

Minister Enoch Gondongwana

21 April 2023

Submitted electronically to [OAGqueries@treasury.gov.za](mailto:OAGqueries@treasury.gov.za)

Dear Minister

**RESPONSE TO THE INVITATION TO COMMENT ON THE ESKOM HOLDING SOC LTD EXEMPTION ON DISCLOSING IRREGULAR EXPENDITURE AND FRUITLESS AND WASTEFUL EXPENDITURE IN ITS ANNUAL FINANCIAL STATEMENTS**

1. The South African Institute of Chartered Accountants (SAICA) welcomes the opportunity to comment on the proposed exemption for Eskom from including particulars of irregular expenditure and fruitless and wasteful expenditure in its financial statements for a period of three financial years (as required by section 55(2)(b)(i) of the Public Finance Management Act and Treasury Regulations 28.2.1).
2. SAICA is South Africa's pre-eminent accountancy body which is widely recognised as one of the world's leading accounting institutes. The Institute provides a wide range of support services to more than 52 000 members who are chartered accountants [CA(SA)] and associates who hold positions as chief executive officers, managing directors, board members, business owners, chief financial officers, auditors, and leaders in their spheres of business operation, including government.
3. In responding to the proposed exemption, SAICA has consulted its members and associates through various platforms including member survey, webcasts, and structures. SAICA also engaged stakeholders to enable the Institute to provide practical comments and solutions.
4. SAICA acknowledges the presentation made by National Treasury to Parliament on 5 April 2023 on the exemption to Eskom and understands the context to the exemption and challenges currently faced by the Utility as a result of the qualification over the years relating to irregular and fruitless and wasteful expenditure. It is, however, important that a transparent and practical solution is sought to improve the current status of the utility which will ensure its sustainability in the long term without further dependency on government for bailout as has been the case since 2016 (Refer to Annexure C for history of bailout). SAICA believes that quick decisions made without proper consultation and analysis may only resolve challenges in the short run with a potential worsening effect in the future.

*Disagreement with the exemption*

5. SAICA members and associates have shown massive interest in the Eskom exemption with over 500 members and associates providing their views on the exemptions. The majority of members (95%) who were engaged disagreed with the Minister granting the exemption to Eskom on disclosing irregular expenditure and fruitless and wasteful expenditure in its annual financial statements.
6. The reasons for the disagreement can be attributed to the increased load shedding that the country has been experiencing since 2018 (Refer to Annexure A for the statics of increased load shedding) which is having a negative impact on the economy. The State Capture and corruption that has taken place at the Utility has also negatively impacted the views of individuals which has resulted in individuals losing trust and confidence in the Utility.
7. The current challenges that the country experiences with load shedding have somewhat been linked by individuals to irregular expenditure which may have resulted in the corruption at Eskom.
8. As a result, most individuals believe that exempting the Utility from disclosing irregular and fruitless and wasteful expenditure in the financial statements may reduce transparency and accountability which may result in an increase in corruption and waste of state resources.
9. It has been noted based on analysis of Eskom's annual financial statements and audit reports (refer to Annexure B for an analysis of financial statements and audit report relating to irregular expenditure) that no adequate action plan was developed by the Utility to implement internal controls to prevent and detect irregular and fruitless and wasteful expenditure despite the Utility being qualified on irregular and fruitless and wasteful expenditure since 2017. Hence, it is envisioned by the public that exempting the disclosure may result in even less action being taken by the utility due to the absence of an impact on the audit report.
10. Individuals have further indicated that Eskom is a State-Owned Entity and therefore has higher public interest than other listed companies. It is funded by taxpayers and thus has an obligation to ensure transparency through the disclosure of irregular and fruitless expenditure on its financial statement to the public. The dependency of all citizens on Eskom have further elevated the public interest dynamic surrounding the entity.
11. Based on the public not having faith and trust in the management of Eskom, they view the annual financial statements and audit report as a way of enforcing transparency and accountability at the utility as the auditors are independent of it.

*National Treasury Instruction No. 4 of 2022/2023: PFMA Compliance and Reporting Framework*

12. SAICA believes that National Treasury Instruction No. 4 of 2023 may provide a solution to address some of the challenges experienced by State-Owned Entities on disclosing irregular and fruitless and wasteful expenditure on its financial statements whilst at the same time enforcing transparency and accountability. National Treasury Instruction No. 4 of 2022/ 2023 will result in the exemption granted to State Owned Entities such as Transnet no longer being required.
13. However, SAICA believes that National Treasury Instruction No. 4 of 2022/23 and the 2022 PFMA Compliance and Reporting Framework still contains weaknesses on disclosure requirements and therefore recommends that the Framework should be enhanced to improve transparency.
14. SAICA proposes the following amendments to Instruction No. 4 of 2022/23:
  - a) Report on the irregular expenditure for the current year;
  - b) Provide the prior irregular expenditure if already reported in the previous year. There is no need to accumulate irregular expenditure;
  - c) Disclose the full contract price of the contract to which irregular expenditure relates; and
  - d) Disclose the term of the contract and indicate the remaining term of such contract.

SAICA believes that this will provide sufficient disclosure without requiring cumbersome and costly information that does not add value to the information provided. It makes compliance easy but does not compromise transparency and truthfulness in reporting.

15. The recommended proposal in paragraph 14 should be applicable to all organs of states governed by the PFMA.

*Importance of strong internal controls*

16. As disclosed in Annexure A, Eskom's annual financial statements have been qualified on irregular expenditure since 2017. Reasons for the 2022 qualification indicated that the qualification is due to *"inadequate systems of internal control to timeously detect and record this expenditure in the consolidated and separate financial statements, as well as inadequate controls to ensure appropriate assessment of potential irregular expenditure arising from supply chain management processes, various investigations, and tracking of internal audit and forensic report findings."*
17. It is important that National Treasury and other oversight bodies enforces accountability on Eskom with regards to establishing an adequate system of policies and procedures for internal controls over financial reporting and expenditure management in line with prescripts. A robust system of internal control and its associated governance with no

material weaknesses can prevent fraud and material errors in transactions and as a result, the financial statements would then fairly present the results of the operating and financial activities. This is important to establish public trust in Eskom.

18. The likelihood of fraud risk is increased when weaknesses in internal controls exist in areas such as procurement and contract management as in the case of Eskom. It is imperative that the Utility strengthens its internal controls to detect and prevent irregular expenditure.

#### *Grey listing*

19. SAICA recommends that the Minister further considers the potential impact that the proposed exemption may have on the current grey listing of the country. Weak controls within institutions such as Eskom may increase the risk of money laundering as identified by the many investigations at Eskom including those identified through the State Capture enquiry
20. Therefore, it is crucial for government to maintain transparency through its reporting and compliance with relevant legislation including the Public Finance Management Act.
21. It is important to note that Eskom was included as a case example on procurement fraud in the [Anti-money laundering and counter-terrorist financing measures South Africa Mutual Evaluation Report](#) issued in October 2021.

#### *Audit impact and Audit report impact*

22. Exempting Eskom from disclosing irregular and fruitless and wasteful expenditure will ultimately result in a decreased audit focus on irregular and fruitless and wasteful expenditure by the auditors.
23. SAICA notes as per the presentation to Parliament reference to “*Irregular expenditure is assessed twice in the audit cycle:*”
  - *In the audit of compliance with laws and regulations – the auditors test for violations of laws and regulations*
  - *In the financial audit – the auditors test the completeness and accuracy of the numbers reported on irregular expenditure in the notes to the financial statements”*
24. It should be noted that the two audit processes achieve very different outcomes with the financial audit determining whether the institution has accurately and completely disclosed irregular expenditure over and above the compliance testing. This process is

important to ensure that all irregular expenditure has been identified by the entity including those that could potentially lead to fraud.

25. The exemption may potentially result in the financial audit on irregular expenditure not being performed which could result in incomplete and inaccurate disclosure of irregular and fruitless and wasteful expenditure on the annual report.
26. SAICA also notes the reference to prior exemptions such as that to Transnet and reference made to “performance of agreed upon procedures by the AGSA”. Agreed upon procedures are not assurance engagements and accordingly an auditor does not express an opinion or an assurance conclusion.
27. In addition, the procedures performed in an agreed upon procedures engagement are agreed between the entity and its auditor in advance, and therefore may not be the same procedures that the auditors would have performed in relation to irregular, fruitless and wasteful expenditure in the financial statements. To this end, findings on completeness and accuracy of irregular and fruitless expenditure may therefore not be fully identified.
28. As in the case with Transnet, the findings of the agreed upon procedures may also not be made available to the public thereby preventing transparency.
29. SAICA strongly recommends that National Treasury continuously engages with the Auditor - General of South Africa (AGSA) to ensure that procedures performed by the auditors on irregular expenditure remains as robust and effective as it has been to provide assurance on the disclosure of irregular and fruitless and wasteful expenditure on the financial statements to ensure that transparency and accountability is enforced.

#### *Other risks*

30. SAICA cautions National Treasury on further risks that may arise with proceeding with the Eskom exemption which includes:
  - Setting a precedence for other entities;
  - Reducing the importance of legislation within the sector; and
  - The message sent to investors on the control environments of entities.
31. SAICA believes that proceeding with the approval of the Eskom exemption will continue to negatively affect the utility and may now not be a solution to the current challenges that the exemption was originally trying to achieve due to the widespread negative publicity that has been received by the exemption.

SAICA welcomes the opportunity to discuss our proposal as documented in this submission with National Treasury.

Please do not hesitate to contact me should you have any questions relating the contents of this document.

Regards,



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**Freeman Nomvalo**  
**Chief Executive Officer**

### Annexure A: Analysis of Disclosure and audit report information on irregular expenditure

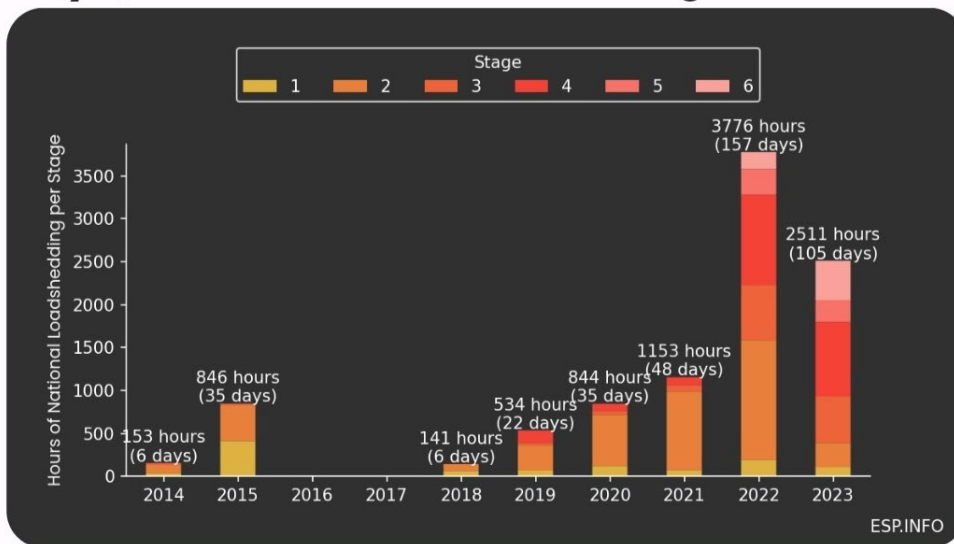
Description	2016	2017	2018	2019	2020	2021	2022
	R m	R m	R m	R m	R m	R m	R m
<b>Irregular expenditure incurred as disclosed in the financial statements</b>	<b>106</b>	<b>4 043</b>	<b>19 609</b>	<b>6 618</b>	<b>11 166</b>	<b>11 663</b>	<b>8 451</b>
Audit Opinions on Irregular Expenditure	Unqualified	Qualified on irregular expenditure (entity did not have adequate controls) (occurrence and completeness)	Qualified on irregular expenditure (entity did not have adequate controls) (occurrence and completeness)	Qualified on irregular expenditure (entity did not have adequate controls) (occurrence and completeness)	Qualified on irregular expenditure (entity did not have adequate controls) (occurrence and completeness)	Qualified on irregular expenditure (entity did not have adequate controls) (completeness and accuracy)	Qualified on irregular expenditure (entity did not have adequate controls) (completeness and accuracy)
Non-compliance	Non-compliance (a) in terms of section 51(1)(b)(ii) (b) procurement and contract management	Non-compliance (a) in terms of section 51(1)(b)(ii) (b) procurement and contract management	Non-compliance: (a) in terms of section 51(1)(b)(ii) (b) consequence management (c) procurement and contract management	Non-compliance: (a) in terms of section 51(1)(b)(ii) (b) consequence management (c) procurement and contract management	Non-compliance: (a) in terms of section 51(1)(b)(ii) (b) consequence management (c) procurement and contract management	Non-compliance: (a) in terms of section 51(1)(b)(ii) (b) consequence management (c) procurement and contract management	Non-compliance: (a) in terms of section 51(1)(b)(ii) (b) consequence management (c) procurement and contract management

**Source: Eskom's Integrated Report**

Annexure B: Load shedding statistics

# Insights

So far in 2023 we have had **2511 hours (105 days)** of national loadshedding



Source: Load shedding – ESP EskomSePush App



### Annexure C – Historical Bailouts

	2016	2017	2018	2019	2020	2021	2022	2023	Total
Eskom Bailouts (in billions)	23 000,00	-	-	-	49 000,00	56 000,00	31 692,00	21 857,00	181 549,00

- In 2008 Parliament approved that funding totaling R60 billion be provided in the form of a subordinated loan to Eskom to support its capital expenditure programme. The money was appropriated as follows R10 billion in 2008/09 R 30 billion in 2009/10 and R20 billion in 2010/11 through the budget of the National Treasury
- To strengthen Eskom's balance sheet, Cabinet approved the provision of a support package in September 2014 which included the conversion of the existing R60 billion subordinated loan to equity. The conversion of the subordinated loan did not have direct cash flow impact either for Eskom or Government
- The support package also included an allocation of R23 billion to Eskom which was to be funded through the sale of non-strategic assets
- Over the period 2015/16 to 2022/23 Eskom received bailouts to the value of R181,55 billion excluding the conversion of the subordinated loan
- In the February 2019 Budget Speech, the Minister of Finance announced that Government has set aside R23 billion per year for the ten years to financially support Eskom, with the accumulated fiscal support amounting to R230 billion. However, due to a decline in Eskom's financial position, a Special Appropriation Bill was tabled on an urgent basis to allocate a significant portion of the R230 billion fiscal support earlier than initially planned
- Of the R230 billion government support package, Government has provided R158,6 (R49 billion, R56 billion, R 31,7 billion and R 21,9 billion for 2019/20, 2020/21, 2021/22 and 2022/23 respectively). Of the R21,9 billion in equity allocated for the 2023 financial year, R11 billion was received by 31 December 2022 with the remaining balance received in January 2023
- In the 2023 Budget, the Minister of Finance proposed a total debt relief arrangement for Eskom of R254 billion. This consists of two components; One is R184 billion which represents Eskom's full debt settlement requirement in three tranches over the medium term and second is a direct takeover of up to R70 billion of Eskom's loan portfolio in 2025/26
- Because of the structure of the debt relief, Eskom will not need further borrowing during the relief period
- Government will finance the arrangement through the R66 billion baseline provision announced in the 2019 Budget, and R118 billion in additional borrowings over the next three years

**Source: Parliamentary Monitoring Group**