DEPARTMENT OF MINERALS AND ENERGY

PETROLEUM PIPELINES ACT, 2003

DRAFT REGULATIONS REGARDING PETROLEUM PIPELINES, LOADING FACILITIES AND STORAGE FACILITIES FOR PUBLIC COMMENT

The Minister of Minerals and Energy has under section 33(1), read with sections 1, 4(f), 20(1)*(d), (j), (n),* (2)*(a),* 32(2) and 33(2) of the Petroleum Pipelines Act, 2003 (Act No. 60 of 2003) made daft regulations in the Schedule, which are hereby published for public comment in terms of section 33(2)(b) of the Petroleum Pipelines Act, 2003 (Act No. 60 of 2003).

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Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and unless the context indicates otherwise-

"**abnormal change**" means a change in a cost that exceeds the normal change in that cost by more than 10% or the change that the Energy Regulator deems to be abnormal;

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

"**a servitude**" means a right by which property owned by one person is subject to a specified use by another;

"**environment**" means surroundings within which humans exist and that are made up of-

(a) the land, water and atmosphere of the earth;

(b) micro-organisms, plant and animal life;

(c) any part or combination of (a) and (b) and the inter-relationships among and between them; and

(d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being; as defined by the National Environmental Management Amendment Act, 2002 (Act No. 56 of 2002);

"**essential petroleum infrastructure**" means petroleum infrastructure that cannot reasonably be duplicated and without access to which suppliers cannot reasonably provide petroleum products to the market;

"**Historically Disadvantaged South Africans**" refers to all persons and groups who have been discriminated against on the basis of race, gender or disability, as contemplated in the Petroleum Products Act, 1977 (Act No. 120 of 1977), as amended;

"**incident**" means an unexpected sudden occurrence, including a major emission, fire or explosion leading to serious danger to the public or potentially serious pollution of or detriment to the environment, whether immediate or delayed;

"**machinery**" has the meaning assigned to it in the Occupational Health and Safety Act, 1998 (Act No. 85 of 1998);

"**management**" means, unless the context implies otherwise, the owner, controller or managing company of a petroleum pipeline, loading facility and/or storage facility;

"**minimum batch size**" means a minimum parcel size that can be practically transported in a multi-product pipeline without causing excessive mixing of products being transported in that pipeline;

"**normal petroleum pipeline market operation**" means normal operation of a new pipeline that would result in the utilisation of at least 80%, by volume, of its design capacity for the first five (5) years of its operation, assuming the projected demand or supply does not change drastically due to additional investment in the South African liquid fuels supply chain;

"**petroleum infrastructure**" means petroleum pipelines, loading facilities and storage facilities;

"**published government policy**" means any gazetted, approved, written or verified statement by a duly mandated Department of Minerals and Energy official;

"**reserve capacity**" means the additional or excess capacity in an essential pipeline that has been determined by the Minister of Minerals and Energy as the strategic minimum additional c apacity required to ensure the implementation of the stated security of supply policy for petroleum products in the market or part thereof;

"**security of supply policy**" means any gazetted, approved, written or verified statement, by a duly mandated Department of Minerals and Energy official, that pronounces on issues and matters that pertain to the sustained and stable supply of petroleum products to the market;

"**the Act**" means the Petroleum Pipelines Act, 2003 (Act No. 60 of 2003);

"the **department**" means the Department of Minerals and Energy;

"**the Energy Regulator**" means the National Energy Regulator of South Africa (NERSA) as established by section 3 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004).

Scope of Regulations

2. These regulations apply to petroleum pipelines, loading facilities and storage facilities with regard to -
   (a) fair administrative action;
   (b) rehabilitation of land;
   (c) mediation and arbitration;
   (d) expropriation procedures;
   (e) rendering of information;
   (f) mechanisms to promote historically disadvantaged South Africans;
   (g) liaison between licensees and local authorities;
   (h) licensing;
   (i) facilitation of third party access; and
   (j) setting or approval of tariffs.

CHAPTER 1

CONSTRUCTION LICENCES

Lodging of a construction licence application

3. An application for a construction licence must-
   (a) be made in a manner contemplated in section 16 of the Act; and
   (b) clearly indicate with appropriate justification if the application is for essential petroleum infrastructure.

Acceptance of construction licence application

4. The Energy Regulator must accept an application properly made in terms of section 16 of the Act.

Notice of application for a construction licence

5. When an application for a licence contemplated in regulation 3 is accepted, the applicant must comply with section 17 of the Act.

Evaluation of construction licence application

6. In evaluating an application for a licence, the Energy Regulator must -

   (a) give effect to section 2 of the Act;

   (b) give effect to the Liquid Fuels Charter as provided for in the Petroleum Products Amendment Act, 2003 (Act No. 58 of 2003); and

   (c) comply with sections 3 and 4 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) and regulation 22.

Conditions of a construction licence

7. (1) The Energy Regulator may impose licence conditions within the framework that is contemplated in section 20 of the Act; and

   (2) Licensees must, on each anniversary of the commencement of the licence, submit to the Energy Regulator a report on-

   (a) the progress of the construction;

   (b) any deviations from the plan or schedule; and

   (c) any anticipated deviations from the plan or schedule.

Expropriation procedures and timelines

8. (1) Applications in terms of section 32(1) of the Act must be made in writing to the Energy Regulator stating -

   (a) the reason for the request;

   (b) evidence of attempts to acquire the land or right in, over or in respect of such land, by agreement with the owner;

   (c) reasons for failures to reach agreement with the owner(s) of the land;

   (d) reasons the land is required by the licensee;

   (e) reasons the acquisition of the land is in the public interest and will enhance the Republic of South Africa's petroleum pipeline infrastructure, loading facilities and storage facilities;

   (f) a plan of the project contemplated; and

   (g) specification of the proposed land required.

(2) Before considering an application for expropriation, the Energy Regulator must be satisfied that a voluntary agreement could not be reached between the applicant and the owner(s) of the land in question.

(3) If a voluntary agreement could not be reached, then the Energy Regulator must hold a public hearing as contemplated in regulation 22 to which the -

(a) the applicant; and

(b) the land owner(s) and if the land is leased, the lessee(s) of the land

must be invited in writing.

(4) The Energy Regulator may, at its discretion, recover all or part of the costs that it incurs in holding a hearing from the applicant or the owner of the land or both contemplated in sub-regulation (3).

(5) The Energy Regulator must make a determination on an application for expropriation. In making a determination, the Energy Regulator must consider -

(a) whether the planned facilities will improve the Republic of South Africa's petroleum infrastructure;

(b) the nature of the servitude or amendment to a servitude, including the nature and function of the petroleum infrastructure relating to the servitude or amendment to a servitude;

(c) whether or not any existing petroleum infrastructure can be used in order to obviate the need for a servitude;

(d) the probable duration of the need for such servitude;

(e) the impact of expropriation on the owner of the land from loss of use of the land as a result of the servitude being granted or amendment to a servitude;

(f) the nature and extent of the inconvenience or loss likely to be suffered as a result of the exercise of the rights under the servitude or amendment to servitude;

(g) the extent to which the land can reasonably be rehabilitated on termination of the servitude;

(h) 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;

(i) the public interest served by the petroleum infrastructure relating to the servitude or amendment to a servitude; and

(j) any other relevant facts and information.

(6) An expropriation award made by the Energy Regulator must be accompanied by a recommendation as to compensation.

(7) In making a recommendation on compensation, the Energy Regulator must consider sub-regulation (5).

(8) If the parties concerned do not accept the Energy Regulator's recommendation regarding compensation, an affected party may approach a court to determine the amount and the time and manner of payment of compensation.

(9) The Energy Regulator must make a decision on an expropriation application and the conditions thereof within 30 days after the completion of the public hearing considering the complexity of the matter.

(10) The acquisition, amendment, or cancellation of servitude by virtue of a decision of the Energy Regulator takes effect when the decision is noted in terms of the legislation applicable to the registration of title deeds.

(11) An owner of land, subject to a servitude granted by the Energy Regulator, may apply to the Energy Regulator for the cancellation of that servitude -

(a) if the relevant licence associated with the servitude is terminated;

(b) 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

(c) for any other lawful reason.

(12) The Energy Regulator may attach conditions to the award of a servitude including but not limited to:-

(a) the holder of a servitude will have 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 petroleum infrastructure or for any other purpose necessary for the effective use of that servitude;

(b) the holder of a servitude contemplated may in a reasonable manner and subject to any other applicable law-

(i) take from the land that is subject to the servitude any material or substance reasonably required for constructing, altering, replacing, maintaining or repairing any petroleum infrastructure or part thereof in respect of which the servitude has been acquired;

(ii) 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;

(iii) deposit on the land that is subject to the servitude any material or substance excavated or removed from the petroleum infrastructure in the reasonable exercise of the servitude; and

(iv) occupy, during the period of construction of the petroleum 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 -

(a) constructing camps or roads;

(b) constructing other buildings or structures; or

(c) installing machinery or equipment necessary for the construction of the petroleum infrastructure.

(c) the holder of a servitude must -

(i) maintain the servitude area to a safety, health and environmental standard state acceptable to the Energy Regulator;

(ii) maintain and repair the petroleum infrastructure within the servitude; and

(iii) maintain and repair access roads associated with the servitude.

CHAPTER 2

OPERATING LICENCES

Lodging of an operating licence application

9. An application for an operating licence must-
   - (a) be made in a manner contemplated in section 16 of the Act; and
   - (b) clearly indicate with appropriate justification if the application is for essential petroleum infrastructure.

Acceptance of an operating licence application

10. The Energy Regulator must accept an application that is properly made, in terms of section 16 of the Act.

Notice of application for an operating licence

11. When an application for a licence contemplated in regulation 9 is accepted, the applicant must comply with section 17 of the Act.

Evaluation of an operating licence application

12. In evaluating an application for a licence, the Energy Regulator must -
   - (a) give effect to section 2 of the Act;
   - (b) give effect to the Liquid Fuels Charter as provided for in the Petroleum Products Amendment Act, 2003 (Act No. 58 of 2003); and
   - (c) comply with sections 3 and 4 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) and regulation 22.

Conditions of an operating licence

13. (1) The Energy Regulator may impose licence conditions within the framework as contemplated in section 20 of the Act; and

    (2) Licensees must provide–

(a) information annually to the Energy Regulator on the total loading, storage and pipeline capacity owned, controlled or managed by the licensee as contemplated by regulation 18;

(b) access to uncommitted capacity in storage facilities to third parties in the manner contemplated by regulation 14;

(c) information on setting or approving tariffs for essential petroleum infrastructure as contemplated in regulation 15, where appropriate;

(d) information on the setting of tariffs for petroleum pipelines as contemplated by regulation 16;

(e) information on the approval of tariffs for petroleum loading facilities and storage facilities as contemplated by regulation 17; and

(f) information on the mechanisms in place in order to promote Historically Disadvantaged South Africans (HDSAs) as contemplated by regulation 19.

Third party access to storage facilities

14. (1) The licensee must publish daily, electronically, the total capacity, committed capacity and available capacity for the next 365 calendar days for each storage tank at each storage facility.

(2) The licensee must keep records of the information contemplated in sub-regulation (1) for a period of two years.

(3) The licensee must at the same time of each day measure the quantity of petroleum in each tank.

(4) The licensee must keep records of the information contemplated in sub-regulation (3) for a period of two years.

(5) The licensee must, on a monthly basis, forward to the Energy Regulator or to the Department, if required under any other Act, the information contemplated in sub-regulations (1) and (3) in an electronic format determined by the Energy Regulator.

(6) For the purposes of determining access to an essential storage facility, the Energy Regulator must-

(a) determine the capacity of the storage facility by considering global best practice for such facilities;

(b) establish the committed capacity by considering all contracted uses for the storage facility;

(c) make a determination on the appropriateness of the uses contemplated in sub-regulation (6)(b) for that type of facility; and

(d) make a determination of whether such use is not intended to keep other users from accessing the facility.

(7) The owner of the facility, unless the allocation is under dispute, must allocate uncommitted capacity.

(8) In the case that the allocation is disputed, the Energy Regulator must allocate the uncommitted capacity.

(9) The allocation mechanism for uncommitted capacity must be commercially reasonable and -

(a) be operationally reasonable;

(b) be on a first come, first serve basis;

(c) follow a use-it-or-lose-it principle; and

(d) be non-discriminatory as contemplated in section 21 of the Act.

(10) Notwithstanding sub-regulation (1), the Energy Regulator may, upon receipt of a complaint, determine uncommitted capacity in any other storage facility considering global best practice for the operation of such facilities and determine an allocation mechanism and grounds for refusal for that capacity.

(11) In determining the uncommitted capacity for storage facilities, the Energy Regulator must also consider-

(a) contractual commitments;

(b) type of storage facility; and

(c) whether or not capacity allocations are being used to limit access to the storage facilities.

(12) 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.

(13) All parties in third party access negotiations and transactions must not abuse a dominant position as contemplated in the Competition Act, 1998 (Act No. 89 of 1998).

(14) Storage licensees must lodge with the Energy Regulator their allocation mechanism within three months of being granted a licence.

(15) The allocation mechanism must be publicly available and comprehensive to enable potential customers to understand the procedure for obtaining access, enter and conclude negotiations. This allocation mechanism must include -

(a) a tariff schedule;

(b) contractual terms and conditions regarding use and payment;

(c) technical requirements for access to the storage facility and network; and

(d) the process to be followed when requesting access.

(16) Grounds for refusing access to uncommitted capacity must be limited to -

(a) insufficient uncommitted capacity;

(b) lack of technical feasibility; and

(c) operational and economical unreasonableness;

(17) Third party tariff for storage services, as contemplated in sub-regulation 1 may consist of-

(a) a commodity charge, reflecting a variable component; and

(b) a capacity charge, reflecting a fixed component.

Setting or approval of tariffs for essential petroleum infrastructure

15. (1) The Energy Regulator must determine the appropriate capacity and associated fixed costs of the pipeline that is required to meet normal market operational requirements.

(2) When setting or approving tariffs for essential petroleum infrastructure, the Energy Regulator must consider-

(a) security of supply policy and its objectives; and

(b) for planned or actual excess capital expenditure to secure reserve capacity in an essential petroleum infrastructure, the licensee's application for a different tariff on existing infrastructure operated by the licensee, in order to-

(i) smoothen the tariff increases over a particular period; and

(ii) promote infrastructure development.

(3) In the case of an essential pipeline, where the required new pipeline capacity has been deemed to be more than the normal petroleum pipeline market operation, the costs associated with the additional capacity must be-

(a) determined by the Energy Regulator;

(b) ring-fenced from costs that are deemed to be prudent, by the Energy Regulator, for the servicing of the normal petroleum pipeline market; and

(c) paid for via-

(i) a dedicated levy on petrol, diesel and jet fuel; or

(ii) an allocation from the fiscal.

Setting of tariffs for petroleum pipelines

16. (1) The Energy Regulator must set tariffs for petroleum pipelines in accordance with sections 28 (2) and (3) of the Act.

(2) In setting tariffs, the Energy Regulator must consider–

(a) distances over which petroleum products are or will be transported;

(b) minimum batch size;

(c) current and projected future demand of petroleum products;

(d) Government's security of supply policy objectives; and

(e) any other appropriate matter.

(3) When setting tariffs and charges, the Energy Regulator must ensure that the revenue generated from the normal market operation of the pipeline is adequate to-

(a) recover the costs associated with the efficient operation and maintenance of the pipeline, in the year in which they are incurred; and

(b) compensate investors for efficient investment and working capital at the rate that is commensurate with associated risk.

(4) The costs contemplated in sub-regulation (3) must-

(a) be in respect of the service for which the tariffs have been applied for; and

(b) be determined such that costs associated with unregulated products or services are not included into the costs of regulated products or services.

(5) The rate of return that is allowed to investors must be determined by using the capital asset pricing methodology;

(6) The Energy Regulator may instruct a petroleum pipeline operator to spread the recovery of all costs contemplated in sub-regulation (4) over a reasonable period to prevent the recovery of such costs from resulting in an abnormal change in tariffs;

(7) The revenue that is required for normal market operation of the pipeline that is contemplated in sub-regulation (2) must be determined by adding-

(a) reasonable operating expenses;

(b) maintenance expenses;

(c) depreciation expenses;

(d) allowance for a reasonable return on working and net assets; and

(e) other applicable obligations;

(8) In determining depreciation expenses contemplated in sub-regulation (6), the Energy Regulator must, except in cases where deemed inappropriate-

(a) use a straight line methodology; and

(b) depreciate all assets over their useful life or over the term of the licence, whichever comes first.

(9) Licensees must provide sufficient information to the Energy Regulator, as required to set tariffs, in a manner that petroleum loading, pipeline and

storage activities of vertically integrated companies are managed separately with separate accounts and data and with no cross-subsidisation.

(10) Levies imposed by or under separate legislation may be passed on to customers in addition to the set tariffs.

(11) In the event of new investment in pipeline capacity, which would result in abnormal change in pipeline tariffs associate with a particular pipeline route when such investments are made, being required and where possible, the Energy Regulator must cause that-

(a) an increase in pipeline tariffs be introduce a few years before the new capacity expansion, in a manner that would prevent an abnormal increase in tariffs in the year that such investments are made; and

(b) monies, collected from the increase in the tariff contemplated in sub-regulation (11)(a), be put aside to cover initial costs of funding the new pipeline capacity in the first few years of the new pipeline capacity in a manner that will not result in abnormal increases in pipeline tariffs;

(12) The Energy Regulator must-

(a) for a period of between 3 and 5 years, adjust pipeline tariffs in a manner that seeks to increase efficiency of the operation of the pipeline; and

(b) at the end of period contemplated in sub-regulation (12)(a), or any other time if the need arises, conduct a comprehensive tariff setting exercise in the manner contemplated in sub-regulation (2).

Approval of tariffs for loading facilities and storage facilities

17. (1) The Energy Regulator must approve tariffs to be charged for loading facilities and storage facilities in accordance with sections 28 (2) and (3) of the Act.

(2) In approving tariffs, the Energy Regulator must also consider-

(a) minimum batch size;

(b) the capacity to take petroleum into a storage facility and the capacity to discharge petroleum from that facility;

(c) the throughput capacity of storage or loading facilities;

(d) current and estimated future demand of petroleum products; and

(e) any other appropriate matters.

(3) When approving tariffs and charges, the Energy Regulator must ensure that the revenue generated from the normal market operation of the storage or handling facility is adequate to-

(a) recover the costs associated with the efficient operation and maintenance of the storage or handling facility, in the year in which they are incurred; and

(b) compensate investors for efficient investment and working capital at the rate that is commensurate with associated risk.

(4) The rate of return that is allowed to investors must be determined by using the capital asset pricing methodology;

(5) The Energy Regulator may instruct an operator to spread the recovery of all cost contemplated in sub-regulation (2) over a reasonable period to prevent the recovery of such costs from resulting in an abnormal change in tariffs;

(6) The revenue that is required for normal operation that is contemplated in sub-regulation (2) must be determined by adding-

(a) reasonable operating expenses;

(b) maintenance expenses;

(c) depreciation expenses;

(d) allowance for a reasonable return on working and net assets;

(e) and applicable obligations.

(7) In determining depreciation expenses contemplated in sub regulation (6), the Energy Regulator must, except in cases where deemed inappropriate-

(a) use a straight line methodology; and

(b) depreciate all assets over the useful life of the assets or over the term of the licence, whichever is the smallest.

(8) Licensees must provide sufficient information to the Energy Regulator, as required to set tariffs, in a manner that the petroleum loading and storage

activities of vertically integrated companies are managed separately with separate accounts and data and with no cross-subsidisation.

(9) Levies imposed by or under separate legislation may be passed on to customers in addition to the tariffs set.

(10) In the event of new investment in storage or handling facilities capacities, which would result in abnormal change in storage or handling tariffs associate with a particular service when such investments are made, being required and where possible, the Energy Regulator must cause that-

(a) an increase in service tariffs be introduce a few years before the new capacity expansion, in a manner that would prevent an abnormal increase in tariffs in the year that such investments are made; and

(b) monies, collected from the increase in the tariff contemplated in sub-regulation (10)(a), be put aside to cover initial costs of funding the new storage or handling facility capacity in the first few years of the new storage or handling facility capacity in a manner that will not result in abnormal increases in service tariffs.

(11) The Energy Regulator must-

(a) for a period of between 3 and 5 years, adjust storage or handling facility tariffs in a manner that seeks to increase efficiency of the operation of the storage or handling facility; and

(b) at the end of period contemplated in sub-regulation (11)(a), or any other time if the need arises, conduct a comprehensive tariff setting exercise in the manner contemplated in sub-regulation (2)

(12) Licensees must provide the Energy Regulator with sufficient information as required by the Energy Regulator for it to approve tariffs.

(13) Levies imposed by or under separate legislation, may be passed on to customers in addition to the tariffs that have been approved.

(14) The Energy Regulator may require licensees to provide copies of contracts signed with customers.

(15) The Energy Regulator must ensure that costs -

(a) contemplated in sub regulation (2) are in respect of the service for which the tariffs have been applied for; and

(b) associated with unregulated or other services are not included in the costs contemplated in sub regulation (2).

Rendering of information to the Energy Regulator by licensees

18. (1) Licensees of petroleum pipelines that have had tariffs set or approved by the Energy Regulator must submit, in a manner a manner contemplated by regulations 16 and 17 and-

(a) in the case of pipelines the share of revenue derived from each customer; and

(b) in the case of storage and handling facilities average monthly volumes of petroleum products stored belonging-

(i) to the licensee; and

(ii) to third party customers, based on measurements taken at the same time each day in that month;

(2) A licensee must at or before the end of May each year forward, to the Energy Regulator the information contemplated in sub-regulations (1) for the preceding year ending 31 March.

(3) Licensees of loading facilities that have had tariffs approved by the Energy Regulator must, in addition to any other information required, submit annually-

(a) projected and actual after tax income for the same year from tariffs derived from third party access customers; and

(b) numbers of customers in the year.

(4) The licensee must, on or before the end of May each year, forward electronically to the Energy Regulator for the preceding year ending 31 March-

(a) a copy of any report made to an inspector in compliance with section 24 of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);

(b) and in an electronic format determined by the Energy Regulator the following information-

(i) the number of incidents of damage to licensed facilities caused by third parties and the resulting assessed damage costs; and

(ii) the encroachment on servitudes measured in square meters of servitude.

(5) Licensees must report to the Energy Regulator annually on their liaison with local authorities regarding excavations by third parties that could damage licensees' pipelines.

CHAPTER 3

GENERAL PROVISIONS

Mechanisms to Promote Historically Disadvantaged South Africans (HDSAs)

19. (1) Applicants for licences or existing licensees must provide information to the Energy Regulator regarding the commercial arrangements for the participation of historically disadvantaged South Africans in the licensees' activities as follows -

(a) number of shareholders from historically disadvantaged background and their respective shareholding in the company that holds/will hold the license;

(b) 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;

(c) numbers and positions of historically disadvantaged South Africans who hold senior management positions in the company that holds/will hold the license;

(d) the value and percentage of subcontracted work to companies with more than 50% ownership of historically disadvantaged South Africans;

(e) compliance with the Employment Equity Act, 1998 (Act No. 55 of 1998); and

(f) plans for and actions taken to develop historically disadvantaged South Africans in the petroleum sector through training, procurement and enterprise development.

(2) The Energy Regulator must administer the information provided in terms of sub-regulation (1) in such a manner as to facilitate ownership, control and / or management of operations of petroleum pipelines, loading and storage facilities.

Rehabilitation of land

20. (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 to 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.

(2) From time to time, licence conditions may incorporate by referral any current legislation on the rehabilitation of land used in connection with petroleum infrastructure, 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.

(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).

(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.

(5) The Energy Regulator must not consent to the termination of a financial security arrangement contemplated in sub regulation 20(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.

Liaison between licensees and local authorities

21. (1) Local authorities with petroleum pipelines that pass through their jurisdiction and licensees concerned must agree on a procedure whereby a municipality must inform the licensee whenever it issues authorizations for excavations and other work that could potentially damage a petroleum pipeline.

(2) Local authorities with petroleum pipelines that pass through their jurisdiction and licensees concerned must meet at least once a year and as necessary. At such meetings they must -

(a) review the emergency plan;

(b) review the number and causes of damage to petroleum pipelines in the preceding year;

(c) review the procedure contemplated in sub-regulation (1) including the contact details of their respective responsible persons;

(d) review the extent of encroachment on petroleum pipelines servitudes and the measures taken to prevent such encroachment;

(e) review the steps taken by the local authority to convey knowledge of the existence of petroleum pipelines servitudes to all relevant divisions of the local authority;

(f) review the local authorities future development plans in so far as they may impact on petroleum pipeline servitudes.

(3) The minutes of the meetings contemplated in sub-regulation (2) must be sent to the municipal manager concerned and the manager in charge of the licensed entity for their attention and action where necessary.

Fair administrative action

22. (1) The Energy Regulator must notify the public of its meetings at which matters contemplated in the Act will be considered;

(2) The Energy Regulator must in publishing a notice of a forthcoming meeting state whether that meeting will be -

(a) open to the public and conducted as a public hearing where interested and affected persons are offered the opportunity to submit their views and present relevant facts and evidence; or

(b) open to the public and conducted as a tribunal.

(3) If the Energy Regulator decides to hold a meeting as a public hearing then the Energy Regulator must comply with regulations made under the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) prescribing the manner in which public hearings must be conducted

(4) If an application for a licence or an amendment to a licence is the subject of a meeting held as a public hearing then the applicant or the licensee, as the case may be, must provide the Energy Regulator with a list of their potential customers or customers and other persons that the applicant believes will 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.

(5) The Energy Regulator must conduct public hearings in the evaluation of -

(a) applications for construction, conversion and operating licences;

(b) applications for approval of tariffs for storage and loading facilities;

(c) applications for tariffs for petroleum pipelines;

(d) applications by third parties for access to storage facilities, loading facilities and petroleum pipelines; and

(e) an amendment to any licence

in a manner contemplated in Regulation R1022 of 31 July 2002 made under the Promotion of Administrative Justice Act.

(6) If a licensee contravenes or fails to comply with a condition of a licence or any provision of the Act, the Energy Regulator, after serving a notice on such licensee in which the licensee is directed to comply with the condition or the provision of the Act within a reasonable period specified in the notice, must sit as a Tribunal to decide on the matter.

(7) In the case where the Energy Regulator has to sit as a Tribunal, it must conduct its hearings in public–

(a) in an inquisitorial manner;

(b) as expeditiously as possible; and

(c) in accordance with the principles enshrined in the constitution.

(8) Despite sub-regulation (7) the member of the Energy Regulator presiding at a Tribunal may exclude members of the public or specific persons or categories of persons, from attending the proceedings—

(a) if evidence to be presented is confidential information, but only to the extent that the information cannot otherwise be protected;

(b) if the proper conduct of the hearing requires it; or

(c) for any other reason that would be justifiable in civil proceedings in a High Court.

(9) The Energy Regulator must provide the participants and other members of the public reasonable access to the record of each Tribunal proceeding, subject to any ruling to protect confidential information.

(10) The following persons may participate in an Energy Regulator Tribunal proceeding in person or through a representative, and may put questions to witnesses and inspect any books, documents or items presented at the hearing-

(a) one or more employees of the Energy Regulator or any person appointed to represent;

(b) the applicant or licensee whose conduct forms the basis of the hearing; and

(c) any other person who has a material interest in the hearing, unless, in the opinion of the presiding member of the Tribunal, that interest is adequately represented by another participant.

(11) The member of the Energy Regulator presiding at a Tribunal may—

(a) direct or summon any person to appear at any specified time and place;

(b) question any person under oath or affirmation; or

(c) summon or order any person—

(ii) to produce any book, document or item necessary for the purposes of the hearing;

(iii) to perform any other act in relation to this Act; or

(iv) give directions prohibiting or restricting the publication of any evidence given to the Tribunal.

(12) The Tribunal member presiding at a hearing may determine any matter of procedure for that hearing with due regard to the circumstances of the matter.

(13) The Promotion of Administrative Justice Act shall be applicable to all administration action undertaken by the Energy Regulator.

(14) Subject to sub-regulation (15), each party participating in an Energy Regulator Tribunal must bear its own costs.

(15) If an Energy Regulator Tribunal takes place as a result of a complaint by a person other than the Energy Regulator or staff of the Energy Regulator and that Tribunal -

(a) has not made a finding against a respondent the Tribunal member presiding may award costs to the respondent and against the complainant who referred the complaint to the Energy Regulator; or

(b) has made a finding against a respondent, the Tribunal member presiding may award costs against the respondent and to a complainant who referred the complaint to the Energy Regulator.

Mediation

23. (1) The Energy Regulator must only mediate in disputes that fall within the ambit of the Act.

(2) 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.

(3) 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 –

(a) one or more members of the Energy Regulator; or

(b) to appoint a suitable person with no conflict of interest and acceptable to the parties to the dispute;

within ten working days of receipt of the application.

(4) At the commencement of mediation the mediator appointed must -

(a) inform the parties that he or she does not have any conflict of interest;

(b) inform the parties about the procedure and manner in which the mediation will be conducted;

(c) 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;

(d) secure agreement or approval, as applicable, from the parties to the dispute to sub-regulation (4)(a) to (c), before proceeding with the mediation.

(5) Any decision by a mediator will not be binding on the parties except those relating to the payment of fees by the parties.

Arbitration

24. (1) The Energy Regulator must only arbitrate in disputes that fall within the ambit of the Act.

(2) 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.

(3) When considering applications for arbitration services the Energy Regulator must determine whether to appoint as arbitrator –

(a) one or more members of the Energy Regulator; or

(b) a suitable person with no conflict of interest and acceptable to the parties to the dispute;

within ten working days of receipt of the application.

(4) At the commencement of arbitration the arbitrator appointed must -

(a) inform the parties that he or she does not have any conflict of interest;

(b) inform the parties about the procedure and manner in which the arbitration will be conducted;

(c) 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;

(d) inform the parties that any award made will be final and binding;

(e) secure agreement or approval, as applicable, from the parties to the dispute to sub-regulation (4)(a) to (d) before proceeding with the arbitration.

(5) 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 -

(a) the name and address of the person who will represent the party at the proceedings;

(b) a detailed description of the dispute;

(c) the relief or remedy sought and the amount claimed, if applicable.

(6) The respondent shall then submit a written statement of defence to the arbitrator and the claimant by a date determined by the Arbitrator.

(7) 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.

(8) Any party may be represented in 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.

(9) Subject to these Regulations, 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.

(10) Documents or information supplied to the arbitrator by one party shall at the same time be supplied by that party to the other party or parties.

(11) Each party shall have the burden of proving the facts relied on to support its claim or defence.

(12) At any time during the proceedings, the arbitrator may order parties to produce other documents, exhibits or other evidence it deems necessary or appropriate.

(13) 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) 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.

(15) 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.

(16) At the request of either party, the arbitrator shall give the parties an opportunity to question the expert at a hearing;

(17) Parties may present expert witnesses to testify on the points at issue during arbitration proceedings.

(18) 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 immediately.

(19) The arbitrator shall state the reasons for the award, unless the parties have agreed that no reasons need be given.

(20) An award may be made public only with the consent of the parties to the dispute or as required by law.

(21) In addition to making a final award, the arbitrator may make interim, interlocutory, or partial orders and awards.

(22) 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