
GENERAL NOTICE

NOTICE 443 OF 2013

DEPARTMENT OF ENERGY

PUBLICATION FOR COMMENTS: GAS AMENDMENT BILL, 2013

I, Dipuo Elizabeth Peters, MP, Minister of Energy, having obtained Cabinet approval, hereby publish the Gas Amendment Bill, 2013 for broader public comments.

All interested persons and organisations are hereby invited to comment in writing on the proposed Bill within 60 calendar days from the date of publication of this Notice.

Comments should be directed to the Director-General of the Department of Energy for the attention of Mr Bulelani Ncanywa or Ms Lebogang Radise by-

- (a) Post to: Department of Energy
Private Bag X96
Pretoria,
0001;
- (b) Hand delivery to: Department of Energy
192 Visagie Street
Pretoria
0001; or
- (c) Email to: bulelani.ncanywa@energy.gov.za or
lebogang.radise@energy.gov.za .

Kindly provide the name, address, telephone number, fax number and email address of the person or organisation submitting the comments.

DIPUO ELIZABETH PETERS, MP
MINISTER OF ENERGY

REPUBLIC OF SOUTH AFRICA

GAS AMENDMENT BILL, 2013

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. of) (The English text is the official text of the Bill)

(MINISTER OF ENERGY)

[B-2013]

ce080912

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Gas Act, 2001, so as to provide for the promotion of the orderly development of the gas industry; to enhance the national regulatory framework; to provide for socio-economic and environmentally sustainable development; to provide for new developments and changing technologies in the gas sector; to facilitate gas infrastructure development and investment; to provide for cooperation between the private and public sectors; to strengthen enforcement and improve compliance; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 48 of 2001, as amended by section 15 of Act No. 40 of 2004

1. Section 1 of the Gas Act, 2001, is hereby amended—

(a) by the insertion before the definition of "chief executive officer" of the following definitions:

" 'Appeal Board' means the Energy Appeal Board established in terms of the National Energy Regulator Act;

'BBEE Act' means the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);"

(b) by the deletion of the definition of 'chief executive officer';

(c) by the insertion after the definition of "chief executive officer" of the following definitions:

" 'complainant' means a person who has submitted a complaint in terms of section 31;

'confidential information' means 'confidential information' as defined in the Competition Act, 1998 (Act 89 of 1998);"

(d) by the substitution for the definition of "customer" of the following definition:

" 'customer' means a person purchasing gas[,] or purchasing transmission, storage [or]; distribution [or]; liquefaction [or]; compression or re-gasification services;"

(e) by the insertion after the definition of "customer" of the following definition:

" 'day' means any day other than a Saturday, Sunday or Public Holiday, and for purposes of calculating any period relating to the

licensing framework, all the days between 16 December of one year and 15 January of the following year must be excluded;";

(f) by the substitution for the definition of "Department" of the following definition:

" **'Department'** means the Department of **[Minerals and] Energy**;"

(g) by the insertion after the definition of "Department" of the following definition:

" **'Director-General'** means the **Director-General of the Department**;"

(g) by the substitution for the definition of "distribution" of the following definition:

" **'distribution'** means the **[distribution of bulk gas supplies and the] transportation [thereof by pipelines] of gas and, if transported by pipeline, with a general operating pressure of more than 2 bar gauge and less than 15 bar gauge or by pipelines with such other operating pressure as the [National] Energy Regulator may permit according to criteria prescribed by regulation to points of ultimate consumption or to reticulation systems, or to both points of ultimate consumption or to reticulation systems, and any other activity incidental thereto, and 'distribute' [and], 'distributing' and 'distributor' have corresponding meanings;**"

(h) by the deletion of the definition of "distribution company";

(i) by the insertion after the definition of "eligible customer" of the following definition:

" **'Energy Regulator'** means the **National Energy Regulator established in terms of section 3 of the National Energy Regulator Act**;"

(j) the substitution for the definition of "gas" of the following definition:

" **'gas'** means all hydrocarbon gases **[transported by pipeline]**, including natural gas, artificial gas, hydrogen rich gas, methane rich gas, synthetic gas, coal bed methane gas, liquefied natural gas **[,]** compressed natural gas, re-gasified liquefied natural gas **[,]** and liquefied petroleum gas, or any combination thereof :Provided that the liquefied petroleum gas is not stored for use as fuel within the ambit of the Petroleum Products Act, 1977 (Act No. 120 of 1977), or it is not stored or used in circumstances regulated under the Petroleum Pipelines Act, 2003 (Act No. 60 of 2003);"

- (k) by the deletion of the definition of "Gas Regulator";
- (l) by the insertion after the definition of "Gas Regulator" of the following definitions:

" **'infrastructure'** means any movable or immovable assets, including plant, equipment and any device or means, including auxillary installations, required for the transmission, distribution, storage, liquefaction, compression or re-gasification of gas;

'infrastructure company' means any transmission company, storage company, compression company or a re-gasification company;

'integrated energy plan' means the **'Integrated Energy Plan'** as defined in the National Energy Act, 2008 (Act No. 34 of 2008);"

- (m) by the substitution for the definition of "licensee" of the following definition:

" **'licensee'** means any person holding a valid licence granted by the **[Gas] Energy Regulator** in terms of this Act;"

- (n) by the substitution for the definition of "liquefaction" of the following definition:

" **'liquefaction'** means converting **[natural]** gas from a gaseous state to a liquid gas state, and "liquefy", "liquefied" and "liquefying" have corresponding meanings;";

(o) by the substitution for the definition of "mine" of the following definition:

" **'mine'** means **'mine'** as defined in the **[Minerals Act, 1991 (Act No. 31 of 1991) Mine Health and Safety Act, 1996 (Act No. 29 of 1996);**";

(p) by the substitution for the definition of 'Minister' of the following definition:

" **'Minister'** means the Minister of **[Minerals and] Energy;**";

(q) by the insertion after the definition of "Minister" of the following definitions:

" **'National Energy Act'** means the National Energy Act, 2008 (Act No. 34 of 2008);

" **'National Energy Regulator Act'** means National Energy Regulator Act, 2004 (Act No. 40 of 2004);

'open access' means access to infrastructure for any producer or eligible customer or distributor or reticulator from an infrastructure company.";

(r) by the substitution for the definition of "person" of the following definition:

" **'person'** means a natural person as well as a juristic person, which includes a body corporate, a partnership or association, or a trust as defined in section 1 of the Trust Property Act, 1988 (Act No. 57 of 1988);";

(s) by the insertion after the definition of "person" of the following definition:

" **'port'** means **'port'** as defined in section 1 of the National Ports Act, 2005 (Act No. 12 of 2005);";

(t) by the substitution for the definition of "price" of the following definition:

" **'price'** means the monetary charge for gas to a [**distributor, reticulator**] trader or [**final**] customer;"

(u) by the insertion after the definition of "price" the following definition:

" **'producer'** means any person who produces gas, whether within or outside the Republic of South Africa;"

(v) by the substitution for the definition of "re-gasification" of the following definition:

" **'re-gasification'** means converting liquefied [**natural**] gas to a gaseous state at a [**re-gasification plant**] land-based re-gasification plant, or on a floating re-gasification facility located in South African territorial waters or within a port, and "re-gasify", "re-gasified" and "re-gasifying" have corresponding meanings;"

(w) by the substitution for the definition of "reticulation" of the following definition:

" **'reticulation'** means the division of bulk gas supplies, with or without the intervention of a distributor and the transportation of bulk gas by pipelines with a general operating pressure of no more than 2 bar gauge to points of ultimate consumption, and any other activity incidental thereto, and "**reticulate**" and "**reticulating**" have corresponding meanings;"

(x) by the insertion after definition of "reticulation" of the following definition:

" **'road'** bears the meaning assigned to the term 'public road' in terms of section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);"

(y) by the substitution for the definition of "service" of the following definition:

" **'service'** means any **[service]** activity relating to the transmission, distribution, storage, trading, liquefaction, compression or re-gasification of gas;"

(z) by the substitution for the definition of "storage" of the following definition:

" **'storage'** means the holding of gas as a service in a transportable or stationary facility and any other activity incidental thereto, **[but excludes]** including the storage of gas in pipelines which are used primarily for the transmission and distribution of gas but excludes storage integral to liquefaction or re-gasification;"

(zA) by the insertion after the definition of "storage company" of the following definition:

" **'street'** includes any square or enclosed public place, the control or care of which is vested in any person or authority;"

(zB) by the substitution for the definition of "**tariff**" of the following definition:

" **'tariff'** means the monetary charge for gas services to **[any]** a trader or a customer;"

(zC) by the substitution for the definition of "trading" of the following definition:

" **'trading'** means the sale or purchase and sale of gas as a commodity by any person or any other activity incidental thereto, and any services associated therewith, excluding the construction and operation of liquefaction, re-gasification, transmission, storage and distribution facilities or systems, and **[trading services has a]** 'trade' and 'trader' have corresponding [meaning] meanings;"

(zD) by the substitution for the definition of "transmission" of the following definition:

" **'transmission'** means the bulk transportation of gas by pipeline at an average operating pressure of 15 bar gauge or above, supplied between a source of supply and a **[distributor, reticulator]** distribution facility, storage **[company]** facility or eligible customer premises, or any other activity incidental thereto, and "transmit" and "transmitting" have corresponding meanings"; and

(zE) by the substitution for the definition of "uncommitted capacity" of the following definition:

" **'uncommitted capacity'** means such capacity determined by the **[Gas]** Energy Regulator in a liquefaction, re-gasification, transmission, storage, compression or distribution facility as is not required to meet contractual obligations."

Amendment of section 2 of Act 48 of 2001

2. Section 2 of the of the Gas Act, 2001, is hereby amended—

(a) by the substitution for paragraphs (c), (d), (e) and (f) of the following paragraphs, respectively:

"(c) **[ensure]** promote the safe, efficient, economic and environmentally responsible transmission, distribution, storage, compression, liquefaction and re-gasification of gas;

(d) promote companies in the gas industry that are owned or controlled by historically disadvantaged South Africans **[by means of licence conditions so as to enable them to become competitive]** in accordance with the BBBEE Act";

- (e) **[ensure that] promote the equitable provision of gas** transmission, storage, distribution, trading, compression, liquefaction and re-gasification services **[are provided on an equitable basis and that the interests and needs of all parties concerned are taken into consideration] in the public interest**;
- (f) promote skills **[among employees] development and employment equity** in the gas industry;"
- (b) by the deletion of paragraph (g);
- (c) by the substitution for paragraph (h) of the following paragraph:
- "(h) **[promote] facilitate** the development of competitive markets for gas and gas services;" and
- (d) by the addition of the following paragraph:
- "(k) promote the optimal use of available gas resources."

Substitution of heading of chapter II of Act 48 of 2001

3. The following heading is hereby substituted for the heading of chapter II of the of the Gas Act, 2001:

"[NATIONAL] GAS [REGULATOR] REGULATION".

Substitution of section 4 of Act 48 of 2001

4. The following section is hereby substituted for section 4 of the Gas Act, 2001:

"Functions of Energy Regulator

4. (1) The Energy Regulator must, as appropriate in accordance with this Act—

(a) issue licences for—

(i) the construction of—

(aa) gas transmission facilities;

(bb) gas storage facilities;

(cc) gas distribution facilities;

(dd) gas compression facilities;

(ee) gas liquefaction facilities; or

(ff) re-gasification facilities;

(ii) the conversion of infrastructure into—

(aa) gas transmission facilities;

(bb) gas storage facilities;

(cc) gas distribution facilities;

(dd) gas compression facilities;

(ee) gas liquefaction facilities; or

(ff) re-gasification facilities;

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- (iii) the operation of—
- (aa) gas transmission facilities;
 - (bb) gas storage facilities;
 - (cc) gas distribution facilities;
 - (dd) gas compression;
 - (ee) gas liquefaction facilities; or
 - (ff) re-gasification facilities; and
- (iv) trading in gas;
- (b) regulate, facilitate and promote participation in the gas industry and ensure adherence by licensees, owners contemplated in section 28, and persons contemplated in section 15(3), with their statutory obligations under this Act;
- (c) prescribe rules for licence applications;
- (d) gather information relating to the production, transmission, storage, distribution, trading, compression, liquefaction and re-gasification of gas and may, subject to the provisions of section 29A, publish such information as prescribed;
- (e) set maximum prices in the prescribed manner;
- (f) set and monitor transmission, distribution, re-gasification, compression and storage maximum tariffs and take appropriate action when necessary to ensure that they are applied in a non-discriminatory manner as contemplated in section 22;
- (g) issue notices in terms of section 26(1) and, if necessary, take remedial action in terms of sections 26(2);

- (h) undertake investigations, enquiries and inspections into the activities of licensees, applicants and into any other suspicious activity and take appropriate action;
- (i) explore relocation of pipelines and the connection of customers to an already licensed area;
- (j) consult with the Department and other relevant government departments or institutions regarding any matter contemplated in this Act;
- (k) consult with gas regulatory authorities of other countries to promote and facilitate the construction, development and functioning of gas transmission, storage, distribution, compression, liquefaction and re-gasification facilities and services;
- (l) take decisions that are not at variance with Government policy;
- (m) make rules in accordance with section 34 (3); and
- (n) provide data to the Department for purposes of improved gas policy formulation.

(2) In performing its functions, the Energy Regulator may—

- (a) deal with any such matters as may be necessary to give effect to the objects of this Act;
- (b) perform any such activity incidental to the performance of its functions;
and
- (c) exercise any powers or perform any duties conferred or imposed on it under any law to the extent that it is not in conflict with this Act."

Substitution of heading of chapter III of Act 48 of 2001

5. The following heading is hereby substituted for the heading of chapter III of the principal Act:

"GAS [LICENCES] LICENSING AND REGISTRATION".

Amendment of section 15 of Act 48 of 2001

6. Section 15 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- "(1) No person may without a licence issued by the **[Gas] Energy Regulator—**
- (a) construct gas **[transmission, storage, distribution, liquefaction and re-gasification facilities or convert infrastructure into such facilities]** infrastructure or convert any other infrastructure into gas infrastructure;
- (b) operate gas **[transmission, storage, distribution, liquefaction or re-gasification facilities]** infrastructure; or
- (c) trade in gas.";
- (b) by the substitution for subsection (2) of the following subsection:
- "(2) **[Notwithstanding subsection (1), a]** A person engaged in an activity referred to in Schedule 1 is not required to apply for or to hold a licence to engage in such activity, but a person engaged

in an activity referred to in items 1, **[and]** 2 and 3 of that Schedule must register the operation as contemplated in section 28.";

- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

"The **[Gas]** Energy Regulator may—";

- (d) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

"(a) in accordance with section 29(1), determine whether any person is engaged in any of the activities requiring a licence as contemplated in subsection(1);"; and

- (e) by the substitution for subsection (4) of the following subsection:

"(a) **[Nothing in this Act precludes any]** A person is not precluded from discussing **[the]** a contemplated construction **[of,]** or conversion of infrastructure **[into, gas facilities]**, the operation thereof or the envisaged trading in gas with the **[Gas]** Energy Regulator **[prior to filing]** before applying for a licence **[application]**.

(b) The **[Gas]** Energy Regulator must, subject to section **[29(4)]** 29A (1), furnish a person contemplated in paragraph (a) with such information as may be necessary to facilitate the **[filing]** lodging of **[an]** the application; and

(c) The discussion as contemplated in paragraph (a) may not take place after the application has been lodged, and the Energy Regulator has issued written confirmation that the

application meets the specified requirements for consideration by the Energy Regulator.".

Amendment of section 16 of Act 48 of 2001

7. Section 16 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"[Application] Requirements for licence application";

(b) by the substitution for subsection (1) of the following subsection:

"(1) **[Any]** A person who **[has to apply]** applies for a licence in terms of section 15 must do so in the prescribed manner and form [and in accordance with the prescribed procedure].";

(c) by the substitution for subsection (2) of the following subsection:

"(2) An application contemplated in subsection (1) must include all the information required in the prescribed form and proof of payment of the prescribed licence application fee."; and

(d) by the substitution for subsection (3) of the following subsection:

"(3) The applicant may request confidential treatment of **[commercially sensitive information contained in an application]** certain information in accordance with the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), and, subject to concurrence by the **[Gas]** Energy Regulator [,] within the prescribed period, such information may be withheld by the Energy Regulator from publicly available copies of the application."

Amendment of section 17 of Act 48 of 2001

8. Section 17 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"[Advertising] Publication of notice of application for licence";

(b) by the substitution for subsection (1) of the following subsection:

"(1) When an application [is made**] for a licence is lodged as contemplated in section 16, the [**person**] applicant [**concerned**] must publish a notice of the application in the prescribed manner [**at least two newspapers circulating in the area of the proposed activity in any two official languages, one of which must be English**].";**

(c) by the deletion of subsection (2);

(d) by the substitution for subsection (3) of the following subsection:

"(3) The [advertisement**] notice as contemplated in subsection (1) must be published for such period or in such [**number of issues of a newspaper**] manner as may be prescribed."; and**

(e) by the addition of the following subsection:

"(4) The applicant may not publish the notice on the application until the Energy Regulator has taken a decision on the request contemplated in section 16(3)."

Insertion of section 17A in Act 48 of 2001

9. The following section is hereby inserted in the principal Act after section 17:

"Objection to licence application

17A. (1) A person who objects to a licence application contemplated in section 16 must do so in a prescribed manner.

(2) The Energy Regulator must, within 14 days of receipt of the objection, furnish the applicant with a copy of the objection and allow the applicant an opportunity to respond thereto.

(3) The applicant must provide the Energy Regulator with a response to the objection in the prescribed manner."

Amendment of section 18 of Act 48 of 2001

10. Section 18 of the principal Act is hereby amended—
(a) by the substitution for the heading of the following heading:

"Evaluation of application by Energy Regulator";

(b) by the substitution for the words preceding paragraph (a) of the following words:

"[Before] In considering an application for a licence in terms of this Act, the [Gas] Energy Regulator—";

(c) by the substitution for paragraph (a) of the following paragraph:

"(a) if it **[is of the view]** believes that the proposed construction of gas facilities or proposed provision of gas services should be altered to provide access to third parties, must inform the applicant of that **[view]** belief and request the applicant to supply reasons as to why the application should not be considered subject to the imposition of such condition;"

(d) by the deletion of paragraph (c); and

(e) by the substitution for paragraph (e) of the following paragraph:

"(e) must publish the criteria contemplated in section 19(2), if applicable, and must allow the applicant an opportunity to amend its application: Provided that nothing in this section shall be construed as preventing the Energy Regulator from acting in terms of paragraphs (a), (b) and (d) prior to considering an application for a licence."

Amendment of section 19 of Act 48 of 2001

11. Section 19 of the principal Act is hereby amended by—

(a) by the substitution for subsections (1), (2), (3) and (4) of the following subsections:

"(1) The **[Gas]** Energy Regulator must decide on an application in the prescribed manner within **[60]** 120 days—

- (a) after the expiration of the prescribed objection period contemplated in section 17(2)(d), if no objections have been received; **[or]**
- (b) after receiving the response of the applicant to objections as contemplated in section **[18(c)] 17A(3); or**
- (c) after receiving the additional information contemplated in section 18(d), if any, where this information is only received after the period contemplated in paragraph (a), and the response contemplated in paragraphs (b), has been received.

(2) The **[Gas]** Energy Regulator decides upon a licence application to establish **[a specified gas transmission pipeline, gas storage facility, liquefaction or re-gasification facility or to]**, convert or operate infrastructure **[into such facilities, or to operate such facilities]**, the **[Gas]** Energy Regulator shall satisfy itself that such application meets, inter alia, criteria **[specified]** prescribed by the Minister, which criteria must be based upon and must reflect—

- (a) the national interest;
- (b) the promotion of regional growth; or
- (c) any other social objective.

(3) The **[Gas]** Energy Regulator must provide the applicant with a copy of its decision **[as well as a list of the factors on which the decision was based]** summarising reasons, facts and evidence which clearly explain the factual and legal basis for such a decision.

(4) The **[Gas] Energy Regulator [must] may, as appropriate and permissible by circumstances of each case, issue separate or combined licences for—**

- (a) **the construction [of gas transmission, storage, distribution, liquefaction and re-gasification facilities] or the conversion of infrastructure [into such facilities];**
- (b) **operation of [gas transmission, storage or distribution facilities] infrastructure; and**
- (c) **trading in gas."; and**

(b) by the addition of the following subsections:

"(5) Without derogating from any other provisions of this Act, the Energy Regulator may issue a licence if it is satisfied that there is sufficient evidence that—

- (a) the applicant has the necessary organisational, financial and technical abilities for the proper performance of the duties associated with the licence applied for; and
- (b) the proposed infrastructure or activity is suitable for the proposed site, after having taken into account the potential socio-economic impact on the surrounding community.

(6) In considering the issuing of an application for a licence, the Energy Regulator must give effect to the objects of this Act.

(7) An applicant may in a prescribed manner, request the Energy Regulator to withdraw its licence application at any stage prior to finalisation in terms of this section."

Amendment of section 21 of Act 48 of 2001

12. Section 21 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The **[Gas]** Energy Regulator may impose licence conditions **[within]** that are not at variance with the following framework of requirements and limitations:

- (a) A licensee must carry out the construction, operation or trading activities for which the licence is granted;
- (b) **[licensees]** a licensee must provide information to the **[Gas]** Energy Regulator of the commercial arrangements regarding the participation of historically disadvantaged South Africans in the **[licensees' activities]** licensee's activity as prescribed by regulation and other relevant legislation;
- (c) the gas transmission, storage, distribution, trading, compression, liquefaction and re-gasification activities of vertically integrated companies must be managed separately with separate accounts and data and with no cross-subsidisation;
- (d) **[third]** interested parties must, in the prescribed manner, have access on commercially reasonable terms to uncommitted capacity in **[transmission pipelines]** gas infrastructure excluding liquefaction facilities;
- (e) interested parties must be allowed to negotiate changes with transmission companies in the routing, size and capacity of proposed pipelines in order to secure capacity for themselves;

- (f) interested parties must be allowed to negotiate with transmission companies for increases in compression of existing transmission pipelines in order to secure capacity for themselves and all pipeline customers must benefit equitably from reduced costs resulting from the increased volume;
- (g) transmission companies are not obliged to incur any additional expenditure to provide the changes referred to in paragraphs (e) and (f), and the total cost for the pipeline must be shared equitably between the transmission company and the parties requesting the change;
- (h) **[licensees]** a licensee must allow interconnections with the facilities of suppliers of gas, transmitters, storage companies, distributors, reticulators and eligible customers, as long as the interconnection is technically feasible and the person requesting the interconnection bears the increased costs occasioned thereby, which must be taken into account when setting their tariffs;
- (i) **[third]** interested parties must in the prescribed manner have access on commercially reasonable terms to uncommitted capacity in fixed storage facilities;
- (j) interested parties **[may]** must be allowed to negotiate with storage companies for changes in the capacity of storage facilities in order to secure capacity for themselves;
- (k) storage companies are not obliged to incur any additional expenditure to provide the changes contemplated in paragraph

- (j) and the total cost for the storage facility must be shared equitably between the storage company and the party requesting the change;
- (l) apart from direct sales via physical by-passes to eligible customers who may alternatively have access to the distribution network at the distributor's discretion, a distributor **[will] may** be granted an exclusive geographic area, but only for a particular range of specifications of gas determined by the **[Gas] Energy Regulator**;
- (m) a distributor **[will] may** be granted the construction, operation and trading licences for its exclusive geographic area **[.The construction and operation licences will be exclusive for the period of validity of such licences, and the trading licence will be exclusive for a period determined by the Gas Regulator];**
- (mA) The corresponding trading licence shall be valid for a period determined by the Energy Regulator but the operator *cum* trader shall remain the supplier of last resort for the period of the validity of the licence, and once the validity period has elapsed, the distributor must allow third parties to have access to its infrastructure;
- (n) an exclusive geographic area must be based on the **[distributor's] ability to supply all present and future potential [consumers] customers with gas at competitive prices and conditions, failing which the Energy Regulator may reduce the**

- exclusive geographic area or revoke the exclusivity granted to the distributor;
- (o) gas must be supplied by a licensed **[distributor]** operator cum trader within its exclusive geographic area to any person on request, if such service is economically viable;
- (p) maximum gas prices and tariffs for distributors, reticulators and all classes of **[consumers]** customers must be **[approved by the Gas Regulator where there is inadequate competition as contemplated in Chapters 2 and 3 of the Competition Act 1998 (Act No. 89 of 1998)]** set in a prescribed manner;
- (q) an advisory service with regard to the safe and efficient use, handling and storage of gas must be provided to customers other than eligible customers, by the trading licensee;
- (r) **[licensees]** a licensee must maintain **[their]** his or her facilities in a fully operative condition;
- (s) all customers in a licenced distribution area, except eligible customers **[and]**, reticulators and customers of reticulators, must purchase their gas from the distribution company licenced for that area;
- (t) the **[time]** period within which gas facilities will become operational shall be fixed; **[and]**
- (u) **[licensees]** a licensee must provide information necessary for the **[Gas]** Energy Regulator to perform its functions[.];
- (v) licensees must, in the event that they wish to terminate, relinquish or abandon a licensed activity, rehabilitate the site

that was used in connection with such activity in accordance with the requirements of the relevant national legislation on land rehabilitation;

(w) a licensee must tender and maintain financial security, as determined by the Energy Regulator, to serve as security for purposes of the land rehabilitation contemplated in paragraph (v), and such the financial security to be used by the Energy Regulator for the rehabilitation of the site, on failure of the licensee to do so;

(x) licensees must, at all times during the period of validity of their licences, comply with the legislation and standards regarding health, safety and environment ; and

(y) licensees may terminate the provision of gas services to their customers under compelling circumstances and in the interests of safety supply, and may reconnect the supply without undue discrimination.”;

(b) by the insertion after subsection (1) of the following subsection:

“(1A) The Energy Regulator may also impose any other license condition that may be required for the purposes of fulfilling the objectives of this Act.”; and

(c) by the substitution for subsection (2) of the following subsection:

“(2) (a) Any person aggrieved by a condition imposed by the [Gas] Energy Regulator in terms of [subsection (1)] this section may in the prescribed manner, apply to the [Gas] Energy Regulator to have the condition reviewed.

(b) If the aggrieved person is not the licensee the **[Gas] Energy** Regulator must inform the licensee regarding the application for review.

(c) Whenever there is an application for review in terms of paragraph (a), the **[Gas] Energy** Regulator **[must] may** conduct an investigation and may for that purpose summon witnesses to appear before it.

(d) At the conclusion of the investigation contemplated in paragraph (c), the Energy Regulator must make a decision in respect of the application for review, in accordance with section 24."

Amendment of section 22 of Act 48 of 2001

13. Section 22 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) **[Licensees]** A licensee may not discriminate between customers or classes of customers regarding access, tariffs, prices, conditions or service except for objectively justifiable and identifiable differences regarding such matters as quantity, transmission distance, length of contract, load profile, interruptible supply or other distinguishing feature approved by the **[Gas] Energy** Regulator."

Amendment of section 23 of Act 48 of 2001

14. Section 23 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) Any licence issued in terms of this Act in respect of operating a gas transmission, storage, distribution, liquefaction, compression or re-gasification facility or of trading in gas is valid for a period of 25 years or such longer period as the [Gas] Energy Regulator may determine."

(b) by the insertion after subsection (1) of the following subsections:

"(1A) A construction licence issued in terms of this Act is only valid for such period as may be determined by the Energy Regulator after taking into consideration such factors as may be relevant to it, including but not limited to the magnitude of the construction project concerned.

(1B) (a) Subject to timely payment of applicable licence fees, if any, in terms of the rules, the period of validity of any licence issued in terms of this Act commences on the date of issue appearing on the licence certificate concerned.

(b) If a licensee fails to pay the applicable licence fees within the prescribed period from the date of issue of any licence, the licence concerned shall be regarded as an invalid licence and the application for such licence shall be deemed not to have been granted."

(c) by the substitution for subsections (2) and (3) of the following subsections:

"(2) A licensee may apply to have his or her licence renewed at least two years before expiration of the original term of the licence.

(3) **[An]** Where appropriate and in accordance with the applicable licensing framework, an application for renewal **[must]** may be granted for such further period as the Energy Regulator may determine, but the **[Gas]** Energy Regulator may set new or different licence conditions.";

(d) by the insertion after subsection (3) of the following subsection:

"(3A) The application for renewal of licence must be made in the prescribed manner."; and

(e) by the substitution for subsection (4) of the following subsection:

"(4) **[A]** Subject to the provisions of section 25(1)(c), a licensee may not assign, cede or transfer its licence to another **[party]** person."

Amendment of section 24 of Act 48 of 2001

15. Section 24 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The **[Gas]** Energy Regulator may vary, suspend or remove any of the licence conditions, or may include additional conditions—".

Amendment of section 25 of Act 48 of 2001

16. Section 25 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"Revocation of licence [on application] by Energy Regulator";

(b) by the substitution for subsections (1) and (2) of the following subsections respectively:

"(1) The **[Gas]** Energy Regulator may revoke a licence on **[the]** application **[of a]** by the licensee if—

- (a) the licensed facility or activity is no longer required;
- (b) the licensed facility or activity is not economically justifiable; or
- (c) another person is willing and demonstrably able to assume the rights and obligations of the licensee concerned in accordance with the requirements and objectives of this Act, and a new licence is issued to such person.

(2) **[Licensees]** For the application contemplated in subsection (1), licensees must give the **[Gas]** Energy Regulator at least 12 months notice in writing of their intention to cease their licensed activities.";

(c) by the insertion after subsection (2) of the following subsection:

"(2A) The Energy Regulator may revoke a licence if—
(a) it is of the view that one or more of the circumstances listed in
subsection (1) exists;

(b) the licensed activity is being carried out in breach of a stipulated licence condition or a provision of this Act, and despite a notice contemplated in section 26(1), and it is considered inappropriate to invoke the provisions of section 24;

(c) the licence was issued on the basis of misrepresentation of material facts to the Energy Regulator by the applicant;

(d) it believes that the licensee is no longer in a position to perform the activity to which the licence relates; or

(e) the licensee is dissolved or wound up."; and

(d) by the substitution for subsection (3) of the following subsection:

"(3) The form and procedure to be followed in revoking a licence under subsection (1) and (2A) is as prescribed."

Substitution of section 26 of Act 48 of 2001

17. The following section is hereby instituted for section 26 of the principal Act:

"Compliance Notices

26. (1) The Energy Regulator may issue a compliance notice in a prescribed form and manner to a person whom the Energy Regulator believes, on reasonable grounds, that such person—

(a) has failed to comply with a provision of this Act;

(b) is engaged in an activity in a manner that is inconsistent with this Act;

or

(c) has failed to comply with a condition of a licence or registration.

(2) A compliance notice issued in terms of subsection (1) remains in force until—

(a) it is set aside by the Appeal Board or a court upon an appeal decision concerning the notice; or

(b) the Energy Regulator issues a compliance certificate.

(3) Any person issued with a compliance notice as contemplated in subsection (1) may apply to the Appeal Board in the prescribed manner and form to review or set aside the notice, within 15 days after receiving the notice or such longer period as may be allowed by the Appeal Board on good cause shown.

(4) The Appeal Board may, after considering any representations and other relevant information, confirm, modify or cancel all or part of the notice.

(5) If the Appeal Board confirms or modifies all or part of the notice, the applicant must comply with that notice as confirmed or modified, within the time period specified."

Repeal of section 27 of Act 48 of 2001

18. Section 27 of the principal Act is hereby repealed.

Amendment of section 28 of Act 48 of 2001

19. Section 28 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) An owner of an operation involving any of the following activities must register the operation with the **[Gas] Energy Regulator**—

- (a) The production, exportation or importation of gas; **[or]**
- (b) an activity referred to in items 1 **[and]**, 2 and 3 of Schedule 1; or
- (c) any other activity as may be prescribed from time to time.";

(b) by the substitution for subsection (2) of the following subsection:

"(2) The owner contemplated in subsection (1) must provide the **[Gas] Energy Regulator** with such information concerning the activities of the operation as may be prescribed."; and

(c) by the addition of the following subsection:

"(4) The Energy Regulator may—

- (a) in accordance with section 29(1), determine whether any person is engaged in any activity contemplated in subsection (1); and
- (b) if such person is not registered as required in terms of subsection (1), direct him or her to cease such activity.".

Insertion of section 28A in Act 48 of 2001

20. The following section is hereby inserted in the principal Act after section 28:

"Regulation of prices for distributors, reticulators and all classes of consumers

28A. (1) The Energy Regulator must set maximum tariffs or prices as contemplated in section 21 (1) (p), that may be charged by a licensee in a prescribed manner.

(2) A tariff or maximum price contemplated in subsection (1)—

(a) must be based on a systematic methodology applicable on a consistent and comparable basis which is fair, non-discriminatory, simple and transparent, predictable and stable, such as to promote access to affordable gas;

(b) becomes effective from the date set by the Energy Regulator; and

(c) may be adjusted by the Energy Regulator on review.

(3) The tariffs or maximum prices set by the Energy Regulator must enable the licensee to—

(a) recover the investment;

(b) operate and maintain the system; and

(c) make profit commensurate with the risk.

(4) The Energy Regulator must monitor the application of tariffs and maximum prices and take appropriate action when necessary to ensure that they are applied in a non-discriminatory manner and a licensee must provide information required by the Energy Regulator in this regard.

(5) A licensee may request the Energy Regulator to review its tariff or maximum price from time to time and may, as may be prescribed, submit a proposal to the Energy Regulator in this regard.

(6) If the Energy Regulator is satisfied that the proposed review is necessary, the Energy Regulator may review such tariff or maximum price."

Amendment of section 29 of Act 48 of 2001

21. Section 29 of the principal Act is hereby substituted for the following section:

"Entry [,] and inspection [and gathering of information] by [Gas] Energy Regulator

(1) For the purposes of this Act, any person authorised thereto in writing by the **[Gas] Minister or Energy Regulator** may—

(a) at all reasonable times enter any property on which a licensed activity is taking place and inspect any facility, equipment, machinery, book, account or other document found thereat;

[and]

(aA) at all reasonable times enter any property on which an activity that ought to be licensed in terms of section 15(1) is taking place or suspected to be taking place and inspect any facility, equipment, machinery, book, account or other document found thereat;

(aB) at all reasonable times enter any property on which any registered activity or any activity that ought to be registered in terms of section 28 is taking place or suspected to be taking place and inspect any facility, equipment, machinery, book, account or other document found thereat; and

(b) require any person to furnish the **[Gas] Minister or Energy Regulator** with such information as may be necessary for the proper application of this Act.

(1A) A person authorised in terms of subsection (1) may enter a private dwelling for entry and inspection as contemplated in subsection (1)(a), (aA) or (aB) only—

(a) with the consent of the owner or occupier; or

(b) if authorised to do so by a warrant issued in terms of subsection (1B).

(1B) The warrant contemplated in subsection (1A) may be issued by a judge or a magistrate if it appears from written information given by the inspector on oath or affirmation that there are reasonable grounds for believing that a contravention of this Act has been or is being committed within the area of jurisdiction of that judge or magistrate.

(1C) An inspector who enters and inspects any premises under this section must conduct the entry and inspection with strict regard for decency and order, and with regard to each person's right to dignity, freedom, security and privacy;

(1D) An inspector who removes anything from premises being searched, must—

(a) issue a receipt for it to the owner or person in control of the premises; and

(b) return it as soon as practicable after it has served the purpose for which it was removed.

(2) The **[Gas] Minister or Energy Regulator** may require that the accuracy of any information furnished in terms of subsection (1)(b) be verified on oath or by way of a solemn declaration.

(3) A person authorised by the **[Gas] Minister or Energy Regulator** as contemplated in subsection (1) must show the authorisation to any person requesting it.

[(4) No information obtained by the Gas Regulator in terms of this Act which is of a non-generic, confidential, personal, commercially sensitive or of a proprietary nature may be made public or otherwise disclosed to any person without the permission of the person to whom that information relates, except in terms of an order of the High Court.]”.

Insertion of section 29A in Act 48 of 2001

22. The following section is hereby inserted after section 29 of the principal Act:

"Handling of confidential information by the Energy Regulator

29A. (1) Notwithstanding anything to the contrary contained in this Act or any other law, the Energy Regulator may not make public or otherwise disclose to any person, information obtained in terms of this Act which is of a non-generic, confidential, personal, commercially sensitive or of a proprietary nature without the permission of the person to whom that information relates, except in terms of an order of the High Court.

(2) The Energy Regulator may not make public or otherwise disclose to any person, except for purposes of this Act, information acquired in the performance of its duties under this Act: Provided that the provisions of this subsection shall not be construed as preventing the Energy Regulator from using such information for purposes of any other law enforced by it, or from disclosing such information to any person in the exercise of its powers or during the performance of its duties under any Act from which such powers or duties are derived.

(3) Any request for information in the possession of the Energy Regulator under this Act must comply with the relevant provisions as

set out in the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).".

Substitution of section 30 of Act 48 of 2001

23. The following section is hereby substituted for section 30 of the principal Act:

"Voluntary resolution of disputes by [Gas] Energy Regulator

30. (1) (a) The [Gas] Energy Regulator may, with the [approval] written consent of the parties to a dispute, act as mediator or arbitrator in any matter concerning the trading of gas or the rendering of services where it considers that it would be appropriate to do so under the circumstances.

(b) When acting as an arbitrator, the [Gas] Energy Regulator must issue a decision on the matter that is not at variance with this Act or licence conditions.

(2) (a) The [Gas] Energy Regulator may, on request of the parties involved, appoint a person, suitable to the [Gas] Energy Regulator and such parties, to act as mediator or arbitrator on behalf of the [Gas] Energy Regulator in any matter contemplated in subsection (1).

(b) Any decision of an arbitrator so appointed must be regarded as being the decision of the [Gas] Energy Regulator.

(3) Any decision taken by the **[Gas] Energy Regulator** acting as arbitrator or by an arbitrator contemplated in subsection (2) is binding on the parties to the dispute."

Amendment of section 31 of Act 48 of 2001

24. Section 31 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"Investigations by **[Gas] Energy Regulator";**

(b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"[The Gas] Without in any way restricting powers conferred upon it elsewhere in this Act or other Acts, the Energy Regulator must conduct investigations into complaints by—";

(c) by the substitution for subsection (2) of the following subsection:

"(2) Notwithstanding subsection (1), the **[Gas] Energy Regulator may on own initiative conduct investigations into matters contemplated in subsection (1) but may not conduct investigations into disputes concerning breach of contract between a licensee and an eligible customer.";**

(d) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

"(b) a description of efforts made to resolve the dispute before resorting to the **[Gas] Energy Regulator."; and**

(e) by the addition of the following subsections:

- "(4) Except where the Energy Regulator, within its discretion, so permits, no complaint shall be investigated unless—
- (a) the complaint fully complies with the provisions of subsection (3) read with the applicable rule; and
- (b) the Energy Regulator is satisfied that the complainant has taken all reasonable steps to exhaust all other remedies and efforts contemplated in subsection 3(b).
- (5) The provisions of this section shall not affect any investigation under, or the performance of any duty or exercise of any power imposed by or conferred under any law."

Amendment of section 32 of Act 48 of 2001

- 25.** Section 32 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
- "Expropriation of land by [Gas] Energy Regulator";**
- (b) by the substitution for subsection (1) of the following subsection:
- "(1) In pursuit of the objects of this Act, the [Gas] Energy Regulator may expropriate land, or any right in, over or in respect of land on behalf of a licensee or an applicant for any gas [transmission, storage, distribution, liquefaction or re-gasification facilities] infrastructure, in consultation with the Minister and in accordance with section 25 of the Constitution.";**
- (c) by the substitution for subsection (3) of the following subsection:

- "(3) The **[Gas] Energy Regulator** may exercise the powers contemplated in subsection (1) only if it is satisfied that—
- (a) a licensee or an applicant is unable to acquire such land or a right in, over or in respect of such land by agreement with the owner; and
 - (b) the land or any right in, over or in respect of such land is reasonably required by a licensee or an applicant for purposes of a gas [transmission, storage, distribution, liquefaction or re-gasification facilities] infrastructure which is in the public interest or which will enhance the Republic's gas infrastructure."; and
- (d) by the addition of the following subsection:

"(4) The Expropriation Act, 1975 (Act No. 63 of 1975) shall apply to all expropriations under this Act, and any reference to a juristic person in that Act shall be construed as a reference to the Energy Regulator, and any reference in that Act to the Minister charged with the administration of the law by or under which such juristic person is established shall be construed as referring to the Minister as defined in this Act who shall in turn engage the Minister of Public Works for expropriation purposes in terms of the first-mentioned Act."

Insertion of section 32A in Act 48 of 2001

26. The following section is hereby inserted in the principal Act after section 32:

"Rehabilitation of land no longer required in connection with licensed activity

32A. Without derogating from the provisions of section 25(2), a licensee who intends to terminate, relinquish or abandon any licensed activity must comply with the rehabilitation procedure as prescribed."

Amendment of section 33 of Act 48 of 2001

27. Section 33 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) Subject to subsections (2) and (3), a licensee may lay and construct pipes for the distribution of gas under or over or along any such street or road, and may from time to time repair, alter or remove any pipes so laid or constructed within its licenced area of supply.";

(b) by the substitution for subsection (2) of the following subsection:

"(2) Before exercising a power contemplated in subsection (1)(a), a licensee must consult and coordinate with the authority in whose area of jurisdiction the street or road in question is situated, except in cases of emergency.";

(c) by the substitution for subsection (3) of the following subsection:

- "(3) A licensee must exercise **[a]** the power contemplated in subsection (1)(a)—
- (a) in accordance with a route and in terms of specifications approved by the authority concerned; **[and]**
 - (b) except in cases of emergency, under the supervision of the authority concerned~~[.]~~;
 - (c) in compliance with any applicable laws; and
 - (d) with demonstrable determination to complete exercising such power within a reasonable time."; and
- (d) the substitution for subsections (5) and (6) of the following subsections, respectively:
- "(5) Subject to subsection (6), any person **[authorized thereto in writing by]** in possession of the necessary written authorisation from either the Energy Regulator or a licensee may at all reasonable times enter any premises to which gas is or has been supplied—
- (a) in order to inspect, repair, replace or alter any **[pipe, meter, fitting, work and apparatus]** gas infrastructure belonging to such licensee;
 - (b) for the purpose of ascertaining the quantity of gas consumed; or
 - (c) where **[a]** gas supply is no longer required, for the purpose of removing any **[pipe, meter, fitting, work and apparatus]** gas infrastructure belonging to such licensee.
- (6) Any person entering **[a]** premises **[under]** in terms of subsection (5) must—

- (a) except in cases of emergency, make arrangements with the occupant or owner of the premises before entering such **[premises] premises**;
- (b) adhere to all reasonable security measures of the occupant or owner of the premises; and
- (c) exhibit **[his or her]** authorisation at the request of **[such] the** occupant or owner."

Insertion of sections 33A and 33B in Act 48 of 2001

28. The following sections are hereby inserted after section 33 of the principal Act:

"General obligations of licensee

33A. (1) The licensee shall, in respect of the areas for which they hold licences in terms of this Act—

(a) develop and maintain an efficient and economical pipeline system for the supply of gas; and

(b) subject to paragraph (a), comply with any reasonable request for such licensee—

(i) to connect to that system and supply gas by means of that system to any premises; or

(ii) to connect to that system a pipeline system operated by a person duly licensed or permitted to do so under this Act.

(2) No licensee shall effect any structural alteration, addition or reconstruction to the licensed facility, or extend the licensed facility, except, with the approval of the Energy Regulator granted on application by such licensee and on such conditions as the Energy Regulator may impose.

Appeals

33B. A person whose rights have been adversely affected by a decision of the Energy Regulator in terms of this Act may, within 30 days of the date on which the affected person became aware of the decision, appeal against that decision to the Appeal Board in accordance with the National Energy Regulator Act."

(2) A person who is aggrieved by a condition of a licence imposed by the Energy Regulator may apply for review as contemplated in section 21(2).

Amendment of section 34 of Act 48 of 2001

29. Section 34 of the principal Act is hereby amended—
(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) ensuring fair administrative action by the **[Gas] Energy Regulator** in terms of the Constitution, Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and any other applicable legislation;"

(b) by the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs respectively:

"(c) setting maximum qualifying thresholds and other requirements that must be met by a person in order to qualify as an eligible customer **[and the conditions under which such eligible customer may purchase gas from a supplier or trader];**

(d) the rehabilitation of land used in connection with **[the transmission, storage, distribution, liquefaction or re-gasification of gas or the trading therein]** any licensed activity, the provision of security for rehabilitation purposes and the composition and amount of such security;"

(c) by the substitution in subsection (1) for paragraphs (g), (h) and (i) of the following paragraphs, respectively:

"(g) the procedure to be followed **[at, and the time within which,]** for expropriations **[proceedings must be conducted];**

(h) the rendering of information to the **[Gas] Energy** Regulator;

(i) price and tariff regulation procedures and principles;"

(d) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

"(a) consult with the **[Gas] Energy** Regulator;"

(e) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

"The **[Gas] Energy** Regulator may make rules regarding—"

(f) by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs, respectively:

- "(a) the procedures to be followed at meetings of the **[Gas] Energy Regulator** relating to the regulation of the gas industry, including the preservation of confidentiality within the ambit of section 8(9)(a) of the National Energy Regulator Act;
- (b) the keeping of records by the **[Gas] Energy Regulator**";
- (g) by the substitution in subsection (3) for paragraph (e) of the following paragraph:
- "(e) the form and manner in which objections to licence applications must be lodged and the furnishing thereof to the applicant for **[his or her] the** response thereto";
- (h) by the substitution in subsection (3) for paragraph (h) of the following paragraph:
- "(h) the procedure to be followed in the review, variation, suspension, addition or removal **[or the revocation]** of licence conditions";
- (i) by the substitution in subsection (3) for paragraph (j) of the following paragraph:
- "(j) the procedures to be followed in investigations, including the summoning of witnesses, administering of oaths or affirmations and the payment of witness fees";
- (j) by the insertion in subsection (3) after paragraph (e) of the following paragraph:
- "(eA) the form, manner and procedure for withdrawal of licence applications";

(k) by the insertion in subsection (3) after paragraph (h) of the following paragraph:

"(hA) the form and procedure for revocation of licences by the Energy Regulator;"

(l) by the deletion of the words "and" at the end of paragraph (k); and

(m) by the addition in subsection (3) of the following paragraphs:

"(m) the conditions under which an eligible customer may purchase gas from a supplier or trader; and

(n) any other procedural matter."

Insertion of section 34A in Act 48 of 2001

30. The following section is hereby inserted in the principal Act after section 34:

"Offences

34A. (1) A person commits an offence if the person—

(a) fails or refuses to furnish the information contemplated in section 28(2), or knowingly furnishes false information in that regard;

(b) fails or refuses to furnish the information contemplated in section 29(1)(b) or furnishes false or incorrect information in that regard;

(c) obstructs or hinders any authorised personnel of the Energy Regulator in the discharge of their duties in terms of this Act and the rules;

- (d) does anything calculated to improperly influence any member or personnel of the Energy Regulator concerning any matter connected with an investigation;
- (e) does anything in connection with an investigation that would have been regarded as contempt of court if the proceedings had occurred in a court of law;
- (f) wilfully interrupts any proceedings or misbehaves in the place where any hearing of the Energy Regulator is being conducted in terms of this Act; or
- (g) fails to comply with a notice of Appeal Board.

(2) A person convicted of an offence stipulated in subsection (1) shall be liable to a fine determined by the Energy Regulator or to imprisonment for a period not exceeding 12 months, or to both such fine and imprisonment."

Insertion of section 36A in Act 48 of 2001

31. The following section is hereby inserted in the principal Act after section 36:

"Powers and duties of Minister

36A. (1) The Minister may—

- (a) undertake such management and development activities, including entering into contracts as may be necessary to organise tenders and to

facilitate the procurement process for the development, construction, commissioning and operation of gas infrastructure;

(b) purchase, hire or let anything or acquire or grant any right or incur obligations for or on behalf of the State or prospective tenderers for the purpose of transferring property or a right to a successful tenderer;

(c) apply for and hold such permits, licences, consents, authorisations or exemptions required in terms of or as may be required by any other law, for or on behalf of the State or prospective tenderers, for the purpose of transferring any such permit, licence, consent, authorisation or exemption to a successful tenderer;

(d) undertake such management activities and enter into such contracts as may be necessary or expedient for the effective establishment and operation of a privately and publicly owned gas infrastructure business;

or

(e) issue any guarantee, indemnity or security or enter into any other transaction that binds the State to any future financial commitment that is necessary or expedient for the development, construction, commissioning or effective operation of a public or privately owned gas infrastructure business, in consultation with the Minister of Finance.

(2) In exercising the powers under this section the Minister is not bound by the State Tender Board Act, 1968 (Act No. 86 of 1968).

(3) Nothing in this section shall be interpreted as prohibiting or preventing an organ of state from participating as envisaged in subsection

(1)(c): Provided that such participation is on commercial terms and in

accordance with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(4) The Minister may, in writing and on such conditions as he or she may determine, delegate any of his or her powers granted and duties imposed in terms of subsection (1), to the Energy Regulator or the Director-General.

(5) A power or duty so delegated must be exercised or performed in accordance with the directions of the Minister.

(6) A delegation made under subsection (4) may, in writing, be repealed, withdrawn or amended, but the repeal, withdrawal or amendment does not affect any right which may have accrued to a person as a result of the power exercised or duty performed before the delegation was repealed, withdrawn or amended.

(7) The Minister may override any decision taken by the Energy Regulator or the Director-General, subject to any rights that may have vested as a consequence of the delegation."

Transitional provisions

32. (1) Any person who, at the time of commencement of the Gas Amendment Act, 2013, (this Act) is involved in an activity for which a licence was not required in terms of the Gas Act must, within six months after the commencement of this Act, apply to the Energy Regulator for a licence in terms of the Gas Act.

(2) The Energy Regulator must grant the application

contemplated in subsection (1), unless the application does not comply with the Gas Act.

(3) The person contemplated in subsection (1) is, subject to that subsection, deemed to be a licensee in terms of the Gas Act, unless such person fails to apply for a licence as contemplated in subsection (1).

(4) Licence applications lodged prior to the commencement of this Act, and still not finalised on the commencement of this Act, must be processed and finalised in terms of the Gas Act, as if the Gas Act has not been amended."

Short title and commencement

33. This Act is called the Gas Amendment Act, 2013 and comes into operation on a date determined by the President by proclamation in the *Gazette*.

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