

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

16 MARCH 2021

DAY 361



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 16 MARCH 2021

CHAIRPERSON: Good afternoon Mr Seleka, good afternoon everybody.

ADV SELEKA SC: Afternoon Chairperson.

CHAIRPERSON: Are we ready?

ADV SELEKA SC: We are ready Chairperson.

CHAIRPERSON: Good – good afternoon Ms Daniels.

MS DANIELS: Good afternoon Mr Chairperson.

CHAIRPERSON: We are grateful to you for agreeing to
10 come in and continue with your evidence this afternoon in
circumstances where you were only scheduled to continue
with your evidence on Friday. We are happy that you were
able to accommodate the commission.

MS DANIELS: You are welcome Sir.

CHAIRPERSON: Thank you.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Please administer the oath or affirmation
again.

REGISTRAR: Please state your full names for the record.

20 **MS DANIELS:** Suzanne Margaret Daniels.

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

MS DANIELS: No.

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

MS DANIELS: 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.

MS DANIELS: So help me God.

CHAIRPERSON: Thank you.

ADV SELEKA SC: Thank you Chair. Ms Daniels thank you again for making yourself available. Chairperson with the
10 arrangement made with Ms Daniels coming up today is that she will deal with certain aspects of her evidence which will exclude the last item we were dealing with with her which was the penalties and the details on the penalties, the calculations, the concerns that were raised by CDH what – she will deal with that on Friday when she comes back at two o'clock again.

For present purposes there are certain items of her evidence that she will deal with and that Ms Daniels emanate mainly from the allegations made by Mr Koko in
20 relation to yourself and then we will deal lastly with the McKinsey Trillian matter insofar as it pertains to your involvement.

You follow that?

MS DANIELS: Yes. Yes I do.

ADV SELEKA SC: Thank you. So even though we are not

going to deal with the – the penalties Ms Daniels we were busy in your last appearance leading your evidence on the penalties but I would like you to by reference to your affidavit explain to the Chairperson and I will give you're the reference now.

Chairperson that will be her affidavit on the transactions which is Eskom Bundle 18(a) it is Exhibit U34.1 on page 236.

CHAIRPERSON: I have got it.

10 **ADV SELEKA SC:** Thank you Chair. Ms Daniels deals specifically with the – with the transactions from page 264 with the penalties.

Ms Daniels what I would like you to explain to the Chairperson as you said last time that the concerns that were raised by CDH were communicated to the Executives; could you be specific in regard to the Executives with whom those concerns were raised and what was the attitude of the Executives in response to those concerns?

20 **MS DANIELS:** Mr Chairman just to give you context I – I took over the – the matter in late 2016 when I started acting as Head of Legal and Compliance. There had been a number of opinions as you will – we will go through on Friday.

There were a number of concerns raised by CDH and I started – I also asked him to do an assessment on

the merits and I started discussing these with Mr Singh and Mr Koko. The reason for discussion with Mr Singh he was in his capacity as CFO he was my immediate superior and as Mr Koko was the acting Chief Executive at the time we discussed it with him as well.

I took them through the various concerns that were raised in the assessing the evidence I had asked them you know particularly Mr – Mr Koko because he had been operationally involved and I think it was early December
10 when he changed from you know the litigation posturing to saying that he would be quite comfortable if we settled the matter at around R500 million.

I was quite surprised because you know the posture up until that point or Eskom's position had been quite strong about litigating and going to arbitration on the matter.

Thereafter when we were sort of going through the evidence I once again go to him and said you know we have these issues with the evidence as presented. At that
20 stage the person who had calculated the penalties, the original sheets had actually left the employ of Eskom. There were technical reports that showed that you know the substance – the substance of the claims that Optimum was making may – may have merit. We did not have the technical evidence to sort of counter it at that stage.

So these are all the issues that we were discussing in this period. And the – the attitude was well you know we might as – we should work towards settling the matter.

I was quite hesitant to do that given the publicity that we had – Eskom had made about this matter and I suggested that I was not going to make this decision on my own. I went – I wanted to take the matter to the board Tender Committee.

ADV SELEKA SC: Can you recall the basis on which Mr
10 Koko suggested that the claim be settled at R500 million?

MS DANIELS: He actually had no basis other than he wanted the matter to go away. You know there was not a technical basis or a legal basis or a response to what I was saying. It was actually in a meeting that we had and where I was briefing him on the issues that we have had in the matters – in the litigation matters they said he would be comfortable settling the matter at around R500 million that was the figure that he could live with.

ADV SELEKA SC: And what was Mr Singh's attitude or
20 reaction?

MS DANIELS: Mr Singh was – was more you know looking at the figures and – and he said if you know identify this and 00:10:17 the figure would be around R577 million and that he would also – he would be able to – to live with that as well.

ADV SELEKA SC: You said you refused the proposal to settle at R500 million what was your basis for refusing?

MS DANIELS: I think my basis was not from you know objectively it would – that would come out later. Objectively it would have been – it would have been prudent to settle.

My position at that point when I had just taken over in late 2016 was that we had made such a big publicity – I do not want use the word stunt but it had been a very
10 public statement that Eskom was going to claim R2 billion from Optimum.

We had just now gone through a change of ownership, new owners and it seemed sort of an abrupt turnaround that we would now be willing to settle the matter at R500 million.

My reasoning was that we should at least go through a legal process. It should not be Eskom withdrawing the claim and then settling at this stage.

ADV SELEKA SC: No. Could you please tell the
20 Chairperson about the memorandum that you and amongst other Mr Snehal prepared and signed I think you submitted it to the board – to the BTC.

In that memo if you please can tell the Chairperson whether you recommended settlement at any particular amount and I say this because Mr Gert Opperman has

given a figure of R740 million and in Mr Snehal's affidavit we came across reference to R1.17 billion as the potential claim that Eskom would have had against Tegeta.

So in your memo if you could tell the Chairperson what is it that you told the BTC?

MS DANIELS: Just – I actually – what I did in the memo to the BTC Mr Chairman is – is extract the relevant bits from the CDH opinion which was attached to the memo. It was quite in detail. We also ex – we also explained at the
10 meeting of I think it was – it was February the minutes are in the – in the bundles the – the issues involved.

I think the reason that the claim – there were various basis for calculation and as time went by depending on the formula that you used one would get to a different – different calculation.

So the – the amount varied from about R479 million to R1.17 – R1.7 billion and you will see that later once the entire exercise had been done we were comfortable with recommending the R577 million.

20 On my own estimation and based on my experience I had also estimated around R700 million would be the claim but because of all the various inputs into the spread sheet there was no consistent approach to how it was dealt with and you know while we each had opinions there had to be an objective verification and CDH had at one stage had

the R1.17 – R1.17 billion as a figure.

And then as – as time went by we did not have the technical evidence to support that nor did we have people that had been consistently involved in the matter to actually give this bad kind of evidence to support it. And it was on that basis you will see that we went to the BTC explained in detail; BTC was actually quite I would say irritated with me for wanting to take them through that detail but I wanted the board to be absolutely clear and
10 informed as to what we had – what the decision was based on and what the – why we were asking for a mandate to settle instead of just you know accepting the settlement.

ADV SELEKA SC: When Mr Molefe was here; Mr Brian Molefe he mentioned that the figure of R2.17 billion was properly documented. Your comment on that?

MS DANIELS: I – I disagree with him there was – there has not been in my experience; in my tenure at Eskom there has not been a consistent contract management approach to Optimum to coal contract so the evidence that
20 we had there was a lot of documentation but it was consistent and would stand the test of – of legal rigour that para would dispute and because as you will see from the CDH opinions there was not a consistent approach to how these penalties were calculated or applied and you know I – I do not agree with him.

ADV SELEKA SC: Hm. Yes I think you should make it clear whether the ultimate view which you submitted to the BTC to settle the claim at a lesser amount than you had – than you had in mind either the R740 million, either the R1.1 billion that had been suggested by CDH give us a sense of whether the factors that motivated the settlement arose only in 2016 when you took over or were they there from the very beginning when the claim was instituted against OCM under Glencore?

10 **MS DANIELS:** Mr Chairman the issues were – were there from the beginning in terms of the basis for calculation of the claim. You will see from the opinions submitted attached to Mr Moodley’s affidavit from CDH that in 2015 there were already issues before the issuing of the summons, before the mention of the claim. I think even Mr Bester testified that there was – he was sceptical as to the amount. He raised the risks with Mr Molefe and these were ignored.

I was not you know around at that time I was not
20 involved in the matter that time. I recall being called into one meeting with myself, Mr Bester, Mr – Advocate Silanko who was the Head of Legal at the time and Mr Moodley and we – they did explain – the three of them explained to Mr Molefe and Mr Koko that you know these were the issues. And notwithstanding that explanation from three people

involved in the matter they were adamant to go ahead with the institution of the claim.

ADV SELEKA SC: Hm. Can you recall exactly when was that meeting?

MS DANIELS: That meeting was in 2015 I think it would have been around early 2015 because there was a meeting scheduled with Glencore around about either that day or the next day.

ADV SELEKA SC: Okay. Now in regard to the emails that
10 Mr Koko sent to Infoportal from the 25 – no the 20th of July 2015 when he comes back from suspension Mr Koko has said that – has in fact conceded that this email address belongs to a person outside of Eskom but he has nonetheless maintained that after every email that he sent to Infoportal you and him and Dr Ngubane would have a meeting about the document attached to the email.

What do you say about that version of his that you had meetings every time after he sent the email to Infoportal?

20 **MS DANIELS:** Mr Chairman that is un – untrue. I mean there was at no stage that that – those meetings happened in the manner – there were no meetings subsequent to emails. I did not – I did not print out the information for Dr Ngubane. Dr Ngubane was not an Executive Chairman so he would not get involved in the matters that were on those

– those emails in transactions in the manner that Mr Koko is trying to present to the commission.

Also you know I noticed that one – one of those emails was about the R1.68 billion guarantee. We – Mr – if that was sent to him we would not meet there was no time at that time to meet about those guarantees and we would not have gone into the detail that the – that Mr Koko seeks to present to the commission.

ADV SELEKA SC: Hm.

10 **CHAIRPERSON:** Mr Seleka.

ADV SELEKA SC: Yes.

CHAIRPERSON: The emails that Mr Koko was talking about in this context do you have any recollection whether Ms Daniels was copied on them by Mr Koko so that they would go to the Infoportal email address and to her? Do you have any recollection of that or some of that may have been?

ADV SELEKA SC: I have – I have the answer - ah no Chairperson. The emails were not copied to her.

20 **CHAIRPERSON:** Yes.

ADV SELEKA SC: There is only one email it is not even copied it is a forwarding to her.

CHAIRPERSON: Ja.

ADV SELEKA SC: The one which she has just mentioned of the guarantee.

CHAIRPERSON: Yes.

ADV SELEKA SC: It came from Infoportal on the 10th of December 2015 setting out the terms of what should be the guarantee. That email Mr Koko forwards to Ms Daniels' email address and Ms Daniels then instructs CDH on the basis of that email.

CHAIRPERSON: Well I am just thinking about Mr Koko's version.

ADV SELEKA SC: Yes Chair.

10 **CHAIRPERSON:** Which you have – out of which you have just restated because it is common cause that he sent those emails to the Infoportal email address.

ADV SELEKA SC: Yes.

CHAIRPERSON: It is to be accepted that it seems that therefore those emails would go to whoever was using the Infoportal address.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** At this stage the evidence does not suggest that it was Ms Daniels who was behind the Infoportal address. In other words that whoever was sending emails to the Infoportal email address was communicating with Ms Daniels. I think the – so far there is no evidence to that effect.

ADV SELEKA SC: That is right Chair.

CHAIRPERSON: So – and except for what Mr Koko said

he was told by Ms Daniels.

ADV SELEKA SC: Yes.

CHAIRPERSON: Namely that the Infoportal address was Dr Ngubane's address.

ADV SELEKA SC: Yes.

CHAIRPERSON: Factually the evidence does not suggest that Dr Ngubane was the person to whom correspondence was directed.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** By whoever was sending emails to the Infoportal email address.

ADV SELEKA SC: Correct.

CHAIRPERSON: Therefore if that is all correct the question that would arise is on Mr Koko's version and I mention that because he probably is listening or watching so he and his lawyers may know what I am thinking.

ADV SELEKA SC: Yes

CHAIRPERSON: On his version how would Dr Ngubane and Ms Daniels have received those emails of his?

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Because they would not have gone to them. He accepts too now that the Infoportal email address for somebody else.

ADV SELEKA SC: Yes.

CHAIRPERSON: So whatever emails he sent using that

email address those emails were going to somebody else not to Dr Ngubane and not to Ms Daniels. So when he says he had meetings with them and they had those emails how could those emails have landed in their hands?

ADV SELEKA SC: Correct.

CHAIRPERSON: So that – that is one of the questions he would have to deal with.

ADV SELEKA SC: Yes.

CHAIRPERSON: On his version.

10 **ADV SELEKA SC:** Yes. Correct.

CHAIRPERSON: Ja okay alright. You understand that Ms Daniels? You were following me?

MS DANIELS: Yes Mr Chair. Yes Mr Chairman.

CHAIRPERSON: Yes.

MS DANIELS: I was following. We did not have those documents Mr Chairman when he – when he sent those emails.

CHAIRPERSON: Yes.

20 **MS DANIELS:** Some of – some of those transactions I do – I do recall but that was based on the fact that Ms Mtetwa mentioned them and also that they appeared before the – the board sub-committees.

CHAIRPERSON: Hm.

MS DANIELS: It is in that context that I recalled it but not from an email from Mr Koko or not from a meeting from –

with Dr Ngubane, Mr Koko to specifically discuss those transactions.

CHAIRPERSON: Hm.

ADV SELEKA SC: Ja.

CHAIRPERSON: Okay you must just remember Mr Seleka.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: At some stage Dr Ngubane would need to be questioned about this part of Mr Koko's evidence.

ADV SELEKA SC: Correct.

10 **CHAIRPERSON:** To see what he knows about this version.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja okay.

ADV SELEKA SC: Chair I – I have already long ago reached out to his attorney and asked him to provide us with an affidavit.

CHAIRPERSON: Yes.

ADV SELEKA SC: And I have also recently asked him – followed up on that. I understand from him that the draft is ready but the client is going through it which is Dr

20 Ngubane.

CHAIRPERSON: Okay.

ADV SELEKA SC: So we will ...

CHAIRPERSON: Yes.

ADV SELEKA SC: Hopefully give you 00:29:00.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Ja. Ms Daniels talking about your knowledge of the – some of the transactions you see in those emails we have when Mr Koko was here tried to compare those transactions to the list that you have attached to your affidavit – I mean you superimposed on your affidavit but you also attached it to your supplementary submission to the Parliamentary Portfolio Committee. Are you able to take us through that and see the extent to which there is a comparison between the two?

10 **MS DANIELS:** Just that I can ...

ADV SELEKA SC: I can tell you where the list is.

MS DANIELS: Yes, do that.

ADV SELEKA SC: Okay. It is in Eskom Bundle 8. I will use your supplementary submission to the Parliamentary Portfolio Committee on page 87.88.

MS DANIELS: 87 point...?

ADV SELEKA SC: 88.

MS DANIELS: 88. Okay I found it.

ADV SELEKA SC: SMD ...[intervenes]

20 **MS DANIELS:** Mr Chairman, I... Sorry.

ADV SELEKA SC: Sorry. SMD-4.

MS DANIELS: Ja, I have it.

ADV SELEKA SC: Okay.

CHAIRPERSON: Okay.

MS DANIELS: Mr Chairman, I submitted this to the

Parliamentary Portfolio Committee in 2018 already but its significance grew when I listened to Ms Matshepo's evidence and as well as some of the evidence of Mr Koko in relation to the emails.

So I then went through the list again, and you know, Mr Koko tried to distance himself from the transactions but it is quite important for the Commission to note that in these transactions Mr Koko was either the, what in Eskom terms, is the end-user, was the recipient of
10 the service or was the driver or, you know, the person responsible for those transactions to take place.

So when he talks about this list, I was quite taken aback by the manner in which he distanced himself. I, at no stage, came to him with this list. On his own evidence, he says that, you know, I would not have at that stage, been able to have so much detail, which is true, because I did not know this.

This would not also originate from the board's side because these transactions were extremely
20 operational transactions. The ones that are of significance for the purposes that I could – of this Commission that I could tie in with the evidence of other people, was especially when Ms Matshepo testified, was the Duvha 3 which is now Item 1 on the list.

ADV SELEKA SC: Yes?

MS DANIELS: And you will see that is valued at R 5 billion. Now the reason the figures are of significance for what I, you know, my assessment when I relooked at it, because she was very specific in saying that this for – you know that Eskom did not need these services.

And when you look at the Duvha 3 transaction itself, it was an engineering transaction. The Duvha 3 boiler exploded and needed to be replaced. At one stage, Mr Koko was the Engineering Manager at Duvha. At the
10 stage when this transaction was in the process, he was Head of Engineering. He was also the Head of Group Technology and Commercial which then took part – which then – in his capacity he oversaw the engineering, the procurement of, you know, the replacement boiler.

So he would have been intimately aware of this transaction. You know, I would not be able to go to him with this kind of paper and give him this value and ask him for an explanation. That is absolute nonsense.

He would have had intimate knowledge, given
20 his position in the organisation and what he had control over. So, you know, when she points out that there was work asked by – of Regiments or Trillian or McKinsey, I am not sure because this was an engineering issue.

There was an insurance component as well through this matter which was dealt with by Mr Singh as

the CFO and there were issues regarding – the underlining issue here was around the contract, the manner in which it was procured.

Mr Koko had insisted on using a non-BEE qualified supplier and those were specific instructions that he gave to the Procurement Team which caused issues later on for Eskom.

So that is the big overviews. So all these issues, all these transactions had some significance of which Mr Koko had some role to play for example the next one was the McKinsey which I highlighted ...[intervenes]

ADV SELEKA SC: Sorry, Ms Daniels.

MS DANIELS: ...because ...[intervenes]

ADV SELEKA SC: Sorry, just before you go on to McKinsey. I just want to read to you. You have mentioned Mr Matshepo. In her affidavit where she says:

“Mr Matshela Koko and Mr Anoj Singh added initiatives...”

Now at this time she said Regiments. This is now in 2015, late 2015.

“They have had meetings [according to her] with Mr Singh and others at Eskom and they were making a proposal to Eskom...”

She says:

“Matshela Koko and Anoj Sing added initiatives

that were not originally on the proposal. These were Online Vending and Duvha 3 insurance claim and rebuild, Hitachi insurance settlement...”

So Duvha 3 insurance is specifically mentioned there which is one of the things you mentioned. Could this be – you think this is the same as the Duvha 3 that we see on this list?

MS DANIELS: Yes, it is Mr Chairman. When she talks
10 about the Duvha insurance claim and the rebuild, the one were – the one component was to get the money from the reinsurer to actually replace the boiler at Duvha. And then also the other part was to recover the normal insurance claim. So that is – that would have been dealt with by Eskom insurance.

ADV SELEKA SC: Yes.

MS DANIELS: We had our in-house Insurance Division.

ADV SELEKA SC: Okay. You have said that this list,
Mr Koko had it with him on the 20th of July 2015 as a list of
20 transactions his principals have told him to focus on. When Mr Koko was here we put that version to him and in response he said the list, actually, it was given to him by yourself. What is your response to that?

MS DANIELS: Well, that is – I categorically deny that and that is why I say to Mr Chairman that it is not possible that

I would have come up with this list because of the nature of the transactions, the value of the transactions and the knowledge of this.

And if I recall his testimony, he also said that, you know, I said it came from the board. That is just not plausible because the detail here, the Non-Executive Board would not know. I would not be able to come to him to ask for information to this degree.

ADV SELEKA SC: Yes.

10 **MS DANIELS:** This list was provided to – he discussed it with me when he came back from suspension. I said at – in my supplementary to the Parliamentary Portfolio Committee and I stand by that.

ADV SELEKA SC: H'm. He has also said that he recalls the list and that the handwriting on the list is his. I do not know whether you are able to tell? I mean, if he concedes that is his handwriting, I suppose that is what it is.

MS DANIELS: Well, Chairman I would ask you if he conceded that it is his handwriting, he must please explain
20 to you a couple of issues that I have identified on the list. I would like to draw your attention to the notes that he has there. Next to Project Libra Anglo which is Item...

CHAIRPERSON: I can see it.

MS DANIELS: Seven.

CHAIRPERSON: I can see it.

ADV SELEKA SC: Yes.

MS DANIELS: Yes.

CHAIRPERSON: H'm.

MS DANIELS: He says:

“We could buy. Give me a fixed price. I will give you the partner...”

CHAIRPERSON: H'm.

MS DANIELS: That is illogical for someone within Eskom to say that, you know.

10 **CHAIRPERSON:** H'm.

MS DANIELS: In terms say: Okay you, you know, we will buy it.

CHAIRPERSON: H'm.

MS DANIELS: Now this project in itself, Mr Chairman, is the coal supply to Fusile Power Station which was problematic because of the nature of the coal, the price of the coal, et cetera. So at that stage, there was no BEE partner for Anglo, you know. Anglo was doing it through its holding company.

20 It had not – that is why it is called Project Libra at that stage. You will find that in the Eskom documents, you know, when the project start out, they are called Project Alpha, Project Libra and those things.

CHAIRPERSON: H'm.

MS DANIELS: Ms Matshepo also testified that is how we

did things. So ...[intervenes]

CHAIRPERSON: Do you see ...[intervenes]

MS DANIELS: He would have to explain to you why he would say to someone: Give me a price now and I will give you a partner.

CHAIRPERSON: Do you say that that sentence where he says give me a fixed price, I think he says, I give you the partner... That TBC there, what is that?

MS DANIELS: If I look at the others, I think it is the Rand
10 value to be confirmed because you will see the other ones all have Rand values.

CHAIRPERSON: Yes.

MS DANIELS: And then there is TBC. So in ...[intervenes]

CHAIRPERSON: Oh.

MS DANIELS: ...you know, in the normal ...[intervenes]

CHAIRPERSON: Oh, then ...[intervenes]

MS DANIELS: ...standard terminology, that would be To be Confirmed.

20 **CHAIRPERSON:** Oh, that would tie in with the fact that no price is given next to Project Libra Bundle?

MS DANIELS: Yes.

CHAIRPERSON: And the fact that he writes: Give me a fixed price. So the price has not been agreed yet?

MS DANIELS: To be determined.

CHAIRPERSON: And ...[intervenes]

MS DANIELS: Yes, that is correct.

CHAIRPERSON: So that sentence is there to ensure that somebody gives him the price, the fixed price, that would go in there, in that price.

MS DANIELS: That is correct.

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

MS DANIELS: And he would have explained why someone would say – why he would say “we could buy”. He is at
10 Eskom.

CHAIRPERSON: H’m.

MS DANIELS: You know. Eskom would be purchasing coal from a supplier.

CHAIRPERSON: H’m. So when he says “give me a fixed price” that would be for coal or for what?

MS DANIELS: Yes, that would be for coal.

CHAIRPERSON: “And I give you the partner.” A far as you understand, what partner would he be talking about in this context?

20 **MS DANIELS**: I would assume that that would be the BEE partner.

CHAIRPERSON: H’m?

MS DANIELS: The request – the requirements of Eskom at the time was that coal be supplied by you know, BEE compliance companies or at least they must be working

towards being BEE compliant in terms of the Mining Charter.

CHAIRPERSON: [Indistinct] ...[intervenes]

MS DANIELS: At that stage, I know or was aware that Eskom – that Anglo was not yet BEE compliant. It was looking for a partner.

CHAIRPERSON: But did Eskom have the parties of giving service providers or product providers – service providers giving them partners, BEE partners? Did they not come
10 with their own BEE partners?

MS DANIELS: No.

CHAIRPERSON: H'm?

MS DANIELS: Exactly, Mr Chairman. Sorry. Exactly, Mr Chairman. That is why I say, no, Eskom did not have the practise of giving partners to suppliers.

CHAIRPERSON: Yes.

MS DANIELS: That was – he must explain to you why he would be giving the partner and why he would be asking for a fixed price ...[intervenes]

20 **CHAIRPERSON:** Yes.

MS DANIELS: ...from internally ...[intervenes]

CHAIRPERSON: Yes.

MS DANIELS: ...at this stage.

CHAIRPERSON: Now who was this note directed to, if you know?

MS DANIELS: Mr Chairman, what ...[intervenes]

CHAIRPERSON: Who was meant to read this?

MS DANIELS: Who... I am sorry, I did not hear the last bit?

CHAIRPERSON: Who was this meant for?

MS DANIELS: From my understanding and the discussion that we had. This was meant for Mr Koko and he had indicated to me that this was instructions from his principals. Those were his words. And at that time, my
10 understanding was, that this referred to the board.

CHAIRPERSON: Yes. So your issues with his note is one, the fixed price, and two, the partner?

MS DANIELS: Yes ...[intervenes]

CHAIRPERSON: [Indistinct] ...[intervenes]

MS DANIELS: ...that is the one issue.

CHAIRPERSON: Yes.

MS DANIELS: Then, as I identified, you will see these transactions Ms Matshepo talked about, the load management, the five release cash unlock and the Online
20 Vending cash unlock as well. There is also a note here that says: Stop paying T-guys(?).

ADV SELEKA SC: Is that at the part where the ...[intervenes]

MS DANIELS: No, the T-guys... At the bottom.

ADV SELEKA SC: Yes?

MS DANIELS: [No audible reply]

ADV SELEKA SC: Yes, proceed.

CHAIRPERSON: Yes, proceed.

MS DANIELS: So this T-guys, in my understanding, this is T-Systems because at that stage there was an issue with the payments of T-Systems.

CHAIRPERSON: Where is the T-guys?

ADV SELEKA SC: It is right at the – after the ...[intervenes]

10 **MS DANIELS:** At the bottom.

ADV SELEKA SC: After the ...[intervenes]

CHAIRPERSON: The last one is Komati replacement. The one above is that ...[intervenes]

MS DANIELS: Well ...[intervenes]

ADV SELEKA SC: It is below the table.

MS DANIELS: In... ja. In handwritten notes Mr Chairman.

CHAIRPERSON: Oh, in handwritten notes “stop paying T-guys.”

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** You say you understand – you understood T-guys to be a reference to T-Systems?

MS DANIELS: Yes.

ADV SELEKA SC: And the alphabet F that is written below that, do you know what that is supposed to mean?

MS DANIELS: I am not sure what that is.

CHAIRPERSON: H'm. Do you know if that is still ...[intervenes]

MS DANIELS: What that is Mr Chairman.

CHAIRPERSON: Do you know whether that is still the same handwriting as the handwriting above or you ...[intervenes]

MS DANIELS: It is looks like it is - Mr Chairman, but I am not a handwriting expert ...[intervenes]

CHAIRPERSON: Yes.

10 **MS DANIELS:** ...specialist.

CHAIRPERSON: Okay.

MS DANIELS: But what I am saying is. Mr Koko needs to explain to you what does this mean?

CHAIRPERSON: H'm.

MS DANIELS: Because this does not look like an instruction from an Eskom person.

CHAIRPERSON: H'm.

20 **MS DANIELS:** You know, a person of his position. And then there was – and it ties in with what Ms Matshepo said that there was this, you know, fee instruction. If you look at the calculation and – I mean, fee extraction.

If you look at the calculation and the values and so there was a concerted effort here to evaluate what could be extracted. That is what made me relook at this list in that light of her testimony and what I had submitted earlier

to Parliament.

I could, you know, clarify more and it also gave more significance having relooked at this list. The other issue is. This word here, to the left, this Zeselor (Zestilor).

CHAIRPERSON: Yes?

MS DANIELS: Of the document. It has been widely reported in the media, and one would have to check this, that Zeselor (Zestilor) is the company that Mr Salim Essa's wife was the shareholder and owner of. So Mr Koko would
10 explain – have to explain how, you know, these elements, how he was tied up in this at Eskom.

CHAIRPERSON: Okay Mr Seleka.

ADV SELEKA SC: Thank you. Now Ms Daniels, can you give us the spelling for that name or the name of that company.

MS DANIELS: What is that?

ADV SELEKA SC: The one of that company.

MS DANIELS: Oh.

CHAIRPERSON: Well, it is on the page.

20 **MS DANIELS:** It think it is Zeselor or... Z-e-s-e-l-o-r.

CHAIRPERSON: Ja, it looks like z-e, either R or S, and either t-l-o-r or h-o-r.

ADV SELEKA SC: Yes.

MS DANIELS: Yes.

ADV SELEKA SC: Okay, Zeselor, l-o-r?

MS DANIELS: Ja.

ADV SELEKA SC: Okay. Or Zestilor or something. You know, I just remember from the Eskom media reports that that company belonged to Mr Essa's wife.

CHAIRPERSON: But you see it on page 87.88 Mr Seleka?

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Yes. No, I am there.

CHAIRPERSON: H'm.

10 **ADV SELEKA SC:** I just wanted certainty on the spelling of that.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes. Then Ms Daniels, there is McKinsey, the third item. Do you have anything to say on CPI Investigations?

MS DANIELS: [No audible reply] [transmission interruption]

20 **ADV SELEKA SC:** I think it is frozen.

CHAIRPERSON: Yes.

MS DANIELS: Can you please repeat that Mr Seleka? I had to close that.

ADV SELEKA SC: Yes. Do you have anything to say on CPI Investigations?

MS DANIELS: I was not sure what that was Mr Chairman. I checked the reports but as it says there, again R 150 million per annum. You know, so there was an estimation of what kinds of revenue this would bring. And this would not be to Eskom. So, you know, Mr Koko would have to explain how he, why and on what basis he would do that kind of calculation.

ADV SELEKA SC: Alright. I see what you are saying. So the revenue ...[intervenes]

10 **MS DANIELS:** ...here. At various stages during...

ADV SELEKA SC: Sorry, the sound seems to be distorted and delayed. Can you hear me now?

MS DANIELS: Yes.

ADV SELEKA SC: Yes. So what you ...[intervenes]

MS DANIELS: Yes, I can hear you know.

ADV SELEKA SC: Yes. In regard to the revenue, you are saying these are revenue projections, not for Eskom, but it would be revenue projections ...[intervenes]

MS DANIELS: No.

20 **ADV SELEKA SC:** Yes, it would be revenue projects for whoever wants these transactions to be procured for them.

MS DANIELS: That is correct Mr Seleka. I am tying it to specifically – because Ms Matshepo, when she was talking about Regiments and Trillian, she mentioned, you know, how they established the fees. I think even Ms Goodson

mentioned some of it. And if you look at this list, it ties in, it makes it more clearer what this was actually about, was those revenue projections as to what could be extracted from Eskom.

ADV SELEKA SC: H'm. Do you know, subsequent to you seeing this list - and as you said made a copy of it – do you know whether a party or parties were given contracts in relation to some of these transactions?

MS DANIELS: [No audible reply]

10 **ADV SELEKA SC:** Well, I do not know ...[intervenes]

MS DANIELS: Yes, they were given contracts.

ADV SELEKA SC: Yes, proceed.

MS DANIELS: These matters did serve before the Board Tender Committee and the various sub-committees in Eskom at given times Mr Chairman. So it would be, you know, easy to check. Like I said, I remember that the Duvha 3 contract was problematic because of the supplier that was... [break in intermission].

We know about McKinsey. The other one that I
20 could identify was the Project Libra. The Online Vending was another issue. That contract served before the BTC a number of times. There were issues that were involved.

And I think the whole IT Support Services was an issue. That contract – Eskom's position and strategy changed a number of times during 2015/2016.

ADV SELEKA SC: Yes. The Online Vending cash unlock, do you know what does it entail or did it entail?

MS DANIELS: [No audible reply]

ADV SELEKA SC: Did you hear Ms Daniels?

CHAIRPERSON: I think she is frozen again.

MS DANIELS: [Interruption in transmission]

CHAIRPERSON: Are you back? I think you froze for a few seconds.

ADV SELEKA SC: H'm.

10 **CHAIRPERSON:** I think she is back.

MS DANIELS: Oh, okay.

CHAIRPERSON: You can ask your question.

ADV SELEKA SC: Can you hear us?

MS DANIELS: Yes, okay.

CHAIRPERSON: Ja.

ADV SELEKA SC: Ja.

MS DANIELS: Can you hear me?

ADV SELEKA SC: Yes, we can hear you now.

MS DANIELS: Okay.

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

CHAIRPERSON: Mr Seleka is going to repeat his question.

ADV SELEKA SC: Yes, thank you, Chair. I asked whether you know what Online Vending cash-unlock entailed?

MS DANIELS: It was very technical but I can just tell you

high-level. It was to put in place an electronic IT support system for purchasing of electricity.

ADV SELEKA SC: Okay. Do you know whether McKinsey was contracted to render that service?

MS DANIELS: They may have been involved. I think you should look at the Steering Committee of the – what is that – this – the services agreement or there might be a separate agreement.

ADV SELEKA SC: Okay. You do not know personally?

10 **MS DANIELS:** I do not recall specifically. I just know that, you know, the Online Vending was an issue. It appeared a number of time, as I said, during the period 2015/2016. It appeared a number of times before the board committees.

ADV SELEKA SC: H'm. So then, just to finalise on this. Is – what is your testimony on this, what is your evidence on this? Is it that this list - just to be clear, this list would have been a list from a third party outside of Eskom given to Mr Koko, showing a list of transactions with projections
20 of revenue that the third party outside of Eskom would have wanted to procure for their own entity for themselves with Eskom?

MS DANIELS: That is my evidence Mr Chairman. In listening to what I know and what I said, this represents what was given to Mr Koko and what he had to execute in

terms of... revenue from Eskom.

ADV SELEKA SC: Yes.

CHAIRPERSON: Well, that ties in with the question I wanted to ask you. I see that those figures on that document represent revenue not for Eskom but for the entities, for certain entities, now it would be quite strange, would it not be, for Eskom to be preparing a document to see how much revenue somebody else would be making. Would you agree with that?

10 **MS DANIELS:** That is correct, Mr Chairman, that is why I say to you I reject Mr Koko's view that this is, you know, a document prepared by me on basis that the board wanted this. This is a document that he came with that he came with that he said this is what – these are the transactions that my principals want me to focus on and this is what he started asking his subordinates for the information and it ties in with the emails that he sent.

CHAIRPERSON: Yes, Mr Seleka?

20 **ADV SELEKA SC:** Thank you, Chair. And lastly, Ms Daniels, because what took us here was the emails, Mr Koko's emails. We have seen they do give us free features in those emails, online vending, cash, unlock features in those emails but there was also an email regarding his visas travelling to Dubai with two members of his family and he said that was arranged by you. Your response?

MS DANIELS: Mr Chairman, I would like the opportunity to categorically state here that I did not under any circumstances moonlight as a travel agent (indistinct – recording distorted) unlike my seniors I had a job at Eskom, I did not organise his travel visas at any stage, he did not request me to do so, he did not pay me R5 000 to do that, I did not (indistinct – recording distorted) of Dr Ngubane in this matter. As I said before, procuring of visas or....

10 (Break in recording)

CHAIRPERSON: Ja, the connection is quite unstable. It looks like you are back, Ms Daniels. Can you hear me? Can you hear me?

MS DANIELS: Yes, I can, Mr Chairman.

CHAIRPERSON: Okay, I just want to repeat what I understand you to be saying because as you were speaking, the connection was unstable, we could not hear parts of what you were saying. One, did you say that you deny having arranged visas for Mr Koko and his family?

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

CHAIRPERSON: Okay, did you also deny – do you say you deny that he gave you R5 000 in regard to the arrangements for those visas?

MS DANIELS: That is correct, Mr Chairman.

CHAIRPERSON: And you said you were not moonlighting

as an Eskom employee as a travel agent at the same time.

MS DANIELS: That is correct, Mr Chairman.

CHAIRPERSON: Okay, so you never arranged or you were never involved in any arrangements to help him get the visas.

MS DANIELS: Not at all, Mr Chairman.

CHAIRPERSON: Yes, okay. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Ms Daniels, there is another – oh, then I asked you – yes, that was about the
10 visa, that is right. There is a statement you made – and I will come back to this later on, but I want to read it to you, your last affidavit, talking about the BTC which approved a transaction with Trillian, the payment to Trillian. We will come back to it but let me read to you and see whether it relates to some of the items you have read on the list. It reads:

20 “It was this approval that was then utilised, the BTC approval of August 2016, utilised as authority to pay Trillian approximately R207 million. The activities referenced were project search, private sector participation, online vending services, Hitachi, Duvha, short term funding facility, long term funding facility and programme management office, as procurement, primary energy, claims, generation. These items were mentioned in this Ms Mothepu’s

testimony.”

You heard that? We will come back to it later. Did you hear that?

MS DANIELS: Yes, I did hear that.

ADV SELEKA SC: Does this by any means relate – or some of these items related in list that we have just gone through?

MS DANIELS: Yes, Mr Chairman, you will see there is the funding restructure that I have highlighted. There is Duvha
10 3 and there is online vending cash unlock, those are the direct cross-references that I could make.

ADV SELEKA SC: Yes. So we will come back to that BTC approval. That means McKinsey did get - to be paid in relation to some of these translations on the list. I mean, Trillian.

MS DANIELS: Trillian, yes, that is correct.

ADV SELEKA SC: Yes, I beg your pardon. Maybe we should go into the Trillian matter. So according to the testimony of Ms Mosilo Mothepu, there is proposal to be
20 made firstly by Regiments which is thought to be teamed up with McKinsey. They are making those proposals to offer services under the master services – the master services agreement, the service level agreement. And as I read from a paragraph in her affidavit, some of the projects were included to the original or initial proposal by Mr Koko

and Mr Singh and she specifically mentioned online vending ...[intervenes]

CHAIRPERSON: I am sorry, Mr Seleka, have you moved away from bundle A or are you still with it?

ADV SELEKA SC: From which one, Chair?

CHAIRPERSON: Eskom bundle 8.

ADV SELEKA SC: Yes, I am moving away from it. I want to ...[intervenes]

CHAIRPERSON: You are going back to Eskom bundle 18?

10 **ADV SELEKA SC:** I want to go to Eskom bundle 14C and E, 14B and C in Eskom – I think the files have been regularised, the affidavit I would be referring to, Chair, is in 14(B) of Moodley, Mr Moodley specifically from page 941, Eskom bundle 14(B). Thank you, Chair.

CHAIRPERSON: I think we need just to take a short adjournment so that the registrar can get my pen, it has fallen too far. We are going to adjourn for five minutes. We adjourn.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: I am grateful, the registrar has retrieved my pen. Okay, now we can continue.

ADV SELEKA SC: Ms Daniels, you can hear us?

MS DANIELS: Yes, I can.

ADV SELEKA SC: Yes. I would like you to deal with the

matter, now that we have gone through the list and McKinsey is mentioned and reading from the affidavit of Ms Mothepu, that paragraph and your paragraph relating to the approval by the BTC in August 2016 to make a payment to Trillian in the amount of R207 million in respect of some of the transactions we have mentioned.

Mr Moodley of CDH has submitted an affidavit to the Commission in which he deals with certain aspects relating to McKinsey and Trillian that involves you in the
10 instructions to CDH and recommendations made to the board. Now we know from the evidence before the Commission that huge amounts of money were paid to Trillian to the tune of 1.2 billion. In fact the BTC had approved R1.8 billion to be paid to Trillian.

There is a submission made in December 2016 which deals partly with some of the payments to Trillian and then ultimately the decision made by the BTC in February 2017 that deals with the last payment for Trillian and McKinsey.

20 Now it is alleged that you also played a role in ensuring that the BTC approved those payments. I would like you to give your version to the Chairperson and if you want me to give you more information I could do so but to the extent that you would have read Mr Moodley's affidavit, can you please deal with firstly the termination of –

purported termination of the MSA agreement by Eskom and how these payments to Trillian and McKinsey were made.

MS DANIELS: Okay. Mr Chairman, I confirm that I have read the affidavit of Mr Moodley and that I have submitted my own version. I also got involved in the tail end of this transaction in late 2016. Some of the facts that I am going to put before you I know because I was involved in my capacity of head of legal. I had to do the 48 hour reports, as it became known. It was reports to Minister Brown on
10 the payments to McKinsey and Trillian and that involved going back to 2015 when the matter came. So some of my knowledge is from that, some of my knowledge is from the investigations that Bowmans did and in compiling that 48 hour report, which is part of the bundle, CDH, Bowmans and the auditors assisted with the information so I am going to rely on that body of information to give you the facts which I do not personally know. Is that okay?

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes, you can continue.

20 **MS DANIELS:** Alright. So insofar as the cancellation of the McKinsey contract one needs to go back to around July 2016 in the Eskom records and it is a BTC meeting in July that the authority to cancel the contract is provided to the team and it is noted that Eskom might have to pay up to – I think it was about – it was over 2 billion that the team –

and when I talk about the team, it was represented by Mr Prish Govender and Mr Edmund Mabelane.

Mr Prish Govender was the project manager for the McKinsey/Trillian project. I do not know what to call because at one stage it was the engineers, the top engineers programme and then it became the McKinsey/Trillian project, though I am not sure what they called it. But at one stage Eskom identified that it may need to pay up to 2.84 billion to – I think it was up to 2 –
10 ja, 2.8 billion to cancel the contract.

At the meeting in July they indicated that they had negotiated a figure of – a settlement figure of 1.8 billion and this was approved by the BTC subject to certain conditions.

ADV SELEKA SC: Yes. Can I – Chair, I ...[intervenes]

MS DANIELS: Is that okay? Does that give you context to...?

ADV SELEKA SC: No, no, that is alright, I just want to find out from the Chairperson something. Chair, I could
20 refer to the documentation in order for the Chairperson to follow the evidence or she could, you know, go freehand ...[intervenes]

CHAIRPERSON: I would like you to refer to the document.

ADV SELEKA SC: To the documentation.

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: Thank you. Well, for that reason, Chair, we will have to change the file to 14C. Eskom bundle 14C and we will start on page 829.25. Ms Daniels, have you found that page?

MS DANIELS: Let me just...

ADV SELEKA SC: It is a submission document.

MS DANIELS: I just have one bundle 14.

ADV SELEKA SC: Yes, no, that is alright. Just follow the
10 page numbers, 829.25.

MS DANIELS: Okay. Yes, I have it.

ADV SELEKA SC: You have that. Now I know you have talked about the period in July 2016. We see in this submission the figures that you are referring to.

MS DANIELS: Okay. I may have the date wrong, if that is 8 August, I would go with this submission.

ADV SELEKA SC: No, I think you are correct about the termination which is made in July or in fact it is June 2016 but please identify the document to the Chairperson?

20 **MS DANIELS:** Okay, this is a submission to the board tender committee Mr Chairman and it is feedback on the McKinsey and company top consultants programme MSA settlement process.

ADV SELEKA SC: So who would have compiled this document?

MS DANIELS: This document was compiled by – I will tell you now – I think it was Mr Govender. Yes, Mr Prish Govender. As you will see there, his signature on page 829.32.

ADV SELEKA SC: Yes.

MS DANIELS: With Mr Mabelane, the Chief Procurement Officer and approved by Mr Anoj Singh.

CHAIRPERSON: The first signature you said whose is it?

MS DANIELS: It is Mr Prish Govender.

10 **CHAIRPERSON:** Oh, because unfortunately ...[intervenes]

MS DANIELS: In terms of the – yes, in terms of the Eskom procurement process, Mr Chairman he was the delegated official, the project manager for the McKinsey project.

CHAIRPERSON: Okay. It is unfortunately they did not write the names of the signatories so you either have to know their signatures or try and make it up – or rather, try and make out what it says. So like that one [indistinct – dropping voice] that seems to be ...[intervenes]

20 **ADV SELEKA SC:** It should be there, Chair.

CHAIRPERSON: H'm?

ADV SELEKA SC: The names should be there, just above their designations.

CHAIRPERSON: Oh, the names are above, ja. Okay, I think I expected them to be below.

ADV SELEKA SC: Yes, that is right.

CHAIRPERSON: Oh, okay. No, no, ja, now I see it, thank you very much.

ADV SELEKA SC: Yes, Chair. Ms Daniels, do you say it was approved by Mr Anoj Singh?

MS DANIELS: Well, you will see Mr Anoj Singh signed the documentation and in Eskom delegation of authority the people who sign the submission document take accountability for the contents and presenting it to the
10 relevant board committee. And this is the reporting line, you will here, just to give it more context, Mr Chairman, the reporting line was that Mr Govender would have reported to the Chief Procurement Officer, the Chief Procurement Officer reported to the Group Financial Officer.

ADV SELEKA SC: Yes and what ...[intervenes]

CHAIRPERSON: Why does it say at page 829.31:

“Other approvals required, none.”

Do you know?

MS DANIELS: This was a standard submission format
20 that Eskom had for submissions to board so if there were other approvals, regulatory approvals, external approvals that were required, this is where the executives or the compliers of the submission documents were expected to note that.

CHAIRPERSON: Okay. Mr Seleka?

ADV SELEKA SC: Yes, thank you. Ms Daniel, we go back to page 1 of – the first page of this document, which is page 829.25 and explain there the resolution which is required in the submission, the submission document dated 8 August 2016.

MS DANIELS: Okay. Just before I explain this, I just wanted to mention one thing that in the submission in June or July, I just cannot remember the date, the reason for the cancellation was provided to the board tender committee is
10 that there could not – the parties could not reach resolution on the terms and conditions of the contract. So, you know, that was just – that was stated in the documentation at the time.

ADV SELEKA SC: Yes, the termination letter. Sorry, just mention the page reference is on page 877.26, it is a termination letter by Eskom to McKinsey dated 16 June 2016 and it says:

“The letters serves to officially notify McKinsey and Company of a board decision taken on 9 June 2016
20 to terminate the McKinsey risk-based contract.”

Was that a board or BTC? Do you recall.

MS DANIELS: It was a BTC decision. You will find, Mr Chairman, that in the Eskom documentation there is not a distinction between board and subcommittees so when people talk about a board decision more often than not it

would be the board subcommittee that they are referring to.

CHAIRPERSON: Did the committees not need their decisions to be approved or ratified by the board?

MS DANIELS: Nothing ratification but what happened on a quarterly basis is that we would prepare committee reports and they would go to the board for notification. Those that required ratification would be ratified or those that required decision would then be tabled for decision.

10 **CHAIRPERSON:** Okay.

ADV SELEKA SC: Ms Daniels, insofar as you say the reason for termination was, I think you said, due to the parties' failure to reach an agreement on the terms and I want you to come back to this because CDH was advising you on whether or not this master services agreement ever in fact came into being and my question, just before you move on, is this. If the parties could not agree on the terms was there in law or in fact an agreement to terminate?

20 **MS DANIELS:** Mr Chairman, this is what we were grappling with at the tail end with CDH and myself. By the time – I just need to put it into context, by the time I got involved in December, I was presented with an email from Mr Govender, he provided me with a copy of the MSA, he provided me with the letter of demand from McKinsey and

the letter of demand from Trillian and at that point factually about over 900 million had been paid out to the parties and but those are the three documents that he presented to me and it was on that basis when I looked at that, I did not have any context, he asked that I must please review the documents and that he was discuss it with me. I remember he driving up from Durban or somewhere and I had a look at those documents and I thought it quite peculiar the agreement was signed – I think it was early in the year and
10 then in June there was – Trillian’s demand came before the McKinsey demand. They were like a month apart and it was on that basis that, without context, that I asked for the legal review and you will see that is why I specifically asked for that in an email and I actually wanted to know from Mr – when I discussed it with Mr Moodley, what exactly was Eskom’s rights in this regard. At that point I did not know specifically of like, you know, there was the – the terms and conditions was the reason or the failure to reach the terms and conditions was actually the reason
20 presented to the board tender committee. It took us quite a while to get the documentation from the project team.

ADV SELEKA SC: Okay and by the way you will see that – I just want to mention this because you mentioned the agreement was concluded early in the year. The affidavit of Dr Weiss says that he received a copy of a signed – as

signed by Eskom of the MSA towards the end of September/early October 2016 when he signed it and backdated it to January 2016. So just to mention that to you, are you aware of that?

MS DANIELS: I was not aware of that.

ADV SELEKA SC: So what it means is ...[intervenes]

MS DANIELS: Because the document that I ...

ADV SELEKA SC: Carry on, sorry?

MS DANIELS: I mean, I was just going based on the
10 document that I received, you know, that it was dated earlier in the year, I was not aware that it was backdated.

ADV SELEKA SC: What it means is that at a time the agreement was purported to be terminated in June 2016 when the BTC takes a decision on 9 June 2016 in fact there was no agreement signed at least by McKinsey.

MS DANIELS: Ja, that would be correct and if he says it was backdated.

ADV SELEKA SC: Ja, we will take you to his affidavit in a short while but let us go through this.

20 **MS DANIELS:** Okay.

ADV SELEKA SC: What is required in the submission?

MS DANIELS: Say that again please, Mr Seleka?

ADV SELEKA SC: Explain the submission to the Chairperson.

MS DANIELS: Okay. What they are doing here is asking

– they are saying to the board tender committee, and when I say they, it is the submitters, Prish, Mr Govender, Mr Mabelane and Mr Singh are saying that they have negotiated a lower settlement fee of 1.8 billion. They needed to pay out 800 million because these would cover costs to date and then the current consultants, which I assume is McKinsey, made an offer to reinvest 1 billion to cater for a transition period and so it sort of a settlement plus a renegotiation of terms kind of arrangement that

10 appears here and that McKinsey and partners decided to take some sort of let me say – yes, a new contracting mechanism and this involves that the Group Chief Executive Officer, now the Group Financial Officer and the Group Executive Generation and Technology are authorised to negotiate more favourable terms on conditions to the settlement process and at this time in August 2016 the Group Chief Executive Officer is Mr Molefe, the Group Financial Officer is Mr Singh and the Group Executive Generation and Technology is Mr Matshela Koko.

20 **ADV SELEKA SC:** Yes, so the agreement – this follows after the agreement, if you take the sequence of events, there is a termination or purported termination of the agreement. There is then submission to the BTC that according to CDH it follows after a letter of demand from McKinsey. After Eskom terminates, McKinsey sends a

letter of demand saying pay me x amount. The executive then make the submission to the BTC that Eskom would be liable to 2.8 billion but they have negotiated an amount of 1.8 billion and they want the approval of the BTC for that payment to be made to McKinsey and a BEE partner, is that correct?

MS DANIELS: That is correct.

ADV SELEKA SC: Did you play any role in regard to the submission?

10 **MS DANIELS:** No, I did not, at that stage I was the company secretary, Adv Silanko was the head of legal and he was dealing with the matter directly, he was not present, if I recall, at this meeting of the 8 August but he did send a legal representative. They did not raise the – Mr Chairman, the company secretariat and the legal department were separate departments so the head of legal used to attend the - or a legal representative from his department would attend the board tender committee meetings to deal with the legal issues. At this particular

20 meeting there were no issues raised when this matter was discussed from those parties although it would subsequently emerge that they did have concerns and they did raise them and there were actually opinions about the McKinsey settlement agreement or the master services agreement that were ignored by the parties mentioned in

the submission.

ADV SELEKA SC: Well, the BTC resolution is to be found on page 875.2 in respect of the submission. 875.2. Let me know when you are there?

MS DANIELS: I am there.

ADV SELEKA SC: Now it is a resolution, it is an extract from approved minutes of the special Eskom board tender committee on 8 August 2016 at 15h00 and I see the extract is signed by you. Do you see that on the 8 November
10 2016?

MS DANIELS: Yes.

ADV SELEKA SC: And it says:

“Resolved that the board tender committee noted to date the initiatives under the top consultants of programme MSA have achieved more than R18.6 billion of annualised impact for Eskom. Applying determination and settlement clauses within the MSA, Eskom may need to pay up to R2.84 billion inclusive of payment to the BEE partner of the value
20 achieved to date. The board tender committee approved:

4.4.3 An already negotiated lower settlement of 1.8 billion inclusive of payment to the BEE partner.

4.4.4 The R1.8 billion settled negotiated will

consist of an initial cash payment of 800 million to cover the utilisation of the consultant's resources to date.

4.4.5 The current consultants have made an offer to reinvest the risk premium (R1 billion) from the settlement to cater for the following.”

And then they give 4.4.5.1. Now I understand 4.4.3 read with 4.4.4 but I do not understand 4.4.5. So there is a settlement – an negotiated amount of 1.8 billion, Eskom
10 has agreed to pay R800 million of that as a cash payment, an initial payment to McKinsey and the BEE partner but then they say:

“The current consultants have made an offer to reinvest the risk premium, R1 billion.”

Are you able to explain that to the Chairperson?

MS DANIELS: I will attempt, I will try, I am not sure if I will get this right but what I think it is saying is that Eskom agrees to pay R1.8billion in settlement fees. We will pay the R800million now. The consultants will not take their
20 one billion, they will set it off against initiatives or savings initiatives that we identify and we will put another contract in place.

ADV SELEKA SC: Ja, but what does that mean when you were parting ways with them, you terminated their – or at least insofar as Eskom is concerned, has terminated the

MSA, what further engagement was there to be made with the supplier?

MS DANIELS: Well, in real terms it was actually not a disengagement, well it was styled as a disengagement process because it would take them six months to exit Eskom but also during that time they would re-negotiate another contract.

ADV SELEKA SC: Did that happen, the re-negotiation...[intervenes].

10 **MS DANIELS:** Not, I don't recall, to my knowledge that, that happened during the time that I was there.

ADV SELEKA SC: Okay, so you know that, that R800million was paid?

MS DANIELS: Yes, it was paid, in fact more than R800million was paid because they added the VAT component when they paid it, so in December when Mr Govender send me the contract and the letters of demand, R943million had been paid. So, I assume that's R800million plus VAT.

20 **ADV SELEKA SC:** Okay, so that – the payments were made on the 12th of August , two payments to Trillion directly and one payment of R596million to McKinsey on the 15th of August. Let's go, specifically, to what happens in December. So, this is in August 2016, let's go specifically to what happens in December where you are

directly approached by Mr Prish Govender. Now, Mr Moodley in his affidavit has said, you approached – you wanted him to give advice and you need to tell the Chairperson what that advice was which you wanted from them. A submission was being drafted which contained an insertion that legal review had been obtained from CDH and you have been criticised for having including that insertion in that submission and thereby caused the BTC to make a decision for further payment to Trillion. Would you please explain to the Chairperson your – your role in that matter?

MS DANIELS: I will do so, Mr Seleka, can you please just give me the reference to Mr Moodley's affidavit again?

ADV SELEKA SC: Mr Moodley is Eskom Bundle 14 (b) on page 941. Now, in December, while you go there, a payment of R134million was made to Trillion.

CHAIRPERSON: Do I need to have a look at it?

ADV SELEKA SC: No Chair.

CHAIRPERSON: No okay.

20 **MS DANIELS:** Alright, Mr Chair, my reasoning for asking for the legal review at that stage, was because of the contract and the two letters of demand that I had been emailed by Mr Prish Govender and he had asked me to have a look at it and to give him an opinion. I looked at the date of the contract and the letters of demand and I

thought this was quite peculiar, I didn't have all the facts at that point, I didn't have any other documentation and for me I wanted to understand what Eskom's rights were. I see from Mr Moodley's affidavit that I did ask him more detailed questions in a subsequent telephone call. So, I must have then gotten, you know, the facts but in terms of payments because that – I confirmed in my – that 48 hour report that we had actually paid over R900million at this stage and for me, I wanted to understand if we could – if we could
10 recover any of that money, if – you know what was the situation. At the same time there was a BTC meeting in December, I had anticipated the legal review would be a quick desktop exercise and that it would not be as complex as it turned out to be. So, in anticipation of that, I had written the clause that was inserted in the submission that the legal review – that I'd briefed CDH and that the legal review had been completed.

I did send that to Mr Moodley, as he states in his affidavit and I did ask him to opine on that, I think, by the
20 time he got back to me I had already submitted the submission because of the time requirements and I think the submission was already late, so I was pressured for time but we had a discussion and he told me that he did not have the necessary documentations to do the review to the limit that I required and that we would need to – you

know, we would need that documentation before we could opine on that and the person that we needed that from was Mr Govender. We did go to the BTC meeting of – I think it was – I just can't remember the date now let me just check it – the 13th of December 2016 and ...[intervenes].

ADV SELEKA SC: Sorry, Ms Daniels, because I think you need to explain to the Chairperson, the advice that had been sought from CDH because part of that – it did not relate to whether you could defend the claim or the
10 demand that was being made by McKinsey and Trillion.

MS DANIELS: Yes, based on – I wanted to know, the demands that they set-out in the letters respectively, because both of them – the respective organisations approached it from different angles. I wanted to know how defensible is it, how arguable are their claims based on what Eskom had done to date and I wanted a more, you know, detailed view, than just saying, we will fight his because having already paid out money, would that prejudice us, how did it actually work, is what I wanted to
20 understand. Because remember at that stage I had no context from the legal perspective as to what had transpired beforehand. In fact, what I recall from the McKinsey process, it was actually a very protracted negotiation so one would have needed to have understood what had taken place and we were presented with a signed

contract, so I needed to understand, what are the terms and conditions of what we had in place.

ADV SELEKA SC: Yes, and Mr Moodley says, they did not advise Eskom on the conclusion of this contract so they required the contract to be provided to them. Upon studying the contract, they saw that the contract used the terminology that was foreign to them, they were not familiar with the concepts and they asked for documentation from Mr Prish Govender and I think, also,
10 from yourself, is that correct?

MS DANIELS: Yes, that's correct because that was the one problem because this is the first time that a risk based contactor had been concluded in Eskom in this manner. We were – subsequent to getting the documentation we would find out that, you know, there were all sorts of other advice – it is correct that CDH was not involved. I, personally, was not involved either so it was a learning experience for us because now we actually had to – we literally, Mr Chairman, had to hunt for the documents
20 because they weren't forthcoming and readily as one would have expected. I think Mr – you know, Mr Govender expected us to give an opinion based on what he had put before us and we said that's not possible, given the terminology that was used and the, you know, the calculations etcetera.

ADV SELEKA SC: And – now we are in December when they ultimately got the documentation and were in a position to provide you with a final opinion on the matter. That opinion indicated that there were suspensive conditions in that agreement that appeared to them not to have been fulfilled on the due date and the due date was the 31st of January 2016, the opinion was given in February 2017, you recall that?

MS DANIELS: Yes, I recall that.

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

MS DANIELS: Yes, I confirm that, in fact, we only got the documents in early – I think it was early February, Mr Chairman, it must have been the first week in February, we had to literally hound Mr Govender to get the documentation. I, in fact, insisted that Mr Moodley meet with Mr Govender, face-to-face to take him through the issues that we were having and I remember that they met – I couldn't attend that meeting but I insisted that they go ahead and meet so that we could get to the bottom of the
20 issues because the non-fulfilment of the suspensive conditions was actually a new factor, that we had not seen before.

ADV SELEKA SC: Can you then...[intervenes].

CHAIRPERSON: Mr Seleka I see it's 4 o'clock, let's take a ten minute break and then we continue.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV SELEKA SC: Thank you Chair. Ms Daniels with that explanation or feature or facts in mind of what CDH was required to do CDH ultimately advised that the suspensive conditions appear not to have been fulfilled, now you can
10 take the Chairperson into the meeting of the 13th of December 2016 because that meeting, that is where the submission was made and the significance of what was said to the BTC in respect of that submission, and that CDH's services were retained.

MS DANIELS: Mr Govender led the discussion, Mr Chairperson so I cannot remember I would have to rely on the minutes of the meeting in terms of what he said about the transaction. In terms of the review, I did tell the committee that we had not completed the review, and that
20 it was still in progress and that would still have to come back to the committee. There was a further report, also presented by Mr Govender.

ADV SELEKA SC: Sorry, Ms Daniels just before that report. Are you saying despite the insertion, in the submission, that conveyed the message that the legal

review had been obtained, in the sense that CDH had been retained to advise Eskom on whether or not to proceed with payments to McKinsey you advised the Board that that legal review had not been received?

MS DANIELS: But it was still in process, yes Mr Seleka you will remember, sorry, Mr Chairman, you will remember that I said that I had, we had prepared the submission in anticipation that it could be done. But by the time we got to the meeting, it had not, I do not even think we had
10 started, we had only just asked for documentation. So I did bring it to the committee's attention that we were still busy with the legal review.

ADV SELEKA SC: But I understand that that message was in fact not conveyed to the BTC, what is your response to that?

MS DANIELS: No, I did tell them that it was in progress.

ADV SELEKA SC: So why then did the BTC approve the payment of R134million to Trillian?

MS DANIELS: The BTC approved R134million, based on
20 what Mr Govender said and as part of the settlement process, and that was a decision that they had already taken in August, as we had earlier discussed.

ADV SELEKA SC: So are you saying the legal review was of no significance with the BTC decision?

MS DANIELS: Not at this stage, I think that they saw it as

part of the settlement process, we were still busy with our legal review. So I would not say that it was of no significance, but it was still in process. So I would not have asked them to base it on that.

ADV SELEKA SC: The reason I am asking you that is because that legal, the insertion that was made in the submission, says that Cliffe Dekker Hofmeyr was retained to conduct the review and the conclusion is that Eskom needs to enter into a termination agreement with the parties to bring the matter to finality. This will absolve Eskom from any further liability once the termination agreement is in place. Now, that was not correct?

MS DANIELS: No, it was not correct and that is why I brought it to their attention at the meeting.

ADV SELEKA SC: Ja, but it was also never correct because when CDH ultimately gave the legal review, if you like, they said something opposite to this, they advised that in fact, it appears that there is no agreement to terminate.

20 **MS DANIELS:** Well, we did not know that in December 2016, Mr Seleka or, Mr Chairman, that would only come out in early February, Mr Moodley and I had then had the opportunity to look at all the documents, and he and his team did a very extensive analysis.

ADV SELEKA SC: Yes...[intervene]

CHAIRPERSON: Sorry Mr Seleka.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: The last I heard you read out was through the resolution of Board and the committee but I do not think that is where you are now.

ADV SELEKA SC: No, Chair, we...[intervene]

CHAIRPERSON: Have you gone back to an earlier bundle?

ADV SELEKA SC: Not even an earlier one we are – ja it
10 is one of the earlier ones in Mr Moodley’s affidavit Chair.

CHAIRPERSON: Because I missed you referring us to it, did you get another bundle.

ADV SELEKA SC: Okay, 14B.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: That is 14B.

CHAIRPERSON: I do not think both my registrar and I would have missed it, maybe I may have missed it.

ADV SELEKA SC: 14B, page 943.

CHAIRPERSON: I just want to have a look at what you
20 were reading.

ADV SELEKA SC: Yes, page 943.

CHAIRPERSON: I am not sure that I follow Ms Daniels, I followed the logic of Ms Daniels answer but maybe it is because I am not looking at the document, when she says the legal review was still out but the decision had been

taken. So I just want to have a look, I have been shown page 944 of Eskom bundle 14.

ADV SELEKA SC: Go to the 943 Chair.

CHAIRPERSON: 943.

ADV SELEKA SC: The one before, paragraph 96, you will see a quotation with eight external legal review, the number eight external legal review.

CHAIRPERSON: Okay, Ms Daniels, I may have missed something. It did not seem to make sense to me that the
10 decision would be taken to make payment while it was known that a legal review was to happen, because I assumed that a legal review would give legal advice which would be necessary for the decision whether to make payment or not. Do I misunderstand something?

MS DANIELS: No, you do not Mr Chair this is where the, sort of the what actually happened and what is on paper, you know, gets fuzzed and this is how – for want of a better word the officials manipulated the process, because at that meeting, we did state that legal review was in
20 progress, okay. I did make it clear that we had not completed the legal review.

However, what the officials then relied on, there was a draft report by Oliver Wyman, which was not a legal review. It was an assessment of the monetary claims and it is in that report, that they also talk about a legal review

that needed to be done which, you know, I had not initiated the CDH review for want of a better word based on that report.

I had done it because I was presented with a contract and two letters of demand and I wanted to understand what Eskom's position should be in that regard. What the officials did subsequent because the BTC said that the R134million should be paid as part of the settlement process they relied on the August decision to
10 make the December payment.

CHAIRPERSON: So - but was your understanding that the legal review was important for the BTC to have in order to make the decision whether or not any payment should be made?

MS DANIELS: Yes, because it was it was too - it actually was to deal with what further payments Eskom should be making, if any and that is why I asked for the legal review if there were any payments that Eskom still had to make and should we be in a - are we in a position to recover
20 what had already been paid?

CHAIRPERSON: And...[intervene]

MS DANIELS: You know because that was the - my apologies Chairman, that was the sort of the when I got the contract plus the two letters of demand, you know, I was stepping into something that I had no context about at that

point and we needed to get the documents and CDH said look, this contract is the terminology is different, it was different to what we had dealt with before.

CHAIRPERSON: But going back to the discussions at the meeting, was there anybody who said something to the effect despite the fact that we are here to receive the legal review we should authorise payment as the BTC, was there anybody who said that, or something to that effect?

MS DANIELS: There was actually a resolution that the
10 R134million should be paid as part of the settlement process.

CHAIRPERSON: Despite the fact that the legal review had not yet been received?

MS DANIELS: Yes.

CHAIRPERSON: So the BTC, as could be expected was aware that there was a legal review still pending?

MS DANIELS: Yes.

CHAIRPERSON: You are able to say that, and are you also able to say, they also knew that the legal review would
20 deal with the question whether any payment should be made at all or any further payment?

MS DANIELS: Any further payment that should be made?

CHAIRPERSON: Yes, that they knew that?

MS DANIELS: Yes.

CHAIRPERSON: Do you recall any reason that was

advanced by anybody to say that legal review, we should not wait for, why they should not wait for the legal review. You say they based that on their 8 August decision, you say?

MS DANIELS: The legal review was not discussed in that detail Mr Chairman, from my recollection.

CHAIRPERSON: I am trying to understand why a committee of the Board would say authorise payment in circumstances where it was aware that there was a legal
10 opinion/review that was pending, which would advise on whether there be further payment. I am trying to understand that and you have already said that as far as you are concerned, they were fully alive to the facts that one, there was still a legal review pending, two, that the legal review would deal with the question whether there should be any further payments.

So I am trying to understand why they would not say let us wait for the legal review.

MS DANIELS: I am not sure Mr Chairman, that meeting
20 was quite, quite rushed because it was the last meeting of the of the year. You know, so I am not sure but what I remember it was - we did not really go into too much detail.

CHAIRPERSON: Well, as the company secretary, you were a company secretary at that time, is that right?

MS DANIELS: Yes.

CHAIRPERSON: Did you say to the BTC, but it does not make sense to authorise payment before we know whether legally they should be further payment, or anything to that effect?

MS DANIELS: Yes, I did tell them that caution needed to be exercised because the legal opinion had not yet been received. What I am saying is I do not think it is necessarily at the Board Tender Committee but, you know, the way that the resolution is crafted, I do not think that
10 they actually gave payment authorisation at that meeting.

CHAIRPERSON: Oh, then I may have missed something. Did I miss something Mr Seleka, I thought we are talking about them having authorised payment of R134million or something?

ADV SELEKA SC: They authorised that payment, Ms Daniels.

CHAIRPERSON: Okay, do you want to take it from there?

MS DANIELS: Did they?

ADV SELEKA SC: Yes, the submission – that is what the
20 submission request - but now it is in a different file Chair.

CHAIRPERSON: Oh okay, but you can continue.

ADV SELEKA SC: Yes.

CHAIRPERSON: I thought that was...[intervene]

ADV SELEKA SC: Let me read the resolution, the resolution of 13 December 2016. Which, again Ms Daniels

is an extract you signed:

“It was resolved that approval be and is hereby granted.”

And I skip to the right paragraph:

“For a payment of R134million to finalise payments up to August 2016 to the BEE partner that was due as per the words split agreed with McKinsey.”

So that approval is made in unequivocal terms.

MS DANIELS: Okay.

10 **CHAIRPERSON:** You accept that now?

MS DANIELS: I accept that, okay, but as I said, it is made as part of the August 2016 decision.

CHAIRPERSON: But what does that mean? What I am looking for - just to remind you, what I am looking for, is whether there were sound reasons why the BTC decided to authorise that payment, even before they could get a legal opinion that they knew was pending on whether any further payments should be made, because it does not sound sensible, it does not sound logical for them to authorise
20 payment in circumstances where they accept that they needed a legal opinion on whether there should be further payments.

It does not sound - it does not make sense to me. So I am trying to understand whether something somebody said something at the meeting, which would make sense to

say no, let us authorise this payment nevertheless, because of A, B, C, D and you are saying they authorised this as part of the settlement in terms of the decision of the 8th of August.

So my question is, what does that mean, in the context of what I am looking for?

MS DANIELS: Okay, let me give you that context was Mr Chairman, there was another report that another review that was happening at the same time, Oliver
10 Wyman...[intervene]

CHAIRPERSON: Legal review?

MS DANIELS: No, this is a management consulting team. They were part of the Marsh & McLennan Group was doing a review on assessing the veracity of the claims submitted by the partners, the McKinsey and Trillian in the project, and at that stage, there was a draft report available and in that report, it said that an amount of approximately R134million was owing, or can be said to be owing to the sub-contractor which was Trillian.

20 And it was - and that report also recommended that any further payments, that should be subject to a legal review. They do make the disclaimer that it is not a legal opinion and they set out the basis for their calculations, the methodology that they used to check the claims that McKinsey and its partner made, and that is the basis for

me of that you are looking for on which the BTC then made that decision and said, okay, because it is still outstanding, it can be made as part of the settlement process.

CHAIRPERSON: But was it excluded from the ambit of the legal review? In other words, was the legal review not going to include whether such a payment, that payment should be made?

MS DANIELS: That was how it was interpreted at the time subsequent to that we would then you know, change our
10 view.

CHAIRPERSON: Okay, Mr Seleka.

ADV SELEKA SC: The – yes and I understand the Chairperson question. Ms Daniels, I think just clarify to the Chairperson, what happened Chair, Oliver Wyman and Marsh does that draft report in which there is a - after they have reviewed the invoices of Trillian and McKinsey there appears to be this R134million that has to be paid. But they say:

20 “Note that this does not constitute a legal opinion on the share due to the BEE partner, that that is out of the scope of our work.”

So they saying well get a legal opinion.

CHAIRPERSON: Yes.

ADV SELEKA SC: This falls outside of our scope.

CHAIRPERSON: Yes.

MS DANIELS: That is correct, Mr Chairman, but what I wanted to say to you it might also have been fear at BTC level. What happens factually in the operations is that Mr Mabelane writes to Trillian and says:

“We did a contract review we owe you R134million, please invoice us.

CHAIRPERSON: Yes.

MS DANIELS: Which is aside from what is happening, the decision as the legal opinion.

10 **CHAIRPERSON:** Ja, they were not aware of that or were they aware of that, that is the BTC of that correspondence?

MS DANIELS: At the time they were not because that happened immediately after the meeting. I am not so sure about the timing, but it was in that period, that letter went out very quickly, Trillian invoiced Eskom, Eskom paid I think within a day.

CHAIRPERSON: Yes.

ADV SELEKA SC: Are you talking about the letter of 16 February 2017?

20 **MS DANIELS:** No, that is...[intervene]

ADV SELEKA SC: Because we do not have the letter you are referring to.

MS DANIELS: No, that is something - because there was a specific letter about the...[intervene]

ADV SELEKA SC: The R134million?

MS DANIELS: The R134million.

ADV SELEKA SC: But if it is made or issued after BTC meeting, it was then consistent with the BTC decision which I have just raised or I read it earlier. They are approving a payment of R134million to the BEE partner who is not mentioned in the resolution, but we know it is Trillian which is owned by Mr Salim Essa as the majority shareholder, we do not have that letter.

CHAIRPERSON: Would you have that letter in your –
10 among your documents Ms Daniels?

MS DANIELS: Mr Chairman, I should have it, I will provide it to the Commission.

CHAIRPERSON: Okay, alright.

MS DANIELS: It should be attached to that report that I was mentioning as well, so I should have it.

CHAIRPERSON: Yes, but before Eskom would pay such a large amount of money, allegedly in terms of some contract, would the legal department not first have had the matter brought to them to say, can we go ahead and pay -
20 would it be lawful if we pay or would that not happen?

I am wondering whether before Mr Mabelane sent that letter you would not have sent it via or rather first raised the issue with the legal department to say, we are about to pay, is it okay, legally?

MS DANIELS: No, Mr Chairman, it is not always the case,

that would have been within his delegation of authority to pay.

CHAIRPERSON: Yes.

MS DANIELS: So it does not always, not all payments would come to the to the legal department.

CHAIRPERSON: Even if it is a large amount or maybe R134million was not regarded as large.

MS DANIELS: In the Eskom context R134million was not large Mr Chairman.

10 **CHAIRPERSON:** Was not a large amount, ja. Okay, alright Mr Seleka. Oh, you wanted to add something?

MS DANIELS: Yes, Mr Chairman, I just want to – I will also give you the approved minutes to say that the payment of R134million was to finalise payments up to August 2016. So I will just double check with Mr Seleka because that is the minute that I have.

MS DANIELS: Ja, we have those minutes.

CHAIRPERSON: Are you mentioning that with a view to saying it would not fall under further payments?

20 **MS DANIELS:** That is why I said, that is how the BTC understood it, if I have the correct extract.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Yes, no, we have those – the minutes and that extract, that extract I read to you Ms Daniels, it reads, they read the same.

MS DANIELS: Okay.

CHAIRPERSON: Okay, alright. Well, subject to what somebody else might say on the face of it, it seems to me that either the BTC did not apply their minds properly to what they were doing before making this authorisation or they may have some understanding that I have not been told about, what do you say to that?

From your point of view, does their decision make sense? That is what I want because you were at the
10 meeting, you are the group company secretary, are you able to say you think it does make sense because of A, B, C, D?

MS DANIELS: It is very difficult hindsight to say that Mr Chair for just one reason is that, you know, the information put before them but what I can say is that the meeting was incredibly rushed. I do not think that the BTC applied its mind to the extent that it normally did, because it was a December meeting it was quite rushed.

CHAIRPERSON: Mr Seleka.

20 **ADV SELEKA SC:** Thank you, Chair Ms Daniels that was not the last payment because there is another meeting which was pending – well maybe not pending but would take place in the following year in February 2017.

And another payment was made in fact two payments; one to Trillian and the other to McKinsey R176 million to

Trillian and R348 million to McKinsey.

Can you tell the Chairperson how that came about because it still ties in with the legal review that you are still waiting for. That legal review has not been received and a decision was made again to make these two payments; one to Trillian and the other to McKinsey.

Well let me – let me say this to you because you would have seen from the affidavits of Mr Moodley affidavit, what Mr Koko has also testified about that you signed the
10 memorandum I think on the 20th of February 2017 which again they say caused payment to be made in February 2017.

So they blame you again for signing that memorandum. Now please tell the Chairperson what happened?

MS DANIELS: Mr Chairman Mr Koko has been gloating about this memorandum since the Parliamentary Committee days and ja it actually just quite a deflection of what actually happened at the time.

20 I cannot quite remember the meeting of the 8th of February but what I can tell you was around the circumstances around the – the memo if that is – if that is okay.

ADV SELEKA SC: Yes please.

MS DANIELS: In early February we still did not have the –

the full documentation and we had to really – really hound Mr – Mr Govender to provide the documentation that was required. I think Mr Molefe provided a list to Mr Govender's secretary as to what was required. And it took some time to get back. I think the meeting only took place on the 7th of February between Mr Moodley and his team and Mr Govender and the team that was managing the McKinsey project.

10 So the documentation and the rigour review was not done by the 8th of February when the meeting took place. I would have said that it – it was not done. I think then what happened is Mr Moodley and his team went away and worked on the documentation and it was only subsequent to the meeting that – that the findings were that we actually may not have a contract. You would have seen it in Mr Moodley's documents in his affidavit.

He raised quite a – a number of issues and the fact about the suspensive conditions only came – came about subsequent to the meeting of the 8th of February.

20 I think it was then that – that we...

ADV SELEKA SC: No sorry Ms Daniels just sorry, sorry I am interrupting you but the suspensive conditions how is it that external lawyers saw the suspensive conditions but Eskom and the internal lawyers did not appreciate the need for the fulfilment of those conditions?

CHAIRPERSON: And that – and that of course would include you because as Company Secretary as I understand the position you are required to advise the board on compliance is it not? The compliance with the law.

MS DANIELS: Mr Chairman it is a – I cannot answer for the lawyers at the time because there were – there were – I was not involved when the contract was put in place and by the time I got involved to all intents and purposes the contract was cancelled.

10 And the only issue that we were talking about was settlement and payments to the parties. So it was from that perspective because the – the issue of the suspensive conditions only arose once we went through all the documentation.

ADV SELEKA SC: Ja which – which makes it all the more important to wait for the legal review. Were you – you had two meetings during the time Eskom was awaiting a legal review and those two meetings in two separate – on two separate occasions decide to make payments without the
20 legal review.

 And when the legal review ultimately comes out it tells you that that this agreement does not seem to have even come into being. So it is more troubling. You follow:

MS DANIELS: I follow but you must understand I did not – I did not read the 8th of February meeting as approvals for any

payments because we were still busy with what we – what we were doing and it was only during that process that I – I think a more thorough investigation into the contracts and how it came about was actually taking place.

ADV SELEKA SC: Ja.

MS DANIELS: If you look at the documentation before that I cannot remember the advocate who – there was – there was actually a senior counsel opinion who said that Eskom should not get into this contract the operations people
10 ignored that. But that – that only surfaced much later so that is why I am saying there is – you are assuming a well-oiled system here but the documents were fragmented and not presented together so it was very hard to see the full picture until after the fact.

ADV SELEKA SC: The – the 8th of February 2017 meeting we have the minutes and we have the extract again signed by you. It is definitely a payment approval. So and I will read for the record it is in Eskom Bundle 14(c) page 875.3.

20 “It was resolved that the feedback on the settlement reached with McKinsey and the payment of R460 million by Eskom as part thereof in full and final settlement of all claims in terms of the Master Service Agreement be noted and supported by the BTC.”

And then the Chairperson was asking a question whether this is going to pay McKinsey and the BBE partner the answer was:

“It was confirmed that all sub-contractors to McKinsey would be paid from the R460 million to be paid by Eskom.”

And then the last two payments were made. This is on the 8th of February those payments were made on the 22nd of February. And can you remember the date when CDH
10 provided its opinion?

MS DANIELS: On the 17th of February I think it was.

ADV SELEKA SC: So on the 17th. And they gave the final one on the 28th of February 2017. By that time Eskom had paid all the – all the money that it had undertaken to pay.

MS DANIELS: That is correct. And in that time CDH was instructed to draft the settlement letter. It was signed by McKinsey and Eskom.

ADV SELEKA SC: But anyway the facts Chair are just the same in respect of the December payment the same applies
20 December 2016 the same applies in February 2017. The legal review had not been obtained and decisions were made to make this payment. It is 00:11:10 that is the Chairperson on that – the minutes of the meeting?

CHAIRPERSON: Of what – what page are they?

ADV SELEKA SC: Oh. You have...

CHAIRPERSON: Oh bundle – start with the bundle

ADV SELEKA SC: Eskom Bundle 14.

CHAIRPERSON: Yes.

ADV SELEKA SC: Page 875.3. Oh 14(c).

CHAIRPERSON: 875.

ADV SELEKA SC: 875.

CHAIRPERSON: Was it not the Eskom Bundle.

ADV SELEKA SC: .3.

CHAIRPERSON: Okay. Yes.

10 **ADV SELEKA SC:** So 875.3 is an extract again from the minutes which is signed by Ms Daniels. The minutes continue on the next page. But I just read the resolution to her.

CHAIRPERSON: Oh you just read the resolution part?

ADV SELEKA SC: Yes.

CHAIRPERSON: Is that the one that is says the feedback on the settlement?

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Okay. Yes.

20 **ADV SELEKA SC:** The feedback on settlement reached with McKinsey and the payment of R600 and R460 million by Eskom as part thereof in full and final settlement of all claims in terms of the Master Service Agreement be noted and supported by the BTC. It even seems Ms Daniels as if the BTC was simply rubber stamping or noting what had

already been done or decided to be done. Did you hear me?

MS DANIELS: I am – I am just trying to – ja I am just reading again Mr ...

ADV SELEKA SC: Because they note and support.

MS DANIELS: Yes they noted and supported it and I am just trying to think what were they – what were they supporting?

ADV SELEKA SC: The payment of R460 million. Do they say in 00:13:33 during December – in December 2016 the same as in February 2017 there is no legal review Ms
10 Daniels and these decisions are made. The legal review when it ultimately comes out it says but the suspensive conditions are not fulfilled. You may not even have been liable to the – for this amount to McKinsey and Trillian.

CHAIRPERSON: And – And quite frankly when it comes to suspensive conditions it does not seem to me that you need a lawyers only. I would image that people who are at management level, senior management level even if they were not lawyers they would know that if their department or their entity concluded an agreement with somebody and they
20 were suspensive conditions they would know that until the suspensive conditions were complied with then they would have been under no obligation. Well do you want to deal with what I have just said now before you go to what Mr Seleka said?

MS DANIELS: I – I..

CHAIRPERSON: Do you have a different ...

MS DANIELS: I – I agree with Chairman and I think that that is why there was that move to cancel – well to cancel the contract or the purported cancellation way back in June 2016 when they said there was a failure to meet the terms and conditions.

CHAIRPERSON: Ja but was that not after some payments had been made?

ADV SELEKA SC: No.

10 **MS DANIELS:** I do not think payments had been made just yet Mr Chairman. They actually made payments starting from I think August 2016.

CHAIRPERSON: Well that would make it worse is it not?

MS DANIELS: Yes.

CHAIRPERSON: If – if June they were aware that suspensive conditions had not been met and they knew the effect of the non-fulfilment of suspensive conditions and nevertheless a month or two later they went along with the authorisation of payment and the payment that it just makes
20 it worse. Would you – would you – would you not agree?

MS DANIELS: Yes I agree with that.

CHAIRPERSON: Yes because I was raising this issue of saying well you do not have to be a lawyer really to know the effect of suspensive conditions. You might be – if you are a senior manager; if you are at a certain level you would know

or you should know as far as I am concerned. Now if they knew but nevertheless went along to make payment or to say payment must be authorised then – then certainly one is not dealing with an issue of oversight then. One is maybe dealing with something much more serious than that. You would go along with that?

MS DANIELS: I – I would go along with that Mr Chairman that was the conclusion that we came to after going through all the documentation. I had very, very lengthy discussion
10 with Mr Moodley once I had the chance to read his opinion. We had then – well I did I cannot remember if Mr Moodley was on the phone or what but I went and spoke to Mr Singh and said that we had actually – we had actually made a mistake by making these payments.

CHAIRPERSON: Yes Mr – well of course on the basis of what I said if they knew that suspensive conditions had not been compliant with and they knew the effect of suspensive conditions then it was not – it could not have been a mistake. They made payments knowing that they should not
20 be making payments or they authorised payments in circumstances where they knew that they should not have done that. They must have had some other reason for doing so. You -...

MS DANIELS: I would agree with you knowing what I know now Mr Chairman you know at this – at that stage I was

wanting to give

CHAIRPERSON: The benefit of the doubt.

MS DANIELS: The benefit of the doubt to my colleagues.

CHAIRPERSON: Hm.

MS DANIELS: But from what I know now I would agree with you.

CHAIRPERSON: Hm. Mr Seleka.

ADV SELEKA SC: So what did Mr Singh say when you approached him?

10 **MS DANIELS**: I want to be perceived 00:18:44.

ADV SELEKA SC: What did Mr Singh say?

CHAIRPERSON: Did he say something you cannot say in public?

MS DANIELS: Yes.

ADV SELEKA SC: Oh is that what she is saying.

CHAIRPERSON: Ja that is what she is saying.

MS DANIELS: I would even – I would be – I would be swearing.

CHAIRPERSON: Whatever it – whatever it is.

20 **MS DANIELS**: I would be swearing.

CHAIRPERSON: Whatever it is that he said what did it reflect about how – what he thought about what you had raised?

MS DANIELS: He said oh my word we are ...

CHAIRPERSON: And then the word that you cannot say?

MS DANIELS: That I cannot say.

CHAIRPERSON: Okay. Did – did it – do you think he was making you to think that it may have been a genuine mistake?

MS DANIELS: Knowing what I know now Mr Chairman I think he was trying to do that.

CHAIRPERSON: Ja. But at that time that – is that the impression you got that he was – he had – he was accepting that the – he was saying that we made a mistake – we made
10 a genuine mistake?

MS DANIELS: I do not think I would go as far as that I just think what he was saying is oh my gosh we have screwed up you know.

CHAIRPERSON: Ja.

MS DANIELS: In colloquial terms.

CHAIRPERSON: Ja. Okay.

MS DANIELS: But it was at that stage I saw it – when I said to him – because Mr – Mr Moodley I have taken at – then taken me through in a very lengthy process the – the thought
20 process behind how they got to the conclusion. And I – and I immediately went to see Mr Singh about it.

CHAIRPERSON: Did you also take him through the same process?

MS DANIELS: The reasoning's.

CHAIRPERSON: Ja the reasoning okay. Mr Seleka.

ADV SELEKA SC: Thank you. Ms Daniels but was he not already aware that there was no legal review yet when decisions were – when these two decisions were made in December and in February?

MS DANIELS: I am not sure Mr Seleka I do not recall Mr Singh being present at the meetings. We would have to check the minutes but Mr Govender was in – in contact with him. But like I said just for the – for the benefit of my colleagues at the time that is – that is so I just assumed it was bona fide.

10

ADV SELEKA SC: Mr Singh was at the meeting of the 8th of February.

MS DANIELS: Okay then he would have known.

ADV SELEKA SC: Then he would have known. Ja I can immediately see whether he was in the December meeting as well. But anyway you said earlier that the Executives were manipulating the – the situation in order to make the payment. Are you saying this now on reflection or did you observe this that time when this was taking place?

20

MS DANIELS: It was not – it was not immediate at the time because Mr Chairman the – my attention at that stage was between the McKinsey Trillian issues, the nuclear issues, Eskom was being sued in terms of municipal debts and all of those things or we were suing and there was quite a bit happening.

When I had the time to reflect and I testified about this in Parliament that this is – this was my conclusion having then put everything together because subsequent to February 2017 we then did our own investigations. There were – there were quite a number of investigations into the McKinsey Trillian matter.

There was the Pre-9 Forensic Services Report, there was the Bowmans Investigation and there was my – my own teams' investigation into it and we put all of this information
10 together so we then could see that the processes were – were manipulated.

ADV SELEKA SC: So Mr Singh was at – had tendered an apology in respect of the meeting of the 13th of December 2016. But he was one of the officials authorised in terms of the resolution to negotiate and conclude the settlement process with McKinsey. So I suppose you would have told him after this meeting.

MS DANIELS: Or Mr Govender he would have gotten it – that is why they – I would have prepared the extracts.

20 **ADV SELEKA SC:** So – okay. So your answer to my question is you knew already then – you observed then that they were manipulating the situation to make this – to make this payment?

MS DANIELS: No, no after.

ADV SELEKA SC: Only after.

MS DANIELS: Yes. It was – it was not obvious at that stage Mr Chairman because like I said there was – what was happening at committee level and then the processes that were – the payment processes that were happening, the letters that were being written etcetera.

ADV SELEKA SC: Yes.

MS DANIELS: At operational level which we – which we not ordinarily have sight of. And Mr Govender had full delegated authority in this matter.

10 **ADV SELEKA SC:** Just the one last thing Chair. Ms Daniels we have just been emailed a letter that you referred to. The letter of the 13th of December 2016. I will read it to the record. It is a letter from Eskom to Dr Eric Wood Group Chief Executive Officer Trillian Capital Partners Melrose Arch Sandton.

20 “Dear Dr Wood, McKinsey Master Service Agreement. Further to your letter dated 27 August 2016 Eskom would like to inform you of a decision taken by – by board of Eskom on 13 December 2016 in relation to the McKinsey MSA Contract settlement process. It is our understanding that you were the BEE partner on this contract. Upon an external review of the program benefits including payment made to date it has come

to our attention that the BEE partners portion has not been fully settled. To that end an amount of R134 million is due to yourself.”

The last paragraph reads:

“In relation to any further payments associated with the McKinsey MSA contract Eskom is currently considering the outcome of the external benefits review and legal advice. We will provide you with further correspondence in this regard in due course. Yours sincerely Edwin Mabelane. 13 December 2016.”

10

Now it seems to convey a message R134 million is due to you but any further payments we still await the outcome currently considering the outcome of external benefits review and legal advice.

So there seems to have been knowledge on at least the part of Mr Mabelane that you would consider a legal advice in regard to making any further payments.

20 **MS DANIELS:** Yes at that stage but it was subsequently disregarded.

CHAIRPERSON: Mr Mabelane in that letter seems to write on the basis that the R134 million is excluded or was excluded from the – or – ja was excluded from the pending legal review. I think this is something that you seemed to

have said – to have said earlier on in response to one of my questions too. Is that your understanding of his letter as well?

MS DANIELS: Yes Mr Chairman that is my understanding of his letter.

CHAIRPERSON: What was the basis for excluding any payments from the legal review as you understood the position?

MS DANIELS: As at that time they utilized or let us say the
10 officials utilized the decision of August 2016 and together with – when he talks about the external benefits review in that letter he is talking about that report that I mentioned the Oliver Wyman Report.

CHAIRPERSON: Hm.

MS DANIELS: And it is in that report that they say there may be R134 million to the BEE partner to the sub-contractor.

CHAIRPERSON: Hm. But the – it had been decided by
20 whoever it was who made the decision that there was a need for a legal review on whether or not payments should be made or further payments should be made. When was that decision taken by whoever took that decision?

MS DANIELS: I took the decision on the 5th of December.

CHAIRPERSON: Ja.

MS DANIELS: 2016 – the Oliver Wyman Report that came

out on the 15th of December also recommended that Eskom conduct a legal review.

CHAIRPERSON: So that was a decision that you took and you took it in December 2016?

MS DANIELS: Yes.

CHAIRPERSON: Way after the meeting of 8 August?

MS DANIELS: Yes.

CHAIRPERSON: And – and Mr Mabelane’s letter is dated ...[intervenes]

10 **MS DANIELS:** But ...[intervenes]

ADV SELEKA SC: 13 December 2016.

CHAIRPERSON: 13 December? Was that – was that after – that would be after you had made a decision?

MS DANIELS: Yes.

CHAIRPERSON: But when you made the decision, did you exclude the R 134 million from the need for a legal opinion?

20 **MS DANIELS:** Mr Chairman, my decision was not based on figures or payments or anything. It was – it would included the R 134 million in – if I look back now because my decision was based on that that I was presented with a contract and two letters of demand, one from McKinsey and one from Trillian ...[intervenes]

CHAIRPERSON: Yes.

MS DANIELS: ...regarding payment from Eskom.

CHAIRPERSON: Yes. So ...[intervenes]

MS DANIELS: Yes. So it was not yet related to, for a want of a better word, the nitty-gritty of ...[intervenes]

CHAIRPERSON: Yes.

MS DANIELS: ...which payments were there.

CHAIRPERSON: But was your decision this. We need to have a legal opinion on whether any payments should be made to Trillian or McKinsey? Was that the ambit of your decision?

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

CHAIRPERSON: Which seems to be – which seems to me to have been all-embrative?

MS DANIELS: Yes, because firstly, the contract was dated January.

CHAIRPERSON: H'm.

MS DANIELS: I think the first letter of demand was dated June 2016.

CHAIRPERSON: H'm, h'm.

20 **MS DANIELS:** The other one was dated August. They were – you know, it was so quick.

CHAIRPERSON: H'm.

MS DANIELS: Those were the red flags for me.

CHAIRPERSON: H'm.

MS DANIELS: And that is why I emailed Mr Moodley and said we need to do a legal review here.

CHAIRPERSON: H'm?

MS DANIELS: Because I had no knowledge of the other issues at that point.

CHAIRPERSON: H'm. But earlier, on the 8th of August, the BTC had said some payments needed to be made. Is that correct?

MS DANIELS: That is correct.

CHAIRPERSON: Ja. And did that decision – did the R 134 million fall within the payments that the BTC said
10 should be paid on the 8th of August?

MS DANIELS: The ...[intervenes]

CHAIRPERSON: As you understood the decision.

MS DANIELS: On the 8th of August, the amount was R 800 million.

CHAIRPERSON: Yes.

MS DANIELS: So what the officials did, is that R 134 million was then calculated into that R 800 million.

CHAIRPERSON: So you understood the officials who, including Mr Mabelane, who said that R 134 million was
20 owed by Eskom, you understand them to have regarded the R 134 million as part of the R 800 and something million that the BTC talked about?

MS DANIELS: Yes, that is correct Mr Chair.

CHAIRPERSON: H'm. Mr Seleka.

ADV SELEKA SC: Yes. So Ms Daniels, even on that

basis, on that score, the draft report of Oliver Wyman which I have read earlier did say in respect of the R 134 million that we are not making a legal opinion in respect of that share of the BEE partner. That is out of our scope. You need to obtain legal advice on that. Even on that R 134 million. So how could they ...[intervenes]

MS DANIELS: So... [break in transmission]

ADV SELEKA SC: Ja-no, I am just testing this ...[intervenes]

10 **CHAIRPERSON:** Yes.

ADV SELEKA SC: Yes.

MS DANIELS: Okay.

ADV SELEKA SC: I am just testing this reasoning. Why would they still say this amount of R 134 million should not be subjected to legal review. It should be taken as part and parcel of the decision that was made on the 8th of August 2016? And...

20 Ja, why exclude it when the very aspect you have obtained to give you an assessment on the work that was given, he is saying to you it appears that amount might be due but I am not giving you legal opinion on it. Please obtain legal opinion.

MS DANIELS: Mr Seleka, I cannot speak or the officials involved in terms of their thinking because they had not consulted me. What I am saying is, based on the way that

the manner in which the letters and correspondence is phrased, that is how the system was manipulated.

I accept that, you know, Oliver Wyman did not give a legal opinion on that but if you look at the documentation, that Oliver Wyman report was used as the rational basis for making that payment.

CHAIRPERSON: Also, do you know of any reason why anybody who knew that you had said that there was a need for a legal opinion on whether a further payment or
10 payments should be made by Eskom under this contract, why they would have gone ahead to have payments made without saying to you, your issue relating to legal opinion, does this affect this as well or not? Do you know why they would not have done that?

MS DANIELS: I am not sure Mr Chairman. They – you know, in the manner in which the Eskom Executives worked is, when they – it was not consistent. So they would consult the legal team when they needed to or when they thought it was necessary or when they created issues but
20 in this instance, I think it was not to bring it to my attention.

CHAIRPERSON: Because I think that even with the fact that the BTC may have made a decision in August, that certain payments should be made, once you raise the issue, I would have thought that anybody who was aware

that you are raising the issue of whether Eskom was legally obliged to make any payments, I would have thought that they would say, hang on, let us wait for this opinion, even about whatever the BTC may have decided because they may have made that decision without the benefit of a legal opinion, and if the legal opinion came, it might persuade them to rethink their own decision.

MS DANIELS: I agree with you Mr Chairman. You know, it did not happen in this case.

10 **CHAIRPERSON**: H'm.

ADV SELEKA SC: H'm.

CHAIRPERSON: Okay Mr Seleka.

ADV SELEKA SC: Yes. Chair, the last question. But Ms Daniels, you know when the Executives come here, they are going to blame you. They are going to say you did not advised them or that you signed for something to be done which should not have been done. And even the memo – Mr Koko has said you told the Parliament – or you said in your supplementary, it was an error of judgment.

20 So you need ...[intervenes]

MS DANIELS: Yes, Mister... [laughs]

ADV SELEKA SC: You need to address those ...[intervenes]

MS DANIELS: Okay.

ADV SELEKA SC: ...allegations.

MS DANIELS: Okay. I think the first one is. I think one needs to be aware of the hierarch of power and authority within Eskom and you know these Executives must take accountability for the decisions they made.

My tenure or during my time as Company Secretary, Compliance Officer, Legal Advisor – when it suited the Executives, they would get the opinions. Unfortunately – and then, you know, conveniently say to us: Well, we take the risk. So we can ignore them.

10 Mr Chairman, I think one of the things in the Eskom Delegation of Authority, you know, legal advice is not binding. The Executive does have the authority to override and actually take the risk. So that is something that one has to look at.

So, you know, when they say that the lawyers did not advise them, they either did not ask or they did things that said, okay, I am going to override you which happened in this instance often.

20 And so I think that is the first part. So they need to take their accountability for making those decisions because they have signed off. They had the full delegated authority from the board and they decided to act against legal advice.

Secondly. I had indicated that I had signed that memo and I said it was a lapse of judgment. At the time, I

thought that my signature on that memo and that memo had actually triggered payment. It, actually, was not so.

So I think Mr Koko is using it. And it is unfortunate for me that he is using it as a great deflection from what actually went down at the time. That memo was sent to me on the 20th of February. So that was quite some days after payments have actually been made.

The instruction to settle, to draft the settlement letter had been provided to CDH and bypassed me.
10 Mr Moodley's affidavit says that the instruction came from me. It actually did not. It came from Mr Govender because I put them – they were in direct contact with each other.

And that changes to the settlement letter with even the proposed draft, that CDH had made so that Eskom was protected, was overridden by Mr Govender. And Mr Mabelane sent the letter to Dr Weiss and it was signed, I think, on the 16th of February.

ADV SELEKA SC: Yes. Yes, that is correct.

20 **MS DANIELS:** Ja. So by the time when I get the memo, you know, payments are already in place. So payment – the processes are already in place, the settlement has been signed and ja... The reason I say it was a lapse in judgment Mr Chairman is. Mr Govender came to my office. I had external parties. He waited outside until I signed.

And I actually – I did sign it without asking for the supporting documentation. So that is where I took the accountability of saying I did not actually apply to my mind to that but I think Mr Koko must not mislead the public and you by thinking – by saying that, you know, look here, I was responsible.

I did not sign this – that the payments had already been made or were in the process of being made. So the signature or non-signature of that document is
10 actually irrelevant. The fact remains that Trillian and McKinsey were paid the balance of the payments.

ADV SELEKA SC: The payments were made on 22 February 2017.

CHAIRPERSON: And the letter is on?

ADV SELEKA SC: The letter ...[intervenes]

CHAIRPERSON: Or the memo or whatever. The letter or memo that she says she signed?

ADV SELEKA SC: Oh. She said she received it on the 20th of February.

20 **CHAIRPERSON:** Oh, okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: And but it was signed on the same day?

MS DANIELS: No ...[intervenes]

CHAIRPERSON: Was it signed on the day you received it?

MS DANIELS: No, mister ...[intervenes]

CHAIRPERSON: Or when did you sign it?

MS DANIELS: Mr Chairman, I signed it late the next day.

CHAIRPERSON: 21?

MS DANIELS: Because I was in meetings. And then it still had to go to Mr Koko and it was not... [break in transmission]. So, you know, that document – he refused to sign it. He said I forwarded it to him. I did not. It went through – Mr Govender was the one that... with the memo.

10 **CHAIRPERSON**: And it really – it was not signed by Mr Koko. He was then Chief Executive at that time.

CHAIRPERSON: H'm. Okay. We stop there...?

ADV SELEKA SC: Yes, Chair. That is – but let me just add what she was saying by this time.

CHAIRPERSON: H'm?

ADV SELEKA SC: By that time already, the 16th of February 2017, Mr Edwin Mabelane had sent a letter to McKinsey saying, we are going to pay you the final amount. That is - we will stop here for today.

20 **CHAIRPERSON**: Okay we will stop here, Ms Daniels, for today but of course you will be coming back on Friday at two o'clock.

MS DANIELS: Yes.

ADV SELEKA SC: Yes.

CHAIRPERSON: Is two o'clock the earliest you can make

in terms of – from your side in terms of the difference in time or is one o'clock also doable?

MS DANIELS: It is doable Mr Chairman. I will just have to go to bed earlier. It is ...[intervenes]

CHAIRPERSON: Oh, okay.

MS DANIELS: ...five o'clock in the morning here ...[intervenes]

CHAIRPERSON: Okay.

MS DANIELS: ...if it is two o'clock in the afternoon.

10 **CHAIRPERSON:** No, no, no. That is fine. Let us leave it at two o'clock. It is just that, Mr Seleka, I am thinking we might finish earlier with the morning witness of Friday. Is it Mr Pamensky?

ADV SELEKA SC: No, it is the former Minister Lynne Brown.

CHAIRPERSON: Oh, okay. Okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: No, no, no. The ...[intervenes]

ADV SELEKA SC: Ja.

20 **CHAIRPERSON:** Okay. No, no. No, no. I thought it was Mr Pamensky. No, no. Let us leave it for two o'clock because...

ADV SELEKA SC: But we might finish early.

CHAIRPERSON: We might finish early.

ADV SELEKA SC: With her.

CHAIRPERSON: H'm.

ADV SELEKA SC: With her, we might finish early.

CHAIRPERSON: With Ms Daniels?

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja. No, okay, let us leave the arrangement at two o'clock. Say you will testify at two o'clock. Okay alright.

MS DANIELS: Thank you, Mr Chair.

CHAIRPERSON: Okay thank you. I am going to take a
10 short adjournment before the next witness takes the stand.

ADV SELEKA SC: Yes.

CHAIRPERSON: To give you a chance to settle.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Okay we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you, Mr Chair.

CHAIRPERSON: Are you ready Mr Seleka?

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

CHAIRPERSON: Yes.

ADV SELEKA SC: Our next witness is Ms Nonhlanhla
Kraai.

CHAIRPERSON: Yes.

ADV SELEKA SC: Shall I first take the oath or...?

CHAIRPERSON: Yes-no, that is fine. I understand she is legally represented. Shall we ...[intervenes]

ADV SELEKA SC: Oh, yes.

CHAIRPERSON: ...have her legal representatives to place themselves on record first?

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: You can do it from where you are if your mic is working.

10 **ADV GOOSEN:** Thank you, Mr Chair. Deirdré Goosen from the Johannesburg Society of Advocates. I have got with me, Mr Padayachee, my instructing attorney, to my left.

CHAIRPERSON: Okay. Thank you. Okay please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record?

WITNESS: My name is Nonhlanhla Dahlia Kraai. [Speaker not clear.]

20 **REGISTRAR:** Do you have any objection to taking ...[intervenes]

CHAIRPERSON: Sorry. I am not sure if that was loud enough. Please, just speak up more.

WITNESS: My name is Nonhlanhla Dahlia Kraai.

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

WITNESS: No objection.

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

WITNESS: Yes, I do.

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

WITNESS: So help me God.

10 **NONHLANHLA DAHLIA KRAAI:** (d.s.s)

CHAIRPERSON: Thank you. You may be seated.

ADV SELEKA SC: Thank you, Chair. Just by way of background information for the next witness and I will refer to the files in due course. Ms Kraai is a former employee of Eskom. Her testimony to the Commission is on a very narrow aspect.

20 This is the person who Mr Masango said was supposed to meet with way back on the 10th of March 2015. He could not meet with her because of the meeting he had with Melrose Arch on that day. On his way back to – what is it?

MS KRAAI: Kusile.

ADV SELEKA SC: Kusile.

CHAIRPERSON: Kusile.

MS KRAAI: Kusile Power Station.

ADV SELEKA SC: On the way back to Kusile, he telephoned Mr Kraai and told her about this strange meeting, as he calls it, that he had at Melrose Arch. They then had another meeting on the 11th, early morning on the 11th of March 2015 and in respect of both the conversation and that meeting, Ms Kraai will give her recollection of what happened. She might at the end also be given the opportunity to respond to Mr Koko's allegation in regard to her. Thank you, Chair.

10 **CHAIRPERSON:** Ja, basically, Ms Kraai is the person that Mr Masango says he told or informed her about the meeting that he says he attended with Mr Koko and Mr Salim Essa at Melrose Arch ...[intervenes]

ADV SELEKA SC: Correct.

CHAIRPERSON: ...on the 10th.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: So Ms Kraai's evidence will seek to say whether that is so but if it did happen, it happened in the telephone conversation that Mr Masango says he had with

20 Ms Kraai ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...after that meeting on the 10th as well as in another meeting or in a meeting the following day.

ADV SELEKA SC: Correct.

CHAIRPERSON: But Mr Masango may have talked about

a meeting on the side of the road and so on but Ms Kraai will deal with all of that.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: That is correct, yes.

CHAIRPERSON: You may proceed.

ADV SELEKA SC: Thank you, Chair. The affidavits – Ms Kraai has provided the Commission with two affidavits ...[intervenes]

10 **CHAIRPERSON:** And maybe just to mention because not everybody might remember the meeting of the 10th as much as we do.

ADV SELEKA SC: Yes.

CHAIRPERSON: The meeting of the 10th of March 2015 that Mr Masango testified about, is the meeting where he says he was told about the suspension of the Eskom Executives even before they were suspended and Mr Koko has said no such meeting took place.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Okay.

ADV SELEKA SC: Thank you, Chair. Ms Kraai has provided the Commission with two affidavits. They are found in Eskom Bundle 14(a). The first one is on page 52. Ms Kraai, you will have the same bundle in front of you, Eskom Bundle 13(a), page 52.

MS KRAAI: Yes.

ADV SELEKA SC: If you... Ja, page 52.

MS KRAAI: [Speaker unclear – voice very soft.]

ADV SELEKA SC: Ja. Ja, she will help you.

MS KRAAI: [Speaker unclear – voice very soft.]

ADV SELEKA SC: Follow... okay.

CHAIRPERSON: Oh, just explain the black numbers to her.

ADV SELEKA SC: Ja, that is her first time Chair. We
10 follow the black pagination on the page that is right at the
top left-hand corner.

MS KRAAI: Yes.

ADV SELEKA SC: And... So are you there on page 52?

MS KRAAI: Yes, I am.

ADV SELEKA SC: There is an affidavit there. I, the
undersigned, Nonhlanhla Kraai. The affidavit runs up to
page 59 ...[intervenes]

MS KRAAI: That is correct.

ADV SELEKA SC: ...where there is a signature. Do you
20 confirm that to be your signature?

MS KRAAI: Yes, that is correct.

ADV SELEKA SC: The affidavit ...[intervenes]

CHAIRPERSON: That is the signature on – just above the
words “signature of deponent”. Is that your signature?

MS KRAAI: On page 59?

CHAIRPERSON: Yes ...[intervenes]

MS KRAAI: That is correct.

CHAIRPERSON: There are two signatures. So I just wanted to make sure that you know which one we are talking about.

MS KRAAI: That is correct Mr Chair. That is my signature.

CHAIRPERSON: Okay alright. Mr Seleka.

ADV SELEKA SC: Thank you, Chair. The affidavit is
10 dated 24 November 2020. Just go back to that page with your signature on it, page 59.

MS KRAAI: Okay just wait.

ADV SELEKA SC: Oh, have you moved ...[intervenes]

CHAIRPERSON: 59, the black numbers on the top left-hand corner.

MS KRAAI: Dated 2012/11?

ADV SELEKA SC: That ...[intervenes]

CHAIRPERSON: Is that page where your signature is, the one we were talking about just now.

20 **ADV SELEKA SC:** On what page are you now?

MS KRAAI: I am on page 59.14.

ADV SELEKA SC: If you go back.

MS KRAAI: Okay.

ADV SELEKA SC: Yes.

MS KRAAI: 24 November 2020.

ADV SELEKA SC: Yes. You confirm the date so?

MS KRAAI: [No audible reply]

ADV SELEKA SC: You confirm the correctness of the contents of your affidavit?

MS KRAAI: Yes, it is correct although I had to correct some errors.

ADV SELEKA SC: Okay.

MS KRAAI: Yes, after I submitted my initial affidavit.

ADV SELEKA SC: Okay so those corrections will be
10 apparent in your supplementary affidavit.

MS KRAAI: In my supplementary affidavit that I signed.

ADV SELEKA SC: Okay we will go into it. Chairperson, I beg leave to have this affidavit on pages 52 to 59, dated 24 November 2020, admitted as Exhibit U-26.1.

CHAIRPERSON: The affidavit of Ms Nonhlanhla Dahlia Kraai starting at page 52 is admitted as an exhibit and will be marked as Exhibit U-26.1.

AFFIDAVIT OF NONHLANHLA DAHLIA KRAAI IS ADMITTED AND MARKED AS EXHIBIT U-26.1

20 **ADV SELEKA SC:** Thank you, Chair. Ms Kraai, then turn to page 59.1.

MS KRAAI: [No audible reply]

ADV SELEKA SC: You are there?

MS KRAAI: [No audible reply]

ADV SELEKA SC: Between those two lines are those two

lines that you see supplementary affidavit.

MS KRAAI: Yes.

ADV SELEKA SC: You see that? I, the undersigned, Nonhlanhla Dahlia Kraai. That is on page 59.1. This affidavit runs up to page 59.14. Do you see that?

MS KRAAI: Yes, I do see that.

ADV SELEKA SC: And above the word deponent, there is a signature there. Do you confirm that to be your signature?

10 **MS KRAAI**: That is correct. That is my signature.

ADV SELEKA SC: It has a date stamp. On the commissioner's stamp is 11 December 2020. I read that one because I see you did not write the date on which you signed it.

MS KRAAI: Ja.

ADV SELEKA SC: Do you see that?

MS KRAAI: Yes, that is correct.

ADV SELEKA SC: Other than that, do you confirm the contents of the affidavit to be yours?

20 **MS KRAAI**: Yes, it is mine.

ADV SELEKA SC: And the correctness of what is contained in there?

MS KRAAI: Yes, that is correct.

ADV SELEKA SC: Thank you. Chairperson, I beg leave to have the affidavit marked supplementary affidavit on

page 59.1 to 59.14 admitted as Exhibit U-26.2.

CHAIRPERSON: And that affidavit is admitted as an exhibit and will be marked as Exhibit U-26.2.

SUPPLEMENTARY AFFIDAVIT OF MS NONHLANHLA DAHLIA KRAAI IS ADMITTED AND MARKED AS EXHIBIT U-26.2

ADV SELEKA SC: Thank you, Chair. Ms Kraai, just by way of background. Could you tell the Chairperson what is your profession or your qualification?

10 **MS KRAAI:** My qualification is Bcom Honours in Accounting and I just obtained my master's in Development Finance.

ADV SELEKA SC: Thank you. Congratulations.

MS KRAAI: Thank you.

CHAIRPERSON: Congratulations.

MS KRAAI: Thank you.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes. You – and when did you join Eskom?

20 **MS KRAAI:** I joined Eskom in 1994 as a graduating trainee because they were sponsoring my studies.

ADV SELEKA SC: I see. And you would have progressed in your career, I suppose, or positions within Eskom?

MS KRAAI: Yes, I did progress. And if maybe I can take the Chair to that progression at high-level.

ADV SELEKA SC: H'm?

MS KRAAI: As I have said, I started as a graduating trainee in one of the power stations. Then I was appointed as a Management Accounting Manager in 2002 in another power station.

And I moved to the Middle-Manager in 2006 also in different power station. And in 2009, I moved to Kusile Power Station Project as a Middle-Manager, Project and Financial Accounting Manager.

10 Then in 2016, I was appointed as a Senior Manager in Oversight and Monitoring Assurance in the portfolio delivery of the project. Then my last was – my last job was Senior Manager for Procurement Primary Energy in Eskom.

ADV SELEKA SC: Yes. So between 2009, April 2009 to October 2016, you say you were the Project and Financial Accounting Manager?

MS KRAAI: Accounting Manager. That is correct Mr Seleka.

20 **CHAIRPERSON:** At Kusile?

MS KRAAI: At Kusile Power Station Project.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Ja. So it will be fair to say you are a learned person?

MS KRAAI: I am?

ADV SELEKA SC: A learned person.

MS KRAAI: I think it is fair and I am also very knowledgeable.

ADV SELEKA SC: Very knowledgeable. [laughs] So if you had an encounter at work which was different from normal, you would notice that, you would remember that?

MS KRAAI: I do so.

ADV SELEKA SC: Ja.

MS KRAAI: I will remember. I think so.

10 **ADV SELEKA SC:** Now Mr Masango has testified before the Commission and has provided the Commission with an affidavit. We have given you that affidavit. And I know from your affidavit that you have listened to his testimony. He talks about given you ...[intervenes]

CHAIRPERSON: Well, before you go there Mr Seleka. Do you want to ask her what her duties were in her position in 2015? What were your duties, generally, insofar as they may be relevant to your interactions with Mr Masango at work?

20 **MS KRAAI:** Mr Chair ...[intervenes]

CHAIRPERSON: In other words, what connected you with Mr Masango.

MS KRAAI: Okay. I belonged to Group Capital Finance or I will say the Finance Division and when I was appointed, you get seconded to your project where we signed, we call

it a Service Level Agreement, to say you will be providing the services in terms of Financial Accounting, Project Accounting, just making sure all your accounting entries are taken care of.

But I was also responsible to make sure your – we call it Short-term Budget, Medium-term Budget, the preparation thereof and the submission, responsible for all your financial audit within the project. Your cash flow management from your monthly, quarterly, yearly and your
10 cost to completion. Your overall business case of the project.

I think it is important that I mention that the delegation of the business case which was your 169 billion including your ITC was delegated to Mr Masango. My delegation was only limited to my Finance Cost Centre but I was there to make sure that there are processes in place, that the business case is executed within the budget that was allocated to the project.

CHAIRPERSON: What was... So were both of you based
20 at Kusile Power Station, that is yourself and Mr Masango?

MS KRAAI: That ...[intervenes]

CHAIRPERSON: In 2015.

MS KRAAI: Yes, that is correct Mr Chair.

CHAIRPERSON: And what was Mr Masango's position or title at Kusile at that time if you are able to remember?

MS KRAAI: Mr Masango was a Project Director for Kusile. Basically, he was responsible for the project.

CHAIRPERSON: Yes.

MS KRAAI: Yes.

CHAIRPERSON: Had the two of you been working at Kusile Power Station for quite some time by March 2015?

MS KRAAI: Yes. I joined Kusile Project, Power Station Project on the 1st of April 2009 Chair.

CHAIRPERSON: Yes, okay. Did your duties require you
10 to have meetings with Mr Masango at certain intervals or at all or not really?

MS KRAAI: Yes, my duties required that I have meetings with Mr Masango except for our standing meetings. We used to have a Steering Committee which used to sit on Tuesdays where we would discuss the progress of the project but from different stakeholders.

But as a finance person, it was important that from time to time we engage ourselves – we will engage, sometime on a weekly basis if it is necessary if I foresee
20 the risk.

Because part of my responsibility was to identify the risk and say from the financial point of view how can it be mitigated because your numbers, they talked to the scope of work, they talked to the milestone, what needs to be executed at the project.

Therefore, I cannot just take a financial decision without Mr Masango and other project manager in the project.

CHAIRPERSON: H'm. And when you talk about the risk to the project or risks to the project, you talk about the Kusile Project or ...[intervenes]

MS KRAAI: The Kusile Project, yes.

CHAIRPERSON: Yes.

MS KRAAI: The financial risk of us going beyond the
10 allocated budget, approved allocated budget, the business case, yes.

CHAIRPERSON: Oh, okay.

MS KRAAI: Because that was my role to make sure that I identify those risks. We put mitigation in place and say what are we going to do.

CHAIRPERSON: Okay.

MS KRAAI: Yes.

CHAIRPERSON: Mr Seleka, you want to take it from there?

20 **ADV SELEKA SC:** Thank you. Thank you, Chair. So Ms Kraai, you – I was going into the telephone conversation that Mr Masango has testified about and wrote about in his affidavit, that he gave you that call, it was a return call on the 10th of March 2015, to tell you why he could not answer your calls to him and why he was

unable to be available for a meeting.

I would like you to give the Chairperson your recollection of what transpired on that day and how it came about that Mr Masango spoke to you about this meeting he had.

MS KRAAI: Thank you, Mr Seleka. Mr Chair, before I can give a ...[intervenes]

ADV SELEKA SC: A recollection.

MS KRAAI: ...recollection of the events that happened
10 over the phone with Mr Masango. I think it is important that I just give the background to that.

CHAIRPERSON: Yes.

MS KRAAI: What led to Mr Masango calling me.

CHAIRPERSON: Yes.

MS KRAAI: Making the call.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes.

MS KRAAI: Yes. I prepared a presentation, looking at the cost to completion or should I say, we call it the MYTD-3
20 which was the target. It is your Miles To Year Price Determination that Eskom use when they apply the tariff increase to...

Once it was approved, you are get given the target to say this was the target, you work within that target. There was a meeting that was scheduled to take

place on the 11th of March 2015 but ...[intervenes]

CHAIRPERSON: And what meeting was that?

MS KRAAI: Yes ...[intervenes]

CHAIRPERSON: [Indistinct] ...[intervenes]

MS KRAAI: ...the meeting was to discuss the presentation and highlight fuel contracts or we used to call them packages that we are going to overspend and we had to make decision to say, yes, as much as we were still within the business overall budget for the project but those
10 specific contracts are beyond their allocated budget.

So you need to make a decision and say: Do we draw the money from the constituency? We had the constituency that was approved, given to the project but you also need to follow the process but you cannot just make that decision just because a package is overspending, you just go and withdraw from the project.

You have to follow, justify, understand what happened because some of these risks to find out that it is just a once-off risk. The consequences will – once you
20 mitigate the risk, then the budget will realign itself. That is the importance of the meeting. And in that meeting already ...[intervenes]

CHAIRPERSON: Was that meeting a meeting of a certain committee that has got a name or ...[intervenes]

MS KRAAI: No, no, no. It was not a committee. Ja.

CHAIRPERSON: It was ...[intervenes]

MS KRAAI: Because if you check the subject on the email, it was saying MYTD-3 Discussion.

CHAIRPERSON: H'm?

MS KRAAI: So we were going to discuss with specific project managers whose contract or packages were overspending.

CHAIRPERSON: Who were going to attend that meeting?

MS KRAAI: It was going to be myself. I think and two of
10 my colleagues were invited. And those specific project managers.

CHAIRPERSON: What were their names?

MS KRAAI: Okay I will try to recall. Can I...?

CHAIRPERSON: Or ...[intervenes]

MS KRAAI: Okay. It was myself, there was Thumelo(?), there was Dudu from the Finance side and I can recall a Ruben Mamorabe(?) was - Azihn(?) was going to attend and ...[indistinct] was going to attend. There was a B&B guy. I cannot remember the name.

20 **CHAIRPERSON:** Ja, you do not mention all of them.

MS KRAAI: Ja, yes.

CHAIRPERSON: But at least those or some of the people ...[intervenes]

MS KRAAI: Basically, it is your multi-discipline from construction, contract management facilities.

CHAIRPERSON: Ja, you said one of them was Dudu who?

MS KRAAI: Dudu Nthonghema(?)

CHAIRPERSON: Okay.

MS KRAAI: Yes.

CHAIRPERSON: And you mentioned another one, the first one ...[intervenes]

MS KRAAI: Thumelo. Those were my finance managers reporting to me.

CHAIRPERSON: Oh, reporting to you?

10 **MS KRAAI:** Yes, they were reporting to me.

CHAIRPERSON: Okay.

ADV SELEKA SC: H'm.

CHAIRPERSON: And was there somebody not reporting to you that was going to attend?

MS KRAAI: Yes, the others I have mentioned Chair.

CHAIRPERSON: You have mentioned two ...[intervenes]

MS KRAAI: They were reporting to Senior Project Managers or contract – they were – I would say technical people. They were not finance people.

20 **CHAIRPERSON:** Mention the two of them for me?

MS KRAAI: It was Ruben Mamorabe.

CHAIRPERSON: Yes?

MS KRAAI: It was Awe Deyase(?).

CHAIRPERSON: Yes.

MS KRAAI: If I can recall.

CHAIRPERSON: Yes.

MS KRAAI: And there was a construction manager
...[intervenes]

CHAIRPERSON: No, that is fine.

MS KRAAI: Ja.

CHAIRPERSON: It is fine. By the time you left Eskom,
were they still there? Were they still employed by Eskom?

MS KRAAI: Yes, they were still employed by Eskom.

CHAIRPERSON: Okay.

10 **MS KRAAI:** Yes.

CHAIRPERSON: Do you have any reason to believe that
they would remember the issue of that meeting?

MS KRAAI: Oh, okay. I think I was still going to explain
to say – but the meeting was going to take place on the
11th Mr Chair.

CHAIRPERSON: Ja.

MS KRAAI: Yes.

CHAIRPERSON: Yes, yes.

20 **MS KRAAI:** But I think they can recall that because the
meeting did continue ...[intervenes]

CHAIRPERSON: Yes.

MS KRAAI: ...although without Mr Masango.

CHAIRPERSON: Okay, alright.

MS KRAAI: Yes.

CHAIRPERSON: Okay continue. I interrupted you.

MS KRAAI: Yes. That is the background I wanted to give Mr Chair to say the importance of that meeting because it was – we are already highlighting the risk that these packages were going to overspend by, like, two billion.

CHAIRPERSON: Okay.

MS KRAAI: Yes. So it was important that Mr Masango becomes part of that meeting to attend. But normally what happens. He would request that me and him will meet so that I brief him of the challenges, what are we seeing at
10 the Finance Department so that when he meets the Project Managers, we all align and he will say: How do I help finance, you know, to achieve what we want to achieve? So there were really critical and crucial decisions that had to be taken.

CHAIRPERSON: So are you saying that whenever there was to be a meeting such as the one that was planned for the 11th ...[intervenes]

MS KRAAI: Yes.

CHAIRPERSON: ...he would want to have a meeting with
20 you ...[intervenes]

MS KRAAI: Yes.

CHAIRPERSON: ...ahead of that meeting?

MS KRAAI: Yes, ahead of that meeting.

CHAIRPERSON: So that you would brief him on ...[intervenes]

MS KRAAI: I brief him on ...[intervenes]

CHAIRPERSON: ...on issues.

MS KRAAI: ...on finance issues.

CHAIRPERSON: Yes.

MS KRAAI: Correct Mr Chair.

CHAIRPERSON: Oh, okay.

MS KRAAI: Yes.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Thank you, Chair.

10 **MS KRAAI**: Okay.

ADV SELEKA SC: Uhm ...[intervenes]

MS KRAAI: So on that day, he said he has got work commitments, that is on the 10th of March. He said he has got work commitments but when he comes back from Megawatt Park ...[intervenes]

CHAIRPERSON: Okay, okay before he said that. What gave rise to him saying that? Did you phone him? Did you meet in the morning or how did...?

20 **MS KRAAI**: Oh, sorry. The secretary arranged – called me to say Mr Masango would like to have a meeting with you when he comes back from Megawatt Park during lunchtime so that you brief him about the meeting.

CHAIRPERSON: And ...[intervenes]

MS KRAAI: ...about the presentation. Sorry.

CHAIRPERSON: And around – do you remember

roundabout what time of the day or morning this was, when his secretary called you?

MS KRAAI: No, Chair.

CHAIRPERSON: No?

MS KRAAI: I think that was the previous day. I cannot remember.

CHAIRPERSON: The day before the 10th?

MS KRAAI: The day before the 10th, yes.

CHAIRPERSON: The 9th?

10 **MS KRAAI**: The 9th. To say Mr Masango would like to have a meeting with you on the 10th.

CHAIRPERSON: Ja.

MS KRAAI: Yes, during lunchtime.

CHAIRPERSON: Yes.

MS KRAAI: So that you take him to the presentation.

CHAIRPERSON: Ja.

MS KRAAI: Ja, in preparation of the meeting that was going to take place on the 11th of March.

CHAIRPERSON: Okay alright.

20 **MS KRAAI**: Yes.

CHAIRPERSON: So the secretary was arranging a meeting for you and Mr Masango ...[intervenes]

MS KRAAI: That is correct ...[intervenes]

CHAIRPERSON: ...to ...[intervenes]

MS KRAAI: ...during lunchtime.

CHAIRPERSON: To meet during the lunchtime
...[intervenes]

MS KRAAI: Yes. And it was ...[intervenes]

CHAIRPERSON: Okay.

MS KRAAI: ...not unusual Chair.

CHAIRPERSON: Ja.

MS KRAAI: Because when he has got an issue with
finance, even when he is having lunch, you know, she will
call – he will ask the secretary that ...[intervenes]

10 **CHAIRPERSON:** Okay.

MS KRAAI: ...that Ms Nonhlanhla must come and see him
...[intervenes]

CHAIRPERSON: Ja.

MS KRAAI: ...so that we discuss few issues.

CHAIRPERSON: Okay alright. Mr Seleka.

MS KRAAI: That is correct.

ADV SELEKA SC: Yes. So did you have a meeting on the
10th?

20 **MS KRAAI:** No, Mr Seleka... No, Chair, we did not have a
meeting.

ADV SELEKA SC: What happened?

MS KRAAI: I think around lunchtime ...[intervenes]

CHAIRPERSON: First of all. Had you agreed to the
suggestion that the two of you should have a meeting
...[intervenes]

MS KRAAI: Yes, I did agree.

CHAIRPERSON: You did?

MS KRAAI: Because we are both on site.

CHAIRPERSON: Ja.

MS KRAAI: It is happening onsite.

CHAIRPERSON: Ja, okay.

MS KRAAI: You quickly go to his office.

CHAIRPERSON: Okay.

MS KRAAI: You brief him. Then you continue with your
10 normal duties.

CHAIRPERSON: Okay but you say the meeting did not
happen?

MS KRAAI: The meeting did not happen.

CHAIRPERSON: Okay.

MS KRAAI: Yes.

CHAIRPERSON: Mr Seleka is asking why did it not
happen.

ADV SELEKA SC: Yes, that is right.

MS KRAAI: Okay. During lunchtime, I think, I called the
20 secretary to check if Mr Masango is back from his
commitment at Megawatt Park.

ADV SELEKA SC: Is this now on the 10th of March?

MS KRAAI: That is the 10th of March.

ADV SELEKA SC: H'm?

MS KRAAI: Then the secretary said: No, he is not back

yet. I think I waited for, if I can recall, 30-minutes or so, thinking may you know he is stuck in traffic, he will be back on – but then I call again, is Mr Masango back on site. We call it site, you know, Kusile power station project. Then she said to me no, she is not back and I took a phone, I called Mr Masango, you know, to say are we still going to have a meeting because it was important for me – the 10 March was also our month end closing for finance so I had to plan other things, I need to review the report before they
10 are submitted to head office. So I just wanted to say are you still coming, are we going to meeting, you know, and continue what needs to happen?

Then when I called the phone, Chair, did not even go to the voicemail, I could not even leave a voice message to say, you know, and that was it. Then I continue with my normal duties.

CHAIRPERSON: You say it did not even go into voicemail, your call ...[intervenes]

MS KRAAI: I am not sure if it was full or what, it is just
20 like “ting”. There was no space for me to leave. Ja, there was no like...

CHAIRPERSON: It was full?

MS KRAAI: I am not sure whether it was full or what but it just did not go to – let me say it did not go to the voice message.

CHAIRPERSON: And it did not ring?

MS KRAAI: No, it did not ring.

CHAIRPERSON: Or did it ring but did not go into voicemail or did it not ring at all?

MS KRAAI: No, it did not ring.

CHAIRPERSON: Oh.

MS KRAAI: Yes.

CHAIRPERSON: Mr Seleka?

MS KRAAI: I am not sure, like I cannot – like I am saying
10 I cannot recall but I do not remember leaving a voice message. Yes, Chair.

ADV SELEKA SC: Yes, okay. No, that is fine. Now you have called – or the PA has said he has not – or the secretary has said he has not come back, you take the step to call him, you are unable to reach him. What do you do next? Do you go about your duties?

MS KRAAI: No, I think I – Chair, I went back to my normal duties, as I have mentioned that it was month end there were a lot of reports that had to be submitted, we
20 had a deadline of five o'clock that day to submit our report.

ADV SELEKA SC: Yes.

MS KRAAI: Yes.

ADV SELEKA SC: Does he ever come back to you?

MS KRAAI: Mr Masango came back to me, I cannot recall the exact time but I think it was around four. But later that

day, you know, he came back to me, Chair, and apologising not coming back ...[intervenes]

CHAIRPERSON: So he called you?

MS KRAAI: Ja, he called me.

CHAIRPERSON: And what did he say in the conversation?

MS KRAAI: He said oh, I am sorry, I could not come back site, you know, something strange happened. Then I am like oh, something strange ...[intervenes]

10 **CHAIRPERSON:** Ja, tell me about that telephone conversation between the two of you.

MS KRAAI: Yes.

CHAIRPERSON: As fully as you are able.

MS KRAAI: Okay. Mr Masango called me, he said - obviously he was returning my call saying he could not come to site and have the meeting as planned with me, apologising for not coming back to site during lunchtime as arranged. Then he said to me something I was called - I was called by Mr Koko or Matshela, to come to a meeting
20 at Melrose Arch, okay? I just listened, you know, because then she said it was a very strange funny meeting. So I was just listening. Then when I arrived there the reason why I could not call you or to say I am not going to be able to meet a meeting it is because my phone was taken at the entrance. I met Koko, I think at the balcony, they met

somewhere, then Mr Koko took him to some room at Melrose Arch where at the entrance he was asked to surrender the phone at the entrance. They took his phone at the entrance. Then she was taken to some room and in that room there was a *indoda emfushane* that is what he said to me.

CHAIRPERSON: That is what he said in the telephone ...[intervenes]

MS KRAAI: Ja over the telephone, ja over the
10 conversation, then ...[intervenes]

CHAIRPERSON: And what did you say?

MS KRAAI: Then I said oh, okay, what happened in that meeting? Chair, as far as I can recall hundred percent Mr Masango did not go further. He said to me let us meet on site in the morning so that you still take me to the presentation and I will tell you the rest of like the story what happened. Because for me was oh, they took your phone, you know, what kind of meeting was that?

CHAIRPERSON: Okay. Did the conversation end?

20 **MS KRAAI:** Ja, the conversation end, the conversation was very brief, Chair.

CHAIRPERSON: Yes.

MS KRAAI: Yes.

CHAIRPERSON: Now you referred – you said he said there was *indoda emfushane* in that meeting, do you want

to ...[intervenes]

MS KRAAI: Ja, she said to me ...[intervenes]

CHAIRPERSON: Hang on, hang on, do you want to say what you understood *indoda emfushane* to mean in English?

MS KRAAI: It was a short Indian man.

CHAIRPERSON: Okay, that is what that phrase means?

MS KRAAI: Ja, that is what the phrase means.

CHAIRPERSON: Okay, alright.

10 **MS KRAAI:** Yes.

CHAIRPERSON: But you said he – I think he was returning your call.

MS KRAAI: Yes.

CHAIRPERSON: But if your call did not even go through he would not have known you had called.

MS KRAAI: As I am saying, it did not ring, it only said “ting” so I am not sure like it was recording and maybe the voicemail was full, I do not know, but I could not leave the – ja, the message, Chair.

20 **CHAIRPERSON:** Okay, alright. Mr Seleka?

ADV SELEKA SC: Thank you. So, Ms Kraai, did he mention to you that he had a meeting with this short Indian man and Mr Koko?

MS KRAAI: That is correct, Mr Chair, he did mention to say he had a meeting with Mr Koko and the Indian

gentleman, the short Indian gentleman.

ADV SELEKA SC: And you are not mistaken about that?

MS KRAAI: No, I am not mistaken about that, Mr Chair.

ADV SELEKA SC: And so he agrees with you then – well, let me ask you this before that, did he mention anything about the suspensions to you on the telephone call?

MS KRAAI: Mr Chair, Mr Masango did not mention anything about the suspension of the four executives.

CHAIRPERSON: In that telephone conversation.

10 **MS KRAAI:** Ja, on the conversation.

ADV SELEKA SC: On the – ja. So he then agrees with you or proposes to you that he will tell you more details ...[intervenes]

MS KRAAI: Ja, like ...[intervenes]

ADV SELEKA SC: The next day.

MS KRAAI: Yes, if I may say, Chair, it was like a casual – you get what I am saying, it is like let us meet in the morning, I will relate the rest of the story in the morning, not something – I will say not something like tense or – if I
20 may say...

CHAIRPERSON: Yes and did you meet the following morning?

MS KRAAI: Yes, we did meet, Chair.

CHAIRPERSON: Around what time was it?

MS KRAAI: It was around, if I am may say, around 6 a.m.

because he said to me he needs to rush, there is another meeting at Megawatt Park.

CHAIRPERSON: Yes.

MS KRAAI: Yes, there is another meeting at Megawatt Park.

CHAIRPERSON: And the meeting that was going to involve the other – or project managers I think you said, the other people, the bigger meeting, what time was it going to be?

10 **MS KRAAI:** It was going to take place between ten and twelve.

CHAIRPERSON: Okay and you met with him at 6 a.m.?

MS KRAAI: Yes, we met at 6 a.m. because he said he is not going to attend the meeting.

CHAIRPERSON: Yes.

MS KRAAI: He needs to go back Megawatt Park but I can continue with the meeting after I have briefed him.

CHAIRPERSON: Yes.

20 **MS KRAAI:** You know, about the presentation, the risk that we have identified and what will be the way forward in terms of handling the over-expenditure that we were anticipating.

CHAIRPERSON: So he was going to tell you ... (intervenes)

MS KRAAI: More or less ... [intervenes]

CHAIRPERSON: What his views ...[intervenes]

MS KRAAI: Ja, what his views are.

CHAIRPERSON: Which he would share with the others at the meeting.

MS KRAAI: Which I would share at the others but they still need to take me to the details of why we find ourselves in this situation.

CHAIRPERSON: Okay, alright. Mr Seleka?

ADV SELEKA SC: Now in this – this is no on the 11
10 March.

MS KRAAI: Yes, Chair.

ADV SELEKA SC: In the morning. He has promised you he will tell you the rest and the next morning, that is the morning, does he – do you ask him or does he volunteer to tell you the rest about the meeting he had on the 10 March?

MS KRAAI: If I can recall, Mr Chair, I think he volunteered. He started – as we were going through the presentation and he is like hey, obviously repeating what
20 he said to me over the phone to say this strange meeting happened at Mel – I am not going to repeat that but then he went further, Chair, and said in that meeting, as I was asking what happened – my last question to him last night was what happened, when he said okay, let us meet, continue with the meeting, do not cancel it, the meeting

that was going to take place between ten and twelve. In the morning he says I was told in that meeting that I will be acting as a Group Capital Executive, as executive for Group Capital. Then I think for me more than – I was like surprised and said oh, okay, where is Mr Dan Marokane going, who was his current manager, you know? And I cannot recall, Chair, what was his response to my question, you know, because I even asked and say who is going to take over at Kusile, you know? Then that one I
10 remember, he said I do not know. But still in the morning of the 11th he did not mention the suspension of the four executives.

CHAIRPERSON: So on the 10th when he spoke to you on the phone he told that the reason why he did not make it for the lunch meeting that was [inaudible – speaking simultaneously]

MS KRAAI: Yes, the reason he was calling me to – the reason why ...[intervenes]

CHAIRPERSON: Hang on one second.

20 **MS KRAAI:** Yes, he could not come.

CHAIRPERSON: Hang on one second. He told you that the reason why he could not make it for that meeting with you was because he had been called to a meeting at Melrose Arch and he had been called by Mr Koko and he had had a meeting with Mr Koko and a short Indian man, is

that right?

MS KRAAI: That is correct.

CHAIRPERSON: And when you asked him what had happened at that meeting, he did not tell you on the conversation but he said ...[intervenes]

MS KRAAI: That is correct.

CHAIRPERSON: ...he would tell you more ...[intervenes]

MS KRAAI: When we meet.

CHAIRPERSON: When you met in the morning on the
10 11th.

MS KRAAI: That is correct.

CHAIRPERSON: And on the 11th when you met the issue was discussed but he just told you that he had been told at that meeting that he would act as Group Capital? What is the title?

MS KRAAI: Group Capital Executive. Ja, Chair, ja.

CHAIRPERSON: Group Capital Executive, ja.

MS KRAAI: Yes.

CHAIRPERSON: Who position was that?

20 **MS KRAAI:** That was Mr Dan Marokane's position.

CHAIRPERSON: So he said he would act – he had been told he was going to act in that position?

MS KRAAI: In that position.

CHAIRPERSON: And you ...[intervenes]

MS KRAAI: I was a bit surprised, hence ...[intervenes]

CHAIRPERSON: You were surprised and you asked him what would happen to ...[intervenes]

MS KRAAI: Ja, where is Mr Marokane going?

CHAIRPERSON: Yes.

MS KRAAI: I thought maybe they are moving, there are some changes happening in the organisation.

CHAIRPERSON: And he did not give you an answer for that?

MS KRAAI: No, he did not.

10 **CHAIRPERSON:** Then you asked who was going to act in his position?

MS KRAAI: At Kusile as a project director.

CHAIRPERSON: And then he gave you answer?

MS KRAAI: He said he does not know.

CHAIRPERSON: He said he did not know.

MS KRAAI: Yes.

CHAIRPERSON: And he did not tell you about any suspensions?

MS KRAAI: No, Chair.

20 **CHAIRPERSON:** Yes.

MS KRAAI: As far- ja, he did not tell me about any suspensions.

CHAIRPERSON: Okay, is that the sum total of your conversation at that meeting of the 11th insofar as it related to his meeting the previous day?

MS KRAAI: That is correct, Chair. Then we
...[intervenes]

CHAIRPERSON: Whatever else you discussed related to
the presentation.

MS KRAAI: It was related to the presentation because I
had to quickly brief him about the presentation.

CHAIRPERSON: Yes.

MS KRAAI: Because I remember, I think I – he said I
need to be out by half past six.

10 **CHAIRPERSON:** Yes.

MS KRAAI: You know, just to – ja.

CHAIRPERSON: Okay, alright. Could you be mistaken
about your conversation with him on the 10th on the phone
and your conversation with him on the 11th?

MS KRAAI: Chair, on the 10th, I am not mistaken. He did
not mention the suspensions.

CHAIRPERSON: Yes and on the 11th?

MS KRAAI: On the 11th he did not mention the
suspensions.

20 **CHAIRPERSON:** Yes. But the things that you say he
mentioned, could you be mistaken about them?

MS KRAAI: About the...?

CHAIRPERSON: About them, they things that you say he
did mention, could you be mistaken about them?

MS KRAAI: Chair, I am not mistaken.

CHAIRPERSON: Okay, alright.

MS KRAAI: That is what I can recall what happened in that morning, Chair.

CHAIRPERSON: Okay, alright. Mr Seleka?

ADV SELEKA SC: Yes, thank you, Chair. Did you at any time thereafter, you know, on the 11th or the 12th or the 13th learn about the suspensions?

MS KRAAI: On the 12 March, I think it was around about eleven, there was a communiqué from corporate
10 communication to the whole organisation relating to the suspension of four executives already mentioning the names of the people that were going to act in those positions and Mr Masango's name was one of the names that was there, exactly the same position. He told me he was told he was going to act.

CHAIRPERSON: Okay.

ADV SELEKA SC: Did the communiqué mention anything about the suspensions of the executives who occupied the positions, one of which being where Mr Masango was going
20 to act?

MS KRAAI: I think I sent the – if I can recall the communiqué, it was just saying the four executives – I am not sure whether did it say they will be suspended but it was saying the four executives, I cannot remember where to where but I did – it was there affidavit.

CHAIRPERSON: You [inaudible – speaking simultaneously]

MS KRAAI: Ja, I cannot remember but it was – it did say to say these are the four executives and while – I think there is some investigation happening, if I can recall, and these are the current executives that will be acting in those positions, I cannot remember word to word.

CHAIRPERSON: Did he say they would step aside?

MS KRAAI: Can you repeat that, Mr Chair?

CHAIRPERSON: Do you remember whether the
10 communiqué said that the executives would step aside?
You cannot remember?

MS KRAAI: I think so, hence I am saying I cannot remember.

CHAIRPERSON: Okay.

MS KRAAI: Where – oh, there is the communiqué, sorry, Chair.

CHAIRPERSON: Ja, yes?

MS KRAAI: It was just saying the executive – ja, to step
20 down while the inquiry is underway. I remember something
inquiry.

CHAIRPERSON: Okay.

MS KRAAI: As if there is some inquiry happening.

CHAIRPERSON: Okay, alright.

MS KRAAI: Yes.

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

That is on page 59.22, Eskom bundle 14A. So were you – I suppose you were not surprised by that or were you surprised to learn – to see that Mr Masango is going to act in the position that he told you about the day before?

MS KRAAI: I think I will say I was surprised also the step down of these four executives more than anything to say, oh, okay, the four executives are stepping down but just the middle manager in a project and these are executive changes happening, so I was like oh, okay, you know, this
10 is what Mr Masango told me that he will be acting although he did not tell me the reasons behind.

CHAIRPERSON: Did – going back to your meeting with Masango on the 11th in the morning did he tell you the name of the person to whom he referred to as a short Indian man?

MS KRAAI: Mr Chair, he never told me.

CHAIRPERSON: He never told you?

MS KRAAI: No, he never.

CHAIRPERSON: And you did not ask.

20 **MS KRAAI:** No, I did not ask.

CHAIRPERSON: Alright.

MS KRAAI: I do not remember asking but he never told me and I would say I was also not interested, if I may say.

CHAIRPERSON: Yes. Now I seem to think Mr Masango said he met with you on the side of the road on the 10th.

Did that happen on the 10th when he came back from that meeting?

MS KRAAI: Chair, as I have said, Mr Masango called around four, past four, I was still on site. As I have mentioned previously it was month end reporting, there were reports that were due at five. I think that day I left the site around six, past six, which was just normal for us, you know, sometimes even eight at night we will leave the site if it is month end reporting, but I never met Mr
10 Masango on the side of the road.

CHAIRPERSON: Okay, alright. So he must be mistaken about that if that is what he says as far as you are concerned.

MS KRAAI: As far as I am concerned, ja. I think it is up to him to prove it, yes.

CHAIRPERSON: Okay, alright. Mr Seleka?

ADV SELEKA SC: Thank you. Did you enquire from him why he called this meeting strange? Did you find out from him?

20 **MS KRAAI**: Chair, I did not – for me I assume it is strange because they took his phone from him. I never enquired to say – I think if I can recall, Chair, I think it is even there in my affidavit, I only asked a question to say why was the meeting not at Megawatt Park and I cannot remember the answer from Mr Masango. I remember

asking that to say why was the meeting at Megawatt Park but at the same time, Chair, I did not read that much because it was normal for Mr Masango to – whether Megawatt Park to meet stakeholders, you know, ja. Ja, for meetings. So I did not really enquire, ensure – there was nothing suspicious or untoward for me to be enquiring to say who was this Indian man.

CHAIRPERSON: Mr Seleka, the email screen shots or prints at page 55 and page 58, do we have something
10 clearer than what we have here?

ADV SELEKA SC: Yes, Chair. We have tried to do that prior to the hearing and Mr Padayachee, the attorney for Ms Kraai, has re-emailed to us those screen shots. We can enlarge them on the computer but I am told when they get to be printed out they still come out small.

CHAIRPERSON: Oh.

ADV SELEKA SC: Ja.

CHAIRPERSON: Will she be able to – that is Ms Kraai – to read into the record what appears on those screen
20 prints?

ADV SELEKA SC: Yes because the names ...[intervenes]

CHAIRPERSON: Cover that.

ADV SELEKA SC: Let us cover that because ...[intervenes]

CHAIRPERSON: Let us cover that, ja.

MS KRAAI: Okay.

CHAIRPERSON: As you have said, Mr Seleka, she is testifying on very narrow issues.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: So I want to us to finish as soon as possible.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: With her evidence. There is no need for us to stay for too long because the area she is covering is
10 very narrow.

ADV SELEKA SC: That is correct, Chair.

CHAIRPERSON: Ja, okay. Ms Kraai, will you be able to read? Let us start with the screen print at page 55.

ADV SELEKA SC: Yes.

CHAIRPERSON: I think in the paragraph 10 you say:

“I set out below what I was informed by Mr Masango over the telephone on that day. It is important now that I also sketch some background better from the conversation and do so by reference to the email
20 screen print of it below.”

Okay, then you can read it so – because I cannot read it clearly.

MS KRAAI: Okay. The first screen shot relates to paragraph 10, Chair.

“It is a rescheduled meeting, it was supposed to take

place on the 4 March but it was rescheduled to take place on the 11 March. The subject of the meeting...”

It says:

“MYPD3 discussions and where ...[intervenes]

ADV SELEKA SC: Sorry, sorry.

CHAIRPERSON: Who is the author of the document.

ADV SELEKA SC: Yes.

CHAIRPERSON: And to whom is it directed and what is the date of the document?

10 **MS KRAAI:** Oh. Oh, okay. I think it will reflect as if it was – it was coming from Tapiso Rapport(?) who was my secretary.

CHAIRPERSON: Okay.

MS KRAAI: Yes.

CHAIRPERSON: It was directed to?

MS KRAAI: It was directed to the following people, Mr Masango, Abram Masango, Nonhlanhla Kraai, Dudu Ngema ...[intervenes]

20 **CHAIRPERSON:** Oh and then the rest of the people that you mentioned?

MS KRAAI: Ja. Boitemelo(?) Kanya, [indistinct – dropping voice] Mosiwe and ...[intervenes]

CHAIRPERSON: Okay, that is fine, you do not have to mention all of them.

MS KRAAI: Yes.

CHAIRPERSON: And what did it say – what was the date of the ...[intervenes]

MS KRAAI: The meeting was 11 March 2015.

CHAIRPERSON: No, the actual ...[intervenes]

ADV SELEKA SC: The date of the email.

CHAIRPERSON: The date of the print or whatever was sent to them, the email or whatever, what was the date of it? Was it sent on the 10th or 11th or is that not clear?

MS KRAAI: It is not clear.

10 **CHAIRPERSON:** Okay, alright. What did it say to them, to the addressees?

ADV SELEKA SC: It is clear on my side, Chair.

CHAIRPERSON: Oh, what it is it?

MS KRAAI: Tapiso send – Tapiso Rappowe(?) sends the email on Wednesday 4 March 2015 at 7.08 and she says – can you see it now?

MS KRAAI: Yes.

ADV SELEKA SC: She says:

20 “Good day all, the meeting is rescheduled due to unavailability of people.”

And then you have the subject and then you have:

“When?”

Meaning the date. Then it says:

“Wednesday, 11 March 2015 at 10.00 to 12.00.”

“Where”?

It says:

“PD’s boardroom”

Now what does PD stand for?

MS KRAAI: Project director’s boardroom. Mr Masango had his own boardroom where he discussed his – ja, presentation, his own issues that relate to his office.

ADV SELEKA SC: Okay, so now – so that we understand this, on the 4 March this email communicates the rescheduling of the meeting and gives a new date being
10 Wednesday the 11 March at 10.00.

MS KRAAI: That is correct, Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes and that is all that is important about that print that is contained there.

ADV SELEKA SC: That is it, Chair, yes.

CHAIRPERSON: And then we go to the one at page 58 of your affidavit.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON**: Page 7 of your affidavit but page 58 of the paginated bundle. Yes, Ms Kraai?

MS KRAAI: Okay. Is the one that relates to paragraph 23, Chair?

CHAIRPERSON: Yes, paragraph 23 says:

“With respect to Mr Masango a meeting was

scheduled on the 16 March 2015 on site at Kusile, see the screen shot below, whereby Mr Masango told us of his appointment to act as GE Group Capital, exactly the position in which he had said to me that Mr Koko had told him he...”

That is Mr Masango.

“...would be appointed to act. Please see hereunder a [indistinct] invitation.”

Yes, do you want to read that, Ms Kraai?

10 **MS KRAAI:** Thank you, Chair.

“The meeting was sent out on Friday the 13 March which was after the Group Corporate communiqué was already out talking about the suspension or step down of the four executives where Mr Masango requested a meeting with his management.”

We used to call it steering committee, we meet people which is all the discipline within the project. As you can see the meeting took place on the 16th – I think it was a Monday, if I can recall, where Mr Masango came to address
20 us to say he is moving and it was with immediate effect, you know? And if I can recall, which I did not mention in my affidavit I think on that day he already had the person introducing a guy who was going to take over at Kusile.

CHAIRPERSON: And you say on what day was that?

MS KRAAI: On the 16th.

CHAIRPERSON: Oh, on the 16th.

MS KRAAI: The very same meeting when he called of us, all – ja, all the managers as per the invite

CHAIRPERSON: Okay, alright.

MS KRAAI: Yes.

CHAIRPERSON: Thank you. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. So the person he was introducing is the person going to act in his position?

MS KRAAI: Who was going to act in his position, that is
10 correct.

ADV SELEKA SC: Okay. Now if it were to be said that you are colluding with Mr Masango to implicate Mr Koko, what would be your response?

CHAIRPERSON: In other words, Mr Koko has said that Mr Masango's evidence that he had a meeting with him and Mr Salim Essa, because that is what Mr Masango has testified, on the 10 March 2015 is not true. He has given evidence as to why he says Mr Masango would falsely implicate him but he says that at that time he and Mr
20 Masango had a - were very close – they were getting on very well, but he says later, and I think it may be 2017.

ADV SELEKA SC: Yes.

CHAIRPERSON: Their relationship seemed to have soured, but then I asked him well Mr Masango says he told Ms Kraai about this meeting on the 10th in a telephone

conversation and – about this meeting why would – and Ms Kraai confirms that in her affidavit, why would, then, Ms Kraai say that Mr Masango told him something that she didn't tell him and I think Mr Seleka is going there to say, well what would you say if Mr Koko's response is you were colluding against him, you were colluding with Mr Masango against him because I think he said – didn't he say, Mr Seleka, that he laid some criminal complaints or he raised – he made some allegations of misconduct on the part of
10 Ms Kraai?

ADV SELEKA SC: Ja.

CHAIRPERSON: I think you must put that.

ADV SELEKA SC: Yes, Ms Kraai your counsel has provided us with a printout of the transcript of Mr Koko's testimony, an extract from there reads,

20 “On 2 March 2017, not only did I, this is Mr Koko testifying, not only did I give the Board that dossier, but I also gave the Board the names of the people at Kusile that I think were in a corrupt relationship with Mr Masango and one of them was Ms Nhlanhla Kraai, she is no longer working for Eskom, I do not know why. I was not surprised when I saw her evidence with Mr Masango joining what he says is their Koko hunt”,

So, my question to you is, if either him or whoever

says to the Chairperson, well Chairperson, in this case it's him these people were colluding against me, they are joining, as he says their Koko hunt, all what you're saying is not true, it's only because you've joined the bandwagon of people who want to bring him down, what is your response?

MS KRAAI: Thank you Mr Seleka, Mr Chair, I did not join the bandwagon, I'm not colluding with Mr Masango. Based on the evidence that I've given under the oath to this
10 Commission that's my vision of my own truth and the truth only, it's not based on the collusion with Mr Masango. I've provided, I believe the evidence that I've provided. It's sufficient enough to prove that I'm not colluding with Mr Masango, hence I provided the emails and if I can recall, Mr Seleka, you even requested the presentation itself to prove and the presentation, luckily, because I still had my backup taking into account what happened to me within the organisation. So, the presentation, if you can recall, Mr Seleka, it was even written 10th of March which was, say
20 you know, this is the presentation and it's written NYPD3 and the appointment also supports my provision of what happened.

ADV SELEKA SC: Yes, but do you know anything about what Mr Koko is saying there about the dossier, corruption at Kusile and that you were part of it?

MS KRAAI: I think, I will speak for what happened to me to say, I did not leave the organisation because of – I was corrupt, I was never corrupt, and I was also not in the corrupt relationship with Mr Masango. I resigned in July 2019 or I formally left the organisation in August 2019 but what led to my resignation is, on the 1st of March, I'm just going to be at high level, I got an appointment in my diary that there's a meeting taking place at – because by then I was with procurement as a senior manager, primary energy
10 responsible for – ja. Then it was just a – it was like a business meeting, then 12 o'clock I go to the boardroom then I found my manager who was my manager by then and there was a HR person there, HR/IR Person. Then the next thing what happened there, I was told of the intention to be suspended which I was shocked, I remember so well, I even cried because I was shocked to say, okay – then there was just – I'm not going to go to the details but there were just two allegations.

I want to answer the issue of corruption to say, the
20 allegation, we're not talking about corruption. The two allegations we're talking about a conflict of interest to say, I declare that my husband is owning a company because my husband is a businessman, but I declare – it's like playing with words, it said, I declare as a Director, I think it's there in the – it doesn't say, I did not declare it says, I

declare as a Director not as a shareholder that was allegation number one. Allegation number two was, I sent the document to my husband somewhere in 2017 and even the declaration is talking about 2017. I think for me, I'm saying it's 2019, the organisation stayed with this for two years then you come and suspend me.

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

MS KRAAI: Then, during my – just to be brief to get where I resigned, then I was subjected to – those are the
10 allegations – then let me respond, I deny those allegations saying I did declare the document I sent to my husband was nothing to do with him getting business in Eskom it was just an example of something he requested, you know, I did not hide, just to say example, look this is how we do things in Eskom, there was no conflict of interest but just to go further Chair, then I participated – that was in March where they asked questions about my husband, everything what happened, you know, and I participated fully, that was March. Then it was quiet...[intervenes].

20 **CHAIRPERSON:** That's and Inquiry now?

MS KRAAI: Sort of an inquiry, ja I got called somewhere in Pretoria to answer about those allegations, provide information, provide everything, then...[intervenes].

CHAIRPERSON: Were you being interviewed as part of the investigation?

MS KRAAI: Yes, I was being interviewed.

CHAIRPERSON: Not a disciplinary hearing as yet?

MS KRAAI: No, it was not a disciplinary hearing.

CHAIRPERSON: Okay.

MS KRAAI: I was just being interviewed but even that interview it became more personal because it was more about, I would say, the assets we owned, just to be at high level. How did we, you know, acquire those assets and all, you know, it wasn't more about the two allegations for my
10 suspension.

CHAIRPERSON: But was Mr Koko, to your knowledge, involved in any way in these allegations being brought against you?

MS KRAAI: I don't know Chair.

CHAIRPERSON: You don't know?

MS KRAAI: I don't know, I really don't know. I participated in March Chair, nothing happened, I waited and waited and as I said, somewhere in May something happened and I said, now it's a personal attack where a
20 video of my house was shown throughout the organisation and the allegation was – it was built by a contractor. Then I realised that my relationship with Eskom was irreparable, hence in July I tendered my resignation.

CHAIRPERSON: And when you tendered your resignation, did Eskom allow you to serve your notice...[intervenes].

MS KRAAI: They allowed me to serve my notice, I left...[intervenes].

CHAIRPERSON: Hang on, hang on, Ms Kraai, we can't speak at the same time.

MS KRAAI: Sorry Chair.

CHAIRPERSON: Did they allow you to serve your full notice?

MS KRAAI: They did Chair.

CHAIRPERSON: They didn't say after you tendered your
10 resignation, okay you don't need to serve your notice you
can go?

MS KRAAI: No, Chair, they allowed me to serve the notice.

CHAIRPERSON: Yes, was that before they proffered any disciplinary charges against you when you tendered your resignation?

MS KRAAI: I can't hear you Chair.

CHAIRPERSON: Was it before they tendered any charges or proffered any charges...[intervenes].

20 **MS KRAAI:** No, no charges were brought against me Chair, when I resigned.

CHAIRPERSON: Yes.

MS KRAAI: But in my letter I stated that I will continue to participate if there are any charges against me.

CHAIRPERSON: So, in your letter of resignation of

March, you continued to cooperate with them...[intervenes].

MS KRAAI: Yes, I wanted to continue to cooperate.

CHAIRPERSON: Even after you were...[intervenes].

MS KRAAI: Even after I'd left the organisation.

CHAIRPERSON: And did they follow-up?

MS KRAAI: Nobody contact me, nobody till today.

CHAIRPERSON: Up till today?

MS KRAAI: Up to today, Chair.

CHAIRPERSON: Have you been charged criminally about
10 anything arising out of that?

MS KRAAI: Nothing, Chair.

CHAIRPERSON: Ja, okay, Mr Seleka?

ADV SELEKA SC: I think one important question is this
Ms Kraai, the questioning – the people who were
questioning you about these allegations they were making
against you, was Mr Koko part of those people?

MS KRAAI: No, no I think – if I can recall, they hired a
company, was it Bowmans, it was Bowmans.

ADV SELEKA SC: Okay, so he wasn't present.

20 **MS KRAAI:** No, he wasn't Chair.

ADV SELEKA SC: So – and you have said, you don't
know whether he was behind this?

MS KRAAI: No, Chair, I don't have ...[intervenes].

ADV SELEKA SC: Would you have any reason to join the
Koko hunt?

MS KRAAI: No reason to join the Koko hunt, Chair.

CHAIRPERSON: Did you know Mr Koko before the 10th of March 2015?

MS KRAAI: Yes, I know Mr Koko from Generation when I was working in Generation at Kriel Power Station and Mr Koko was, I think an Engineer at Duvha Power Station, but we will have those meetings where he's there, I'm there but I knew Mr Koko and there's nothing ja.

CHAIRPERSON: Had there been any issues at any stage
10 between the two of you before ...[intervenes].

MS KRAAI: Nothing that I know of Chair, till today.

CHAIRPERSON: Before he gave his evidence before this Commission and said whatever he said about you, did you know of any issues that might have been there before...[intervenes].

MS KRAAI: No, we don't have any issues with Mr Koko.

CHAIRPERSON: Yes, okay, alright.

MS KRAAI: Yes, Chair

CHAIRPERSON: Mr Seleka?

20 **ADV SELEKA SC:** Ja, Chair I think that's it, are you aware of any investigation by, what's his name, the gentleman who's mentioned by Mr Koko, Paul O'Sullivan?

MS KRAAI: Who's that?

ADV SELEKA SC: Paul O'Sullivan.

MS KRAAI: Okay Who's that?

ADV SELEKA SC: You don't even know the man?

MS KRAAI: No, I don't know who's that, Chair.

ADV SELEKA SC: Okay that's alright.

MS KRAAI: I don't know who's that, Chair.

CHAIRPERSON: Is there anything you could have benefited by falsely implicating Mr Koko?

MS KRAAI: Me benefiting?

CHAIRPERSON: Hmm.

MS KRAAI: Nothing, Chair, there was no benefit for me,
10 even to collude with Mr Masango.

CHAIRPERSON: Okay, alright. Counsel for Ms Kraai do you wish to re-examine.

COUNSEL: Mr Chair, we have no questions for re-examination?

CHAIRPERSON: Okay, thank you. I think we are going to adjourn at this stage, tomorrow is it Mr Anoj Singh, Mr Seleka who is giving evidence tomorrow?

ADV SELEKA SC: On the 18th Chair.

CHAIRPERSON: And who is giving evidence tomorrow?

20 **ADV SELEKA SC:** It's a different work stream.

CHAIRPERSON: Oh, it's a different work stream.

ADV SELEKA SC: I believe it's a different work stream
Chair.

CHAIRPERSON: Oh.

ADV SELEKA SC: Because we couldn't sync Mr Singh's

availability for tomorrow.

CHAIRPERSON: Well, we must talk because my schedule reflects him ja, and I've not given any permission that he should not come.

ADV SELEKA SC: I will remind the Chairperson.

CHAIRPERSON: You will remind me, have I given?

ADV SELEKA SC: Yes.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Well, if you say I have given, I will accept your...[intervenes].

ADV SELEKA SC: He's coming on the 18th.

CHAIRPERSON: Oh, is that so?

ADV SELEKA SC: Ja, with the proviso that, if we are not finished, we will schedule him for another day.

CHAIRPERSON: Oh, so I was quite kind. Okay, alright, Okay, I'm not able to tell the public who will give evidence during the day tomorrow but in the evening, for the evening session I will hear the evidence of the former Minister of
20 Transport, Ms Dipuo Peters who will continue and complete her evidence and then on Thursday you said it will be Eskom.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: And Friday.

CHAIRPERSON: Okay, alright. Ms Kraai thank you very much for availing yourself to assist the Commission, we appreciate it very much.

MS KRAAI: Thank you Chair.

CHAIRPERSON: And, to come in the evening and thank you to your legal team as well.

MS KRAAI: Thank you Chair and thank you to Mr Seleka.

CHAIRPERSON: Thank you, we are going to adjourn for the day, we adjourn.

10 **REGISTRAR:** All rise.

INQUIRY ADJOURNS TO 17 MARCH 2021