have – all the Board members would have received the email from Ms Daniels in closing the submission.

**ADV SELEKA SC:** Correct Chair.

**CHAIRPERSON:** To the Board about this transaction.

**ADV SELEKA SC:** Correct.

**CHAIRPERSON:** And then she sends an email to Ms Daniels/Mr Anoj Singh, where she raises certain questions  
20 about the content or the subject matter of the submission.

**ADV SELEKA SC:** Correct Chair.

**CHAIRPERSON:** Ja she asks four questions.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** And you will see there, there are no

red fonts or blue...[intervenes].

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** That email Chair, is forwarded, if you go up, is forwarded to Mr Eric Wood by Mr Anoj Sing on the 9<sup>th</sup>.

**CHAIRPERSON:** Oh, it's forwarded to Mr Eric Wood by Mr Anoj Singh.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Who has received it from Ms Mariam  
10 Cassim.

**ADV SELEKA SC:** Correct, who also received it.

**CHAIRPERSON:** Yes, okay.

**ADV SELEKA SC:** And sent from her Iphone, then you go up, you see Mr Eric Wood then forwards it on to Mr Mohamed Bobat.

**CHAIRPERSON:** And what page do we go to, to find that?

**ADV SELEKA SC:** It's above, the one above Chair.

**CHAIRPERSON:** Oh, yes, okay. So, he sends it to Mr Mohamed Bobat.

20 **ADV SELEKA SC:** That's correct.

**CHAIRPERSON:** And...[intervenes].

**ADV SELEKA SC:** At 7h13.

**CHAIRPERSON:** Ja, okay 7h13 on the 9<sup>th</sup> of December.

**ADV SELEKA SC:** On the 9<sup>th</sup> of December.

**CHAIRPERSON:** Yes, right.

**ADV SELEKA SC:** So, that's outgoing, that's outgoing, now, on the page where we were, you see the replies, the responses.

**CHAIRPERSON:** That's 565.

**ADV SELEKA SC:** That's 565.

**CHAIRPERSON:** Then Mohamed Bobat ...[intervenes]

**ADV SELEKA SC:** Replies.

**CHAIRPERSON:** ...replies to Mr Eric Wood.

**ADV SELEKA SC:** At 8h04.

10 **CHAIRPERSON:** At 8h04.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And the subject it still the same "urgent request to approve the pre-purchase of coal from Optimum Coal Pty Limited.

**ADV SELEKA SC:** Yes and they are keeping this email of Ms Mariam Cassim now they had aired that responses to her questions.

**CHAIRPERSON:** Okay, so ...[intervenes]

**ADV SELEKA SC:** Yes.

20 **CHAIRPERSON:** ...on the face of it, it is Mr Bobat who is providing answers.

**ADV SELEKA SC:** Correct.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** He is providing answers to questions

that are – were asked by a member of the Eskom Board to officials of Eskom.

**ADV SELEKA SC:** Correct Chair.

**CHAIRPERSON:** And not to him.

**ADV SELEKA SC:** Not to him.

**CHAIRPERSON:** Yes, but what happened was that the Board members questions were sent to Ms Daniels and Mr Singh.

**ADV SELEKA SC:** Yes.

10 **CHAIRPERSON:** And Mr Singh passed his questions to Mr Eric Wood, Mr Eric Wood passed them to Mr Bobat, Mr Bobat provided the answers ...[intervenes]

**ADV SELEKA SC:** The answers.

**CHAIRPERSON:** ...in red at page 566.

**ADV SELEKA SC:** Correct.

**CHAIRPERSON:** And then sent these – the document at page 566 together which contains answers in red to the questions of the Board member to Eric Wood.

**ADV SELEKA SC:** Yes, ja, he requested ...[intervenes]

20 **CHAIRPERSON:** Who I assume will send it to Mr Anoj Singh.

**ADV SELEKA SC:** Which is exactly what he is saying there in his email, he says:

“Please see responses below as discussed.”

**CHAIRPERSON:** Oh, there he says on the 9<sup>th</sup> of

December.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Eleven minutes past eight in the morning:

“Hi Anoj,

Please see responses below as asked.”

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Those are the responses provided by Mr Mohamed Bobat.

10 **ADV SELEKA SC:** Correct.

**CHAIRPERSON:** Okay, right so well when I heard the evidence relating to Mr Bobat and his being appointed as either an advisor or Chief of Staff to Mr Des van Rooyen on the 10<sup>th</sup> or 11<sup>th</sup> in the manner in which that appointments seems to have been made, one of the questions I asked was whether he was not employed or could he be given an offer just like that and he is said to accept it, he doesn't even want to go and think about it, he accepted on the spot and yet Mr van Rooyen was I think saying he didn't know  
20 him, or he may have seen him once in six years or something, or maybe that was not Mr Bobat, maybe it was the other person.

Okay, alright, well I am trying to – so now I know that on the 9<sup>th</sup> he was busy at Regiments with matters relating to Eskom.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay now I understand, now I follow, yes thank you Mr Seleka.

**ADV SELEKA SC:** Then it seems they are not saying their sense to his PA, he says to his PA on that same page the PA ultimately Chair, the emails are not in sequence, Chairperson will have to go to page 554, she ultimately forwards it to Ms Suzanne Daniels.

**CHAIRPERSON:** Page 554?

10 **ADV SELEKA SC:** 554.

**CHAIRPERSON:** This is the email in the middle is from Pauli Ntochane ...[intervenes]

**ADV SELEKA SC:** On behalf of.

**CHAIRPERSON:** On behalf of Anoj Singh.

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

**CHAIRPERSON:** For some reason she emphasis the “on behalf of” Anoj Singh, she sends it at nine minutes past nine, December 9 2015 to Ms Daniels and she says responses to Board Queries. She says:

20           “Hi Suzanne,  
Responses to the questions raised by board members is as follows on the resolution.”

I take it that what then she puts in under one, two, three, four is exactly what came from Mr Bobat.

**ADV SELEKA SC:** As is.

**CHAIRPERSON:** But she has filed and I guess that is something that Ms Cassim had not asked.

**ADV SELEKA SC:** That is the question ...[intervenes]

**CHAIRPERSON:** Oh she raised, h'm ...

**ADV SELEKA SC:** It says has – let's see.

**CHAIRPERSON:** Oh, "has this proposal been approved or recommended by the Board IFC".

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And the answer is a special Board IFC  
10 was held this morning to consider this matter and we were comfortable to recommend the approval to the Board. So now this is being sent to Ms Daniels as answers that come from Mr Singh?

**ADV SELEKA SC:** Correct.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** In fact ...[intervenes]

**MS DANIELS:** Can I ...[intervenes]

**CHAIRPERSON:** This part, this question 5 was it among  
20 the questions from Ms Cassim, I'm talking about four questions.

**ADV SELEKA SC:** Yes, that question wasn't there, but it would have been a request made by Ms Veroshni Naidoo.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Ms Daniels will recall, she was here Chairperson and she said she asked kindly ensure that IFC

approves the submission.

**CHAIRPERSON:** H'm, well obviously the question that arises is why Mr Singh was not able to respond to these questions raised by the Board Member on his own being the Chief Financial Officer of Eskom, and why he needed outside assistance.

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

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** And this is about the submission so this  
10 is before the guarantee, it is the submission, I know in his affidavit he gives an answer but the answer relates to the guarantee, why he went out again to seek advice from Eric Wood and he says:

“I further wish to point out that at the time I thought it prudent – but this is the guarantee – I thought it prudent to seek advice from Wood as to the options presented by ABSA Bank regarding the guarantee as he could properly advise us with regard to his past banking experience.”

20 I am not sure whether he deals with this to give the reasons for seeking this advice but I am sure he will explain when he is here.

And Ms Venete Klein had a background in banking as well, I wonder why they didn't ask for her advice.

**CHAIRPERSON:** Yes, okay alright.



**ADV SELEKA SC:** So that email Chair if the Chairperson is still on page 554 at the top of that page is then Ms Suzanne Daniels, after having received the email from Ms Dasinski she forwards it to Ms Merriam Cassim.

**CHAIRPERSON:** It is at page 556?

**ADV SELEKA SC:** 554.

**MS DANIELS:** 554.

**ADV SELEKA SC:** 554 Chair. So then Ms Daniels is able to respond ...[intervenes]

10 **CHAIRPERSON:** Oh.

**ADV SELEKA SC:** Ja, and she also says “see below, best regards”.

**CHAIRPERSON:** At this stage Ms Daniels did you not know the journey that this email had travelled?

**MS DANIELS:** No Mr Chairman I did not know that the journey, the extensive journey that it had taken. My first exposure to that was in 2018 when I received queries from the Mail & Guardian.

20 **CHAIRPERSON:** I mean question 2 was “please confirm that the coal will be purchased at a 5% discount to the price in the current agreement”, why should Mr Anoj Singh not know the answer to that question, why should he go back to Mr Eric Wood and the Tegeta people and Regiments, because that is information that ought to have been known to him at the time of – before there was the

decision to make a submission to the Board, isn't it? Isn't it Ms Daniels, is that not some information that he should have known actually all of them should have known?

**MS DANIELS:** He should have known all of that, you now the financial construct in the submission document came from him, or I assumed at the time that it came from him. It is clear the he had some outside help.

**CHAIRPERSON:** H'm. Okay, Mr Seleka?

**ADV SELEKA SC:** Thank you Chair. Ms Cassim  
10 ultimately responds Chairperson and says she is happy with the responses.

**CHAIRPERSON:** Sorry?

**ADV SELEKA SC:** I say Ms Cassim then approved saying she is happy with the responses, her email is attached to her affidavit Chair which is in a separate bundle.

Chair we could go to those questions, but in the interest of time let's see when those who ...[intervenes]

**CHAIRPERSON:** Well the – I don't want you to abandon important issues, so if it is important to do justice you can  
20 deal with them.

**ADV SELEKA SC:** Ja, I think it may be more appropriate to ask Mr Singh about the questions, his questions, his answers I beg our pardon.

**CHAIRPERSON:** Well that is fine, but it may be that on some we can get information from Ms Daniels, because she

was the Company Secretary and she had a duty to raise questions if she was being instructed to do things that she did not understand, or that were questionable.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So when I say let's try and cover as much as possible I don't mean that we deal with important matters in a superficial way.

**ADV SELEKA SC:** Yes. Well Ms Daniels – I think what I could ask you in regard to these questions, perhaps is the  
10 one – number 4 which is on page 555. The question they asked is:

“Is Optimum the only mine that can supply coal to Hendrina? Have all other supply options been investigated?”

Would you have known the answer to that question?

**MS DANIELS:** No... I mean, the first part is that Optimum is the only mine because it is right next to Hendrina Power Station and it was one of the reasons why Hendrina was  
20 built there. That is from the ministry.

Have all other supply options been investigated? At the time, I would not have known that without having to speak to the operational people.

**ADV SELEKA SC:** Ja. Well, this is might take us back to that question of the owner and proposed owner because at

the time the owners were OCM/Glencore.

And the question is whether as a matter of fact... Well, whether the board was told. Now that is a matter of act. OCM was still supplying coal to Eskom at this time.

So this question which is seeking to enquire from you for the executives whether OCM is the only mine that can supply to Hendrina.

Should it not have been answered by – and that would have defeated the submission – if it was answered  
10 by – the correct facts: Yes, OCM is in fact still supplying to Hendrina. Because that was what was happening at the time. CDH knows that.

**CHAIRPERSON:** And it was supplying at one-fifty?

**ADV SELEKA SC:** It was supplying at one-fifty per ton.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** And it had said: We are coming out of business rescue. Glencore will fund.

**CHAIRPERSON:** H'm.

**ADV SELEKA SC:** And they will carry on with the  
20 agreement as it was. So that question needed a correct answer. What is your comment on that?

**MS DANIELS:** I am not sure I understand the question fully. Are you saying that I should have answered that?

**ADV SELEKA SC:** Okay. No, I am not saying you should have answered that. I am asking, again, whether – if you

were aware that OCM was in fact supplying coal? OCM had undertaken to supply coal at the price of the existing CSA.

**MS DANIELS:** That was part of the meeting that I attend on the 24<sup>th</sup> of November. You will recall from my earlier testimony.

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

**MS DANIELS:** It was mentioned in the submission.

**ADV SELEKA SC:** Yes.

10 **MS DANIELS:** So there is a line in the submission about that the owners would continue with their supply.

**CHAIRPERSON:** But that question was, is Optimum the only mine that can supply coal to Hendrina.

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

**CHAIRPERSON:** The answer does not answer that question. Instead, it talks about means of getting coal at a certain price. It says there is no other means of getting coal at a price of R 150,00 per ton. That is not what was asked. The question was: Is Optimum the only mine that  
20 can supply coal to Hendrina? What was the correct answer to that question at the time, to your knowledge?

**MS DANIELS:** To my knowledge it would have been Optimum as the only mine that can supply Hendrina.

**CHAIRPERSON:** Okay. And then the next question was: have all other supply options been investigated? To you

knowledge, what would have been the correct answer?

**MS DANIELS:** If I said yes, they would have to explain what they were and also highlighting additional costs in terms of logistics to get the coal to Hendrina.

**CHAIRPERSON:** When you look at that answer. There is no other means of getting coal at a price of R150 per ton. To the extent that OCM was supplying coal at that price, that answer was misleading. Would you not agree?

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

10 **CHAIRPERSON:** Because you did not need to – Eskom did not need to have a pre-purchase agreement with Tegeta in order to have coal at R150 per ton from OCM. It did not need that transaction.

**MS DANIELS:** It did not need that transaction Mr Chair. That you are correct. So it is sort of an open-ended answer.

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

**MS DANIELS:** It answers the question on the face of it but it is more what it does not say.

20 **CHAIRPERSON:** Well, no it does not answer the question on the face of it but it seems to serve a certain purpose because the question did not talk about the means. It simply asked: Is Optimum the only mine that can supply coal to Hendrina? Two: Have all other supply options been investigated?

And they say there is no other means of getting coal at a price of R 150,00 but the fact of the matter is, without this transaction with Tegeta, they could and were getting coal from Optimum for R 150,00 per ton.

So the transaction was not necessary for Eskom to get coal ...[intervenes]

**MS DANIELS:** No.

**CHAIRPERSON:** ...from Optimum from R 150,00 per ton.

**MS DANIELS:** No, because that agreement was in place.

10 **CHAIRPERSON:** Yes.

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

**CHAIRPERSON:** So this was misleading. It ...[intervenes]

**MS DANIELS:** Yes.

**CHAIRPERSON:** It sought to convince board members. It sought to say to them: You know, we – this transaction is going to give us coal at a very good price that we do not have. But the fact of the matter is, that was a price that they were having with OCM at the time.

20 **ADV SELEKA SC:** Indeed.

**CHAIRPERSON:** Without any agreement with Tegeta.

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

**CHAIRPERSON:** You accept that?

**MS DANIELS:** I accept that.

**CHAIRPERSON:** And now... You saw these answers

including this one. If you apply your mind to these answers before you sent them off to the board member, Ms Cassim. Or they were sent by Mr Anoj Singh.

**MS DANIELS:** They were sent by Mr Anoj Singh and I forwarded them to Ms Cassim.

**ADV SELEKA SC:** Yes.

**MS DANIELS:** Quite quick ...[intervenes]

**CHAIRPERSON:** Did you apply your mind to them?

**MS DANIELS:** Quite quickly. I did apply my mind to them  
10 because these came from the Chief Financial Officer. So I was not going to – like I said, I was not going to second guess what he had put down there. I had interpreted these questions that you asked more of a funding nature.

**CHAIRPERSON:** Mr Seleka.

**ADV SELEKA SC:** H'm. Alright. Let us see, point – question 4 has – it has an element of confusion in it and it seems to require an explanation from the board in clear terms.

You... I mean, it should – a question asked in  
20 that manner: Is Optimum the only mine that can supply coal to Hendrina?

The board member is either under the impression that Optimum is unable to supply, so we have to help it with a cash injection so that it can supply.

You see that? Because there is a prepayment



request if you look at question 1.

**MS DANIELS:** Yes?

**ADV SELEKA SC:** But that confusion is not clear. Look at question 1 Ms Daniels. It reads:

“Please explain the decrease in inventory days?”

That is on page 554. The submission reads that:

“The coal purchase will be prepaid in terms...”

So I am struggling to understand how this would  
10 translate into working capital saving. And then there is a  
long answer there but it goes on to say:

“This amount, which is the R 1.7 billion, can be utilised to make the prepayment by instituting the pre-purchase agreement which will count as part of working capital.

It will put inventory back to 54-days.

The OCM coal is pledged to Eskom as security and it forms part of inventory.

Under inventory perspective, the transaction  
20 remains unchanged.

Consequently, Eskom is thus in no ways in a financial position than before the transaction but has mitigated the security of supply risk and has funded its working capital financing costs via the discounts being offered by the

potential buyer.”

There we have that potential buyer. It is – do you follow that answer? To me it is convoluted.

**CHAIRPERSON:** I am sorry. You were reading from what page?

**ADV SELEKA SC:** 554 Chair.

**CHAIRPERSON:** 554.

**ADV SELEKA SC:** The answer to question 1.

**MS DANIELS:** Mr Seleka, these questions were asked of  
10 the responsible officials.

**ADV SELEKA SC:** Yes.

**MS DANIELS:** So you know, I would not go and nose pick it. At this point, the board member asked the questions. The Chief Financial Officer provided the answers. And I provide it to the board member. She seemed to have understood them because she was comfortable with them.

I am not sure, you know, how I needed to interrogate at that stage because the questions were asked of the people who submitted – who signed off the  
20 submission.

And this was a financial construct that Mr Singh had introduced. And this was actually the first time that I had seen about inventory days and you know the acting of. So I left it to his expertise.

**ADV SELEKA SC:** H'm. Ja and the use of OCM and

potential buyer, it is so confusing. But Chair, I want to move on to the next point.

**CHAIRPERSON:** Ja, you can do that.

**ADV SELEKA SC:** Yes. Ms Daniels, let us – like the emails we have seen in regard to the – what was that – the drafting of...? You say the emails you are getting a drafting of the submissions or we saw the emails now regarding the answers to Ms Miriam’s questions, Ms Miriam Cassim.

10                    Now let us look at what happens in regard to the underlining agreement which starts on page 724, the terms of which starts on page 724, Eskom Bundle 18.

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

**ADV SELEKA SC:** Because that underlining agreement also has an evolution similar to what we see the pattern to be in regard to this transaction.

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

**ADV SELEKA SC:** Are you there?

20                    **MS DANIELS:** I am getting there. There is a lot of ...[intervenes]

**CHAIRPERSON:** Did you say 724?

**ADV SELEKA SC:** 724 Chair.

**CHAIRPERSON:** There are two emails there. One from Matshela, 2010 and to Ms Daniels. And another one from Businessman to Matshela, 2010.

**ADV SELEKA SC:** That is correct Chair.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** So we have looked at these emails but just in order to contextualise what I would like Ms Daniels to show the Chairperson. Are you there Ms Daniels?

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

**ADV SELEKA SC:** Yes. So that is the beginning of the guarantee terms and the underlining agreement, ultimately. So the email ...[intervenes]

10 **MS DANIELS:** Yes.

**ADV SELEKA SC:** The email comes for Businessman after twelve midnight on 10 December 2015 to Mr Matshela Koko, 2010. It is a two-pager. He forwards that to you at 07:31, *10 December 2015*.

And on the next page, he would have used that two-pager to instruct Mr Moodley of CDH to assist with the drafting of the underlining agreement. Do you see that?

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

20 **ADV SELEKA SC:** Yes. On page 7... Let me see. Page 743.

**MS DANIELS:** Yes?

**ADV SELEKA SC:** 743, it is a repeat of your email to Mr Moodley at the bottom of the page at 08:42.

**MS DANIELS:** Yes, I am there.

**ADV SELEKA SC:** Yes. So it is a repeat of your email

which Mr Moodley receives and he forwards it to – I do not know whether it is mister or miss - Badia(?) Maasdorp.

**MS DANIELS:** It is a mister.

**ADV SELEKA SC:** A mister. Also an attorney at CDH.

**MS DANIELS:** Yes.

**ADV SELEKA SC:** Okay. And that is on the 10<sup>th</sup> of December 2015 and he ultimately replies to you on the 10<sup>th</sup> of December 2015 at 14:24. You see that email at the top of the page?

10 **MS DANIELS:** Yes, I do.

**ADV SELEKA SC:** And the attachment is, Letter Agreement. It says:

“Suzanne, see attached the mock-up version. Should OCM not also be a party?”

He is asking.

“There are obligations on them e.g. issue the credit notes, et cetera and they are actually the supplier.”

Now who did you understand is he referring to  
20 there as OCM, Tegeta or OCM under Glencore?

**MS DANIELS:** OCM under Glencore in the process of being purchased by Tegeta.

**ADV SELEKA SC:** Yes. What he is asking there is because the underlining agreement only has Eskom and Tegeta as the parties to their agreement. Is that right?

**MS DANIELS:** Yes. At the time, yes, we changed the draft of this confrontation.

**ADV SELEKA SC:** Well, then on page 744 you sent an email or the drafts to Mr Anoj Singh and Mr Matshela Koko at 14:47, still on the 10<sup>th</sup> of December 2015. Letter Agreement is the attachment. It says:

“Anoj, Matshela herewith the execution copy of the letter agreement in respect of the above.”

And you go on to say:

10 “Anoj, as discussed, we have not included the date for the fulfilment of CP’s.”

Were the CP’s condition precedence?

**MS DANIELS:** Condition precedence, yes.

**ADV SELEKA SC:** Yes.

“The interest payable. We will need to confirm.”

Now page 749 Chairperson. What does Mr Singh do with what you have sent to him? So on page 7... Let us start on 748. I beg your pardon.

20 **MS DANIELS:** 740?

**ADV SELEKA SC:** Ja, 748.

**MS DANIELS:** Oh, eight.

**ADV SELEKA SC:** There is your email again to Mr Anoj Singh and Mr Koko to the bottom of the page which goes to Mr Anoj Singh. What happens at the top of the

page?

You sent your email at 02:47 p.m. but at the top of the page is an email from Mr Anoj Singh's PA. Again, Ms Phule Nezotsiyana(?) at 15:14 on the 10<sup>th</sup> of December 2015.

It goes to Mr Eric Wood and the attachment again is: Letter Agreement, Tegeta, Eskom, Execution Copy, which is what you sent to them.

“Good day sir, please find above attached.

10 Warm regards.”

Did you know that this had happened?

**MS DANIELS:** No, I did not.

**ADV SELEKA SC:** And the attachment follows on the next pages until page 751. Then turn to page 752. There are two emails ...[intervenes]

**MS DANIELS:** I am there.

**ADV SELEKA SC:** You are there. There are two emails there. The bottom one is from Anoj Singh.

**MS DANIELS:** Yes.

20 **ADV SELEKA SC:** The 10<sup>th</sup> of December 2015. I think it is the same from his PA. It says:

“Good day sir. Please find the above attached.”

Now it is sent to Eric Wood. And what does Mr Eric Wood do with it? Look at the top email.

**MS DANIELS:** Mr Eric Wood sent – he sends it to Salim Essa at Gmail ...[intervenes]

**ADV SELEKA SC:** Gmail.com. 10 December 2015 at 15:15. The attachment is the same: Letter Agreement, Tegeta, Eskom, Execution Copy, Pre-purchase of Coal from Optimum Coal Mine (Pty) Ltd. Did you know about this?

**MS DANIELS:** No, I did not.

**ADV SELEKA SC:** Now we do not see or the investigators have not been able to find how the agreement comes back  
10 if at all it came back to Eskom but the last email we have is on page 753 which is an email from you to Mr Anoj Singh, again attaching what you are saying is the execution copy. This is at 16:14.

And you say:

“Hi, Anoj. Herewith the agreement as amended.”

You see that?

**MS DANIELS:** Yes, I see that.

**ADV SELEKA SC:** Now the amendments are not apparent  
20 from the documents but who would have made amendments?

**MS DANIELS:** The amendments I made here was to ...[indistinct] *[break in transmission – speaker unclear]*

**ADV SELEKA SC:** Did you ...[intervenes]

**MS DANIELS:** Which was the 31<sup>st</sup> of March 2016.



**ADV SELEKA SC:** Oh, did you personally make this  
...[intervenes]

**MS DANIELS:** On Clause 5.1.

**ADV SELEKA SC:** Yes, did you personally make  
amendments?

**MS DANIELS:** We – there were stuff that was not filled in.  
I mean... Sorry, information that was not completed and  
the date was one of them.

**ADV SELEKA SC:** Yes.

10 **MS DANIELS:** So I time stamped it where you can see it  
says 16:00.

**ADV SELEKA SC:** Yes.

**MS DANIELS:** That would have been the one that I  
inserted the dates.

**ADV SELEKA SC:** Are you saying you inserted the date  
for the fulfilment of the suspensive conditions?

**MS DANIELS:** Ja, as discussed with Mr Singh.

**ADV SELEKA SC:** Yes, that was going to be my next  
question. So where did you get the date of 31 March 2016  
20 from which is Clause 5.1 of the document?

**MS DANIELS:** Correct. I got that from Mr Singh.

**ADV SELEKA SC:** Did you know that on the same day,  
10 December 2015, Tegeta/Oakbay was concluding an  
agreement with Glencore/OCH which had exactly the same  
expiry date, 31 March 2016 for the suspensive conditions

in that agreement?

**MS DANIELS:** No, I did not know that at the time.

**ADV SELEKA SC:** You did not know that at the time?

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

**ADV SELEKA SC:** You say you did not know at the time?

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

**ADV SELEKA SC:** Can you hear me?

**MS DANIELS:** It came to light later in the Public Protector's reports and the media.

10 **ADV SELEKA SC:** Just repeat that again.

**MS DANIELS:** It came to light later in the Public Protector's report, the State Capture Report and in the media.

**ADV SELEKA SC:** I see. So what did – I mean if you look at this, the document that relates to an underlining pre-purchase agreement with Tegeta. Why did it have to be sent to Mr Eric Wood and Mr Salim Essa?

**MS DANIELS:** Mr Chairman, I cannot answer that. You are going to have to ask Mr Singh. I do not know.

20 **ADV SELEKA SC:** Okay. And we see that subsequently – subsequent to this exchange... Well, just before that. Did you ask him why should this agreement be subjected to suspensive conditions in the first place? Because the submission required the board to urgently make a decision in order to avert a risk of coal supply.

**MS DANIELS:** At the time I did not ask him Mr Chairman because even with the acquisition of Optimum Mine, there would be suspensive conditions as you would see here because there would be approvals from the regulatory authorities but at the time I did not ask him why the urgency in respect of the first decision.

**ADV SELEKA SC:** Well, you know the submission is made to the board on the basis of urgency. So the question is to what extent this pre-purchase of coal agreement, if you ask  
10 the board to urgently make the decision. That is one. Number two is, why suspend it for three months? Did you ask that other one, the second question?

**MS DANIELS:** No, I did not. I think you are going to have to ask Mr Singh as they were the delegated officials to negotiate and conclude this agreement.

**MR SELEKA SC:** Did you find out from him how he chose the date of 31 March 2016 and not any other date?

**MS DANIELS:** No, I did not.

**MR SELEKA SC:** Did it not surprise you as one of the  
20 persons involved in the drafting of the submission that required a decision by round robin?

**MS DANIELS:** Not on the – it did not surprise me because the regulatory approvals usually took longer so 31 March was a conservative estimate.

**MR SELEKA SC:** But they are approvals in respect of

what?

**MS DANIELS:** The MPRDA, the Section 11 approval, the transfer of the mining right and approval by the Competition authorities but, as we know now, with the benefit of hindsight, those two things came fairly quickly.

**MR SELEKA SC:** Ja, but even at that stage that would not have been an issue because of the way the agreement was drafted. The agreement specifically said, the underlying agreement, that Tegeta was going to purchase coal from  
10 OCM and Tegeta will then on sell to Eskom. So regulatory issues did not stand in the way of the way in which the agreement was drafted.

**MS DANIELS:** No, but you asked me whether I was surprised by the date, so from that perspective I did not raise – it was not a red flag for me.

**MR SELEKA SC:** Ja, but is that an answer if you look at the terms of the agreement? It says:

20 “Eskom Holdings and Optimum Coal concluded a coal supply agreement in terms of which OCM supplies and delivers coal to Eskom. OCM has become the subject of business rescue proceedings. Eskom has obtained a mandate from its board of directors to enable Tegeta to pre-purchase coal from OCM for the supply and delivery of coal in accordance with Eskom’s approvals

framework on substantially the terms and conditions set out in the existing coal supply agreement. Tegeta is in the process of acquiring all shares on OCM.”

Which is a separate matter. But OCM is there, Tegeta is going to pre-purchase coal from OCM and supply to Eskom. Why suspend this agreement? Do you have a response to that?

**MS DANIELS:** I am just reading this again. Okay.

10 **MR SELEKA SC:** Are you looking for the agreement?

**MS DANIELS:** No, no, I am just reading the agreement just to familiarise myself, it has been a while. Okay. I still – well, it does mention the purchase of OCM by Tegeta so I think it was reasonable to expect that in there and it does say that clauses – that the clauses that you read would become effective immediately but they are still subjecto(?). It was a bit – ja, it is confusing.

**MR SELEKA SC:** It is confusing, indeed.

20 **MS DANIELS:** Yes. But for me the date of 31 March was reasonable in terms of the regulatory approvals.

**MR SELEKA SC:** Ja, but that belonged to the acquisition agreement, to the sale of shares agreement, it did not belong to the pre-purchase agreement, if it was any relevant.

**MS DANIELS:** No, I agree with you there but it is in here

now so that is how I understood it.

**MR SELEKA SC:** Then go to page 773, Eskom bundle 18.

**MS DANIELS:** Yes, I am there.

**CHAIRPERSON:** Did you 73, Mr Seleka?

**MR SELEKA SC:** 773.

**CHAIRPERSON:** 773?

**MR SELEKA SC:** Yes.

**CHAIRPERSON:** Okay.

**MR SELEKA SC:** So your email to Mr Singh of the  
10 amended agreement is again reflected there on the bottom.  
Mr Anoj Singh takes your email and forwards it to Mr Eric  
Wood. Do you see that he sent that ...[intervenes]

**MS DANIELS:** I see that.

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

**MS DANIELS:** Yes, I do.

**MR SELEKA SC:** At 4.26 p.m. Mr Eric Wood responds in  
the early evening of the same date, 10 December 2015 at  
16.42 and he is asking:

“Any luck with the guarantee draft? Regards.”

20 In response to Mr Anoj Singh. What did Mr Eric Wood have  
to do with the guarantee?

**MS DANIELS:** Nothing from my perspective, I only learnt  
from Ms Mathepu’s evidence before the Commission that  
he had actually spoken to ABSA about the terms of that –  
of the guarantee.

**MR SELEKA SC:** Yes. Then turn to page 778. 778 is an email now from Mr Koko's PA. Is that Mr Koko's PA? Executive Assistant to Mr Matshela Koko, ja. The signature there, end of the email.

**MS DANIELS:** Yes.

**MR SELEKA SC:** Do you see that?

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

**MR SELEKA SC:** So this email – it is on Thursday 10 December 2015, at 16.56, is addressed to Mr Nath of  
10 Oakbay. Nath@Oakbay.co.za, c.c. Pauli(?) Nzotiana(?)  
08.21 that Mr Singh's PA. Yes, that is correct.

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

**MR SELEKA SC:** And the letter, agreement is attached.

“Please find attached letter for your attention, should you require and further clarity please feel free to speak to Matshela.”

And that agreement is in the next four pages, it is signed by Mr Nath. You were not aware of that correspondence, were you?

20 **MS DANIELS:** Which ones, between the PAs?

**MR SELEKA SC:** Yes.

**MS DANIELS:** No, I was not copied on that but the agreement was signed and I think I got a copy back signed by the parties.

**MR SELEKA SC:** Just in conclusion here on this point.

Page 784 there is a letter from Tegeta 10 December 2015.

**MS DANIELS:** Yes.

**MR SELEKA SC:** Addressed to Mr Matshela Koko providing the banking details. Do you see that?

**MS DANIELS:** Yes, I can see that.

**MR SELEKA SC:** Ja, name of account, Tegeta Exploration, the bank is State Bank of India and the account is given. Now I was surprised by this because when I read the underlying agreement, I saw a clause there which says the  
10 prepayment will be made to OCM. Do you recall that clause?

**MS DANIELS:** The advance payment, yes.

**MR SELEKA SC:** Yes. The agreement expressly said that prepayment will be made to OCM. It says – ja, that is clause 2:

“Eskom has obtained a mandate from its board of directors to enable Tegeta to pre-purchase coal from OCM for the supply and delivery of coal in accordance with Eskom’s approvals framework.”

20 Do you have any comment there? I can also ...[intervenes]

**MS DANIELS:** No, it says what it says.

**MR SELEKA SC:** Let me also read 6.1. Clause 6.1 says:

“Eskom will make an advance payment to OCM to pre-purchase future coal supply in terms of existing coal supply agreement.”



And advance payment to OCM and they seem to have made a distinction between OCM and Tegeta in their contract.

**MS DANIELS**: Tegeta I think was purchasing OCM.

**MR SELEKA SC**: Yes.

**MS DANIELS**: Optimum Coal Mine, ja.

**MR SELEKA SC**: Yes. And now the money is going to go State of Bank of India.

**MS DANIELS**: Well there is also one later for Baroda.

**MR SELEKA SC**: That is on page 786.

10 **MS DANIELS**: Oh, okay.

**MR SELEKA SC**: Account name Bank of Baroda. But now this one comes from Eric Wood and it is addressed to Mr Anoj Singh and banking details are different from the one given in the letter addressed to Mr Koko. So did Eric Wood have anything to do with Tegeta, to your knowledge?

**MS DANIELS**: To my knowledge, no, I do not know. You would have to ask Mr Koko and Mr Singh.

**MR SELEKA SC**: Okay. I think that concludes the issue here. Anything you want to say to the Chairperson before I  
20 move on. I see there was an email from you on page 788 about the condition precedent. One and three were still open. That means were not fulfilled.

**MS DANIELS**: That was subsequent.

**MR SELEKA SC**: Ja, that is 16 March 2016.

**MS DANIELS**: [indistinct] 14.47 yes. The approvals had

not been obtained to transfer the mining licence and their query was whether the guarantee would be extended but it lapsed on the 31 March.

**MR SELEKA SC:** Ms Daniels, can we quickly deal with the 659 prepayment. I say quickly because we have the fax, the fax that is related by Dr Mthethwa before the Chairperson.

**MS DANIELS:** That is why I am smiling because you say quickly.

10 **MR SELEKA SC:** The submission was made or was drafted over the weekend. You were sent a copy of that on Sunday night on the 10 April 2016. We have grappled with the answer to the question why did that meeting take place of the BTC by teleconference, take place on the 11<sup>th</sup>, the night of the 11 April 2016 when there was a BTC meeting scheduled – a prior scheduled BTC meeting for the 13 April 2016? Your answer?

**MS DANIELS:** I was instructed by Mr Khoza to convene the meeting. He was the Chairperson of the BTC at the  
20 time.

**MR SELEKA SC:** Ja and we have asked this question, you would know that, that the draft submission document already had a date of 11 April 2016 when it came to you. How did that happen?

**MS DANIELS:** I am not sure I understand, Mr Seleka, it

came with the date.

**MR SELEKA SC:** Ja, the draft submission – well, then let us do this because I have seen from affidavit you say Mr Zethembe Khoza called you on the 11<sup>th</sup> when you were already at home.

**MS DANIELS:** Yes.

**MR SELEKA SC:** Monday 11 April. What I am asking you is, the draft document that came to you Sunday evening that was exchanged over the weekend on Sunday, it  
10 already had a date of 11 April 2016 on it for BTC meeting. How did that happen if Mr Khoza only got it on Monday?

**MS DANIELS:** Well, at that stage we were still preparing it for the 13<sup>th</sup>, I did not – I did not have any expectation that there will be a meeting on the 11<sup>th</sup>.

**MR SELEKA SC:** Ja, but it is not answering the question, how did the date of 11 April 2015 get to be inserted on a draft document that was exchanged before Mr Khoza called you, according to your version, and said let us have a meeting on Monday the 11<sup>th</sup>?

20 **MS DANIELS:** It came from Mr Mthethwa already and at that stage we were talking about the content. I actually did not check the dates but the assumption was that this was going to the 13<sup>th</sup>, the meeting of the 13<sup>th</sup>.

**MR SELEKA SC:** Who had made that assumption?

**MS DANIELS:** Well, I did because she spoke to me on the

– I think it was late afternoon of the 8 April and asked me how could she get something on the agenda and I said please prepare the submission and submit it as quickly as possible because, you know, we have a meeting scheduled for the 13<sup>th</sup> and Mr Khoza would be the one that would have to approve that submissions.

**MR SELEKA SC:** Well, I – you see, the 11<sup>th</sup>, similar to the 9 and the 10 December 2015 has developments that are taking place parallel to what was happening within Eskom  
10 and that again is the acquisition of OCH by Oakbay. So according to the evidence of Mr Marsden, on the 11 April 2016 he had been approached by Mr Howa and told that Tegeta has a shortfall in respect of the purchase price and that shortfall was R600 million and he wanted some assistance, either the bank defer the payment or to give them a bridging loan. The banks refused. By 15.00 that day he gets a message, Mr Howa, from Mr Marsden that the banks declined their request. Did you know that ...[intervenues]

20 **CHAIRPERSON:** One second, Mr Seleka and Ms Daniels? Okay, please continue.

**MR SELEKA SC:** Thank you, Chair. So did you know that – did you know those facts?

**MS DANIELS:** No, Mr Chairman, I did not know those facts at the time, those came out later when Mr Marsden

testified at the parliamentary inquiry.

**MR SELEKA SC:** Did you know that Dr Mthethwa had been approached by Tegeta, Mr [indistinct] 20.44, firstly with a request to supply coal which later incorporated a requirement or request for a prepayment.

**MS DANIELS:** That is what she spoke to me about over the weekend when we were putting the submission together, yes.

**MR SELEKA SC:** Did you know that – proceed?

10 **MS DANIELS:** I do not think she specifically mentioned Mr Nath's name but she did mention that she had been approached by Tegeta.

**MR SELEKA SC:** She says she – I mean, in the email we see exchanged with you she explicitly says to you that she has not dealt with the issue of a prepayment.

**MS DANIELS:** Ja, what that email means is that she had not dealt with it in the submission.

**MR SELEKA SC:** Yes in the submission but it was only in the resolution.

20 **MS DANIELS:** Yes.

**MR SELEKA SC:** So her evidence is that she had not dealt with a prepayment request before and so she did not know what to do with it.

**MS DANIELS:** So that is why she asked for my assistance.

**MR SELEKA SC:** Oh, so you would have assisted with

the prepayment?

**MS DANIELS:** The drafting, how you put it in the submission, yes.

**MR SELEKA SC:** Yes. You know that she had not been given an offer in writing at that stage over the weekend as you were drafting the submission?

**MS DANIELS:** No, she did not have anything in writing as she testified but she was able to speak to me telephonically about what she had discussed with the  
10 supplier.

**MR SELEKA SC:** Yes. Well, the reason I was putting that to you is because I saw your affidavit saying there should be no confusion about the prepayment because the supplier had put it in writing in the letter dated 8 April 2016.

**MS DANIELS:** I was responding to what she had put in her affidavit, Mr Chairman, but at the time of drafting she did not have anything in writing.

**MR SELEKA SC:** And, as a matter of fact, she does say in  
20 her affidavit that that letter was received only on the 12 April and it was backdated to the 8 April. You would have seen that in her affidavit.

**MS DANIELS:** Yes, I did.

**MR SELEKA SC:** Who came up with the motivation for the prepayment, Ms Daniels?

**MS DANIELS:** I do not understand, Mr Seleka.

**MR SELEKA SC:** Who in the submission crafted or drafted, inserted the motivation for the prepayment?

**MS DANIELS:** I assisted Mr Mthethwa in drafting the motivation for the prepayment.

**MR SELEKA SC:** Ja, we were considering that motivation in the submission against the reason given by the supplier in their offer letter. The motivation in the submission suggests the reopening of the export component of the mine. Do you recall that?  
10

**MS DANIELS:** Yes, I saw that.

**MR SELEKA SC:** And the offer from the supplier seems to talk about increasing the amount of coal and using the money for the purposes of beneficiation. Do you recall that?

**MS DANIELS:** Yes, I do.

**MR SELEKA SC:** What we wanted to understand is whether the two reasonings, are they the same or different?

20 **MS DANIELS:** I am not sure because my formulation was based on my conversation with Ms Mthethwa or sorry, Dr Mthethwa, Mr Chairman. So they should be similar because she was having the conversation with the supplier.

**MR SELEKA SC:** So are you suggesting that she would have given the reasoning for the prepayment to the

supplier?

**MS DANIELS:** Please repeat that?

**MR SELEKA SC:** Are you suggesting that she would have given to the supplier the reasoning for the motivation so that the supplier could put it in their offer letter to Eskom?

**MS DANIELS:** I am not sure that I can say that but based on our conversation that is what she gave or the information that she gave me and if it made its way into the letter then she would have been the conduit between the  
10 supplier and Eskom.

**MR SELEKA SC:** Ja. Did you say anything to Mr Khoza about the request for the meeting – the request made to you to schedule a meeting for the 11 April when there was a meeting coming up on the 13 April 2016?

**MS DANIELS:** Yes, I did, Mr Chairman, Mr Khoza – I said to him well, we have a meeting in 48 hours, I mean – well, it was less than 48 hours because it was late Monday evening and he said that the operations team had approached him and that is was urgent.

20 **MR SELEKA SC:** You would have seen some of the board members who came here and the affidavit of Mr Khoza saying they were misled by you and Dr Mthethwa and you were colluding with Tegeta. What is your comment on that?

**MS DANIELS:** On the collusion aspect I think Mr Khoza is



wrong, we were – I was assisting my colleagues and I know that was – it looks problematic but that is how we dealt with it because they were under pressure from Mr Koko and I am not sure about Mr Khoza but I know Mr Koko. In terms of the collusion, my meetings that I testified about with Mr Essa was about the suspensions and later with the Guptas was about Mr Molefe suspension matter and had nothing to do with coal. In fact I was not aware that Dr Mthethwa had met with the Guptas regarding the coal  
10 issues, so I reject his version that we colluded. He was well aware of the reason for the meeting, he was the one who called the meeting, he was the Chairman of the BTC, it was his prerogative to have the meeting, not mine.

**MR SELEKA SC:** Okay, if the – well, the assumption that the date of the 11<sup>th</sup> in the draft submission over the weekend could only have come from you be a fair assumption or unfair to you?

**MS DANIELS:** I think that is unfair to me. I was not the originator of the document, I had advised Dr Mthethwa that  
20 the meeting was going to take place on the 13<sup>th</sup>, it was a schedule board tender committee meeting, the officials would have been aware of that.

**MR SELEKA SC:** Dr Mthethwa has said that, in her affidavit, there was no reason why the BTC could not wait until the 13<sup>th</sup> of April. I think Mr Koko says something to

that effect, which means that there was nothing so urgent to make the BTC meet on the 11<sup>th</sup> of April 2016. What is your comment on that?

**MS DANIELS:** These were the responsible officials who would have motivated for the meeting, Mr Koko signed off as the responsible executive, he bypassed his own subordinate, that is Mr Mboweni and signed off on these documents. So he should have been aware or he ought to have been aware that the meeting was going to, you know,  
10 or the urgency.

And it also is contrary to what he had said in Parliament about understanding why the meeting was urgent for the 11<sup>th</sup>. He talked about, he once again talked about supply issues, and demand that are not etcetera. So I contest, you know that he did not know that that the meeting - while he was the one who motivated for the urgency. If it was not so then he would have to answer for it.

**ADV SELEKA SC:** I see. Now, the BTC did ultimately  
20 have a meeting on the 11<sup>th</sup> - on the 13<sup>th</sup> of April 2016. Did you attend the BTC meeting?

**MS DANIELS:** Yes, I did.

**ADV SELEKA SC:** And we see from the minutes that Mr Singh tendered an apology to the BTC about what he said were issues he had not disclosed to the BTC regarding the

going concern of Tegeta, Tegeta's going concern status?

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

**ADV SELEKA SC:** Can you tell the Chairperson a little bit about what those issues were?

**MS DANIELS:** Mr Singh pointed out to the Board members, Mr Chairman, that Tegeta was having issues with the banks. He did not - I do not recall if he specifically mentioned, but from what was happening at the time, they were facing their bank accounts being closed.

10 I think he also worked out that the surety that that he had accepted was not acceptable and that is something else needed to be put in place, and then he also did a cash flow analysis based on what was already contracted to Eskom by them.

**ADV SELEKA SC:** So Tegeta's bank accounts had been closed?

**MS DANIELS:** I think they were in the process of being closed Mr Chairman I am not sure that they were still operating.

20 **ADV SELEKA SC:** Well it shows that they were, the minutes shows that they were closed or frozen.

**MS DANIELS:** Oh, frozen so they were in the process of being closed then.

**ADV SELEKA SC:** But go further about the security because there were certain things you needed to do prior

to the pre-payment being made. One of them was to consider whether this was a feasible transaction for Eskom.

**MS DANIELS:** Yes, the meeting of the 11<sup>th</sup> had asked, had tasked him with assessing whether this was financially viable for Eskom to enter into and what he then did was he looked at their status for the next period, I think it was next three to 12 months, and he had put in place a session of revenue.

10           And he had come back and said that this was not viable and that alternative security would have needed to be found for Tegeta and this is when the issue of pledge and security in the form of the shares of Tegeta was raised, and he said that that was more acceptable to Eskom.

**ADV SELEKA SC:** When you do say that in your affidavit, but by the time the payment was made, what was the position in regard to those pledges and securities?

20           **MS DANIELS:** Those pledges and securities were not in place yet Mr Chairman and I had not yet completed the necessary paperwork for that, when the payment was made it was actually made earlier in the day based on – and this was based on the evidence of Mr Snell Naga, before the Commission, and listening to that, and knowing that at the time when that payment was made, the pledge and security

agreements were not yet in place.

They were signed towards the end of the day, because there were issues with the share certificates that were presented to us.

**ADV SELEKA SC:** Yes, so you say in your affidavit:

10 “Mr Singh further advised the BTC that Tegeta had been engaged with and the security now being offered basically constituted a pledge of all Tegeta shares as security for the pre-payment. Effectively, Eskom would hold the assets of the company and be the owners of the coal mine and all its resources. There was no mention of a discount at this feedback, neither the economic viability of the transaction.”

**MS DANIELS:** That is, sorry.

**ADV SELEKA SC:** Please proceed.

**MS DANIELS:** That is correct I do say that in my affidavit at paragraph 83.

20 **ADV SELEKA SC:** Yes, you also say at 85, the pledge and security agreement was not yet in place.

**MS DANIELS:** That is correct.

**ADV SELEKA SC:** Did you draw that to the BTC's attention?

**MS DANIELS:** When the payment was made I was not aware that it was made on the day. The pledge

agreements, I was excused from the BTC meeting of the 13<sup>th</sup> to go and draft the pledge agreements and put them in place.

**ADV SELEKA SC:** So when did you become aware that payment was made?

**MS DANIELS:** Round – with timing of the payment I was, I became aware when Mr Naga testified as to how that payment was actually made, and the time at which it was made, and that made me realise that at the time that if - I  
10 think it was 12 o'clock or, you know it was very early in the day, it was not practically possible that it was made against those pledge agreements because I only completed it in late afternoon.

**ADV SELEKA SC:** Then let me just quickly paint the picture for you because this agreement is concluded or the pre-purchase submission, pre-payment submission made in April 2016 leads to the conclusion of an agreement, a short term agreement with Tegeta. But this time Tegeta had been in short term agreements with Eskom in respect of  
20 our Arnot Power Station from January 2016.

So they have a short term agreement in January 2016 and another short term agreement in February 2016, which was to end in April 2016. Those agreements Dr Nteta has confirmed in respect of those agreements, that Tegeta did not ask for a pre-payment. Were you aware of

these facts?

**MS DANIELS:** Not to that detail Mr Chairman.

**ADV SELEKA SC:** Okay, were you aware that Tegeta was supplying Eskom with coal at Arnot Power Station?

**MS DANIELS:** I was not aware of the specific Arnot agreement until the submission, I was aware that they were supplying at Brakfontein.

**ADV SELEKA SC:** Well, then they were supplying at Arnot and Dr Nteta has said the supply plan of April 2016 cannot  
10 be relied upon as a reason for urgency for this decision, for those two things, and there was in fact also no reason to ask for a pre-payment for the extension of the agreement that at the time existed.

The only motivation, and I would like to hear your comment on this as received from the evidence was again Eskom taking a step to financially assist Tegeta in paying what on that day of the 11<sup>th</sup> was a shortfall by Tegeta to pay off the purchase price, in respect of OCH. Your comment on that?

20 **MS DANIELS:** Firstly, I was surprised by Dr Nteta's comments at the Commission, as she and Mr Mabalane fielded quite a lot of questions on the 11<sup>th</sup> as to the urgency, and as to the pre-payment, and as to why it was required, you will see that in the minutes.

Subsequently, I would agree with you based on

what we know now that this transaction was more to assist Tegeta in acquiring optimum than the, you know, what is the word, the facts put before the BTC in the submission, that this was an emergency.

**ADV SELEKA SC:** Chair we will show the evidence in due course of that money how it travelled from Eskom to Tegeta and the Bank of Baroda ultimately. Ms Daniels we did touch on the penalties when you were here last time, did we?

10 **MS DANIELS:** I am not sure Mr Seleka it has been a while.

**ADV SELEKA SC:** Ja, but anyway, what is intriguing about these penalties that even before Eskom issued a letter of demand in July 2015. CDH the attorneys for Eskom at the time, say that they had advised Eskom of the challenges in regard to not only the calculation of the penalties and the methodology, but also the evidence to prove the figures that Eskom had calculated in order to arrive at that R2.17billion.

20 They talk about a memo 11 – at least at the very latest in March 2015 raising these concerns, but we know that Mr Koko and Mr Brian Molefe had said that – and they do in their affidavit, that Eskom was entitled to this R2.17billion. Were you not aware of OCH's concerns in regard to this amount before the letter of demand?



**MS DANIELS:** I was not involved in the matter that time Mr Chairman, but what I can tell you from my own experience with the Optimum contract is that Eskom actually did not manage that contract very well and so the calculation of penalties has always been an issue of contention with the supplier, from the BHP Billiton days. I was in Primary Energy at the time and I did manage some arbitration issues around it and we always had a problem proving the penalties. It was not consistent, so I would  
10 not be surprised that there was that memo at that early stage of the game.

**ADV SELEKA SC:** So when did you become involved with the claim for penalties?

**MS DANIELS:** It was late 2016 when I took over from Mr Mayo Silanco as Acting Head of Legal and Compliance.

**ADV SELEKA SC:** And you say in your affidavit that your observation was that Mr Koko had shown a keen interest in the matter?

**MS DANIELS:** Yes he did, at that stage he had just been  
20 appointed Acting Group Chief Executive and one of the first things that he said to me is that he would be happy to settle at roundabout R500million on that claim, and I was surprised, I hadn't had the time yet to study all the documentation, I did caution him that we were already in arbitration and you know how did we get from R2.1billion to

R500million.

**ADV SELEKA SC:** Was that your question to him?

**MS DANIELS:** Yes.

**ADV SELEKA SC:** Was that your question to him?

**MS DANIELS:** Yes.

**ADV SELEKA SC:** And what was the response?

**MS DANIELS:** I don't think he gave me a proper response, he just said that he would be happy to settle the matter, he wanted it off his desk.

10 **ADV SELEKA SC:** But the matter ...[intervenes]

**CHAIRPERSON:** Mr Seleka we might have to take an adjournment or some time, what is your assessment, I suspect that there are still quite some matters to deal with.

**ADV SELEKA SC:** I have the last matter of McKinsey Trillian.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** I could take less than 30 minutes with it.

20 **CHAIRPERSON:** But the penalties one aren't there still quite some issues, the opinions from CDH and so on?

**ADV SELEKA SC:** Ja, there is ...[intervenes]

**CHAIRPERSON:** What is your assessment?

**ADV SELEKA SC:** If she doesn't – but the tricky part was – it is not a tricky part but the distinguishing aspects with Ms Daniels is that if she did not know about these opinions

given already in 2015 and she comes later once can go into the details of them with her.

**CHAIRPERSON:** Well it may well be that we must either make another time available for us to continue with that, because while we want to finalise the evidence of as many witnesses as possible within a short space of time we nevertheless want to deal with issues properly still.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** So maybe we could find time. In next  
10 week I will be having quite a few evening sessions, maybe we could look at the possibility of an evening session with her during the week after next. Which week are you – are you here during that week?

**ADV SELEKA SC:** That is the one I am in, the first week of March Chairperson.

**CHAIRPERSON:** Oh is that the first week of March.

**ADV SELEKA SC:** Yes, I could just enlighten the Chairperson ...[intervenes]

**CHAIRPERSON:** H'm?

20 **ADV SELEKA SC:** I could inform the Chairperson in regard to recent correspondence with Mr Anoj Singh's attorneys, I have seen correspondence from them that they would be available either on the 11<sup>th</sup> or the 12<sup>th</sup> of March. For Eskom Chair had given him a date of the 3<sup>rd</sup> of March, so that becomes an open slot, if the Chair accommodates

him on the 11<sup>th</sup> or the 12<sup>th</sup>.

**CHAIRPERSON:** Well isn't the 11<sup>th</sup> or 12<sup>th</sup> somebody else's week, Transnet's week?

**ADV SELEKA SC:** I think the date of 11/12 was proposed through him in the letter from Transnet work stream.

**CHAIRPERSON:** Yes, but he therefore can't say – he can't propose to take Transnet's slot and give it to you isn't it?

**ADV SELEKA SC:** [laughing]

10 **CHAIRPERSON:** From what you are saying it seems that he was saying that he would be available during the Transnet week for Eskom evidence?

**ADV SELEKA SC:** I think he was dealing with both Eskom and Transnet at the same time Chair.

**CHAIRPERSON:** Yes, but they are separate.

**ADV SELEKA SC:** They are separate issues.

**CHAIRPERSON:** Yes, so in regard to your week he hasn't given anything?

**ADV SELEKA SC:** No.

20 **CHAIRPERSON:** Ja, well – but he has been told that we don't have time in terms of days so has to ...[intervenes]

**ADV SELEKA SC:** I will engage further.

**CHAIRPERSON:** ...make himself available, so but during the week of the first of March, that first week of March you say you will be doing Eskom evidence.

**ADV SELEKA SC:** Correct yes.

**CHAIRPERSON:** And did we finish Ms Klein's evidence?

**ADV SELEKA SC:** We did Chair.

**CHAIRPERSON:** We are done with her?

**ADV SELEKA SC:** We are done with her ja, we finished by videolink.

**CHAIRPERSON:** Why does it ...[intervenes]

**ADV SELEKA SC:** Am I not giving a convincing answer?

**CHAIRPERSON:** It seems that you are not sure. I am  
10 trying to look at the witnesses that we haven't – we still  
need to do under Eskom other than Mr Koko, Mr Anoj  
Singh, Mr Brian Molefe and Ms Lynn Brown.

**ADV SELEKA SC:** Yes, Mr Zwane.

**CHAIRPERSON:** Mr Zwane.

**ADV SELEKA SC:** Mr Romeo Khumalo.

**CHAIRPERSON:** Romeo Khumalo.

**ADV SELEKA SC:** And Mr Tsotsi has tendered to come  
back.

**CHAIRPERSON:** Ja.

20 **ADV SELEKA SC:** To deal with all the allegations coming  
out here against him.

**CHAIRPERSON:** Ja, so we still have quite a few  
witnesses on Eskom.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** I think let us – Ms Daniels?

**MS DANIELS:** Yes sir?

**CHAIRPERSON:** How is our situation, to what extent would you be able to be available at short notice, when I say short notice like two days notice, three days notice, generally speaking?

**MS DANIELS:** Generally speaking that will be fine Mr Chairman, it is just bearing in mind the time difference.

**CHAIRPERSON:** Yes, no, no subject to you being accommodated on the time, two days, three days notice  
10 might well work, be fine for you?

**MS DANIELS:** Yes, that will work.

**CHAIRPERSON:** Okay, alright. Okay I think let us adjourn and we are going to try and have Ms Daniels back to finish her evidence. Your estimate is how much time do you need to finish all her evidence and having done justice to the issues but not too much time.

**ADV SELEKA SC:** Yes Chairperson if we go into the details of the opinion of the CDH we could take an hour with Ms Daniels, an hour, an hour thirty minutes, ja that's  
20 my estimation.

**CHAIRPERSON:** That is for everything?

**ADV SELEKA SC:** For the balance of what is remaining.

**CHAIRPERSON:** Oh, okay, so there is not a lot that is left, I just assumed it was still – okay alright, no we should find time.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay we will – I think Ms Daniels we will stop here for today but we will make arrangements. Mr Seleka thinks that more or less an hour, another hour of your evidence might be enough to complete your evidence, so maybe if it takes longer it might be an hour and a half, so we will see but they will be in touch with you to see on what day we could do that.

10 It seems to me – oh by the way because of the difference in time we wouldn't be able to – I wouldn't be able to hear your evidence in the mornings before we start at ten, because you would be fast asleep at the time.

**MS DANIELS:** Yes.

**CHAIRPERSON:** Okay, okay we will make a plan and then we will continue and then complete your evidence.

**MS DANIELS:** Thank you Mr Chairman.

**CHAIRPERSON:** Okay, thank you very much, okay let us adjourn then, and I think next week I think I am listening, I will be hearing evidence relating to PRASA, I am just  
20 saying this for the benefit of the public and the media, but I think next week it is PRASA related evidence.

Okay, we will adjourn for the day, thank you to everybody for sitting until this time and working until this time.

We adjourn.

**ADV SELEKA SC:** Thank you.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 22 FEBRUARY 2021**