

REPUBLIC OF SOUTH AFRICA

GAS BILL

*(As amended by the Portfolio Committee on Minerals and Energy (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF MINERALS AND ENERGY)

[B 18D—2001]

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BILL

To promote the orderly development of the piped gas industry; to establish a national regulatory framework; to establish a National Gas Regulator as the custodian and enforcer of the national regulatory framework; and to provide for matters connected therewith.

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

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SCHEDULE 1

EXEMPTION FROM OBLIGATION TO APPLY FOR AND HOLD A LICENCE

CHAPTER I 20

DEFINITIONS AND OBJECTS

Definitions

- In this Act, unless the context indicates otherwise—
 - “**chief executive officer**” means the person appointed in terms of section 11(1);
 - “**customer**” means a person purchasing gas, or purchasing transmission, storage 25
or distribution or liquefaction or re-gasification services;
 - “**Department**” means the Department of Minerals and Energy;
 - “**distribution**” means the distribution of bulk gas supplies and the transportation
thereof by pipelines 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 Gas 30
Operator may permit according to criteria prescribed by regulation to points of
ultimate consumption or to reticulation systems, or to both points of ultimate
consumption and reticulation systems, and any other activity incidental thereto,
and “distribute” and “distributing” have corresponding meanings;
 - “**distribution company**” means any person distributing gas; 35
 - “**eligible customer**” means a customer who in the prescribed manner may buy gas
directly from suppliers without the intervention of a distribution company;
 - “**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, 40
liquefied petroleum gas or any combination thereof;
 - “**Gas Regulator**” means the National Gas Regulator established by section 3;
 - “**licensee**” means any person holding a licence granted by the Gas Regulator in
terms of this Act;
 - “**liquefaction**” means converting natural gas from a gaseous state to a liquid state; 45
 - “**mine**” means “mine” as defined in the Minerals Act, 1991 (Act No. 31 of 1991);
 - “**Minister**” means the Minister of Minerals and Energy;
 - “**person**” includes any organ of state as defined in section 239 of the Constitution;
 - “**prescribed**” means prescribed by regulation or by rules;
 - “**price**” means the charge for gas to a distributor, reticulator or final customer; 50
 - “**production**” means the recovery, processing, treating and gathering of gas from
wells in the earth up to the boundary of the mine, or the manufacture of synthetic
or artificial gas, or the manufacturing of any gases in the refining process up to the

- boundary of the factory, and any other activity incidental thereto, and “produce” and “producing” have corresponding meanings;
- “**re-gasification**” means converting liquefied natural gas to a gaseous state at a re-gasification plant;
- “**regulation**” means a regulation made under section 34(1); 5
- “**reticulation**” means the division of bulk gas supplies 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;
- “**rule**” means by a rule made under section 34(3); 10
- “**service**” means any service relating to the transmission, distribution, storage, trading, liquefaction or re-gasification of gas;
- “**specification**” means the chemical and physical composition, calorific values and Wobbe Index of the gas that conforms to recognised international standards and the pressure of the gas at point of entry to shared systems; 15
- “**storage**” means the holding of gas as a service and any other activity incidental thereto, but excludes storage of gas in pipelines which are used primarily for the transmission and distribution of gas;
- “**storage company**” means any person storing gas;
- “**tariff**” means the charge for gas services to any customer; 20
- “**this Act**” includes the regulations;
- “**trading**” means the purchase and sale of gas as a commodity by any person and any services associated therewith, excluding the construction and operation of transmission, storage and distribution systems, and “trading services” has a corresponding meaning; 25
- “**transmission**” means the bulk transportation of gas by pipeline supplied between a source of supply and a distributor, reticulator, storage company or eligible customer, or any other activity incidental thereto, and “transmit” and “transmitting” have corresponding meanings;
- “**transmission company**” means any person transmitting gas; 30
- “**uncommitted capacity**” means such capacity determined by the Gas Regulator in a liquefaction, re-gasification, transmission, storage or distribution facility as is not required to meet contractual obligations.

Objects of Act

2. The objects of this Act are to— 35
- (a) promote the efficient, effective, sustainable and orderly development and operation of gas transmission, storage, distribution, liquefaction and re-gasification facilities and the provision of efficient, effective and sustainable gas transmission, storage, distribution, liquefaction, re-gasification and trading services; 40
- (b) facilitate investment in the gas industry;
- (c) ensure the safe, efficient, economic and environmentally responsible transmission, distribution, storage, 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; 45
- (e) ensure that gas transmission, storage, distribution, trading, 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;
- (f) promote skills among employees in the gas industry; 50
- (g) promote employment equity in the gas industry;
- (h) promote the development of competitive markets for gas and gas services;
- (i) facilitate gas trade between the Republic and other countries; and
- (j) promote access to gas in an affordable and safe manner.

CHAPTER II

NATIONAL GAS REGULATOR

Establishment of Gas Regulator

3. The National Gas Regulator is hereby established as a juristic person.

Functions of Gas Regulator

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4. The Gas Regulator must, as appropriate, in accordance with this Act—
- (a) issue licences for—
 - (i) construction of gas transmission, storage, distribution, liquefaction and re-gasification facilities;
 - (ii) conversion of infrastructure into transmission, storage, distribution, liquefaction and re-gasification facilities;
 - (iii) operation of gas transmission, storage, distribution, liquefaction and re-gasification facilities; and
 - (iv) trading in gas;
 - (b) gather information relating to the production, transmission, storage, distribution, trading, liquefaction and re-gasification of gas;
 - (c) issue notices in terms of section 26(1) and, if necessary, take remedial action in terms of section 26(2);
 - (d) undertake investigations and inquiries into the activities of licensees;
 - (e) consult with government departments and other bodies and institutions regarding any matter contemplated in this Act;
 - (f) consult with government departments and gas regulatory authorities of other countries to promote and facilitate the construction, development and functioning of gas transmission, storage, distribution, liquefaction and re-gasification facilities and services;
 - (g) regulate prices in terms of section 21(1)(p) in the prescribed manner;
 - (h) monitor and approve, and if necessary regulate, transmission and storage tariffs and take appropriate action when necessary to ensure that they are applied in a non-discriminatory manner as contemplated in section 22;
 - (i) expropriate land or any right in, over or in respect of such land as is necessary for the performance of a licensee's functions;
 - (j) promote competition in the gas industry;
 - (k) promote the optimal use of available gas resources;
 - (l) take decisions that are not at variance with published Government policy;
 - (m) publish from time to time a list of other legislation applicable to the gas industry;
 - (n) perform any activity incidental to the performance of its functions;
 - (o) make rules in accordance with section 34(3); and
 - (p) exercise any power or perform any duty conferred or imposed on it under any law.

Constitution of Gas Regulator

5. (1) The Gas Regulator consists of five part-time members appointed by the Minister.

(2) The Minister must designate one of the members appointed under subsection (1) as chairperson of the Gas Regulator.

(3) If the chairperson is for any reason unable to perform his or her duties, the other members must choose another person from among themselves to act as chairperson until the chairperson can resume his or her duties or another chairperson is appointed by the Minister.

(4) (a) A member of the Gas Regulator holds office for a period of four years.

(b) The Minister may reappoint a member.

(c) If a member of the Gas Regulator ceases to hold office, the Minister may appoint another person in his or her place for the remainder of the term of office of that member.

(5) Members of the Gas Regulator must be paid for their services such remuneration and allowances as the Gas Regulator may determine with the approval of the Minister and the concurrence of the Minister of Finance.

Disqualifications and requirements regarding appointment to Gas Regulator

6. (1) No person may be appointed or remain as a member of the Gas Regulator if that person— 5

- (a) is not a South African citizen resident in the Republic of South Africa;
- (b) is an unrehabilitated insolvent;
- (c) has been convicted of an offence involving dishonesty; or
- (d) is in the employ of, or affiliated to, an organ of state in any sphere of 10 government, or has any conflict of interest in this regard.

(2) The Minister must appoint, as members of the Gas Regulator, persons who—

- (a) have adequate legal, technical, business, economic or other experience relevant to the transmission, storage or distribution of gas or trading in gas;
- (b) are collectively representative of South African society as a whole; 15
- (c) are committed and available to fulfill their role as members of the Gas Regulator; and
- (d) demonstrate impartiality and objectivity,

in such a manner that a fair balance between continuity and capacity building is achieved. 20

(3) Before appointing members to the Gas Regulator, the Minister must by notice in the *Gazette* call for nominations from members of the public.

(4) All members must—

- (a) upon appointment disclose if he or she is in the employ of or acts as a consultant to, or has any relationship with any person, firm, association or 25 company engaged in the exploration for gas, or the production, transmission, storage, distribution, liquefaction or re-gasification of gas or trading in gas, or has any pecuniary interest in any such firm, association or company;
- (b) upon appointment disclose if his or her spouse, life partner, child, business partner or associate or employer is in the employ of or acts as a consultant to, 30 or has any relationship with any person, firm, association or company engaged in the exploration for gas or the production, transmission, storage, distribution, liquefaction and re-gasification of gas or trading in gas, or has any pecuniary interest in any such firm, association or company; and
- (c) notify the Minister and the Gas Regulator when those interests change. 35

(5) A member must not at any time be present during the discussion of, or the making of a decision on, or take part in, any matter before the Gas Regulator in which that member or his or her spouse, life partner, child, business partner or associate or employer, other than the State, has a direct or indirect interest.

(6) If a member acquires or contemplates acquiring an interest contemplated in subsection (4)(a), such member must immediately in writing declare that fact to the Minister and the Gas Regulator. 40

Vacation of office and termination of appointment

7. (1) A member of the Gas Regulator must vacate his or her office if that member—

- (a) becomes of unsound mind; 45
- (b) has been absent from more than two consecutive meetings without leave of the chairperson for each absence;
- (c) resigns by written notification to the Minister;
- (d) materially breaches any duty imposed on him or her in terms of this Act; or
- (e) becomes disqualified from being a member on any of the grounds referred to 50 in section 6(1).

(2) The Minister may terminate the appointment of a member of the Gas Regulator if such member behaves in a manner contrary to the provisions of section 9.

Meetings of Gas Regulator

8. (1) (a) The Gas Regulator must meet at such times and places as may be determined 55 by the chairperson.

(b) The chairperson must call such meetings of the Gas Regulator as are necessary for the proper performance of its functions.

(2) The chairperson shall, upon a written request of the chief executive officer or two other members, convene a special meeting to be held within two weeks after the date of receipt of such request. 5

(3) Unless other procedures are prescribed, the chairperson of any meeting of the Gas Regulator must determine the procedures to be followed at such meeting.

(4) The quorum for any meeting of the Gas Regulator is a majority of its members.

(5) (a) The decision of the majority of the members present at a meeting constitutes a decision of the Gas Regulator. 10

(b) In the event of an equality of votes on any matter the person presiding at the meeting has a casting vote in addition to his or her deliberative vote.

(6) No decision taken by the Gas Regulator is invalid merely because of a vacancy on the Gas Regulator or because any person not entitled to sit as a member sat as such member at the time when the decision was taken if the rest of the members present at the meeting and entitled to sit as members at the meeting constituted a quorum and the decision was taken by a majority of those members present and entitled to vote. 15

(7) The Chief Executive Officer or, if unavailable, an employee of the Gas Regulator designated by the Chief Executive Officer, must attend all meetings of the Gas Regulator and has the right to speak, but not vote, at such meetings. 20

(8) (a) Any meeting of the Gas Regulator is open to the public unless confidential, proprietary or commercially sensitive information is tabled for discussion, in which case an affected person must convince the Gas Regulator as to why such information should not be disclosed to the public.

(b) If the Gas Regulator takes a decision in any other manner than at a formal meeting, such decision comes into effect immediately but must be reduced to writing, signed by a majority of the members and submitted for noting at the first formal meeting of the Gas Regulator following the decision. 25

(c) The Gas Regulator must cause a record of all of its proceedings to be kept.

Duties of members of Gas Regulator 30

9. Members of the Gas Regulator may exercise all their powers under this Act and must—

- (a) perform all their duties in terms of this Act;
- (b) act in a justifiable and transparent manner whenever the exercise of their discretion is required; 35
- (c) at all times act in the interest of the Gas Regulator and not in their own or sectoral interests;
- (d) act independently of any undue influence or instruction;
- (e) recuse themselves from and refrain from voting on or discussing any matter pending before the Gas Regulator in which they have a direct or indirect interest; and 40
- (f) act in a manner that is required and expected from the holder of a public office.

Decisions of Gas Regulator

- 10.** (1) Any decision of the Gas Regulator must be— 45
- (a) consistent with the Constitution and this Act;
 - (b) in the public interest;
 - (c) within the powers of the Gas Regulator, as set out in this Act;
 - (d) taken within a procedurally fair process in which all affected persons have the opportunity to submit their views and present relevant facts and evidence at their own expense to the Gas Regulator; 50
 - (e) based on facts and evidence that must be summarised and recorded with the decision;
 - (f) in writing; and
 - (g) explained clearly as to its factual and legal bases and the reasons therefor.

(2) Any decision of the Gas Regulator and the reasons therefor must be available to the public. 55

(3) Any person adversely affected by a decision of the Gas Regulator may bring such decisions under review by the High Court.

Personnel of Gas Regulator

- 11.** (1) The Gas Regulator must appoint a chief executive officer for the Gas Regulator.
- (2) Subject to the directions of the Gas Regulator, the chief executive officer is responsible for— 5
- (a) the day-to-day management of the affairs of the Gas Regulator; and
 - (b) administrative control over the employees appointed under subsection (3).
- (3) The chief executive officer may appoint employees, or contract with any person, to assist the Gas Regulator in the performance of its functions.
- (4) The chief executive officer and other members of the personnel of the Gas Regulator must be paid such remuneration, allowances, subsidies and other benefits as the Gas Regulator, with the approval of the Minister and the Minister of Finance, may determine. 10
- (5) Notwithstanding subsections (1) and (3), the Minister may determine that the Gas Regulator appoint or make use of persons employed or contracted by another licensing or regulatory authority falling under the Minister's jurisdiction. 15
- (6) Section 9 applies to any member of the personnel of the Gas Regulator, with the changes required by the context.

Funds of Gas Regulator

- 12.** The funds of the Gas Regulator consist of— 20
- (a) appropriations from the National Revenue Fund;
 - (b) levies imposed by or under separate legislation; and
 - (c) charges for dispute resolution and other services rendered.

Accounting by Gas Regulator

- 13.** (1) The Gas Regulator must perform its functions in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999). 25
- (2) The Gas Regulator must open one or more accounts in its name with one or more recognised financial institutions and deposit therein all money received from the sources contemplated in section 12.
- (3) The financial records of the Gas Regulator must be audited by the Auditor-General. 30
- (4) The financial year of the Gas Regulator starts on 1 April of one year and ends on 31 March of the following year.

Reporting by Gas Regulator

- 14.** The annual report for public entities required in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), must be accompanied by information on the following matters: 35
- (a) Licences granted, amended or withdrawn;
 - (b) regulations made and directives issued;
 - (c) the envisaged strategies of the Gas Regulator; 40
 - (d) the existing position and envisaged commercial developments with respect to the transmission, storage, distribution, liquefaction and re-gasification of gas and the gas trade;
 - (e) the position regarding health and safety in the industry; and
 - (f) such other matters as the Gas Regulator may deem necessary. 45

CHAPTER III

GAS LICENCES AND REGISTRATION

Activities requiring licence

- 15.** (1) No person may without a licence issued by the Gas Regulator— 50
- (a) construct gas transmission, storage, distribution, liquefaction and re-gasification facilities or convert infrastructure into such facilities;

(b) operate gas transmission, storage, distribution, liquefaction or re-gasification facilities; or

(c) trade in gas.

(2) Notwithstanding subsection (1), 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 of that Schedule must register the operation as contemplated in section 28. 5

(3) The Gas Regulator may—

(a) determine whether any person is engaged in any of the activities requiring a licence as contemplated subsection (1); 10

(b) direct any person engaged in any of the activities requiring a licence in terms of subsection (1) who is not in possession of the necessary licence to cease such activity.

(4) (a) Nothing in this Act precludes any person from discussing the contemplated construction of, or conversion of infrastructure into, gas facilities, the operation thereof or the envisaged trading in gas with the Gas Regulator prior to filing a licence application. 15

(b) The Gas Regulator must, subject to section 29(4), furnish a person contemplated in paragraph (a) with such information as may facilitate the filing of an application.

Application for licence 20

16. (1) Any person who has to apply for a licence in terms of section 15 must do so in the prescribed form and in accordance with the prescribed procedure.

(2) Any application contemplated in subsection (1) must include—

(a) the name, company number (if any) and principal place of business of the applicant; 25

(b) particulars of the owners or shareholder of the applicant if the applicant is not a natural person;

(c) documents demonstrating the administrative, financial and technical abilities of the applicant;

(d) a description of the proposed facility to be constructed or operated, or the proposed trading to be conducted, including maps and diagrams where appropriate; 30

(e) a general description of the type of customers to be served and the tariff or gas price policies to be applied;

(f) the plans and ability of the applicant to comply with all applicable labour, health, safety and environmental legislation; 35

(g) a detailed specification of the gas that will be traded under the licence; and

(h) such other particulars as may be prescribed.

(3) The applicant may request confidential treatment of commercially sensitive information contained in an application and, subject to concurrence by the Gas Regulator, such information may be withheld from publicly available copies of the application. 40

Advertising of application for licence

17. (1) When application is made for a licence as contemplated in section 16, the person concerned must publish a notice of the application in at least two newspapers circulating in the area of the proposed activity in any two official languages, one of which must be English. 45

(2) The advertisement must state—

(a) the name of the applicant;

(b) the object of the application; 50

(c) the place where the application will be available for inspection by any member of the public;

(d) the period within which any objections to the issue of the licence may be lodged with the Gas Regulator;

(e) the address of the Gas Regulator where any objections may be lodged; and 55

(f) that objections must be substantiated by way of an affidavit or solemn declaration.

(3) The advertisement contemplated in subsection (1) must be published for such period or in such number of issues of a newspaper as may be prescribed.

Particular information to be supplied by applicant

18. Before considering an application for a licence in terms of this Act, the Gas Regulator—

- (a) if it is of the view that the proposed construction of gas facilities or the proposed provision of gas services should be altered to provide access to third parties, must inform the applicant of that view and request the applicant to supply reasons as to why the application should not be considered subject to the imposition of such condition; 5
- (b) may direct the applicant to alter the plans for the proposed construction of gas facilities or the proposed provision of gas services in order to comply with applicable health, safety or environmental legislation; 10
- (c) must furnish the applicant with all substantiated objections contemplated in section 17(2)(f) in order to allow the applicant to respond thereto;
- (d) may request such additional information as may be necessary to consider the application properly; and 15
- (e) must publish the criteria contemplated in section 19(2), if applicable, and allow the applicant an opportunity to amend its application.

Finalisation of application

19. (1) The Gas Regulator must decide on an application in the prescribed manner within 60 days— 20

- (a) after the expiration of the 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).

(2) The Minister may direct that when the Gas Regulator decides upon a licence application to establish a specified gas transmission pipeline, gas storage facility, liquefaction or re-gasification facility or to convert infrastructure into such facilities, or to operate such facilities, the Gas Regulator shall satisfy itself that such application meets, inter alia, criteria specified by the Minister, which criteria must be based upon and must reflect— 25 30

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

(3) The Gas 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. 35

(4) The Gas Regulator must issue separate licences for—

- (a) the construction of gas transmission, storage, distribution, liquefaction and re-gasification facilities or the conversion of infrastructure into such facilities;
- (b) the operation of gas transmission, storage or distribution facilities; and
- (c) trading in gas. 40

Disposal of gas assets controlled by State

20. Whenever any state-controlled entity that acquired a licence pursuant to the provisions of section 19(2) sells any of its shares or any of its assets or part thereof, covered by such a licence, to any privately controlled entity, it shall do so by means of an open and transparent bidding procedure. 45

Conditions of licence

21. (1) The Gas Regulator may impose licence conditions within 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; 50
- (b) licensees must provide information to the Gas Regulator of the commercial arrangements regarding the participation of historically disadvantaged South Africans in the licensees' activities as prescribed by regulation and other relevant legislation;

- (c) the gas transmission, storage, distribution, trading, 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 parties must in the prescribed manner have access on commercially reasonable terms to uncommitted capacity in transmission pipelines; 5
 - (e) interested parties must be allowed to negotiate changes with transmission companies in the routing, size and capacity of proposed pipelines;
 - (f) interested parties must be allowed to negotiate with transmission companies for increases in compression of existing transmission pipelines and all pipeline customers must benefit equitably from reduced costs resulting from the increased volume; 10
 - (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; 15
 - (h) licensees 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; 20
 - (i) third parties must in the prescribed manner have access on commercially reasonable terms to uncommitted capacity in storage facilities;
 - (j) interested parties may negotiate with storage companies for changes in the capacity of storage facilities;
 - (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; 25
 - (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 be granted an exclusive geographic area, but only for a particular range of specifications of gas determined by the Gas Regulator; 30
 - (m) a distributor will 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; 35
 - (n) an exclusive geographic area must be based on the distributor's ability to supply present and future potential consumers at competitive prices and conditions; 40
 - (o) gas must be supplied by a licensed distributor within its exclusive geographic area to any person on request, if such service is economically viable;
 - (p) maximum prices for distributors, reticulators and all classes of consumers 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); 45
 - (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 must maintain their facilities in a fully operative condition; 50
 - (s) all customers in a licensed distribution area, except eligible customers and reticulators, must purchase their gas from the distribution company licensed for that area;
 - (t) the time period within which gas facilities will become operational must be fixed; and 55
 - (u) licensees must provide information necessary for the Gas Regulator to perform its functions.
- (2) (a) Any person aggrieved by a condition imposed by the Gas Regulator in terms of subsection (1) may in the prescribed manner apply to the Gas Regulator to have the condition reviewed. 60
- (b) If the aggrieved person is not the licensee the Gas 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 Regulator must conduct an investigation and may for that purpose summon witnesses to appear before it.

Non-discrimination

22. (1) Licensees 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 Regulator. 5

(2) The prohibition of discrimination referred to in subsection (1) applies to actions by licensees in favour of their related undertakings in particular. 10

Term of licence

23. (1) Any licence issued in terms of this Act is valid for a period of 25 years or such longer period as the Gas Regulator may determine.

(2) A licensee may apply to have his or her licence renewed. 15

(3) An application for renewal must be granted, but the Gas Regulator may set new or different licence conditions.

(4) A licensee may not assign its licence to another party.

Amendment of licence

24. (1) The Gas Regulator may vary, suspend or remove any of the licence conditions, or may include additional conditions— 20

(a) on application by the licensee;

(b) with the permission of the licensee;

(c) upon non-compliance by a licensee with a licence condition;

(d) if it is necessary for the purposes of this Act; or 25

(e) on application by any affected party.

(2) The procedure to be followed in varying, suspending, removing or adding any licence conditions is as prescribed.

Revocation of licence on application

25. (1) The Gas Regulator may revoke a licence on the application of a licensee if— 30

(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 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. 35

(2) Licensees must give the Gas Regulator at least 12 months notice in writing of their intention to cease their activities.

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

Contravention of licence

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26. (1) If a licensee contravenes or fails to comply with a condition of a licence or any provision of this Act, the Gas Regulator may serve 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.

(2) If a licensee fails to comply with a notice contemplated in subsection (1) the Gas Regulator may sit as a tribunal and, with due regard to section 10, decide on the matter and may impose a penalty of a fine not exceeding R2 000 000,00 per day for each day on which the contravention or failure to comply continues. 45

(3) The Gas Regulator must consider the severity of non-compliance in deciding the amount of any penalty. 50

(4) Any person adversely affected by a decision of the tribunal contemplated in subsection (2) may bring such decision under appeal to the High Court.

(5) The Minister may by notice in the *Gazette* amend the amount referred to in subsection (2) in order to counter the effect of inflation.

Revocation of licence by court

27. (1) The Gas Regulator may by way of application on notice of motion apply to the High Court for an order suspending or revoking a licence if there exists any ground justifying such suspension or revocation, such as failure of the licensee to carry out the construction, operation or trading activities for which the licence was granted. 5

(2) The court before which an application is made under subsection (1) may grant or refuse the application and may make such order as to costs and maintaining the services of the licensee as it may deem fit. 10

Registration with Gas Regulator

28. (1) An owner of an operation involving any of the following activities must register the operation with the Gas Regulator:

- (a) The production or importation of gas; or
- (b) an activity referred to in items 1 and 2 of Schedule 1. 15

(2) The owner contemplated in subsection (1) must provide the Gas Regulator with such information concerning the activities of the operation as may be prescribed.

(3) Any application for registration in terms of subsection (1) must be submitted in the prescribed form.

CHAPTER IV 20

GENERAL PROVISIONS

Entry, inspection and gathering of information by Gas Regulator

29. (1) For the purposes of this Act, any person authorised thereto in writing by the Gas 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 25
- (b) require any person to furnish the Gas Regulator with such information as may be necessary for the proper application of this Act.

(2) The Gas Regulator may require that the accuracy of any information furnished in terms of subsection (1) be verified on oath or by way of a solemn declaration. 30

(3) A person authorised by the Gas 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. 35

Voluntary resolution of disputes by Gas Regulator

30. (1) (a) The Gas Regulator may, with the approval of the parties to a dispute, act as mediator or arbitrator in any matter concerning the trading of gas or the rendering of services. 40

(b) When acting as arbitrator, the Gas Regulator must issue a decision on the matter.

(2) (a) The Gas Regulator may, on request of the parties involved, appoint a person, suitable to the Gas Regulator and such parties, to act as mediator or arbitrator on behalf of the Gas Regulator in any matter contemplated in subsection (1). 45

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

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

Investigations by Gas Regulator 50

31. (1) The Gas Regulator must conduct investigations into complaints by—

- (a) customers relating to the supply of gas;
- (b) customers relating to unreasonable or excessive prices or tariffs imposed by a licensee; and
- (c) any customer concerning unreasonable differences regarding the supply of gas or gas services by licensees. 5

(2) Notwithstanding subsection (1), the Gas Regulator may not conduct investigations into disputes concerning breach of contract between a licensee and an eligible customer.

(3) A complaint contemplated in subsection (1) must be submitted within the prescribed period and in the prescribed manner and be accompanied by— 10

- (a) supporting information; and
- (b) a description of efforts made to resolve the dispute before resorting to the Gas Regulator.

Expropriation of land by Gas Regulator

32. (1) In pursuit of the objects of this Act, the Gas Regulator may expropriate land, or any right in, over or in respect of land on behalf of a licensee for gas transmission, storage, distribution, liquefaction or re-gasification facilities in accordance with section 25 of the Constitution. 15

(2) The procedure to be followed in giving effect to subsection (1) must be prescribed.

(3) The Gas Regulator may exercise the powers contemplated in subsection (1) only if it is satisfied that— 20

- (a) a licensee is unable to acquire 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 for gas transmission, storage, distribution, liquefaction or re-gasification facilities which will enhance the Republic's gas infrastructure. 25

Rights of licensee in respect of premises or land belonging to others

33. (1) (a) Subject to subsections (2) and (3), a licensee may lay and construct pipes for the distribution of gas under or over any such street, and may from time to time repair, alter or remove any pipes so laid or constructed within its licenced area of supply. 30

(b) The licensee is responsible for any restoration necessary as a result of the acts referred to in paragraph (a).

(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 in question is situated, except in cases of emergency. 35

(3) A licensee must exercise a 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. 40

(4) Any pipe, meter, fitting, work or apparatus belonging to a licensee and lawfully placed or installed above or under any land or upon any premises not in the licensee's possession remain the property of and may be removed by such licensee.

(5) Subject to subsection (6) any person authorised thereto in writing by a licensee may at all reasonable times enter any premises to which gas is or has been supplied— 45

- (a) in order to inspect, repair, replace or alter any pipe, meter, fitting, work and apparatus belonging to such licensee;
- (b) 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 belonging to such licensee. 50

(6) Any person entering a premises under subsection (5) must—

- (a) except in cases of emergency, make arrangements with the occupant or owner of the premises before entering such 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 occupant or owner. 55

Regulations and rules

- 34.** (1) The Minister may, by notice in the *Gazette*, make regulations regarding—
- (a) ensuring fair administrative action by the Gas Regulator;
 - (b) criteria for distribution;
 - (c) the 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; 5
 - (d) the rehabilitation of land used in connection with the transmission, storage, distribution, liquefaction or re-gasification of gas or the trading therein, the provision of security for rehabilitation purposes and the composition and amount of such security; 10
 - (e) the determination of gas specifications;
 - (f) the procedure to be followed and fees to be paid in mediation and arbitration proceedings;
 - (g) the procedure to be followed at, and the time within which, expropriation proceedings must be conducted; 15
 - (h) the rendering of information to the Gas Regulator;
 - (i) price regulation procedures and principles;
 - (j) mechanisms to promote historically disadvantaged South Africans; and
 - (k) any other matter that may or has to be prescribed, or determined or provided for by regulations in terms of this Act. 20
- (2) Before promulgating regulations contemplated in subsection (1), the Minister must—
- (a) consult with the Gas Regulator;
 - (b) invite public comments on such regulations; and 25
 - (c) duly consider the comments.
- (3) The Gas Regulator may make rules regarding—
- (a) the procedures to be followed at meetings of the Gas Regulator;
 - (b) the keeping of records by the Gas Regulator;
 - (c) the form and manner, and contents of licence applications; 30
 - (d) the publishing of licence applications and the contents thereof;
 - (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 response thereto;
 - (f) the procedure to be followed in considering licence applications; 35
 - (g) the publishing of information relating to uncommitted capacity by the holders of transmission or storage licences and the publishing of prices for gas supplied to customers other than eligible customers by the holders of distribution licences;
 - (h) the procedure to be followed in the variation, suspension or removal or the revocation of licence conditions; 40
 - (i) the form in which registration must be lodged;
 - (j) the procedures to be followed in investigations, including the summoning of witnesses and the payment of witness fees;
 - (k) the inspection of and enquiry into the construction and operation of any gas facility or any trading in gas; and 45
 - (l) consultation with interested and affected parties.

Transitional provisions

- 35.** (1) Any person owning or operating gas facilities or trading in gas prior to the commencement of this Act must, within six months after the commencement, submit to the Gas Regulator an application for a licence in terms of this Act. 50
- (2) (a) The Gas Regulator must grant a licence contemplated in subsection (1), unless it finds that the applicant is unable or unwilling to own or operate gas facilities or to trade in gas in a manner consistent with the objectives and provisions of this Act.
- (b) Any licence issued in terms of paragraph (a) must for all purposes be regarded as a licence issued in terms of section 19. 55

Mozambique Gas Pipeline Agreement

36. (1) In this section, “the agreement” means the Mozambique Gas Pipeline Agreement, as it existed immediately before the date of commencement of this Act, entered into between the Minister, the Minister of Trade and Industry and Sasol Limited concerning the introduction of natural gas by pipeline from the Republic of Mozambique into the Republic. 5

(2) Despite anything to the contrary in this Act, the agreement binds the Gas Regulator until 10 years after natural gas is first received from Mozambique.

(3) From the date of the conclusion of the agreement, the terms of the agreement relating to the following matters constitute conditions of a licence issued in terms of section 19: 10

- (a) Exclusive rights and periods granted in respect of transmission and distribution of gas;
- (b) third party access to the transmission pipeline from Mozambique and to certain of Sasol’s pipelines; 15
- (c) prices charged by Sasol for gas;
- (d) Sasol’s obligation to supply customers, distributors and reticulators with gas; and
- (e) administration of the agreement.

(4) The Gas Regulator must formally issue licences to the entities contemplated in the agreement and may impose such conditions in respect of each licence in terms of this Act as are not contrary to the agreement. 20

Short title

37. This Act is called the Gas Act, 2001, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 25

SCHEDULE 1

EXEMPTION FROM OBLIGATION TO APPLY FOR AND HOLD A LICENCE

(Section 15(2))

1. Any person engaged in the transmission of gas for that person's exclusive use.
2. Small biogas projects in rural communities not connected to the national gas pipeline grid.
3. Gas reticulation and any trading activity incidental thereto.
4. Liquefied petroleum gas supplied from a bulk storage tank or cylinder, piped at less than 2 bar gauge and crossing no more than four erf lines between separate property boundaries.

MEMORANDUM ON THE OBJECTS OF THE GAS BILL, 2001

Background and objects

For several decades South Africa has had a relatively small gas industry based on gas produced from coal. The gas industry is now set to enter a period of rapid expansion based on natural gas fields in South Africa and Southern Africa. However, the lack of a legislative framework is a barrier to the development of the gas industry. The Gas Bill will provide the legislative framework and will establish an independent Gas Regulator. The objects of the Gas Bill are to—

- (a) promote the efficient, effective, sustainable and orderly development and operation of gas transmission, storage and distribution facilities and the provision of efficient, effective and sustainable gas transmission, storage, distribution and trading services;
- (b) facilitate investment in the gas industry;
- (c) ensure the safe, efficient, economic and environmentally responsible transmission, distribution and storage 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;
- (e) ensure that gas transmission, storage, distribution and trading services are provided on an equitable basis and that the interests and needs of all parties concerned are taken into consideration;
- (f) promote the development of competitive markets for gas and gas services;
- (g) facilitate gas trade between the Republic and other countries; and
- (h) promote access to gas in an affordable and safe manner.

Investor decisions concerning a project to import gas from Mozambique are being made in the absence of specific legislation. In order to accommodate this the Minister of Minerals and Energy has negotiated an Agreement with the company concerned and the Gas Bill makes provision for this agreement to be made binding on the Gas Regulator until 10 years after gas is first received from Mozambique.

Financial implications for State

The Department of Minerals and Energy budget does not provide for the establishment and running of a Gas Regulator. Therefore, when the Gas Act is promulgated, the Department will require an extra R2 100 000 to run the Gas Regulator for the financial year 2001/2002, with an equivalent amount for the following years.

Bodies consulted

Bodies consulted on the Bill are:

*Afrox Limited, *BP South Africa, *British Gas; Camala, Central Energy Fund, Chevron; *Cinery Global Power (Egoli Gas); *Cosatu; Department of Constitutional Affairs; Department of Finance; *Department of Labour; *Department of Trade and Industry; DNCH Mozambique; Durban Electricity Department; *Easigas; Econ, *Energy and Development Research Centre; *Energy Africa Ltd.; *Energy and Utility (Pty) Ltd.; *Engen; *Engineering Council; *Enron Corp; *Eskom; *Fedusa; Forest Exploration International (South Africa); International Energy Agency; *L P Gas Association; *Mossgas (Pty) Ltd.; Namibian Ministry of Mines and Energy; Namcor; Nampower; National Electricity Regulator; *Petroleum Agency; *Petronet; *Phillips Petroleum South Africa, Ltd.; *Pioneer Natural Resources South Africa; Ranger Oil Ltd.; Sacob; Sadelec; Sasol Gas; *Sasol Oil, Sasol Petroleum International; *Shell Exploration & Production Namibia; *Shell South Africa (Pty) Ltd; *Soekor; *Texaco Namibia Resources Inc.; *USA Department of Energy; *World Bank. (The names of the bodies that submitted written comments are marked with an asterisk.)

Parliamentary procedure

The State Law Advisers and the Department of Minerals and Energy are of the view that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

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