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Zondo commission – Tegeta guarantee was not board approved

The first time former Eskom head of legal Suzanne Daniels became involved in matters involving Gupta-owned Tegeta Exploration and Resources was in November 2015, she told the commission of inquiry into state capture on Monday.

This was in a meeting with representatives from Tegeta's parent company Oakbay Investments, Glencore, and the business rescue practitioners of the latter's Optimum Coal Mine (OCM). It was at this meeting that Eskom's then head of generation Matshela Koko first mooted its all or nothing position regarding OCM. Eskom, he told the meeting, expected that Glencore would have to conclude a sale of all assets of Optimum Holdings, and not only OCM, for the utility to consider continuing to do business with the company.

However, because Oakbay had not been made aware of this position beforehand, said then CEO Nazeem Howa, the delegation would have to go back and get board approval. It was the first sign of the strong-arming of Glencore into selling Optimum that other witnesses have testified to. The company owned several other mines which also supplied Eskom, but only OCM was undergoing financial difficulties.

The following month, on 4 December, Koko asked Daniels to draft a letter to the director-general of the Department of Mineral Resources, Thibedi Ramontja, to inform him of the emergency situation involving OCM, which at this point supplied more than one power station. In the letter, said Daniels, the business rescue situation was mentioned as was the urgency for Eskom to sustain coal supply from OCM. "It wasn't clear at the time what he [Koko] sought to achieve. He just ended the letter with 'I request your assistance with this regard'," said Daniels.

Ramontja's response to the request was then used as motivation to seek board approval for a pre-payment of R1.7-billion, at the time presented as being for OCM, to help the mine rise above its difficulties and enable it to carry on supplying coal. A submission was then prepared, said Daniels, and made to the board, as the delegation of authority for the amount in question fell there. An urgent meeting was called of the board's investments and financial committee, and through a round robin resolution, they achieved approval on 9 December.

"Why was it thought necessary to let a matter involving such big amounts be decided by way of a round robin without the benefit of a proper discussion among board members?" asked commission chairperson Deputy Chief Justice Raymond Zondo.

"I think at the time, given the time of year, it was practicality, ostensibly. There was a rush to get a decision, so the instruction was 'send out the document'."

The next day, however, the OCM prepayment was converted into a guarantee by Anoj Singh, CFO of Eskom at the time, said Daniels. The reasoning behind the guarantee was that it removed the risk factor for Eskom, given the amount approved.

Daniels is expected to continue giving evidence on a date not yet determined.

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