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Dear Bontshitswe

**LETTER OF DEMAND: ESKOM AND DEPARTMENT OF PUBLIC ENTERPRISES TO
IMMEDIATELY PUT A MORATORIUM ON DEMANDING PAYMENT FROM
MUNICIPALITIES, UPHOLD ALL BANK ACCOUNTS, AND REVERSE ASSETS
“INCLUDING LAND”**

1. This letter serves as a response to your letter dated 16 September 2020.
2. We note your contention that you act on behalf of and in the interest of communities who are clients of Eskom. We do not admit that this is so, but nonetheless proceed to give a response to the issues raised in your letter.
3. In the nature of things, it ought to be plain to any citizen of the Republic that Eskom is empowered by law to generate, transmit and distribute electricity to all citizens of the Republic of South Africa. It does so by directly supplying the communities and by supplying bulk electricity to hundreds of municipalities in the entire country. That being so, Eskom operates in a strictly and heavily regulated environment. All its actions are subject to and governed by law. There are a number of national statutes which govern Eskom's operations. These

include the Electricity Regulation Act 4 of 2006, the Public Finance Management Act 1 of 1999 and several other statutes.

4. In the same vein, Eskom's relationship between itself and its customers, including the communities and municipalities, is governed by law. Briefly stated, Eskom has a legal duty to collect revenue from the sale of electricity it makes from its supply to the municipalities and the communities. The law makes it obligatory for Eskom to take all reasonable steps to collect such revenue. Similarly, Eskom has an obligation to pay its suppliers of coal and other material. It can only do so if it effectively collects all revenue due to it. Such collection is prescribed by the law and is not a discretion conferred on Eskom.
5. The municipalities do not exist for their own sake, but are constitutionally mandated to supply basic services such as electricity to residents/communities in a sustainable manner and to manage and prioritise the needs of the communities. The real remedy of the letter writers appears to lie against their municipalities. The latter have public law duties to take reasonable steps to structure their budgets in a manner that affords priority to basic services such as electricity.
6. That being said, the supply and receipt of electricity is sanctioned by the Electricity Regulation Act 4 of 2006. Simply put, the relationship is predicated on the principle of reciprocity and entails the parties' mutuality of obligations. It is not correct, as you appear to suggest, that Eskom has a unilateral duty to supply electricity. The correct legal position prescribed by the applicable statutory provisions entail that Eskom supplies electricity while the municipalities and the communities have a corresponding and contemporaneous legal duty to pay for it. The laws governing the supply and receipt of electricity are based on the user-pay-principle. The courts have confirmed as much in their interpretations of the applicable statutes that govern the supply of electricity. The National Electricity Regulator of South Africa (NERSA) requires as much, and this is set out in all the license conditions issued by the regulator to Eskom and the municipalities. Eskom has consistently complied with all its statutory obligations. Regrettably, the municipalities have fallen short of their legal duties towards Eskom.

7. Eskom is also legally bound by section 51(1)(b)(i) of the Public Finance Management Act 1 of 1999 ("the PFMA") to take effective and appropriate steps to collect all revenue due to it. We pause here to mention that this is an important statutory obligation placed on all public entities such as Eskom.
8. We should point out that an important consideration is that Eskom is contractually obliged to pay its coal suppliers within a period of 14 days so as to generate the electricity that the municipality is dependent on. Payment of electricity enables Eskom to pay its coal suppliers (creditors) within the contractually stipulated period of 14 days.
9. Municipalities owe Eskom a staggering R32 billion in electricity supplied to them. If Eskom does not collect the debt that is due and payable to it, the utility will simply collapse.
10. It is not in the interest of justice to allow municipalities to escape their constitutional obligations towards their residents while they continue collecting from the residents, but are failing to pay over to Eskom, as they are required by law.
11. Eskom has at all times acted within the letter of the law. Where it obtained judgments and orders against delinquent debtors, it has done so strictly in accordance with the law as sanctioned by the courts.
12. In the circumstances, there is no merit in the contention that Eskom has hindered service delivery by the municipalities. On the contrary, Eskom has been reasonable and accommodating towards municipalities. The record shows that the issue of the municipal debt precedes the Covid-19 crisis. There is no factual basis for the suggestion that Eskom has breached the National Disaster Management Act or its regulations.

13. We urge you to encourage municipalities and the communities to make good on their legal obligations towards Eskom. The law governing the supply of electricity assumes that citizens and constitutional beings (state organs) like the municipalities will be conscientious, law abiding and observe the culture of payment. That is the right thing to do.

Yours sincerely



André de Ruyter
GROUP CHIEF EXECUTIVE
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