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## GENERAL NOTICE

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### NOTICE 1420 OF 2008

#### DEPARTMENT OF MINERALS AND ENERGY

#### NATIONAL ENERGY REGULATOR OF SOUTH AFRICA

**Notice of intention to make rules in terms of the Petroleum Pipelines Act, 2003  
(Act No. 60 of 2003)**

The National Energy Regulator of South Africa has in terms of section 34(3) of the **Petroleum Pipelines Act, 2003 (Act No. 60 of 2003)** made the rules contained in the schedule and which are hereby published for public comment.

Comments must be submitted by **19 December 2008** and can be hand delivered at the offices of the National Energy Regulator of South Africa at **Kulawula House, 526 Vermeulen Street, Arcadia, Pretoria** OR sent by registered post to: **P O Box 40343, Arcadia, 0007** OR emailed to: [petroleumrules@nersa.org.za](mailto:petroleumrules@nersa.org.za)

Enquires can be directed to Executive Manager: Hydrocarbons Regulation. His contact details are:

Telephone: (012) 401 4600

Fax: (012) 401 4700

Email: [petroleumrules@nersa.org.za](mailto:petroleumrules@nersa.org.za)

 (ACTING)

**Smunda Mokoena**

**CHIEF EXECUTIVE OFFICER**

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## THE RULES

### DEFINITIONS

1. In these Rules 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

**“Act”** means the Petroleum Pipelines Act, 2003 (Act No. 60 of 2003) including regulations made in terms thereof;

**“amendment”** means to vary, suspend, remove or add a licence condition as contemplated in section 23 of the Act;

**“authorisation permit”** means a permit issued by the Energy Regulator in terms of these rules;

**“authorised person”** means a person who has been issued with a valid authorisation permit by the Energy Regulator;

**“day”** means a calendar day including Saturday, Sundays and Public Holidays as defined in the Public Holidays Act, 1994 (Act No. 34 of 1994)

**“Energy Regulator”** means the National Energy Regulator established in terms section 3 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004).

**“facility”** means a petroleum pipeline, storage facility and/or loading facility as defined in section 1 of the Act;

**“licensee”** means a holder of a licence issued by the Energy Regulator in terms of the Act.

## CHAPTER 1 LICENSING

### UNITS OF MEASURE

2. All measurements must be expressed in metric units.

### FORM AND CONTENT OF LICENCE APPLICATION

3. An application for a licence must be made in writing in the form specified in Annexure A and must contain the information specified therein.

### MANNER OF LICENCE APPLICATION

4. (1) An application for a licence must -
  - (a) be signed and dated by a mandated representative of the applicant or the applicant in a solemn declaration certified by a Commissioner of Oaths;
  - (b) be accompanied by a copy suitable for public viewing in accordance with rule 5 of these Rules;
  - (c) be delivered by hand at or sent by registered post to the addresses specified in Annexure A and may also be sent electronically to the email address specified in Annexure A;
  - (d) include any other information that the Energy Regulator may consider necessary or appropriate and is requested by the Energy Regulator during the process of considering a licence application.
- (2) An owner may, in one application, include more than one facility provided that-
  - (a) the facilities concerned -
    - (i) require the same type of licence; or
    - (ii) form an integrated system as contemplated in section 19(3) of the Act;
  - (b) the facilities concerned are wholly owned by the same owner(s);
  - (c) all required details in terms of these rules and the Act are provided for each facility.
- (3) The Energy Regulator must provide an applicant for a licence with a receipt recording -
  - (a) the date of receipt of the application;

- (b) the name of the person that received the application on behalf of the Energy Regulator; and
- (c) the tracking or reference number allocated to that application.

#### **CONFIDENTIAL TREATMENT OF INFORMATION IN A LICENCE APPLICATION**

5. (1) Any person who intends to apply for a licence in terms of the Act may consult with the Energy Regulator regarding confidential treatment of commercially sensitive information in a proposed licence application prior to lodging the application with the Energy Regulator.
- (2) An applicant for a licence may request confidential treatment of commercially sensitive information, and subject to the concurrence of the Energy Regulator such information may be withheld from publicly available copies of an application.
- (3) Where the applicant requests confidential treatment of commercially sensitive information, the applicant must -
- (a) submit the request, together with reasons thereof, to the Energy Regulator before publication of the notice in terms of rule 6 of these rules;
  - (b) provide the Energy Regulator with a copy of the licence application indicating which specific paragraphs and/or pages should be withheld from publicly available copies of the application; and
  - (c) only comply with rule 6 of these rules once a decision of the Energy Regulator regarding the request has been communicated to it.
- (4) The Energy Regulator must inform the applicant of its decision regarding the request for confidential treatment of commercially sensitive information within 30 days from receipt of the request.
- (5) An applicant may appeal against the decision of the Energy Regulator regarding the confidential treatment of commercially sensitive information in its application, in writing and within 30 days of the decision being communicated to it.

#### **PUBLISHING OF LICENCE APPLICATIONS AND CONTENTS THEREOF**

- 6 (1) An applicant must publish, on at least three different days and in any two of the official languages (one of which must be in English), a notice of a licence

application in at least two newspapers one of which must be distributed in the area of the proposed activity.

- (2) If the Energy Regulator deems it necessary when considering the specific characteristics of a licence application, it may direct that the advertisement must be published for a longer period or in more than two newspapers.
- (3) A notice of a licence application published in terms of section 17 of the Act must—
  - (a) state that the licence application will be accessible to members of the public—
    - i) from the date on which the notice is published until the closing date for objections which must be 30 days from the last date of publication of the notice;
    - ii) at the offices of the applicant and state the physical address, telephone number and the name of the contact person at the offices of the applicant ; and
    - iii) at the offices of the Energy Regulator at the address specified in Annexure A.
  - (b) contain a warning that objections received after the closing date may be disregarded;
  - (c) state that -
    - i) persons who wish to lodge objections must do so by completing the form at Annexure B to these rules; and
    - ii) any objection must be delivered by hand at or sent by registered post to the addresses specified in Annexure B and may also be sent electronically to the email address specified in Annexure B.

#### **FORM AND MANNER OF LODGING OBJECTIONS TO LICENCE APPLICATIONS**

7. (1) An objection to a licence application shall be in the form specified in Annexure B and shall contain the information specified therein.
- (2) An objection to a licence application must be –
  - (a) delivered by hand at or sent by registered post to the addresses specified in Annexure B and may also be sent electronically to the email address specified in Annexure B; and

- (b) received by the Energy Regulator on or before the closing date of objections mentioned in the notice published in terms of rule 6 of these rules.

#### **APPLICANT RESPONSE TO OBJECTIONS**

- 8. An applicant for a licence that wishes to respond to an objection to its application must—
  - (a) do so within 30 days of receipt of the objection to its licence application from the Energy Regulator; and
  - (b) do so in writing to the Energy Regulator stating the name of the objector and the date of the objection to which it is responding.

#### **PROCEDURE TO BE FOLLOWED IN CONSIDERING LICENCE APPLICATIONS**

- 9. (1) When evaluating licence applications, the Energy Regulator may perform investigations, collect necessary information, consult with national, provincial and municipal authorities, hold public meetings, and, take any other action it considers necessary in order to evaluate the application.
- (2) Based on the evaluation of the licence application, the Energy Regulator may request the applicant to modify the application.

#### **PROCEDURES TO BE FOLLOWED IN THE AMENDMENT OF A LICENCE**

- 10.(1) (a) A licensee or affected party may apply in writing to the Energy Regulator for an amendment of a licence.
- (b) An application for an amendment to a licence must be made in writing, and must state:
  - (i) the name of the applicant if different from the licensee;
  - (ii) the name of the licensee;
  - (iii) the type of licence and licence number, if known;
  - (iv) the type of amendment being applied for; and
  - (v) the reasons for the amendment.
- (c) All applications for the amendment of a licence must be accompanied by supporting documentation, where appropriate.
- (d) Where the application for amendment is from a person other than the licensee—
  - (i) the Energy Regulator must provide the licensee with a copy; and

- (ii) the licensee must respond to the application in writing to the Energy Regulator within 30 days from receipt of the application from the Energy Regulator.
- (2) Before amending a licence in terms of section 23(1) (c) of the Act, the Energy Regulator must comply with section 25 of the Act.
- (3) Before amending a licence in terms of section 23(1) (d) of the Act, the Energy Regulator must follow the process outlined in rule 15 of these rules.
- (4) Before amending a licence in terms of section 23(1)(f), the Energy Regulator must-
  - (a) declare an emergency;
  - (b) inform the licensee of the amendment; and
  - (c) inform the public of the amendment in any manner appropriate.

#### **FORM AND PROCEDURES TO BE FOLLOWED IN THE REVOCATION OF A LICENCE**

- 11.(1) An application for the revocation of a licence must be made in writing in the form specified in **Annexure C** and must contain the information specified therein.
- (2) If the reason for ceasing the licensed activity is that another person is willing and able to assume the rights and obligations of the licensee in accordance with the requirements and objectives of the Act -
  - (i) an undertaking to that effect made under oath by such other person must accompany the application for revocation of a licence; and
  - (ii) such other person must apply for a new licence in accordance with the Act and these rules.

## CHAPTER 2 INSPECTIONS AND INVESTIGATIONS

### INSPECTION OF AND ENQUIRY INTO LICENCED ACTIVITIES

- 12.(1) The Energy Regulator must issue an authorised person with an authorisation permit similar to the one and reflecting the information contained in **Annexure D**.
- (2) The period of validity of an authorisation permit contemplated in subrule 1 must expire:
  - (a) on the date specified therein; or
  - (b) within 12 months after the date of issue; or
  - (c) in the case of a NERSA employee, upon termination of service, whichever comes first.
- (3) An authorised person must, upon request by an owner or operator of the facility or activity being inspected, show his or her authorisation permit to any person requesting it.
- (4) Licensees must in accordance with the Act, permit an authorised person to enter and inspect any property on which the licenced activity is taking place.
- (5) Licensees must furnish the Energy Regulator with such information as may be necessary for the proper application of the Act.
- (6) A licensee may allow any authorised person to accompany it on any vehicular and airborne inspection of the licensee's property on which a licenced activity takes place.
- (7) A licensee must provide appropriate health and safety equipment to an authorised person conducting an inspection.
- (8) The owner or operator of a facility inspected and from which books, accounts or other documents were removed for further inspection by an authorised person, must within 30 days from receipt from the Energy Regulator of a notice indicating which books, accounts or other documents were removed, inform the Energy Regulator of information it regards as non-generic, confidential, personal, commercially sensitive or of a proprietary nature in the books, accounts or other document removed from its facilities.

**PROCEDURES TO BE FOLLOWED IN INVESTIGATIONS**

- 13.(1) Complaints in terms of section 31(1) of the Act must be lodged with the Energy Regulator within 3 years of the occurrence of the alleged non-compliance with the Act or licence conditions by a licensee.
- (2) Complaints contemplated in subrule 1 must comply with section 31(2) of the Act and must be lodged with the Energy Regulator -
  - (i) in writing by completing the form in **Annexure E** which form must be hand delivered or sent by registered post to the addresses mentioned in Annexure E; or
  - (ii) telephonically by calling this number: +27 12 401 4600.
- (3) Where a complaint is lodged telephonically, the complainant will be required to sign a statement recording the complaint.
- (4) On receipt of a complaint, the Energy Regulator must inform the licensee that is the subject of the complaint, of the nature of the complaint and direct the licensee to respond in writing to the allegations in the complaint within 30 days from the date of receipt of the complaint from the Energy Regulator.
- (5) The Energy Regulator may conduct investigations in accordance with the regulations made in terms of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) read together with rule 15 of these rules or may follow another process it deems to be appropriate in the circumstances.
- (6) The Energy Regulator may reimburse witnesses summoned by it in the course of an investigation for all associated costs within 30 days of receipt of proof of such costs by the Energy Regulator.

### **CHAPTER 3 GENERAL RULES**

#### **PUBLISHING OF INFORMATION RELATING TO UNCOMMITTED CAPACITY**

14. A licensee must, within 7 days of receipt of the decision from the Energy Regulator regarding uncommitted capacity available at its facilities, publish such a decision outside the gates of its facility and on its website.

#### **CONSULTATION WITH INTERESTED AND AFFECTED PARTIES**

- 15.(1)(a) The Energy Regulator must, where its administrative action might materially and adversely affect the rights or legitimate expectations of any person, call for written representations to adduce the relevant facts.
- (b) The call for written representations must be published on the Energy Regulator's web site and on a public notice board outside the Energy Regulator's offices.
- (c) 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.
- (d) For purposes of subrule 1, the Energy Regulator must give at least two week's notice of the deadline for written representations and must comply with section 3 of the Promotion of Access to Administrative Justice Act, 2000 (Act No. 3 of 2000).
- (2)(a) The Energy Regulator must, where its administrative action might materially and adversely affect the rights of the public, either -
- (i) follow a notice and comment procedure; or
  - (ii) hold a public hearing; or
  - (iii) follow a notice and comment procedure and hold a public hearing.
- (b) Where the Energy Regulator chooses to hold a public hearing, the Energy Regulator must :
- (i) comply with regulations 11, 12, 13, 14, 15 and 16 of the regulations made in terms of the Promotion of Access to Administrative Justice Act, 2000 (Act No.3 of 2000); and

- (ii) give notice of the public hearing as contemplated in regulation 11 of the regulations made in terms of the Promotion of Access to Administrative Justice Act, 2000 (Act No. 3 of 2000), at least 7 days before the date of the hearing.
- (c) Where the Energy Regulator chooses to follow a notice and comment procedure, the Energy Regulator must comply with chapter two of the regulations made in terms of the Promotion of Access to Administrative Justice Act, 2000 (Act No. 3 of 2000).

### **REPEAL OF RULES**

16. The following rules are hereby repealed in their entirety:
- (a) Petroleum Pipelines Act Rules, Part One: Licensing 2006 (Government Notice 290, in Government Gazette 28667 of 31 March 2006); and
  - (b) Petroleum Pipelines Act, Part Two: Inspections 2006 (Government Notice 962, in Government Gazette 29258 of 29 September 2006).

### **SHORT TITLE AND COMMENCEMENT**

17. These rules are called the Petroleum Pipelines Act Rules, 2008 and shall come into operation on the date of publication.



**NOTE:** The applicant may request confidential treatment of commercially sensitive information in terms of rule 5 of these rules and subject to the concurrence of the Energy Regulator such information may be withheld from publicly available copies of the application.

**SUBMIT THIS FORM TO-**

**POSTAL ADDRESS:**

The National Energy Regulator of South Africa  
Hydrocarbons Regulation – Licence Applications  
PO BOX 40343  
Arcadia, 0083  
Pretoria

**Or**

**Physical Address:**

The National Energy Regulator of South Africa  
Hydrocarbons Regulation – Licence Applications  
Kulawula House  
526 Vermeulen Street  
Arcadia  
Pretoria

You **may also email** the form to

[petroleumpipelines.licenceapplications@nersa.org.za](mailto:petroleumpipelines.licenceapplications@nersa.org.za)

**Enquiries:**

Contact: Executive Manager: Hydrocarbons Regulation  
Contact No.: (012) 401 4600  
Fax No: (012) 401 4700  
E-mail: [petroleumpipelines.licencenquiry@nersa.org.za](mailto:petroleumpipelines.licencenquiry@nersa.org.za)

**CHAPTER 1**  
**GENERAL INFORMATION**

***SECTION A: PARTICULARS OF APPLICANT***

Please provide the following -

- A1. Full name of applicant and its mandated representative;
- A2. Trading name of applicant if different from registered name;
- A3. Physical and postal address of principal place of business of the applicant;
- A4. Postal and physical address of registered office if different from principal place of business;
- A5. Telephone number of applicant;
- A6. Fax number of applicant;
- A7. E-mail address of applicant; and
- A8. Contact person at the applicant, including:
  - (a) designation
  - (b) family name
  - (c) first name
  - (d) telephone number
  - (e) fax number.

***SECTION B: DESIRED COMMENCEMENT DATE***

- B1. Desired date from which the licence (if granted) takes effect.

***SECTION C: ADDITIONAL INFORMATION***

- C1. Please provide any other relevant information that the applicant wishes to include with this application.

***SECTION D: LICENCE CONDITIONS***

- D1. Please provide your desired licence conditions in terms of section 20(1) of the Act.

**SECTION E: SOLEMN DECLARATION**

I (full names)..... Identity Number..... hereby declare that all information provided herein is within my personal knowledge and is true and correct.

Signed at ..... (place) on this.....day of ..... (month) ..... (year).

.....

**Signature**

I certify that the deponent:

(a) has acknowledged that she/he knows and understand the contents of this application form and its annexures, that she/he has no objection to taking the prescribed oath and that she/he considers the oath binding on her/his conscience; and

(b) has in the prescribed manner sworn that the contents of this application form and its annexures are true and signed same before me at .....(place) on this ..... day of.....(month) .....(year).

**COMMISSIONER OF OATHS**

Name: .....

Address: .....

Capacity: .....

## CHAPTER 2

### DOCUMENTS TO BE ATTACHED TO THIS APPLICATION

1. If the applicant is a natural person, a certified copy of the applicant's identity document and, in the case of a non - South African citizen, permanent residence permit or employment permit and proof of residence in South Africa, or proof of domicile in South Africa, as the case may be.
2. If the applicant is a local government body or other statutory body, a juristic person established in terms of an Act of Parliament or other legal body, attach a copy of the proclamation establishing such a body or state relevant legislation.
3. If the applicant is not a natural person, and is not contemplated in (2) above, a document stating –
  - (a) the title of legislation under which it is registered;
  - (b) the registration number given to it in terms of such legislation;
  - (c) In the case of companies, the names of the current directors and the ownership or shareholding structure including particulars of the shareholders;
  - (d) a certified copy of the identity document of the mandated representative authorised to make the application, if applicable; and
  - (e) proof of authorisation.
4. Documents demonstrating the administrative abilities of the applicant.<sup>1</sup>
5. Documents demonstrating the financial abilities of the applicant.<sup>3</sup>
6. Documents demonstrating the technical abilities of the applicant.<sup>3</sup>
7. Where the facility is owned by more than one person, the applicant must provide–
  - (a) details of the co-ownership arrangement and proof thereof;
  - (b) written mandate from each of the other owners authorising the applicant to apply for the licence on their behalf; and
  - (c) signed solemn declarations (Section E of this application form) from each of the owners.
8. A certified copy of the Record of Decision of the relevant environmental authorities in accordance with the National Environmental Management Act, 1998 (Act No. 107 of 1998) permitting the activity for which the licence is sought, if applicable or proof and

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<sup>1</sup> Only original or certified copies will be accepted by the Energy Regulator.

the status of such a permit application OR a solemn declaration (Certified by a Commissioner of Oaths) stating the applicant's plans and ability to comply with all applicable labour, health and environmental legislation.

9. List of applicable regulations, operating and technical standards, codes and specifications including those relating to safety, to be used in the activities for which this application is made; for example, American Society of Mechanical Engineers (ASME) Standards, American Petroleum Institute (API) Standards and European Norms (EN).
10. Details of the petroleum that will be handled in the facility for which this application is made.
11. Information required by regulations made in terms of the Act concerning mechanisms to promote historically disadvantaged South Africans.

**CHAPTER 3**  
**DETAILS OF APPLICATION**

Complete the appropriate form:

Construction of petroleum pipeline (PPL.p.F1)

Conversion of petroleum pipeline (PPL.p.F2)

Operation of petroleum pipeline (PPL.p.F3)

Construction of petroleum storage facility (PPL.sf.F1)

Conversion of petroleum storage facility (PPL.sf.F2)

Operation of petroleum storage facility (PPL.sf.F3)

Construction of petroleum loading facility (PPL.lf.F1)

Conversion of petroleum loading facility (PPL.lf.F2)

Operation of petroleum loading facility (PPL.lf.F3)