

REPORT OF THE AUDITOR-GENERAL ON NUCLEAR POWER AND ENERGY AGENCY FOR THE YEAR ENDED 30 JUNE, 2023

PREAMBLE

I draw your attention to the contents of my report which is in three parts:

- A. Report on the Financial Statements that considers whether the financial statements are fairly presented in accordance with the applicable financial reporting framework, accounting standards and the relevant laws and regulations that have a direct effect on the financial statements.
- B. Report on Lawfulness and Effectiveness in use of public resources which considers compliance with applicable laws, regulations, policies, gazette notices, circulars, guidelines and manuals and whether public resources are applied in a prudent, efficient, economic, transparent and accountable manner to ensure Government achieves value for money and that such funds are applied for intended purpose.
- C. Report on Effectiveness of Internal Controls, Risk Management and Governance which considers how the entity has instituted checks and balances to guide internal operations. This responds to the effectiveness of the governance structure, the risk management environment and the internal controls, developed and implemented by those charged with governance for orderly, efficient and effective operations of the entity.

An unmodified opinion does not necessarily mean that an entity has complied with all relevant laws and regulations, and that its internal controls, risk management and governance systems are properly designed and were working effectively in the financial year under review.

The three parts of the report are aimed at addressing the statutory roles and responsibilities of the Auditor-General as provided by Article 229 of the Constitution, the Public Finance Management Act, 2012 and the Public Audit Act, 2015. The three parts of the report, when read together constitute the report of the Auditor-General.

REPORT ON THE FINANCIAL STATEMENTS

Opinion

I have audited the accompanying financial statements of the Nuclear Power and Energy Agency set out on pages 1 to 28, which comprise of the statement of financial position as at 30 June, 2023, and the statement of financial performance, statement of changes in net assets, statement of cash flows and the statement of comparison of budget and actual amounts for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 35 of the Public Audit Act, 2015. I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit.

In my opinion, the financial statements present fairly, in all material respects, the financial position of Nuclear Power and Energy Agency as at 30 June, 2023, and of its financial

performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards (Accrual Basis) and comply with the Public Finance Management Act, 2012 and the Energy Act, 2019.

Basis for Opinion

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the Nuclear Power and Energy Agency Management in accordance with ISSAI 130 on the Code of Ethics. I have fulfilled other ethical responsibilities in accordance with the ISSAI and in accordance with other ethical requirements applicable to performing audits of financial statements in Kenya. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Key Audit Matters

Key audit matters are those matters that, in my professional judgment, are of most significance in the audit of the financial statements. There were no key audit matters to report in the year under review.

Other Matter

Unresolved Prior Year Matters

In the audit report of 2021/2022 financial year, several issues were raised under the Report on Financial Statements, Report on Lawfulness and Effectiveness in Use of Public Resources, and Report on Effectiveness of Internal Controls, Risk Management and Governance. However, Management has not resolved the issues or given any explanation for failure to resolve them.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

As required by Article 229(6) of the Constitution, based on the audit procedures performed, except for the matters described in the Basis for Conclusion on Lawfulness and Effectiveness in Use of Public Resources section of my report, I confirm that nothing else has come to my attention to cause me to believe that public resources have not been applied lawfully and in an effective way.

Basis for Conclusion

1. Irregular Utilization of Petroleum Development Levy Funds

Review of the financial records revealed that the Agency received a total of Kshs.918,000,000 which includes an amount of Kshs.200,000,000 from the Petroleum Development Fund which were utilized on implementation of nuclear projects. This was contrary to Section 4(4) of the Petroleum Development Fund Act, 2012 which states that

there shall be paid out of the Petroleum Development Funds such monies as are necessary for the development of common facilities for distribution or testing of oil products and matters relating to the development of the oil industry.

In the circumstances, Management was in breach of the law.

2. Failure to Prepare Financial Statements for Staff Mortgage and Car Loan Fund

Note 14 (b) to the financial statements reflects non-current receivables of Kshs.317,285,000 in respect of staff mortgage and car loans fund. However, the financial statements for the Funds were never prepared and submitted for audit contrary to Section 47(1) of the Public Audit Act, 2015 on time limit of submission of accounts which provides that the financial statements required under the Constitution, the Public Finance Management Act, 2012 and any other legislation, shall be submitted to the Auditor-General within three months after the end of the fiscal year to which the accounts relate.

In the circumstances, Management was in breach of the law.

3. Irregular Procurement for Consultancy Services – Enterprise Resource Planning (ERP) Implementation

The Agency under Note 8 to the financial statements spent a total of Kshs.439,943,721 in respect of use of goods and services. Included in the expenditure is consultancy fees amounting to Kshs.9,692,300 for procurement of a consultant for PRE-ERP-implementation process.

However, Management used their list of the prequalified suppliers under consultancy to seek for proposal for the consultant, contrary to Section 122(1) of the Public Procurement and Asset Disposal Act, 2015 which stipulates only those candidates who qualified after submitting their expression of interests were to be invited to put in their proposals. Management invited bids from firms that had not put in their expression of interests and qualified to be invited.

In the circumstances, Management was in breach of the law.

4. Irregular Reallocation of Funds

The Agency spent a total of Kshs.16,429,506 on gratuity and Kshs.30,185,316 on medical expenses against an approved budget of Kshs.15,000,000 and Kshs.25,000,000 respectively as reflected in Note 9 to the financial statements. This resulted to an over expenditure of Kshs.1,429,506 and Kshs.5,185,315 for gratuity and medical expenses respectively contrary to Public Finance Management Act, 43, 2 (b) which states that an Accounting Officer, may reallocate funds between programs, or between Sub-Votes, in the budget for a financial year if a request for the reallocation has been made to The National Treasury explaining the reasons for the reallocation and The National Treasury has approved the request.

In the circumstances, Management was in breach of the law.

5. Outstanding PAYE Penalties and Interest

The Kenya Revenue Authority itax portal for Income Tax assessment for the Agency reflects cumulative penalty and Interest charges of Kshs.1,473,814 contrary to Section 105 of the Income Tax Act which states that tax is recoverable if it is proved to the satisfaction of the Commissioner that, in respect of a year of income, tax has been paid by or on behalf of a person, whether directly or by deduction or otherwise, which is in excess of the amount payable by that person as finally determined in respect of that year of income, the Commissioner shall refund the amount of the excess, together with any interest which may be payable thereon under this Act, to the person entitled to the refund. Additionally, when tax is due and payable by a person in respect of an assessment, any amount refundable to that person under this section shall be applied towards the satisfaction of the tax so due and payable to the extent of that tax and the amount so applied shall not be refunded.

In the circumstances, Management was in breach of the law.

6. Non-Compliance of Mortgage Loan Terms

The Agency mortgage facility as per Section E part 48 of the scheme regulations had a maximum duration of twenty-five (25) years which is contrary to Section 7 of Circular SRC/ADM/COR/1/13 Vol. III /128 of 2014 states that the maximum duration of the mortgage facility is twenty (20) years. The policy further allows staff on contract to access the facility contrary to the eligibility criteria stipulated in the 2014 car and mortgage loan circular. This is contrary to Section 1 of SRC circular on staff car and mortgage defines the scope and eligibility of the car and mortgage facility as state officers employed on permanent and pensionable basis as well as state officers working on part time or full-time basis.

In the circumstances, Management was in breach of the regulations.

The audit was conducted in accordance with the International Standards for Supreme Audit Institutions (ISSAI) 4000. The standard requires that I comply with ethical requirements and plan and perform the audit to obtain assurance about whether the activities, financial transactions and information reflected in the financial statements comply, in all material respects, with the authorities that govern them. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

REPORT ON THE EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

As required by Section 7(1)(a) of the Public Audit Act, 2015 and based on the audit procedures performed, except for the matter described in the Basis for Conclusion on Effectiveness of Internal Controls, Risk Management and Governance section of my report, I confirm that nothing else has come to my attention to cause me to believe that internal controls, risk management and governance were not effective.

Basis for Conclusion

Excess Composition of Board Members and Committees

The Agency had nine (9) Board Members and hence the membership of committees should be a third (1/3) of the board which translates to a maximum of 3 members. This, however was not adhered to as the four (4) committees of the board had four (4) members. The number of members to any Committees should be no more than one third (1/3) of the full board to obviate the risk of a committee conducting its business within the framework of a full board structure.

In the circumstances, the effectiveness of the governance structure of the board could not be confirmed.

The audit was conducted in accordance with the International Standards for Supreme Audit Institutions (ISSAIs) 2315 and 2330. The standards require that I plan and perform the audit to obtain assurance about whether effective processes and systems of internal controls, risk management and overall governance were operating effectively, in all material respects. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

Responsibilities of the Management and those Charged with Governance

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards (Accrual Basis) and for maintaining effective internal controls as Management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error and for its assessment of the effectiveness of internal controls, risk management and governance.

In preparing the financial statements, Management is responsible for assessing the Agency's ability to continue to sustain its services, disclosing, as applicable, matters related to sustainability of services and using the applicable basis of accounting unless Management is aware of the intention to terminate the Agency or to cease operations.

Management is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 47 of the Public Audit Act, 2015.

In addition to the responsibility for the preparation and presentation of the financial statements described above, Management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements comply with the authorities, which govern them, and that public resources are applied in an effective way.

Those charged with governance are responsible for overseeing the Agency's financial reporting process, reviewing the effectiveness of how Management monitors compliance with relevant legislative and regulatory requirements, ensuring that effective processes and systems are in place to address key roles and responsibilities in relation to

governance and risk management, and ensuring the adequacy and effectiveness of the control environment.

Auditor-General's Responsibilities for the Audit

The audit objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion in accordance with the provisions of Section 48 of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with ISSAIs will always detect a material misstatement and weakness when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

In addition to the audit of the financial statements, a compliance audit is planned and performed to express a conclusion about whether, in all material respects, the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities that govern them and that public resources are applied in an effective way, in accordance with the provisions of Article 229(6) of the Constitution and submit the audit report in compliance with Article 229(7) of the Constitution.

Further, in planning and performing the audit of the financial statements and audit of compliance, I consider internal controls in order to give an assurance on the effectiveness of internal controls, risk management and overall governance processes and systems in accordance with the provisions of Section 7(1)(a) of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. My consideration of the internal controls would not necessarily disclose all matters in the internal controls that might be material weaknesses under the ISSAIs. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

Because of its inherent limitations, internal control may not prevent or detect misstatements and instances of non-compliance. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies and procedures may deteriorate.

As part of an audit conducted in accordance with ISSAIs, I exercise professional judgement and maintain professional skepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by Management.
- Conclude on the appropriateness of Management's use of the applicable basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Agency's ability to continue to sustain its services. If I conclude that a material uncertainty exists, I am required to draw attention in the auditor's report to the related disclosures in the financial statements or if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my audit report. However, future events or conditions may cause the Agency to cease to continue sustain its services.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information and business activities of the Agency to express an opinion on the financial statements.
- Perform such other procedures as I consider necessary in the circumstances.

I communicate with Management regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal controls that are identified during the audit.

I also provide Management with a statement that I have complied with relevant ethical requirements regarding independence and to communicate with them all relationships and other matters that may reasonably be thought to bear on my independence and where applicable, related safeguards.



FCPA Nancy Gathungu, CBS
AUDITOR-GENERAL

Nairobi

22 March, 2024