



**DEPARTMENT OF MINERALS AND ENERGY
REPUBLIC OF SOUTH AFRICA**

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EXPLANATORY MEMORANDUM

A previous *Gas Regulations Discussion Document* that was released by the Minister for public comment elicited a number of valuable responses for which the Department of Minerals and Energy is grateful. The responses have been carefully considered and have resulted in significant inputs to these Draft *Gas Regulations*.

The procedures for promulgating the regulations as stated in section 34 (2) of the **Gas Act** are as follows and in the following order:

- (a) Consultation with the Energy Regulator;
- (b) Invitation for public comments; and
- (c) The Minister must duly consider such comments before promulgating the regulations.

This document is intended for the phase of consultation with the public.

FORMAT FOR COMMENTS:

(i) Regarding comments that could result in prospective changes to the draft regulations, please track change your proposed wording on the draft regulations text; and

- (ii) Please insert footnotes for each of the changes proposed as motivation and reason for change suggested.
- (iii) Closing date for comments: 26 May 2006 at DME

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GOVERNMENT NOTICE

DEPARTMENT OF MINERALS AND ENERGY

No. R. 363

13 April 2006

GAS ACT, 2001 (ACT No 48 of 2001)

PIPED GAS REGULATIONS

In terms of section 34(1) and (2) of the Gas Act, 2001 (No 48 of 2001), I, L Hendricks, Minister of Minerals and Energy hereby publish the draft regulations in the attached Schedule for public comment.

SCHEDULE

ARRANGEMENT OF REGULATIONS

1. Definitions
2. Criteria for Distribution
3. Eligible Customers
4. Price Regulation Principles and Procedures for Distributors, Reticulators and all classes of consumers
5. Historically Disadvantaged South Africans Information
6. Third Party Access to Transmission pipelines
7. Third Party Access to Storage Facilities
8. Registration with the Energy Regulator: Information
9. Expropriations Proceedings
10. Rehabilitation of Land
11. Fair Administrative Action
12. Determination of Gas Specifications
13. Mediation
14. Arbitration
15. Costs of Mediation and Arbitration
16. Rendering of Information to the Energy Regulator by Licenses

ATTACHMENTS

Regulation Cross Reference with the Gas Act

Definitions

1These regulations any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned, unless the context indicates otherwise –

“**administrative action**” means an administrative action as defined in the Promotion of Administrative Justice Act, 2000 (Act No 3 of 2000);

“**backhauling**” means the delivery of gas in a direction opposite of the aggregate physical flow of gas in the pipeline, typically delivery is upstream from the **point** of receipt;

“**Act**” means the Gas Act, 2001 (Act No 48 of 2001) and includes these Regulations;

“**historically disadvantaged South Africans**” means those persons historically disadvantaged by unfair discrimination on the basis of race, gender or disability;

“**linepacking**” means using a pipeline to store gas by increasing the pressure

“**liquefaction plant**” means a plant for converting natural gas from a gaseous state to a liquid state and any other equipment incidental thereto;

“**National Energy Regulator Act**” means the National Energy Regulator Act, 2004 (No 40 of 2004);

“**Promotion of Access to Information Act**” means the Promotion of Access Information Act, 2000 (Act No.3 of 2000);

“**re-gasification plant**” means a plant for converting liquefied natural gas to a gaseous state and any other equipment incidental thereto;

“**related undertakings**” means any undertaking in which a licensee owns a substantial shareholding, interest, or similar right, including subsidiaries, parent companies and subsidiaries of parent companies and joint-venture partners;

“**subsidiary**” means a subsidiary or subsidiaries, as defined in the Companies Act, 1973 (Act 61 of 1973);

“**the Agreement**” means the Regulatory Agreement between the Minister of Minerals and Energy, the Minister of Trade and Industry and Sasol Limited in Terms of Section 36 of the Gas Act concerning the introduction of natural gas from the Republic of Mozambique to the Republic of South Africa.

Criteria for Distribution

[Sections 1 with 34 (1) (b) of the Gas Act]

2. **As** provided for in sections 1 and 34 of the Act –
 - 2.1 the Energy Regulator may **take** the following criteria into account when determining the operating pressures that define distribution pipelines, other **than** those specified in the Act-
 - 2.1.1 more **than** five customer off-takes per kilometre may be considered as distribution; and
 - 2.1.2 more **than** five pipeline splits per kilometre may be considered as distribution.
 - 2.2 Notwithstanding sub-regulation 2.1, branch pipelines connected to a transmission pipeline, whose primary purpose is to serve eligible customers must be classified as transmission pipelines.

Eligible Customers

[Sections 1 with 34 (1) (c) of the Gas Act]

3. **As** provided for in sections 1 and 34 of the Act -
 - 3.1 the following customers qualify as eligible customers–
 - 3.1.1 distributors;
 - 3.1.2 reticulators;
 - 3.1.3 electricity generators;
 - 3.1.4 customers outside licensed distribution areas; and
 - 3.1.5 customers located within a licensed distribution area and who meet the following qualifying threshold consumption-
 - 3.1.5.1 for the first 5 years after the first delivery of gas on a commercial basis to the distribution licensee: 400 000 Giga Joules per annum;

3.1.5.2 for the next 5 years: 100 000 Giga Joules per annum;and

3.1.5.3 thereafter: **40 000** Giga Joules per annum;

3.1.6 Customers who were receiving gas in **an** area prior to the issue of a distribution license issued by the Energy Regulator or a reticulation permit or equivalent issued by the local authority for that area.

3.2 Notwithstanding anything else in this regulation, a vertically integrated gas company active in transmission and distribution may only supply an eligible customer in other distribution areas licensed to another entity if a third party would have mandatory access to the transmission pipelines for quantities of gas equivalent to the threshold of that eligible customer.

Price Regulation Principles and Procedures for Distributors, Reticulators and **all** classes of consumers

[Sections 4 (g) with 34 (I) (i) of the Gas Act

4 As provided for in Sections 4 and 34 of the Act –

4.1 For as long as the Agreement referred to in section 36 of the Act is in force, pricing matters that are not specifically provided for in that Agreement must be governed in accordance with this regulation.

4.2 Customers whose maximum gas prices are calculated by Market Value Pricing in terms of the Agreement must be informed by the gas trader of the elements **used** to calculate their maximum gas price and specifically:

4.2.1 the alternative fuel;

4.2.2 the operating costs for the alternative fuel and for gas; and

4.2.3 the Net Present Value for operating cost of the alternative fuel **and** the operating cost of gas.

4.3 Levies to be collected under the **Gas** Regulator Levies Act, **2002** (Act No. 75 of 2002) may not be passed on to customers;

4.4 The maximum prices charged to distributors, reticulators **and** all classes of consumers, excluding those prices for the customers of the reticulators, are subject to the approval

of the Energy Regulator where there is inadequate competition as contemplated in Chapters Two and Three of the Competition Act 1998 (Act No. 89 of 1998).

4.4.1 Principles to be followed by the Energy Regulator in considering maximum price approvals must -

4.4.1.1 be objective i.e. based on a systematic methodology applicable on a consistent and comparable basis;

4.4.1.2 be fair;

4.4.1.3 be non-discriminatory;

4.4.1.4 be transparent;

4.4.1.5 be predictable; **and**

4.4.1.6 include efficiency incentives.

4.4.2 Maximum prices must enable the licensee to -

4.4.2.1 recover all efficient and prudently incurred investment and operational costs; and

4.4.2.2 make a profit commensurate with its **risk**.

4.5 The Energy Regulator must approve maximum prices for gas for each distribution area or group of distribution areas for the following classes of customers:

4.5.1 residential.

4.5.2 commercial and industrial:

| | | | |
|---------|---------------------|----|-----------------|
| Class 1 | Less than 400 GJ pa | | |
| Class 2 | 401 GJ pa | To | 4000 GJ pa |
| Class 3 | 4001 GJ pa | To | 40 000 GJ pa |
| Class 4 | 40 001 GJ pa | To | 400 000 GJ pa |
| Class 5 | 400 001 GJ pa | To | 4 000 000 GJ pa |

4.6 When gas is sold, the accompanying sales invoice must itemise the constituent elements of the total price reflected on the invoice, including at least the cost of gas, **any** transport tariffs, levies, and any other charges.

4.7 Licensees must provide the Energy Regulator with sufficient information as defined by the Energy Regulator for it to determine maximum prices. Licensees may be required to file contracts signed with customers with the Energy Regulator, but the

Energy Regulator must not make public the contents of such contracts if such information is protected in terms of the Promotion of Access to Information Act.

4.8 To the extent possible, the Energy Regulator should promote fair pricing **through** price transparency, rather than direct intervention, so that consumers may make informed market decisions. To promote price transparency and the prevention of discrimination:

4.8.1 trading licensees must provide the Energy Regulator within two months **of** the end of each year the annual volume and average price for that year for each of its customers consuming less than 10 million gigajoules per annum;

4.8.2 the Energy Regulator must publish aggregated results for selected categories of customers; and

4.8.3 the Energy Regulator may not release information pertaining to individual customers if such information is protected in terms of the Promotion of Access to Information Act and there must be at least three customers in a given category **for** a price to be published.

4.9 Invoices issued by licensees to customers and consumers must indicate:

4.9.1 the acquisition price of the gas;

4.9.2 details of all tariff charges applied, including metering, levies and other charges.

4.10 When the ownership of gas changes, the price of gas in the new owner's hands refers to the price of gas from the seller plus any tariffs charged by the seller.

Historically Disadvantaged **South** Africans Information

(Sections 21 (1)(b) & 34 (1) (j) of the Gas Act)

5 As provided for in sections 21 and 34 of the Act -

5.1 Applicants for licenses or existing licensees must provide information to the Energy Regulator regarding the commercial arrangements regarding the participation of historically disadvantaged South Africans in the licensees' activities as follows:

5.1.1 numbers of shareholders from historically disadvantaged background **and** their respective shareholding in the company that holds/will hold the license;

- 5.1.2 numbers and positions of historically disadvantaged South Africans who are members of the Board of Directors of the company that holds/will hold the license;
 - 5.1.3 numbers and positions of historically disadvantaged South Africans who hold senior management positions in the company that holds/will hold the license;
 - 5.1.4 the quantity and percentage of subcontracted work to companies with more than 50% ownership of historically disadvantaged South Africans.
 - 5.1.5 compliance with the Employment Equity Act.
 - 5.1.6 plans for and actions taken to develop historical disadvantaged South Africans in the gas sector through training, procurement and enterprise development.
- 5.2 The Energy Regulator must administer the provision of information acquired in terms of sub-regulation 5.1 in such a manner as to facilitate the addressing of historical inequalities and to broaden the country's economic base and accelerate growth, job creation and poverty alleviation. That administration must comprise a scoring schedule that includes:
- 5.2.1 core elements of the piped gas industry as specified in section 15 (1) of the Gas Act;
 - 5.2.2 historically disadvantaged South Africans such as shareholders, directors, management, subcontractors;
 - 5.2.3 target indicators;
 - 5.2.4 weighting factors;
 - 5.2.5 achievements; and
 - 5.2.6 bonus provision for exceeding targets.

Third Party Access to Transmission Pipelines

[Sections 21 (1)(d) with 34 (1)(k) of the gas Act]

- 6 As provided for in sections 21 and 34 of the Act -
- 6.1 Third party access matters that are not specifically provided for in the Agreement are governed in accordance with this regulation.

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- 6.2 Access to uncommitted capacity of transmission pipelines must be provided on a commercially reasonable basis. The allocation mechanism to be used, must comply with the following principles.
- 6.2.1 use-it-or-lose-it;
 - 6.2.2 non-discrimination; and
 - 6.2.3 defined time periods.
- 6.3 Grounds for refusal of access are limited to -
- 6.3.1 inadequate uncommitted capacity;
 - 6.3.2 technical feasibility; and
 - 6.3.3 commercial viability.
- 6.4 Where two or more applications are received by the pipeline operator on the same date, priority must be allocated according to the most favourable contract ~~to~~ the pipeline company, taking into account such identifiable elements as the proposed volumes and length of contract.
- 6.5 The Energy Regulator may upon receipt of a complaint determine uncommitted capacity in a transmission pipeline and determine an allocation mechanism and grounds for refusal for that transmission pipeline that are consistent with sub-regulations 6.1 and 6.2 above.
- 6.6 Transmission licensees must not discriminate between customers or classes of customers, particularly with regard to the granting of more favourable conditions to its related undertakings than to other customers or classes of customers.
- 6.7 The transmission licensee must specifically not discriminate in respect of:
- 6.7.1 the manner, content and timing of the provision of any information that pertains to third party access to customers or prospective customers;
 - 6.7.2 the manner and timing of processing of applications and granting of capacity;
 - 6.7.3 the terms and conditions of any grant of capacity and any other service to be provided to any customer or prospective customer;
 - 6.7.4 tariff methods and prices, including but not limited to the offering and granting of any discount and the imposing of any surcharge;
 - 6.7.5 nominations and balancing of gas entering and exiting the system; and
 - 6.7.6 scheduling of maintenance activities.
- 6.8 Each licensee interconnected to other systems must provide any other transmission, storage, distribution licensees or reticulator with sufficient information to ensure that

the transport of gas may take place in a manner compatible with the secure and efficient operation of the interconnected system.

- 6.9 All parties in third party access negotiations and transactions must avoid any abuse of a dominant position and negotiations for access to the system must be in good faith.
- 6.10 Each transmission licensee must preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business. In particular no commercially sensitive information will be supplied to related undertakings.
- 6.11 At the request of one or more parties to negotiations for third party access to gas transmission pipelines, the Energy Regulator, after consultation with the parties concerned, may fix a term within which the negotiations must be completed. If the negotiations are not complete within that term, then the Energy Regulator may make a binding determination regarding access and conditions thereof as to whether or not access should be granted and under which conditions.
- 6.12 Transmission licensees must lodge with the Energy Regulator their interim guidelines for the use of the transmission system within the first year following implementation of these regulations; until a Regulator approved Gas Network Code has been adopted The information must be publicly available and be sufficient to enable potential customers to understand the procedure for obtaining access to a transmission pipeline as well as to enter and conclude negotiations with the transmission licensee. These guidelines must include:
- 6.12.1 a detailed description of the gas transmission system indicating all inlet and outlet points;
 - 6.12.2 all ownership boundaries;
 - 6.12.3 method by which the tariffs are calculated;
 - 6.12.4 method by which a customer may request a tariff;
 - 6.12.5 contractual terms and conditions regarding use and payment;
 - 6.12.6 technical requirements for access to the network; and
 - 6.12.7 the process to request access.
- 6.13 Backhauling tariffs must not exceed the equivalent forward haul tariff and may be limited to actual costs where appropriate.
- 6.14 When determining the uncommitted capacity for transmission pipelines the Energy Regulator must consider the following elements:
- 6.14.1 contractual commitments;
 - 6.14.2 variations in pipeline capacity from one segment to another;

- 6.14.3 potential to increase pipeline capacity by additional compression, linepacking, backhauling, parallel lines, peak storage facilities etc;
 - 6.14.4 temperature and pressure differences; and
 - 6.14.5 load profile and swing requirements;
- 6.15 The Regulator may approve that the third party tariff for transmission pipelines **can** consist of a commodity charge, reflecting a variable component, and **a** capacity charge, reflecting a fixed component.

Third Party Access to Storage Facilities

[Sections 21 (1) (i) with 34 (1) (k) of the Gas Act]

- 7 As provided for in sections 21 and 34 of the Act -
- 7.1** Access to uncommitted capacity in storage facilities must be provided **on a** commercially reasonable basis. The allocation mechanism to be used must **comply** with the following principles:
- 7.1.1 use-it-or lose-it;
 - 7.1.2 non-discrimination;
 - 7.1.3 defined time periods.
- 7.2** Where two or more applications for mandatory third **party** access are received **by a** storage company on the same date, the storage company must select the **most** attractive application, taking into account objective elements such **as** the proposed volumes, revenue generated and length of contract.
- 7.3** Grounds for refusal of access **are** limited to -
- 7.3.1** inadequate uncommitted capacity;
 - 7.3.2 technical **feasibility**; and
 - 7.3.3 commercial **viability**.
- 7.4** The Energy Regulator may upon receipt of a complaint determine **uncommitted** capacity in a storage facility and determine **an** allocation mechanism **and grounds** for refusal for that storage facility that are consistent with sub-regulations **7.1** and **7.2**.
- 7.5** Each licensee **interconnected** to other systems must provide **any** other transmission, storage, distribution licensees or **reticulator** with sufficient information to **ensure** that

- the storage of gas may take place in a manner compatible with the secure and efficient operation of the interconnected system.
- 7.6 Each storage licensee must preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business. In particular no commercially sensitive information will be supplied to related undertakings
- 7.7 Storage licensees must not discriminate between customers or classes of customers, particularly with regard to the granting of more favourable conditions to its related undertakings than to other customers or classes of customers. The storage licensee must specifically **not** discriminate in respect of -
- 7.7.1 the manner, content and timing of the provision of any information to customers or prospective customers as required by the Gas Act;
 - 7.7.2 the manner and timing of processing of applications and granting of capacity;
 - 7.7.3 the terms and conditions of any grant of capacity and any other service to be provided to any customer or prospective customer;
 - 7.7.4 tariff methods and prices, including but not limited to the offering and granting of any discount **and** the imposing of any surcharge;
 - 7.7.5 nominations and balancing of gas entering and exiting the storage facility; and
 - 7.7.6 scheduling of maintenance activities.
- 7.8 All parties in **third party** access negotiations and transactions must avoid any abuse of a dominant position and negotiations for access to the system must be in good faith.
- 7.9 Each storage licensee must preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business. In particular no commercially sensitive information will be supplied to related undertakings.
- 7.10 At the request of one or more parties to negotiations for third party access to storage facilities, the Energy Regulator, after consultation with the parties concerned, may **fix** a term **within** which the negotiations must be completed. **If** negotiations are not complete **within** that term, then the Energy Regulator may make a binding determination as to whether or not access should be granted and under which conditions.
- 7.11 Storage licensees must lodge with the Energy Regulator their interim guidelines for the use of **the** system **within** the first year following implementation of these regulations, until a Regulator approved Gas Network Code **has** been adopted. The

information must be publicly available and must be sufficient to enable potential customers to understand the procedure for obtaining access and enter and conclude negotiations. These guidelines must include -

- 7.11.1 a detailed description of the gas storage system indicating all inlet points and outlet points.
 - 7.11.2 method by which the tariffs are calculated;
 - 7.11.3 method by which a customer may request a tariff;
 - 7.11.4 contractual terms and conditions regarding use and payment;
 - 7.11.5 technical requirements for access to the storage facility and **network**; and
 - 7.11.6 the process to request access.
- 7.12 When determining the uncommitted capacity for storage facilities the Energy Regulator must consider the following elements:
- 7.12.1 contractual commitments;
 - 7.12.2 type of storage facility;
 - 7.12.3 cushion gas requirements; **and**
 - 7.12.4 load profile and swing requirements;
 - 7.12.5 miscibility of gases; and
 - 7.12.6 capacity allocations are not being used to limit access to the storage facilities.
- 7.13 The Regulator may approve that the third party tariff for storage services can consist of a commodity charge, reflecting a variable component, and a capacity charge, reflecting a fixed component.
- 7.14 Storage owned and operated by a reticulator solely for reticulation purposes must be exempted from these mandatory third party access regulations.
- 7.15 Storage that forms part of the process of and is within the premises of a liquefaction or regasification plant must be exempted from these mandatory **third party** access regulations.

Registration with the Energy Regulator: Information

[Sections 28 (2) with 34 (1) (h) of the Gas Act]

- 8 As provided for in sections 28 and 34 of the Act -

- 8.1 Entities registered in terms of section 28 (1) of the Act must provide, as applicable, the following information to the Energy Regulator -
- 8.1.1 exploration programmes;
 - 8.1.2 development programmes;
 - 8.1.3 gas reserves data, measured in trillions of cubic feet;
 - 8.1.4 actual and planned production statistics, including details of gas for own use
 - 8.1.5 sources, specifications and quantity of imported gas;
- 8.2 The information that must be provided in sub-regulation 8.1 must be supplied within three months on the end of each calendar year. If during the year there is any substantial change to the information provided under sub-regulations 8.1.1 and 8.1.2, then the registered entities must notify the Energy Regulator in writing.

Expropriation Proceedings

[Sections 32 (2) with 34 (1) (g) of the Gas Act]

- 9 As provided for in sections 32 and 34 of the Act -
- 9.1 Licensees that require land or right in or over in respect of such land must first endeavour to acquire such land or right in or over in respect of such land by agreement with the owners.
- 9.2 Applications in terms of section 32 (1) of the Act must be made in writing to the National Energy Regulator stating:
- 9.2.1 the reason for the request;
 - 9.2.2 evidence of attempts to acquire the land or right in, over or in respect of such land, by agreement with the owner.
 - 9.2.3 reasons why those attempts to reach agreement with the owner(s) did not succeed;
 - 9.2.4 proof that such land is reasonably required by the licensee;
 - 9.2.5 proof that the acquisition of the land is in the public interest and will enhance the Republic of South Africa's gas infrastructure;
 - 9.2.6 a plan of the project contemplated; and
 - 9.2.7 specify the proposed areas.

- 9.3 Before considering an expropriation, the Energy Regulator must satisfy itself that a voluntary agreement cannot be reached between the applicant and the owner(s) of the land in question.
- 9.4 If a voluntary agreement cannot be reached, then the Energy Regulator must:
- 9.4.1 hold a hearing to which the following are invited:
- 9.4.1.1 applicant;
- 9.4.1.2 the owner and if the land is leased the renter of the land;
- 9.4.1.3 other affected persons;
- 9.4.2 publish the date, time and venue of the hearing at least two weeks in advance on the website or in a newspaper circulated in the area in which the expropriation is sought;
- 9.4.3 ensure that the land is reasonably required by the licensee or prospective licensee. In such determination, the Energy Regulator must consider:
- 9.4.3.1 that the planned facilities will enhance the Republic of South Africa's gas infrastructure;
- 9.4.3.2 the nature of the servitude or amendment to a servitude, including the nature and function of the gas infrastructure relating to the servitude or amendment to a servitude;
- 9.4.3.3 whether or not any existing gas infrastructure can be used to give effect to the servitude;
- 9.4.3.4 the probable duration of the servitude;
- 9.4.3.5 the extent of the deprivation of use of the land likely to be suffered as a result of the servitude or amendment to a servitude;
- 9.4.3.6 the nature and extent of the actual inconvenience or loss likely to be suffered as a result of the exercise of the rights under the servitude or amendment to a servitude;
- 9.4.3.7 the extent to which the land can reasonably be rehabilitated on termination of the servitude;
- 9.4.3.8 any advantage that the landowner, or other person with a compensational interest in the land subject to the servitude, is likely to derive as a result of the servitude or amendment to a servitude; and
- 9.4.3.9 the public interest served by the gas infrastructure relating to the servitude or amendment to a servitude. and
- 9.4.4 make a decision on the expropriation of the land and the conditions thereof.

- 9.5 An expropriation award made by the Energy Regulator must be accompanied by a recommendation as to compensation. In making a recommendation on compensation, the Energy Regulator must consider:
- 9.5.1 The nature of the servitude or amendment, including the nature **and** function of the gas infrastructure relating to the servitude or amendment;
 - 9.5.2 Whether any existing gas **infrastructure** will be used to give effect to the servitude;
 - 9.5.3 The probable duration of the servitude;
 - 9.5.4 The extent of the deprivation of use of the land likely to be suffered as a result of the servitude or amendment;
 - 9.5.5 The rental value of the land affected by the servitude or amendment;
 - 9.5.6 The nature and extent of the actual inconvenience or loss likely to be suffered as a result of the exercise of the rights under the servitude or amendment;
 - 9.5.7 The extent to which the land can reasonably be rehabilitated **on** termination of the servitude;
 - 9.5.8 Any advantage that the landowner, **or** other person with a compensational interest in the land subject to the servitude, is likely to derive as a result of the servitude *or* amendment; **and**
 - 9.5.9 The public interest served **by** the gas infrastructure relating to the servitude or amendment.
- 9.6 If the parties concerned do not accept the Energy Regulator's recommendation, a dissatisfied affected party may approach a court to determine the amount and the time and manner of payment of compensation.
- 9.7 The Energy Regulator must make a decision on an expropriation application within **30** days of the completion of the meeting contemplated in sub-regulation 9.4.1.
- 9.8 The acquisition, amendment or cancellation of a servitude by virtue of an order of the Energy Regulator takes effect when the order is noted in terms of the legislation applicable to the registration of title deeds.
- 9.9 An owner of land subject to a servitude may apply to the Energy Regulator for the cancellation of that servitude:
- 9.9.1 if the relevant licence associated with the servitude is terminated;

- 9.9.2 if the rights and obligations in respect of the servitude have not been exercised on the land subject to the servitude for a continuous period of three years; or
- 9.9.3 for any other lawful reason.
- 9.10 The Energy Regulator may attach one or more conditions to the award of a servitude including:-
- 9.10.1 the holder of a servitude will have a reasonable right of access to the land which is subject to the servitude for the purpose of constructing, altering, replacing, inspecting, maintaining, repairing or operating the relevant gas infrastructure or for any other purpose necessary for the effective use of that servitude.
- 9.10.2 the holder of a servitude contemplated may in a reasonable manner and subject to any other applicable law:
- 9.10.2.1 take from the land that is subject to the servitude any material or substance reasonably required for constructing, altering, replacing, maintaining or repairing any gas infrastructure or part thereof in respect of which the servitude has been acquired;
- 9.10.2.2 remove vegetation or any other obstacle which is on the land that is subject to the servitude and which is detrimental to the reasonable use of the servitude;
- 9.10.2.3 deposit on the land that is subject to the servitude any material or substance excavated or removed from the gas infrastructure in the reasonable exercise of the servitude;
- 9.10.2.4 occupy, during the period of construction of the gas infrastructure in respect of which the servitude has been acquired, as much of the land subject to the servitude as may reasonably be required for:
- 9.10.2.4.1 constructing camps or roads;
- 9.10.2.4.2 constructing other buildings or structures; or
- 9.10.2.4.3 installing machinery or equipment necessary for the construction of the gas infrastructure.
- 9.10.3 a holder of a servitude must:
- 9.10.3.1 maintain the servitude area to a safety, health and environmental standard state acceptable to the Energy Regulator;
- 9.10.3.2 repair and maintain the gas infrastructure within the servitude;

- 9.10.3.3 repair and maintain access roads associated with ~~the~~ servitude;
and
- 9.10.3.4 ~~turn~~ the land to ~~as~~ close as possible to its original state after construction, maintenance or repair.
- 9.11 The Energy Regulator may recover all ~~or~~ part of the costs that it incurs in holding a meeting contemplated in sub-regulation 9.4.1 from one or more of the parties that present evidence to that meeting.

Rehabilitation of Land

[Section 34 (1) (d) of the Gas Act]

- 10 **As** provided for in section 34 of the Act -
- 10.1 Licensees shall, not less **than six (6)** months prior to termination, relinquishment or abandonment of licensed activities submit to the Energy Regulator a plan for approval **for** the closure, removal and disposal (if applicable) of all installations relating such Licensed activities. The plan shall include information on alternatives investigated for further use **and** alternative disposal of the installations, the decommissioning activities, site clean up, removal and disposal of dangerous material and chemicals **and an** environmental impact assessment of the termination and abandonment. The Energy Regulator's approval of the plan may be subject to conditions as determined **by** the Energy Regulator. Subject to the provisions of section 10 of the National Energy Regulator Act the Energy Regulator may amend the plan **as** it deems fit.
- 10.2** From time to time, licence conditions may incorporate by referral any current legislation on the rehabilitation of land used in connection with the transmission, storage, distribution, liquefaction or re-gasification of gas or the trading therein, and **may** include ~~the~~ provision **of** environmental performance bonds for rehabilitation purposes **and** the composition and amount of such guarantees. Such financial provision may include; ~~an~~ insurance policy or a bank guarantee or a trust fund or other financial arrangement acceptable to the Energy Regulator
- 10.3 The Energy Regulator may in writing, at any time, require written confirmation from **a** licensee that it is in compliance ~~with~~ the requirements of the National Environmental Management Act, 1998 (**Act** No 107 of 1998).

- 10.4 In the case of relinquishment, abandonment or surrender by the licensee or termination of the rights of the licensee, excluding the sale of the licensed facility, the state shall be entitled, but not obliged, to take over the licensee's facilities or part thereof without compensation to the licensee, in which case the licensee shall have no further obligations or liabilities in relation to the abandonment or decommissioning of its facilities or the part thereof taken over by the state.
- 10.5 The Energy Regulator must not consent to the termination of the financial security arrangement contemplated in sub-regulation 10.2 before it is in receipt of a certificate from an independent consultant competent to conduct environmental impact assessments in accordance with the provisions of the National Environmental Management Act, 1998 (Act No. 107 of 1998), stating that the site has been rehabilitated;

Fair Administrative Action

(Section 34 (1) (a) of the Gas Act)

- 11 As provided for in section 34 of the Act -
- 11.1 If the Energy Regulator believes that an administrative action by it may materially and adversely affect the rights or legitimate expectations of any person then the Energy Regulator must call for written representations to adduce the relevant facts and evidence and must give:
- 11.1.1 at least two week's notice of the deadline for written representations;
- 11.1.2 a clear statement of the intended administrative action;
- 11.2.3 a reasonable opportunity for persons who may be affected by the proposed administrative action to make representations.
- 11.2 The call for written representations must, at a **minimum**, be given on the Energy Regulator's web site and on a public notice board at the Energy Regulator's offices.
- 11.3 When considered appropriate by the Energy Regulator, notices of the call for written representations may be communicated by the Energy Regulator directly to the persons concerned.
- 11.4 Licencees must provide the Energy Regulator with a list of all their potential customers or customers and persons likely to be affected together with their addresses

and contact details within a time specified by the Energy Regulator if directed to do so in writing by the Energy Regulator.

Determination of Gas Specifications

[Section 34 (1)(e) of the Gas Act]

12 As provided for in section 34 of the Act -

12.1 The Energy Regulator may set a range of gas specifications, including maximum concentrations of gases that may be harmful, for each licensed activity and must set a range of gas specifications, including maximum concentrations of gases that may be harmful, where gas is comingled or is planned to be comingled from two or more separately owned sources. Such gas specifications **will** be determined by:

12.1.1 chemical composition;

12.1.2 calorific values;

12.1.3 combustion properties;

12.1.4 the pressure of the gas at point of entry to shared systems; and

12.1.5 relevant additional components as determined by the Energy Regulator.

12.2 The National Energy Regulator may determine the technical and commercial feasibility of the miscibility of gases, including determining the maximum quantities from individual sources to promote the interconnection **and** interoperability of systems.

12.3 Where it is not technically feasible or economically viable to make gas from different systems compatible, these gases must be conveyed in separate pipeline systems.

Mediation

[Sections 34 (1)(f) and 30 of the Gas Act]

13 As provided for in sections 30 and 34 of the Act -

- 13.1 Requests for the Energy Regulator to act as a mediator must be made in writing with the approval of all of the parties to the dispute and must set out the nature of the dispute between the parties.
- 13.2 When considering applications for mediation services the Energy Regulator must first determine whether or not to mediate in the dispute and if so, determine whether to appoint –
 - 13.2.1 one or more members of the Energy Regulator; or
 - 13.2.2 to appoint a suitable person acceptable to the parties to the dispute;
within ten working days of receipt of the application;
- 13.3 At the commencement of a mediation the mediator appointed must -
 - 13.3.1 inform the parties of any conflict of interest that he or she may have;
 - 13.3.2 inform the parties about the procedure and manner in which the mediation will be conducted;
 - 13.3.3 inform the parties how the fees, if any, to be paid by the parties for the mediation service will be determined and to whom payments should be made;
 - 13.3.4 secure agreement or approval, as applicable, from the parties to the dispute to sub-regulations 13.3.1 to 13.3.3 before proceeding with the mediation.
- 13.4 Any decision by a mediator will not be binding on the parties except those relating to the payment of fees by the parties.

Arbitration

[Sections 34 (1) (f) and 30 of the Gas Act]

- 14 As provided for in sections 30 and 34 of the Act -
 - 14.1 Requests for the Energy Regulator to act as an arbitrator must be made in writing with the approval of all of the parties to the dispute and must set out the nature of the dispute between the parties.
 - 14.2 When considering applications for arbitration services the Energy Regulator must determine whether to appoint as arbitrator –
 - 14.2.1 one or more members of the Energy Regulator; or
 - 14.2.2 a suitable person acceptable to the parties to the dispute;
within ten working days of receipt of the application;

- 14.3 At the commencement of an arbitration the arbitrator appointed must -
- 14.3.1 inform the parties of any conflict of interest that he or she may have;
 - 14.3.2 inform the parties about the procedure and manner in which the arbitration will be conducted;
 - 14.3.3 inform the parties how the fees, if any, to be paid by one or more of the parties for the arbitration will be determined and to whom payments should be made;
 - 14.3.4 **inform** the parties that any award made will be final and binding;
 - 14.3.5 secure agreement or approval, as applicable, from the parties to the dispute to sub-regulations 14.3.1 to 14.3.4 before proceeding with the arbitration.
- 14.4 The party initiating a dispute, the claimant, shall submit to the arbitrator and to the party against whom the claim is being made, the respondent, a written statement including the following information:
- 14.4.1 the name and address of the person who will represent of the party at the proceedings;
 - 14.4.2 a detailed description of the dispute;
 - 14.4.3 the relief or remedy sought and the amount claimed, if applicable.
- 14.5 The respondent shall then submit a written statement of defence to the arbitrator and the claimant by a date determined by the Arbitrator.
- 14.6 During arbitration proceedings, any party may amend or supplement its claim, counterclaim or defence, unless the arbitrator considers it inappropriate to allow such amendment or supplement, because of the party's delay in making it, **if** it would be prejudicial to the other parties, or because of any other circumstances. **A party may** not amend or supplement a claim or counterclaim if the amendment or supplement would fall outside the scope of the agreement to arbitrate.
- 14.7 Any party **may** be represented in an arbitration. The names, addresses and telephone numbers of representatives shall be communicated in writing to the other parties and to the Arbitrator. The parties or their representatives may communicate in writing directly with the Arbitrator provided that copies of such documents are provided to all the other parties to the dispute.
- 14.8 Subject to these rules, the arbitrator may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.
- 14.9 Documents or information supplied to the arbitrator by one party shall at the same time be communicated by that party to the other **party** or parties.

- 14.10 Each party shall have the burden of proving the facts relied on to support its claim or defence.
- 14.11 At any time during the proceedings, the arbitrator may order parties to produce other documents, exhibits or other evidence it deems necessary or appropriate.
- 14.12 The arbitrator may appoint one or more independent experts to report to it, in writing, on specific issues designated by the arbitrator and communicated to the parties.
- 14.13 The parties shall provide such an expert with any relevant information or produce for inspection any relevant documents or goods that such expert may require. Any dispute between a party and the expert as to the relevance of the requested information or goods shall be referred to the arbitrator for decision.
- 14.14 Upon receipt of an expert's report, the arbitrator shall send a copy of the report to all parties to the dispute and shall give the parties to the dispute an opportunity to express, in writing, their opinion on the report. A party may examine any document on which the expert has relied in such a report.
- 14.15 At the request of either party, the arbitrator shall give the parties an opportunity to question the expert at a hearing., parties may present expert witnesses to testify on the points at issue during arbitration proceedings.
- 14.16 Awards by an arbitrator shall be made in writing and shall be final and binding on the parties. The parties must carry out any such award without delay.
- 14.17 The arbitrator shall state the reasons for the award, unless the parties have agreed that no reasons need be given.
- 14.18 An award may be made public only with the consent of the parties to the dispute or as required by law.
- 14.19 In addition to making a final award, the arbitrator may make interim, interlocutory, or partial orders and awards.
- 14.20 If the parties settle the dispute before an award is made, the arbitrator shall terminate the arbitration and, if requested by all parties, may record the settlement in the form of an award on agreed terms. The arbitrator is not obliged to give reasons for such an award.
- 14.21 If in the opinion of the arbitrator the continuation of the proceedings becomes unnecessary or impossible for any other reason, the arbitrator shall inform the parties of its intention to terminate the proceedings. The arbitrator shall thereafter issue an order terminating the arbitration,

- 14.22 Confidential information disclosed during the proceedings by the parties or by witnesses shall not be divulged by the arbitrator. Unless otherwise agreed by the parties, or required by applicable law, the members of the arbitrator shall keep confidential all matters relating to the arbitration or the award.
- 14.23 The members of the arbitrator shall not be liable for any act or omission in connection with any arbitration conducted under these rules, except that they may be liable for the consequences of conscious and deliberate wrongdoing.

Costs of Mediation and Arbitration

[Section 34 (1) (f) of the Gas Act]

- 15 As provided for in section 34 of the Act -
- 15.1 The Energy Regulator may charge fees for mediation and arbitration services. Such fees must be-
- 15.1.1 sufficient to recover all or part of the costs incurred by the Energy Regulator including, if applicable, the costs of a professional person contemplated in section 30(2)(a) of the Act; and
- 15.1.2 paid by one or more of the parties to the dispute as is determined by the mediator or arbitrator concerned taking into account the circumstances of the dispute.
- 15.2 Fees to be paid by a party to a dispute mediated or arbitrated by the Energy Regulator or a person appointed by the Energy Regulator must be paid within 30 calendar days of receipt of an invoice therefore unless the Energy Regulator has determined otherwise.

Rendering of Information to the Energy Regulator by Licensees

[Section 34 (1) (h) and 21 (1) (h) of the Gas Act]

- 16 As provided for in sections 21 and 34 of the Act -

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- 16.1 Licensees must submit to the Energy Regulator the following information, in addition to any other information required:
- 16.1.1 detailed annual accounts consisting of a balance sheet, income statement and cash flow statement for each licensed gas facility and activity;
 - 16.1.2 an updated plan of the distribution network to the Energy Regulator and details of availability for public inspection;
 - 16.1.3 the annual volume, average charges and name and address for each of its customers consuming less than 10 million gigajoules per annum for that year.
The charge data supplied by the trading licensee must:
 - 16.1.3.1 be limited to piped gas;
 - 16.1.3.2 reflect actual prices and tariffs and any other charges paid by the end-consumer excluding taxes;
 - 16.1.3.3 include meter rental, standing charge and the initial installation charge to the customer where applicable;
 - 16.1.3.4 be disaggregated on a calendar monthly basis; and
 - 16.1.3.5 be reported in Rands per GigaJoule.
- 16.2 Information rendered under sub-regulation 16.1 must be submitted annually to the Energy Regulator within three months of the end of the Regulator's financial year.

| Regulations | | Gas Act Cross Reference | |
|---|---|-------------------------|---------------|
| Section No | Item | Section | Section 34(1) |
| 1. | Definitions | | |
| 2. | Criteria for Distribution | 1 | (b) |
| 3. | Eligible customers | 1 | (c) |
| 4. | Price Regulation Principles and Procedures for Distributors, Reticulators and all classes of customers | 4 (g) | (i) |
| 5. | Historically Disadvantaged South Africans Information | 21 (1) (b) | (j) |
| 6. | Third Party Access to Transmission | 21 (1) (d) | (k) |
| 7. | Third Party Access to Storage | 21 (1) (i) | (k) |
| 8. | Registration with the Energy Regulator: Information | 28 (2) | (h) |
| 9. | Expropriations Proceedings | 32 (2) | (g) |
| Regulations Addressed only in Section 34 (1) | | | |
| 10. | Rehabilitation of Land | 34 (1) (d) | (a) |
| 11. | Fair Administrative Action | 34 (1) (a) | (d) |
| 12. | Determination of Gas Specifications | | (e) |
| 13. | Mediation | | (f) |
| 14. | Arbitration | | (f) |
| 15. | Costs of Mediation and Arbitration | | (f) |
| 16. | Rendering of Information to the Energy Regulator by Licensees | 21 (1) (h) | (h) |