

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

22 FEBRUARY 2019

DAY 54

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PROCEEDINGS HELD ON 22 FEBRUARY 2019

CHAIRPERSON: I see there is nobody ready to address me.

ADV VINCENT MALEKA SC: Good morning Chair.

CHAIRPERSON: Good morning Mr Maleka, good morning everybody, good morning Mr Mabuza. Yes.

ADV VINCENT MALEKA SC: Chair today we are going to begin with the first of witnesses from Eskom or relating to Eskom. It is Mr Jabulane Albert Mabuza of course representing the board of Eskom. He is legally represented. May I ask those who represent him to place their names on record?

10 **CHAIRPERSON:** Ja thank you.

ADV THEMBEKA NGCUKAITOBI: Thank you Mr Chairman my name is Thembeke Ngcukaitobi I am with Ms Lerato Zikalala I act on behalf of Mr Mabuza and the board of Eskom. We are acting on instructions of Clare Tucker from Bowman Gilfillan.

CHAIRPERSON: Thank you very much Mr Ngcutaitobi. Thank you.

ADV VINCENT MALEKA SC: Chair the evidence of Mr Mabuza will be guided by a statement he made which he submitted to the commission.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: The statement is in a file which has been marked Exhibit U1 to U3. At the moment it comprised two files of documentation.

20 **CHAIRPERSON:** No this one is marked Volume U and then it says File 1 so I guess that is in substance the same thing.

ADV VINCENT MALEKA SC: Yes we can work with that description.

CHAIRPERSON: Ja.

ADV VINCENT MALEKA SC: Can I though for the record ask you to mark the statement of Mr Mabuza as U1.

CHAIRPERSON: The Registrar can just mark it. Zonika. Just go and mark that file U1. Actually if we call it U1 it seems to me it is going to be much more convenient and easier.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: So I think I will change mine from Volume U File 1 to simply U1.

ADV VINCENT MALEKA SC: Indeed.

CHAIRPERSON: Is that fine?

ADV VINCENT MALEKA SC: Yes Chair.

CHAIRPERSON: That is much more than when we say Volume U1 we know which one
10 we are talking about.

ADV VINCENT MALEKA SC: Yes. I understand from the rest of my colleagues who were presenting evidence relating to Eskom that there are additional statements which have already been designated file numbers of exhibit numbers.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Flowing from U1.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: So it will be U2 up to U4.

CHAIRPERSON: Yes I see there is a lever arch file marked Volume U File 2 of this one
20 that we have just marked U1 is marked Volume U file 1 of and there is space left but we have now amended that to say U1.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: I assume that this other one marked Volume U File 2 is the one that should be U2? Is that right?

ADV VINCENT MALEKA SC: We can ignore it for the moment.

CHAIRPERSON: We can ignore it for now okay.

ADV VINCENT MALEKA SC: Because it was given to you in advance so that you familiarise yourself.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: With the different witnesses who would unfold after the evidence of Mr Mabuza.

CHAIRPERSON: Okay no that is fine.

ADV VINCENT MALEKA SC: Chair there are housekeeping matters that I would like to deal with before we get to the actual evidence of Mr Mabuza.

CHAIRPERSON: Yes.

10 **ADV VINCENT MALEKA SC:** The first relates to the notices that have been dishd out to persons who are or might be implicated from the evidence – sorry from the statement of Mr Mabuza.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: We have prepared a separate bundle for your records. May I beg your permission to hand up a copy of the bundle of the notices?

CHAIRPERSON: Yes thank you.

ADV VINCENT MALEKA SC: You will see then the bundle begins with an index of Eskom implicated parties.

CHAIRPERSON: Yes.

20 **ADV VINCENT MALEKA SC:** They are eight in total. The first is Mr Anoj Singh.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: The second is Mr Sean Maritz. The third is Mr Edwin Mabelane. The fourth is Mr Charles Kalima. The fifth is Mr Govender. The sixth is Mr – is Ms Daniels. The seventh is Mr Magango and the last is Mr Koko.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Copies of these notices are included in the bundle.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Nothing tends on them for the moment.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: I merely give you this bundle at this stage in the event those persons elect to exercise their right in terms of Rule 33 either to apply for the introduction and presentation of their own evidence or the cross-examination of Mr Mabuza in due course.

CHAIRPERSON: Okay.

10 **ADV VINCENT MALEKA SC:** For now we do not have any response from their side.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: So we will ask you to pack this document for now.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: The next set of documents Chair is a bundle that has been prepared by Mr Mabuza and his lawyers in the course of the preparation of his evidence and in respect of additional matters that we raised with his lawyers and with him. They have kindly prepared the bundle and have made it available to us. May I ask once again for your permission to present that bundle to you.

CHAIRPERSON: Thank you.

20 **ADV VINCENT MALEKA SC:** I have taken the liberty of marking it U5.

CHAIRPERSON: Okay. Arrangements must just be made for the marking to be also on the spine.

ADV VINCENT MALEKA SC: Yes. We will definitely mark it in accordance with our own internal processes and requirements.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: But this is the method, fashion and model in which it was presented to us.

CHAIRPERSON: Ja no that is fine.

ADV VINCENT MALEKA SC: I like you have not had an opportunity to go through it in detail.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: But I was given some guidance as to how I should approach this document as and when an opportunity to carefully consider it arises.

CHAIRPERSON: Yes.

10 **ADV VINCENT MALEKA SC:** But for now just to take you through what its contents are and it will be an exercise of the blind leading the blind for the moment. You will see that the file begins with an index.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Then the index has different parts, Parts A to C for now.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And Part A describes documents relating to disciplinary proceedings. You will see A2.

CHAIRPERSON: Yes.

20 **ADV VINCENT MALEKA SC:** In particularly relates to the charges that were put to Mr Koko.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And...

CHAIRPERSON: And his plea.

ADV VINCENT MALEKA SC: And his plea. You will see that A3 relates to the summary of what they conceive to be objective evidence relating to allegations made in

the public domain regarding Mr Koko based on Seva emails and Eskom Board resolutions. These are emails which Eskom retrieved and sought to utilise in support of the charges that were brought against Mr Koko. The Chairman of Eskom in the course of his evidence will take you through the charges, Mr Koko's response and some of the emails. Of course we will want to find out from him what was the upshot of those proceedings. And then Chair what follows is A4 the disciplinary charges brought against Ms Daniels. We do not have her plea yet but I am sure Eskom's lawyers will guide us on that issue in due course.

CHAIRPERSON: Yes.

- 10 **ADV VINCENT MALEKA SC:** What follows are the findings made by the Chairperson of the Disciplinary Enquiry of Ms Daniels? You will find it at A5. We will take you to some of those findings in due course and then thereafter you have A6 which is the charges brought against Mr Kalima and A7 is the charges brought against Mr Maritz. Again the Chairperson will take us through all of this in order to explain to us what is the status of the proceedings in that regard. Part B relates to several of the responses that we ask Eskom to present or provide in relation to the - or some of the reports that we have presented before you including the Fundudzi Report. You will find that the response relating to Fundudzi is set out in Part B and then what follows is Eskom's notice of review application. In that litigation involving the setting aside of the contract
- 20 or contracts awarded to McKinsey and there would be one aspect relating to those proceedings which we would like to draw your attention to in due course. And it relates to a so called Rule 35.12 notice that Eskom gave to McKinsey to produce several documents. And we will refer you to the response of McKinsey in that regard. And then you will find Eskom's response in regard to the investigation which we now know has been initiated by the SIU. It is set out in B2 and then there is another notice of motion

in B3. And B4 it is styled separate pack provided. This is a pack of documentation again which the Eskom lawyers have produced for our consideration relating to exchange of confidential information between some of its executives and third parties who in our view had no right to receive, consider or distribute that information. It has now been given to me in a separate pack. I have not yet time to consider it but I will again ask the administrative team of the commission to make several copies and we will make sure that a copy is placed before you.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: So that in due course you would consider it.

10 **CHAIRPERSON**: Okay.

ADV VINCENT MALEKA SC: And lastly it is a memorandum on the status of Eskom's Contractual Relationship if any with Tegeta and related group of companies and the concern of the legal team was whether Eskom is still doing business with Tegeta and its related entities. We have been told that Tegeta is under business rescue and the Chairperson will canvass that issue again. We raised it with him and we will raise it in the course of this proceedings in the light of the concerns that we have around its involvement in allegation relating to state capture in Eskom. And lastly it will be the Eskom note. And then Part C relates to the directors declaration of interest in line with Eskom's conflicts of interests, policies and processes. This is one of the issues which

20 we raised with Eskom in the light of the contents of Mr Mabuza's statement. You would recall that at some point that statement deals with two of Eskom's erstwhile directors who were forced or elected to resign months into the employment – sorry months into their appointment as directors and in regard to at least one of them there were allegations of conflict of interest. So the issue that we ask the Chairperson of Eskom to address is how a board appointed on the premise of cleaning up would in turn have

some of its members facing allegations of conflict of interest. I am not suggesting any wrongdoing at this stage but it becomes un-axiomatic that you are appointed to clean up and yet you face allegations of debt. So that is the bundle that the Eskom lawyers have usefully given to us arising from several questions that we have asked them to address. Chair that is the sum total of the documentation that we are going to use. May I mention that we have asked your registrar to bring with her for your assistance several reports that we have canvassed on Wednesday relating to previous enquiries, findings and reports on allegations of state capture. We have done so because we are going to ask Mr Mabuza to deal with some of the findings, recommendations and remedial measures made by a number of those entities especially the remedial measures suggested by National Treasury in the report which you will find in 5.11 of Volume 6. But that is something that we will deal with in due course. Chair against the background of that data set ...

CHAIRPERSON: Ja I think Volumes 1 to 6 are certainly here and I think those are the volumes you have indicated would be necessary.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: So that Mr Mabuza is not in just at the right time, at the right moment we will present Volumes 1 to 6 to him.

20 **CHAIRPERSON:** Ja.

ADV VINCENT MALEKA SC: Yes thank you. Chair we would then ask you to make sure that Mr Mabuza takes the prescribed oath unless there is any other preliminary matter that you would like to raise with us?

CHAIRPERSON: No that is fine. An oath or affirmations will administered to Mr Mabuza.

REGISTRAR: Please state your full names for the record?

MR JABULANE ALBERT MABUZA: My name is Jabulane Albert Mabuza.

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

MR JABULANE ALBERT MABUZA: Nope.

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

MR JABULANE ALBERT MABUZA: Yes.

REGISTRAR: Do you 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.

10 **MR JABULANE ALBERT MABUZA:** Help me God.

CHAIRPERSON: Thank you very much. Yes you may proceed Mr Maleka.

ADV VINCENT MALEKA SC: Mr Mabuza good morning.

MR JABULANE ALBERT MABUZA: Good morning Counsellor.

ADV VINCENT MALEKA SC: I will be asking you questions but your answers would be of interest to the Chairperson. So I suggest that as you give answers keep his line of sight and make sure that you speak with a tone and pace that will be useful for him to understand your evidence. Before I start with the substance of your evidence as outlined in your statement I would like us – I would like you to provide us with some background of yourself in brief because the position that you occupy at the moment
20 would like us to have some appreciation of your background.

MR JABULANE ALBERT MABUZA: I do not know how far I must go but ...

ADV VINCENT MALEKA SC: Well I would like to provide the highlights of what you consider to be the achievements or failures in your life of importance to your office as the Chairperson of a state owned entity. It is a broad question you have been given the clean canvass and you can apply the broad strokes on it.

MR JABULANE ALBERT MABUZA: Thank you. Honourable Chairman I was born in a small town outside Mpumalanga called Waterval Boven. I grew up in that part of the world. I went to matriculate Othlane, dropped out of law school in 1981 at [indistinct]. Got involved working for the then Bantu Affairs Commissioner. Continued to drive taxis.

CHAIRPERSON: Was that Kwanda Baza Bantu?

MR JABULANE ALBERT MABUZA: Kwanda Baza Bantu.

CHAIRPERSON: Okay.

MR JABULANE ALBERT MABUZA: Continued to drive taxis.

CHAIRPERSON: That is how it was known that department ja.

10 **MR JABULANE ALBERT MABUZA:** That department yes Mr Chair. Drove taxis. Got involved with the black taxi movement on the back of which I was part of the team that formed Fabcos the Foundation for African Business and Consumer Services and it was in that position that I got to meet what became my boss, my [indistinct] at SAB. Joined the executive team of SAB in 1993. In 1997 went to the hotel side of SAB and...

ADV VINCENT MALEKA SC: And SAB is South African Breweries?

MR JABULANE ALBERT MABUZA: South African Breweries correct. Went onto be involved in their hotel and gaming business as it was to be and I became the founding chief executive of Tsogo Sun. It was in this role that I got involved in various business organisations some I have since relinquished. Some I continue to hold. I am chairman
20 of the casino association.

ADV VINCENT MALEKA SC: More or less I am sorry to interrupt you. Just questions of timeline. When did you become the Chief Executive officer of Tsogo Sun?

MR JABULANE ALBERT MABUZA: I became Chief Executive Officer of Tsogo Sun it would be '95/'96 and ja since then until 2011/2012 when I retired.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: And through these business organisations I became – been in the tourism business. Been Chairman of South Africa and Tourism for nine years. Been President of Busa the Business Unit in South Africa for 6. Been now for the last three years President, Chairman of Business Leadership South Africa. Served on various boards in – I am chairman of Telkom which I have now announced to – for last six years which I...

ADV VINCENT MALEKA SC: Yes can I be rude and stop you there because you now getting to the officers you occupy or occupied of relevance to the commission. You have just mentioned Telkom and that you have been chairperson of that institution.

10 When did you become chairperson of Eskom's board?

MR JABULANE ALBERT MABUZA: Since November 2012 I was appointed November 2012 as a director and chairman of Telkom a position I still hold. Yesterday Telkom board publicly announced that I will be stepping down from that position end of May 2019.

ADV VINCENT MALEKA SC: Can you give us some appreciation as far as you are able to do so off the cuff. The profile of Eskom's financial – Transnet – Telkom's financial position? Firstly what is its market cap?

MR JABULANE ALBERT MABUZA: I think Telkom's market cap would be 42/43 billion.

20 **ADV VINCENT MALEKA SC:** What is its shareholding profile?

MR JABULANE ALBERT MABUZA: Currently the shareholding of profile of Telkom the government would own just below 40% and the Public Investment Corporation around 13% or so. The rest is publicly listed free floating shares.

ADV VINCENT MALEKA SC: The chairperson of the commission has already received evidence that the chief executive of Telkom is Mr Sipho Maseka, can you confirm that?

MR JABULANE ALBERT MABUZA: That is correct.

ADV VINCENT MALEKA SC: What is intriguing for me is that of all the state owned entities or public entities in which the state has shares there has not been any public revelation that Telkom was subjected to attempts of state capture.

MR JABULANE ALBERT MABUZA: Not that I am aware of.

ADV VINCENT MALEKA SC: Are you able to explain to us why not or why would that not be the case? If you can of course.

MR JABULANE ALBERT MABUZA: Ja we- in 2012 a new board was reconstituted at Telkom. I was asked to chair that board. I also had the privilege to assemble that
10 board and that board in March 2013 after a process of searching for the CEO we appointed Siphon Masego a person that I have known much before and was a student at Wits. I have known him when he was CEO of BP South Africa and he worked at Vodacom. So I appointed Siphon in March 2013 or February 2013. I must also say that when I joined the board on the 12 November 2012 the following hour after my appointment the then CEO announced her resignation and in the same vein told me that the then CFO was going to leave. So at the time Telkom was faced with many, many issues ranging from some contracts that have gone bad in Nigeria. Various issues with the competition commission. The terrible relationship between the major shareholder and the board. The share price of Telkom at the time I think was about
20 R11.00 so we appointed Siphon 2013. Siphon went on as it ought to be to put his own executive team. At the time we had about 23 or odd thousand employees. The mobile business was bleeding R100 million every month. Ja the company was financially not in a bad – in a good state the government had at various times even considered selling it. I think when we arrived there was an offer from Korean Telecoms at the time to buy Telkom for R26,00 a share. Where we at now Telkom's mobile business has turned

around, has become the mainstay. Sustained, continued to sustain our fixed line business. Telkom has played continues to play in provision of the infrastructure and indeed advancing itself into play into the ITC sector in its wider sense with a staff compliment of just under 10 000. Telkom's share price today would be maybe R63,00, it has seen a high of about R85,00. As I left the Board Meeting yesterday at Telkom I left feeling that the world must judge but I think we have done well. The company is in very good hands. It is in a very good state. It has got a strong Board. It has got a strong executive leadership one that I am sure will stand against any in, in the world. So why I think the, the Board people, the Board members were committed were diligent
10 were dedicated wanted to do nothing, but to salvage the company in the manner they best know how, followed the law. Being very robust in ensuring that they hold the executive to account and have allowed the executive the space and the authority to do what they were employed to do, being very clear and had good relationship with the shareholder that there was an understanding that we the Board will run the organisation, will employ the CEO, who will report to the Board and who will account to the shareholder. Being very clear that the Board does not deal with customers. The Board does not deal with suppliers. The Board does not deal with employees. The Board deals with shareholders and we have continued to report to the Board, sought its authority, never guesses out executive, executive but held him accountable. Also told
20 him that the one thing we are not going to have I will not be surprised as your Chairman, you will always give me timeous, accurate and reliable information on the basis of which I will make decisions. That is how we have worked with Telkom and thankfully we have gotten the support from the shareholder. We have provided the shareholder, we have paid dividends, continue to pay dividends to the shareholder and Telkom continues to do what it is meant to do and it competes in the, in the, in the

economic space.

CHAIRPERSON: Well did you say that the staff complement now is about 10 000?

MR JABULANE ALBERT MABUZA: Yes, sir. The staff complement is about 10 000, Deputy Chief Justice. We over time have lost a, a number of our employees. Not something that one is very proud and excited about, but at various stages there has had to be cause to be made on appropriately and right sizing the business to meet the challenges. I can also confirm that that has been done within the law. Done in as humane a manner as has been possible and continued to find pathways for those of our employees who for whatever the reason have either chosen to voluntarily separate
10 with the company and where in those few and far between instances we had to, to act on separation on the basis of the Section 189 of the Labour Relations Act, but *ja* it is [indistinct] purpose.

CHAIRPERSON: No, no I thought that was quite interesting because I think when you, you said when you started as Chair the staff complement was about 23 000. So, so, so it looks like you were able to reduce staff in accordance with I assume the requirements of the company and you say that all of that was done within the ambit of the law.

MR JABULANE ALBERT MABUZA: Indeed.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Indeed, indeed.

20 **CHAIRPERSON:** Thank you. Mr Maleka.

ADV VINCENT MALEKA SC: Thank you Chair. Can I just conclude the topic of Telkom by putting one more question to Mr Mabuza so that we are not left with an impression?

CHAIRPERSON: *Ja*.

ADV VINCENT MALEKA SC: Inconsistent with public.

CHAIRPERSON: Hm.

ADV VINCENT MALEKA SC: Knowledge. Mr Mabuza you would know that Telkom has had to face serious investigations by the Competition Commission arising from allegations of abuse of its dominant position in the so called Virtual Private Network space and can you tell the Chairman what the [indistinct] of that enquiry was?

MR JABULANE ALBERT MABUZA: From memory here now you will pardon me Mr Chair.

CHAIRPERSON: Yes, yes.

MR JABULANE ALBERT MABUZA: As Advocate Maleka says Telkom's dominant
10 position at the time seemed to have manifested in how it has dealt with competitors. Telkom had its, as an example Telkom would have had its own business called Telkom Business that was in the space providing internet services, but also Telkom was wholesaling to other companies, other ISPs like your MWEB. There were various accusations that Telkom the wholesaler was treating its own as in Telkom Retail differently from companies like MWEB as an example in pricing and indeed on routing traffic it would privatise its own and there were also other IT competitive areas for which Telkom has been found guilty relating to how it has really gone about in, in, in, in its pricing for the, their point of sale technology. So to this Telkom was, has paid various fines. Telkom has had to comply with certain prescripts from the Competition
20 Commission with a certain period. I can also confirm that Telkom is competing competitively with its competitors out there today and when we went on to acquire Business Connexion at the time which is now BCX there were certain prescriptions that we got from the Competition Commission which we have honoured and served and they have all come to pass three years after we acquired the business.

ADV VINCENT MALEKA SC: And to be blunt about it Eskom was forced or compelled

by the Competition Authorities to pay an accumulative fine in excess of a billion Rand in relation to the VPN enquiry. Can you confirm that?

MR JABULANE ALBERT MABUZA: I can confirm that.

ADV VINCENT MALEKA SC: In relation to the BCX do you know whether there was any finding against Telkom and if so what happened in relation to payment of fines?

MR JABULANE ALBERT MABUZA: No, in as far as BCX is concerned no and maybe a reference point Telkom would be about 100 years. I think up until 2010 it is about eight years ago Telkom as a company has never had to sell anything. Telkom sat and waited for people to place orders looking for Yellow Pages or, or telephone lines and
10 they would get it to you as and when they want. So over time that culture has changed to an organisation that knows that consumers and customers owe you nothing. They will vote on their Rand on the basis of the service, the quality and the value they get. So Telkom has had to compete, has had to win and to the question that speaks to why I would say there has been no incidences relating to our acquisition of BCX of an anti-competitive nature.

ADV VINCENT MALEKA SC: Yes. Chair we have explored more than it is enough the Telkom question.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: I would like to move to.

20 **CHAIRPERSON:** *Ja.*

ADV VINCENT MALEKA SC: Hm.

CHAIRPERSON: Yes, please do so before Mr Mabuza says I thought I was here for Eskom and not Telkom [laughing].

ADV VINCENT MALEKA SC: Mr Mabuza let us get to that question unless there is any other aspect of your background you would like to deal with. Now you indicate that

you were appointed to the Board of Eskom in January 2018. Correct?

MR JABULANE ALBERT MABUZA: That is correct.

ADV VINCENT MALEKA SC: Can you just explain to the Chairperson how you were appointed?

MR JABULANE ALBERT MABUZA: It might not seem obvious Chairman, but positions like this one never applies for. I was on my way to divorce in my capacity as Chairman of Telkom where I serve on various bodies of the World Economic Forum related to the ITC space. It was on 19 January, I think it was a Saturday or a Friday. I got a call firstly from the DG of Finance to tell me I should expect a call from either the
10 Deputy President or the Minister of Finance and/or the Minister of Public Enterprises. Later that day I got a call from the Minister of Public Enterprises who was Minister Lynne Brown. She was out at a meeting I think in Irene she said and she then on the phone said Mr Mabuzza, I said Minister Brown. She said oh did you expect this call? I said no Lynne I have had your number since you were a Minister for Economic Affairs on the phone. So I could see it is you calling. So she then told me that she has come out of a meeting and that the Deputy President has asked her to convey that a decision has been to appoint me as Chairman of the Board. They will be sending me a list of other names of people who between then and the next 48 hours would have been complete and congratulated me. I said well, well I am not sure whether I should be
20 congratulated. Then she said oh, I hope you will accept because we have already announced this. So I said well Minister *ja*, delighted to accept. I was sitting on the side lines as leader of business shouting about the need to, to change the leadership at Eskom. I led a delegation of business to meet President Zuma to articulate this very sentiment amongst others that the entire Board of Eskom should be fired and the executives should be gotten rid of. So it then became, it would have been incongruent

of me to then say I do not want to serve. So I then agreed. Later on that evening I then got a call from the then Deputy President who then said congratulations. I said Deputy President I will see you in divorce. He said no, you are not going to divorce. You come home. I am going to divorce, because you are coming home. So I then, the following day I got to know that Phakamani Hadebe was appointed as CEO as an Interim CEO. I immediately at that point, because I have been an Executive Chairman of a company called Sphere Holdings which has been my investment company. A company that I have put all my pension money from Tsogo Sun invested in the investment holding company. This company is invested [intervenes].

10 **ADV VINCENT MALEKA SC:** Sorry to interrupt you and to be rude. We will get to Sphere, your involvement in it.

MR JABULANE ALBERT MABUZA: Yes.

ADV VINCENT MALEKA SC: And whatever concerns might arise from it. We will get to that point. For now I just want to establish some few issues arising from the process relating to your appointment. I pick up from your evidence up to this point that your appointment was publically announced before you even had been approached or before you accepted. Is that a fair reflection of that process?

MR JABULANE ALBERT MABUZA: [Laughing] I, I, well maybe as I was being told it was being announced.

20 **ADV VINCENT MALEKA SC:** It is, it is a bit difficult to proceed around that answer. Can I deal with it in terms of dates? When did you get the call from then Minister Brown?

MR JABULANE ALBERT MABUZA: I got the call from Minister Brown on 19 January.

ADV VINCENT MALEKA SC: When to your knowledge and I know, but I would like to hear from you.

MR JABULANE ALBERT MABUZA: Hm.

ADV VINCENT MALEKA SC: Was the appointment of a new Board including you publically announced in our country?

MR JABULANE ALBERT MABUZA: On 22 January.

ADV VINCENT MALEKA SC: On 22 January?

MR JABULANE ALBERT MABUZA: Right.

ADV VINCENT MALEKA SC: Okay. I understand. Now in relation to that process you would appreciate of course that your appointment as the head of the Board and of course the appointment of your colleagues who would serve on that Board reflects a serious office of responsibility and integrity. Do you accept that?

MR JABULANE ALBERT MABUZA: I, I do.

ADV VINCENT MALEKA SC: And in that regard there has to be some level of confidence that the processes relating to the appointment in that office are able to deal with questions of responsibility and integrity. You accept that?

MR JABULANE ALBERT MABUZA: I do yes.

ADV VINCENT MALEKA SC: Against that background of matters that are common course between you and me can you explain to the Chairperson whether there has been any [indistinct] investigation relating to your appointment about your prior business dealings with could or could not have an impact on ethics and possible conflict of interest in Eskom? I can tell you this because the Chairman has taken comfort from us that when we were appointed we had to go through scrutiny of some sort and thank God several offers have jumped ahead. So I wonder whether that type of scrutiny applies in relation to office bearers of a Board such as yourself.

MR JABULANE ALBERT MABUZA: Well our, our, I was not allowed to dwell too much in the Sphere point save to say I knew when I was appointed that I am Chairman, an

Executive Chairman of a company that owns a company that maintains a third of Eskom's boilers. So I knew that. So it was in the context that I was saying I was Chairman of Sphere which owns Babcock and Honeywell. So I immediately phoned the Chief Executive of Sphere.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: And told him I have accepted this job and it has got implications for you, me, Babcock and Honeywell. I hope you will appreciate that it has not been an easy acceptance given the task and the importance and the significance of Eskom. So I have chosen to be part of that effort to bring the tide back
10 so that all shops can float including ours. Than to sit on the sand trying to push the Sphere ship. So if Sphere finally gets to float so be it, but this is what I have chosen. So tomorrow I will send you a letter resigning as Chairman and I will set in motion a process to talk to lawyers to find an appropriate way of dealing with the my investment in Sphere via a, a blind trust. Okay, agreed can you then wait for the announcement and then on the basis of that when I then got sent the letter of appointment on that Sunday attaching a number for me to contact the Minister's office to complete the various forms, probity forms. Something that I had expected. Something I was not concerned about. In the work I have done as Chief Executive of Tsogo Sun I have had to subject myself to probity every year and I have understood that. I have also
20 understood that coming to a Board with the background that it had it was important that one submits oneself to that. I would not have known whether the people who appointed me have in fact done that. So for my part I was going to make sure that I declared to the extent I should, eliminate, manage and avoid any conflict going forward. So when I finally go to that form I completed the form which asks me about who I am, what I am doing, what other companies I am involved in, do I know anybody that is involved in

something else that there could be a customer or provider to, to Eskom which I have declared that I do have those relations and indeed the Sphere relationship in particular and this is how I sought to address this. Now there has been something that there has been a bit maybe not unusual, but something that I am not accustomed to. That you get a letter that says you are appointed. You are one of 13 people. All of you are the team. You are the captain. I am not used to that. I am used to a situation that a shareholder or whoever appoints a Board and most of the time at least that which I am used to the Chairman becomes very much part of the decision and determination of the other members who come onto the Board, but here it was a bit unusual, but it was also
10 not in my place. I had to...

CHAIRPERSON: Or based, based on the point you are making that what you are used to is where the Chairperson will have had an input?

MR JABULANE ALBERT MABUZA: Indeed.

CHAIRPERSON: In who else become.

MR JABULANE ALBERT MABUZA: Indeed.

CHAIRPERSON: Members, *ja*, but you say here it happened differently?

MR JABULANE ALBERT MABUZA: It did. It had a different.

CHAIRPERSON: Okay.

MR JABULANE ALBERT MABUZA: And here it also was I think eight of the members
20 were being appointed then. The other four were members that were, were coming from the previous Board. Without casting any aspersions about these particular members the Chairman would appreciate that it also started to create a certain problematic dynamic in my own head that now when do you start to be the right or you are to be the wrong member of the passport. So it did create that problem, but be that as it may I am not aware of any other probity that was done by other people, on other people. I know

of what was done to me and I submitted myself to that and the Minister told me when I finally gave her my form she indicated that wow this is the first time I have had a Member of the Board of Eskom disclosing and declaring this amount of the external involvement. The only time I have had to know of a conflict is when I sit in Parliament, get asked by the opposition about the conflicted member of a Board of a Public Enterprise I have led. So then that is that is that is.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: All I know about the; that probity process [intervenes].

- 10 **ADV VINCENT MALEKA SC:** We will get to the issue of your colleague whose probity was raised in Parliament, but can I ask you to go to a bundle of documents which is marked EXHIBIT U5. Chair that is the [indistinct] file.

CHAIRPERSON: Yes, *ja*.

ADV VINCENT MALEKA SC: You will see the last of the index described document is Director's Declaration of Interest.

MR JABULANE ALBERT MABUZA: [Intervenes].

ADV VINCENT MALEKA SC: Which is C1?

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: It begins with page 140 of that bundle.

- 20 **MR JABULANE ALBERT MABUZA:** *Ja*, I am on it.

ADV VINCENT MALEKA SC: It may rise questions of confidentiality, but if it does you will guide us. It is a Director's Declaration of Interest Manual Form on the, well I, I nearly said the letterhead, but on a document which has Eskom's.

CHAIRPERSON: Emblem or logo.

MR JABULANE ALBERT MABUZA: Logo.

ADV VINCENT MALEKA SC: Logo.

CHAIRPERSON: [Laughing].

ADV VINCENT MALEKA SC: Thank you Chair. Do you know that document?

MR JABULANE ALBERT MABUZA: Yes, yes I do.

ADV VINCENT MALEKA SC: What is it?

MR JABULANE ALBERT MABUZA: This is my Director's Declaration of Interest and Advocate Maleka there is nothing here that is confidential. It is a public document now, but if to the extent there is something that is confidential one of the things I had to accept in taking this job at Eskom as I have gotten to appreciate it more was that I was going to gain very little out of this, but I was certain I was going to lose something. What I was not sure of what I was going to lose is any and everything between my privacy and my life and I am okay with it. So there is nothing here that, I no longer have any privacy having accepted the Chairmanship of Eskom and I am cool with it.

ADV VINCENT MALEKA SC: Yes. I am grateful for that and there may well come a time when that issue arises, but for now I see that the date on that document that is page 140 is a revision date of July 2018. From your recollection when did you complete this declaration?

MR JABULANE ALBERT MABUZA: This declaration was completed initially around the 26th or so of January 2018.

20 **ADV VINCENT MALEKA SC:** Okay. I will get [intervenes].

MR JABULANE ALBERT MABUZA: But periodically as it is required by the Act, Companies Act and it is practice is that as and when there are changes in my interests, in my Directorships and these have been happening quite often as I near the end of my working life I have had to update my interests.

ADV VINCENT MALEKA SC: The declaration in that document relating to Sphere

appears on page 142 Chair.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And I would like to just take you through some of the elementary aspects of it. The first is if you at page 142 the date of resignation as the Executive Chairperson I assume that you were the Executive Chairperson of Sphere?

MR JABULANE ALBERT MABUZA: That is correct.

ADV VINCENT MALEKA SC: When did you resign?

MR JABULANE ALBERT MABUZA: I resigned on the 23rd, excuse me, of January.

ADV VINCENT MALEKA SC: That would have been approximately five days after your
10 appointment?

MR JABULANE ALBERT MABUZA: I was notified of my appointment yes around the 19th, but I was appointed on the 22nd. I communicated my resignation on Tuesday the 23rd.

ADV VINCENT MALEKA SC: The next line item is the extent of your shareholding in Sphere.

MR JABULANE ALBERT MABUZA: That is correct.

ADV VINCENT MALEKA SC: There is both the percentage and the Rand value. I am not going to ask you to deal with it. It is up to you of course given the ethical corporate approach you take between privacy and public office, but the key question is you are
20 saying you have instructed lawyers to put that shareholding in a blind trust. Can I ask you when did you do so and when, if at all, was a blind trust established to house this shareholding?

MR JABULANE ALBERT MABUZA: Firstly, yes I bought 6 percent of Sphere for R26 million which I paid for from my after tax money. I resigned on 23 January. Once I was back in the country I then enlisted the services of that particular department in Standard

Bank. I had actually had my office at Sphere. I had actually been paid a certain stipend at Sphere and I have never been to Sphere since that day. I have never been receiving any information about what is happening in the business at Sphere either than the last time I received a dividend. I have had no course to ask a dividend of what relative to what should it have been. I have left the matter with the Standard Bank Trust office in (indistinct) it's taken a lot longer to finally settle on what type of a structure but I have continued to be pliant to that investment myself whilst this structure is being processed.

ADV VINCENT MALEKA SC: And as a blind trust you don't control it, do you?

10 **MR JABULANE ALBERT MABUZA:** The trust itself?

ADV VINCENT MALEKA SC: The blind trust, do you or don't you control it?

MR JABULANE ALBERT MABUZA: I don't know, I'm blind to it, seriously Advocate Maleka it's – I've only been kept in the know of what is happening about the establishment and the formation of the trust, I have not been involved in what the trust holding in Sphere has been doing, that's the pliantness I was personally referring to.

ADV VINCENT MALEKA SC: Yes, Chair unless you want some explanation around the blind trust I will move on.

CHAIRPERSON: No that's fine, thank you.

ADV VINCENT MALEKA SC: Right. Mr Mabuza we have established some few facts
20 around the process relating to your appointment and the way you have dealt with what could have manifested some conflicts of interest. I would like now to move to your statement, and we will get to the background around how this statement got to be given to the Commission, but first of all can I confirm that you have had an occasion to read this statement before you took the witness box this morning.

MR JABULANE ALBERT MABUZA: Yes I did.

ADV VINCENT MALEKA SC: If you go to U1, which starts with your statement you will see that at the top right hand corner there is a numbering which starts with JM and thereafter follows the sequence of numbers beginning from 001, do you see that?

MR JABULANE ALBERT MABUZA: Jip.

ADV VINCENT MALEKA SC: Please go to 42 of that document.

MR JABULANE ALBERT MABUZA: JM42?

ADV VINCENT MALEKA SC: Yes, you will see that there's a signature, can you confirm that that is the signature?

MR JABULANE ALBERT MABUZA: Yes, that is the signature and I confirm it is my
10 signature.

ADV VINCENT MALEKA SC: You will also see that there is the signature of someone who is a Commissioner of Oaths, do you see that?

MR JABULANE ALBERT MABUZA: Yes I see that is the Commissioner of Oaths in front of whom I took this oath when I was signing this statement.

ADV VINCENT MALEKA SC: Yes, do you confirm that you are comfortable with the contents of this statement, is there any aspect of it that you wish to change or clarify before we get to its contents?

MR JABULANE ALBERT MABUZA: No, I am comfortable with the statement, I don't
20 need to change or clarify anything I do – I would love to for the sake of completion
Chairman if we can go back to that – my declaration for the sake of completion.

CHAIRPERSON: Yes, okay.

MR JABULANE ALBERT MABUZA: On page 144 of that document.

CHAIRPERSON: That is U5.

MR JABULANE ALBERT MABUZA: That's correct. One of these if I – one of the two questions that this form asks is to declare interest held by persons related and inter-

related to you or other associates interest in Eskom Holdings, Eskom subsidiaries, Eskom Holdings suppliers, Eskom subsidiary suppliers and/or any other entities dealing with the Eskom Group for example if you have an interest in company Y and company Y has got interest in company Z and company Z deals with Eskom then you need to declare that interest in company Y as well as the details in company Z.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: For the sake of completion I am related to my wife by marriage, my wife is related biologically to her siblings, one of which is Thembelana, who is in mining, a young man that I was very much part of raising and
10 sending to school so I did know he was in mining. He is invested in Mlwazi and prior to this his family, the Langa family and the Mabuza family sought to create a joint venture in mining. The Mabuza interest represented by son Lwazi. So it was important that I disclosed this at the time, so I just thought for the sake of completion as a matter of fact I don't sit in meetings at Eskom that deals with coal for this very point, thank you.

CHAIRPERSON: Thank you.

MR JABULANE ALBERT MABUZA: So I am back to you Advocate.

ADV VINCENT MALEKA SC: Yes thank you, Chair it's important to give you an interesting background on how this statement was obtained, because Mr Mabuza talks to that issue and it's vital for you to appreciate how the legal team obtained this
20 statement. Mr Mabuza I'm at JAM001, in paragraph 2, are you there?

MR JABULANE ALBERT MABUZA: Yes I am.

ADV VINCENT MALEKA SC: And there you see in providing a response to the Commission Eskom has placed its personnel and resources fully at the disposal of the Commission. In this regard the Commission has interviewed various personnel from Eskom and has received statements from those personnel. You are aware that before

Eskom plays its resources and personnel at the disposal of the Commission there was a set of questions that the Commission posed to Eskom and invited them to deal with them, correct. Can I ask you to go to Annex A of your statement which begins at page 47. It's on the same file.

MR JABULANE ALBERT MABUZA: Annex A page 47, these are the various ...(intervention)

CHAIRPERSON: Yes, are you looking at U1?

MR JABULANE ALBERT MABUZA: U1 thank you.

CHAIRPERSON: Thank you.

10 **MR JABULANE ALBERT MABUZA:** Ja, got it.

ADV VINCENT MALEKA SC: Please go to page 47.

MR JABULANE ALBERT MABUZA: Annexure A yes I'm there.

ADV VINCENT MALEKA SC: Then if you turn to the contents of Annexure A you will see that they begin from page 48.

MR JABULANE ALBERT MABUZA: That's correct.

ADV VINCENT MALEKA SC: What is that document?

MR JABULANE ALBERT MABUZA: This document is on A is Tegeta Contracts and Acquisition of Optimum Coal Mines by Tegeta, B is TNA which is for the New Age Media and then it – this particular page is on Tegeta Contracts and Acquisition of OCM by
20 Tegeta.

ADV VINCENT MALEKA SC: You will see that the document is divided into various columns, the first one is area, we will get to that, and the second column relates to issues to consider in the Eskom submission, do you see that? On page 48.

MR JABULANE ALBERT MABUZA: On page 48 yes.

ADV VINCENT MALEKA SC: And then the last column is possible Eskom witnesses,

do you see that?

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: Now you will see that the first area that the Commission was concerned with related to an understanding of who Tegeta is, do you see that?

MR JABULANE ALBERT MABUZA: I can see that.

ADV VINCENT MALEKA SC: And then you are given a list of specific questions which Eskom was invited to deal with, and the response of Eskom is that a witness who would deal with those things is Mr Dan Mashigo.

MR JABULANE ALBERT MABUZA: That is correct yes.

10 **ADV VINCENT MALEKA SC:** Chair I can confirm that we do have a statement from Mr Mashigo who would deal with that question.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: And the same scheme goes on in page 49, are you there?

MR JABULANE ALBERT MABUZA: Yes correct.

ADV VINCENT MALEKA SC: Can you confirm that Eskom did indicate who would deal with the question of the initial appointment of Brakfontein?

MR JABULANE ALBERT MABUZA: Yes, Dan Mashigo and Kiren Maharaj.

20 **ADV VINCENT MALEKA SC:** Yes, and then we go on in relation to penalties which we will find on page 50, you will see that the Commission raised specific questions from 5.1 to 5.9, 9 you will get it over the page but Eskom did suggest witnesses who would deal with those questions, do you see that?

MR JABULANE ALBERT MABUZA: Yes.

ADV VINCENT MALEKA SC: And they're given and again Chair I can confirm that we do have statements from those witnesses.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: And so it goes on, and on page 53 you will see that there is number 10 which deals with the 1.6billion prepayment or guarantee, do you see that?

MR JABULANE ALBERT MABUZA: Yes.

ADV VINCENT MALEKA SC: Again some questions are raised and a witness is offered.

MR JABULANE ALBERT MABUZA: Yes, Mr Hal Magar.

ADV VINCENT MALEKA SC: Magar and so it goes on, on page 11, sorry page 54
10 paragraph 11, Mr Andre Pillay.

MR JABULANE ALBERT MABUZA: Yes, Mr Andre Pillay who is the Head of Treasury at Eskom.

ADV VINCENT MALEKA SC: Ja, all of those witnesses have given statements and Chair they will testify in regard to those topics, and this is the background on how your submission in terms of this statement got to be made, correct?

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: Yes, now you say on page U12, that is paragraph 2 on page 2 of Exhibit U1:

20 “In addition Eskom is providing a flash disk with information to the
 Commission that is relevant to matters specifically addressed in this
 submission and is listed as Annexure C.”

Do you see that?

MR JABULANE ALBERT MABUZA: Yes correct.

ADV VINCENT MALEKA SC: Chair for your guidance Annexure C is at page 62 to page 66.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: Mr Mabuza I am not going to take you through those documents, I can confirm that the Commission has received them and some of them the Commission has processed for the purposes of your evidence, correct?

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: Then before we take the tea adjournment can I also draw the attention of the Chair that part and parcel of the information that the Commissioner, that Eskom gave to us was through an index which is marked B, and your reference it's right at the top of the second page of your statement.

10 **MR JABULANE ALBERT MABUZA:** Correct.

ADV VINCENT MALEKA SC: And then Exhibit B Chair you will find it at page 58 and it's a document which I would like to take you to, because it raises several questions of importance that are not dealt with in your statement. If you go to page 58 you will see Chair that there is Exhibit B and you will see that the heading is Index to Documents previously submitted to the Commission by Eskom's legal team on the 15th of January 2019, do you see that?

MR JABULANE ALBERT MABUZA: Yes.

ADV VINCENT MALEKA SC: Chair this is I suppose an opportune moment to break for tea, but when we come back I would like to deal with some of the documents
20 reflected on that index.

CHAIRPERSON: Ja no that's fine, we will take the tea adjournment and we will resume at half past eleven. The Commission adjourns.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Mr Maleka.

ADV VINCENT MALEKA SC: Chair in the next round of the presentation we are going to deal with the reports via a document we have prepared called the Gap Analysis on Eskom. I believe that a copy of that document has been presented to you

CHAIRPERSON: Yes I have got it.

ADV VINCENT MALEKA SC: I will ask Mr Jac Swarts to present and illuminate some of those lines on the monitors so that those concerned may see precisely what our analysis in terms of the slides is. And so Chair as I was saying the analysis begins with a presentation of the reports to you and we are grateful to our learned friends Ms Norman and Mr Mokoena because they are the ones who took the effort of asking the
10 investigators to source and produce and also compile these reports in a format and form that is readily accessible and under-stanchion that the files before you have been marked on the spine through volumes for easy identification and that in due course your files will be marked with a clear descriptive indicator on the spine precisely what the contents are.

CHAIRPERSON: Yes that will be very helpful ja.

ADV VINCENT MALEKA SC: I have been assured by Ms Norman.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: That by resumption of the proceedings after lunch today they will be in the form that you had indicated.

20 **CHAIRPERSON:** That is fine, that is fine.

ADV VINCENT MALEKA SC: So Chair just before I start with the gap analysis in terms of the slides I would like to take you to a report which is in Volume 6.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And if the first page of Volume 6 you will see it is again an index and file number 16.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Is the report on an enquiry conducted by the National Energy Regulator of South Africa NERSA relating to the load shedding and electricity supply shortage which occurred on the 12 May 2008. We take you to this report as a starting point not only because of what NERSA did but the repeat of what is happening in relation to Eskom regarding load shedding activities. This report recalls for the first time as far as we are aware and we confess our knowledge may be limited that a regulator in our country decided to conduct a statutory enquiry in terms of Section 4.2B of the Electricity Regular Act relating to the activities of a licensee such as Eskom

10 relating to questions of load shedding that had fundamental consequences for the country and which raised serious national concerns. We are not aware of any other enquiry which NERSA may have undertaken arising from the repeat of the difficult experiences suffered by Eskom in terms of the supply of electricity. We take you to this report for now Chair because when the Chairperson of Eskom testifies we will raise issues around questions of load shedding and hopefully he will indicate to you how Eskom is busy dealing with those difficult questions. But the key question which we would really ask you to consider for the purposes of the commission is what are the other options consumers such as you and I have when these things happen or it is a normal consequence that we have to live with as consumers in the face of the powers

20 conferred upon the regulator to consider those aspects? So Chair when – you will see that the report begin at page 1976 and there is a table of contents on 1977. I ask you to go to the introductory portion of the report at page 1978 and I ask you to read with me the second paragraph from the top. “In the light of the above the energy regulator decided that an enquiry be conducted in terms of Section 4(B)II and 4(B)IV I can ask you to strike out that section because I have looked at the Electricity Regulation Act

there is no Section of that sort in that Act.

CHAIRPERSON: Is that the roman figure that is not there or the whole?

ADV VINCENT MALEKA SC: The roman figure IV as far as I am aware the latest version of that Act.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Ends with roman figure III.

CHAIRPERSON: Okay and it was not there and has since been repealed a bit later or something?

ADV VINCENT MALEKA SC: No I have also looked at the previous version of the amendment I could not find it but I confess that you know in these sorts of things one is
10 wrong. I can assure you the latest version does not have roman figure IV.

CHAIRPERSON: Hence for the sake of completeness if you have not had enough time somebody can just check whether as at 2008.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: It was – it was not there.

ADV VINCENT MALEKA SC: Yes. Into the national electricity – roman figure II of the Electricity Regulation Act 4.02.06 into the National Electricity supply shortage and the subsequent load shedding by Eskom and other licensees during the period 1 November 2007 to 31 January 2008. I ask you to note that the relevant period covered by
20 NERSA's investigation was for more or less a period of a month or slightly more. But it is for that period that NERSA decided that it was going to engage into load shedding because of the consequences of it. And then Chair you will see that in...

CHAIRPERSON: Is that not two months, November to 31 January?

ADV VINCENT MALEKA SC: Ja it is about.

CHAIRPERSON: Or actually three?

ADV VINCENT MALEKA SC: Well three months.

CHAIRPERSON: Three months ja.

ADV VINCENT MALEKA SC: Three months effectively yes. You are correct it is three months. The purpose of this enquiry is to inform the energy regulator of the reasons for the current electricity supply shortage resulting in the national load shedding of the electricity and recommended measures to be adopted to mitigate against the electricity supply shortage and to reduce the adverse impacts thereof. The scope of the enquiry focuses specifically on events in the period 1 November 2007 to 31 November 2008 and yes my notes indicate that that is a period of 3 months.

10 **CHAIRPERSON:** To 31 January I think you said November.

ADV VINCENT MALEKA SC: 31 January – 1 November 2007 to 31 January 2008 and that is the period of.

CHAIRPERSON: Ja.

ADV VINCENT MALEKA SC: Paragraph 2 talks about the methodology of the investigation. I am not going to ask you to consider it.

CHAIRPERSON: Ja.

ADV VINCENT MALEKA SC: Paragraph 3 gives you some background about Eskom and it is a background that I will develop when I ask you to consider the Denton Reports but at that stage it was quite clear according to NERSA the regulator that
20 Eskom was controlling 92% of the generation of electricity in our country. And then Chair the next part of the report which is important is at page 1981 paragraph 4. Load shedding was experienced during the months of November 2007 to January 2008 the high number of load shedding incidents in January attracted national attention. There were five load shedding incidents in November and four in December arising mainly out of generation capacity shortages. In January fourteen incidents occurred due to both

energy and capacity constraints. The high frequency of load shedding in January was related to the increasing demand about 3000 megawatts after the December holiday period and an increase in the unplanned outage raid as shown in figure 1. And then Chair I skip the rest and ask you to go to paragraph 5.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Measures of an adequate and secure power supply is the ability to continuously balance supply of power that is generation and demand for power load. The balance is maintained by controlling the frequency to 50 Hertz. If demand exceeds generation the system slows down and the national – and the Eskom
10 national control centre instructs power stations to increase generation from available plant. Where there is no more available plant the system will slow down and eventually collapse unless the load is reduced. Chair that gives you some kind of a non-technical explanation around how load shedding happens. Even I as an un-engineer I am able to follow the relationship between the demand for electricity and the supply of it and how ultimately if there is an imbalance between the two the system if not properly managed would give rise to the national collapse and a national blackout. And Chair I ask you to go to page 1982. Just before the figure 1 there is a paragraph which gives you the indication of what was the extent of load shedding.

CHAIRPERSON: Yes.

20 **ADV VINCENT MALEKA SC:** It is the second number paragraph.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: The November and December incidents were mainly caused by inadequate generating capacity resulting mainly from generator trips. The more severe load shedding incident of up to 4000 megawatt occurred on numerous occasions seventeen days in January as a result of both capacity and energy

shortages. The extent of the capacity and energy constraints and the applicable reasons are discussed later in the report. Then they give them to you Chair in that figure beginning from 13 November cutting across through the Y axis up to ...

CHAIRPERSON: Yes that is figure 1 with.

ADV VINCENT MALEKA SC: The bar charts.

CHAIRPERSON: Ja.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And you will see that the bar charts are again in all
10 these diagrammatic expressions of the horizontal line and the vertical line which we
were told that the one represents the X axis the other represents the Y axis. The
horizontal line gives you the degree of load shedding from the date 13 November 2007
it goes across to January 31 09. And then as we look at the vertical line you will see
the amount of megawatts of electricity that were shed during each month.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And you will see that the peak of ...

CHAIRPERSON: I see – I see that the – the last vertical line relates to 31 January
2009.

ADV VINCENT MALEKA SC: Yes.

20 **CHAIRPERSON**: And the one immediately before that in 30 January 2008?

ADV VINCENT MALEKA SC: It should be 30 January 2008.

CHAIRPERSON: The last one?

ADV VINCENT MALEKA SC: Yes because that is the period of investigation.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Conducted by NERSA.

CHAIRPERSON: Yes. Yes I thought so too.

ADV VINCENT MALEKA SC: So you are quite correct I think it is 2008.

CHAIRPERSON: Ja. Thank you.

ADV VINCENT MALEKA SC: And Chair for the purposes of completing our attention to this figure we merely point out that the peak period of sharing of 4000 megawatts of electricity occurred on 24 January 2008 this is where we find 4000 megawatts of electricity shared on one day. The rest is a variation from 1000 up to 3000 but we would ask you to note that the worst form of load shedding occurred on 24 January 2008 and that is when...

10 **CHAIRPERSON**: I think I can see that in terms of those vertical bars that is correct but I thought you said 4000 it appears to me to be close to 7000, am I – do I misunderstand something in this?

ADV VINCENT MALEKA SC: No, no I think the load shedding if you look at it is darkness – it a dark.

CHAIRPERSON: Oh okay.

ADV VINCENT MALEKA SC: It is the darkest shaded because if you look at the legion.

CHAIRPERSON: Yes.

20 **ADV VINCENT MALEKA SC**: Just below the heading Correlation Between Load Shedding and Unplanned Outages.

CHAIRPERSON: Yes okay.

ADV VINCENT MALEKA SC: The darker one is load loss.

CHAIRPERSON: Yes okay. Okay so it was just under 4000?

ADV VINCENT MALEKA SC: Indeed.

CHAIRPERSON: Ja okay.

ADV VINCENT MALEKA SC: Well the report suggest that it is 4000.

CHAIRPERSON: Or maybe it is 4000.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Well the red line goes up to 4000, the darker line is just below the line for 4000.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: And Chair the next is once you have the appreciation of what NERSA's investigation reveals. The next important question which NERSA had to engage with is at page 1985.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: At the top the economic impact of load shedding events is not readily available however for generation capacity planning purposes the costs of not supplying electricity is deemed to be R75.00 per kilowatts of electricity. This implies that the load shedding in the period cost the South African economy approximately R50 billion. There is NERSA's estimation without reference to scientific research but simply an indication of what happened or what happens when the country suffers consequences of load shedding and the cost to the economy. We would like to develop that issue later on as soon as we get to the issues relating to Eskom and hopefully those who have information will help us in that regard. Chair I leave the rest and go to the findings and recommendations.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And that you will find – it is...

CHAIRPERSON: Well there is reference to recommendations on the same page but I do not know if that [indistinct].

ADV VINCENT MALEKA SC: No it is not that one. It is at page 2015. I am not going to read them to you I merely want you to note where they are to be found.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And then the recommendations follow at page 2017. And the sum total of it was a request by NERSA that Eskom should do certain things to prioritise corrective measures so as to avoid these consequences. And some of them were directed at specific departments of Eskom like Primary Air Energy. For instance if you go to page 2017 the further investigation and the recommendation reads as follows: “Primary Energy Procurement and management and in particular Coal
10 management in Eskom the availability, adequacy and optimum utilisation of Eskom’s generation plant in emergency and in view of the midlife of these plants. These are critical areas of operation that affects Eskom which the regulator recommended that they should be looked at in order to take corrective measures.” We will get to the Dentons Report because it comes almost seven years after this recommendation by NERSA and it raises numbers of questions relating to the operations of Eskom and it makes findings at the request of Eskom and present them before Eskom with a view to take corrective action. What follows thereafter is no longer the implementation of the observations made by Denton but something else and it is that something else which we submit begins to provide a clear indication of the state capture projects. So that is
20 why we started here. That this report is important in sequence in order to show you that questions of load shedding were not new as and when they repeated themselves in 2015 and as and when they still occur this year. We have always been on Eskom’s radar NERSA’s a regulator it inquired into the reasons, it got the reasons and NERSA made recommendations and yet the problems still occur.

CHAIRPERSON: Well one will hear all the evidence and look at all the reports but it

certainly is a matter of concern that when load shedding happened and to go and add my recollection is that the executive admitted that it had been warned.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: About if I recall correctly eight years earlier.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: By the management at Eskom that if certain things were not done that is what was going to happen and from my recollection there was an admission that not much was done and load shedding happened.

ADV VINCENT MALEKA SC: Yes.

10 **CHAIRPERSON:** And then it is more worrying that notwithstanding that lesson it happened again was it 2015 and it is happening again in 2019 and with even more intensity and seriousness. So ja okay alright.

ADV VINCENT MALEKA SC: Chair if it is necessary we will consider that issue and seek to present clear undisputed evidence about what happened when that warning came to the fore and what happened thereafter. But anecdotally you are correct. There was a clear warning given to the executive authorities of our country at the time that they should not luxuriate in the surplus capacity that they found in Eskom when they took office. Because it – let us be clear Eskom has always had capacity which was surplus to its requirement and it was for that reason that it extended all sorts of
20 benefits to the major consumers of electricity such as the mining industry to procure electricity as subsidised rates. I hope they do not kill me but it was at that level but things changed when our country after democracy decided to put Eskom where it ought to have been by making sure that each and every household is electrified at reasonable costs. It is at that point in time when the strategic shift of Eskom occurred that what was surplus capacity became capacity constraints and at that point the executive was

warned and nothing was done. So Chair to now get back to the gap analysis may I ask you to go to page 2 of the slides.

CHAIRPERSON: Well it is – we will hear – we will look at the Denton Report – Dentons Report and we will look – hear the witnesses. One hopes that people who were supposed to be taking measures in line with the recommendations of the NERSA report and the Denton report were not doing other things when they were supposed to be doing that.

ADV VINCENT MALEKA SC: Yes, yes. Chair I am tempted to go to the Dentons Report in order to address your concern but I am not too sure whether I should do it
10 now or leave it later.

CHAIRPERSON: I am happy that you do it later.

ADV VINCENT MALEKA SC: Okay, okay.

CHAIRPERSON: Ja.

ADV VINCENT MALEKA SC: Oh is Mr Mokoena tempting you?

ADV VINCENT MALEKA SC: Yes. Can I ask you to go to Volume 2?

CHAIRPERSON: Yes thank you. Yes I am there.

ADV VINCENT MALEKA SC: Chair we...

CHAIRPERSON: No I see Mr Mokoena tempted you successfully. Yes.

ADV VINCENT MALEKA SC: I hope it is not a poison pass from him.

20 **CHAIRPERSON**: Yes.

ADV VINCENT MALEKA SC: Chair you will see that on page 356

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Is the report by Denton dated 2 July 2015.

CHAIRPERSON: Ys.

ADV VINCENT MALEKA SC: The date is important and I would ask you to mark it

because at some point the investigators gave us the executive summary of the draft preliminary report which is from Dentons on the face of it but it is marked a different date which is 5 July 2015.

CHAIRPERSON: Oh.

ADV VINCENT MALEKA SC: You do not have it yet.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And we will make it available to you.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: But it raises fundamental concerns around the dates of
10 these reports and had happened because there is anecdotal evidence that this report
became – it mysteriously disappeared.

CHAIRPERSON: It would be the latter one. The latter of the two?

ADV VINCENT MALEKA SC: The draft...

CHAIRPERSON: Oh the draft executive summary.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Ja okay.

CHAIRPERSON: It became what?

ADV VINCENT MALEKA SC: We could not get it.

CHAIRPERSON: Oh. There was difficulty in sourcing it.

20 **ADV VINCENT MALEKA SC**: Yes I think some members of Parliament when they ask
questions in the inquiry they wanted to find the whereabouts of this report and nothing
by way of a satisfactory explanation was given and for that reason we as the
investigators make sure that the commission has it and Eskom kindly produced it.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: But in these versions that we now have.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: I have asked you to mark the date of 2 July and you will see at page 357 going to 359 it is the table of contents. It is a long report I am not going to take you through it I will try as best I can to take you through the key features of it. At page 360 there is an introduction of how Denton got involved. Paragraph 1.1 this document constitutes the report of Dentons South Africa in respect of the investigation commissioned by Eskom Limited pursuant to a request for proposal issued on 8 April 2015 under number – in terms of a resolution adopted by the board or directors of Eskom on 11 March 2015. So that there is no doubt that this investigation
10 was commissioned by the haste decision making body in Eskom and that is the board.
1.2 the investigation commenced on 20 April 2015 a draft report was required to have been provided on 20 July 2015 with the final report to follow 31 July 2015. May I stop here and make the following observations? You will see that the time lines in terms of the board's expectation was that the investigation should immediately commence and it should produce a draft report on 20 July and the final report should be presented at 1 July 2015. What you have and what we have managed to obtain and we would like to confirm with Eskom is why do we not have the final report? At best we have the draft report. What happened to this mandate of Denton and that is a key feature because as a state body having obligations of accountability you follow through the decisions you
20 make.

CHAIRPERSON: Assume the report would still be tabled to the, before the Board and deliberated upon in due course. I would imagine you would be seeking to ensure that or not?

MR JABULANE ALBERT MABUZA: Mr Chairman the, the report if we can just stick to that, the report as is.

CHAIRPERSON: Yes the actual report, *ja*.

MR JABULANE ALBERT MABUZA: That would be submitted. It would be served.

CHAIRPERSON: Yes, yes.

MR JABULANE ALBERT MABUZA: To the Board.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: This will not be the first time.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: We deal with elements of what is in that report.

CHAIRPERSON: Okay.

10 **MR JABULANE ALBERT MABUZA:** The Matshela Koko matter as an example his disciplinary proceedings.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Amongst the charges that he was served with.

CHAIRPERSON: Hm.

MR JABULANE ALBERT MABUZA: Deals with his amongst others these issues of his very contract.

CHAIRPERSON: Yes.

20 **MR JABULANE ALBERT MABUZA:** And it is now a matter of course that he had since resigned barely hours before we had the hearing and there are processes then that flows from there. So most of his disciplinary hearings somewhere somehow are relating to the contents of this report. So I just wanted to say the.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Report as a document.

CHAIRPERSON: Hm.

MR JABULANE ALBERT MABUZA: To formally say report so annexure this.

CHAIRPERSON: Hm, hm.

MR JABULANE ALBERT MABUZA: Is served to the Board.

CHAIRPERSON: Ja.

MR JABULANE ALBERT MABUZA: That will, will happen but elements of it we have been dealing with it.

CHAIRPERSON: And, and dealing with it not as a result of the report but on your own in the light of the issues that you thought needed to be dealt with?

MR JABULANE ALBERT MABUZA: And it happens to coincide with those.

CHAIRPERSON: Yes.

10 **MR JABULANE ALBERT MABUZA:** The remedial actions.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Amongst others that are called for by the report.

CHAIRPERSON: Ja, okay.

ADV VINCENT MALEKA SC: Mr Mabuza just to be fair to you and make sure that your evidence on this score is coherent and complete. You did reflect on some of these questions before you came to testify, because I see that the bundle you gave us this morning deals with your response to it. If I may guide you where you will find it and I confess I have not read this bundle fully, but when I.

CHAIRPERSON: Is it U5?

20 **ADV VINCENT MALEKA SC:** It is U5.

CHAIRPERSON: U5, yes. Well evident led I think we have got to read it like this. Maybe you, when you refer to any page make eye contact with Mr Mabuza to see if he is able to find so that he is not, he is not able to find. You can indicate if somebody needs to assist. I do not like a situation where anybody just stands up from the audience and goes to the witness while witness is giving evidence.

UNKNOWN PERSON: Thank you Chair.

CHAIRPERSON: So let us do it that way, *ja*. Okay. Mr Mabuza you do have U5 now that that, that file marked U5?

MR JABULANE ALBERT MABUZA: Yes, I do.

CHAIRPERSON: Okay. What page Mr Maleka you wanted to...?

ADV VINCENT MALEKA SC: Chair I asked Mr Mabuza to go to page 114.

CHAIRPERSON: And, and maybe before he does we, we just need to make sure if it, if nobody has made sure that Mr Mabuza is aware of which file among the various files on his table is U1, U2 or whatever it is marked. So that he might be able to find them
10 without assistance.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: He just needs to know which one is marked what.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: And where it is marked.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: Mr Mabuza you will see that there are lots of files on your table, but U5 is a small bundle blue covered file which is from Bowman Attorneys and on the face of it, it is marked U5. Are you, are you there?

20 MR JABULANE ALBERT MABUZA: *Ja*, got it.

ADV VINCENT MALEKA SC: Yes and then your statement is in U1. I think you now know how to find it.

MR JABULANE ALBERT MABUZA: I have got my statement. I am the one who is moving it. Clearly I dropped out of law school too soon.

CHAIRPERSON: [Laughing].

MR JABULANE ALBERT MABUZA: I moved this from one.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: To the one that I am working on.

CHAIRPERSON: Okay. The, the lever arch file which contains your statement is the;
that lever arch file

MR JABULANE ALBERT MABUZA: Is U1.

CHAIRPERSON: We refer to it as U1.

MR JABULANE ALBERT MABUZA: Thank you Chair.

CHAIRPERSON: U1. I see there, there are two or three other files. I do not know
10 whether Mr Maleka you want to deal with them now or later.

ADV VINCENT MALEKA SC: No not, not now.

CHAIRPERSON: Okay, alright.

ADV VINCENT MALEKA SC: Not now. Can I ask you to put aside the rest of the files
away from you so that you make space for yourself?

MR JABULANE ALBERT MABUZA: So we are closing 1764?

ADV VINCENT MALEKA SC: Yes, we close Volume 6, 1764.

MR JABULANE ALBERT MABUZA: Thank you.

ADV VINCENT MALEKA SC: Yes. You now have before you U5?

MR JABULANE ALBERT MABUZA: That is correct.

20 **ADV VINCENT MALEKA SC:** And we are trying to cohere your response in line with
that you have provided in writing. If you go to page 114.

MR JABULANE ALBERT MABUZA: I am on page 114.

ADV VINCENT MALEKA SC: You will see in the middle of the page you deal with
Report 11 in gap analysis and that is the report we have dealt with?

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: And you have provided these responses?

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: Can I confirm purely as a matter of evidence that these are the responses you have carefully formulated and have presented before the Commission [intervenes]?

MR JABULANE ALBERT MABUZA: Correct.

[Background noise]

CHAIRPERSON: It is not you Mr Maleka and it is not Mr Mabuza.

[Laughing]

10 **ADV VINCENT MALEKA SC:** Chair any blind sounds coming from all over are difficult to deal with. I am not going to take you through each and every one of them unless you prefer to do so. I am merely going to confirm with you that you stand by those responses as an accurate reflection of your answer to the Commission's request. Correct?

MR JABULANE ALBERT MABUZA: Correct, I confirm.

ADV VINCENT MALEKA SC: And there is no, any aspect of the response that you would wish to highlight for now? I raise this issue with you because I have not had enough time to carefully consider those responses.

20 **MR JABULANE ALBERT MABUZA:** *Ja*, I think in broad, in broad terms Chairman these responses do by and large address the bulk of the four buckets I referred to of what was being raised. It may go into rather more detail on breaking down the 5.5 billion amount of penalties as to what is it that was pre, what is it that was post. At the end it might go further to, to break down on the, the, the issues for instance where the accounting authority recognises payments made to Tegeta and Brakfontein Extension as I have been extended as irregular explain. We do explain how that amount of 30.4

billion, 27, 37 million, 22 and 30 million have been got. So either than that suffice to say these have been dealt with as I indicated either in our disciplinary processes or they are being pursued on a criminal level or they will be followed on, on, on, on civil, on civil claims.

ADV VINCENT MALEKA SC: Yes. Thank you Mr Mabuza. So if you go back to the file containing your statement U1.

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: And you go to page 59.

MR JABULANE ALBERT MABUZA: Yes, I am on page 59.

10 **ADV VINCENT MALEKA SC:** You will find, Chair we are at page 59 of EXHIBIT U1.

CHAIRPERSON: Not yet. You see some of the annexures, you see most it seems of the pages are paginated on the right hand corner.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: But on some annexures the pagination is on the left hand corner which is a little bit obscure.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: But I am there now.

ADV VINCENT MALEKA SC: *Ja*, I think it is a question of the profile of the document. Some of them are presented in landscape format.

20 **CHAIRPERSON:** Yes.

ADV VINCENT MALEKA SC: Which you are then going to find the paginated.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Pagination elsewhere than on the right hand corner.

CHAIRPERSON: *Ja*, no, no. It is, it is, it is okay.

ADV VINCENT MALEKA SC: Yes. Again Chair we are trying to do a gap analysis of

what is lacking from previous reports, what has emerged and how we think the Commission should close the gap.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Mr Mabuza remember we were looking at this document in the context of information that you through the legal team of Eskom produced for us. The next information that you produced for us which is not dealt with in detail in your statement is the guarantee that is referred to in Item 220 on page 59. Do you see that?

MR JABULANE ALBERT MABUZA: *Ja*, correct.

ADV VINCENT MALEKA SC: The story of that guarantee will be told in due course. I
10 have taken you through the list of questions and answers which indicate who from Eskom's side will tell that story, but for now and for the purposes of closing the gap as far as your Board is concerned you are aware of that guarantee as the Board?

MR JABULANE ALBERT MABUZA: Yes.

ADV VINCENT MALEKA SC: And I suppose you are aware that, let me not ask you a leading question. What is the status of that guarantee? Do you know what is happening about it?

MR JABULANE ALBERT MABUZA: We; the, the guarantee clearly lapsed long before we got in office, but we are aware about the circumstances behind that guarantee. We remain curious about how does a supposed recipient of coal gives guarantee to a
20 supplier. That is the one part. So we also got access to material and information that speaks to; that comes out of the various hearings and disciplinary hearings that outside of here we, as an, I can join dots where the guarantee expires and where a prepayment kicks in and, and we can surmise as to why, but we remain curious.

ADV VINCENT MALEKA SC: Yes. Well one of the points that I would like you to deal with as the new Board relating to that guarantee is this and it arises from a public

explanation that Eskom has not suffered any loss because the guarantee was not used nor drawdown's were made from it by the time it had expired. Those are some of the publically made explanations in relation to that guarantee. What I want to understand from you is has Eskom interrogated firstly whether or not it was required to pay a guarantee fee to the bank that maintained that guarantee on behalf or, or for the benefit of Tegeta?

MR JABULANE ALBERT MABUZA: As I indicated I do not think this Board would have agreed to provide a guarantee to a supplier. I also do know that a previous Board did authorise that this guarantee be done. So I can only say I do not know what was in
10 that Board's head to do that. I would not. I also think it is, it is incorrect to say Eskom has not suffered because the guarantee did lapse. Eskom has definitely suffered reputation at least from the very curiosity that arises from providing a guarantee to a supplier, because this was a guarantee by Eskom to a bank. A bank that Eskom was to continue to do business with. This guarantee was to be flashed to seller ostensibly arguing that this supplier using this guarantee now has got away with all financially who can acquire whatever the seller was selling. When the guarantee expired the bank would not want to renew the guarantee because matters in the public domain were suggesting that there was something improper about the beneficiary of this guarantee or otherwise. So Eskom yes did suffer financially if, if nothing else the amount of
20 guarantee fees totally to just around 650 000 or so that it had to pay per quarter to, whilst the guarantee was still in place.

ADV VINCENT MALEKA SC: Who would have to pay that amount?

MR JABULANE ALBERT MABUZA: Eskom, because Eskom took a decision that we are not going to give 1.6 billion to the supplier, but we are prepared to provide the supplier with a guarantee. We are going to get the guarantee from the bank. The bank

gives you the guarantee against a fee which is either payable monthly, yearly or quarterly in this case. The fee that was paid as at the time when this guarantee expired was about, about 650 000 give or take.

ADV VINCENT MALEKA SC: Okay. Thank you for that information. There appear implications arising from your evidence especially the question of the guarantee fee, because if Eskom paid that amount then Eskom must have suffered some financial loss as a result of paying.

MR JABULANE ALBERT MABUZA: Indeed.

ADV VINCENT MALEKA SC: I am not suggesting that would have been lawful of
10 unlawful, but if the guarantee itself was not authorised under the legal prescripts then that fee itself would not have been lawful and there would be question marks around it. From your perspective who in Eskom will be able to give us the finer details of the amount of the fees that Eskom paid?

MR JABULANE ALBERT MABUZA: We will get this from the Financial Community at, at, at Eskom.

ADV VINCENT MALEKA SC: Thank you Mr Mabuzza. Chair those are the two critical issues which we have identified from the index Mr Mabuzza gave us, but which were not dealt with in his statement.

CHAIRPERSON: Yes.

20 **ADV VINCENT MALEKA SC:** And we believe that we have now close the gaps on those two issues. The rest of the issues arise from his statement. So with your leave I will go back to the statement.

CHAIRPERSON: Very well. You may proceed.

ADV VINCENT MALEKA SC: Mr Mabuzza [coughing], I am sorry. All of the discussions that we have had so far takes us now to page 3 of your statement and I am looking at

page 10, still at paragraph 10 on page 3 and I think you can confirm in regards to that paragraph that the 20th is the key date.

CHAIRPERSON: Have you got the right file Mr Mabuza?

MR JABULANE ALBERT MABUZA: Yes, I do.

CHAIRPERSON: Oh, okay.

MR JABULANE ALBERT MABUZA: Page 3, paragraph 10.

ADV VINCENT MALEKA SC: Do you see that?

MR JABULANE ALBERT MABUZA: *Ja*, I do.

ADV VINCENT MALEKA SC: So we can confirm that the date is the 20th not the 19th?

10 **MR JABULANE ALBERT MABUZA**: We can confirm that should it be the 22nd [intervenes]?

ADV VINCENT MALEKA SC: The 22nd?

MR JABULANE ALBERT MABUZA: The 22nd.

ADV VINCENT MALEKA SC: Thank you.

MR JABULANE ALBERT MABUZA: It is the, it is the 19th when I got the call.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: The Board was appointed on the 22nd.

ADV VINCENT MALEKA SC: And when, do you recall when for the first time did you meet as a new Board?

20 **MR JABULANE ALBERT MABUZA**: I got to Eskom on Monday the 22nd with the CEO and we would have met I think on the 20th, three days later or so.

ADV VINCENT MALEKA SC: Okay.

MR JABULANE ALBERT MABUZA: As a Board.

ADV VINCENT MALEKA SC: We will then work with that timeline. I am going to skip paragraphs 12 to 14 because you are going to discuss some of those general

indications about what your Board had to deal with. More in detail later on unless you want to reflect on them for the purposes of your evidence at this stage.

MR JABULANE ALBERT MABUZA: Chairman with indulgence so that I clear this in my own head.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: Back to this issue we were discussing of guarantees and prepayments and where my curiosity legal or illegal, proper or irregular, what is, is worth noting people in office duly authorised people, people with the requisite authority to the extent of Board Members, Chairs of Board, Office Bearers, 10 Chief Executives, CFOs, Heads of Procurement these are people who had the authority. The authority they did not have is to do things that are illegal or irregular, but they had the authority to do things. So I hope somewhere in the course of the work of the Commission we will settle at a point where there is an understanding and an appreciation by Office Bearers that you have authority, but you do not have authority to do anything including things that are illegal, because these are decisions that were taken by duly authorised people in structures with their attendant authorities that goes with their office, but what they did do which I call curious and might be regular or legal is, it does not mean the Chairman of the Board or he CEO or the CFO or the Head of Procurement could not sign this. So there, there, it is important that hopefully 20 somewhere in the work of the, the Commission we will reach a landing where Office Bearers particularly in state owned entities as we deal with the, the mandate of your Commission Chair that there would be an appreciation of that.

CHAIRPERSON: Yes. Basically at least in part what you are talking about is the use of one's authority for the purpose for which one was given that authority and the abuse of authority that one may have. At least in part that is what you are talking about?

MR JABULANE ALBERT MABUZA: That that, that is it Chair, thank you.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Yes. Then we are grateful for that guidance. At paragraph 16 on page 5 you say that:

“At the time of the Board’s appointment the company was undoubtedly facing one of the most difficult times in the organisations 95 year history.”

Can I ask you to sum up precisely what are those most difficult times that Eskom was facing when you took office?

- 10 **MR JABULANE ALBERT MABUZA:** When we took office as I got to know later that the funders of Eskom and Eskom being now a matter of public record there is no money. So it relies on money from lenders and the shareholder. The funders, it was in January 2018 the last money that Eskom could find from the market would have been in July 2017. The funders had actually drawn a line on the ground that we are not putting one cent more here under this current leadership of Eskom. So that that, that that has had many implications for, for Eskom. The first being January 2018 Eskom was under terms to release its interim result for the period of ending September 2017. The JSE had indicated it would delist Eskom’s bonds if by a certain date they do not publish those results. The auditors would not sign on these results on a going concern
- 20 basis until there was some small gap of R20 billion that had to be provided to address the liquidity crunch that the organisation was facing giving rise to the question of going concern. So you do not have your results on the base of which people can give you money to see where you stand. You cannot get your results because audits cannot confirm you are a going concern. You cannot be going as a concern when the funders are not prepared to give you any more money. You are not selling enough or maybe

you do sell, but you are not collecting enough revenue. So that was; then this is an organisation that at one stage had a, a better rating, credit rating than the Sovereign.

ADV VINCENT MALEKA SC: Hm.

MR JABULANE ALBERT MABUZA: This is an organisation that at one stage was one of the top five in the world of utilities. So you have to go see this in the context. Needless to say this is an organisation whose survival is so systemic in the socio economic fabric of our society. So that was the one issue that it faced. All what we knew about was there was a lot of graft, a lot of malfeasance. Indeed it was the, the main theatre where corruption, state capture was taking place. So the morale was low.

10 People were not too proud to be associated with this organisation. So here this Board comes in. That is the backdrop. So we had to do a few things soonest. The one was to get those results which we finally did albeit with the various reportable irregularities. Two, there was sufficient I would image confidence in this Board led by this taxi driver that whilst they do not know the difference between electricity megawatts or kilowatts that they do have is sufficient integrity, ethical standing that they funders could at least have confidence that they will not steal our money. They might not be able to turn a turbine, but they will steal our money. So the funders were with a certain level of confidence prepared to give us what we call as our bridge to bond, because we are only going to be going out to on a bond fund raising September later in the year, but we

20 had this R20 billion cap that we had to fill. So I and the Chairman of Audits, Sindi Mabaso-Koyana. So they had to go and meet the funders, look them in the eye. I met the Vice President of the World Bank which had met our Deputy President at the time and had indicated to him that they will pull the plug on funding Eskom from the World Bank and we all know what that ripple effect would have been. So they, the funders against the little credibility we had and believe that we could clean up, stabilise this

patient who were prepared to give us the bond. With these results we went out to raise more funds. We now had a complete Board, had a new Chief Executive and we embarked on appointing a permanent Chief Executive and a permanent CFO and went onto continue with the, the disciplinary hearing and over time tried to, to address the issues on procurement, because Mr Chairman as I got to learn here as I got to learn here is that it's called corruption, the name is corruption but the game is procurement.

ADV VINCENT MALEKA SC: Right can I stop you there, I know that you feel so strong about it and we will get to it in detail. To complete contextual matters of background you say at the time when you came in, in January 2018, there was a liquidity crises, I
10 would like you to give us some figures if you can, if not please point us to who would give them to us. What was the debt burden of Eskom at that point in time, more or less to your knowledge?

MR JABULANE ALBERT MABUZA: Without the CFO of Eskom and see it from whence it comes Eskom generates give or take about R180billion in revenues, it pays about R95billion, spends that on buying its primary energy, spends another R50billion on its people's costs, so at arbitral level Eskom would have about 40/45billion, it's got a debt servicing burden of 50billion, so Eskom must go and borrow, if nothing else another R5billion to pay debt.

ADV VINCENT MALEKA SC: Right, do you know how much of the government
20 guarantees were extended to Eskom when you came into office to back up its debt burden to the funders?

MR JABULANE ALBERT MABUZA: Eskom had a guarantee of about R350billion, I would say by that time it would have had about 115 or so of unutilised guarantee. Now the way this smart people that spent longer time at school than I did say that you've got a guarantee of 350, some of that has already been committed and used, some of it is

committed but not yet used, so there would have been maybe in round numbers R100billion that was not yet used, but the guarantee is quite specific, the guarantee is for capital project, for nothing else, not for operating expenses. So it was as I said around 100billion that might not have been used, I could be wrong by 15billion or so, but it is irrelevant in Eskom, 15billion is a small number.

ADV VINCENT MALEKA SC: From the reports that we have seen there are different funders who have extended different forms of loans to Eskom, is that correct?

MR JABULANE ALBERT MABUZA: Ja, correct.

ADV VINCENT MALEKA SC: Yes. And each and every one of the loan covenants that
10 we have looked at has a material default clause or event default clauses. I suppose you are aware of the implications of those clauses.

MR JABULANE ALBERT MABUZA: Yes.

ADV VINCENT MALEKA SC: And Minister Gordhan was here and he told us that all of those loan covenants have what he called cross-guarantee, cross-default provisions.

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: That if you default on one the rest of the default clauses kick on are you aware of that?

MR JABULANE ALBERT MABUZA: Yes I am.

ADV VINCENT MALEKA SC: In the light of your knowledge can you explain to the
20 Chairperson what would be the implications of Eskom defaulting on one and not the rest of the loan covenants by the funders?

MR JABULANE ALBERT MABUZA: Chairman as Advocate Maleka has explained, these are not on the cross-default within Eskom, they are cross-default in the sovereign, so a breach of any of the covenants within Eskom the fatal effect of it it's not only within Eskom, not that Eskom has got no fatal effect on the economy and on the

country all that's come up for cross-defaults, whether they are sitting in Denel or in SAA or we had the Minister of Financer telling us that we've got to borrow R1.5billion every day even those kind of borrowings come up for having been affected by the cross-defaults.

CHAIRPERSON: So in other words a failure on the part of Eskom and indeed on the part of any SOE that may have been issued with a guarantee is for all intents and purposes quite disastrous for the sovereign.

MR JABULANE ALBERT MABUZA: For the country.

CHAIRPERSON: For the country yes.

- 10 **MR JABULANE ALBERT MABUZA:** Even the guarantees themselves Chairman I mean if we said it's 350 that would be 350 out of maybe 600billion of all guarantees.

CHAIRPERSON: Yes, yes.

MR JABULANE ALBERT MABUZA: Which is about half of the GDP, so the point I'm trying to make is it's – I don't have the English word, only the Afrikaners have got a nice word who can describe it but I can't say it here, it's fatal, it's fatal for the country, not only for the economy, for the country.

- CHAIRPERSON:** Yes, so obviously it's something to be issued really when circumstances call for it and once it has been issued it should be honoured, the debt has got – the obligations that the SOE concerned must make sure it honours those
20 obligations because the country can't afford a breach of those obligations with the consequences that you have just told us for the country.

MR JABULANE ALBERT MABUZA: Yes Mr Chairman but more importantly for people that are in charge of running this entity needs to understand and appreciate what Advocate Maleka called the responsibility, integrity.

CHAIRPERSON: Yes, yes.

MR JABULANE ALBERT MABUZA: They need to understand what turns on the decisions and the authorities that they have but for the records to date Eskom has not yet defaulted.

CHAIRPERSON: Ja thank you.

ADV VINCENT MALEKA SC: The one contextual issue that I would like to clear up now that we understand the extend of the burden of the debt and the back-up guarantees that provide a comfort to the funders. You talked about the fact that there was a liquidity crises in Eskom, my simple understand of the meaning of that term of art is that you don't have money to pay for your debts as and when they fall due, you don't
10 have sufficient money in your bank to plan properly for our business operating expenditures, would that be consistent with your understanding?

MR JABULANE ALBERT MABUZA: Ja, as it says the cashier has run dry so no liquidity.

ADV VINCENT MALEKA SC: Yes, what was the extent of the liquidity crunch at Eskom at the point in time when you assumed office, if you are aware. You have mentioned the figure of R2billion, I'm not too sure that was ...(intervention)

MR JABULANE ALBERT MABUZA: It's twenty.

ADV VINCENT MALEKA SC: R20billion?

MR JABULANE ALBERT MABUZA: R20billion. We needed a cash injection of
20 R20billion that would take us through to August September which was the time we would next be able to go and meet funders, one to report about the past hopefully the picture is such that it gives them hope that we will be able, willing and available to pay in the future.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: And you needed five did you say you needed R5billion in order for

the auditors to confirm that you were a going concern?

MR JABULANE ALBERT MABUZA: No Chairman I said the auditors would not sign the financial statements.

ADV VINCENT MALEKA SC: Oh, okay, no they wouldn't until they were – if they had to sign they would have to say this company should not be relied on as a going concern, so don't trade with them, so we had to produce the results but to produce the results we had to demonstrate that there is funds in the company for it to be able to trade beyond September 2017, the audit it's now March or February or so of 2018.

CHAIRPERSON: Okay and that's the R20billion?

10 **MR JABULANE ALBERT MABUZA:** And thus the R20billion was put in yes.

CHAIRPERSON: Oh I thought you mentioned R5billion in connection with being able to get the auditors to ...(intervention)

MR JABULANE ALBERT MABUZA: Now the R5billion Mr Chairman I raised in the context of the gap between what Eskom generates of its own, being R45billion, and the R50billion it has to pay to service its debt on an ongoing basis.

CHAIRPERSON: Oh, okay.

MR JABULANE ALBERT MABUZA: So between the 50 an 45 there's the five, so they must go and borrow from someone else to can pay this one other 45billion creditor.

CHAIRPERSON: Yes, okay, thank you.

20 **ADV VINCENT MALEKA SC:** There are two points there Mr Mabuza in relation to your evidence, the one is the audited financial statements were historical in terms of reporting of reporting on the financial condition of Eskom, for the previous year of operation, in other words 2016/2017?

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: And the expression of going concern opinion by the

auditors is forward looking?

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: You agree with that?

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: That you do have some money in your kitty to pay for your obligations going forward?

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: Yes, when I look at paragraph 17 on page 6 you do mention the amount of R20billion and that's the issue you have already dealt with, do you agree?

10

MR JABULANE ALBERT MABUZA: I do.

ADV VINCENT MALEKA SC: Okay, now you've mentioned the question of the possible JSE delisting of Eskom bonds, you do deal with that issue in paragraph 18, I would like to skip it if you don't have anything further to say in that regard.

MR JABULANE ALBERT MABUZA: Ja, just to say that because of the periods it's important that we put it in context, the financial years at Eskom runs from – runs to March am I right?

ADV VINCENT MALEKA SC: Yes.

20

MR JABULANE ALBERT MABUZA: Runs from April to March, which therefore means the interim is the period ended 31st September 2017. When we got to office in March – in February, end of January 2018, we had 60 days before the end of this – that particular financial year which would have been March 2018, so the results that were not yet released were for the period ended September, and the reason they were not released was because there were issues of going concern, but the results for the period prior to that which would have been March 201 for the full year of 2016/2017 when they

were released, they had qualifications both of the international financial reporting statements since and indeed in terms of the PFMA, so this results, the significance of getting these results was what has – because auditors when they audit your next term they want to know how did you deal with the previous issues that were raised on the previous financial so the reason this could not be released issues that were carried forward did not seem to have been and in a related manner the discussion we're having about the remedial action was raised in the previous era as it turns out some, if not most have not yet been addressed, so the question of the going concern was – has to be seen in the context that we had release those results and a month later come to the

10 end of the financial year which we would need those results audited so that they can take those results to the bond markets, because the timing of when we were going to go and raise funds is assumed that you will go in August, you would have had your financials audited around May, June of 2018, you would have enough time to do your road shows and then go and raise money, but we were still stuck in September 2017, except that the calendar was saying it's March 2018. So this going concern has to be seen in that concern, you are right Advocate Maleka it's going forward, so we were already forward without confirmation that we would get forward.

ADV VINCENT MALEKA SC: Yes, I mean we have read the report of Parliament, which makes it quite clear that a major issue in relation to the 2017, March 2017

20 audited financial statements insofar as the PFMA is concerned related to all manner of unauthorised fruitless and wasteful expenditure, which were marked out by the auditors, what's your recollection on the score.

MR JABULANE ALBERT MABUZA: My recollection is when I first publicly had to announce Eskom results, these very results we're talking about, if I'm not mistaken we had indicated to the public that first and foremost we don't know what we don't know

yet, this is what we've seen so far, and I think there as a figure of about R3billion of irregular expenses that we reported on for that period, that figure became R19billin six months later. So yes the irregular expenses one could well argue that they have not become new irregular expenses that have come about between January 22 and March 31, they were irregular expenses that have come about over a period longer than that, to the extent that in the period preceding this date there were reporting where these irregularities were not reported could either that they were just not seen at the time, or they were deliberately not reported on.

ADV VINCENT MALEKA SC: Right, Mr Mabuza thanks for that additional explanation,
10 I am now going to go to paragraph 19 and you give us a list of your colleagues who were appointed more or less with you and those who continued with office. I am going to mark out two names, and what I'm going to raise with you in relation to those two names is no longer a confidential matter, but is a matter that is now in the public record. I raised the question on those two names for a different purpose other than the context in which the names emerged for public discussion. If you go to page 7 you will see that there are a list of names and two have been marked with asterisk, do you see that?

MR JABULANE ALBERT MABUZA: Yes.

ADV VINCENT MALEKA SC: Who are those?

MR JABULANE ALBERT MABUZA: The one is Mark Lamberti and the other one is
20 George Johannes Sibulela.

ADV VINCENT MALEKA SC: Yes and then against those names you give the date when the assumed office, we now know that it is more or less around 19 January and the next date is when they resigned from office. As against the name of Mr Mark Lamberti you say that he resigned on the 6th of April 2018, do you see that?

MR JABULANE ALBERT MABUZA: Yes correct.

ADV VINCENT MALEKA SC: Do you confirm the correctness of the date of resignation?

MR JABULANE ALBERT MABUZA: I do.

ADV VINCENT MALEKA SC: Alright, the net is the name of Mr George Sibulela, same date of coming in to office and a different date of exiting by way of resignation. What is the date of resignation?

MR JABULANE ALBERT MABUZA: He resigned on the 19th of October 2018.

ADV VINCENT MALEKA SC: Yes. For the purposes of this enquiry can you please deal as brief as you can with the reasons why persons who volunteered to assume
10 public office resign months later into that office?

MR JABULANE ALBERT MABUZA: Chairman firstly the circumstances and the reasons leading to their leaving office are not the same. Mark Lamberti really with some very heart that I had to accept his resignation owing to an unrelated matter to his office at Eskom, owing to a matter that relates to his position and how he has been found by a court to have ill-treated a black female and overlooked her for appointment in her job. I say this because this has definitely been devastating to Mark the person definitely not the person I personally have experienced over the time I have worked with him, over many years and indeed he recruited me to be Chairman of the Board of the PLSA to be the Chairman of PLSA, I did not appoint him to the Board here, but I
20 know what it has done to him, the person, which is really unfortunate. I accepted and respected his decision, which I think was the right one, to leave this public office, given the time and the place our society is at on issues of gender and race. So I respected that, I also had to accept his resignation from the Board of PLSA and also accept his resignation from the CEO initiative but I remain very hurt by what happened, I am not justifying or defending his action but I remain very deeply hurt by it. So this was the

circumstances behind Mark having to leave office.

ADV VINCENT MALEKA SC: May I ask you one or two questions on that score, and maybe you are not the right person to deal with the question, but if not someone else will have to deal with that question, and I truly respect the relationship you had with Mr Lamberti but the risks investigation, the risk processes what I want to understand is was the litigation that ultimately gave rise to a judgment against him still continuing when he accepted appointment at Eskom as a Board Member, to your knowledge?

MR JABULANE ALBERT MABUZA: Chairman the only time I got to be aware of these incidents was at a meeting where the Portfolio Committee of the Department of Public Enterprise were on a site visit at Eskom, and its nature that Portfolio Committee is made of members from different parties in Parliament. During question time a Member of Parliament, Honourable Chivambo from the EFF, raised this point addressing me, to say you are sitting in this Board with people that have got these issues around them to which Mark responded to say as you know this matter is in court it is prejudicial to be talking about it, I have not yet been found guilty of anything. If indeed I do get found guilty of anything I will be the first to resign, you won't have to worry about me continuing. So that was the only time I even got, as I said this was a matter that was at the company where Mr Lamberti was, and I only got to know about it at the time, not that I would have done anything about it had I known, I was not the person that was appointing Mr Lametti to the Board, the earlier point that I made that I was invited to a Board that had members already been appointed, I was asked to Chair it. So that's all I – the rest is what I knew after that as I was dealing with it as Chairman of Eskom and as I was dealing with his resignation as Chairman of PLSA.

ADV VINCENT MALEKA SC: So I take it from your answer that you became aware before he resigned of that litigation.

MR JABULANE ALBERT MABUZA: That's correct.

ADV VINCENT MALEKA SC: Yes and the company you are talking about for the record is Imperial Holdings?

MR JABULANE ALBERT MABUZA: Holdings, correct.

ADV VINCENT MALEKA SC: Chair it is almost one o'clock, we are going to get to another detailed topic.

CHAIRPERSON: Yes, okay, we are going to adjourn, we are going to take the lunch break and we will resume at two o'clock. The Commission adjourns.

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**

CHAIRPERSON: Yes Mr Maleka you may proceed.

ADV VINCENT MALEKA SC: Thank you Chair. Mr Mabuza we were at page 7, page 7 and we were dealing with the – your evidence relating to Mr Lamberti. I take it that you have said what you wanted to say. We now go to the evidence relating to Mr Sebulela.

MR JABULANE ALBERT MABUZA: Yes Chairman as I indicated that there are reasons for departing the board were not necessarily the same. Mr Sebulela resigned on the 19 October owing to an undeclared interest in one of the tenders on the ICT space. The issue of that tender predates by about five years this board in office. It has
20 been a tender that has been out there for the last five or so years. It turns out that Mr Sebulela also long before he joined the Eskom board he had a relationship of being a sub-contractor to one of the bidders in a general arrangement that as and when they get jobs anywhere they would sub-contract to him or his company.

ADV VINCENT MALEKA SC: What is the name of that bidder?

MR JABULANE ALBERT MABUZA: The name of the bidder is EOH. But this

relationship predates as I said Mr Sebulela on the board. So when Mr Sebulela joined the board as I have demonstrated in my own declaration this particular relationship was not disclosed in a general declaration. When these bids finally came to the board the board through its various committees had reached a point to recommend that they re-open this process and I would think the committee actually mentioned from a strategic point what it would do. I think the board – the committee recommended to the board that instead of taking this one contract and give it to one vendor they were going to give it to about six vendors, break these various tender to those six. One of those six that was bidding is the very company UAH. But prior to this there seemed to have been a

10 specific sub-contracting – there was a general one that if we get jobs in this space we will work with you. Then there was a specific one that says we are bidding for this job at Eskom we want you to be our sub-contractor. That is what we finally got to hear from the bidder. Because as I said he did not disclose and declare this as his general – in his general declaration. He did not disclose it as a specific declaration at the start of every board meeting. On the one side the audit and forensic team would send material that says we are about to go into a meeting to look at something like this please note member so and so either as per your own declaration or on our own findings you are to be seen to be an interested person. And then they cause that to be shared to the company secretary and you get told. So you would be able to know that you are – if

20 you had forgotten you would be ably reminded. So in this particular instance this did not happen because it was not disclosed generally and specifically. Secondly when the bidder themselves, the bidders themselves do get to be asked the same questions as to do they have anybody in Eskom in whatever position who could be of conflict. The bidder this particular time has disclosed and has mentioned that Mr Sebulela is related to them. So on hearing that the audit and forensic people raised the issue as they raise

the issue I then approached him to say there is this matter. He said no I do not know about it and then the decision where this – the decision was taken about the strategic approach he was not at that meeting but there was a round robin resolution that was being circulated. He participated in that round robin resolution which means he would have seen the material. He might not have remembered that he was related but he therefore participated in the process that he should not have participated in. So I then confronted him after now he has now signed the resolution and said this thing has come up again. He said, no I do not know about this. I said, but Georgie there is – this comes from the bidder why would they want to prejudice themselves by saying they

10 have you who would cause them – I do not understand. He said, no I did not. So I said to him, there is information here about your company and your ID. But I know you I know you very well. He says; well no it is not me maybe they got it from the office. Okay I then went back to the team and say, Guys knowing this day of fake news this might be fake. They then produced a document he had signed of this contractual arrangement. He – I then confronted him same and he said, no. You know what Chairman I leave my stamp, my signature stamp somewhere. This could be one of those. At which point I said to him, well I think you have got bigger problems than this. If you have your stamp that you do not know where it is, you do not know who is signing on your behalf I would be more worried if I were you. Anyway this is where we are and

20 I think you have got to do the right thing. He said no leave me let me think about it. So I let him think about it and then unfortunately this thing is now in the public domain. These newspapers have got certain deadlines they working on. This time is now a Friday afternoon we cannot hold this any further. The weekend papers are calling to say they are going to print if we – if they do not get a response. At which point I then called him and then I then drafted a resignation for him on a text. I said I think you now

need to resign by returning this sms to me. By this time I have advised the person who has appointed him but Minister I am dealing with this because of time this is how I propose we deal with it. I will draft this when he gets it I will receive it, I will forward it to you and if it is okay Minister if I receive it given time can I accept it on your behalf. The Minister said yes you may go ahead. So of course after a long time he still does not feel he should do this but in his words which I appreciated was “in the interest of clean corporate governance I will leave.” So he then sent me that text. Within seconds of course I responded and indicated I do accept your resignation on behalf of the minister and the minister will be advised accordingly. That is what – that is what happened Mr

10 Chairman.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Thank you Mr Mabuza. Questions of process. Where was the weakness in the system at the – which led to this controversy as far as you can pick up? I mean all of you have declared when he took office. The declarations are updated by the audit and risk individuals in Eskom and yet they feel to pick up?

MR JABULANE ALBERT MABUZA: Ja Mr Chairman I thought about this in the context of the previous point that it is highly unlikely that the process could pick up something that is not available. So it is up to me who knows – I know who I deal with. I know where interests I have are. And indeed even outside of issues of conflict of

20 interest, excuse me, if I know that I occupy a position like I do at Eskom and there is a certain behaviour privately and publicly that is expected of me and that is not yet in the public domain that I have already breached that – that example I have already assaulted someone and the matter is going through the various processes. It is not everybody who would get to know that I am charged for assault and if they do I will tell them the matter is still in court. Only I know that I have got that matter. So if I consider

my office just outside of the narrow constraints of what my – I need to do I need to at least do take one of those people that my reporting office say, you may, you may not be aware this thing might or might not come out that I am currently being charged for assault I would propose that I be given leave so that I do not affect the good office that I occupy. So those things might not necessarily be there. So I also – I say the issue of declaration and management of conflicts has first and foremost have to start from the interested officer. I have to declare it as I have indicated in my own form. Anything that I have not disclosed here is what has not yet happened or I do not know I am doing. The things I know I am doing that are of a commercial nature I have declared up front.

10 Whether they are known by someone else or not I have declared. So in this particular instance I do not know how else would the board – the officers have found out if he did not declare but because the system is such that even the tenderer must state. So if the tenderer did not disclose we would have known when maybe more damage would have been caused. So it now is back to the individual. That individual that occupy these offices need to be honest, ethical and sincere in their declarations first and foremost. So if there is flaw I would argue that maybe George should have declared more.

ADV VINCENT MALEKA SC: Thank you I am grateful for that but can I suggest to what I conceive to be a weakness in the system beyond the good faith or lack of it on the part of an appointee or a candidate for such a responsible office as you hold. And I
20 say so because it is now become clear evidence before the Chairperson that individuals are appointed to serious office without any prior background check by those who have the power to appoint. And Chair you now have evidence before you about the issue we are dealing on 1.7 or 1.8 relating to Treasury's appointment of Special Advisors and so on. And the evidence we have so far is that the Minister concerned was appointed on the 9th the next day advisors and chief of staff are appointed which suggests that if ever

there was an opportunity to do background search it would have taken less than a day. So where I would like your comment is this a proper background investigation to candidates for appointment would at least established minimum information relating to probity questions around the candidates concerned. Do you agree?

MR JABULANE ALBERT MABUZA: I do.

ADV VINCENT MALEKA SC: And that background investigation ought to be done before, at least well before the appointment is made.

MR JABULANE ALBERT MABUZA: I agree.

ADV VINCENT MALEKA SC: And in this case in your case the appointment was made
10 almost on the same day when it was publicly announced.

MR JABULANE ALBERT MABUZA: I agree.

ADV VINCENT MALEKA SC: In the light of all of those matters that you and I agree on what would be your recommendation in order to make sure that declarations go beyond the good faith disclosures of the candidates for appointment.

MR JABULANE ALBERT MABUZA: Ja as I indicated Chairman earlier about my issue of privacy I also do come from a place where for me to have continued to be a key employee and chief executive officer at Tsogo Sun I had to always be of acceptable probity. And any and everything that I disclose or did not disclose was available. I was signing as I disclosed to the officers, the gaming boards that you can go to anybody,
20 anywhere in the world and take any information about me and should you find any of those to suggest that I am not fit nor proper to occupy this office I would know that I am putting the license that Tsogo Sun has at risk and Tsogo would be given at least the opportunity to remedy that by removing me from office or face the consequences. So this maybe brings me to the point Advocate Maleka referred me when he was talking about my declaration to a date of July when we were still talking about when I was

appointed. It is that document under the Annexure, Annexure C Chair.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: That is under Text 6.

ADV VINCENT MALEKA SC: That is U5 Chair. It is Exhibit U5.

CHAIRPERSON: Ja what page was it again?

ADV VINCENT MALEKA SC: It starts at page 140.

CHAIRPERSON: I do remember the reference to July 2018.

MR JABULANE ALBERT MABUZA: Ja – yes I am sorry to do this but I think it is an important point to make. That date is not a date related to my appointment. That date
10 is the date at which this form is being revised in the policy processes of Eskom.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: So I just do not want an impression to be left that I joined in January now we have settled on the date whether it is the 19th or the 20th or 22nd but only in July did I declare my interest.

CHAIRPERSON: No I...

MR JABULANE ALBERT MABUZA: It is important that we get that one.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: No you can take for granted that your evidence is clear on this.

20 **CHAIRPERSON**: Yes no I thought I would mention that is was quite clear. I mean you did say you made the disclosure, the declaration I think still in January I think quite soon after your appointment but that July 2018 it is also indicated there it is revised so you did talk about how it gets updated. So ja that was – that was clear.

MR JABULANE ALBERT MABUZA: I am glad that the – Chairman with that. So to Advocate Maleka's question as we go forward in updated these various probity forms if

I may call them that way one of the learnings at least would be that – I guess the very least you can do is you have told us everything that is for you to tell us the truth, all the truth on this day should we find anything that it is not in line with this we then must exercise the particular sanction. That is the one part. The other part is we must I do not know what else you do to know whether a person has told you everything as in this particular instance. The third point is as Advocate Maleka says here in the case of this where the shareholder, the government appoints people to these boards they need to spend a little bit more time before they appoint them to be sure and know that the person they appointing is the person they want to appoint knowing what they know
10 about that person. There is a lot in the public space about these type of situations that I guess they are a bit of an embarrassment.

CHAIRPERSON: Yes thank you.

ADV VINCENT MALEKA SC: Thank you Chair. You are close to ministers. You have mentioned the example of probity investigation in the gambling industry and from what you told us you commend that model of prior probity investigation and I leave it to you to suggest some such options to avoid these things because they are likely to happen unless we address them.

MR JABULANE ALBERT MABUZA: Yes to confirm I am close to them by the office I occupy.

20 **ADV VINCENT MALEKA SC:** Yes. The last person of the board that you are leading who was forced or called upon to resign because of possible questions of conflict of interest is a person you name at paragraph 21 on page 7 of your statement, do you see that?

MR JABULANE ALBERT MABUZA: Yes I do.

ADV VINCENT MALEKA SC: Give us some sort of contextual appreciation of why that

person was called upon to resign?

MR JABULANE ALBERT MABUZA: This current Minister of Public Enterprise has taken a view Chairman that none of his staff, his office is officials should occupy positions on state owned boards that they have got to oversight on. Previous ministers had a different take on this. So Ms Jacky Molisane is an official that has been working and continues to work for the Department of Public Enterprise. Minister Gordhan has – has had a preference that he did not think that creates sufficient distance between the shareholder and the board. So he decided that he was going to ask her to resign and accordingly she is employed by the Department so she has resigned from the board.

- 10 **ADV VINCENT MALEKA SC:** Mr Mabuza unless you have further issues to raise I would like now to go to the meat of your evidence and of course you introduce that part of your evidence from paragraph 23 and I would like you to reflect on what you were so emphatically prepared to talk about through that graphic description that procurement is a disguised way of expressing corruption. I hope that I am not misquoting you?

CHAIRPERSON: Well you maybe. I do not think he said that. Well he said procurement is the game.

MR JABULANE ALBERT MABUZA: Yes corruption is the name.

CHAIRPERSON: Ja.

ADV VINCENT MALEKA SC: And then what is the game?

- 20 **MR JABULANE ALBERT MABUZA:** It has – the game is procurement.

ADV VINCENT MALEKA SC: Okay and...

MR JABULANE ALBERT MABUZA: To do corruption. I said corruption is name, procurement is the game.

ADV VINCENT MALEKA SC: Yes to a simple idle mind like me what does that mean in lay terms?

MR JABULANE ALBERT MABUZA: What that means is what we see and we call corruption is what happens in the procurement of goods and services in the public sector. That is – we talk – we call it corruption but the real deal, the real incident, the real happening, the real goings on is what happens in the procurement and we have come to see it in a number of manifestations at Eskom.

ADV VINCENT MALEKA SC: Chair you remember we led the evidence of Mr Mathabula right early on.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Who told you that the total public procurement bill is in
10 the order of R800 million as I recall.

MR JABULANE ALBERT MABUZA: Billion.

ADV VINCENT MALEKA SC: Billion. Yes.

CHAIRPERSON: Ja.

ADV VINCENT MALEKA SC: And that half of it is characterised by a non-compliance with the PFMA. He did not go as far as to suggest that all of that non-compliance constitute corruption but it more or less fits in within the scheme of Mr Mabuza's observation that..

CHAIRPERSON: Ja.

ADV VINCENT MALEKA SC: I would not want to mis-describe.

20 **MR JABULANE ALBERT MABUZA:** But there is if I may Chairman.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: There is perhaps the need to say this and a public office bearers and public people in the public service use this line a lot. That irregular expenditure is not always wasteful, fruitless and corrupt.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: The irregularity comes out of being irregular relative to the prescripts of the Public Finance Management Act. It might be a narrow way of looking at it. But there is corruption that is over and above irregular expenses as per the PFMA.

CHAIRPERSON: Ja. Ja I am sure there would be bona fide transactions that which have got some irregularity but the irregularity has nothing to do with corruption.

MR JABULANE ALBERT MABUZA: That is correct, that is what I am saying.

CHAIRPERSON: It is somebody who misunderstood genuinely some requirement or thought that the circumstances were such that I genuinely thought that there was no
10 need to comply with a particular requirement but it is genuine.

MR JABULANE ALBERT MABUZA: Agreed.

CHAIRPERSON: And then there are those where everybody knows this is what you are supposed to do but they do not do it because it does not suit their purposes and that is where you get into corruption.

MR JABULANE ALBERT MABUZA: I agree.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Now I am going to get to the details of that topic. Because you begin with it from page 18 paragraph 51 of your statement but before I go there I just want to confirm that you have dealt with some of the issues you describe in
20 the interposing paragraphs before that. And remember we had finishes what you had dealt with up to paragraph 22 on page 7. I would like to move quite quickly with those interposing paragraphs because you have dealt with some of them. In paragraph – sorry in – on page 8 from paragraph 23 you set out in detail what you as a new board found when you got in there. You have dealt with it as far as I am aware and I do not think there is a need to repeat it Chair. And then in paragraph...

CHAIRPERSON: Yes. Yes he may if there is something that he wants to highlight which you – he thinks we have not covered. Just highlight that otherwise he certainly has dealt with some.

ADV VINCENT MALEKA SC: Thank you Chair.

MR JABULANE ALBERT MABUZA: I have dealt with it thank you.

ADV VINCENT MALEKA SC: Yes. And so would be the case from Chapter 3 of your statement beginning at page 10 paragraph 29. You give us the background of Eskom's Corporate Governance and then in paragraph 31 on page 11 going up to 35 on page 12 you talk about Eskom's Conflict Of Interest Policy and the declarations that are required
10 from members of the board and you have dealt with that topic now quite adequately, do you agree?

MR JABULANE ALBERT MABUZA: I did except to just emphasise that on page 10 that paragraph 30.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: That when, when you look at that table at the bottom of page 10 this table says as it is January for a Board that was appointed in January 2018. By the time I submitted this statement which was, I must get the date right now, which was signed on 16 January 2019. It is almost a year.

ADV VINCENT MALEKA SC: A year.

20 **MR JABULANE ALBERT MABUZA:** This Board Chairman and its various Committees has had 61 meetings. A year does not have 61 weeks. So this does just speak to an abnormally. I just wanted to, to, to state the amount of time Non-Executive Directors of Eskom spent at Eskom and each Board Meeting lasts an average of eight hours. It is, it is, it is, it is, it is, it is, it is, it is unusual.

CHAIRPERSON: Hm.

MR JABULANE ALBERT MABUZA: Four/six Board Meetings a year.

CHAIRPERSON: Hm.

MR JABULANE ALBERT MABUZA: Is what.

CHAIRPERSON: Is normal.

MR JABULANE ALBERT MABUZA: So the dysfunctionality that the President was talking about when he spoke about Eskom is manifest by the Executive, the Non-Executives spending more time almost to the point where I do not think this Non-Executive tab which speaks to they either are overreaching or there is a vacuum.

CHAIRPERSON: Hm.

10 **MR JABULANE ALBERT MABUZA**: I just wanted to.

CHAIRPERSON: Yes, *ja*.

MR JABULANE ALBERT MABUZA: Give you an example of each.

CHAIRPERSON: *Ja*.

ADV VINCENT MALEKA SC: Well it is the nature of your mandate to go and clean up. You cannot behave as usual when there is a special task to deal with.

MR JABULANE ALBERT MABUZA: Accept I am not complaining.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: I just want it to be seen in the context of effort versus reward.

20 **ADV VINCENT MALEKA SC**: No, I am grateful for that and can I [laughing] can I ask you to reflect on the table and raise one.

CHAIRPERSON: Or, or well maybe you, you are not complaining about having to attend so many meetings, but maybe you are complaining about the situation that has brought that about.

MR JABULANE ALBERT MABUZA: And it is, it is unsustainable Chairman.

CHAIRPERSON: Hm.

MR JABULANE ALBERT MABUZA: There has to come a time when you have got to create enough distance from the Executive to be, not be player and referee themselves.

CHAIRPERSON: [Indistinct].

ADV VINCENT MALEKA SC:

MR JABULANE ALBERT MABUZA: Non-Executives rather.

CHAIRPERSON: *Ja.*

ADV VINCENT MALEKA SC: One of the unique governing structures of Eskom insofar as the interface between the Board and the Senior Executives are concerned is this
10 animal called the Board Tender Committee. I would like to illicit your thoughts on it, because we know that in this case allegations of state capture impacted quite heavily on what the BTC, the Board Tender Committee, did. My understanding of the delegation of authority of Eskom is that the Board Tender Committee is an organ of the Board. It is the Board operating on a narrow scale of its members and a narrow scale of mandate relating to Procurement. Do you agree with that model of the mandate of the BTC?

MR JABULANE ALBERT MABUZA: Firstly the, the, the name of this Committee in as far as the Board I lead is a bit of a misnomer. The Committee of the Board that is currently in office does not sit and adjudicate tenders. One of the mandates that in
20 announcing our appointments the Deputy President of the Republic at the time referred to was Board Members should desist from being involved in adjudicating tenders. So it is being called the Board Tender Committee. I have not experienced this Committee adjudicating tenders, but I nevertheless did not stop from executing that mandate of ensuring that Board Members do not get involved in tenders and also disband this Committee. It does no longer exist at Eskom Governing Structures as we speak today.

The, historically this is what happened at Eskom. I might get some of my numbers incorrect. These Executives at Eskom either as individuals or attaching to their positions they carry big responsibilities as I mentioned in their delegated Schedule of Authorities of what they can spend before they go one, one level up. I got to be aware that I might get it wrong. I will not remember what each of the Heads of various divisions as in Generation, Distribution and Finance and/or Transmission their Schedule of Authority, but anything that is above 500 million and where I come from 500 million is a lot of money. At Eskom as I indicated they [indistinct] they spend on primary energy 95 billion. So 500 million is a level that is, attaches to a certain office or officer or a

10 group of officers. Then the next level was then 750 million. Above 750 million it must go to the, to the tender, the Board Tender Committee but when it comes to the Board Tender Committee it is not for the Board Tender Committee to adjudicate tenders. It is to say we have decided that you should procure from Supplier A this various product or service at this price. This we confirm. This is a strategy on sourcing this particular product of service that was approved by a Board at such and such a point and I guess what this Committee can do is oversight just to ask the kind of questions and I will give you an example of a question I had asked in one of these meetings was, here is this individual who has been given an tender to supply I think it was fuel for about a billion, some number like that, but clearly because it is outside of the purview of the Executives

20 it comes to this Board for oversight. So now this Board is, committee is submitting it to the Board. Ask the question, guys why did you ask these people to complete in the questionnaire previous values of businesses they have run before and I just want to see whether they can carry this amount of value in business, okay. Why did you ask them the question when were they established? Now just so as to establish that they have got the requisite experience. I thought so, I said but now explain this one to me.

You are recommending that we must buy fuel from this supplier who was set up the week before you closed for calling for tenders and by their own admission they tell you the biggest amount of business they have ever carried is R10 million and you want us to say it is okay to give them the 1.5 billion contract. That is what you want us to do. That is the one example. The other example they present a case to the Board of this is what we must approve or whatever amount over 1 billion and then I ask the question, where is this person who submitted this document from the office. No, this person is suspended. What is this person suspended for? No, this person was involved in another matter and, oh so what happened? No she, we finally got, she confessed that she was involved in such and such transgression. Oh, okay. So why are you suspending her? So that we can investigate. So you want to investigate a confession? Is that what you want to do? Well where I come from when you see something like this as a matter of course anything that comes from this person I will have to go, the *onus* would be on them to prove that she had not done wrong, because the only thing I know they do wrong. Maybe exceptionally they have managed not to do wrong. So I am just trying to, to, to show you that what this Committee and the Board ought to, would have been oversight not to actually say do give, do not give, pay or do not pay. So what we have then now done we then as a, when we finally disbanded this because you had to go through a process and to change your governing structures and do what you had to do. It took a bit of time. Where were finally settled is we do not have a Board Tender Committee as we speak.

ADV VINCENT MALEKA SC: Since when?

MR JABULANE ALBERT MABUZA: June, June/July/August but it is the, the, the, the last quarter of calendar year 2018. So what we then did we disbanded the Board Tender Committee, no since January this year. The work we did last year we said from

January or from February this year there will be none. So there has been none. What we have done in its place or another thing that kind, kind of like seemed odd the Chief Executive of the Company does not sit in the Board Tender Committee. Below the Board Tender Committee there is the so called ETC which I guess stands for the Executive Tender Committee. The Chief Executive does not sit on that Committee. So the Chief Executive if he was not a Director he would not know what his business is buying from whom for what, because Procurement reports through Finance and I am passing no judgment whether I saw it wrong, but decisions of buying are thought some of them the Chief Executive ought to know and own. So he would sit in the Board when

10 the BTC presents the stuff and Phakamani the CEO he too would hearing of these things for the first time which we thought that was not right. How can we hold him accountable as the Commander in Chief here when he does not command this part? So we then decided either than disbanded the Board Tender Committee one of the things we are going to do we are going to wound up the limits, the levels of what this Executive Committee should do. We are going to up the levels of what the Chief Procurement Officer will be. We will keep the Chief Procurement to report through the Finance, but above a certain level the Chair, the Chief Executive will Chair a Committee which is a Committee just before it comes to the Board, but when it comes to the Board we will then let this be done by the Investment and Finance Committee to just have

20 oversight on this as against adjudicating tenders. So I guess this would be akin to the level about the Chief Executive of a Bank who is not a Member of the Credit Committee and a level above him that the Board could have two or three independent members that have got oversight on these issues that the Chief Executive has taken.

ADV VINCENT MALEKA SC: Thank you Chair. Can I move on?

CHAIRPERSON: Yes, you may move on.

ADV VINCENT MALEKA SC: To another topic?

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Thank you and I take it that you have now realigned your DOA to reflect those changes?

MR JABULANE ALBERT MABUZA: Correctly, yes.

ADV VINCENT MALEKA SC: From paragraph 31 on page 11 you talk about probity questions and the declarations, we have dealt with those matters unless you want us to revisit them.

MR JABULANE ALBERT MABUZA: No.

10 **ADV VINCENT MALEKA SC:** And they go up to page 18, paragraph 15. You comfortable with where it starts?

MR JABULANE ALBERT MABUZA: Yes, I am. I am.

ADV VINCENT MALEKA SC: With the essence of your evidence relating to how you dealt with allegations of corruption as and when you picked up as the new Board. You start with the topic relating to disciplinary processes taken by the new Board. Do you see that?

MR JABULANE ALBERT MABUZA: Yes.

20 **ADV VINCENT MALEKA SC:** And in paragraph 52 you mention names. We will get to some of these names, but my recollection is that you as the new Board were mandated or in fact required by the Portfolio Committee which investigated allegations into state capture to undertake or take disciplinary actions against Senior Executives of Eskom. We have taken the Chairperson in your absence to several of the recommendations by the Portfolio Committee that the new Board should take those actions. We have also taken the Chairperson to the Fundudzi Report which recommended disciplinary actions. I am not going to go through that ground again. I am now going to move from the

premise that you accept as a matter of statutory and corporate obligations that you have; that you had that duty and what you did was to try and fulfil it by instituting disciplinary processes. Is that a fair premise to move on?

MR JABULANE ALBERT MABUZA: That that is correct.

ADV VINCENT MALEKA SC: Yes. This morning you gave us EXHIBIT UM, sorry U5 Chair.

CHAIRPERSON: I was wondering [laughing] where that one came from, UM.

ADV VINCENT MALEKA SC: Sorry, U5.

CHAIRPERSON: Okay.

10 **ADV VINCENT MALEKA SC:** We will get back to your statement, but I would like to deal with the contents of EXHIBIT U5 and Mr Mabuza your evidence in this regard will converse Part A of EXHIBIT U5 and you will see that Part A has several sections and we start from Section 1 to Section 7. Do you see it?

MR JABULANE ALBERT MABUZA: *Ja*, correct.

ADV VINCENT MALEKA SC: And subject to the direction of the Chairperson I am going to start with them in reverse and it will become clear later on why I do so. Chair you will see that the sequence of the documentation relating to the DC.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Begins from Section 2.

20 **CHAIRPERSON:** Yes.

ADV VINCENT MALEKA SC: And it goes on up to Section 7 as I have indicated, but with your leave I would like to start with the disciplinary charges as are contained in Section 7 from page 107.

CHAIRPERSON: Yes, you may proceed. That is fine.

ADV VINCENT MALEKA SC: Are you at page 107 of U5?

CHAIRPERSON: It looks like the one he is looking at is a much thicker lever arch file than my U5.

ADV VINCENT MALEKA SC: Can I ask the appoints person from Bowmans to guide the Chairperson?

CHAIRPERSON: Yes. Somebody is going to assist you.

MR JABULANE ALBERT MABUZA: Thank you.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Are you at page 107?

MR JABULANE ALBERT MABUZA: Yes.

10 **ADV VINCENT MALEKA SC:** Page 107, almost towards the end of that bundle.

MR JABULANE ALBERT MABUZA: Thank you. Yes I am on page 107.

ADV VINCENT MALEKA SC: That letter is from Bowmans. What is the date of the letter?

MR JABULANE ALBERT MABUZA: The date of the letter is 27 February 2018.

ADV VINCENT MALEKA SC: Who is the addressee?

MR JABULANE ALBERT MABUZA: Is the addressee is Mr Sean Maritz.

ADV VINCENT MALEKA SC: What does it tell him?

MR JABULANE ALBERT MABUZA: I beg yours.

ADV VINCENT MALEKA SC: What does the letter tell him?

20 **MR JABULANE ALBERT MABUZA:** The letter tells him that he is required to attend a disciplinary hearing by an independent Chairman Senior Counsellor Advocate Tim [indistinct] on the 8th and 9 March 2018 at a venue to be advised. He would have to face charges as contained in Annexure A and Eskom intends to be legally represented in the disciplinary hearing by our [indistinct] Counsel and you are similarly permitted to get legal representation should you so wish.

ADV VINCENT MALEKA SC: As at 27 February 2018 what did Mr Maritz do at Eskom?

CHAIRPERSON: You mean in terms of the position he was occupying?

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: What position was he occupying if you do know Mr Mabuza?

MR JABULANE ALBERT MABUZA: Yes Mr Chairman. I indicated earlier that when we arrived at Megawatt Park with the incoming Interim CEO Phakamani Hadebe it was 22 January. I.

ADV VINCENT MALEKA SC: Yes.

10 **MR JABULANE ALBERT MABUZA:** As the new landlord I had to come and tell the tenant who was Mr Sean Maritz to handover keys to the new tenant Phakamani Hadebe. Mr Maritz had read about that in the paper. I had called him from Rome to tell him I am coming to release of his tenancy and he should go back to his position as Chief Information Officer as we know have a new Interim CEO. So when I got there I did just that.

ADV VINCENT MALEKA SC: So I understand that you had to relieve him of the tenancy, but what tenancy did he occupy?

MR JABULANE ALBERT MABUZA: He was Acting Chief, he was what did they call them again? They were rotational, they did some rotational stuff a couple of weeks
20 before we were appointed towards the end of the previous calendar year. He was brought in to be the Acting Chief Executive after Mr Johnny Dladla. So Sean was Acting Chief Executive of Eskom at the time when I arrived.

ADV VINCENT MALEKA SC: He was the number one Senior Executive of Eskom in an acting capacity?

MR JABULANE ALBERT MABUZA: At that time he was the big chief.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: And as in February he was, of 2018, he had gone back to the position of Chief [indistinct].

MR JABULANE ALBERT MABUZA: Yes. On the 22nd I formally.

CHAIRPERSON: Hm.

MR JABULANE ALBERT MABUZA: Asked him to go back to his.

CHAIRPERSON: Hm.

MR JABULANE ALBERT MABUZA: Position as chief.

CHAIRPERSON: Financial Officer.

10 **MR JABULANE ALBERT MABUZA:** Information Officer.

CHAIRPERSON: Oh, Information Officer?

MR JABULANE ALBERT MABUZA: Chief Information Officer.

CHAIRPERSON: Okay, thank you.

ADV VINCENT MALEKA SC: The charges that appear from page 108 are asserted against him in the context of a specific office and just to guide all of us the preamble of it says:

20 “It is alleged that in your capacity, in your position as the Interim Group Chief Executive you committed serious acts of misconduct alternatively gross negligence in terms of the Eskom Disciplinary Code which is destructive of the trust required for an ongoing employment relationship.”

And you set out the specific provisions of the Code that deal with that charge. So let me confirm first thing first. He was charged in his capacity as the Acting Group Chief Executive Officer. Do you see that?

MR JABULANE ALBERT MABUZA: *Ja.*

ADV VINCENT MALEKA SC: And you have read these charges before and I would like to take you to the components of them. I begin with charge 1. Can I ask you to read it out please so that we all have the substance if not the text of the charge?

MR JABULANE ALBERT MABUZA: Charge 1:

10 “You breached your duties and responsibilities as an Executive and/or breach of 2.1, 2.2A and/or 2.29 and/or 2.30 and/or 2.35 of the Code and/or you conducted yourself in a way that is unacceptable in terms of Eskom values and ethics and/or you committed financial misconduct under the PFMA and/or exposed Eskom to significant financial and reputational risk and harm in relation to an asset development finance framework agreement between Huarong Energy Africa Proprietary Limited and Eskom Holding SOC and a fee letter committing Eskom to an immediate payment, excuse me of \$21 800 000 or approximately R340 million South African fee letter. In this regard it is alleged specifically that you...”

ADV VINCENT MALEKA SC: Stop. That is lawyers speak. In essence what did you find as the new Board relating to Mr Maritz that gave rise to this charge?

20 **MR JABULANE ALBERT MABUZA:** The time is, is, is, is, is, is of our appointment and the time of some of these developments as they are properly covered in the charge sheet is, is worth referring to.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: This is January, the 22nd 2018. As it is normal course I am now meeting the old tenant. I am asking him to handover to the new tenant. We are meeting him in his office and I asked him to take us through all the

things that he thinks we should be aware of. He tells us everything except he does not tell us that barely 30 days before we arrived he had signed these documents committing to, committing Eskom to this amount. For us to only know a few weeks later that these documents are alive as recent as when we were talking to him. So we felt that it was, was serious enough to suspend him and discipline, subject him to a disciplinary hearing.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: The, the, the Chair would be aware the names that are mentioned on the list there rather name, there are seven names.

10 **ADV VINCENT MALEKA SC:** Yes.

MR JABULANE ALBERT MABUZA: Mr Maritz became the only person who we suspended ourselves when we go to Eskom is Mr Maritz. The others, the seven when we got there they were at various stages of their suspension and so they were not there when we got there.

ADV VINCENT MALEKA SC: Yes.

20 **MR JABULANE ALBERT MABUZA:** So he is the only one who when we got there we suspended as I said for not having it is a very material point to, would have told the incoming Chief Executive that yesterday I have signed committing you to a fee of R340 million which is part of a one point whatever billion Dollars funding that we have agreed to, to take.

ADV VINCENT MALEKA SC: Yes. Mr Mabuza I mean you are the incoming Chair and you are talking to your commander on the ground and he is giving you a report on the status of Eskom which you will inherit as the Board. I would like to illicit some details to the extent that you are able to give them to us. We now know that you were appointed on the 20th and you indicated that you immediately went to Telkom, to Eskom to get a

report back, to get a report a status report. You meet Mr Maritz. More or less when?

MR JABULANE ALBERT MABUZA: On the 22nd.

ADV VINCENT MALEKA SC: On the 22nd?

MR JABULANE ALBERT MABUZA: On Monday 22 January.

ADV VINCENT MALEKA SC: Yes and he gives you a detail of what was happening.

What I would like to understand from you is that was it a verbal report or was there any written report or did a written report come thereafter?

MR JABULANE ALBERT MABUZA: No, it was not a written report, we had met him in the office and I introduced myself to him, as I said I had called him to tell him I'm
10 landing by this time and Phakamani will meet me at the airport, we will drive to Eskom together, and as the person at home we had to first greet him and then tell him what he had read in the newspapers as we indicated on the Sunday, but also the issue of the impending change of the leadership of Eskom was not something that just suddenly happened that week. Long before I went on holiday in December I chaired a meeting in December of the business community where the Minister of Finance then, Malusi Gigaba, had asked for the business community to submit names for consideration to the Board of Eskom.

So it was a very topical issue that the Board, the leadership would change.

ADV VINCENT MALEKA SC: Ja.

20 **MR JABULANE ALBERT MABUZA:** So the point I'm trying to make is some of his actions whether it's on the 8th of December or the 26th of December 2017 with the then Chairman, they both knew that at the very least if they could, unless it's a matter of life and death, they could hold this unless it was as I finally settled that it was let's get, whatever we can get in the basket the supermarket is about to close. So – and when we meet him he tells us everything but this particular matter, which – that was

personally that was my major problem about it.

ADV VINCENT MALEKA SC: Yes. Thanks for that detail, so I take it that you were with Mr Phakamani when you met Mr Maritz?

MR JABULANE ALBERT MABUZA: Correct yes.

ADV VINCENT MALEKA SC: And then he tells you everything but the deal. Before these charges were formally launched by Bowman's on behalf of Eskom did you have an occasion to speak to Mr Maritz about this non-disclosure? Did you confront him and find out why he did not tell you about this important deal?

MR JABULANE ALBERT MABUZA: If not me personally Parliament would have
10 because we had discussed this with Phakamani before we approached the four men and told them that this is the problem, this is the seriousness at which we look at this thing, and we need to suspend and call him to - he would have been told, I can't recall whether I was in the same room when he was told that or Phakamani would have told him alone.

ADV VINCENT MALEKA SC: But you don't recall?

MR JABULANE ALBERT MABUZA: I don't recall, but I know he was told.

ADV VINCENT MALEKA SC: Alright, and you then – sorry I stopped you when you were about to deal with the details of the charges on page 108, paragraph 1.1, I would like you continue and indicate what were the elements of the factual grounding relating
20 to the charge.

MR JABULANE ALBERT MABUZA: Thank you, just to confirm he did not see these charges for the first time on this letter, he was told what was wrong that he was going to be suspended, he was told, this followed having been told by Phakamani that.

ADV VINCENT MALEKA SC: Give us some sense of what you personally know before this letter was sent to him?

MR JABULANE ALBERT MABUZA: Well I – once we got to be aware of this which was – there's a commitment by Eskom to take a loan of about 1.5 billion Dollars if I'm not mistaken from a China based company, this Warong was going to be agent that facilitated that for that service of facilitation there was a payment of what I still thought was 39 million dollars but the numbers here must be more correct than what I think and when he was confronted he said – I think I was in the meeting – he said no he did not sign the agreement, he signed, he was told by Anoj Singh, the CFO who was on suspension I think at the time to sign this, who signed the timesheet, his was to honour the details of the timesheet and at certain stages of this there was communication
10 between the Chairman, Mr Khoza, and him that kept on asking actually as recent as the Thursday before we were appointed to say have you executed the decision of the Board to pay these people in which he had not yet, so when he finally did it would appear that he did it on the Thursday or the Friday before we were appointed on the Sunday, so which made this more problematic for us that you've just done this and you should have known that you should not, so that was his part in it, but the main agreement was not yet signed, which case we suspended him and we him through this disciplinary hearing and he was charged and two days were set aside to the 8th and the 9th for the hearing I think he resigned before the start of March.

ADV VINCENT MALEKA SC: March 20?

20 **MR JABULANE ALBERT MABUZA:** The dates set for the hearing was 8 and 9 March 2018, I think he resigned before the end of February, barely a week after we had confronted him with the charges. Ja, the Bowman letter to him was the 27th of February, I can go and find exactly the date when he resigned but it was definitely before the 8th and the 9th of March.

ADV VINCENT MALEKA SC: Yes, so he resigns before the commencement of the

proceedings.

MR JABULANE ALBERT MABUZA: Of the proceedings yes.

ADV VINCENT MALEKA SC: Yes, what we don't have in this bundle is any possible explanation or response of Mr Maritz to these charges and I assume that for the present purposes the Chairperson will rely on what you explained to him from the verbal discussions you had with Mr Maritz.

MR JABULANE ALBERT MABUZA: Ja, Mr Maritz was suspended on the 31st of January 2018 which is nine days since we came in office, charges were presented to him as we see in the letter on the 27th of February 2018, his hearing was scheduled to
10 sit from the 8th and the 9th of March. He resigned with immediate effect on the day he received this notice, on the 27th of February, it should say 2018 here, not 2017.

ADV VINCENT MALEKA SC: Chair you will hear a lot about Warong on the 1st and the 4th of March through the evidence which will be presented by my colleague, Ms Norman. Mr Maritz has not responded to these charges, but they reflect fundamental questions around State Capture and he is one of those persons who we would ask to invoke a three turn power to tell you his versions about these thing. Mr Mabuza is there anything that you want to add in relation to Mr Maritz involvement in Warong?

MR JABULANE ALBERT MABUZA: Except related to him once he was not in our
20 employ we could do no more either than handing the matter to the SIU and the Hawks for possible criminal charges and for us to then pursue civil claims against him, for his acts or omission, that's relative to him. We have since received letters of demand from Warong which demand we have refused to honour and we told them they are not, we don't owe them anything, they are not entitled to it. They have threatened, they have – we said that's fine, so that's where that is. Recently I think I got a letter from their Chairman from China wanting to have coffee at which point I told him no, there is no

coffee to be had, Mr Phakamani has told your people that we have no relationship with you, there is no need to have coffee with you, to the extent you feel you have got a claim please do what you must. That's where the matter is at. So we have not paid the 39million dollars or the 340million dollars - Rands, neither did we take the 1.5 if that's the number billion dollars as a loan. So far we're waiting for the claim.

ADV VINCENT MALEKA SC: Has Warong not declared an arbitration, a dispute against you, against Eskom?

MR JABULANE ALBERT MABUZA: They said they would, they said they would, as I said the last communication I remember was from the Chairman of the holding
10 company in the China saying let's – sure this is something we can talk about over coffee, I did not think so.

ADV VINCENT MALEKA SC: As a matter of interest what we read in the newspapers about Transnet is that its Board had authorised a civil suit against former executives or even present executives who had exposed Transnet to all sorts of financial losses. From your part what has the Board done in regard to persons who are now beyond its reach by reason of termination of employment relationship, so far as the losses Eskom may have suffered by reason of their ill-conduct?

MR JABULANE ALBERT MABUZA: Chairman without sounding like we think we've done better than anybody to the extent they were employees we have tried to
20 discipline, when they resigned we could not follow that. To the extent we could pursue criminal charges we have done as in the papers it would become evidence that there are case numbers for that, and we have handed that matter to the various law enforcement agencies. We have not yet laid any civil action, which does not mean we don't intend to, we will. Furthermore we had thought we should prioritise getting the money, so we have been able to have vent one billion Rands that we did get back from

McKinsey. We are in the course of getting the other 600million from Trillion, we have not paid the 340million dollars here, so ja I think Transnet gives us a good action to aspire to and we are committed to do that, but for now if it's cold comfort we have managed to put R1.1billion to be exact in Eskom's bank accounts, and we will continue to use all the various processes to get whatever was stolen from Eskom and we will continue when we can't on the criminal basis pursue civil charges. This not yet finished.

ADV VINCENT MALEKA SC: Yes, no thank you very much and we are grateful to hear that there are effective civil processes to recover whatever was lost, at least to some
10 degree. Chair I have explored the back-end of the disciplinary processes, I am now going to jump to the front-end and the reason why we started at the back-end was simply to give a perspective of someone who was in the employ of Eskom at the time when the new Board came in, and how the new Board dealt with him, so with your leave I would go then back to Section 2 of Part A which begins at page 5.

CHAIRPERSON: Yes thank you, you may proceed.

ADV VINCENT MALEKA SC: Mr Mabuza what is that document on page 5?

MR JABULANE ALBERT MABUZA: Which page 5?

ADV VINCENT MALEKA SC: The very bundle that we are working on, if you page it backwards to the front of it, under Section 2.

20 **MR JABULANE ALBERT MABUZA:** Page 5 in this number, oh here, got it. Yes these are – is a letter from Bowman's to Mr Koko laying – putting charges to him.

ADV VINCENT MALEKA SC: The date of that letter?

MR JABULANE ALBERT MABUZA: The date of this letter is the 7th of January, February 2018.

ADV VINCENT MALEKA SC: Alright, you will see that the date of that letter comes

almost two to three weeks before the charges against Mr Maritz that we have previously dealt with, so as matter of sequence I assume that you authorised Bowman to initiate disciplinary processes on your behalf against Mr Koko before Mr Maritz?

MR JABULANE ALBERT MABUZA: Correct Mr Chairman and if its – if it helps as indicated when we came in there was a list of seven names, of these seven names I personally have not met a number of these people. The one that I met was the A, Mr Maritz, who was in office and the other one who is on this list that I have since met was Mr Mashigo who got reinstated after being suspended when we had arrived, so I think it's important that I mention most of these people that are here were not at Eskom when
10 we arrived. Mr Koko was not at Eskom when we arrived, owing to a previous disciplinary process that he had challenged, the only interaction we were to have with Mr Koko was when the Labour Court ordered that he be reinstated and we respected the court order and he was reinstated and he was coming back to Eskom, at which case I would have met him, so as it is I have never met him, but he was reinstated and was supposed to start I guess on the Wednesday or the Monday, or the day he was supposed to come back he was in Parliament, so he couldn't come on that Wednesday, he was going to come the following Monday, but by this time we as the Eskom Board had taken the view that the disciplinary hearing from which he has been cleared from was a sham, but we could not defy a court order. We decided we were going to place
20 charges in front of him and the disciplinary process that is not a sham, and not a spray and pray charges, there were other charges that were being spoken of, one of which was the Impulse, we chose not to, we picked the four that we thought would stick and we presented them to him, and we viewed them serious enough that we did not think it was worth him coming to the office and then suspend him, we told him this is serious enough that don't come here, go to the disciplinary hearing on the appointed date, yes,

and that date did come and we can get to talk about the charges and I would love to talk about those charges.

ADV VINCENT MALEKA SC: Yes I can see that you are getting worked-up, but we will get to them. Mr Mabuza you said that the previous charges were a sham, in what sense?

MR JABULANE ALBERT MABUZA: I don't know Eskom processes but those charges there's no way they would have stuck, as I said I read in the newspapers that he was being bad to appoint his own, the Chairman to prosecute him, and it was bad when it is convenient for him and as it stand out I was not surprised when the charges could not
10 stick, but this time we were clear that we are going to take due process, get an independent Chairman, describe the charges in a manner that was not ambiguous, very laser-pointed, we were not surprised that it turned out the way it did.

ADV VINCENT MALEKA SC: Yes, and I see that the letter that we're dealing with on page 5 was addressed to Mr Oscar Gani, who is Mr Gani?

MR JABULANE ALBERT MABUZA: Mr Oscar Gani is the lawyer of record representing Mr Koko.

ADV VINCENT MALEKA SC: And I see that a number of people were copied, one of them is Mr Cassiem, who is Mr Cassiem and why was he copied?

MR JABULANE ALBERT MABUZA: Mr Cassiem was copied I think because he was
20 going to be the independent Chairman we would have asked Advocate Cassiem to chair this.

ADV VINCENT MALEKA SC: Alright, so it's not in dispute that Mr Gani got this letter together with the charges on behalf of his client.

MR JABULANE ALBERT MABUZA: That's correct.

ADV VINCENT MALEKA SC: Let's deal with the essence of the charges, or if not the

text of them, depending on how you want to deal with them, I don't want to constrain you. They begin on page 6 and I would like you to deal with charge one.

MR JABULANE ALBERT MABUZA: Thank you Chairman, I would love to and I will try to be as slow so that I can hear myself. Charge one:

10 “You breached your duties and responsibility as Executive and/or acted in a conflict of interest with your position and/or in breach of item 2.35 of the Code and/or you conducted yourself in a way that is unacceptable in terms of Eskom's values and ethics and in particular in breach of Clause 3.2.6.2 of the Code of Ethics procedure 32 to 757, prohibiting the distribution of confidential Eskom documents to any third party in that between at least July 2015 and November 2015 you distributed from your Eskom email account and your personal email account and/or failed to take steps to prevent such distribution using your personal email account highly confidential Eskom documents including contractual negotiation memoranda, a letter to the Minister of Public Enterprises, a financial spreadsheet and minutes of the Executive Committee of the Eskom Board to a third party. This breaches Eskom's policies and procedures and amounts to amongst other things a serious breach of fiduciary duties.”

20 Before I step off charge one I would, the third tab after this so that I complete my story, relates to the same charge it is just better articulated and more detailed under that page 39, this is the charge to Suzanne Daniels, it is the same charge, but here it is with going into a bit of detail, because the same charge.

ADV VINCENT MALEKA SC: So both of them are facing ...(intervention)

MR JABULANE ALBERT MABUZA: The same charge.

ADV VINCENT MALEKA SC: Okay.

MR JABULANE ALBERT MABUZA: The same charge. So as I was at the point of saying:

10 “...failed to take steps to prevent distribution using your personal email of highly confidential Eskom documents to a third party, including draft statements from the Chairperson of Eskom, a draft contractual document and a draft letter to the email address businessmaninfoportalone@zoho.com. This breaches Eskom policies and procedures amongst other things a serious breach of your fiduciary duties to Eskom. Based on information accessed from the server mains of Mr Koko and information in the public domain the email address businessmaninfoportalone@zoho.com is likely to be the email address of Mr Salim Issa, an associate of the Gupta family and the shareholder in a number of companies involved in supplying Eskom goods and services, including Tegeta and Trillion. You also received an implemented input on the drafting of an Eskom public statement regarding contracts linked to the Gupta family from this person. This too breaches the Eskom policy and procedures amounts amongst other things to a serious breach of your fiduciary duties to Eskom.”

20 So Eskom believes that businessmaninfoportalone@zoho.com is likely to be the email of Mr Salim Issa, and we have provided the Commission with documentation that comes out of these various servers to this effect.

ADV VINCENT MALEKA SC: Chair you remember when we addressed you on Wednesday we referred to the report of Fundudzi which mentioned this email address.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And we were quite careful not to pin down a specific

name as the addressee.

CHAIRPERSON: Yes, you just mentioned that you – its importance would be apparent later, yes.

ADV VINCENT MALEKA SC: Yes, and Eskom's investigations and the evidence of the Chairperson based on the investigation is that that email belongs to a specific individual whose name is now mentioned.

CHAIRPERSON: Ja, okay.

ADV VINCENT MALEKA SC: We will get to the details. I may mention that on Monday I will give you another bundle of detailed emailed documentation that was
10 given to us this morning by the lawyers of Eskom, I have not looked at it, but let's deal with the Chairperson's knowledge of these matters as arising from the charge sheet that we are dealing with.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Mr Mabuza before we step off charge one on page 6 which you have now linked with charged one from page 39 to page 40.

MR JABULANE ALBERT MABUZA: Correct.

ADV VINCENT MALEKA SC: Can I ask you some few questions of clarity, because the charge talks in general terms as it refers to a number of individuals. The first thing is that it relates to contractual memoranda in a letter to the Minister of Public Enterprise
20 and financial spreads and minutes of the Executive Committee of the Board. Can I elicit some details to the extent that you are able to help us on these generalities? First thing first, who was the Minister of Public Enterprises at the time, who is referred to in this charge?

MR JABULANE ALBERT MABUZA: At the time the Minister of Public Enterprise was Minister Lynne Brown.

ADV VINCENT MALEKA SC: And the negotiating memoranda that you refer to here to which negotiations did they relate?

MR JABULANE ALBERT MABUZA: These negotiations were related in part to Tegeta, Optimum Coal. They were related McKinsey these ones specifically was relating to McKinsey. The public would remember that there was time when there were various pulling and pushing within Eskom about to settle, to charge or not to charge McKinsey. So these relate to that and their appointment or otherwise of Trillian linked to that as a sub-contractor. This was predominantly about the McKinsey Trillian appointment.

10 **ADV VINCENT MALEKA SC:** Yes. As far as we were able to pick up from the reports we have presented to the Chairperson. Negotiations with McKinsey relating to the so called top engineers project began in April 2015. Are you able to place some context as to whether the memoranda you referring to insofar as they dealt with the negotiations?

MR JABULANE ALBERT MABUZA: Not with specific details.

ADV VINCENT MALEKA SC: Not specifically. Alright and then the financial spreadsheet and minutes of the executive committee of the board that you referred to are you able to just give us a snapshot of – at what point in time did they relate to?

MR JABULANE ALBERT MABUZA: Let me find that.

20 **ADV VINCENT MALEKA SC:** I am at page 6 of the...

MR JABULANE ALBERT MABUZA: I need to find this actual detail. Thank you. In – on – if I can just go through a few of those points.

ADV VINCENT MALEKA SC: Ja give us the page first.

MR JABULANE ALBERT MABUZA: On page 27.

ADV VINCENT MALEKA SC: 27.

MR JABULANE ALBERT MABUZA: I am dealing with paragraph 15.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: 15.1 is it – can I proceed? May I proceed Chair?

CHAIRPERSON: Yes you may proceed 15.1 you said.

MR JABULANE ALBERT MABUZA: Yes Chairman.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: On the 20 July 2017 at 7:56 Mr Koko sends an email from email address Matshelo Koko kokomm@eskom.co.za to infoportal1@zoho.com re internal consulting directives pdf with a message in quotes:

10 “Please print. This is an attachment in “internal consulting directive to pdf which is an Eskom directive regarding directive for the implementation of the National Treasury cost containment instruction and government gazette. This policy deals extensively with the appointment of the consultants.” As it is referred to on this pack as Annexure SM1. Again on the 20 July now I am 15.2 on the 20 July at now 7:57 one minute later an email is sent from email address Matshelo Koko kokomm@eskom.co.za to infoportal1@zoho.com with the subject: Top Engineers 2 pdf. An attachment is forwarded. This is a pdf Top Engineers 2 pdf and pdf is it has “Approval conditions agreed between acting CFO and acting group executive GC NT on Friday 26 June 2015. Top Engineering Engineers Development Programming. Top Engineering

20 Development Programme is one of the names given to the McKinsey 2016 contract discussed in Annexure SM2. Also on the 20 July 2015 at 8 o’clock, 8:01 5, 4 minutes later seemingly a duplicate of the email above an email is sent from email address Matshela Koko kokomm@eskom.co.za to inforportal1@zoho.com with subject: Top Engineers 2 pdf which we show in the pack as Annexure SM3. Also on the 20 July at 8:01 an email is sent from email address Matshela Koko kokomm@eskom.co.za to

infoportal@zoho.com re Exco Resolution pdf with a message. Print this one too. And the attachment is an Eskom round robin resolution dated March 2014 and the title of the submission is Business Case for the Creation of a Permanent Top Engineer Programme that will A help to deliver an accelerated critical business project for Eskom whilst reducing dependency on external consultants and B continue the development of top engineers beyond the foundational year currently on offer. This is shown in Annexure SM4. On the 8 August 2015 at 22:...

CHAIRPERSON: So ..

MR JABULANE ALBERT MABUZA: This is 15.5.

- 10 **CHAIRPERSON**: Sorry Mr Mabuza it appears that from 15.1 to 15.4 all those emails were sent quite one – quite quickly one after the other.

MR JABULANE ALBERT MABUZA: Yes it would.

CHAIRPERSON: In the morning.

MR JABULANE ALBERT MABUZA: Yes it would.

CHAIRPERSON: Yes okay. Now you move to ...

MR JABULANE ALBERT MABUZA: To the evening.

CHAIRPERSON: To the 8 August.

MR JABULANE ALBERT MABUZA: Which started to be now late in the evening.

CHAIRPERSON: Ja okay.

- 20 **MR JABULANE ALBERT MABUZA**: That is correct.

CHAIRPERSON: Yes you may proceed.

MR JABULANE ALBERT MABUZA: On the 8 August on 2015 at 22:20:12 an email is sent from Mr Koko's email address at Eskom Matshelo Koko kokomm@eskom.co.za to infoportal1@zoho.com with a subject: Online Vending pdf and the message I quote "we did not finish our discussion about this transaction this is what is going to the board on

the 18 August. This email has attachment online vending pdf which is a submission to the executive co – the Exco Procurement Sub Committee I refer to it earlier as the ETC here they call it the Ex Corps.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: On the 14 August 2015 Submission to the board tender committee on the 18 August 2015 re feedback on the results of the negotiations held to negotiate but not conclude. With ten service providers for the provision of online vending agency services selling prepaid electricity on behalf of Eskom. This we refer as Annexure SM8. On the 21 September 2015 another email is sent from Mr
10 Koko's email address being kokomm@eskom.co.za to infoportal@zoho.com dated 2015.09.21 and this is sent at 16:32:03 with the subject Me. And attached. Disciplinary intention to suspend PED 31.08.2015 SNP docs. Which is a letter on an Eskom letterhead with a subject Intention to Effect Suspension with Pay Pending Investigation into Alleged Misconduct and or Disciplinary Action addressed to a Mr Petla.

CHAIRPERSON: Alright.

MR JABULANE ALBERT MABUZA: This we show in Annexure SM10.

ADV VINCENT MALEKA SC: I am sure you will come back to the details but just this letter of suspension is on Eskom's version addressed to Mr Petla. Who is Mr Petla?

MR JABULANE ALBERT MABUZA: It would appear Mr Petla was an executive at
20 Eskom.

ADV VINCENT MALEKA SC: Alright. Alright I am sorry to interrupt you.

MR JABULANE ALBERT MABUZA: I do not know that. Shall I proceed?

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: On the 30 September 2015 an email is sent from Mr Koko Matshelo kokomm@eskom.co.za to infoportal1@zoho.com dated 2015.09.30

at 14:47:22 with subject Re this attach is a photo image of a letter from Doctor Ngubane to the Minister Lynne Brown re suspension of contact in any form whatsoever and commercial relationship with the Mail and Guardian, City Press and Sunday Times there is no message. This is shown as SM15 as an annexure.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: On 14 November 2015 an email is sent from Mr Koko's email address kokomm@eskom.co.za to infoportal1@zoho.com dated 14 November 2015 10.36 with subject re: An attached label 3D docs. This document is fitted is titled Electricity Load Shedding Revue and the way forward. There is no
10 message. We show this as Annexure SM18. 15.9. On the 25 November 2015 an email from the email address kokomm@eskom.co.za to infoportal1@zoho.com dated 25 November 2015 at 15:47 there is no title here but the message in quotes "Give the boss please". There is an attachment entitled 2015 1125 – 20151125 total cost plus mine investments by Eskom future fuel. This attachment is a financial spreadsheet which we attach as 19.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: So these are the details Mr Chairman relating to that charge 1 about the McKinsey Consultants Engineers as we now got to realise and a little bit more.

20 **ADV VINCENT MALEKA SC:** Yes.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Before we leave the emails one of them that strikes me as odd and I may be uninformed is paragraph 15.8. This talks about load shedding review and way forward. We will obviously look at Annexure SM18. But insofar as context is important to the question that I would like to pose to you is that you would –

do you know whether Eskom sometime in April commissioned an entity called Dentons to assist it with all the problems it had that led to load shedding. Do you know about that exercise undertaken by the board of Eskom at the time?

MR JABULANE ALBERT MABUZA: I know of it from public report. As you would recall I was not inside Eskom but yes I have heard about the Dentons, the Bowmans Report yes I have heard about it.

ADV VINCENT MALEKA SC: Yes. We have presented to the Chairperson a copy of that Bowman Report and we owe him a summarised executive version of it. The Dentons Report recommended a number of remedial measures arising from its findings
10 relating to the problems of load shedding at Eskom. At the time I wonder whether you as a new board have heard on occasion to reflect what are the problems that Eskom is encountering which are the primary or contributory causes to load shedding and I ask that question in the context of the fact that load shedding did not end in 2008 when it was picked up by NERSA in 2015 when Bowman was called upon and commissioned to investigate it still persists now? So my question is have you as a board had occasion to reflect on the primary causes of load shedding?

MR JABULANE ALBERT MABUZA: Chairman load shedding is what is currently happening and we have experienced it in the term of this board. Towards the end of December last year prior to that we had experienced it at the back of the industrial
20 action we have had in June/July. We have seen it in the last about ten days ago for an extended period of about five days. We started to get involved in dealing with this issue of load shedding in the December incidences that occurred wherein the operational team was kicked into gear. We addressed the public and we undertook that we will do all we can with what is now famously known as the Nine Point Plan to ensure that we do not have load shedding until the 15 January at least and we can come back and

take stock now.

ADV VINCENT MALEKA SC: Yes.

MR JABULANE ALBERT MABUZA: But maybe at this point I need to and we have covered this at some detail earlier that it is important and this not an excuse or obfuscation of any nature. It is important to just remember what were the issues facing Eskom at that time when this board was put in office to come and address those issues. We have dealt with those issues extensively and they are by and large about liquidity going concern financial issues. So it therefore stands to reason that the problem statement being financial issues, ethical issues, clean-up issues it is – that being the
10 problem statement the solution had to be find people that would deal with this problem that was in hand. So the Deputy President at the time and the government I think did what they had to do to deal with the problem statement at the time. What we are now having is not the problem that we had at the time. Maybe we should have foreseen it. So what that is now calling for is seeing in the public domain comments about the competence or the ability or otherwise of people in the leadership of Eskom to deal with these operational and technical issues clearly that is not what they – skills they are endowed with. Now knowing what we now know I think we need to saying we need to get people of skills either to augment or replace the current the skill set if we agreed that the purpose for which the skill set was brought in had been sorted out and if it does
20 rematch we will deal with it then and make space for people that have got the skills that are required to do so to address issues of an operational nature – of a technical nature. And really I do not claim anything more than understanding the mechanics of how an engine a differential and a gear box mechanically move wheels of a taxi and how fuel and combustion works. Which I can just assume that that is what happens when you put fire to boiled water to generate steam to turn a turbine. But I do not – I have no

ability about that. So it does concern us which is why whilst dealing with issues of funding of sustainability of the organisation we will have to continue to engage all the stakeholders in the financial community but also on the other side we need to now deal with the issues of operation, issues of the Eskom plant that is on average 38 years. Issues of the non-maintenance of these. Over the last five years various leadership of Eskom have taken the decision to spend half of what they had to spend on maintenance. Now things mechanical they do wear and tear. These are big mechanical things that have had big wears and tears and the effect of them has been that much devastating to the economy, the existing economy but the investments that

10 the country is trying to attract without the energy to fuel that. So we have been engaging as I said Chairman we are engaging various stakeholders on the one side to deal with viability financial staff. The operation, the people issues but now there are these operational mechanical and technical issues and many South Africans have responded to the Thuma Mina by raising their hands. The Engineering Community have raised their hands to say we are here. The Academic Community have raised their hands. Previous employees of Eskom have come forward and say – and the minister would have made certain announcement about these to say you need to assemble this team send them to the sites to do audits of the state and the condition of the plant factually to be able to know the state of the plant given what they were set out

20 to produce relative to what they producing which is clearly less and why they are producing and what to do to make them produce what they were set up to produce. This is both on the old plants the 38 year old plants and then new built plants that it has become clear that they are not producing that which they were built to produce for a variety of reasons and how to get them to that level both in terms of what actual work needs to be done to the equipment and what technical skills need to be done to this

equipment and also to get in a little bit more detail to check has it got anything with the quality, the quantity or its peoples' skills or lack thereof. So these – and I will – most of the other people that have responded to Thuma Mina. I have seen some of the offers on tweets that says Eskom must do this this coming weekend. So we are pulling all that together to try and address this to the extent we can and as I said the President has appointed a task team. There is another cabinet committee. We have heard now there is another chief restricting officer so there are a lot of people coming in to help. Clearly this problem cannot be solved by Eskom alone. What I on behalf of the board that I lead want to say is to the extent we do not know what this is so that we do not

10 understand the problem. Chances are that we are unlikely to understand the solution and to the extent we occupy spaces that can occupied by other South Africans that are responding to this Thuma Mina that can do that we are only too happy to do that. And the shareholder knows our interest and commitment to not be obstructive but to be – because we do want to have this problem solved once and for all. And indeed I have approached one of the law firms that had advised the government as way back as 2010 – 2008 about what to do and they have given us the material. We will send all that into the big pot where everybody is trying to find a solution. And we will take the Dentons Report also into that mix.

CHAIRPERSON: Ja. Chair I see it is already four o'clock.

20 **CHAIRPERSON**: Yes. I spoke a few days ago maybe including yesterday. I think including yesterday about the fact that we may need to start early or finish later than normal in order to make sure that the time that we will lose on Monday afternoon is – we find those two hours somewhere.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: 1. I do not know whether you might have had a chance to or a

member of the legal team may have had a chance to discuss that with Mr Mabuza because he will still be giving evidence on Monday and what his attitude might be, his availability to start earlier or finish later. So if not maybe this is the time to talk about that because if it suits everybody we could take another hour but obviously there is no point in taking another hour today if maybe he is going to finish about lunch time tomorrow I mean on Monday.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: And therefore we would not need – we would have hours that we were not going to use anyway for the hearing.

10 **ADV VINCENT MALEKA SC**: Yes.

CHAIRPERSON: But you would have a better picture of what your estimate is in terms of when on Monday we might finish with his evidence and whether or not somebody has had a chance to discuss with him the possibility of finishing later or starting earlier.

ADV VINCENT MALEKA SC: Chair we agreed yesterday that today we will finish at four.

CHAIRPERSON: Yes okay.

ADV VINCENT MALEKA SC: And Mr Mabuza is here his lawyers know that you did request that we should start earlier on Monday.

CHAIRPERSON: Okay.

20 **ADV VINCENT MALEKA SC**: I will prefer that we start earlier.

CHAIRPERSON: On Monday.

ADV VINCENT MALEKA SC: Even though I am quite comfortable.

CHAIRPERSON: Ja.

ADV VINCENT MALEKA SC: That we finish by lunch time.

CHAIRPERSON: Yes. Ja.

ADV VINCENT MALEKA SC: But I have been wrong before.

CHAIRPERSON: Well I think either you or somebody in the legal team was quite wrong a few days ago when he had quite a number of hours that we did not use.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: But your assessment is that we should finish about lunch time on Monday.

ADV VINCENT MALEKA SC: Yes, yes.

CHAIRPERSON: But we – you suggest that it might be a good precaution to start earlier than ten o'clock on Monday.

10 **ADV VINCENT MALEKA SC:** Yes subject to Mr Mabuza's availability.

CHAIRPERSON: Ja. Yes. Mr Mabuza how is your situation if we were to start at nine on Monday would nine or half past nine would that be fine with you?

MR JABULANE ALBERT MABUZA: Mr Chairman I am good to go for another hour tonight.

CHAIRPERSON: Yes.

MR JABULANE ALBERT MABUZA: I am good to start an hour earlier on Monday.

CHAIRPERSON: On Monday.

20 **MR JABULANE ALBERT MABUZA:** I will just need to juggle my doctor's appointment because I too am a mechanical being. I need to tell my doctors that I will do – try and see them in the afternoon or another date. I am okay to start as early as is determined.

CHAIRPERSON: Okay. Okay no thank you for that. Okay then we – you said that you would prefer that we do not take another hour now but we take it on Monday morning.

ADV VINCENT MALEKA SC: On Monday yes.

CHAIRPERSON: Okay no that is alright then. We will adjourn now but on Monday we will start at nine.

ADV VINCENT MALEKA SC: Yes and Chair before we adjourn can I ask for your permission to hand up copies of the email and associated documents referred to by Mr Mabuza.

CHAIRPERSON: Yes that is fine.

ADV VINCENT MALEKA SC: They have made available to us this morning.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Two things I have not looked at them.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Secondly they have not been paginated in line with the
10 commissions closest [indistinct].

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: But I would like to hand up a copy to you so that you familiarise yourself with their contents over the weekend.

CHAIRPERSON: Ja. Yes.

ADV VINCENT MALEKA SC: We will replace them on Monday when...

CHAIRPERSON: They have been paginated.

ADV VINCENT MALEKA SC: The appropriate pagination has been done.

CHAIRPERSON: No that is fine. That is fine thank you. Zonika. Thank you.

ADV VINCENT MALEKA SC: And Chair that would then conclude today's proceedings
20 subject to your direction.

CHAIRPERSON: Yes, no thank you. We will then adjourn and then as I said we will resume at nine o'clock on Monday. The commission adjourns.

INQUIRY ADJOURNS TO 25 FEBRUARY 2019