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Zondo Commission – Eskom pressed to sign up for dodgy R25bn loan agreement

Eskom head of treasury Andre Pillay says a R25-billion loan facility signed in 2017 by then interim CEO Sean Maritz was a grossly flawed process that exposed interference from then board chairperson Zethembe Khoza and former public enterprises minister Lynn Brown. Maritz resigned in early 2018, just before the current board could institute disciplinary action against him for his participation in the transaction.

Pillay was testifying at the commission of inquiry into state capture on Friday. He told the inquiry that in the lead up to Maritz signing the document, he had told him that Khoza was putting pressure on him to sign. This was despite the board officially taking a different stance. While in limbo over what to do, Maritz had approached Brown, who told him to proceed and sign it. Khoza resigned from the board in January last year.

The nightmare for Pillay started as far back as March of that year, when he shared the concerns of legal advisors White and Case, with whom he and then CFO Anoj Singh had met in London to discuss the validity of Huarong's loan proposal to Eskom. At this point, Huarong had provided a terms sheet to Eskom, which they scrutinised with White and Case. The legal advice they got was that Eskom should not rush to do business with the company. A number of red flags were raised, among them:

- Huarong Energy Africa (HEA), under whose banner the loan was being offered, did not appear to be a legitimate subsidiary of Chinese-based Huarong, at least not according to its website.
- The proposed cancellation fee, should Eskom want out of the deal, was too high for a company with Eskom's financial status.
- The proposal did not make clear how the funding to Eskom would be sourced, and the legitimacy of that entity.
- Eskom should demand that HEA provide an organisational structure that clarifies who plays what role in the process.
- HEA did not seem to have a history of funding organisations of Eskom's size or structure.

Singh insisted on signing the terms sheet, claiming that it was not binding. When he testified before the inquiry last week, Eskom board chair Jabu Mabuza said Huarong has consistently threatened Eskom with legal action, but the utility will not pay the money they believe is due to them. He also revealed that upon being appointed in late January 2018, following Khoza's departure, he and current CEO Phakamani Hadebe met Maritz at the Eskom head office in Johannesburg. Maritz brought them up to speed on every important part of Eskom's business, except the Huarong deal, despite having just appended his signature to it the week before.

It appeared to Pillay during the course of the negotiations with HEA that Khoza had a close relationship with Rex Madida of a local company called Tribus, which appeared to play the role of agents in the transaction. Tribus had first contacted Pillay in 2015, offering a funding solution to Eskom, which was not entertained. When it returned with Huarong later, however, it seemed to have caught the attention it sought.

Pillay and Madida met officially for the first time in China, where he and Singh had gone to meet with investors. Madida introduced himself as a Johannesburg-based political deployee of the KwaZulu-Natal ANC, and offered no further explanation.

The evidence leader asked Pillay if Tribus had only used HEA to boost their chances of getting approval, to which Pillay said it would seem so.

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