Affidavit
&
Annexures
of
Andre Pillay

1.

I am Andre Frank Pillay, ID 6908195116080, currently I am the General Manager, responsible for the Treasury of Eskom. I have over 20 years' experience in the Capital Markets. I joined Eskom in 2011 as Senior Manager Funding Execution. In 2016, I was promoted to Group Treasurer, I report directly to the Chief Financial Officer.

2.

During 2015, we Eskom Treasury met with Tribus representative, Rajeev Thomas and their partners from Mazi Capital, Malusi Cele and Siviwe Mazwana, I was in the meeting with a few of my colleagues, Nomhle Mnguni and Siyabonga Nxaba, **see Annexure AP1**. Generally, entities with proposals would either via the investor relations office or directly submit either to myself or someone in Eskom, unsolicited proposals. Tribus approached Eskom with an unsolicited proposal to assist it with its capital expansion (capex) programme. Eskom indicated that the issue at the time was not necessarily a lack of projects but rather an issue of funding of the required capital expansion projects. The Tribus team returned to Eskom under a new banner called Huarong Energy Africa (HEA). This was following a number of engagements between Eskom and the Tribus on how a combination of funding and execution of capex would address Eskom requirements.

3.

The Tribus also met with Minister of the Department of Public Enterprises, Lynne Brown, in Cape Town. I can recall that Eskom was represented by Freddy Ndou. The verbal feedback I received from him was that Tribus presented their proposal and they were told by the Minister to engage Eskom on the matter. In a subsequent meeting I attended between the Minister and her officials and Eskom officials, the Minister mentioned in passing that she met with Tribus, that she said that she suggested that they must follow the Eskom processes on the matter. The Tribus team also did indicate that they have someone that know the Minister well and they will approach her with the proposal.

4.

There was nothing in the engagements with the Tribus and subsequently HEA that raised concerns or any suspicious. However, as the engagement with HEA continued I was concerned by the direct engagements between the HEA representatives and Sean Maritz and Zethembe Khoza, I will also elaborate on this at a later stage. There were a few meetings between HEA and Sean Maritz and Zethembe Khoza with parallel meetings with the Eskom Treasury representatives where indications were given that such meetings are taking place and instances where I notice them in the building. I have raised objection in meetings with HEA regarding this matter and indicated that I will suspend any form of contact with them.

5.

Eskom Treasury received an unsolicited proposal from HEA on 01 June 2016. Eskom Treasury made it clear to the HEA that it would have to follow commercial and governance processes to pursue any proposal. Rajeev Thomas indicated that prior to the meeting between Eskom and HEA; an engagement had already taken place between the General Manager for Special Projects (Poobie Govender) and HEA to discuss the asset development solution presented by HEA. This was based on HEA comments, to test the structure with GM for Special Projects (Poobie Govender). Rajeev Thomas also indicated that he and his colleague Wim Terblanche either worked for or with Eskom as suppliers on certain projects previously, so they know various people within Eskom. The GM for Special Projects denies that he met

HEA prior to the issue of the RFI by ET and that he only got involved with the transaction subsequent to a request to provide technical advice on the transaction.

6.

On 29 September 2016 an RFI was issued to the Market. The RFI was issued under the Treasury Funding Commercial Process, which is part of the Eskom Commercial Process so therefore the emphasis was on funding proposals that do not require a Government Guarantee and not on project specific issues. The RFI was also intended to determine if possible solutions existed, similar to the HEA proposal. The invitation was to submit a proposal that will provide Eskom with innovative financing solutions that meet the following requirements:

6.1 Innovative financing solutions that do not require sovereign guarantee or securitization of Eskom existing assets.

6.2 Funding is equal to or greater than R15bn.

6.3 Financing solution does not contravene any loan covenants of Eskom.

6.4 Financing solution does not require equity in Eskom.

6.5 Financing option is in line with the Eskom's current cost of funding or better.

6.6 Financing solutions involve reputed organisation with funding track records.

6.7 Funding term is attractive to Eskom.

6.8 Funding solution can be implemented within a reasonable shorter period.

7.

The Funding Plan for 2016/17 – 2020/21 was based on five year funding requirement of R326,9 billion, with a funding requirement of R68,5 billion for 2016/17, see Table 1 below.

The various funding sources can also be seen in Table 1.

Table 1: Funding Plan for the period FY2016/17 - FY2020/21

Sources (R' million)	FY16/17	FY17/18	FY18/19	FY19/20	FY20/21	Total
Domestic Bonds	17 000	8 000	8 000	8 500	10 000	51 500
International Bonds and Loans	-	5 500	7 000	12 000	-	24 500
Commercial Paper Bills	6 000	6 000	7 500	8 500	10 000	38 000
Development Finance institutions [1]	33 439	41 438	34 930	32 603	-	142 410
Export Credit Agencies [2]	10 277	5 528	7 774	3 275	-	26 854
Structured Products [3]	1 750	2 214	2 930	3 472	33 312	43 678
Total	68 466	68 680	68 134	68 350	53 312	326 942

Source: Eskom

[1] *Development Financing Institutions – KfW IPEX-Bank, World Bank, Development Bank of Southern Africa (DBSA), European Investment Bank (EIB) , African Development Bank (AfDB), Agence Française de Développement (AFD) and KfW*

[2] *Export Credit Agencies - Euler Hermes, Coface. SACE. Japanese Bank for International Corporation, United States Export-Import Bank*

[3] *Structured Products – Bank loans, Sukuks, Refinancing structures and Swap restructuring*

Eskom does from time to time issue RFPs to seek proposals for possible funding proposals that will complement or displace the funding sources as listed above. The funding proposal of HEA was not listed in the funding plan of the period. Therefore, following the issuance of the RFI to test the market following the receipt of the HEA proposal Eskom issued an RFP for innovate funding solutions.

8.

RFI (Corp 3626) closed with 12 Responses received including the HEA proposal

Details of the responses received:

#	Name	Date received by Eskom
1	ABSA	21 October 2016
2	Deloitte Capital	21 October 2016
3	Huarong Energy Africa (Pty) Ltd	20 October 2016
4	Huawei Technologies Africa (Pty) Ltd	20 October 2016
5	JP Morgan	21 October 2016
6	Nedbank	21 October 2016
7	Peu Capital Partners and Total Utilities Management Services	21 October 2016
8	Regiments	21 October 2016
9	Rand Merchant Bank and Identity Advisory (Pty) Ltd	21 October 2016
10	Standard Chartered	21 October 2016
11	Superstars Group	07 October 2016
12	Afrisat Investments Ltd	Requested extension for 2 weeks.

9.

During December 2016, Anoj Singh indicated that he had a call from Rajeev Thomas and they discussed the signing of the Term Sheet. I discussed the matter with him and he indicated that this was just merely an indication to HEA that Eskom is considering this proposal and this will give Rajeev Thomas the ability to maintain the support from his Chinese partners. I reviewed the term sheet it was clear that this was a non-binding Term Sheet. When I reviewed the Term Sheet I wanted to ensure that it was not binding, therefore, I included the non- binding clause, as per paragraph 18(5), see **Annexure AP2.** This Term Sheet was signed on 20 December 2016 by Anoj Singh and by Rajeev Thomas 21 December 2016.

10.

Anoj Singh requested that Eskom Treasury a Board Investment and Finance Committee (IFC) submission to inform it of the HEA proposal and also requested the Board IFC approved mandate to negotiate with and conclude a financing agreement with HEA amounting to $1.5bn and $6bn, see **Annexure AP3**. Anoj Singh was well aware of the fact that Eskom cannot conclude and sign any transaction based on a RFI. This IFC Board was following our meeting on 8-13 January 2017 with HEA in China where Anoj Singh (accompanied by Andre Pillay, Poobie Govender and Prish Govender) was introduced to HEA (Rajeev Thomas, Rex Madida and Wim Terblanche) and their Chinese partners (Chen Jianbao, Chairman of HEA). What was interesting during the introductory meeting was that Rex Madida introduced himself as a political deployee of the ANC in KZN.

11.

During the abovementioned meeting in China, the Huarong group presented their proposal, Anoj Singh was not supportive of the proposal and he raised a number of questions to the point of disapproving of it. Upon reflection, it seemed at the time that the Huarong Group was not taken aback by this and the meeting continued. It now appears that this was all staged to not raise suspicions on my side. I would have engaged him if I thought that he was meeting with the HEA team. I was also aware of the fact the he (Anoj Singh) would meet with bankers, investors and financial institutions and in particular where he has his own agenda.

12.

The submission to the IFC was to share with the committee the nature of this proposal and if it appropriately would address a number of the Eskom concerns and challenges such as, liquidity, capex and not utilising Government Guarantees, see **Annexure AP3** This proposal also included a significant commercial element that would require the approval of the Board Tender Committee (BTC). The Chair of this committee was Zethembe Khoza and he was also present at the IFC Board meeting of which was a member. Zethembe Khoza was very interested in the proposal and he was eager for us to table it at the next BTC. In hindsight given the developments that led to the signing of the facility it was clear that he (Zethembe Khoza) was closer to this transaction and HEA than what I thought.

13.

Importantly, during the period January – February 2017, Eskom was in the process of preparing its Corporate Plan (CP) and it was decided by Anoj Singh to include the Private Sector Participation (PSP), in the CP of this specific year. R65 billion was allocated to PSP and it was communicated that the HEA proposal or facility will be part of the PSP, see **Annexure AP4**. The Mckinsey and Trillian teams assisted Eskom with this CP and the issue of the PSP was mentioned in a preparatory meeting which was largely attended by the Mckinsey representatives and a number of Eskom representatives including myself.

14.

The PSP programme would also not managed out of the Eskom Treasury but would be managed by Prish Govender. Anoj Singh instructed that Prish Govender to start the PSP process and copy this largely from the Transnet PSP programme. This Policy document on PSP was drafted by Poobie Govender, I reviewed the document with no inputs. The fact the Eskom Treasury was not primarily responsible for the PSP was a concern that I discussed with Anoj Singh, and he gave a very superficial reason, that Eskom Treasury already has a huge responsibility of raising the funding for Eskom.

15.

A few days prior to the signing of the Term Sheet (TS), see **Annexure AP5** on 14 March 2019, Anoj Singh informed me that he was contacted by the HEA representatives with a request to sign the Term Sheet, also following the request letter from HEA 22 February 2017, see **Annexure AP6**. He indicated that a senior member of the Huarong Group was visiting and the signing of the Term Sheet was purely to demonstrate the Eskom and HEA co-operation. The commercial terms of Term Sheet were in-principle agreed to, however subject to Board approval, and it will be superseded by the signing of the ALFA terms, see clause 2(3). In addition, following our visit to China as stated in paragraph 9, I received a letter from Rajeev

Thomas, see **Annexure AP7**. From my response letter see **Annexure AP8**, it is clear that Eskom does not have the mandate to engage HEA formally and that what is contained in Term Sheet does require Board approval.

16.

Given these developments Eskom Treasury contacted White & Case on this planned signing. On 10 March 2017, White & Case advised Eskom not to sign the Term Sheet in its current form but negotiate with HEA and consider amending it. As per White & Case, the Term Sheet included onerous binding terms for Eskom and was ambiguous as to what was being offered by HEA and who the parties were. On 12 March 2017, White & Case provided written thoughts on the Term Sheet, repeating the advice not to sign it in the current form, see **Annexure AP9**. I advised Anoj Singh of the issues raised by White & Case and his view was that this is not a binding Term Sheet and just a ceremonial signing. Anoj Singh signed the Term Sheet together with the HEA Chairman. This appeared as if Anoj Singh and the IGCE, Mr. Koko wanted to demonstrate positive developments at Eskom under their leadership.

17.

Eskom Treasury also maintained that it cannot contract from an RFI process and that the proposal had to be subjected to a RFP process. I engaged Anoj Singh on this matter and we issued an RFP issued to the Market (Corp 4085) on 13 March 2017. ET indicated they established that the appointment of a supplier for the innovative finance solution could not be made on the RFI issued, hence the RFP was issued.

18.

A memorandum from Calib Cassim the Acting Chief Financial Officer informing that Johnny Dladla, the Interim Group Chief Executive of a possible signing of a non-binding co-operation agreement with HEA on 28 July 2017, at the BRICS summit in Xiamen was prepared, see **Annexure AP10**. Again, this was an initiative used by HEA and many of their Chinese counterparts to demonstrate continuing and good working relationship with Eskom. This was not signed by Mr Dladla during his visit to China, based on the advice from Eskom Treasury.

19.

Eskom applied for Exchange Control Approval from SARB on 31 July 2017, see **Annexure AP11**. The application was to seek permission to enter into an Asset Financing Arrangement with resident and non-resident financial institutions. This was one of the number of approvals that Eskom required to proceed with this transaction. However, HEA was under the impression that this is all that was required to proceed. The Eskom Treasury was deliberate in only raising this issue with the HEA team, as HEA will not contact the SARB to try and expedient the approval process. It became clear that HEA would use this approval to push Eskom to sign this facility, as they were under the impression that this was the only approval require that would enable the signing of the agreement.

20.

On 04 August 2017, the SARB approved the Eskom Exchange Control Application subject to the following conditions relating to the Currency and Exchange Manual for Authorized Dealers.

20.1. Amongst other conditions from the Currency and Exchange Manual for Authorized Dealers was that, no upfront payment of commitment fees, raising fees and/or any other administration fees are payable by the borrower;

20.2. The above mentioned fees may be paid from South Africa once the proceeds of the loan funds have been received and converted into Rand locally provided that such fees do not exceed 5% of the principal sum. Based on the SARB approval which had conditions for inflow of funds into the country (Eskom), it was evident that, at this stage, the transaction was never going to succeed as the structure of the financing was such that there is no inflow of funds to Eskom.

20.3. The financing was based on a turn-key principle whereby Huarong engineers, construct and provide financing to the Special Purpose Vehicle (SPV), that is set up to build the asset required by Eskom. Therefore funds will flow from the lenders to the investors as arranged by Huarong into the SPV.

21.

On 14 August 2017, the Legal Corporate Specialist (Gabriela Palacios) sent a memo, see **Annexure AP12** to the Legal Group Executive (Suzanne Daniels) requesting that:

21.1. The GE opposes any approval to the asset funding project if such are against legal advice provided.

21.2. Request reasons from the relevant signatories and senior officials as to why the binding term sheet was signed without following proper legal and governance processes.

21.3. Request reasons from Group Capital and Treasury on why they are persisting with the Huarong Asset Funding Project despite the legal advice regarding the terms of the ADFA and the fee letter.

This was prompted by the engagements between, Eskom Treasury with W&C and the Legal team, as this was very crucial in the governance process to enable the signing of such an agreement. This was also part Conditions Precedent, therefore the agreement could not be signed or effective.

22.

The Eskom Treasury submission to Board IFC of 15 August 2017 was a matter arising from the meeting of 3 February 2017, requesting a mandate to conclude the financing arrangement with HEA, see **Annexure AP13**. The Board IFC noted the submission and requested that a list be compiled, including information on the SARB's approval and all other pertinent documentation that is required for the agreement to be approved and signed. At this stage, the SARB approval was secured, however, the Eskom Governance processes were not completed. This included legal sign –offs of both internal and external legal counsel, PFMA

approval, capital project and commercial approvals. The Board IFC members where under the impression that the SARB approval was the only outstanding item required to complete the approval process and give effect to the transactions. The Board IFC member Zethembe Khoza, was very preoccupied with this transaction and he may have communicated the fact that the SARB approval was the only outstanding matter to his fellow board members. I had to engage Zethembe Khoza regularly, during some of these instances he would enquire regarding the status of the transaction.

23.

A summary of discussions relating to HEA was sent to the Legal and Compliance Group Executive (Suzanne Daniels) by White & Case on 18 August 2017, see **Annexure AP14**. The document provided a brief summary of discussions that White & Case have been involved in with regards to the HEA Asset Funding Program.

24.

On 22 August 2017, the Legal Corporate Specialist (Gabriela Palacios) sent a memo to Legal and Compliance Group Executive requesting that the matters mentioned below be approved by the Legal and Compliance Group Executive. The Legal and Compliance Group Executive opposed any approval to the asset funding project if such are against legal advice provided. The Legal and Compliance Group Executive requested reasons from the relevant signatories and senior officials as to why the binding term sheet was signed without following proper legal and governance processes, see **Annexure AP15**.

25.

On 13 September 2017, the Corporate Finance GM (Mohamed Khan) sent a memo to the Acting Programme Director PDD (Poobie Govender) and copied the Acting GFCO (Calib Cassim) and I, on the HEA transaction financial impact, see **Annexure AP16** The memo indicated that the Huarong transaction was expensive in relation to Eskom's traditional sources of funding. The memo further recommended that all traditional funding sources be exhausted before the Huarong funding option is considered. This intervention was also supported by the ET given that this is an independent assessment of this transaction. This analysis was not considered by Eskom prior to the sign off of the fee letter and the ADFA, even though it formed part of the motivation (emailed) to the Sean Maritz not to sign the ADFA, see **Annexure AP17**.

26.

The IGCE, Sean Maritz took office on 6 October 2017. Sean Maritz, Calib Cassim and I met with HEA representatives on 20 October 2017, and I indicated that given Eskom's liquidity constraints, the signing of the ADFA was not a solution as this structure does not imply immediate liquidity to Eskom. It appeared that Sean Maritz had interactions with HEA prior to the abovementioned meeting and they convinced him that HEA would be able to provide short term funding.

27.

Following the meeting with HEA, Sean Maritz requested me to write and propose a short term facility, see **Annexure AP18**. A letter was drafted and sent to HEA (Rajeev Thomas) with a proposal to consider. HEA responded verbally that this would not be possible but suggested that HEA undertake a Due Diligence (DD) process to consider the viability of the proposal.

The DD was initiated and the HEA representative was clear throughout the process that this was not achievable. It was also very clear that the HEA representatives also had regular engagements with Zethembe Khoza and Sean Maritz. The Eskom Chairman, Zethembe Khoza, travelled to China on 6-8 October 2017, to negotiate the short term facility with Huarong. Sean Maritz verbally requested that I accompany Zethembe Khoza, but this request I declined. I was concerned that Zethembe Khoza was now operational and did not have the authority to negotiate agreements on behalf of Eskom. This was an initiative I did not want to participate in, and I also suggested that my colleague Sincedile Shweni must decline if requested to travel by Sean Maritz.

28.

On 26 October 2017, a round-robin IFC Board proposed to consider and approve the HEA short facility as indicated on the resolution, see **Annexure AP19**. Prior to this, Eskom Treasury prepared the submission based on short term facility. It was indicated that some of the IFC members were uncomfortable with the round robin process and agreed to participate in a formal meeting that was held on 27 October 2017. Sean Maritz and Zethembe Khoza were scheduled to attend this meeting, but it was indicated that Sean Maritz and Zethembe Khoza, were meeting with the Minister of the Department of Public Enterprises on the same day, in Cape Town. Following the discussions at the meeting the Board IFC approved the following:

28.1. Huarong Asset Financing for Short Term facility for liquidity, subject to Eskom internal governance approvals, Government approval and an assessment of the risk by the chairman of the Audit and Risk Committee.

28.2. Negotiation with HEA for the short Term facility with conditions.

28.3. The ADFA in principle, based on the signed Term sheet, and subject to a due diligence, and all legal, technical, financial and other governance issues being addressed.

28.4. Facility fee in relation to the short term facility to be paid once confirmation and drawdown of the short term facility as noted above is agreed by HEA and subject to the agreement that the fees would only be paid once the money is in the Eskom's bank account.

28.5. Management to approach HEA to consider setting off the facility fee from the payment drawdown into Eskom's account.

28.6. Interim Group Chief executive was delegated with the power and authority to give effect to the above.

29.

Based on the IFC Board resolution the HEA (ADFA) transaction was not approved. However, prior to this meeting Sean Maritz confirmed to Calib Cassim, in an email, that he was comfortable to sign this transaction. This was his position despite Calib Cassim's recommendation not to sign this agreement. Following the signing, an informal meeting in the Chairman's office took place, with the Company Secretary (Nazir Ebrahim), Zethembe Khoza (Chairman), Sean Maritz (IGCE), Calib Cassim (Acting GCFO), Simphiwe Dingaan (Chairman of IFC), Sathiaseelan Gouden (Chairman of Audit and Risk Committee) and myself. This

meeting was initiated by the Company Secretary when I indicated to him that the HEA agreement was signed. The outcome of the IFC meeting was discussed and it was agreed that the HEA transaction was not approved. Sean Maritz, indicated that the Minister of the Department of Public Enterprises, approved the transaction for him to sign. I responded that the Delegation of Authority does not allow for this and that he does not have the authority to unilaterally, sign the agreement. In addition, I highlighted the fact that this would result in further Reportable Irregularities for Eskom as its financials are already qualified. I recommended in the meeting, that Sean Maritz issue a letter to HEA to indicate that he was not duly authorised to sign the agreement and that Eskom still has to follow due process, to which he did not respond.

30.

A few days after the signing of the HEA agreement, Eskom received an invoice from HEA for the fees to be paid, **Annexure AP20**. Given that the agreement was not valid, I instructed my colleagues not to process any invoice from HEA. The HEA representatives towards the end of December 2017, approached Sean Maritz with an updated ADFA for signing, which he signed and it was followed by an invoice to be paid. It was very clear that there was a deliberate effort made to have this ADFA signed. I asked Sean Maritz why he was going out of his way to sign this transaction and he indicated that Zethembe Khoza was putting pressure on him to get it signed. Zethembe Khoza, also had regular interactions with Rex Madida of HEA (Tribus). At one stage, I was next to Zethembe Khoza and I noticed Rex Madida was calling him to discuss the HEA transaction, they had a conversation in vernacular. This happened either during the World Bank/IMF meetings 12-15 October 2017 or 7-10 November 2017 meetings in the USA. Following the call, Zethembe Khoza immediately enquired regarding the signing and process of the HEA facility.

31.

I am convinced that they viewed me as a 'problem' or a stumbling block in not getting the agreement signed, and there were clear signs of intimidation to frustrate or scare me. Zethembe Khoza, called me to his office at one stage and shared with me that Sean Maritz does not want work with me. I viewed this as a signal that I must be careful and that I was not co-operating with them (Sean Maritz and Zethembe Khoza). On another occasion, Sean Maritz summonsed me to his office where he presented me with a whistle-blower report suggesting that I took a bribe from some Russian company and that they built me a house in Plettenberg Bay (for R5 million). I indicated that I am willing to cooperate with his investigation into the matter, as I was convinced this was merely a threat. Eskom has not done any business with the Russians. They, like other investors, were looking at funding the nuclear project, at the time. I sought private legal advice on this matter and was advised not to agitate Sean Maritz, but to co-operate and not be confrontational. To date, nothing has transpired from this whistle-blower allegations. I also participated in a Bowman's Inquiry on the HEA matter. This process was established to determine the involvement of Sean Maritz in the process and signing of the HEA facility.

32.

SARB suspended exchange control approval granted to Eskom on 04 August 2018, see **Annexure AP21.** Eskom had failed to meet the conditions attached to the approval. The terms of the Currency and Exchange Manual for Authorized dealers was not complied with, specifically that no upfront payment of commitment fees, raising fees and/or any other

administration fees was payable by the borrower. The above mentioned fees may be paid from South Africa once the loan funds have been received and converted into Rands locally, provided that such fees do no exceed 5% of the principal sum. As at 25 January 2018, no funds had been received by Eskom from HEA due to the manner in which the ADFA was structured. As a result, SARB suspended the approval granted on 04 August 2018, pending a response from Eskom.

33.

On 02 February 2018 Eskom responded to SARB suspension the Exchange Control approval granted to Eskom on 4 August 2017 and indicated that:

33.1. Based on the structure of financing, funds will flow from the lenders and investors as arranged by Huarong into the SPV.

33.2. No funds have been received by Eskom.

33.3. The signed Term Sheet, Fee letter, and addendum to the Asset Development Framework, see **Annexure AP22**.

34.

On 14 February 2018, National Treasury responded to the letter received from Eskom on 11 January 2018, see **Annexure AP23.** National Treasury raised a number of issues that Eskom had to clarify and requested that the transaction be put on hold until the SARB conditions are complied with, feedback is received from the NT and after Eskom has responded to all issues raised by DPE.

35.

Eskom responded to the HEA letter received on 24 January 2018, National Treasury, see **Annexure AP24**

35.1. In the letter, Eskom declined to meet and indicated that investigation on the transaction are ongoing and the Program Development Fee has not been, and will not be, paid at that time, if at all.

36.

Governance and Legal Processes

It was clear that a number of Governance processes were not followed;

36.1. Both IFC and BTC recommendation as mentioned above did not constitute an official board resolution therefore, no recommendation from IFC or BTC is sufficient for execution by the company

36.2. The ALFA and ADFA are distinct documents, the term sheet that was signed does not refer to the ADFA.

36.3. There was no legal transition from ALFA to ADFA

36.4. The list of fees in the ALFA and ADFA are defined or labelled differently.

Some additional important matters to note

37.

At a quarterly meeting, held in October 2017 at the Department of Public Enterprises' offices, Calib Cassim and I were requested to join a meeting between the Director-General (DG) Richard Seleke of the Department and Sean Maritz. I was not aware of the meeting. It was clear from the tone of the meeting that Richard Seleke and Sean Maritz had prior discussions and Richard Seleke said in the meeting to Sean Maritz that the problem with Eskom is the people that work there, implying that we are the problem. He proceeded and basically told us that the way we raise funding is wrong and that we should move from the West (Europe and USA) and look to the East for funding. I interpreted this as a signal that we should look at the HEA transaction.

38.

The signing of the ADFA was always the trigger for the upfront fees. Sean Maritz asked why we do not want sign the facility and we responded via Calib Cassim with reasons but he indicated that he will sign nonetheless, which he did. See attached emails, see **Annexure AP17**

39.

Once ADFA and the fee letters were signed, see **Annexure AP20**, the invoice was received from HEA and Eskom Treasury did not pay. The time to pay as per contract elapsed and the ADFA had to be resigned with a new date of 28 December 2017. HEA then reissued another invoice. I also informed the ET not to process the invoice if asked by anyone to do so. The invoice thus remained unpaid.

40.

Prior to Sean Maritz signing the ADFA and fee letters, I realized that there was a push to sign this facility, I went to meet the DG of National Treasury, Dondo Mogajane, and I indicated to him that Sean Maritz was planning to sign the facility and that he seemed desperate to do so. The DG of National Treasury wrote to the Acting DG of DPE, Makgololo Makololo informing her that Eskom must not sign the ADFA (HEA facility). The Acting DG of DPE contacted Sean Maritz and indicated that he should not sign the facility. Sean Maritz was very upset and wanted to know who was engaging DPE on this matter as he was instructed not to sign the facility. Still he proceeded to sign, as mentioned above.

41.

I have raised my concerns with Rajeev Thomas regarding the approach taken by HEA on engaging directly with the Sean Maritz and Zethembe Khoza, telephonically. I did indicate to him that this compromises the governance processes of Eskom and my and the Eskom Treasury involvement in the HEA matter. His response was that he cannot control this and we continued having a fairly heated conversation and I mentioned the comment made in paragraph 46 below, regarding Trillian. In the conversation he also blamed me for HEA not being able to progress on concluding the transaction and he made a statement that he would come to Eskom and "sort me out". I took this comment as a threat and reported it to Calib Cassim. I suspended all communication with Rajeev Thomas and HEA. The only engagement I had was when Sean Maritz arranged a meeting with the HEA representatives as mentioned in paragraphs 26 and 27. Rex

Madida attempted to intervene between Rajeev Thomas and I. Rex Madida also engaged my colleague Sincedile Shweni to assist him with the intervention.

42.

I met Rex Madida when he came to the ET to meet Sincedile Shweni, and he tried to speak to me regarding my last conversation with Rajeev Thomas. He indicated that HEA has asked Rajeev Thomas not to engage with me or Eskom going forward.

43.

Calib Cassim removed his name from the ADFA signatory list, he knew that there was no authorization to sign this ADFA.

44.

It was very clear that the intention was that HEA wanted to obtain the approximately 400 million fee of which R240 million was payable upon signing. During the discussion with HEA, I made it clear that I do not support this as Eskom would have to demonstrate value derived from this fee and there was no evidence of any value to Eskom.

45.

The approach from HEA was also different, as if they want to guide the correspondence between them and Eskom. They would present us with wording or drafting on communication that we have to transfer onto Eskom letterheads and we have to sign and return to them.

46.

I was also told (by Ven Zibanda of Zambezi Capital) that Anoj Singh mentioned to him that he introduced Trillian to HEA. I raised this matter with Rajeev Thomas in one of our meetings. This discussion clearly annoyed him. I did indicate to him that this would make it very difficult to proceed with the discussions or engagements with HEA. Rajeev Thomas responded that he has never met anyone from Trillian.

47.

Zethembe Khoza appeared very protective of Anoj Singh, when he (as Chairman) had to suspend him in 26 July 2017, it was opted to place him on special leave, instead.

48.

Before the arrival of Brian Molefe and Anoj Singh, Eskom did not do any work with Trillian or Regiments. Shortly, after their arrival the Trillian representatives were always in the Eskom Building. I have met with Eric Wood a number of times during this period and it was clear that he wanted to create some form of professional relationship with me.

49.

Eskom was working on a funding initiative (transaction: R30 billion loan facility) with Goldman Sachs. In a meeting with the Goldman Sachs Team, Eric Wood was also present. Eskom Treasury team and Goldman Sachs were told by Anoj Singh that Trillian will assist with the transaction. This was odd given that there was no formal process followed to appoint them as a service provider. The Trillian representatives were very proactive and wanted to show control of the transaction. I did indicate to Anoj Singh that the participation of Trillian will not work. Eskom had to seek approval

from National Treasury for this transaction and the involvement of Trillian and the bad media coverage on them will not achieve the approval. Anoj Singh requested that I prepare a Board submission to seek approval for the Goldman Sachs transaction. A submission was prepared and when it was due to be submitted he requested that I withdraw the submission. This was based on my advice, as previously mentioned, and at this stage it was clear that Goldman Sachs was not going to approve a partnership with Trillian.

50.

Goldman Sachs later in a formal meeting indicated that they are not going to collaborate with Eskom in a transaction if Trillian is involved. Anoj Singh took a very grim view of Goldman Sachs. What was peculiar was that Anoj Singh, was more concerned about the Trillian. This all made sense given that Eric Wood mentioned to me that I can give him anything to do in Eskom Treasury even if they had to sweep the floors of the Treasury, Anoj Singh would find a way to pay him. This comment made me very worried and I deliberately avoided Trillain, and Eric Wood. When Trillian opened their new offices I declined the invite to the opening ceremony. When Trillian was about to announce the appointment of Tokyo Sexwale as Trillian chairman, Eric Wood informed me and it was done in way that created the impression that I was important to be almost consulted on something so significant.

51.

During the preparation of the 2017 Corporate Plan, Eskom Treasury was responsible for the drafting of the Funding Plan in the Corporate Plan. A group of Trillian representatives arrived at the Treasury and they indicated that they are assisting Anoj Singh with the Corporate Plan and more specific the Funding Plan. They requested information and copies of the previous Funding Plans. I suggested to the Eskom Treasury team to assist them and provide them with all the information.

52.

Anoj Singh never formally informed me of this arrangement and I did not enquire regarding this matter. When the Funding Plan was due for submission, Anoj Singh called and requested the Funding Plan. I did not ask if Trillian was not supposed to submit it, I indicated that I would have it ready the following day (it was Friday). I requested a few colleagues to assist and we worked until the Saturday evening to finalise and submit the plan. When Anoj Singh reviewed the plan he called myself and Eric Wood to discuss the plan. Anoj Singh had some frivolous comments on the plan to which Eric Wood proposed certain wording. I rejected this wording and maintained my original drafting. I was shocked to learn that Trillian was paid almost R30 million for working on this plan, basically for no work done or value to Eskom.

53.

There was also an issue around the negotiations for funding from China Development Bank. We experienced problems with a particular clause in the loan agreement and we arrived at a solution to this problem and Anoj Singh was aware of it. Anoj Singh asked me to forward this wording to him. He then sent it to Trillian (Eric Wood) to comment on, Trillian basically repackaged our original wording and sent this back to Eskom. For this Trillian was paid approximately R4 million.

Declaration

I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience.

Signature of deponent

54.

I certify that the deponent has acknowledged that he knows and understands the contents of this statement. This statement was sworn to before me and the deponent's signature was placed thereon in my presence at JOHANNESBURG on 18 FEBRUARY 2019 at 15h30.

Commissioner of Oaths

COMMISSIONER OF OATHS
TREVOR LEON MYBURGH CA (SA)
SAICA No. 00202239
Commissioner of Oaths (RSA)
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