Report of the Standing Committee on Appropriations on the Eskom Debt Relief Amendment Bill [B38 – 2023] (National Assembly – Section 77), Dated 5 December 2023

Having considered the Eskom Debt Relief Amendment Bill [B38 – 2023], referred to in terms of Section 13 of the Money Bills Amendment Procedure and Related Matters Act, 2009 (No. 9 of 2009) (as amended by the Money Bills Amendment Procedure and Related Matters Amendment Act, 2018 (13 of 2018), the Standing Committee on Appropriations reports as follows:

1. Introduction

Section 213(2) of the Constitution of the Republic of South Africa provides that money may be withdrawn from the National Revenue Fund only (a) in terms of an appropriation by an Act of Parliament; or (b) as a direct charge against the National Revenue Fund, when it is provided for in the Constitution or an Act of Parliament.

The 2023 Eskom Debt Relief Amendment Bill (hereafter referred to as the Bill) seeks amend the Eskom Debt Relief Act, 2023, so as to provide for the payment of interest by Eskom on amounts advanced as a loan; to provide for a power for the Minister of Finance to reduce the amounts for the requirements for Eskom in the event of non-compliance with conditions; and to provide for matters incidental thereto. The Standing Committee on Appropriations, hereinafter referred to as the Committee, is established in terms of section 4(3) of the Money Bills Amendment Procedure and Related Matters Act, 2009 (as amended), and herein referred to as the Act.

The Bill was tabled in Parliament by the Minister of Finance on 1 November 2023 during the presentation of the 2023 Medium Term Budget Policy Statement and was referred to the Committee on the same day for consideration and report to the National Assembly as prescribed in section 13 of the Act. In processing the Bill, section 4 (4) (c) of the Act also requires the Committees on Appropriations of both Houses to consult with the Financial and Fiscal Commission. In addition to National Treasury briefing the Committee on the Bill and consulting with the FFC, the Parliamentary Budget Office was also requested to brief the Committee on the Bill. Furthermore, Eskom Holdings SOC Ltd was requested to comment on the Bill in writing.

The Act also requires the Committee on Appropriations to conduct public hearings on the Bill and for the Committee to report to the House on the comments and amendments to the Bill. In compliance with the requirements of the Act, advertisements were published on Parliament's website and social media platforms, inviting the public and interested parties to comment on the Bill. The public hearings on the Bill were held on 1 December 2023 via the Zoom virtual meeting platform. In response and in line with the requirements of the Act, a submission was received for consideration from the Congress of South African Trade Unions.

Dearsqth@pegasus.aserv.co.za, a network of online platforms designed to facilitate and encourage the public to participate in government decision-making processes or policy formulation also ran a poll on the Bill.

2. Background to the Bill

Eskom Holdings SOC Ltd (Eskom) is a state-owned company (SOC) as defined in the Companies Act, 2008 (Act No.71 of 2008) and is wholly owned by the South African Government, with the Minister of the Public Enterprises as the shareholder representative. Eskom is South Africa's primary electricity supplier that generates, transmits, and distributes electricity to local industrial, mining, commercial, agricultural, redistributors (metropolitan and other municipalities) and residential customers and to international customers in Southern Africa.

Eskom also purchases electricity from independent power producers (IPPs) and international suppliers in Southern Africa. In recent years, Eskom has been experiencing a series of financial and operational challenges, caused to a large extent by governance failures, poor leadership and malfeasance, poor management and high turnover of boards, CEOs and Executives. All these affect the performance of the power utility. As a consequence of the challenges, Eskom has been unable to fulfil its primary mandate of providing electricity as required, resulting in persistent hours of load shedding, negatively affecting the South African economy and the livelihoods of South Africans.

In his 2019 budget speech, the Minister of Finance proposed to Parliament that Eskom be allocated R23 billion annually over the medium term to support the entity during its reconfiguration and restructuring. In total, Eskom was to receive a total allocation of R230 billion over a period of 10 years (R23 billion per annum). On 31 March 2019 Eskom experienced challenges in drawing its intended facilities and could not honour its debt obligations. Failure to meet its obligations could have had negative consequences for Eskom and the entire debt portfolio of government as a significant portion of Eskom debt is government guaranteed, more than R330 billion. Consequently, the Minister of Finance intervened by invoking section 16 of the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999) and approved R17.6 billion for Eskom, which was the maximum allowable amount. This accelerated part of the R23 billion allocation announced in the 2019 Budget.

Additionally, through the Special Appropriations Act, 2019 (Act No. 25 of 2019), a total amount of amount of R59 billion was appropriated out of the National Revenue Fund for the requirements of the Department of Public Enterprises (previous shareholding ministry) to assist Eskom with its financial obligations and to provide for matters connected therewith, of which—

(a) R26 billion was appropriated for the 2019/2020 financial year; and
(b) R33 billion was appropriated for the 2020/2021 financial year.

These funds were appropriated and were to be transferred to Eskom in each of the financial year to assist the entity in fulfilling its financial obligations. During the presentation of the 2022 Medium Term Budget Policy Statement (MTBPS), the Minister of Finance announced that government was planning to take a significant portion of Eskom Debt to ensure financially sustainability of the utility.

Government considered various measures to address Eskom's unsustainable R423 billion debt burden. The overall objective of government has always been to strengthen the utility's balance sheet, enabling it to restructure and undertake the investment and maintenance needed to support the security of electricity supply. Government has always been of the view that resolving Eskom's unsustainable debt burden has a huge potential to unlock investment and restores South Africa's fiscal credibility. All these considerations, with other factors, gave rise to the urgent intervention on the risky Eskom debt through the promulgation of the Eskom Debt Relief Act No.7 of 2023 (the Act). There were several reasons advanced by government as to why the Act was a reasonable and justifiable solution in dealing with Eskom debt, namely;

- National Treasury submitted to Parliament that government's 2019 solution for Eskom's stranded debt (R230 billion over 10 years) did not sufficiently address Eskom's underlying solvency or liquidity challenges. However, government was of the view that an optimally designed debt solution, with conditions, can be leveraged to support the structural reform of the electricity sector that will enhance SA's long-term growth prospects;
- The Eskom R350 billion in government guaranteed debt, which was at risk of default (a contingent liability and added to the sovereign debt by Moody's and the IMF), raises the South African's risk premium and therefore cost of borrowing; and
- At that time, it was advanced that dealing with Eskom's debt would enable much-needed investment in critical transmission and other infrastructure and would also allow Eskom to prioritise critical maintenance on its existing fleet.

In the 2023 Budget Review, the Minister of Finance announced a debt relief package to Eskom amounting to R254 billion over the next three years. This arrangement, which was subject to strict conditions, was intended to relieve the extreme pressure on the utility's balance sheet, enabling it to undertake the necessary maintenance and investment.

The 2023 Eskom Debt Relief Act appropriated funds for the requirements of Eskom as direct charges against the National Revenue Fund and attributed it to the vote of the National Treasury (Vote 10), totalling R254 billion for the 2023 Medium Term Expenditure Framework (MTEF) in two categories, namely;

a) The Eskom Debt Relief Act attributed to the Vote of the National Treasury as a loan with conditions to Eskom:
   - A total allocation of R78 billion for the 2023/24 financial year;

- A total allocation of R66 billion for the 2024/25 financial year; and
- A total allocation of R40 billion for the 2025/26 financial year.

b) In addition, for the 2025/26 financial year, the Act appropriated a total of R70 billion for Eskom as a debt takeover by government as a direct charge against the National Revenue Fund, as determined by the Minister of Finance.

The Eskom Debt Relief Act had a number of set conditions which Eskom had to comply with, namely:

(a) Eskom's capital expenditure was restricted to transmission and distribution. The only capital expenditure that may be undertaken for generation relates to minimum emissions standards, flue-gas desulfurisation and required maintenance. No other greenfield generation projects will be allowed during the debt-relief period.
(b) Eskom may not use proceeds from the sale of non-core assets for capital and operating needs. All proceeds from the sale of non-core assets, including the Eskom Finance Corporation and any property sales, will be used for the debt-relief arrangement.
(c) No new borrowing will be allowed until the end of the debt-relief period, unless written permission is granted by the Minister of Finance.
(d) Eskom's guarantee framework agreement for the R350 billion facility (which expires at the end of March 2023) will reduce in line with National Treasury recommendations.
(e) Positive equity balances in Eskom's derivative contracts (swaps/hedges) cannot be used to structure new debt or loan agreements without the approval of the National Treasury. Nor can any such balance be used as "margin financing" for another derivative contract or derivative overlays.
(f) The debt relief can only be used to settle debt and interest payments.
(g) Eskom may not implement remuneration adjustments that negatively affect its overall financial position and sustainability.

Subsequently, during the presentation of the 2023 Medium Term Budget Policy Statement (MTBPS) in Parliament, the Minister of Finance tabled the Eskom Debt Relief Amendment Bill (B38 – 2023) (the Bill). The Bill seeks to amend the Eskom Debt Relief Act, No.7 of 2023.

3. Purpose of the Eskom Debt Relief Amendment Bill

National Treasury reported to Parliament that it tabled the Bill in order to:

(a) Introduce an interest in the Eskom Debt Relief package to better reflect the cost of this arrangement, with the interest charged being market related while also striking a delicate balance between ensuring that the interest charged does not negatively impact on Eskom's cashflow, while at the same time reflecting a fair market related rate.
(b) The proposed amendment on the Bill differed from what was originally envisaged in the Eskom Debt Relief Act that the Debt Relief package will be an interest-free loan.
(c) The interest will be paid on disbursed amounts even if Eskom complies with the set conditions. However, the interest will be higher if Eskom fails to comply with the set conditions.
(d) The subordinated nature of the loan will be same as envisaged in the Act; however, it will now be an interest-bearing loan.

4. Key features of the Eskom Debt Relief Amendment Bill

The Amendment Bill proposed amendments to the Eskom Debt Relief Act, 2023, so as to provide for the following:

- Payment of interest by Eskom on the amount advanced as a loan.
- For a power by the Minister of Finance to reduce the amounts to be advanced for the requirements of Eskom in the event of non-compliance with the conditions.

The Bill proposes that section 2 of the Eskom Debt Relief Act, 2023, be amended as follows:

(a) By the insertion in subsection (2) after paragraph (a) of the following paragraph:
"(*a*A) Eskom must pay interest on the amounts advanced as a loan, in terms of paragraph *(a)*, at a rate determined by the Minister."; and
(b) By the addition of the following subsection:

"(4)*(a)* If Eskom fails to comply with a condition determined in terms of subsection (2)(b), the Minister may, after consultation with Eskom, reduce the amounts envisaged in subsection (1).
(b) The reduction in terms of paragraph *(a)*-
(i) applies to the portion of the amount not yet advanced to Eskom;
(ii) may not exceed five percent of the total amount for the applicable financial year; and
(iii) must be disclosed in the National Treasury's next quarterly report to the relevant Parliamentary Committees.".

5. Comments and hearings on Bill with identified stakeholders

The sections below provide an overview of the submissions made by the identified stakeholders on the Bill.

6.1 Financial and Fiscal Commission

The Financial and Fiscal Commission (FFC) submitted that government guarantees to state-owned entities (SOEs) remained a significant risk as many were in poor and deteriorating financial positions which heightened the risk of these liabilities materialising. Over the past decade, there has been a significant decline in the performance of major SOEs amidst increasing operational costs, falling net profits and increasingly unsustainable debt levels.

The FFC submitted that the Minister of Finance was yet to clarify what the Eskom debt relief conditions were. Historically, debt bailouts to SOEs have continuously failed to address the underlying structural issues that led to their poor performance. This raised doubts as to whether the debt relief will improve Eskom's operational performance over the long-term. The conversion of the Eskom debt relief programme to an interest-bearing loan meant that Eskom will be obligated to pay interest in addition to repaying the principal amount. The impact that this will have on the fiscus will depend on the interest rate specified in the loan agreement, as well as Eskom's ability to service interest payments on the loan. The FFC submitted that without significant structural reforms that would address the power utility's financial and operational challenges, it was unlikely that the entity would be able to service these debt obligations.

The FFC commended government on the Eskom debt relief afforded to municipalities and explained that the Municipal Finance Management Act (MFMA) Circular No.124 as published by National Treasury on 31 March 2023 set out conditions meant to help municipalities restore financial prudence, accountability, and overall integrity while receiving relief of their debt to Eskom. However, the FFC raised concerns over the punitive nature of the conditions attached to the debt relief, particularly the condition that Eskom would take over the electricity provision function from a municipality who failed to meet the debt relief conditions. The FFC explained that electricity was the main revenue source for municipalities and taking this function from them would have detrimental consequences on municipal sustainability, further worsening their dependency on national transfers.

6.2 Parliamentary Budget Office

The Parliamentary Budget Office (PBO) in its submission gave an overview of the Bill and highlighted the following areas of importance:

- Interest rate determination: the interest to be paid on the loan will be at a rate determined by the Minister of Finance;
- Consequences of non-compliance: should it be determined that Eskom failed to comply with the debt relief conditions, the amounts reduced by the Minister will apply to future advances to Eskom;
- Conditional reductions: the reduced amounts may not exceed 5 per cent of the total amount for the applicable financial year**;**
- Conditions: the operational conditions applicable to the debt relief will be included in Eskom's corporate plan; and
- Monitoring and reporting: a task team has been established to monitor compliance with conditions and report quarterly on whether Eskom is eligible for the conversion of the loan to equity.

6.3 Eskom Holdings SOC Ltd

Eskom Holdings SOC Ltd (Eskom) in its written submission to the Committee gave an overview on the Bill focusing on the conditions as prescribed by the Minister of Finance. It submitted that on 10 November 2023, National Treasury informed it that a total 72 applications for municipal debt relief were received. A total of 36 applications were approved, one conditionally approved and 35 were still pending approval.

Regarding National Treasury's Circulars 123 and 124 that were published in March 2023, Eskom reported that in the Annual Financial Statement for the financial year 2023, Eskom has taken into consideration National Treasury's (NT) requirements and has appropriately revised its estimated credit loss (ECL) to ensure that any write-offs in the subsequent years were provided for, thus not impacting the income statement in subsequent years.

Eskom submitted that the NT municipal debt relief plan required municipalities to comply with several conditions including the payment of current accounts. Should the municipalities comply with the current account payments, this would have a positive impact on reducing the significant annual municipal debt growth. As per the NT conditions, the debt growth by municipalities was expected to be repaid over a 12-month period interest-free. Compliance with this would also have a positive impact on reducing the significant annual municipal debt growth.

Eskom submitted that if a municipality failed to comply with the conditions, the payment relief to that municipality would immediately cease. However, Eskom stated that any debt already written off by that time would remain written off. The non-compliance to the NT conditions, more specifically the non-payment of full current accounts, would result in further growth in overdue debt, negatively affecting Eskom's financial position and the anticipated improved cash flows would not materialise.

7 Public Submission on the Bill

The section below provides an overview of the submission that was made in response of the advertisement that was published in print media, Parliament's website and social media platforms.

7.1 Congress of South African Trade Unions

The Congress of South African Trade Unions (COSATU) welcomed the Eskom Debt Relief Act; however, it expressed concerns about some clauses in the Bill. It submitted that it had long championed the need for the national fiscus to take over Eskom's unsustainable debt levels as part of a package to stabilize and rebuild power utility. This relief would help Eskom to shift resources to ramping up maintenance of infrastructure which was the fastest way to end loadshedding.

COSATU was opposed to restrictions on Eskom investing in new generation capacity and submitted that a fundamental cause of loadshedding was Eskom's power generation fleet that was nearing end of its life span. Ensuring sustainability of Eskom and to prevent loadshedding becoming a permanent situation, COSATU submitted that there was a need to both fix existing and investment in new generation capacity, not either or. To this end, COSATU recommended that the restrictions on Eskom investing in new generation capacity be removed from Eskom Debt Relief Act.

COSATU submitted that the Bill introduced a clause requiring Eskom to pay interest to National Treasury for debt relief provided through the Eskom Debt Relief Act. It submitted that this was a major shift which posed significant financial costs for Eskom, and it undermined the overall objective of the debt relief initiative by government. To this end, COSATU recommended that clause 1(a)(aA) in the Bill be deleted and that the existing Eskom debt repayment modalities to the state be retained.

7.2 Dearsqth@pegasus.aserv.co.za poll

This platform could not be located on any search drive and as such could not be invited to make an oral presentation during the public hearings. A total of 3 submissions were received via the Dearsqth@pegasus.aserv.co.za platform. Based on the identical nature of the responses *(No, I don't, all the above*), the platform ran what seemed to be poll. Unfortunately, Parliament has no idea of how the question(s) were worded. Some participants added information which included them stating that

(1) No water' our roads everything all high heads are pensioners ' cant think' old SA,,, no such stuff like waterpipes burst' potholes!!!! Look at our country all the 60 age above' no ppl ' please hope the DA takes over this government don't care about SOUTH AFRICANS' Just to be corrupt and stealing money; and (2) Financial strain on Eskom.

8 Committee Findings and Observations

Having considered all the submissions made by the above stakeholders on the Eskom Debt Relief Bill [B38 – 2023], the Standing Committee on Appropriations made the following findings and observations:

8.1 The Committee notes and welcomes the proposal on the Bill that will compel Eskom to pay interest on the amount advanced as a loan. The Committee is also of the view that government should charge interest on any amount advanced to a State-Owned Company both in the interest of fairness and competitiveness.

8.2 The Committee notes the submission by COSATU that the proposed amendment on the Bill that would allow Eskom to pay interest on amount advanced as a loan be scrapped. COSATU feels that this presented a major shift which posed significant financial costs for Eskom, and consequently undermines the overall objective of the debt relief initiative by government. However, the Committee is of the view that because the interest to be charged on the loan amounts has not been pre-determined but set at a maximum ceiling of 5 per cent, the Committee is satisfied that government as represented by National Treasury will not charge an interest that will negatively impact Eskom's finance. It is government who proposed the debt relief package for Eskom to Parliament, the Committee is confident that government will at all material times take decisions that are in the best interest of Eskom and the people of the Republic of South Africa.

8.3 The Committee notes and welcomes the proposal on the Bill that will allow the Minister of Finance to reduce the amount to be advanced to Eskom or charge a higher interest should Eskom fails to comply the conditions. However, the Committee would like to implore the Minister of Finance, Minister of Public Enterprises, and Minister of Electricity to establish a joint task team comprising of National Treasury and Eskom that will monitor Eskom compliance with the conditions of the Act and provide the necessary interventions where necessary. The Committee is concerned about prevalence of non-compliance with Parliament approved legislations.

8.4 The Committee notes that COSATU is opposed to the restrictions on Eskom investing in new generation capacity and submitted that a fundamental cause of loadshedding was Eskom's power generation fleet that was nearing end of its life span and therefore recommended that the restriction on Eskom investing in new generation capacity be removed from Eskom Debt Relief Act. Like COSATU, the Committee would like to see Eskom investing in new generation capacity if that would surely end loadshedding. However, given huge costs overruns in both the two new Eskom power stations (Kusile and Medupi), the costs associated with the design defects and the fact that these two power stations are yet to be fully commissioned, makes it very difficult for the Committee to suggest that Eskom must incur further government guaranteed debts to invests in new generation capacity. The Committee is of the view that Eskom must first demonstrate both financial and operational efficiency to justify investment in new generation capacity. Furthermore, the Committee is of the view that it will be irresponsible for both Parliament and government to allow Eskom to incur more government guaranteed debts that may require more government bailouts if Eskom finds itself in a similar situation.

8.5 The Committee notes the concerns and recommendations by the FFC that National Treasury should reconsider the condition that Eskom will take-over the electricity distribution licenses from municipalities should they fail to comply with the conditions of the debt relief. However, the Committee is of the view that there should be consequences for non-compliance with the debt relief arrangements and encourages all municipalities to ensure that they comply with all the debt relief arrangements. Furthermore, the debt relief arrangements for municipalities also arises due to non-compliance in paying the Eskom debt, the Committee would therefore not encourage municipalities to not honour the conditions and arrangements made with Eskom and National Treasury, there should be consequences otherwise municipalities will be encouraged to negotiate in bad faith, making mockery of Parliament.

9 Recommendations

The Standing Committee on Appropriations, having considered the briefings and comments by invited stakeholders on the Eskom Debt Relief Amendment Bill [B38 - 2023], recommends as follows:

9.1 That the Minister of Public Enterprises must ensure that Eskom complies with all the conditions of loans as envisaged in the Eskom Debt Relief Act No.7 of 2023.

9.2 That the Minister of Public Enterprises ensures that consequence management prescripts and actions are invoked and taken immediately against the Eskom Board of Directors (Board) and Executives should Eskom fail to comply with conditions determined in terms of subsection (2)(b) of the Act.

9.3 That the Minister of Finance and the Minister of Public Enterprises ensure that National Treasury and Eskom immediately report to Parliament any municipality who violates the debt relief arrangements with Eskom.

9.4 That the Minister of Finance, Minister of Public Enterprises, and Minister of Electricity should establish a joint task team comprising of National Treasury and Eskom that will monitor Eskom's compliance with the conditions of the Act and to provide the necessary interventions where needed.

10 Committee Recommendation on the Bill

The Standing Committee on Appropriations, having considered the Eskom Debt Relief Amendment Bill [B38 - 2023] (National Assembly – Section 77); referred to it and classified by the Joint Tagging Mechanism; recommends that the Bill be adopted, without amendments.

11 Conclusion

The responses to the recommendations as set out in section 9 above by the relevant Executive Authorities must be sent to Parliament as well as the Committee within 60 days of the adoption of this report by the National Assembly.

Report to be considered.