



31 October 2019

Zondo Commission – former Eskom director Pamensky takes the stand

Mark Pamensky, the man reported to have been the Gupta ally within the board of Eskom when the family held lucrative coal contracts, took the stand at the commission of inquiry into state capture on Thursday. Pamensky, a qualified auditor, told the commission that he applied for a position on the power utility's board in response to a newspaper advert in late 2014, with the intention to help the company reverse the financial disarray it was in at the time. He was at Eskom from December 2014 to November 2016.

Eskom, he said, was experiencing financial losses on the one hand, while it struggled with power supply, resulting in load-shedding, on the other. On probing from evidence leader Advocate Kate Hofmeyr, Pamensky revealed that his interest in Eskom developed mere months after he had met with two Gupta brothers, Rajesh and Atul, to discuss business. He did not, however, discuss the prospects of joining Eskom then, he said.

The first meeting, with Rajesh Gupta in June 2014, was at the family's Saxonwold home in Johannesburg. Asked by commission chairperson Deputy Chief Justice Raymond Zondo what its purpose was, Pamensky said it was simply a regular meeting as any other between two businessmen.

He met Atul three months later, in September, at which occasion Pamensky was asked to consider joining the family's Oakbay Resources and Energy, which he was told had a new subsidiary called Shiva Uranium. According to Pamensky, Atul told him that the family was looking to list Oakbay, and was thus looking for people who could sit on the company's board. "I was called to a meeting by Atul Gupta who explained to me that they are listing a subsidiary of theirs called Oakbay which had a subsidiary called Shiva Uranium and they were looking for independent non-executive directors to join their boards," he said. Soon after this, the Eskom advert caught his attention, and he applied.

Upon applying for the Eskom board membership, Pamensky revealed the potential conflict of interest in this regard to the Department of Public Enterprises (DPE). The then DPE minister Lynne Brown's office responded – following some back and forth correspondence – with approval for Pamensky to join the board, as there he was not in conflict.

He was appointed in December 2014, amid a major debate within the ranks of the board over a controversial contract to the value of R43-million that then acting CEO Collin Matjila had signed off on with the *New Age* newspaper to sponsor the publication's business breakfasts, regularly broadcast live on SABC. The utility had previously held two other contracts for the same sponsorship purpose, that were found to have been approved out of budget. Two meetings held just before Pamensky's appointment, at the end of November and in the first week of December, saw the matter discussed extensively, with Matjila arguing that there was value in supporting the newspaper.

Pamensky's first meeting as board member, on 16 January 2015, also discussed the matter, but he said he did not recall that it involved the TNA, as the *New Age* was referred to. He also was not aware of the

irregularity of the previous contracts, or he would have spoken out against the proposed ratification of the R43-million contract, as was the status of the discussion in early 2015.

Weeks later, a round robin resolution approving the contract, Hofmeyr said, did so despite both internal and external legal advice against Eskom doing so. The first legal opinion was sought from Eskom's own legal unit, and on the advice of auditing firm Sizwe Ntsaluba Gobodo, legal firm Ledwaba Mazwai were also tasked with looking into the legality of the contract. Ledwaba Mazwai found that Matjila had acted in a way that constituted financial misconduct. He and several other executives were suspended in March 2015.

Had he known the legal standing of the other contracts, said Pamensky, he would have approached the round robin process differently. He did, however, defend the approval of the contract, which, former executive Chose Choeu told the commission in his testimony excluded a termination clause, hence the round robin approach. Pamensky told the commission that it was better to approve the contract and get value out of it, than to terminate it and risk being sued for the same amount, without getting anything out of the process.

In August 2017, the Organisation Undoing Tax Abuse laid criminal charges against Pamensky for his conduct while he was director at Eskom and Oakbay, accusing him of sharing confidential information belonging to the power utility with the Guptas, who later got to own Optimum mine, a major supplier of coal to Eskom, thus bagging over R2-billion in contracts.

Useful links:

[Zondo Commission website](#)

Corruption Watch's [Zondo Commission updates](#)